MEMORANDUM OF AGREEMENT
BETWEEN UNITED STATES ARMY CORPS OF ENGINEERS MISSISSIPPI RIVER VALLEY ROCK ISLAND DISTRICT, THE METROPOLITAN WATER AND RECLAMATION DISTRICT OF GREATER CHICAGO
AND THE
ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE LOCKPORT POOL REHABILITATION

WHEREAS the Rock Island District of the United States Army Corps of Engineers (COE) and the Metropolitan Water and Reclamation District of Greater Chicago (MWRDGC) propose rehabilitation (maintenance and repairs) of the Chicago Sanitary and Ship Canal (CSSC) portion of the Illinois Waterway (IWW) between River Miles (RM) 290.0 to 321.7 in Cook, DuPage, and Will Counties, Illinois pursuant to Section 107 of Public Law 97-88 and 97-377 for the operation and maintenance of the CSSC; and

WHEREAS, the undertaking consists of placing a precast concrete panel in front of the existing canal wall along the left descending bank. These concrete panels will be anchored into a large block of concrete placed below the crown of the levee. The top of the existing canal wall will be removed to allow for this construction and replaced with new concrete when complete. This alternative would result in the channel narrowing by up to four (4) feet, altering the original proportions of the prism channel. In addition, the alternative uses concrete panels not used in the original construction. These alterations constitute an Adverse Effect to the National Register of Historic Places (NRHP) eligible CSSC.

WHEREAS, the COE has defined the undertaking's Area of Potential Effect (APE) as the CSSC Channel Extension (RM 291.1 to 293.3) of the IWW; and

WHEREAS, the COE has determined that the undertaking may have an adverse effect on the NRHP-eligible CSSC and has consulted with the Illinois SHPO, the MWRDGC, the Menominee Tribe of Wisconsin; the Sac and Fox Tribe of the Mississippi in Iowa; and over 140 other interested parties pursuant to 36 C.F.R. part 800, of the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); and

WHEREAS, the COE has consulted with the MWRDGC regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the COE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, the COE and the Illinois SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

I. STIPULATIONS

The COE shall ensure that the following measures are carried out prior to rehabilitation/construction activities:

A. Completion of the NRHP-eligible National Park Service Multiple Property Documentation Form for the CSSC, acceptable by the Illinois SHPO and submitted to the National Park Service for consideration for formal listing and

B. Completion of Level I Historic American Engineering documentation of the CSSC Channel Extension (RM 291.1 to 293.3) of the IWW, acceptable by the Illinois SHPO and the National Park Service.

II. DURATION

This MOA will be null and void if its terms are not carried out within five (5) years from the date of approval from the Illinois State Historic Preservation Officer and the ACHP for this rehabilitation/construction work or its execution, whichever shall occur later. Prior to such time, the COE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

III. POST-REVIEW DISCOVERIES

If potential historic properties are discovered or unanticipated effects on historic properties found, the COE shall develop a discovery plan in consultation with the Illinois SHPO.

IV. REPORTING

Annual reports shall be provided by the COE to all signatory parties of this MOA by February 25 of each and every year, beginning in the year of 2010, until the COE notifies all signatories of the termination of this MOA.

V. DISPUTE RESOLUTION

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the COE shall consult with such party to resolve the objection.

A. If the COE determines that such objection cannot be resolved; the COE will forward all documentation relevant to the dispute, including the COE's proposed resolution, along with the proposed resolution from the MWRDGC and any other signatory or concurring parties, to the ACHP. The ACHP shall provide the COE, the MWRDGC and any other signatories, with its advice on the resolution of the objection within ninety (90) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the COE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The COE will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the ninety (90) day time period, the COE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the COE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. The COE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION AND EXECUTION

The termination and execution procedures are as follows:

A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VI , above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

B. Once the MOA is terminated, and prior to work continuing on the undertaking, the COE must either (1) execute an MOA pursuant to 36 CFR § 800.6 or (2) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The COE shall notify the signatories as to the course of action it will pursue.

C. Execution of this MOA by the COE, the MWRDGC, and the Illinois SHPO, and implementation of its terms evidence that the COE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

VIII. SIGNATORIES AND CONCURRING PARTY

United States Army Corps of Engineers, Rock Island District

15 July 2009

Lieutenant Colonel Michael Clarke COE Signatory Date
Commander and District Engineers

State of Illinois

July 22, 2009

Anne Haaker, as Illinois Deputy SHPO Signatory Date
Illinois Historic Preservation Agency

Metropolitan Water and Reclamation District of Greater Chicago

7/21/09

Richard Lanyon, as MWRDGC Concurring Party Date
Executive Director

Approved as to form and legality:

7-21-09

Frederick M. Feldman Date
General Counsel for MWRDGC