

**AMENDMENT TO MEMORANDUM OF AGREEMENT FOR THE ILLINOIS SHORELINE
EROSION INTERIM 3 PROJECT AMONG THE ADVISORY COUNCIL ON HISTORIC
PRESERVATION, THE CITY OF CHICAGO, THE CHICAGO PARK DISTRICT, THE ARMY
CORPS OF ENGINEERS, AND THE ILLINOIS HISTORIC PRESERVATION OFFICE**

WHEREAS, that certain Memorandum of Agreement for The Illinois Shoreline Erosion Interim 3 Project (Project) was executed on August 16, 1993 (Agreement), and remains in effect;

WHEREAS, the Secretary of Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings were published and codified in the Code of Federal Regulations (36 CFR 68) in 1995 and revised in 2017;

WHEREAS, Promontory Point and Morgan Shoals are the only unconstructed reaches of the original Illinois Shoreline Erosion Interim 3 Project, as described in the Project Cooperation Agreement Between The Department of the Army and The City of Chicago and The Chicago Park District for Construction of the Remainder of the Chicago Shoreline, Chicago, Illinois Project dated May 17, 1999;

WHEREAS, the historic significance and community interest in the Promontory Point reach warrants the development of a more robust consultation and evaluation process for the project under

Section 106 of the National Historic Preservation Act (NHPA)(54 U.S.C. § 306108);

WHEREAS, the goals of this Agreement are to: (1) strive for a design that prioritizes the protection of historic properties and avoids adverse impacts that would diminish the significance and integrity of Promontory Point as a National Register of Historic Places listed property; (2) promote a coordinated, clear, and efficient process for implementation of Section 106 of the NHPA; (3) provide an orderly process for the resolution of conflicts, considerations of feasible alternatives, and appropriate mitigation; (4) maintain the confidence of the public in the USACE, City of Chicago, and the Chicago Park District; and (5) provide for public participation in the implementation of Section 106 of the NHPA (Section 106); and

WHEREAS, the City of Chicago and the Chicago Park District are added as invited signatories to the Agreement;

NOW, THEREFORE, the Advisory Council on Historic Preservation (ACHP), the City of Chicago, the Chicago Park District, the Army Corps of Engineers, and the Illinois State Historic

Preservation Office agree to amend the Agreement as follows:

Amend the Agreement by attaching and incorporating the following Appendix which contains specific consultation provisions applicable to the Promontory Point segment of the Project:

APPENDIX 1 TO THE

**MEMORANDUM OF AGREEMENT AMONG
THE UNITED STATES ARMY CORPS OF ENGINEERS, CHICAGO DISTRICT, THE CITY
OF CHICAGO, THE CHICAGO PARK DISTRICT,
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PROMONTORY POINT SHORELINE REVETMENT REPAIR
PROJECT, CHICAGO, ILLINOIS**

WHEREAS, the United States Army Corps of Engineers (USACE), Chicago District, the Chicago Park District (Park District), and the City of Chicago (City), plan to repair the limestone step-stone revetment at Promontory Point on Lake Michigan in Chicago, Illinois, as previously authorized by the Illinois Shoreline Erosion Interim 3 Project (Project), thereby making the Project an undertaking subject to review under Section 106 , and its implementing regulations, 36 C.F.R. § 800; and

WHEREAS, the scope of the undertaking includes the design and construction of coastal storm damage reduction features at Promontory Point, including the repair of the existing limestone revetment

and the underlying foundation; and

WHEREAS, the Area of Potential Effects (APE) for the Project is defined as the entirety of Promontory Point and nearshore area around the revetment, including any construction staging and access areas; and

WHEREAS, Promontory Point is a Chicago City Landmark designed by Alfred Caldwell and completed in 1939 and was listed on the National Register of Historic Places (NRHP) on January 18 2018; and

WHEREAS, there are nine NRHP contributing resources at Promontory Point including its Prairie style landscape, the French eclectic inspired stone pavilion, the four council rings, the 55th Street underpass, the David Wallach Memorial Fountain, and the step-stone revetment bordering the lakeshore; and

WHEREAS, the USACE has determined that the undertaking has the potential to effect Promontory Point, which is listed on the NRHP, and has consulted with the Illinois SHPO; and

WHEREAS, a Memorandum of Agreement (Agreement) for the Illinois Chicago Shoreline Erosion Interim 3 Project was executed in 1993 by the USACE Chicago District and the Illinois State Historic Preservation Officer (SHPO), accepted by the Advisory Council on Historic Preservation (ACHP), and concurred to by both the City and the Park District; and

WHEREAS, the signatories agreed to amend the Agreement to add this Appendix with respect to the Promontory Point segment of the Illinois Chicago Shoreline Erosion Interim 3 Project, in order to meet current regulatory guidance and set forth detailed consultation and public involvement procedures; and

WHEREAS, the USACE is the lead federal agency pursuant to Section 106 and its implementing regulations (36 C.F.R. Part 800) and must ensure that no federal undertaking, which may affect historic properties, is commenced before the effects of such action are considered; and

WHEREAS, the Park District owns the property on which the Promontory Point is located; and

WHEREAS, the SHPO, has concurred in the use of an amendment as a Signatory pursuant to 36 C.F.R. § 800.6(c)(1); and

WHEREAS, the USACE invited the ACHP to participate in the development of this Agreement amendment and the ACHP is participating pursuant to 36 C.F.R. § 800.14(b)(2), and agreed to being a Signatory to this Agreement pursuant to 36 C.F.R. § 800.6(c)(1); and

[PLACEHOLDER: WHEREAS, the City and the Park District are the non-Federal sponsors for this project, and the USACE has invited the City and the Park District to sign this Agreement as Invited Signatories, and the City and Park District have elected to sign this Agreement pursuant to 36 C.F.R. § 800.6(c)(2); and

[PLACEHOLDER: WHEREAS, the USACE has consulted with the Citizen Potawatomi Nation of Oklahoma, the Forest County Potawatomi Community of Wisconsin, the Hannahville Indian Community of Michigan, the Kickapoo Tribe of Oklahoma, the Little Traverse Bay Bands of Odawa Indians of Michigan, the Menominee Indian Tribe of Wisconsin, the Miami Tribe of Oklahoma, and the Prairie Band Potawatomi Nation (collectively “Indian Tribes”) and invited them to sign this Agreement as Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3), and the _____ have elected to participate each as a Concurring Party; and]

[PLACEHOLDER: WHEREAS, the USACE has consulted with the Promontory Point

Conservancy, Preservation Chicago, Landmarks Illinois, Hyde Park Historical Society, and the National Trust for Historic Preservation, and has invited them to sign this Agreement as Concurring Parties pursuant to 36 C.F.R. § 800.6(c)(3), and]

[PLACEHOLDER: WHEREAS, the Indian Tribes identified above, Promontory Point Conservancy, Preservation Chicago, Landmarks Illinois, Hyde Park Historical Society, and the National Trust for Historic Preservation are hereinafter collectively referred to as Consulting Parties; and]

WHEREAS, the USACE intends to coordinate its compliance with Section 106 with the applicable requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) pursuant to 40 C.F.R. §1500-1508; and

WHEREAS, Section 5072 of the Water Resources Development Act of 2007 directs a joint third-party review of the Promontory Point project by the Buffalo and Seattle Districts of the USACE to ensure consideration of historic properties affected by the undertaking through the lens of the Secretary of

Interior's Standards for the Treatment of Historic Properties and that proposed measures are checked for consistency with the coastal storm damage and erosion prevention objectives of the project; and **NOW, THEREFORE**, the USACE, the SHPO, the ACHP, the City, and Park

District 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.

STIPULATIONS

The USACE shall ensure that the following measures are carried out:

I. SCOPE, APPLICABILITY, AND QUALIFICATIONS

- A. A. This Agreement specifically applies to Section 106 compliance for the Promontory Point
- A. segment of the Illinois Shoreline Erosion Interim 3 Project.
- A. B. This Agreement is applicable to the process used by USACE to comply with Section 106 as regulated in 36 C.F.R. Part 800 and establishes a process by which USACE consults with the SHPO, ACHP, and Consulting Parties.
- C. This Agreement honors the long history of community involvement and consultation by setting forth stipulations that ~~will~~ prioritize avoiding adverse effects that would compromise the significance of Promontory Point where technically feasible.
- D. USACE, in compliance with its responsibilities under the NHPA, will ensure that the City and Park District carry out the requirements of this Agreement as a condition of implementation and funding.
- E. The USACE, Park District and the City shall ensure that all design work carried out pursuant to this Agreement shall be done in consultation with an architectural historian, historic architect, or historic landscape architect who meets or exceeds the Secretary of the Interior's Professional Qualifications Standards with a minimum of ten years of demonstrated experience with large-scale historic masonry projects, with preference for engineering experience and knowledge. The USACE, Park District and City shall ensure that consultants retained for services pursuant to this Agreement meet these standards.

II. PRE-DESIGN AND DESIGN DEVELOPMENT

- A. Prior to design of the project, the USACE, Park District and the City will ensure the development of a combined Cultural Landscape and Historic Structures Report (HSR) for the step stone revetment feature of Promontory Point in order to identify maintenance, repair, and improvements needed for the historic structure, which could include but are not limited to repair of existing materials, replacement of damaged materials or inconsistent prior repairs, removal of non-historic conditions and materials, and rehabilitation to meet current USACE engineering requirements for shoreline protection projects consistent with the authorized objectives of the Illinois Shoreline Erosion Interim 3 Project. The HSR will include research and review of archival documentation, an existing condition survey, measured drawings, record photography, materials studies, evaluation of significance, selection and rationale for the most appropriate treatment approach for the various components of the structure (preservation, rehabilitation, restoration, or reconstruction); and development of specific work recommendations that can be directly applied to the designs for construction of coastal storm damage risk management features at Promontory

Point. This work will be completed by a consultant that meets the qualifications outlined in Stipulation I (E).

A draft copy of the HSR will be provided to the SHPO, ACHP, and Consulting Parties, and they will have forty-five (45) calendar days from receipt to provide comments, if any, to USACE. All comments should be sent electronically to the USACE project manager.

B. The USACE, Park District and the City will develop the design for the Promontory Point segment of the undertaking utilizing the information and recommendations in the HSR with the intent to minimize and/or avoid adverse effects where technically feasible. The USACE, Park District and City shall ensure that the design for Promontory Point, to include the step stone revetment, will adhere to the Secretary of the Interior's Standards for the Treatment of Historic Properties 36 CFR Part 68, and other relevant guidelines, including but not limited to, the Guidelines for the Treatment of Cultural Landscapes, <https://www.nps.gov/crps/tps/landscape-guidelines/index.htm>.

C. In accordance with the procedures set forth in Stipulation III, the USACE will ensure coordination with the SHPO, ACHP and Consulting Parties at the following milestones:

1. A design charrette will be hosted by USACE prior to commencement of the design process with the City's design consultants, Park District, SHPO, ACHP, and Consulting Parties. A summary of the design charrette will be compiled as an appendix to the Scope Definition Report (as defined below) and provided to stakeholders.
2. Taking into account the summary of the design charrette and HSR, a scope definition report will be generated to provide an initial summary of the project components that will be developed through the design process and the general design scope requirements with a level of detail equivalent to approximately a 15% design (Scope Definition Report). The HSR and a summary of the design charrette will be included as appendices to the Scope Definition Report. A draft copy of the Scope Definition Report will be provided to the SHPO, ACHP, and Consulting Parties, and they will have 45 calendar days from receipt to provide comments, if any, to USACE. All comments should be sent electronically to the USACE project manager.
3. Project construction plans and specifications (Plans and Specifications) and design analysis will be provided to the SHPO, ACHP, and Consulting Parties at the 35%, 65%, and 95% levels of design. The SHPO, ACHP and Consulting Parties may provide comments, if any, within 45 calendar days of receipt of the documents for each level of design. All comments should be sent electronically to the USACE project manager.
4. Project recommendations resulting from the Section 5072 Third Party Review will be provided to the SHPO, ACHP and Consulting Parties to the extent releasable by applicable law. [See Chicago Shoreline Project Section 5072 Third Party Review Memorandum of Understanding as Exhibit 1.

D. During all stages of project design, the USACE will ensure decisions made pursuant to this Agreement will consider comments or objections from the SHPO, ACHP and Consulting

Parties consistent with the procedures established in this Agreement. The USACE will create a document that will track comments provided and identify how comments were/were not considered in the development of the design (Comment Matrix). USACE will provide an updated version of the Comment Matrix to SHPO, ACHP and the Consulting Parties for each deliverable listed in C.1 through C.4. above.

III. DESIGN IMPLEMENTATION AND CONSTRUCTION

A. ASSESSMENT OF EFFECTS

The USACE has determined that the undertaking has the potential to affect the NRHP listed Promontory Point. Following evaluation of the design and supporting documentation, the USACE will submit a determination of effects to the Signatories and Invited Signatories of this document. As Promontory Point is a listed historic property within the project APE, the USACE will submit one of the following findings:

1. Finding of No Adverse Effect to Historic Properties: If the USACE determines that based on the proposed design developed in accordance with Stipulation I, the criteria of adverse effect have not been met, the USACE shall propose a finding of “no adverse effect” and consult with the SHPO in accordance with 36 C.F.R. § 800.5(b) and (c) and following steps a-c below.
 - a. The USACE shall notify the SHPO and Consulting Parties of its finding; describe any project specific conditions and/or modifications required to the undertaking to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 C.F.R. § 800.11(e).
 - b. Unless the SHPO or Consulting Parties object within thirty (30) calendar days, the USACE will proceed with its “no adverse effect” finding and conclude the Section 106 review.
 - c. If the SHPO or Consulting Parties object to a finding of “no adverse effect,” the USACE will consult with the objecting party to resolve the disagreement.
 - i. If the objection is resolved, the USACE shall proceed with the undertaking in accordance with the resolution; or
 - ii. If the objection cannot be resolved, the USACE shall request the ACHP review the findings in accordance with 36 C.F.R. 800.5(c)(3)(i-ii) and submit the required supporting

documentation.

The USACE shall prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the

ACHP’s opinion and provide this to the SHPO and Consulting Parties. If the USACE’s final determination is to reaffirm its “no adverse effect” finding, the Section 106 review of the undertaking will have concluded. If the USACE revises its finding by determining there’s an adverse effect, then it shall proceed to Stipulation III.B.

- iii. Avoidance of Adverse Effects: Avoidance of adverse effects to historic properties is the preferred treatment approach. The USACE will consider ~~redesign~~ of elements of the undertaking in order to avoid and/or minimize effects to historic properties that may be adverse. If the USACE determines that the undertaking cannot be modified to avoid significant effects that may adversely affect contributing elements of the historic property, the USACE will make submit a finding of “adverse effect.”
2. Finding of Adverse Effect to Historic Properties: If the USACE determines that the undertaking will adversely affect Promontory Point, it shall notify the SHPO and Consulting Parties of the determination and consult to resolve the effects as outlined in Stipulation III.B of this Agreement.

B. TREATMENT OF HISTORIC PROPERTIES

1. If the USACE determines that the Project will result in adverse effects to historic properties, the USACE, in consultation with SHPO, ACHP, and Consulting Parties, shall develop a Historic Properties Treatment Plan (HPTP). A HPTP would be developed after the USACE notifies the SHPO, ACHP, and Consulting Parties of a determination of “adverse effect” for the undertaking but before construction of the feature.
2. A HPTP shall outline the minimization and mitigation measures necessary to resolve the adverse effects to historic properties. Development of appropriate measures shall include consideration of the historic property feature and provisions for avoidance or protection measures if necessary.
3. A HPTP shall define the process and conditions under which monitoring is appropriate and detail the means and methods of public outreach and dissemination of the results to the general public.
4. The USACE shall ensure that the provisions of a HPTP, as developed in consultation with the SHPO, ACHP, and Consulting Parties and concurrence by the SHPO and ACHP, are documented in writing and implemented. A HPTP shall be appended to this Agreement without further amendment. The use of a HPTP to resolve adverse effects resulting from the Project shall not require the execution of an individual Memorandum of Agreement. Development and review of the HPTP will follow the procedures outlined in Stipulation III.

C. CONSTRUCTION

Prior to construction, the USACE will ensure the development of requirements and best management practices for the protection of historic properties to be included in the Plans and Specifications provided to a construction contractor. During construction, USACE, Park District and the City will monitor the contractor and ensure compliance with measures associated with historic protection. During construction, the City and Park District will provide bi-monthly

construction updates with photographs that will be distributed to all Signatories, Invited Signatories and Consulting Parties.

IV. CONSULTATION, COMMUNICATION, AND COORDINATION PROTOCOLS

A. ACHP and SHPO

The USACE will seek ACHP advice, guidance, and assistance pursuant to 36 C.F.R. § 800.2(b)(2) to carry out the terms of this Agreement, if needed. The USACE will submit consultation materials using the ACHP's most current submittal system and allow a thirty (30) day comment period. The USACE cultural resources staff will serve as the primary point of contact for all ACHP and SHPO communication and coordination. If the ACHP and SHPO receive communication regarding the undertaking or the terms of this Agreement, they will notify all Signatories, Invited Signatories, and Consulting Parties within ten (10) days of receipt of any contact with a summary identifying the contact, the issues identified, and any resulting discussion or guidance provided.

B. TIMEFRAMES AND REVIEW PROCEDURES

For all draft and final documents and deliverables produced in compliance with this Agreement, unless specified above, USACE shall provide documents electronically for formal review and for communications among the SHPO, ACHP, and Consulting Parties. Upon request, a hardcopy via mail may be provided to any Consulting Party, time and document size and format permitting. Any written comments provided on draft documents by the SHPO, ACHP, and Consulting Parties within forty-five (45) calendar days from the date of receipt shall be considered in the revision of the document or deliverable. USACE shall document and report the written comments received for the document or deliverable and how comments were addressed. After receipt of the comments, USACE shall provide to SHPO, ACHP, and Consulting Parties a Comment Matrix.

The SHPO, ACHP, and Consulting Parties shall have fifteen (15) calendar days to respond in writing. Failure of the SHPO, ACHP, and Consulting Parties to respond in writing within forty-five (45) calendar days of receipt of any document or deliverable shall not preclude USACE from moving to the next step in this Agreement. A copy of the final document shall be provided to the SHPO, ACHP, and Consulting Parties subject to the limitations in Stipulation V (Confidentiality).

C. PUBLIC COMMENT AND PUBLIC NOTICE

The USACE will seek and consider the views of the public in a manner that reflects the nature of the undertaking and the importance of Promontory Point as a City of Chicago Landmark. The USACE will use its procedures for public involvement under NEPA to solicit information and concerns, pursuant to 36 C.F.R. § 800.2(d)(3). If members of the public provide comment on their own initiative, the USACE may take those comments into consideration. Relevant project information and opportunities to comment will be shared with the public via the USACE Chicago District (LRC) website and social media platforms. The USACE will provide ample opportunities for community engagement, including but not

limited to hosting public meetings, website comment submittals, and emails.

D. DISPUTE RESOLUTION

1. Should any Signatory, Invited Signatory or Consulting Party object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the USACE shall consult with such party to try to resolve the objection. Objections must be submitted in writing and include a detailed description of the basis for the objection.

2. If an objection by a Signatory cannot be resolved, the USACE will:

- a. a. Forward all documentation relevant to the dispute, including the USACE's proposed resolution to the ACHP. The ACHP shall provide the USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, the SHPO, City, Park District, and/or Consulting Parties, and provide them with a copy of this written response.

b.

- c. The USACE will then proceed according to its final decision.

- a. ~~b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO, ACHP, City, Park District, and/or Consulting parties to the Agreement and provide them and the ACHP with a copy of such written response.~~

- c. The USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

E. EMERGENCY PROCEDURES

In the event USACE proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of Illinois or another immediate threat to life or property, Section 106 compliance will be implemented as follows: USACE will notify the SHPO, ACHP, City, Park District, and the SHPO, ACHP, and Consulting Parties, as appropriate, by telephone and electronic communication within twenty-four (24) hours prior to taking the action, when feasible. As part of the notification, the USACE will provide a plan to address the emergency. The SHPO, ACHP, City, Park District, and Consulting

Parties will have seven (7) calendar days to review and comment on the plan to address the emergency unless the nature of the emergency requires a shorter period of review. If the SHPO, ACHP, or Consulting Parties do not comment or do not object to the plan within the review period, the USACE will implement the proposed plan.

This section only applies to actions that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority (President or Governor of Illinois) pursuant to 36 C.F.R. 800.12. USACE may request an extension of the period of applicability from the ACHP prior to the expiration of the 30 days. Immediate rescue and salvage operations to preserve life or property are exempt from Section 106 and the provisions of 36 C.F.R. 800.12(d).

F. DURATION

This Agreement will expire if its terms are not carried out within fifteen (15) years from the date of its execution. Prior to such time, the USACE may consult with the City, Park District, SHPO and ACHP to reconsider or extend the terms of the Agreement and amend it in accordance with Stipulation VI below.

G. MONITORING AND REPORTING

Each year following the execution of the Agreement, the USACE will provide the SHPO, ACHP, Invited Signatories, and Consulting Parties a summary report detailing work undertaken pursuant to the terms of the Agreement. This report will include any proposed scheduling changes, any problems encountered, and any disputes and objections received in the execution of the Agreement. This summary report will be provided via electronic communication. Any change in scope or schedule will be reported to the SHPO, ACHP, and Consulting Parties within thirty (30) days of the decision.

IV. POST-REVIEW DISCOVERIES

Prior to construction, the USACE will ensure the development of a discovery plan to account for any post-review discoveries. The SHPO, ACHP, and Consulting Parties will have thirty (30) calendar days to provide comment on the discovery plan prior to acceptance. If properties or sites are discovered that may be historically significant or if unanticipated effects on historic properties occur, communication will be carried out via procedures outlined in the discovery plan.

V. CONFIDENTIALITY

While there are no known archaeological sites in the project APE, Signatories and Invited Signatories to this Agreement acknowledge that information about historic properties is subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 C.F.R. § 800.11(c), relating to the disclosure of information about the location, character or ownership of an historic property, and will ensure that any disclosure under this Agreement is consistent with the terms of this Agreement and with Section 304 of the NHPA, 36 C.F.R. § 800.11(c), the Freedom of Information Act (5 U.S.C. § 552), as amended, and 5 ILCS 140/1 *et seq.*, as applicable. Confidentiality regarding the specific nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be maintained to the extent allowable by law.

Dissemination of such information shall be limited to appropriate personnel within the USACE (including their contractors), SHPO, ACHP, and Consulting Parties and those parties involved in planning, reviewing, and implementing this Agreement. When information is provided to the USACE by SHPO or others who wish greater control over the discretionary dissemination of that information, the USACE will make a good faith effort to do so, provided the information to be controlled and the rationale for withholding is clearly identified, to the extent consistent with applicable law.

VI. AMENDMENTS

This Agreement may be amended when such an amendment is agreed to in writing by USACE, SHPO, ACHP, the City, and the Park District. The amendment will be effective on the date the USACE files the signed document with the ACHP. Consulting parties will be notified of the amendment and will be provided a copy of the executed document.

VII. ANTI-DEFICIENCY ACT

- A. All requirements set forth in this Agreement requiring expenditure of funds by the USACE are expressly subject to the availability of appropriations and the requirements of the Anti-Deficiency Act (31 U.S.C. 1341). No obligation undertaken by the USACE under the terms of this Agreement shall require or be interpreted to require a commitment to extend funds not appropriated for a particular purpose. If the USACE cannot perform any obligation set forth in this Agreement because of unavailability of funds that obligation must be renegotiated among the USACE and the Signatories, and Invited Signatories, as necessary.
- A. The Signatories and Invited Signatories hereby acknowledge and agree that the City's obligations hereunder are subject in every respect to the availability of funds. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of its funds, then the City will notify USACE in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted. No payments will be made or due under this Agreement beyond those amounts appropriated and budgeted by the City to fund payments under this Agreement.
- B. The Signatories and Invited Signatories hereby acknowledge and agree that the Park District's obligations hereunder are subject in every respect to the availability of funds. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the Park District for disbursements of its funds, then the Park District will notify USACE in writing of that occurrence, and the Park District may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted. No payments will be made or due under this Agreement beyond those amounts appropriated and budgeted by the Park District to fund payments under this Agreement.

VIII. TERMINATION

If any Signatory, or Invited Signatory, to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories 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, or Invited Signatory, may terminate the Agreement upon written notification to the other signatories.

Once the Agreement is terminated, and prior to work continuing on the undertaking, the USACE must either (a) execute an agreement document pursuant to 36 C.F.R. § 800.6; or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The USACE shall notify the SHPO and ACHP as to the course of action it will pursue. Once the USACE, SHPO and ACHP have identified a course of action, the USACE will inform the City, the Chicago Park District and the SHPO, ACHP, and Consulting Parties.

IX. EXECUTION

Execution of this Agreement by the USACE and SHPO and implementation of its terms evidence that the USACE has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

U.S. Army Corps of Engineers

_____Date

[insert agency official name and title]

Illinois State Historic Preservation Officer

_____Date

[insert name and title]

Advisory Council on Historic Preservation

_____Date

[insert name and title]

INVITED SIGNATORIES:

[insert invited signatory name]

CONCURRING PARTIES:

[insert Concurring Party name]