

LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF ILLINOIS
FOR CONSTRUCTION OF THE
PEORIA LAKE HABITAT REHABILITATION PROJECT
PEORIA AND WOODFORD COUNTIES, ILLINOIS

THIS AGREEMENT is entered into this 30th day of March, 19 93, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the District Engineer for the Rock Island District U.S. Army Corps of Engineers, and the STATE OF ILLINOIS (hereinafter referred to as the "State"), acting by and through the Director, Illinois Department of Conservation,

WITNESSETH, that:

WHEREAS, construction of the Peoria Lake Habitat Rehabilitation Project at Peoria Lake in Peoria and Woodford Counties, Illinois (hereinafter referred to as the "Project", as defined in Article I.a of this Agreement), was approved under the terms of the Upper Mississippi River System Environmental Management Program, as authorized by Section 1103(e) of the Water Resources Development Act of 1986, Public Law 99-662, as amended; and

WHEREAS, Section 906(e) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project; and

WHEREAS, the State in order to insure the continued operation of the Project, has voluntarily agreed to provide 100 percent of the cost of operation and maintenance of the Project.

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the construction of any water resources project by the Secretary of the Army shall not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project; and

WHEREAS, the State has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in cost-sharing and financing in accordance with the terms of this Agreement;

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

a. The term "Project" shall mean construction of a barrier island approximately 1.1 miles long; development of a forested wetland management area of approximately 168-acres; and excavation of approximately 3550 feet through an existing blocked side channel with placement of submerged rock substrate, as generally described in the Report entitled "Peoria Lake Enhancement, Peoria Pool, Illinois Waterway," dated July 1990 and approved by the Assistant Secretary of the Army (Civil Works) on September 1, 1992, (hereinafter referred to as the "Definite Project Report").

b. The term "total project costs" shall mean all costs incurred by the State and the Government directly related to construction of the Project. Such costs shall include, but not necessarily be limited to, continuing planning and engineering costs incurred after October 1, 1985; costs of applicable engineering and design (including the Definite Project Report); actual construction costs; supervision and administration costs; costs of plans and specifications; costs of contract dispute settlements or awards; and the value of utility and facility alterations or relocations, provided for the Project by the State, but shall not include any costs for lands, easements, rights-of-way, betterments, operation, maintenance, or rehabilitation.

c. The term "period of construction" shall mean the time from the advertisement of the first construction contract to the time of acceptance of the Project by the Contracting Officer.

d. The term "Contracting Officer" shall mean the U.S. Army District Engineer for the Rock Island District, or his designee.

e. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public road or way.

f. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins on October 1 and ends on September 30.

g. The term "functional portion of the Project" shall mean a completed portion of the Project as determined by the Contracting Officer to be suitable for tender to the State to operate and maintain in advance of completion of construction of the entire Project.

h. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing: buildings, railroads, highways, bridges, railroad bridges and approaches thereto, pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures and improvement determined by the Government to be necessary for the construction, operation and maintenance of the project.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the State and appropriated by the Congress of the United States, shall expeditiously construct the Project (including relocations of railroad bridges and approaches thereto), applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The State shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications, prior to the issuance of invitations for bid. To the extent possible the State will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the State, but award of the contracts, modifications or change orders, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

b. As further specified in Article VI hereof, the State shall provide, during the period of construction, a cash contribution of 25 percent of total project costs.

c. As further specified in Article III hereof, the State shall provide all lands, easements, rights-of-way, and suitable borrow and dredged material disposal areas determined by the Government to be necessary for construction of the Project.

d. As further specified in Article III hereof, the State shall perform all relocations determined by the Government to be necessary for construction, operation and maintenance of the Project.

e. The value of the contributions provided under paragraph d. of this Article may be applied as a credit against the cash contribution required pursuant to paragraph b. of this Article.

f. As further specified in Article VIII hereof, when the Government determines that the Project or a functional portion of the Project is complete, the Government shall turn the completed Project or functional portion over to the State, which shall accept the Project or functional portion and be solely responsible for operating and maintaining the Project or functional portion in accordance with Article VIII hereof.

g. No Federal funds may be used to meet the State share of total project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the Federal granting agency.

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91-646 RELOCATION ASSISTANCE

a. The State shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the Government to be necessary for the construction, operation, and maintenance of the Project, and shall furnish to the Government evidence supporting the State's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way may be provided incrementally, but all lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the advertisement of the construction contract.

b. Upon notification from the Government, the State shall accomplish or arrange for accomplishment at no cost to the Government all relocations determined by the Government to be necessary for construction of the Project.

c. The State shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform

Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way for construction and subsequent operation and maintenance of the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR RELOCATIONS

The costs of relocations which will be included in total project costs and credited towards the State's share of total project costs shall be that portion of the actual costs as set forth below and approved by the Government:

a. Highways and Highway Bridges: Only that portion of the cost as would be necessary to construct substitute bridges and highways to the design standard that the State of Illinois would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

b. Utilities and Facilities (including railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any alteration or relocation if materials of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total project costs nor credited towards the State's share.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the State and the Government during the period of construction, the State and the Government shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to construction of the Project. The State will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during the period of construction and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to construction of the Project, but the Contracting Officer, having

ultimate responsibility for construction of the Project, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT

a. The State shall provide, during the period of construction, the cash payments required under Article II of this Agreement. Total project costs are currently estimated to be \$4,950,900. In order to meet its share, the State must provide a cash contribution currently estimated to be \$1,237,700. The dollar amounts set forth in this Article are based upon the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the State.

b. The State shall provide its required cash contribution in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the State by February 15th of each year of the estimated funds that will be required from the State to meet its share of total project costs for the upcoming fiscal year.

2. No later than 60 calendar days prior to the award of the first construction contract, the Government shall notify the State of the State's share of total project costs, including its share of costs attributable to the Project incurred prior to the initiation of construction, for the first fiscal year of construction. No later than 30 calendar days thereafter, the State shall verify to the satisfaction of the Government that it has deposited the requisite amount in an escrow account acceptable to the Government, with interest accruing to the State.

3. For the second and subsequent fiscal years of project construction, the Government shall, no later than 60 calendar days prior to the beginning of the fiscal year, notify the State of the State's share of total project costs for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the necessary funds available to the Government through the funding mechanism specified in Article VI.b.2 of this Agreement. As construction of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the State, the Government shall so notify the State, and the State, no later than 45 calendar days from receipt of such notice, shall make the necessary funds available through the funding mechanism specified in Article VI.b.2. of this Agreement.

c. The Government will draw on the escrow account provided by the State such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Project as they are incurred, as well as costs incurred by the Government prior to the initiation of construction.

d. Upon completion of the Project and resolution of all relevant claims and appeals, the Government shall compute the total project costs and tender to the State a final accounting of the State's share of total project costs. In the event the total contribution by the State is less than its minimum required share of total project costs, the State shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet its minimum required share of total project costs.

e. If the States' total contributions under Article II.b and II.d of this Agreement (including relocations) exceed 25 percent of total project costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return said excess to the State.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION AND MAINTENANCE

a. After the Government has turned the completed Project, or functional portion of the Project, over to the State, the State shall operate and maintain the completed Project, or functional portion of the Project, at no cost to the Government in accordance with regulations or directions prescribed by the Government.

b. The State hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the

purpose of inspection, and, if necessary, for the purpose of operating and maintaining the Project. If an inspection shows that the State for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the State. If the State persists in such failure for 30 calendar days after receipt of the notice, then the Government shall have a right to enter, at reasonable times and in a reasonable manner, upon lands the State owns or controls for access to the Project for the purpose of operating and maintaining the Project. No operation and maintenance by the Government shall operate to relieve the State of responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The State shall hold and save the Government free from all damages arising from the construction, operation and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the State shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the State to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the State which are properly allowable and allocable to performance of any such environmental investigations shall be included in total project costs and cost-shared as a construction cost in accordance with Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the State and the Government shall provide prompt notice to each other, and the State shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the State shall determine whether to initiate construction of the Project, or, if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the State determine to proceed or continue with construction after considering any liability that may arise under CERCLA, the State shall be responsible, as between the Government and the State, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs as defined in this Agreement. In the event the State fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or proceed with further work as provided in Article XVII of this Agreement.

d. The State and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph c. of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The State shall operate and maintain the Project in a manner so that liability will not arise under CERCLA.

ARTICLE XI - MAINTENANCE OF RECORDS

The Government and the State shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total project costs. The Government and the State shall maintain such books, records, documents, and other evidence for a minimum of three years after completion of construction of the Project and resolution of all relevant claims arising therefrom, and shall make available at their offices at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XII - GOVERNMENT AUDIT

The Government shall conduct an audit when appropriate of the State's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of project costs.

ARTICLE XIII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the State agrees to comply with all applicable Federal and State laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XIV - RELATIONSHIP OF PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XVI - COVENANT AGAINST CONTINGENT FEES

The State warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XVII - TERMINATION OR SUSPENSION

a. If at any time the State fails to make the payments required under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate or suspend work on the Project until the State is no longer in arrears, unless the Assistant Secretary of the Army (Civil Works) determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury Bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

b. If the Government fails to receive annual appropriations for the Project in amounts sufficient to meet project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State. After 60 calendar days either party may elect without penalty to terminate this Agreement pursuant to this Article or to defer future performance hereunder, except for the operation and maintenance of any functional portion of the project previously turned over to the State; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article V of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVIII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage pre-paid), registered, or certified mail, as follows:

If to the State:

Director
Illinois Department of Conservation
Lincoln Tower Plaza
524 South 2nd Street
Springfield, Illinois 62701-1787

If to the Government:

District Engineer
U.S. Army Engineer District, Rock Island
Clock Tower Building, P.O. Box 2004
Rock Island, Illinois 61204-2004

b. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or seven calendar days after it is mailed, as the case may be.

ARTICLE XIX - OBLIGATION OF FUTURE APPROPRIATION

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Illinois General Assembly when such obligation would be inconsistent with the State's constitutional or statutory limitations.

ARTICLE XX - CONFIDENTIALITY

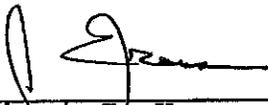
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer for the Rock Island District U.S. Army Corps of Engineers.

THE DEPARTMENT OF THE ARMY

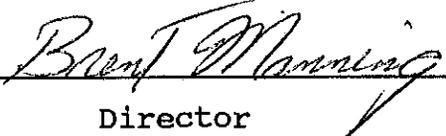
THE STATE OF ILLINOIS
DEPARTMENT OF CONSERVATION

By:



Albert J. Kraus
Colonel U.S. Army
District Engineer

By:



Director

Date:

30 March 1993

Date:

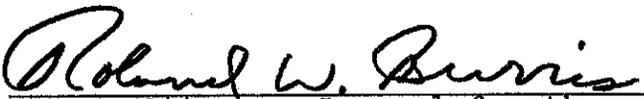
21 Jan 92

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1993

CERTIFICATE OF AUTHORITY

I, Roland W. Burris, do hereby certify that I am the Attorney General for the State of Illinois, that the State of Illinois is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the State of Illinois in connection with a Habitat Rehabilitation Project at Peoria Lake in Peoria and Woodford Counties, Illinois, and to pay damages, if necessary, in the event of the failure to perform, in accordance with Section 221 of Public Law 91-611, as amended, and that the person who has executed this Agreement on behalf of the State of Illinois has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 17th day of March, 19 93.


Attorney General for the
State of Illinois

LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF ILLINOIS
FOR CONSTRUCTION OF THE
PEORIA LAKE HABITAT REHABILITATION PROJECT
PEORIA AND WOODFORD COUNTIES, ILLINOIS

CERTIFICATION REGARDING LOBBYING

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

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

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

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the

required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE STATE OF ILLINOIS
DEPARTMENT OF CONSERVATION

By Brent Manning
Director

Date: 21 Jan 92

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMF
0348-0046

Reporting Entity: _____ Page _____ of _____