AGREEMENT
BETWEEN THE U.S. ARMY CORPS OF ENGINEERS AND THE ILLINOIS STATE HISTORIC PRESERVATION OFFICE
REGARDING THE
DEMOLITION OF SEVERAL BUILDINGS
AT
THE CITY WATER, LIGHT & POWER COMPLEX
3100 EAST STEVENSON DRIVE,
SPRINGFIELD
SANGAMON COUNTY, ILLINOIS

WHEREAS the U.S. Army Corps of Engineers (CORPS) proposes to grant a permit to the City of Springfield, Office of Public Utilities (CITY) for construction of improvements to the waterworks facilities at the City Water, Light & Power complex located at 3100 East Stevenson Drive (known as the Waterworks Improvements Project); hereinafter referred to as the undertaking, and,

WHEREAS the undertaking consists of the demolition of several structures, the only ones of historic significance being the top of the water intake structure, the crusher house and associated conveyors, and the vent structure(s) of clearwell(s) of the City Water, Light & Power complex; and,

WHEREAS, the CORPS has defined the undertaking's area of potential effect (APE) as the area of land containing these buildings; and,

WHEREAS, the CORPS has determined that the undertaking will have an adverse effect on the City Water, Light and Power complex, some elements of which have been determined to be eligible for listing on the National Register of Historic Places, and has consulted with the Illinois State Historic Preservation Officer (SHPO) 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 CORPS has consulted with CITY regarding the effects of the undertaking on historic properties and has invited them to sign this MOA as a concurring party; and

WHEREAS, no other properties of historic, architectural or archaeological significance exist within the project area, nor are human remains likely to be encountered; and,

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the CORPS 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 CORPS 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. The CITY concurs with this agreement.

DEFINED ENTITIES

This AGREEMENT involves the following parties:

1. The CITY commonly referred to as City Water, Light & Power, a municipal utility located in Springfield, IL.
2. The CORPS. The undertaking that is the subject of this AGREEMENT falls under the jurisdiction of the Rock Island District of the CORPS.
3. The SHPO who is also the Director of Historic Preservation for the IL Historic Preservation Agency (IHPA). The mission of the IHPA is to collect, preserve, interpret, and communicate the diverse heritage of Illinois and to educate the public by providing access to historic resources in the state.

Also referenced in this AGREEMENT are the following:

1. The ACHP which was created by the National Preservation Act of 1966. The federal responsibilities of the ACHP are delegated to the SHPOs in each state.
2. The National Register of Historic Places which was created by the National Preservation Act of 1966. The National Register is maintained by the National Park Service (NPS) and serves as a continuation of the Registry of National Historic Landmarks established under the Historic Sites Act.
3. Illinois Historic American Engineering Record (HAER) is a program founded by the Illinois Historic Preservation Agency in 1991 and was established for the purpose of documenting historic places.

REQUIREMENTS

1. The Corps shall ensure that issuance of Permit No. CEMVR-OD-P-2010-940 to the City is withheld until this Memorandum of Agreement (MOA) has been executed by all signatories.

2. The CITY shall, within sixty (60) calendar days of executing this AGREEMENT, obtain field photographs of the top of the water intake structure, the crusher house and associated conveyors, and the vent structure(s) of the clearwell(s) of the City Water, Light & Power Complex.

3. The CITY shall, within sixty (60) calendar days of executing this AGREEMENT, prepare a compact disk (CD) containing electronic images of relevant construction drawings pertaining to the construction of the water intake structure, the crusher house and associated conveyors, and the clearwell(s) of the City Water, Light & Power Complex.

4. The CITY shall, within sixty (60) calendar days of executing this AGREEMENT, submit

the field photographs and construction drawings (on CD) of the water intake structure, the crusher house and associated conveyors, and the clearwell(s) of the City Water, Light & Power Complex to the SHPO for review. The SHPO shall complete its review, provide the CITY with an acceptance letter for these materials, and acknowledge the CITY's immediate plans for the demolition of these structures within thirty (30) days of receiving the submitted materials. Upon receiving the SHPO acceptance letter, the CITY may immediately commence demolition activities to these structures.

5. The CITY shall, within two (2) years of executing this AGREEMENT, complete an Illinois Historic American Engineering Record (IL HAER) Level II documentation package for the Lakeside 1 and 2 power plants located at the City Water, Light & Power complex and submit it to the SHPO and Corps. A Level II documentation package shall consist of photographs, drawings, and project narrative. The project narrative will include historical context statements and a written architectural description of the structures using the IL HAER designated outline format. A select number of original construction drawings will be reproduced for inclusion as figures within the project narrative. Additionally, a larger and more inclusive set of relevant construction drawings will be submitted via electronic media (on CD). The SHPO shall review the CITY Level II documentation package and provide an acceptance letter to the Corps and the CITY within thirty (30) days of receipt of the Level II documentation package.

6. Digital black and white photography of the buildings to include building site, exterior elevations, and distinctive exterior architectural features shall be produced and submitted on archivally stable photographic paper.

7. The CITY shall utilize a qualified consultant to perform the work associated with the Level II documentation package and agrees to meet IL HAER standards and guidelines.

8. After acceptance of the Level II documentation package by the SHPO, the CITY shall deliver one original paper copy and one electronic copy (on CD) of the Level II documentation package to IHPA and a local repository, if so requested. The CITY shall also copy-furnish the Corps the associated submittal letter documenting their completion of the terms of this MOA.

DURATION

This AGREEMENT will be null and void if its terms are not carried out within two (2) years from the date of its execution. Prior to such time, the CITY may consult with the other signatories to reconsider the terms of the AGREEMENT and amend it in accordance with Article "Amendments" below.

DISPUTE RESOLUTION

Should a signatory to this AGREEMENT object at any time to any actions proposed, or the manner in which the terms of this AGREEMENT are executed, they shall notify the CITY, in

writing, stating their objections. The CITY shall consult with the disputing party to resolve the objection. If the CITY determines that such objection cannot be resolved, the CITY will:

A. Forward all documentation relevant to the dispute, including the CITY's proposed resolution, to the ACHP. The ACHP shall provide the CITY 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 CITY shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and the signatories and provide the ACHP and the CORPS with a copy of the written response. The CITY will then proceed according to the final decision of the CORPS.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the CITY may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the CITY shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the AGREEMENT, and provide them to the ACHP with a copy of such written response.

C. The CITY's responsibility to carry out all other actions subject to the terms of this AGREEMENT, that are not the subject of the dispute, remains unchanged.

AMENDMENTS

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

TERMINATION

If any signatory to this AGREEMENT 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 as provided for 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 AGREEMENT upon written notification to the other signatories.
Once the AGREEMENT is terminated, the CITY must either (a) execute an AGREEMENT pursuant to 36 CFR § 800.6, or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The CITY shall notify the other signatories as to the course of action it will pursue.

Execution of this AGREEMENT by the CITY, the CORPS and the SHPO, and implementation of its terms, shall serve as evidence that the CORPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

FORCE MAJEURE

A. As used in this AGREEMENT, an event of "Force Majeure" shall mean any event that:
   1. prevents or hinders the affected Party (the "Affected Party") from performing its obligations under this Agreement or complying with any conditions required by another Party under this Agreement; and
   2. is beyond the reasonable control of and not the result of the fault or negligence of the Affected Party (including such Affected Party's personnel and Subcontractors); and
   3. could not have been prevented by the exercise of reasonable diligence by the Affected Party or its personnel or its agents. Force Majeure events which are considered to be beyond the reasonable control of an Affected Party shall include, but are not limited to: war, civil insurrection, changes in Law, earthquakes, tornadoes, epidemics, quarantines, riots, acts of terrorism and the results thereof, and acts of sabotage and the results thereof, drought, flood, storm, fire, lightning, and explosions.

B. The burden of proof as to whether a Force Majeure event has occurred shall be upon the Party claiming a Force Majeure event.

C. The Affected Party, within ten (10) Business Days after knowing of the occurrence of the Force Majeure event, shall give the other Parties Notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of such Party's obligations.

D. The Affected Party shall continue to perform its obligations under this Agreement to the extent possible, and the Affected Party must use all reasonable efforts to overcome, mitigate, and remedy the damages, delays, and effects of the Force Majeure and its inability to perform its obligations under this agreement as a result thereof.

E. When the Affected Party is able to resume performance of its obligations hereunder, that Party shall give the other Parties Notice to that effect and shall promptly resume such performance.

F. If the Affected Party determines that its terms cannot be carried out due to Force Majeure, as defined herein, that party shall immediately consult with the other parties to attempt to develop an Amendment per Article, "Amendments," above. If within thirty (30) days of the Force Majeure event (or another time period agreed to by the signatories) an Amendment cannot be reached, a signatory may terminate the AGREEMENT pursuant to the terms and conditions set forth in the Termination paragraph of this AGREEMENT.

SIGNATORIES:

United States Army Corps of Engineers, Rock Island District

_____ Date 12 NOV 10
Shawn P. McGinley
Colonel, US Army
Commander and District Engineer

Illinois State Historic Preservation Officer

_____ Date 17 NOV 10
Ms. Anne Haaker
Deputy State Historic Preservation Officer
Illinois Historic Preservation Agency

CONCURRING PARTIES:

_____ Date
Mr. Timothy J. Davlin
Mayor
City of Springfield, Illinois