

**326th MEETING OF THE
STATE ENVIRONMENTAL IMPROVEMENT
AND ENERGY RESOURCES AUTHORITY
EIERA Office
425 Madison Street, Second Floor
Jefferson City, Missouri
September 15, 2016
10:00 a.m.**

1. Call to Order

2. Approval of Minutes

Approval of Minutes from the 325th Meeting of the Authority held May 12, 2016, in Jefferson City, Missouri

3. State Revolving Program

A. Program Update

B. Consideration and Approval of Resolution Approving Senior Managing Underwriter(s) and Co-managing Underwriter(s) In Connection with the State Revolving Fund Program and Authorizing the Authority to Negotiate and Enter into an Agreement(s) In Connection Therewith

C. Other

4. Energy Efficiency Leveraged Loan Program

A. Program Update

B. Other

5. Missouri Market Development Program

A. Program Update

B. Consideration of the Funding Recommendation for the Enginuity, LLC, Project and Authorizing the Director or Her Designee to Enter Into an Agreement on Behalf of the Authority

C. Consideration of the Funding Recommendation for the EPC Inc., Project and Authorizing the Director or Her Designee to Enter Into an Agreement on Behalf of the Authority

D. Consideration of the Funding Recommendation for the Granuband Macon, LLC, Project and Authorizing the Director or Her Designee to Enter Into an Agreement on Behalf of the Authority

E. Consideration of the Funding Recommendation for the St. James Winery, Inc., Project and Authorizing the Director or Her Designee to Enter Into an Agreement on Behalf of the Authority

F. Other

6. Brownfields Revolving Loan Fund Program

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #5B
MISSOURI MARKET DEVELOPMENT PROGRAM
FUNDING RECOMMENDATION FOR ENGINUITY, LLC

Issue:

Enginuity, LLC requested \$250,000 to purchase equipment costing \$500,737 that will enable the company to produce off-road diesel fuel and carbon products from a variety of organic wastes.

Action Needed:

Consideration of the funding recommendations for the Enginuity, LLC project.

Staff Recommendation:

Staff recommends funding this project in the amount of \$250,000 not to exceed 50% of the cost of the equipment.

Staff Contact:

Kristin Tipton, Development Director

Background:

Enginuity, LLC (located in Mansfield, Missouri) requested \$250,000 to purchase equipment costing \$500,737 that will enable the company to produce off-road diesel fuel and carbon products from a variety of organic wastes. The process would involve a high-temperature chemical conversion paired with secondary filtration processes. This technology is patented and used in many of Missouri's charcoal plants and Enginuity, LLC has secured the services of an environmental engineer who has experience in all aspects of the process.

Enginuity, LLC, a successful past program participant, is an engineering company that provides turnkey services for a variety of industries. Enginuity performs metal stamping, plastic injection molding, tool and die design and electrical design. Through a past MMDP project, the company produces products that are carried by Menards, Ace Hardware, and other national chains.

With this project, Enginuity intends to accept waste from multiple sources, but a large supplier will be Grisham Farms, another past successful program participant. Grisham Farms produces 3,000 tons of poultry feed each week from pre-consumer food waste, necessarily generating a

tremendous amount of food contaminated packaging which is currently landfilled. Enginuity's process will break down these materials to a liquid called bio-crude that will then be refined to produce off-road diesel fuel, and solids that are raw carbon. Raw carbon has multiple applications and Enginuity has letters of intent to purchase the "biochar" from Wright County who will apply it to roads in winter weather and from several nurseries and landscapers that will use it as a soil amendment. The off-road diesel will be sold to area farmers and businesses that have operations where it can be used.

Enginuity, LLC anticipates diverting 14,000 tons annually and creating nineteen full time and five part-time jobs with this project.

The Missouri Market Development Program Steering Committee, which includes staff from the Missouri Department of Natural Resources, Missouri Department of Economic Development, and the Authority, recommends funding this project in the amount of \$250,000 not to exceed 50% of the cost of the equipment. The Steering Committee also recommends that the project be required to divert enough materials (10,000 tons) and create enough jobs (11) to meet Program funding level eligibility requirements rather than the anticipated numbers. Five people voted for this funding recommendation and one person voted against it.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #5C
MISSOURI MARKET DEVELOPMENT PROGRAM
FUNDING RECOMMENDATION FOR EPC, INC

Issue:

EPC, Inc. requested \$250,000 to purchase equipment costing \$1,638,952 that will increase process capacity at a new electronics remanufacturing and recycling facility.

Action Needed:

Consideration of the funding recommendations for the EPC, Inc. project.

Staff Recommendation:

Staff recommends funding this project in the amount of \$200,000 not to exceed 50% of the cost of the equipment.

Staff Contact:

Kristin Tipton, Development Director

Background:

EPC, Inc. requested \$250,000 to purchase equipment costing \$1,638,952 that will increase process capacity at a new electronics remanufacturing and recycling facility in Wright City. The company has outgrown its manual demanufacturing process currently based in Earth City and plans to install the state-of-the-art shredding and sorting machine at a new 200,000 square-foot facility currently under construction.

EPC, Inc. a past program participant, is an Information Asset Disposal (IAD) company. They refurbish and resell equipment whenever possible, but many of the items that come through their facilities are truly end-of-life and have no remarketed value. EPC manually demanufactures these items so the component materials such as printed circuit boards, copper, plastic, aluminum and steel can be recycled. This is currently done at a facility in Earth City and this operation will relocate to the Wright City building. Equipment that can be remarketed is done at a smaller storefront in St. Charles.

The current manual demanufacturing processes are becoming non-sustainable due to depressed commodity markets, increased labor costs, and increased volume of end-of-life equipment. EPC, Inc. has been forced to turn away potential customers and has not been able to participate in public recycling events for these reasons. Automating the e-waste handling process will enable the company to serve its clients in a more economically feasible

manner and will also allow the company to grow. EPC, Inc. believes they will increase materials recovered by at least 25%.

EPC, Inc. is the only company in Missouri that is certified by the National Association of Information Destruction standards. Its clients include Citibank, Wells Fargo, Southwest Airlines, Abbott Laboratories and Express Scripts. Increasing the volume of electronic equipment that is recycled by certified firms helps insure that the equipment is recycled in the proper manner.

EPC, Inc. anticipates diverting an additional 2,000 tons annually from the waste stream and creating four full time employee positions with this project.

A business that has previously participated in the program is eligible to apply for additional funding if the new project results in a new product, uses different recovered materials, or increases diversion significantly. This project will enable EPC to accept different waste streams and will increase the diversion significantly.

The Missouri Market Development Program Steering Committee, which includes staff from the Missouri Department of Natural Resources, Missouri Department of Economic Development, and the Authority, recommends funding this project in the amount of \$200,000 not to exceed 50% of the cost of the equipment. This funding recommendation was unanimous.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #5D
MISSOURI MARKET DEVELOPMENT PROGRAM
FUNDING RECOMMENDATION FOR GRANUBAND MACON, LLC

Issue:

Granuband Macon, LLC requested \$250,000 to purchase equipment costing \$500,000 that will enable the company to manufacture playground tiles and other products at its tire recycling facility in Macon.

Action Needed:

Consideration of the funding recommendations for the Granuband Macon, LLC project.

Staff Recommendation:

Staff recommends funding this project in the amount of \$100,000 not to exceed 50% of the cost of the equipment.

Staff Contact:

Kristin Tipton, Development Director

Background:

Granuband Macon, LLC (located in Macon, Missouri) requested \$250,000 to purchase equipment costing \$500,000 that will enable the company to manufacture playground tiles and other products at its tire recycling facility in Macon. The company has been processing scrap tires for use as mulch and infill for nearly ten years and would be the only Missouri company making a product from tires beyond the crumb rubber stage.

The tile manufacturing line would be purchased from an Iowa company with an agreement that the Iowa company will continue to market the tiles. The owner of the Granuband plant operates similar plants in the Netherlands and believes he can also produce additional products with the acquisition of this line, including a roofing product which has already generated interest in United States markets.

Because Granuband already shreds tires, the tile manufacturing line is a natural fit. Scrap tires continue to be problematic in the waste stream since updated air regulations have made it cost prohibitive for utilities to convert plants to continue to burn tire derived fuel. Currently, Granuband receives tires from multiple locations in Missouri.

Granuband Macon, LLC anticipates diverting an additional 800 tons annually from the waste stream and creating ten to twelve full time employee positions with this project.

The Missouri Market Development Program Steering Committee, which includes staff from the Missouri Department of Natural Resources, Missouri Department of Economic Development, and the Authority, recommends funding this project in the amount of \$100,000 not to exceed 50% of the cost of the equipment. This funding recommendation was unanimous. The amount recommended is the maximum amount for which the business is eligible given the amount of materials the project will divert and jobs it will create. At this time, Granuband is considering whether it will be able to fund the additional amount required to purchase the manufacturing line if this award is approved.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #5E
MISSOURI MARKET DEVELOPMENT PROGRAM
FUNDING RECOMMENDATION FOR ST. JAMES WINERY, INC.

Issue:

St. James Winery, Inc. requested \$175,500 to purchase equipment costing \$351,000 that will enable the company to make a distilled spirit similar to grappa from grape waste (pomace) left over from wine production.

Action Needed:

Consideration of the funding recommendations for the St. James Winery, Inc. project.

Staff Recommendation:

Staff recommends funding this project in the amount of \$175,500 not to exceed 50% of the cost of the equipment.

Staff Contact:

Kristin Tipton, Development Director

Background:

St. James Winery, Inc. (located in St. James, Missouri) requested \$175,500 to purchase equipment costing \$351,000 that will enable the company to make a distilled spirit similar to grappa (an Italian after-dinner drink) from grape waste (pomace) left over from wine production. This new product line will be part of a campus-wide shift to using sustainable processes and materials in the production of its beverages.

St. James Winery intends to construct a distillery on site at their current wine and craft beer production facility and will use the pomace from wine production to develop a new distilled spirit. Pomace (grape skins, pulp, seeds and stems) is generated in very large quantities in wine production and, like most organic materials, disposal can be problematic, often heavily impacting local wastewater treatment systems.

The project is part of St. James Winery's plan to become the model for sustainability in the wine and craft beverage industry. The St. James Winery campus may ultimately be an end user for pomace produced around the state, or can serve as a model for use of raw materials to other wineries. Other investments in the campus will increase overall energy efficiency,

generate energy, and reduce expense of water management. The new distillery is planned to be LEED Certified.

St. James Winery was founded in 1970, is located on fifty acres adjacent to Interstate 44 and employs sixty people. The family owned company produces 250,000 cases of wine each year and also produces grapes on 238 acres of vineyards.

St. James Winery anticipates diverting 1,000 tons from the waste stream annually and creating twelve new full time jobs with this project.

The Missouri Market Development Program Steering Committee, which includes staff from the Missouri Department of Natural Resources, Missouri Department of Economic Development, and the Authority, recommends funding this project in the amount of \$175,000 not to exceed 50% of the cost of the equipment. This funding recommendation was unanimous.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #6A
MISSOURI BROWNFIELDS REVOLVING LOAN FUND UPDATE

Issue:

Update on the Missouri Brownfields Revolving Loan Fund

Action Needed:

None.

Staff Recommendation:

None.

Staff Contact:

Kristin Tipton, Development Director

Background:

The MBRLF was awarded \$113,000 in supplemental funding for petroleum projects this year and EPA Region 7 staff thanked the EIERA for work done on the program. The required twenty-percent match for this award is \$22,600. Staff also presented at the Missouri Brownfields Conference held at the Lake of the Ozarks in July.

Project updates are as follows:

- MDNR has agreed that all cleanup work has been completed at the former ACME Battery site, owned by Remains, Inc., and will issue the certificate of completion once appropriate environmental covenants are prepared. Remains, Inc., also continues to make interest payments on loan draws.
- The cleanup at the Wittenberg Warehouse, part of the former Porter Oil Site currently owned by the Land Reutilization Authority of the City of St. Louis, continues to be delayed as the City attempts to source funds for the project, the cost of which far exceeds estimates.
- Soil excavation at the Park Street property, owned by Habitat for Humanity of Springfield, Missouri, Inc., is complete but backfilling continues to be delayed due to excessive water on the property and unresolved drainage issues.
- A Certificate of Completion was issued for the project at the former Kemper Military School Administration building, owned by the Boonslick Community Development Corporation, and

the building has been demolished. The City will soon begin converting the area to greenspace as they also rehabilitate other buildings on the campus.

- MDNR has issued a Certificate of Completion for the Shaw Boulevard project with Tower Grove Neighborhoods Community Development Corporation in St. Louis. The developer who won the bid to purchase the property will be turning the former gas station into a hamburger and shake restaurant.
- Cleanup has begun at the former school building owned by the City of Howardville.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #6B

**CONSIDERATION OF THE ST. LOUIS LAND REUTILIZATION AUTHORITY REQUEST TO WAIVE
AGREEMENT REQUIREMENT TO RETURN EXPENDED FUNDS IF PROPERTY IS SOLD PRIOR TO CLEANUP
COMPLETION**

Issue:

Update on the MBRLF project with the St. Louis Land Reutilization Authority

Action Needed:

Consideration of the St. Louis Land Reutilization Authority request to waive the agreement requirement to return expended funds to the MBRLF if the property is sold prior to cleanup completion.

Staff Recommendation:

Staff recommends waiving the agreement requirement for the St. Louis Land Reutilization Authority to return funds to the MBRLF if the property is sold prior to cleanup completion.

Staff Contact:

Kristin Tipton, Development Director

Background:

At its meeting on March 21, 2013, the Authority awarded a MBRLF petroleum subgrant to the Land Reutilization Authority of the City of St. Louis to complete remediation at the Wittenberg Warehouse site.

The project property is part of a larger, multiple parcel site known as the former Porter Oil site, which was used for bulk petroleum storage and the treatment of hazardous wastes. The Land Reutilization Authority of the City of St. Louis previously received and expended an EPA petroleum Brownfields grant on the site, primarily to remove underground and above ground storage tanks. This cleanup resulted in the receipt of a No Further Action letter from the MoDNR Tanks Section. The site was also enrolled in the MoDNR BVCP to address additional issues on the site. Among these is the collection of storm water in the basement of the warehouse building, which has become contaminated with waste oil that has been dumped by unknown individuals. The subgrant from the MBRLF was to enable a continuation of the ongoing cleanup and ready the warehouse for demolition so that the property can be redeveloped for commercial/industrial reuse. The Land Reutilization Authority of the City of St. Louis did not have sufficient funds to cover the oily water disposal fee, which was estimated to be \$95,000.

Because the Land Reutilization Authority of the City of St. Louis has removed similar contamination from the site previously, the cost estimate was believed to be sound. A contractor was hired to remove the oily water, but additional tanks on the property complicated the completion of the cleanup. It was determined that the building must be demolished to properly remove the tanks and additional sludge in the basement of the building. Bids received for the revised Remedial Action Plan far exceeded available funds.

As the Land Reutilization Authority sought to identify the necessary amount of funding, a developer offered to purchase the property. Believing that selling the property was the best possible way to get the property cleaned up, the Land Reutilization Authority Board authorized the sale of the property at its meeting earlier this month.

Our agreement with the St. Louis Land Reutilization Authority requires them to retain the title to the property until a Certificate of Completion is awarded by the BVCP and requires that any MBRLF money expended on the project be repaid to the Authority if the property is sold ahead of receiving the Certificate. The project has spent \$56,636.01 of the \$95,000 award. Peter Phillips from the St. Louis Development Corporation will attend the Authority's meeting to request that the Authority waive this agreement provision.

This is a difficult recommendation to make. Both parties to this agreement are public entities with limited access to funds. Waiving the agreement requirement would enable the St. Louis Land Reutilization Authority to clean up other properties with the money. Returning the funds to the MBRLF would enable the EIARA to clean up other properties with the money. However, the expended funds were well used – the developer purchasing the property now knows exactly what must be done to clean up the property. In addition, the St. Louis Land Reutilization Authority will require the developer to maintain the property enrollment in the MoDNR/BVCP and its agreement with the developer will enable the St. Louis Land Reutilization Authority to take the property back if it is not cleaned up in a reasonable amount of time.

KT:ge

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #7B

**RATIFICATION OF NRD MEMORANDUM OF UNDERSTANDING WITH THE
MISSOURI DEPARTMENT OF NATURAL RESOURCES AS AMENDED**

Issue:

Between EIERA meetings a non-material change was needed on the NRD Memorandum of Understanding with MDNR.

Action Needed:

Ratification of the NRD Memorandum of Understanding, as amended, between the Authority and MDNR.

Staff Recommendation:

Staff recommends that the MOU, as amended, be ratified.

Staff Contact:

Karen Massey

Background:

In FY2013, the Board authorized the Director to negotiate and enter into a Memorandum of Understanding (MOU) with DNR related to Natural Resource Damage and Restoration (NRD) activities. A copy of the fully executed MOU is attached as Exhibit A.

Last spring MDNR asked EIERA staff to perform work related to funds recovered as a result of damage to state groundwater resources. During the discussions about the type of work to be performed, staff realized that these funds were from a settlement that was not managed by Joint State and Federal Trustees as other NRD funds held by the EIERA and our related activities have been. After discussions with the MDNR and Authority General Counsels, it was determined that the MOU, as originally written, would allow the Authority to provide services related to State Trustee groundwater recoveries; however, all felt that it would still be best to clarify the agreement in this area.

Attached as Exhibit B is the resulting amendment to the NRD MOU. We normally would have brought the amendment to you before its finalization; however given that these are not material changes and that ground water related work needed to be provided before the next EIERA Board meeting, we are asking instead that you ratify the executed amendment.

The first two changes found on page one of the Amendment relate to State Trustee recoveries as described above. The third non-substantive change, found on page two, simply recognizes that not all payments to the EIERA for services are technically reimbursements and substitutes "compensate" for "reimburse".

Staff will be on hand at the meeting to answer any questions and to update you on the NRD program generally.

KM:ge

Attachments

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING BETWEEN THE MISSOURI DEPARTMENT OF NATURAL RESOURCES AND THE STATE ENVIRONMENTAL IMPROVEMENT AND ENERGY RESOURCES AUTHORITY OF THE STATE OF MISSOURI

I. BACKGROUND

The Federal Water Pollution Control Act ("CWA", commonly known as the "Clean Water Act") [33 U.S.C. §§ 1251-1387] and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA", more commonly known as the Federal "Superfund" law) [42 U.S.C. §§ 9601-9675], and its implementing regulations [40 C.F.R. Part 300 and 43 C.F.R. Part 11] authorizes state agencies, federally-recognized tribes and certain federal agencies with authority to manage or control natural resources, to act as trustees on behalf of the public, and to restore, rehabilitate, replace, and/or acquire natural resources equivalent to, those injured by hazardous substances releases. Similar to the CWA and CERCLA, the Oil Pollution Act of 1990 ("OPA") [33 U.S.C. §§2701-2762] (CERCLA, OPA and the CWA will be referred to collectively as the "Acts") and its implementing regulations [15 CFR Part 900] also authorize such trustees to pursue recovery of natural resource damages ("NRD") on behalf of the public for injury to, destruction of, loss of, or loss of use of natural resources, including the costs of assessing natural resource damages.

As authorized by CERCLA and OPA, the Governor of the State of Missouri has designated the Director of the Missouri Department of Natural Resources ("MDNR") to act on behalf of the State of Missouri as natural resource trustee ("State Trustee"). The State Trustee cooperates and coordinates with Federal Trustees designated by the President in the National Contingency Plan in the preparation of the assessments of, as well as the pursuit of claims for, damages to natural resources under the Acts due to releases, discharges, spills or other incidents, occurrences or events in the State and its boundary waters. The State Trustee and Federal Trustee(s) are "Joint Trustees" of recovered NRD. The State Trustee is authorized, pursuant to a Joint Trustees' Resolution, to utilize natural resource damages jointly recovered from responsible parties, including interest accrued thereon, toward the restoration, replacement, rehabilitation, or acquisition of the equivalent of, natural resources or resource services injured, destroyed or lost. Such recovered damages are jointly held within the United States Department of the Interior Natural Resource Damage Assessment and Restoration Fund.

The State Environmental Improvement and Energy Resources Authority, a body corporate and politic and a governmental entity of the State (the "EIERA"), is authorized pursuant to the provisions of Sections 260.005 to 260.125, inclusive, Revised Statute of Missouri, as amended and Appendix B(1) thereto, to provide for the conservation of the air, land and water resources of the State by the prevention or reduction of the pollution thereof and proper methods of disposal of solid waste or sewage and to provide for the furnishing of water facilities and resource recovery facilities and to provide for the development of the energy resources of the State, to provide for energy conservation and to provide for energy efficiency projects and increased energy efficiency in the State. MDNR in its role as the State Trustee for

NRD now desires that the EI ERA assist, on an as needed and as directed basis, in the development and implementation of the expenditure of recovered NRD to further the goals established by the Joint Trustees and pursuant to the Acts.

In consideration of the foregoing, the parties to this Memorandum of Understanding ("MOU") mutually agree as follows:

II. PARTIES

The EI ERA and the MDNR are parties to this MOU. The following officials or their designees are authorized to enter into this MOU on behalf of the parties to this MOU.

1. Director
State Environmental Improvement and Energy Resources Authority
2. Director
Missouri Department of Natural Resources as designated State Trustee

III. PURPOSE

The purpose of this MOU is to establish the relationship between the MDNR and the EI ERA with respect to the development and implementation of plans pursuant to the Acts to restore, replace, rehabilitate, or acquire the equivalent of, natural resources or resource services injured, destroyed or lost due to releases, discharges, spills or other incidents, occurrences or events in the State and its boundary waters. The parties acknowledge it is the responsibility of the MDNR as State Trustee, and the EI ERA shall have no involvement in, the assessment of or pursuit of claims against responsible parties. The parties further acknowledge the State Trustee has primary responsibility for the restoration, replacement, rehabilitation, or acquisition of the equivalent of, nature resources or resource services injured, destroyed or lost and the role of the EI ERA will be to use its authority, as directed by the State Trustee, to assist the State Trustee to effectuate the goals and objectives of the NRD Program in the most efficient and cost-effective manner possible.

IV. EI ERA SERVICES

Specific services to be provided by the EI ERA for any NRD Program project shall be those directed by the Trustee to be provided by the EI ERA, to the extent the provision of such services is within the authority and purpose of the EI ERA and to the extent the EI ERA Director and State Trustee agree in writing. Each project work plan shall define the services to be provided including the performance and financial reporting. Any general NRD services requested by the State Trustee that are not subject to a project work plan, shall be requested by the State Trustee in writing and acknowledged by the EI ERA Director. All such services shall be designed to use NRD Funds to plan and implement actions pursuant to the Acts which are appropriate to restore, replace, rehabilitate, or acquire the equivalent of, natural resources or resource services injured, lost or destroyed. Services shall be carried out by the EI ERA at the direction, with technical and other assistance, and with the approval, of the State Trustee. Types of services which may be provided by the EI ERA may include, but are not limited to:

- Research, including research preliminary to the development of any final action plan to be implemented by or with the assistance of the EI ERA;

- Procurement, including developing, with direction and assistance from the Trustee, RFPs to evaluate and select restoration projects to achieve specific restoration goals and obtain professional and other services as needed;
- Entering into financial assistance agreements with third parties for the restoration, replacement, rehabilitation, or acquisition of the equivalent of, natural resources or resource services which were injured, destroyed or lost;
- Acquiring and transferring real estate;
- Contract management;
- Acting as paying agent, including investing NRD Funds not needed for immediate cash flow provided that interest accrued inures to the benefit of the NRD program funds;
- Consulting with professionals under contract to the EIERA; and
- Other activities that further the goals established by the Joint Trustees pursuant to the Acts and within the authority and purpose of the EIERA.

V. Compensation and Reimbursement of Expenses

The State Trustee shall compensate EIERA for services provided by EIERA under this MOU by paying actual EIERA staff costs (including without limitation all wages, taxes and fringe benefits) plus an appropriate overhead rate (including leave allocation) for time spent by EIERA staff performing general NRD activities, preparing project work plans (regardless of whether any such plan is finalized or implemented) and executing project work plans. Certain services may be subject to a minimum fee regardless of the time spent by EIERA staff performing the activity.

In addition, the State Trustee shall reimburse to EIERA for all of EIERA's reasonable out-of-pocket costs and expenses incurred by the EIERA in providing services under this MOU including general NRD activities, preparing project work plans (regardless of whether any such plan is finalized or implemented) and executing project work. Out-of-pocket costs and expenses include, without limitation, travel expenses, professional fees, consultant fees, cost of supplies, courier and other delivery charges, photocopying charges, and attorneys' and paralegals' fees and expenses.

The EIERA will provide the State Trustee with the appropriate annual overhead rate for each fiscal year during the first fiscal quarter of such fiscal year. Invoices for services and cost and expense reimbursement will be submitted or drawn at least quarterly and be accompanied by reasonable documentation acceptable to the State Trustee.

In addition to defining the services and reporting requirements specified in section IV above, each project work plan will state whether the service is subject to a minimum charge and the source from which costs and expenses will be paid.

VI. REPORTING

Each project work plan will specify the financial and performance reporting requirements for the services involved. A performance report will be submitted at least every six months beginning 180 days after the effective date of this MOU and in a format with information mutually acceptable to the Parties.

VII. INDEMNIFICATION

To the extent permitted by applicable law, the State Trustee shall protect, indemnify, defend and hold harmless the EIERA and its directors, officers, administrators, agents, attorneys, servants, employees, representatives, and affiliates (the "Indemnified Parties") for, from and against, and promptly reimburse the Indemnified Parties for, any and all claims, damages, liabilities, losses, judgments, costs and expenses (including reasonable attorneys' fees and expenses and amounts paid in settlement) incurred, paid or sustained by the Indemnified Parties in connection with, arising out of, based upon or otherwise involving or resulting from any threatened, pending or completed action, suit, investigation or other proceeding by, against or otherwise involving the Indemnified Parties and in any way dealing with, relating to or otherwise involving this MOU, performance by EIERA of any services under or contemplated by this MOU, except to the extent that they arise from the gross negligence, bad faith or willful misconduct of any of the Indemnified Parties.

VIII. MISCELLANEOUS

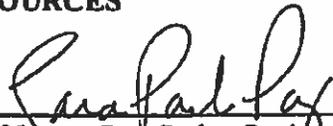
- A. Compliance with Laws.** All documents entered into, and activities undertaken, under this MOU shall be conducted in accordance with all federal, state and local laws, ordinances, rules and regulations of any applicable governmental authority, including without limitation all State open meetings and records laws.
- B. Severability.** Any provision of this MOU which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions of this MOU or affecting the validity, enforceability or legality of such provisions in any other jurisdiction.
- C. Counterparts.** This MOU may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same MOU.
- D. Effective Date.** The effective date of this MOU shall be the date on which the last party to this MOU executes this MOU.
- E. Termination.** This MOU may be terminated by any party upon thirty (30) days written notice to the other parties.
- F. Amendments.** This MOU may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing signed by all of the parties hereto.

G. Reservation of Rights. The parties hereto understand this MOU is not intended to create or waive any legal rights or obligations among the parties or any other person or entity not a party to this MOU. Nothing in the MOU is to imply that any party hereto is in any way abrogating or ceding any responsibilities or authority inherent in its control or State Trusteeship over natural resources.

H. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State without reference to its conflicts of law principles.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be duly executed and delivered by their respective officers thereunto duly authorized.

**MISSOURI DEPARTMENT OF NATURAL
RESOURCES**

By: 
Print Name: Sara Parker Pauley
Title: Director

**STATE ENVIRONMENTAL
IMPROVEMENT AND ENERGY
RESOURCES AUTHORITY**

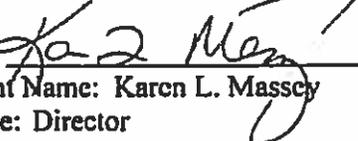
By: 
Print Name: Karen L. Massey
Title: Director

EXHIBIT "B"

**FIRST AMENDMENT TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MISSOURI DEPARTMENT OF NATURAL RESOURCES
AND
THE STATE ENVIRONMENTAL IMPROVEMENT AND ENERGY RESOURCES
AUTHORITY OF THE STATE OF MISSOURI**

The Missouri Department of Natural Resources ("MDNR") and the State Environmental Improvement and Energy Resources Authority ("EIERA") entered into a Memorandum of Understanding to establish and document the services MDNR may seek from EIERA to assist MDNR's resource restoration efforts. A copy of the MOU is attached hereto.

Pursuant to Section VIII.F of the MOU, amendments may be made in writing signed by both MDNR and EIERA. By this amendment, the parties modify the MOU as follows:

The following sentence shall be added after the current first paragraph of Section I (Background), on Page 1:

State law, including the Missouri Clean Water Law per Chapter 644 RSMo, also authorizes the State to recover damages and restoration costs from responsible parties.

The following paragraph shall replace the current second paragraph of Section I (Background), on Page 1:

As authorized by CERCLA and OPA, the Governor of the State of Missouri has designated the Director of the Missouri Department of Natural Resources ("MDNR") to act on behalf of the State of Missouri as natural resource trustee ("State Trustee"). The State Trustee cooperates and coordinates with Federal Trustee(s) designated by the President in the National Contingency Plan in the preparation of the assessments of, as well as the pursuit of claims for, damages to certain natural resources under the Acts due to releases, discharges, spills or other incidents, occurrences or events in the State and its boundary waters. The State Trustee and Federal Trustee(s) are often "Joint Trustees" of recovered NRD, in which case the State Trustee is typically authorized, pursuant to a Joint Trustees' Resolution, to utilize natural resource damages jointly recovered from responsible parties, including interest accrued thereon, toward the restoration, replacement, rehabilitation, or acquisition of the equivalent of, natural resources or resource services injured, destroyed or lost. Typically such recovered damages are jointly held within the United States Department of the Interior Natural Resource Damage Assessment and Restoration Fund, until disbursement in accordance with a Joint Trustees' Resolution. In some situations, the State Trustee may recover natural resource damages solely on behalf of the State of Missouri, in which case such recovered damages may be held in the state natural resource protection fund

and/or transferred to EIERA pending implementation of appropriate restoration/acquisition projects.

The following paragraph shall replace the current second paragraph of section V (Compensation and Reimbursement of Expenses) on Page 3:

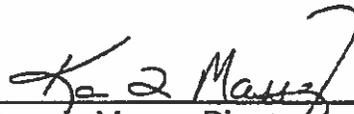
In addition, the State Trustee shall compensate EIERA for all of EIERA's reasonable out-of-pocket costs and expenses incurred by the EIERA in providing services under this MOU including general NRD activities, preparing project work plans (regardless of whether any such plan is finalized or implemented) and executing project work. Out-of-pocket costs and expenses include, without limitation, travel expenses, professional fees, consultant fees, cost of supplies, courier and other delivery charges, photocopying charges, and attorneys' and paralegals' fees and expenses.

The parties hereby agree to this Amendment as of the date specified below.



Sara Parker Pauley, Director
Missouri Department of Natural Resources,
State Trustee

June 24, 2016
Date



Karen L. Massey, Director
Environmental Improvement and Energy
Resources Authority

6/24/16
Date

State Environmental Improvement and Energy Resources Authority
326th Board Meeting
September 15, 2016

Agenda Item #8
ELECTION OF OFFICERS

Issue:

The Authority By-laws require elections of Officers at first meeting of the Authority held after June 1st each year.

Action Needed:

Election of Officers.

Staff Recommendation:

None.

Staff Contact:

Karen Massey

Background:

The By-Laws of the Authority state that the election of Officers take place at the first meeting of the Authority held after June 1st of each year. Article II, Section 1 states that the officers of the Authority shall be a Chair, a Vice-Chair, a Secretary and a Treasurer. Other than the Chair and Vice Chair, any two or more offices may be held by the same person. In past years we have found it advantageous to also elect an Assistant Secretary.

If you wish to review the By-laws, Article III contains the duties of each office.

KM:ge

Attachment

**BYLAWS OF THE
STATE ENVIRONMENTAL IMPROVEMENT AND
ENERGY RESOURCES AUTHORITY**

ARTICLE I

Section 1

Name of the Authority: The name of the Authority shall be "State Environmental Improvement and Energy Resources Authority."

Section 2

Seal of the Authority: The seal of the Authority shall consist of two concentric circles and shall bear the inscription "State Environmental Improvement and Energy Resources Authority, Missouri, Corporate Seal, 1973."

Section 3

Office of the Authority: The principal office of the Authority shall be located in the State of Missouri at such place as the Authority may from time to time designate by resolution. In the absence of establishment of a permanent principal office, the Authority may, by resolution, establish a temporary principal office at such place as it shall designate. The Authority may also have office at such other place or places within the State of Missouri as it may from time to time designate by resolution.

ARTICLE II

Section 1

Officers: The officers of the Authority shall be a Chair, a Vice-Chair, a Secretary and a Treasurer. Such assistant officers as may be deemed necessary may be elected or appointed by the Authority. The powers and duties of such assistant officers shall be as provided herein and as provided from time to time by resolutions of the Authority. Any two or more offices (except the offices of Chair and Vice Chair) may be held by the same person.

Section 2

Chair: The Chair shall be elected by the Authority, be a member of the Authority and shall serve until a successor is duly elected and qualified.

Section 3

Vice-Chair: The Vice-Chair shall be elected by the Authority, be a member of the Authority and shall serve until a successor is duly elected and qualified.

Section 4

Secretary: The Secretary shall be elected by the Authority. The Secretary need not be a member of the Authority and shall serve at the pleasure of the Authority. The office of Secretary may be combined with that of Treasurer.

Section 5

Treasurer: The Treasurer shall be elected by the Authority. The Treasurer need not be a member of the Authority and shall serve at the pleasure of the Authority. The office of Treasurer may be combined with that of Secretary.

Section 6

Election and Term of Office: The officers of the Authority shall be elected by the members of the Authority at the first meeting of the Authority held after June 1st of each year. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. Each officer shall hold office until his/her successor has been duly elected and qualified or death or until resignation or removal in the manner hereinafter provided. Each officer shall be eligible for re-election to such office.

Section 7

Removal: Any officer, employee or agent elected or appointed by the Authority may be removed by the Authority whenever in its judgment the best interest of the Authority would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 8

Vacancies: A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by election by the members of the Authority for the unexpired portion of the term.

ARTICLE III

The respective officers of the Authority shall have the following authority, powers and duties.

Section 1

The Chair: The Chair shall be chief executive officer of the Authority and shall preside at all meetings of the Authority and shall perform all duties commonly incident to the position of presiding officer of a board, commission, or corporation and shall have authority without impairment of any authority specifically granted by the Authority to other persons, to sign all contracts, instruments, documents and official orders of the Authority. The Chair shall have general supervision over the business and affairs of the Authority, subject to the direction of the Authority, and shall perform such other and further duties as the Authority, by formal resolution, may from time to time provide.

Section 2

Vice-Chair: The Vice-Chair shall perform duties and have the authority of the Chair during the absence or disability of the Chair, and shall preside at the meetings of the Authority when and while the Chair shall vacate the chair. The Vice-Chair shall perform such other and further duties and have such other and further authority as the Authority may, by formal resolution or motion, from time to time provide.

Section 3

Secretary: The Secretary shall keep the official records and seal of the State Environmental Improvement and Energy Resources Authority and shall certify, when required, to copies of records. The Secretary shall attend all meetings of the Authority and keep a full and true record of its proceedings, which shall include the date, time, place, members present, members absent, and a record of votes taken indicating the

vote as cast by each member present, all as required by Section 610.020.6 of the Revised Statutes of Missouri and such other information as the Secretary deems appropriate. The Secretary shall issue all official notices and prepare all papers and reports for the meetings of the Authority. The Secretary shall perform such other duties as the Authority may assign from time to time. If the Secretary is absent or unable to act, then the Assistant Secretary, if one has been appointed, shall perform all duties of the Secretary including but not limited to the execution and delivery of any instruments, documents, or papers of the Authority. The Assistant Secretary shall perform such other and further duties and have such other and further authority as the Authority may, by formal resolution or motion, from time to time provide.

Section 4

Treasurer: The Treasurer shall have supervision of the funds, securities, receipts and disbursements of the Authority, cause all monies and other valuable effects of the Authority to be deposited in its name and to its credit in such depositories as shall be selected by the Authority or pursuant to authority conferred by the Authority, cause to be kept at the office of the Authority correct books of account, proper vouchers and other papers pertaining to the corporation's business, render to the Chair of the Authority, whenever requested, an account of the financial condition of the Authority and of his/her transactions as Treasurer, and, in general, perform all duties and have all powers incident to the office of Treasurer and perform such other duties and have such other powers as from time to time may be assigned by the By-laws, the Chair, or the Authority.

Section 5

Assistant Officers: The powers and duties of such assistant officers as shall be elected or appointed by the Authority shall be as provided from time to time by resolutions of the Authority.

ARTICLE IV

Section 1

Director: The Director, under the direction of the Chair, or the Authority, shall have general supervision over and be in administrative charge of all the activities of the Authority, and, in addition, shall perform all the duties incident to this position and office. Except as otherwise provided by resolution of the Authority, the Director shall make final certification for payment of all duly authenticated and authorized items of expenditure for payment from any Authority funds from whatever source derived, and whenever the Chair is required to sign vouchers, requisitions and other instruments made by the Authority, the Director shall approve the same for submission to the Chair for signature. The Director shall assist the Secretary or Treasurer in the performance of their duties and shall have the full power to act in the place and instead of the Secretary at any time as may be directed by the Chair, the Secretary or the Authority. The Director shall act as or appoint an employee of the Authority to act as custodian who will be responsible for the maintenance of the Authority's records and said Custodian will make said records available for inspection and copying by the public, all pursuant to the requirements of Section 610.023, 610.024 and 610.026 of the Revised Statutes of Missouri and the Director shall be responsible for seeing that the Authority complies with the other requirements of the Missouri open meetings and records law as set out in Chapter 610 of the Revised Statutes of Missouri.

Section 2

General Counsel: The General Counsel shall, as directed by the Director or Authority, recommend legal directives with respect to Authority activities, advise the Director, officers and members of the Authority as to all legal matters relating to the administration, operations and financing of the Authority and as to the laws governing the acquiring and constructing of projects, and the issuing of bonds and notes as provided to pay the cost of projects. General Counsel shall draft, examine, or approve as to legal compliance all forms, contracts, or other documents necessary for all phases of the Authority's work or purposes and shall coordinate with and assist Bond Counsel in the preparation of all documents related to the sale of Authority obligations and the

investment of the proceeds; shall render regular opinions on such matters relating to the Authority as may be requested by the Director, Chair, members, or officers of the Authority. In addition, General Counsel shall perform such other services incident thereto and shall undertake such other duties as from time to time may be assigned by the Director or Chair or the Authority.

Section 3

Appointment: The Director and General Counsel shall be appointed and/or retained by the Authority on such terms as the Authority shall specify and shall serve at the pleasure of the Authority.

Section 4

Additional Personnel: The Director with approval from the Authority may from time to time employ such other personnel as may be necessary to exercise the Authority's powers, duties and functions as prescribed by law. Persons so appointed shall serve at the pleasure of the Director and Authority. The selection and compensation of such personnel shall be determined by the Authority based on the Authority personnel and compensation policies subject to the laws of the State of Missouri. The Authority may also from time to time retain or contract for the services of architects, engineers, accountants, attorneys, bond counsel, financial consultants, and such other persons, firms or corporations necessary to carry out its duties and to fix the compensation thereof.

ARTICLE V

Section 1

Regular Meetings: A regular meeting of the Authority for the transaction of all business as may properly come before the meeting shall be held not less frequently than once each quarter of the calendar year at the principal office of the Authority or legal counsel or at such other place within or without the State of Missouri, which is reasonably accessible by the public, as is designated in the notice of the regular meeting. The Chair in consultation with the Authority members may fix the regular meeting date, hour and place, and, each member shall be notified at least one (1) week

prior to the date fixed for the regular meeting by telephone call or in writing by letter, e-mail or other means of electronic communication (if by mail, notice shall be deemed adequate if deposited in the United States mail one (1) week prior to the meeting date).

Section 2

Special Meetings: In addition to the regular meetings of the Authority held pursuant to Section 1 of this Article V, the Chair may when necessary call a special meeting for the transaction of all business as may properly come before the meeting, or the Chair shall call a special meeting when requested to do so by any two members. Notice of special meetings shall be given at least five (5) days before the date set for the meeting by telephone call or in writing by letter, e-mail or other means of electronic communication (if by mail, notice shall be deemed adequate if deposited in the United States mail five (5) days prior to the meeting date). The special meeting shall be held at the principal office of the Authority or legal counsel or at such other place within or without the State of Missouri, which is reasonably accessible to the public and at such time as is reasonably convenient to the public, which shall be designated in the notice of the special meeting. At any special meeting any business shall be in order, whether or not stated in the notice of the meeting.

Section 3

Public Notice of Meetings: In addition to the notice of meetings sent to members of the Authority as provided above, at least 24 hours prior to an Authority meeting, a notice of the meeting shall be prominently posted in the office of the Authority in a part of the office accessible by the public and designated for posting such notices and such notice shall also be made available to the press and the public as requested and shall be published in such publications of the state as are normally utilized by state agencies to publish notice of agency meetings. The notice shall include the time, date and place of the meeting and shall state whether or not the meeting is to be an open or closed meeting and shall state the tentative agenda for the open meeting, all as required by Section 610.020 of the Revised Statutes of Missouri.

Section 4

Quorum: Three (3) members of the Authority shall constitute a quorum and the affirmative vote of three (3) members shall be necessary and sufficient for any action by the Authority. The Chair shall have a vote on all issues.

Section 5

Proxies: Proxies to vote with respect to any matter shall not be allowed or accepted.

Section 6

Register: The Secretary shall maintain a register of the address of each member. Notice by mail, e-mail or other means of electronic communication sent to the address as shown by the Secretary's records shall be effective. Any member who desires to receive notice at a different temporary or permanent address shall notify the Secretary who shall modify the records accordingly.

Section 7

Meeting by Telephone or Other Electronic Means: Members may participate in a meeting of the Authority by means of conference telephone or other electronic means whereby all individuals participating in the meeting, including the public attending the meeting, can hear each other, and any member participating in a meeting of the Authority in such manner shall be considered present at such meeting for all purposes including for quorum purposes.

ARTICLE VI

Section 1

Contracts: The Authority may authorize the Director, any officer or officers, assistant officer or assistant officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Authority, and such authority may be general or confined to specific instances.

Section 2

Loans: No loan shall be contracted on behalf of the Authority and no evidence of indebtedness shall be issued in its name unless authorized by resolution of the Authority. Such authority may be general or confined to specific instances.

Section 3

Checks, Drafts, or Orders: All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents of the Authority or Director and in such manner as shall from time to time be determined by resolution of the Authority.

Section 4

Deposits: All funds of the Authority not otherwise invested or employed shall be deposited from time to time to the credit of the Authority in such banks, trust companies or other depositories as the Authority may select.

ARTICLE VII

The Authority, its officers and members shall have such additional and further rights, powers and duties as by law may or hereafter be permitted.

ARTICLE VIII

Section 1

Power to Indemnify in Action, Suits or Proceedings other Than Those by or in the Right of the Authority: To the extent not otherwise covered by Sec. 105.711 – Sec. 105.726 R.S.Mo. 1986, as amended or supplemented or any other statute, agreement or otherwise, and subject to Section 3 of this Article VIII, the Authority shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an action by or in the right of the Authority, by reason of the fact that the person is or was a member, officer, director or employee of the Authority

against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Authority, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 2

Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Authority: To the extent not otherwise covered by Sec. 105.711 – Sec. 105.726 R.S.Mo. 1986, as amended or supplemented or any other statute, agreement, or otherwise and subject to Section 3 of this Article VIII, the Authority shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Authority to procure a judgment in its favor by reason of the fact that the person is or was a member, officer, director or employee of the Authority, or is or was serving at the request of the Authority against expenses, including attorney's fees, and amounts paid in settlement actually and reasonably incurred by the person in connection with the defense or settlement of such action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Authority; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the Authority unless and only to the extent that the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person

is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 3

Authorization of Indemnification: Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Authority as authorized in the specific case upon a determination that indemnification of the member, officer, director or employee is proper in the circumstances because the person has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VIII. Such determination shall be made (i) by the members by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or, even if obtainable, a quorum of disinterested members so directs by independent legal counsel in a written opinion. To the extent, however, that a member, officer, director or employee of the Authority has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, that person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by that person in connection therewith.

Section 4

Further Indemnification: To the extent determined by the members, the Authority shall have the power to give any further indemnity, to the fullest extent permitted by law, in addition to the indemnity authorized or contemplated by Sections 1, 2 and 3 of this Article VIII to any person who is or was a member, officer, director, employee or agent, or to any person who is or was serving at the request of the Authority as a member, officer, director or employee of the Authority.

Section 5

Good Faith Defined: For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interest of the Authority, or, with respect to any criminal action or proceeding, to have had no reasonable cause

to believe the person's conduct was unlawful, if the person's action is based on the records or books of account of the Authority, or on information supplied to the person by the Director or employees or agents of the Authority in the course of their duties, or on the advice of legal counsel for the Authority or on information or records given or reports made to the Authority by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Authority. The provisions of this Section 5 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VIII.

Section 6

Indemnification by Order of Court: Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any member, officer, director or employee may apply to any court of competent jurisdiction in the State of Missouri for an order requiring the indemnification of such member, officer, director or employee, to the extent otherwise permissible under Sections 1 and 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the member, officer, director or employee is proper in the circumstances because the person has met the applicable standards of conduct set forth in Sections 1 and 2 of this Article VIII. Notice of any application for indemnification pursuant to this Section 6 shall be given to the Authority promptly upon the filing of such application.

Section 7

Expenses Payable in Advance: Expenses incurred by a member, officer, director or employee in defending a civil or criminal action, suit or proceeding may be paid by the Authority in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the member, officer, director or employee to repay such amount if it shall ultimately be determined that the person is not entitled to be indemnified by the Authority as authorized in this Article VIII.

Section 8

Non-Exclusivity and Survival of Indemnification: The indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, Bylaw, agreement, vote of disinterested members or otherwise, both as to action in the person's official capacity and as to action in another capacity while holding such office, it being the policy of the Authority that indemnification of the persons specified in Section 1 and 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Sections 1 or 2 of this Article VIII but whom the Authority has the power or obligation to indemnify. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to the person who has ceased to be a member, officer, director or employee and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 9

Insurance: The Authority may purchase and maintain insurance on behalf of any person who is or was a member, officer, director or employee of the Authority, or is or was serving at the request of the Authority as a member, officer, director or employee of the Authority against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Authority would have the power to indemnify the person against such liability under the provisions of this Article VIII.

Section 10

Right to Hire Counsel: Notwithstanding anything to the contrary in this Article VIII, statute or otherwise, a member, officer, director or employee of the Authority shall retain the right to hire counsel of said person's choosing.

Section 11

Meaning of "Authority" for Purposes of Article VIII: For purposes of this Article VIII, references to "the Authority" shall include, in addition to the resulting Authority, any constituent Authority (including any constituent of a constituent) absorbed in consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its members, officers, directors and employees, so that any person who is or was a member, officer, director or employee of such constituent Authority, or is or was serving at the request of such constituent Authority as a member, officer, director or employee shall stand in the same position to the resulting or surviving Authority as such person would have with respect to such constituent Authority if its separate existence had continued.

ARTICLE IX

These Bylaws may be altered, amended or repealed, and new Bylaws may be adopted by the Authority at any regular meeting or at any special meeting, after a public hearing has been held on such proposed altered, amended or repealed Bylaws.