EA APPENDIX C

PROGRAMMATIC AGREEMENT

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AMONG
THE ROCK ISLAND DISTRICT OF THE U.S. ARMY CORPS OF ENGINEERS,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER,
THE IOWA STATE HISTORIC PRESERVATION OFFICER,
THE MISSOURI STATE HISTORIC PRESERVATION OFFICER,
AND THE WISCONSIN STATE HISTORIC PRESERVATION OFFICER
REGARDING IMPLEMENTATION OF THE SHORT-TERM
DREDGED MATERIAL PLACEMENT

WHEREAS, the Rock Island District of the U.S. Army Corps of Engineers (Corps) has determined that the Illinois Waterway and Mississippi River have historic and chronic shoaling areas and that dredging is generally required to provide adequate channels for commercial navigation and that dredged material placement undertakings are required for the Corps' short-term (less than 10 years) needs.

WHEREAS, the Corps has determined that the dredged material placement undertakings may have an effect upon properties listed on, or eligible for, inclusion in the National Register of Historic Places (National Register), and has consulted with the Advisory Council on Historic Preservation (Council) and the Illinois, Iowa, Missouri, and Wisconsin State Historic Preservation Officers (SHPOs) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), [and Section 110(f) of the same Act (16 U.S.C. 470h-2(f)]; and,

NOW, THEREFORE, the Corps, the Council, and the appropriate SHPOs agree that the undertakings shall be implemented in accordance with the following stipulations to satisfy the Corps' Section 106 responsibility for all individual actions.

I. HISTORIC PROPERTY SURVEYS AND TESTING

A. The Corps will take all measures necessary to discover, preserve, and avoid significant historic properties, listed on, or eligible for, inclusion in the National Register of Historic Places, burials, cemeteries, or sites likely to contain human skeletal remains/artifacts and objects associated with interments or religious activities, and provide this information, studies, and/or reports to the appropriate SHPOs through the implementation of historic property surveys and testing, and the treatments of historic properties. The Corps will ensure that the following measures are implemented:

1. Unless recent and modern ground surface disturbances and/or historic use can be documented, the Corps will conduct a historic property visual (reconnaissance) survey with subsurface testing on all new and expanded dredged material placement sites and all other areas indirectly and directly affected by construction, use, maintenance, and operation of the new and

expanded dredged material placement sites having the potential for historic properties. The Corps will evaluate historic properties identified through the reconnaissance survey in accordance with 36 CFR Part 800.4(c), and reports of the findings shall be submitted to the appropriate SHPOs for review and comment. If the reconnaissance survey results in the identification of historic properties that are eligible for the National Register of Historic Places, the Corps, in consultation with the appropriate SHPOs, shall develop and implement plans for the appropriate treatment of historic properties. Treatment will include, but not be limited to, avoidance of the historic property, avoidance of a portion of the historic property, and data recovery of the portion of the historic property to be affected, or data recovery of the entire historic property.

2. The reconnaissance surveys and subsurface testing will be conducted in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Identification and Evaluation (48 FR 44720-23) and take into account the National Park Service publication entitled The Archaeological Survey: Methods and Uses (1978) and any extant or most recent version of appropriate SHPOs guidelines for historic properties reconnaissance surveys/reports, related guidance, etc. The reconnaissance surveys and subsurface testing will be implemented by the Corps and monitored by the appropriate SHPOs.

3. In consultation with the appropriate SHPOs, the Corps shall evaluate for eligibility all significant historic properties by applying the National Register criteria (36 CFR Part 60.4).

a. For those properties that the Corps and the appropriate SHPOs agree are not eligible for nomination to or inclusion in the National Register, no further historic properties investigations will be required, and the project may proceed in those areas.

b. If the survey results in the identification of properties that the Corps and the appropriate SHPOs agree are eligible for nomination to, or inclusion on, the National Register, such properties shall be treated in accordance with Part II below.

c. If the Corps and the appropriate SHPOs do not agree on National Register eligibility, or if the Council or the National Park Service so request, the Corps will request a formal determination of eligibility from the Keeper of the National Register, National Park Service, whose determination shall be final.

II. TREATMENT OF HISTORIC PROPERTIES

A. Those properties that the Corps and the appropriate SHPOs agree are eligible for nomination to, or that the Keeper has determined eligible for inclusion in, the National Register, will be treated in the following manner:

1. If the Corps determines, and documents this determination, in consultation with the appropriate SHPOs that no other actions are feasible to avoid and minimize effects to properties and the Corps and SHPOs agree under consultation that properties cannot be avoided, then a treatment plan, which may include data recovery, documentation, avoidance, protection, or removal, will be coordinated with the appropriate SHPOs. If data recovery is

the agreed upon treatment, the data recovery plan will address substantive research questions developed in consultation with the appropriate SHPOs. The treatment plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties (Advisory Council on Historic Preservation, 1980) and appropriate SHPOs guidance. It shall specify, at a minimum, the following:

a. The property, properties, or portions of properties where the treatment plan is to be carried out;

b. The research questions to be addressed, with an explanation of research relevance and importance;

c. The methods to be used, with an explanation of methodological relevance to the research questions;

d. Proposed methods of disseminating results of the work to the interested public; and,

e. A proposed schedule for the submission of progress reports to the appropriate SHPOs.

2. The treatment plan shall be submitted by the Corps to the appropriate SHPOs for 30 days review. The Corps will take into account SHPO comment and shall ensure that the data recovery plan is implemented. The appropriate SHPOs shall monitor this implementation.

B. The Corps will ensure that the data recovery plan is carried out by or under the direct supervision of an archaeologist(s), architectural historian(s) and/or other appropriate cultural resource specialist(s) that meets, at a minimum, the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9).

C. The Corps will ensure that adequate provisions, including personnel, time, and laboratory space are available for the analysis of recovered materials from historic properties.

D. The Corps will develop and implement an adequate program in consultation with the appropriate SHPOs to secure and historic properties from vandalism during data recovery.

III. CURATED ITEMS

In consultation with the appropriate SHPOs, the Corps will ensure that all materials and records resulting from the historic properties studies conducted for the dredged material placement sites project are curated at a repositories within the States of Illinois, Iowa, Missouri, and Wisconsin in accordance with 36 CFR Part 79.

IV. TREATMENT OF HUMAN REMAINS

If incidental finds of human remains are encountered either during the data recovery or during any project construction activities, the Corps will comply with all provisions outlined in the appropriate state acts, statutes, guidance, provisions, etc., and any decisions regarding the treatment of human remains will be made under consultation with the SHPOs. If incidental finds of human remains are encountered or collected from Federal lands or federally recognized tribal lands, the Corps will coordinate with the appropriate federally recognized Native Americans, as promulgated by the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. § 3001 *et seq.*), under consultation with the appropriate SHPOs.

V. REPORTS

The Corps will ensure that all final historic properties reports resulting from the actions pursuant to this Programmatic Agreement (Agreement) will be provided in a format acceptable to the appropriate SHPOs and the National Park Service for possible peer review and submission to the National Technical Information Service. The Corps will ensure that all such reports are responsive to contemporary standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery (42 FR 5377-79). Precise locational data may be provided only in a separate appendix, if it appears that the release of this locational data could jeopardize historic properties. The reports and reports data will be made available for publication and public dissemination.

VI. PROVISION FOR UNDETECTED HISTORIC PROPERTIES DISCOVERED DURING IMPLEMENTATION

In accordance with 36 CFR Section 800.11(a), if previously undetected or undocumented historic properties are discovered during project activities, the Corps will cease, or cause to stop, any activity having an effect and consult with the appropriate SHPOs to determine if additional investigation is required. If further archaeological investigations are warranted or required, any treatment plan will be performed in accordance with Part II - TREATMENT OF HISTORIC PROPERTIES and Part III - CURATION AND DISSEMINATION OF INFORMATION of this Agreement. If both the Corps and the appropriate SHPOs determine that further investigation is not necessary, activities may resume with no further action required. Any disagreement between the Corps and the appropriate SHPOs concerning the need for further investigations will be handled pursuant to Part V - DISPUTE RESOLUTION of this Agreement.

VII. DISPUTE RESOLUTION

Should the appropriate SHPOs or the Council object within 30 days to any plans or actions provided for review pursuant to this Agreement, the Corps will consult with the objecting party to resolve the objection. If the Corps determines that the disagreement cannot be resolved, the Corps will request further comment from the Council in accordance with 36 CFR Part 800.6(b).

The Corps in accordance with 36 CFR Part 800.6(c)(2) will take any Council comment provided in response into account, with reference only to the subject of the dispute. The Corps' responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VIII. TERMINATION

Any of the signatories to this Agreement may request a reconsideration of its terms or revoke the agreement upon written notification to the other signatories, by providing thirty (30) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the advent of termination, the Corps will comply with 36 CFR Parts 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IX. AMENDMENTS

Any party to this Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13, to consider such amendment.

X. PERIODIC REVIEW

The Corps will provide the SHPOs with evidence of compliance with this Agreement by letter on January 30, 1999, and once every year thereafter said date. This letter shall contain the name of the project, title of the documents which contained the Agreement, historic properties identified, determinations of effect, avoidance procedures, level of investigation(s) and/or mitigation(s) conducted with titles of all project reports related to such investigation(s) and/or mitigation(s) which have been completed.

XI. EXECUTION AND IMPLEMENTATION

A. Nothing in this Agreement is intended to prevent the Corps from consulting more frequently with the appropriate SHPOs or the Council concerning any questions that may arise or on the progress of any actions falling under or executed by this Agreement. Any resulting modifications to this Agreement will be coordinated in accordance with Section 800.5(e)(5).

B. The undersigned concur that the Corps has satisfied its Section 106 responsibilities for all individual undertakings through this Agreement regarding the implementation of the short-term dredged material placement.

XII. SIGNATORIES

ROCK ISLAND DISTRICT, U.S. ARMY CORPS OF ENGINEERS:

BY: _____ Date 13 MARCH 1998

Colonel James V. Mudd
District Engineer
U. S. Army Corps of Engineers
Rock Island District

ILLINOIS STATE HISTORIC PRESERVATION OFFICER:

BY: _____ Date 3-31-98

William L. Wheeler
Illinois State Historic Preservation Officer
Illinois Historic Preservation Agency

IOWA STATE HISTORIC PRESERVATION OFFICER:

BY: _____ Date: 4-6-98

Patricia Ohlerking
Iowa State Historic Preservation Officer
State Historical Society of Iowa

MISSOURI STATE HISTORIC PRESERVATION OFFICER:

BY: _____ Date: 13 May 1998

~~David A. Shorr~~ Claire F. Blackwell, Deputy
Missouri State Historic Preservation Officer
Department of Natural Resources

XII. SIGNATORIES (Continued)

WISCONSIN STATE HISTORIC PRESERVATION OFFICER:

BY:_____ Date: 5/27/98

~~Jeff M. Dean~~ Deputy
Wisconsin State Historic Preservation Officer
State Historical Society

ADVISORY COUNCIL ON HISTORIC PRESERVATION:

BY:_____ Date:_____

John Fowler
Executive Director
Advisory Council on Historic Preservation