PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF ILLINOIS
FOR CONSTRUCTION OF THE
BANNER MARSH STATE FISH AND WILDLIFE
HABITAT REHABILITATION AND ENHANCEMENT PROJECT
IN FULTON AND PEORIA COUNTIES, ILLINOIS

**THIS AGREEMENT** is entered into this 29 day of JANUARY, 1998, by and between the **DEPARTMENT OF THE ARMY** (hereinafter the "Government"), represented by the District Engineer for the Rock Island District, and **THE STATE OF ILLINOIS DEPARTMENT OF NATURAL RESOURCES** (hereinafter the "State"), represented by the Director, Illinois Department of Natural Resources.

**WITNESSETH, THAT:**

**WHEREAS**, construction of the Habitat Rehabilitation and Enhancement Project, at Banner Marsh State Fish and Wildlife Area in Fulton and Peoria Counties, Illinois 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;

**WHEREAS**, the Government and the State desire to enter into a Project Cooperation Agreement for construction of the Banner Marsh State Fish and Wildlife Area Habitat Rehabilitation and Enhancement Project (hereinafter the "Project", as defined in Article I.A. of this Agreement);

**WHEREAS**, Section 906(e) of Public Law 99-662 provides that the first costs for enhancement of fish and wildlife resources shall be a Federal cost when certain specified circumstances are present;

**WHEREAS**, Section 906(e) further provides that when such specified circumstances are not present, 25 percent of the first cost of enhancement of fish and wildlife resources shall be provided by the Non-Federal Interest;

**WHEREAS**, the Government and the State agree that the specified circumstances referred to in Subsection 906(e) of Public Law 99-662 are not present for the Project;

**WHEREAS**, Section 1103(e)(7)(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended by Section 107(b) of the Water Resources Development Act of 1992, Public Law 102-580, specifies the operation and maintenance responsibilities for the Project;

**WHEREAS**, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, provides that the Secretary of that Army shall not commence construction of any water resources project, or separable element thereof, until each non-federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

**WHEREAS**, Section 1103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, establishes the maximum amount of costs for the habitat rehabilitation and enhancement component of the Upper Mississippi River System Environmental Management Program;

**WHEREAS**, the State proposes to perform certain work, hereinafter referred to as the "Section 215 Work" which is a part of the Project;

**WHEREAS**, timely performance of the Section 215 Work by the State will repair sections of the authorized project to prevent additional damages by fluctuating water levels and advance the completion of the Project;

**WHEREAS**, Section 215 of Public Law 90-483, as amended, provides that the Secretary of the Army may enter into an agreement to credit or reimburse the costs of certain work accomplished by states or political subdivisions thereof, which later is incorporated into an authorized project when it is determined that such credit or reimbursement is in the public interest;

**WHEREAS**, the Secretary of the Army has determined that it is in the public interest to credit the State for that portion of the Section 215 Work, as defined in Article I.K. of this Agreement;

**WHEREAS**, Section 215 of Public Law 90-483, as amended, limits Federal credit for a single project to no more than $5,000,000 or 1 percent of the total project costs, whichever is greater.

**WHEREAS**, pursuant to the Intergovernmental Cooperative Act, 5ILCS 220/1, Illinois Constitution Article 7, Section 10, and 20ILCS 805/63(B), the State has authority to enter into this agreement.

**WHEREAS**, the Government and the State have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the construction of the Project in accordance with the terms of this Agreement.

**NOW, THEREFORE**, the Government and the State agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the improvement of the existing levee which is approximately 44,500 feet; relocation of an existing 14,000 gpm pump which includes constructing a permanent concrete building to house the diesel engine and supplies; contour grading of three selected sites for littoral zone development which will also be used for borrow; and planting of native grass on approximately 144 acres all as generally described in the Upper Mississippi River System Environmental Management Program Definite Project Report With Integrated Environmental Assessment (R-11F) Banner Marsh State Fish and Wildlife Area, LaGrange Pool, Illinois River, Miles 138.5 through 143.9, Fulton and Peoria County, Illinois, dated September 1995, and approved by the Assistant Secretary Of The Army—(Civil Works), on 20 March 1996.

B. The term "total project costs" shall mean all costs incurred by the State and the Government in accordance with the terms of this Agreement directly related to construction of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs;

engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs including costs incurred for the Section 215 Work as defined in paragraph K. of this Article for which the Government affords credit in accordance with Article II.D.2. of this Agreement, to the extent that they do not duplicate costs otherwise included in this paragraph; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, right-of-way, relocation, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of dispute resolution under Article VII of this Agreement.

C. The term "financial obligation for construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total project costs.

D. The term "non-Federal proportionate share" shall mean the ratio of the State's total cash contribution required in accordance with Article II.D.2. of this Agreement to total financial obligations for construction, as projected by the Government.

E. The term "period of construction" shall mean the time from the date the Government first notifies the State in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first construction contract to the date that the U.S. Army Engineer for the Rock Island District (hereinafter the "District Engineer") notifies the State in writing of the Government's determination that construction of the Project is complete.

F. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

G. The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, or railroad when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

H. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

I. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the State to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the State in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

J. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

K. The term "Section 215 Work" means Project work commencing after the execution of this Agreement and for which the Government will give credit pursuant to Section 215 of Public Law 90-483 and the Section 215 Agreement incorporated herein by reference, and shall include stripping and clearing vegetation from critical reaches of the riverward levee slope between Stations 258+00 to 277+00 and Stations 356+00 to 380+00, excavation of approximately 87,000 cubic yards of borrow material, from specified locations within the Banner Marsh site, placement and semicompaction of the borrow material to restore the riverward slope of the levee, and placement of approximately 5,000 tons of bedding rock and 16,000 tons of riprap on all restored areas. The Section 215 Work shall not include the value of lands, easements, rights-of-way, or relocations, including suitable borrow and dredged or excavated material disposal areas necessary solely for the Section 215 Work.

L. The terms "operation," "repair," and "replacement" shall mean those actions required by the annual operation and maintenance requirements identified in the Definite Project Report described in paragraph A. of this Article.

M. The term "rehabilitation" shall mean those actions in excess of the annual operation and maintenance requirements identified in the Definite Project Report described in paragraph A. of this Article.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE STATE

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the State, shall expeditiously construct the Project (with the exception of the Section 215 Work), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the State the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the State has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the State the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the State with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the State the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the State, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution or contract claims, and performance of all work on the Project (with the exception of the Section 215 Work) (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the State with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. For the Section 215 Work the Government shall be afforded the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the State's issuance of such solicitations. No construction shall commence under this Agreement until the designs, detailed plans and specifications, and arrangements for prosecution of the Section 215 Work have been approved in writing by the District Engineer, or his representative, all bids received and the proposed provisions of any contract shall be subject to review by the Government prior to contract award. In addition, all proposed changes in approved designs, plans, and specifications also must be reviewed and approved by the District Engineer or his representative in writing in advance of the related construction where practicable. To the extent possible, the State also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The State shall consider in good faith the comments of the Government made as a result of its review, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all Section 215 Work shall be exclusively within the control of the State. However, the failure of the State to comply with direction received from the District Engineer, with respect to the Section 215 Work, may result in the costs associated with such work being determined ineligible for credit towards the State's share of total project costs.

B. The State may request the Government to accomplish betterments. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the State in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The State shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the State in writing and furnish the State with an Operation and Maintenance Manual (hereinafter the "O&M Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the State shall operate and maintain the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The State shall contribute 25 percent of total project costs in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the State shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the State must provide for the construction, operation, and maintenance of the Project and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the State's contributions under paragraph D.1 of this Article and Articles V, X, and XV.A. of this Agreement will be less than 25 percent of total project costs, the State shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the State's total contribution equal to 25 percent of total project costs. As authorized by Section 215 of Public Law 90-483, as amended, the Government may afford credit for the Section 215 Work. Such credit may be afforded in increments as useful increments of the Section 215 Work are completed by the State. The affording of such credit shall be subject to a technical review by the Government to verify that the credited work was accomplished in a satisfactory manner and in accordance with the limitations contained in this Agreement. To afford any such credit, the Government, as further specified in Article VI.B. of this Agreement, shall apply the actual amount of credit toward the cash contribution required by this paragraph. The actual amount of credit shall not exceed the State's actual costs attributable to the Section 215 Work. The actual amount of credit shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

If the actual amount of credit exceeds the cash contribution required by this paragraph, the Government, subject to the availability of funds, shall, on behalf of the State, provide Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas, or perform Project relocations, equal in value to such excess credit amount. As an alternative, and in its sole discretion, the Government may, subject to the availability of funds, reimburse the State in an amount equal to such excess credit amount.

3. If the Government determines that the value of the State's contributions provided under paragraphs D.1. and D.2. of this Article and Articles V, X, and XV.A. of this Agreement has exceeded 25 percent of total project costs, the Government, subject to the availability of funds, shall reimburse the State for any such value in excess of 25 percent of total project costs. After such a determination, the Government, in its sole discretion, may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining project relocations on behalf of the State.

E. The State may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the State. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the State in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The State shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the State shall be responsible, as between the Government and the State, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the State in accordance with paragraphs B., D., and E. of this Article and Articles V, X, and XV.A. of this Agreement and to determine whether the State has met its obligations under paragraphs B., D., and E. of this Article.

G. In addition to any other limitations contained in this Agreement, the affording and the amount of credit is subject to the following additional limitations:

1. Any reimbursement for the Section 215 Work performed by the State shall be dependent upon the appropriation of funds applicable thereto or funds available therefor, and shall not take precedence over other pending work of higher priority at the same or other improvement projects.

2. Any work undertaken by the State prior to the effective date of this Agreement shall not be subject to credit or reimbursement pursuant to this Agreement.

3. No credit shall be given or reimbursement made unless and until the District Engineer, U. S. Army Engineer District, Rock Island, has certified that the Section 215 Work subject to credit or reimbursement pursuant to this Agreement has been performed in accordance with this Agreement.

4. This Agreement shall not be construed as either committing the Government to assume any responsibility placed upon the State or any other non-Federal entity by the conditions of project authorization or any other applicable statute or regulation, or as committing the Government to reimburse the State if the Authorized Project is not undertaken or is modified so as to make the Section 215 Work performed by the State no longer an integral part of the Authorized Project.

5. Credit or reimbursement shall not be made for any work which does not, in the judgment of the Government, conform to the description set forth in Article I.K. of this Agreement.

6. The amount of credit or reimbursement, or combination thereof, to be provided by the Government to the State shall not exceed the Government's estimate of what the cost of the Section 215 Work would be if it were to be accomplished by the Government as a component of the Authorized Project, or the State's actual auditable costs for the Section 215 Work, whichever is less. The Government's estimate is $1,300,000 which may be increased at its sole discretion.

7. The amount of credit or reimbursement for which the State may be eligible pursuant to this Agreement is not subject to interest charges, nor is it subject to adjustment to reflect changes in price levels between the time the Section 215 Work is completed and the time that the credit or reimbursement is afforded.

8. The amount of credit or reimbursement provided by the Government to the State for the Section 215 Work described herein, in combination with any credit or reimbursement provided pursuant to any other Section 215 Agreement executed for the Authorized Project, shall not exceed the statutory limitation of five million dollars ($5,000,000) or one (1) percent of total project costs, whichever is greater.

9. The State shall obtain all applicable Federal, State and local permits required for the performance of the Section 215 Work and for operation, maintenance, repair, rehabilitation and replacement of the Project.

10. Any contract awarded by the State for the Section 215 Work under this Agreement shall include provisions consistent with all applicable Federal laws and regulations.

H. The State shall not use Federal funds to meet the State's share of total project costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

I. Prior to construction, the State shall satisfy the requirements of the National Environmental Policy Act and any other applicable environmental statutes and executive orders

## ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government, after consultation with the State, shall determine the lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government in a timely manner shall provide the State with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the State must provide, in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of construction, the State shall acquire all lands, easements, and rights-of-way set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each construction contract, the State shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the State must provide for that contract.

For so long as the Project remains authorized, the State shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the State are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the State, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the State with general written descriptions of such improvements in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with construction of such improvements. Prior to the end of the period of construction, the State shall provide all improvements set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the State shall prepare, or insure the preparation of, plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the State, shall determine the relocations necessary for the construction, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government in a timely manner shall provide the State with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the State to fulfill its obligations under this paragraph, and shall provide the State with a written notice to proceed with such relocations. Prior to the end of the period of construction, the State shall perform or ensure the performance of all relocations as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government construction contract, the State shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The State in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the State's share of total project costs.

E. 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 required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

## ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND IMPROVEMENTS OF DISPOSAL AREAS

A. The State shall receive credit toward it's share of total project costs for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the State must provide pursuant to Article III of this Agreement, for the value of the relocations, that the State must perform or for which it must ensure performance pursuant to Article III of this Agreement and for the value of all legally acquired lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and relocations that the Government determines to be necessary for construction, operation and maintenance of the Section 215 work. However, the State shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of cooperation for another Federal project, or that are owned by the State on the effective date of this agreement. The State also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the State on the effective date of this Agreement shall be fair market value of such real property interests as of the date the State provides the Government with authorization for entry thereto or, if the State performs the Section 215 Work, the date that the State begins construction of such work. However, for lands, easements, or rights-of-way owned by the State on the effective date of this agreement that are required for the construction of the Section 215 work, fair market value shall be the value of such real property interests as of the date the State awards the first construction contract for the Section 215 work, or, if the State performs the construction with its own labor, the date that the State begins construction of the Section 215 work. The fair market value of lands, easements, or rights-of-way acquired by the State after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The State shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the State and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the State's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the State's appraisal, the State may obtain a second appraisal and the fair market value shall be the amount set forth in the State's second appraisal, if such appraisal is approved by the Government.

In the event the Government does not approve the State's second appraisal, or the State chooses not to obtain a second appraisal, the Government shall obtain an appraisal and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the State. In the event the State does not approve the Government's appraisal, the Government, after consultation with the State shall consider the Government's and the State's appraisal and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the State for the real property interest exceeds the amount determined pursuant to paragraph B.2.a. of this Article, the Government, at the request of the State, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the State, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the market value shall be the lesser of the approved amount or the amount paid by the State, but not less than the amount determined pursuant to paragraph B.2.a. of this Article.

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

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

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

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

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the State within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the State, the Government shall determine the value of relocation in accordance with the provisions of this paragraph.

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

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

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

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

## ARTICLE V - PROJECT COORDINATION TEAM

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

B. The Government's Project Manager and the State's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; construction of the Section 215 Work; contract costs; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed O&M Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the State.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government, in good faith, shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs and costs due to betterments. By April 1 of each year and at least quarterly thereafter, the Government shall provide the State with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs due to betterments, of the components of total project costs, of each party's share of total project costs, of the State's total cash contributions required in accordance with Articles II.B., II.D., and II.E. of this Agreement, of the non-Federal proportionate share, and of the funds the Government projects to be required from the State for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be $4,910,728, and the State's cash contribution required under Article II.D. of this Agreement is projected to be $1,179,115.

The amount of credit for the Section 215 Work to be afforded against the State's required contribution towards total project costs in accordance with Article II.D.2. of this Agreement is projected to be $1,300,000. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the State.

B. The State shall provide the cash contribution required under Article II.D.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract, the Government shall notify the State in writing of such scheduled date and the funds the Government determines to be required from the State to meet the non-Federal proportionate share of projected financial obligations for construction through the first fiscal year of construction, including the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction. Not later than such scheduled date, the State shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Rock Island" to the District Engineer.

2. For the second and subsequent fiscal years of construction, the Government shall notify the State in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the State to meet the non-Federal proportionate share of projected financial obligations for construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the State shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for construction incurred prior to the commencement of the period of construction; and (b) the non-Federal proportionate share of financial obligations for construction as they are incurred during the period of construction.

4. If at any time during the period of construction the Government determines that additional funds will be needed from the State to cover the non-Federal proportionate share of projected financial obligations for construction for the current fiscal year, the Government shall notify the State in writing of the additional funds required, and the State, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1 of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B. or II.E. of this Agreement, the State shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, Rock Island" to the District Engineer. The Government shall draw from the funds provided by the State such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the State must provide additional funds to meet its cash contribution, the Government shall notify the State in writing of the additional funds required. Within 30 calendar days thereafter, the State shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the State with the results of the final accounting. The final accounting shall determine total project costs, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments and the State's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the State is less than its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, 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 the State's required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the State exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the State no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the State, the Government shall seek such appropriations as are necessary to make the refund.

## ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, the party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

## ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the State, as required by Section 1103(c)(7)(A) of the Water Resources Development Act of 1986, as amended, shall operate, maintain, repair, and replace the entire Project or the functional portion of the Project, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the O&M Manual and any subsequent amendments thereto. Operation, repair, and replacement costs shall be paid by the State at no cost to the Government. If any future rehabilitation of the Project is mutually agreed upon by the State and the Government, 75 percent of such costs shall be paid by the Government and 25 percent of such costs shall be paid by the State, in accordance with Section 906(e) of the Water Resources Development Act of 1986.

B. The State hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the State owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, or replacing the Project. If an inspection shows that the State for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the State. If, after 30 calendar days from receipt of notice, the State continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the State owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, or replacing the Project. No completion, operation, maintenance, repair, or replacement by the Government shall operate to relieve the State of responsibility to meet the State's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

## ARTICLE IX - INDEMNIFICATION

The State shall hold and save the Government free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, or the Section 215 Work, except for damages due to the fault or negligence of the Government or its contractors.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

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

B. Pursuant to 32 C.F.R. Section 33.26, the State is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the State and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the State and independent auditors any information necessary to enable an audit of the State's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

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

## ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the State and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the State each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

## ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

## ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the State fails to fulfill its obligations under Article II.B., II.D., II.E., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the State in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the State elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred.

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.

## ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the State shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the State determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the State with prior specific written direction, in which case the State shall perform such investigations in accordance with such written direction. All actual costs incurred by the State for such investigations for hazardous substances shall be included in total project costs and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of costs.

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

C. The Government and the State shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the construction, operation, and maintenance of the Project. Should the Government and the State determine to initiate 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 the costs of clean-up and response, 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. In the event the State fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the State's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

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

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

## ARTICLE XVI - NOTICES

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

If to the State:

Director
Illinois Department of Natural Resources
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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

## ARTICLE XVII - CONFIDENTIALITY

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

## ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount the Government is authorized to expend for the Project.

C. The Government shall not incur cost for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

## ARTICLE XIX - SECTION 1103 PROJECT COST LIMITS

The State has reviewed the provisions set forth in Section 1103 of Public Law 99-662, as amended, and understands that Section 1103 establishes the maximum amount of costs for the habitat rehabilitation and enhancement component of the Upper Mississippi River System Environmental Management Program.

Notwithstanding any other provisions of this Agreement, the Government shall not make a new project expenditure, or afford credit toward total project costs for the value of any contribution provided by the State, if such obligation, expenditure, or credit would result in total project costs, plus the value of any obligations already made under the habitat rehabilitation and enhancement component of the Upper Mississippi River System Environmental Management Program, exceeding the maximum amount, unless otherwise authorized by law.

## ARTICLE XX - 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.

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

THE DEPARTMENT OF THE ARMY

BY: _____
JAMES V. MUDD
Colonel, U.S. Army
District Engineer

DATE: 1/29/98

THE STATE OF ILLINOIS
DEPARTMENT OF NATURAL RESOURCES

BY: _____
BRENT MANNING
Director

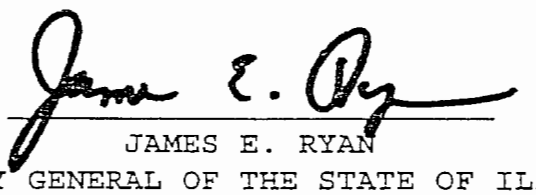
DATE: 1/27/98

1.29.98

# CERTIFICATE OF AUTHORITY

I, James E. Ryan, do hereby certify that I am the principal legal officer of 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 the Banner Marsh State Fish and Wildlife Area Habitat Rehabilitation and Enhancement Project, and to pay damages, in accordance with the terms of this agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of the State of Illinois have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 29th day of January, 1997.



JAMES E. RYAN
ATTORNEY GENERAL OF THE STATE OF 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, subgrant, 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.

Brent Manning

Brent Manning
Director

DATE: 1/28/98

1.27.98