PROGRAMMATIC AGREEMENT

AMONG

THE UNITED STATES ARMY CORPS OF ENGINEERS,

ILLINOIS HISTORIC PRESERVATION AGENCY,

THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,

REGARDING THE ASSESSMENT OF EFFECTS TO HISTORIC PROPERTIES AND

THE MITIGATION OF ADVERSE EFFECTS FOR THE WOOD RIVER DRAINAGE AND LEVEE DISTRICT

UNDERTAKING: For purposes of Section 106 the federal Undertaking is the development of the Limited Reevaluation Report to address design deficiencies in under seepage controls and implement the design deficiency corrections for the Wood River Drainage and Levee District in Madison County.

State: Illinois

Agency: U.S. Army Corps of Engineers, St. Louis District (USACE)

Whereas, the Wood River Levee project originally was authorized by the Flood Control Act of 28 June 1938, Flood Control Committee Document No. 1, 75th Congress, and First Session, to provide flood protection to urban, agricultural and industrial areas. The original level of protection was increased after the floods of 1943 and 1944 and again in 1954. The project provides protection from a Mississippi River design flood that reaches 52 feet on the St. Louis gage, and has an additional 2 feet of freeboard. The project sponsor is the Wood River Drainage and Levee District (Levee District); and

Whereas, a Resolution of the Committee on Transportation and Infrastructure, U.S. House of Representatives, dated May 7, 1997, authorized the reconstruction of Illinois flood protection projects to address deficiencies. A study of design deficiencies was undertaken under the reconstruction project authority, and is being documented in a Limited Reevaluation Report (LRR); and

Whereas, Section 1001(20) of the Water Resources Development Act of 2007 authorizes the reconstruction of levees within the Levee District; and

Whereas, any design deficiency correction project that results from the LRR will be undertaken as a new project, and is pending approval of the appropriation of funds; and

Whereas, the USACE has determined that the tentative recommended plan proposed by the LRR to correct design deficiencies may have an adverse effect on historic properties that are either considered eligible for or are listed on the National Register of Historic Places (NRHP); and has consulted with the Illinois State Historic Preservation Office (SHPO) pursuant to 36 CFR 800, Protection of Historic Properties, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as amended; and

Whereas, the USACE has established the area of potential effect (APE) for historic resources, as defined in 36 CFR § 800.16(d), to be the limits of the tentative recommended plan as illustrated in the *Draft Limited Reevaluation Report and Environmental Assessment on Design Deficiency Corrections for Wood River, Illinois Flood Protection Project*; and

Whereas, in consultation with the Illinois State Historic Preservation Officer (SHPO) the USACE has determined that the tentative recommended plan to correct the design deficiencies of the Wood River levee may affect the archaeological sites 11MS9, 11MS17, 11MS108, and 11MS178 that may be eligible for the NRHP; and that the undertaking also has the potential to affect other as yet unidentified NRHP-eligible historic properties; and

Whereas, the USACE has notified the Advisory Council on Historic Preservation (ACHP) of the finding of adverse effect and the ACHP has chosen to participate in consultation to seek ways to reduce and mitigate adverse effects to historic properties in accordance to its regulations (36 CFR § 800) implementing Section 106 of the NHPA; and

Whereas, access to some properties, for the purposes of survey, has yet to be acquired leaving areas with unknown resources and the potential for historic properties; and

Whereas, the consulting parties agree that the full impacts of the design deficiency correction undertaking on historic properties cannot be fully determined until the final design has been completed; and

Whereas, Section 106 of the NHPA (16 U.S.C. §470 *et seq.*) provides definitions and procedures for consultation between federal agencies and Indian tribes with respect to federal undertakings; and that pursuant to NHPA Section 101(d)(6)(B) [16 U.S.C. §470a(d)(6)(B)] and 36 CFR § 800.2(c)(2)(ii)(A), the USACE has initiated consultation with Indian Tribes who either historically ceded lands in Illinois to the United States where the adversely affected historic property(ies) is situated, and/or that may attach traditional religious or cultural importance to the site(s); and

Whereas, these federally recognized Indian Tribes the USACE has either consulted with, or provided the opportunity to consult with include the Absentee-Shawnee Tribe, the Eastern Shawnee Tribe, the Shawnee Tribe, the Cherokee Nation, the United Keetoowah Band of Cherokee, the Delaware Nation, the Delaware Tribe of Oklahoma, the Citizen Potawatomi Nation, the Forest County Potawatomi, the Match-e-be-nash-she-wish Potawatomi, the Hannahville Indian Community, the Nottawaseppi Band of Huron Potawatomi, the Pokagon Band of Potawatomi, the Prairie Band of Potawatomi, the Ho-Chunk Nation, the Winnebago Tribe of Nebraska, the Iowa Tribe of Kansas, the Iowa Tribe of Oklahoma, the Kickapoo Traditional Tribe of Texas, the Kickapoo Tribe of Oklahoma, the Kickapoo Tribe of Kansas, the Sac and Fox Nation of Oklahoma, the Sac and Fox Nation of Missouri, the Sac and Fox Tribe of Mississippi in Iowa, the Miami Tribe of Oklahoma, the Osage Nation, the Peoria Tribe, and the Quapaw Tribe of Oklahoma and these Tribes have been invited to sign the PA as a Concurring parties. The USACE will provide all invited Indian Tribes with a copy of the Final Programmatic Agreement; and

Whereas, the USACE has invited the Wood River Drainage and Levee District, and the Southwest Illinois Flood Prevention District (project proponents) to participate in consultation and to sign this PA as signatories; and

Whereas, based on currently available information, construction of the undertaking within the tentative recommended plan will not affect any locations known to include Native American burials, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 *et seq.*); and

Whereas, the USACE, in accordance with 36 CFR § 800.2(d)(3), has used the agency's procedures for public involvement under the National Environmental Policy Act (NEPA) to inform the public of this undertaking and to solicit their views on historic properties and has distributed the LRR to appropriate state and federal agencies and to the public; and

Now, therefore, the USACE shall ensure that the following terms and conditions will be implemented in a timely manner and with adequate resources in compliance with the NHPA of 1966 as amended, through the execution and implementation of this Programmatic Agreement (16 U.S.C. §§ 470 *et seq.*).

STIPULATIONS

The USACE will ensure that the following stipulations are carried out prior to taking any action that could adversely affect a National Register-eligible historic property:

The historic property investigations will use a phased process, as specified in Sec. 800.4(b)(2), to identify and evaluate archaeological sites, evaluate the effects of the proposed undertaking on NRHP-eligible historic properties, and mitigate the adverse effects of the project on NRHP-eligible historic properties that cannot be avoided. The following measures have or will be carried out:

I. Consultation

A. The USACE shall consult with the SHPO and with Indian Tribes to determine and document the APE, review existing information on historic sites within the APE, seek appropriate information from concurring parties, other individuals, organizations, and historic societies likely to have knowledge of, or concerns with, cultural resources sites in the area, and identify issues relating to the undertaking's potential effects on archaeological sites.

B. The USACE shall enter into government-to-government consultation with Indian Tribes that attach religious and cultural significance to archaeological properties that may be affected by the undertaking.

C. The USACE, in coordination with Illinois SHPO, will continue efforts during the duration of this Agreement to identify other parties with demonstrated interests in preservation issues and invite them to participate as consulting parties.

D. The USACE shall take the steps necessary to identify historic and archaeological sites within the APE, based on the information gathered while determining the scope of identification efforts, and in consultation with the SHPO and any Indian tribe that might attach religious and cultural significance to properties within the APE.

E. The USACE shall apply the NRHP Criteria (36CFR part 63), in consultation with the SHPO and any Indian tribe that attaches religious and cultural significance to identified properties, and guided by the Secretary's Standards and Guidelines for Evaluation in evaluating properties identified within the area of potential effects that have not been previously evaluated for NRHP-eligibility.

F. The USACE shall provide Indian Tribes with copies of all plans, determinations, and findings provided to the SHPO to assist the Indian Tribes in identifying activities that may be of interest.

II. Identification, Evaluation and Assessment of Effects Determinations

A. The USACE shall undertake archaeological testing (Phase II investigations to evaluate integrity and significance) to assess the NRHP-eligibility of those sites requiring further evaluation.

B. If the USACE determines that any NRHP Criteria are met and the SHPO agrees, the property shall be considered eligible for the National Register for Section 106 purposes. If the USACE determines that the criteria are not met and the SHPO agrees, the property shall be determined not eligible. If the USACE and the SHPO disagree, or the Council so requests, the USACE

shall obtain a determination of eligibility from the Secretary of the Interior pursuant to 36 CFR part 63. If an Indian tribe that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request USACE to obtain a determination of eligibility.

C The USACE, in consultation with the SHPO and any Indian tribe that attaches religious and cultural significance to identified archaeological sites, shall apply the criteria of adverse effect to archaeological sites within the APE. USACE shall consider any views concerning such effects that have been provided by consulting parties, property owners, and the public.

D. The USACE shall consult with the SHPO and other parties, to develop and evaluate alternatives to or modifications in the undertaking that could avoid, minimize, or mitigate adverse effects on National Register-eligible sites or architectural resources.

E. The USACE shall ensure that a determination, finding, or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis.

F. The results of the Phase II archaeological investigation of sites and portions of sites located within the APE, as well as reports resulting from testing undertaken to identify deeply buried sites and historic properties in areas not previously surveyed, will be submitted to the SHPO for review and the consulting Indian tribes will be provided results related to adversely affected NRHP-eligible Native American archaeological sites.

G. Where adverse effects cannot be avoided, the USACE shall consult with the SHPO, the Concurring Tribes, and other consulting parties to resolve the adverse effects, consistent with Standard Mitigation Measures (Appendix A) consistent with Illinois Historic Preservation Agency documentation requirements and the Illinois State Agency Historic Resources Protection Act, and with guidance provided in 36 CFR § 800.6, through the implementation of Archaeological Data Recovery Plan(s) developed in accordance with the Advisory Council on Historic Preservation's (Council) *"Recommended Approach for Consultation on the Recovery of Significant Information for Archaeological Sites"* (64 FR27085-87 published in the *Federal Register* on May 18, 1999) Council's *Handbook on Treatment of Archaeological Properties* and the *Secretary of the Interior's Standards for Archaeological Documentation*;

H. The signatories shall ensure that all determinations, finding, or agreements made pursuant to this PA are supported by sufficient documentation to enable any reviewing party to understand their basis.

I. The USACE shall ensure that reports on archaeological data recovery carried out pursuant to this agreement are provided to the SHPO, and the Concurring Indian tribes, and other consulting parties.

J. The USACE shall ensure that all materials and records resulting from archaeological investigations conducted under terms of this PA from USACE owned or administered fee-title lands are curated at an appropriate curation facility in accordance with 36 CFR Part 79 and subject to its contract with the curation facility. The USACE currently has a contract with Illinois State Museum Society to store collections at its Springfield, Illinois location.

III. Unanticipated Discoveries and Effects

A. The signatories recognize that Native American skeletal remains, associated or unassociated funerary objects, sacred objects, and objects of cultural patrimony (Cultural Items) that may be discovered or excavated during archaeological survey, testing, or data recovery

investigations on federal land are subject to the NAGPRA. The land managing federal agency shall assume responsibility for compliance with the NAGPRA related to this undertaking.

B. The USACE recognizes that any human remains (other than for a crime scene) that may be discovered or excavated during archaeological survey, testing, or data recovery excavations on non-federal land are subject to Human Skeletal Remains Protection Act (Illinois Comp. Stat. Ann. 20 ILCS 3440/0:01, et seq.). The USACE in consultation and concurrence with the SHPO and Indian Tribes shall monitor the excavation and handling of any such human remains to ensure that they are treated in accordance with the SHPO's instructions and in accordance with procedures agreed to among the Indian Tribes the USACE and the SHPO.

IV. PA Amendment, Dispute, and Termination clauses

A. Amendments: Any signatory or interested party to this Agreement may propose to the signatories that it be amended, whereupon the signatories will consult in accordance with 36 CFR § 800.6(c)(7) to consider such an amendment.

B. Dispute resolution:

1. Except for the resolution of eligibility issues, should the Illinois SHPO, Indian Tribes, or members of the public disagree on the implementation of the provisions of this Agreement, they will notify the USACE, who will seek to resolve such objections through consultation.

2. If the dispute cannot be resolved through consultation, the USACE shall forward all documentation relevant to the dispute to the ACHP, including any proposed resolution identified during consultation. Within seven (7) days after receipt of all pertinent documentation, the ACHP may:

    a. Provide the USACE with recommendations to take into account in reaching a final decision regarding the dispute; or

    b. Notify the USACE that it will comment pursuant to 36 CFR § 800.7(c) and provide comments within forty-five (45) days.

3. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute, and the USACE's responsibilities to fulfill all actions that are not subject of the dispute will remain unchanged.

4. If the ACHP does not provide the USACE with recommendations or notification of its intent to provide comments within seven (7) days, the USACE may assume that the ACHP does not object to its recommended approach and it will proceed accordingly.

C. Termination of PA: Any Signatory to this Agreement may terminate it by providing sixty (60) days notice to the other parties, provided that the parties will consult during the period prior to the termination to seek agreement on amendments or other actions that will avoid termination. In the event of termination of this Agreement by the SHPO, the USACE shall comply with the provisions of 36 CFR § 800.6(c)(8).

D. Duration of PA: This Agreement will terminate if its terms are not carried out within ten (10) years from the date of the last signature on this Agreement. Prior to such time, the USACE

may consult with the other signatories to reconsider the terms of the Agreement, amend it in accordance with Stipulation V.A., or agree that it should continue in force for a period of years to be determined at that time.

E. Annual Report: An annual letter report will be produced each January by the USACE and provided to all the parties to this agreement including the Indian Tribes apprising signatories and concurring parties of the status of the project.

F. Anti-Deficiency Act: The stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act (31 United States Code [U.S.C.] Sec. 1341). If compliance with the Anti-Deficiency Act alters or impairs the USACE's ability to implement the stipulations of this agreement, the USACE will consult in accordance with the amendment and termination procedures found in this Agreement.

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Execution of this Programmatic Agreement and implementation of its terms evidences that the USACE has taken into account the effects of the undertaking upon historic properties and has afforded the ACHP an opportunity to comment.

Signatory:

United States Army Corps of Engineers:

By: _____ **Date:** 30AUG2011

Christopher G. Hall
Colonel, U.S. Army
District Commander

Signatory:

Illinois State Historic Preservation Officer:

By: _____ **Date:** Aug 29, 2011

Anne E. Haaker
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency

Signatory:

Advisory Council on Historic Preservation:

By: _____ **Date:** 8/30/11

John M. Fowler
Executive Director
Advisory Council on Historic Preservation

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Concurring Party:

Osage Nation:

By:_____ **Date:**_____

John D. Red Eagle
Chief
Osage Nation

Concurring Party:

United Keetoowah Band of Cherokee:

By:_____ **Date:**_____

George Wickliffe
Chief
United Keetoowah Band of Cherokee Indians in Oklahoma

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APPENDIX A

Standard Mitigation Measures for Individual Historic Properties

1. If the USACE or SHPO determine that a nondemolition project meets the ACHP's Criteria of Adverse Effect, it shall consult with the SHPO to determine whether the historic properties should be treated in accordance with the Standard Mitigation Measures outlined herein. The USACE shall submit the following documentation to the SHPO for review:

    a. Location information, including maps, of the property/site.

    b. Background documentation to include an analysis of alternatives:

        i. For rehabilitation, include an explanation of why treatment to *Standards* is neither prudent nor feasible.
        ii. For rehabilitation projects, 35mm photographs of each existing elevation and any significant architectural feature or elements. For new construction projects, 35mm photographs of the National Register listed/eligible structures which will be adversely affected by the project.
        iii. For new construction, include an explanation of why plans and specifications cannot be developed to meet the Standards.

    c. Comments and recommendations from the USACE.

    d. An analysis of alternatives that were considered.

    e. Its proposed Standard Mitigation Plan for the historic properties, prepared in accordance with State and Federal guidelines outlined in Stipulation II.G. of this Agreement, or a statement of other mitigation actions, if any are proposed, and why.

    f. A brief description of measures taken to solicit the views of the public and the comments received.

2. The SHPO will review the documentation submitted by the USACE, and, within 30 days of receipt, concur, object, request additional information, submit its own mitigation plan proposal to the USACE for its review and approval, or notify the USACE of its determination that its proposed Standard Mitigation Plan is not appropriate.

3. All Standard Mitigation Plans, prepared in accordance with this Agreement, must be reviewed, approved and signed by the USACE and SHPO before any project activities may proceed. The scope and duration of a Standard Mitigation Plan must be clearly specified.

4. Any modifications or revisions to a Standard Mitigation Plan must be reviewed by SHPO in accordance with Stipulations II.G. of this Agreement.