

CHALLENGE COST-SHARING AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE ILLINOIS DEPARTMENT OF NATURAL RESOURCES

THIS AGREEMENT, entered into this 22nd day of April, 1998, by and between the Department of the Army, U.S. Army Corps of Engineers (hereinafter the "Corps"), represented by the Project Manager, Mississippi River Project, Rock Island District, and the Illinois Department of Natural Resources, represented by the Director.

WITNESSETH, THAT:

WHEREAS, The Corps manages lands and waters of the Mississippi River in government owned tracts known as Milan Bottoms, located in Mississippi River Pool 16. These lands are managed as part of a rich river floodplain ecosystem that provide important habitat for migratory waterfowl, songbird, and many other species of wildlife and fish. For certain species, particularly neo-tropical migrants these habitats are considered of national and even global significance.

WHEREAS, The area is known for several significant avian resources to include active rookery sites, red-shouldered hawk sites and wintering bald eagle use areas, anecdotal information suggests that the area may also be vital to a large variety of bottomland forest and wetland avian species, to include neo-tropical migrant species.

WHEREAS, To date, no standardized Breeding Season Avian Use Census has been conducted. Such a census will fill an information gap and provide standardized baseline avian data that will be a valuable tool in future management planning for this specific area, as well as for other similar bottomland forested tracts.

WHEREAS, it is mutually beneficial to the Corps and the Partner to work cooperatively to complete a standardized Breeding Season Avian use Census, and

WHEREAS, the Partner, in order to assist the Government in this project has voluntarily agreed to pay a portion of the cost, and

WHEREAS, The Corps and the Partner have the full authority and capability to perform as hereinafter set forth and intend to cooperate in financing and challenge cost-sharing in accordance with the terms of this Agreement;

NOW THEREFORE, The Corps and the Partner agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

- a. The term "Project" shall mean a standardized Breeding Season Avian Use Census to be conducted on Corps lands in government tracts known as Milan Bottoms, in Mississippi River Pool 16.
- b. The term "total project costs" shall mean all costs incurred by the Government and the Partner directly related to completion of the project.
- c. This agreement in no way restricts either party from participating in similar activities or arrangements with, or accepting contributions from, other public and private agencies, organizations, and individuals.

- d. A report of the completed Breeding Season Avian Use Census will be provided to the Corps for use in managing bottomland forests.

#### ARTICLE II – OBLIGATIONS OF THE PARTIES.

- a. The Corps, subject to and using funds appropriated by the Congress of the United States (hereinafter the “Congress”), shall provide \$2000.
- b. The Partner, through the Illinois Wildlife Preservation Fund shall provide \$4000.
- c. The Corps and Partner shall perform a final accounting to determine the contributions provided by all parties to this Agreement and to determine whether each has met its obligations under paragraphs a and b of this Article.
- d. The Partner shall not use Corps supplied funds, or allow their use, for other than authorized project purposes.

#### ARTICLE III. – METHOD OF PAYMENT

- a. On the effective date of this Agreement, total project costs are projected to be \$6000, and the Partner’s contribution, required under Article II.b., of this Agreement is projected to be \$4000.
- b. Upon receipt of a final invoice and copy of the completed Breeding Season Avian Use Census, the Corps will make payment for its share of the project totaling \$2000.
- c. Said invoice and Breeding Season Avian use Census should be mailed to: Mississippi River Project, Natural Resource Management Section, ATTN: Project Forester Gary Swenson, P.O. Box 534, Pleasant Valley, Iowa 52767.

#### ARTICLE IV – DISPUTE RESOLUTION

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

#### ARTICLE V – FEDERAL AND STATE LAWS

In exercise of their respective rights and obligations under this agreement, the Corps and the Partner agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88-352, and the 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 Regulations 600.7, entitled “Non-discrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army.”

#### ARTICLE VI – RELATIONSHIP OF PARTIES

- a. In the exercise of their respective rights and obligations under this Agreement, the Corps and the Partner 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 proposes 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 VII - 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 VIII – INDEMNIFICATION

The Partner shall hold and save the Corps free from all damages arising from services the Partner performs or provides for completion of this Project, except for damages due to the fault or negligence of the Corps.

#### ARTICLE IX – TERMINATION OR SUSPENSION

- a. If at any time the Partner fails to fulfill its obligations under this Agreement, The Project Manager shall terminate this Agreement or suspend future performance under this Agreement unless he/she 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 interest in connection with the Project.
- b. If the Corps fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Corps shall so notify the Partner, 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 Corps receives sufficient appropriations or until either the corps or the Partner elects to terminate this Agreement.
- c. In the event that either party elects to terminate this Agreement pursuant to this Article, or Article II.b. of this Agreement, both parties shall conclude their activities related to the Project and proceed to a final accounting.

#### ARTICLE X – NOTICES

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

If to the Partner: Anne Mankowski, Natural Heritage Biologist  
Illinois Department of Natural Resources  
116 North East Street  
Cambridge, IL 61238  
(309) 937-3384

If to the Corps: Gary Swenson, Project Forester  
U.S. Army Corps of Engineers  
Mississippi River Project  
Box 534  
Pleasant Valley, Iowa 52767  
(309) 794-4489

- 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 XI – 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 Project Manager, Mississippi River Project, Rock Island District.

The Department of the Army

The State of Illinois

BY: \_\_\_\_\_  
Monte P. Hines, P.E.  
Acting Project Manager  
Mississippi River Project

BY: \_\_\_\_\_  
Brent Manning  
Director  
Illinois Department of Natural Resources

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_