

**MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES ARMY CORPS OF ENGINEERS, ROCK ISLAND DISTRICT
AND
THE ILLINOIS STATE HISTORIC PRESERVATION OFFICER
REGARDING
MODIFICATIONS TO THE ILLINOIS AND MICHIGAN CANAL
IN THE CITY OF MARSEILLES, LASALLE COUNTY, ILLINOIS
(SHPO LOG NO. 017042720)**

WHEREAS, Nucor Tubular Products (hereafter, “Applicant”), formerly Independence Tube Corporation, plans to construct a rail and vehicular crossing (hereafter, “Project”) over the Illinois and Michigan Canal (hereafter, “I&M Canal) in Marseilles, LaSalle County, Illinois; and

WHEREAS, the Project and proposed mitigation are occurring on land owned by the State of Illinois and administered by the Office of Land Management in the Illinois Department of Natural Resources (hereafter, “IDNR”), and the Project requires a state permit from the Office of Water Resources in IDNR; and

WHEREAS, the Project requires a permit (CEMVR-OD-P-2020-0417) from the United States Army Corps of Engineers, Rock Island District (hereafter, “District”), in accordance with Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403), thereby making the Project an Undertaking subject to review under Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. § 306108, and its implementing regulations (36 CFR Part 800) (Act); and

WHEREAS, IDNR co-signed with the Applicant the District’s permit application for the Undertaking; and

WHEREAS, the Illinois State Historic Preservation Office is within IDNR, and the Director of IDNR is the duly designated Illinois State Historic Preservation Officer (hereafter, “SHPO”); and

WHEREAS, the District has consulted with the SHPO pursuant to the Act; and

WHEREAS, the District has defined the Undertaking's area of potential effect (hereafter, “APE”) as the Permit Area (see Appendix A) in accordance with 33 CFR Part 325, Appendix C; and

WHEREAS, the I&M Canal was listed as a National Historic Landmark (hereafter, “NHL”) on January 29, 1964 and was listed on the National Register of Historic Places on October 15, 1966; and

WHEREAS, the District has determined that the Undertaking constitutes an adverse effect to the I&M Canal NHL; and

WHEREAS, on May 29, 2020 the SHPO concurred with the District's determination of an adverse effect; and

WHEREAS, in accordance with 36 CFR § 800.10(b) and 36 CFR § 800.10(c), the District has notified the National Park Service (hereafter, "NPS") of its adverse effect determination with specified documentation and has invited the NPS to sign this Memorandum of Agreement (MOA) as a Concurring party (see Appendix B); and

WHEREAS, the District has consulted with the Applicant regarding the effects of the Undertaking on the I&M Canal and has required the Applicant to sign this MOA as a Signatory party (see Appendix B); and

WHEREAS, the District has consulted with the SHPO and IDNR regarding the effects of the Undertaking on the I&M Canal; and

WHEREAS, IDNR's signature on this MOA signifies SHPO participation as an entitled signatory under the Act and IDNR concurrence on the Undertaking and its mitigation as both landowner and issuer of a state permit for the Undertaking; and

WHEREAS, the District has consulted with the Canal Corridor Association (hereafter, "CCA") regarding the effects of the Undertaking on the I&M Canal and has invited the CCA to sign this MOA as a Concurring party (see Appendix B); and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1) and 36 CFR § 800.10(b), the District has notified the Advisory Council on Historic Preservation (hereafter, "ACHP") of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36CFR§ 800.6(a)(1)(iii); and

WHEREAS, all parties mutually agree that there is no prudent or feasible alternative to the Undertaking as proposed; and

NOW, THEREFORE, the District and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into mitigate the adverse effect of the Undertaking on the I&M Canal.

STIPULATIONS

I. MITIGATION

- A. The District shall ensure that issuance of Permit No. CEMVR-OD-P-2020-0417 to the Applicant and Co-Applicant is withheld until this MOA has been executed by all signatories.
- B. Permit CEMVR-OD-P-2020-0417 issuance will include a Special Condition requiring compliance with Stipulations I.C and I.D of this MOA.
- C. IDNR and the Applicant shall collaborate to ensure that the tow path at the three extant rail lines over the I&M Canal immediately across East Broadway Street from the Nucor Tubular Products facility in Marseilles, IL, (see Appendix C: Area of Mitigation) be reconfigured to match the proposed design of the new tow path as it crosses the proposed rail line over the I&M Canal at the expense of the Applicant. The design of the new crossing shall include design features similar to previously approved, upgraded I & M Canal tow path crossings in the vicinity (See photographs in Appendix D).
- D. The treatment of the historic tow path within the APE of the Undertaking must be submitted to and reviewed by the SHPO, the NPS, and the CCA. The treatment must meet the Secretary of the Interior's Standards for Rehabilitation, as reasonably determined by the SHPO.

II. DURATION

This MOA shall terminate if its stipulations are not carried out within three (3) years from the date of its execution. Prior to such time, the District may consult with the Signatories to reconsider the terms of this MOA and amend it in accordance with Stipulation IV below. The District shall notify the Signatories as to the course of action it will pursue.

III. 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 District shall consult with the parties to resolve the objection. If the signatories cannot agree regarding a dispute, the District shall:

- A. Forward all documentation relevant to the dispute, including advice or comments regarding the dispute received by the District from the Signatories and Concurring parties along with the District's proposed resolution, to the ACHP. The ACHP shall provide the

District 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 District 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 District will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the District may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the District 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 Signatories' responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IV. 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 and is filed with the ACHP.

V. TERMINATION

If any Signatory to this MOA determines that its terms become impossible to carry out, that party shall immediately consult with the other Signatories to attempt to develop an amendment per Stipulations III and IV above. If after thirty (30) days an amendment has not been reached, any Signatory may terminate the MOA upon written notification to the other Signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the District must either (a) execute another Memorandum of 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 District shall notify the Signatories as to the course of action it will pursue.

Execution of this MOA by the District, SHPO, Applicant and Co-Applicant and implementation of its terms is evidence that the District has taken into account the effects of this undertaking on historic properties and afforded the SHPO and ACHP an opportunity to comment.

This agreement is binding upon the signatories hereto not as individuals, but solely in their capacity as officials of their respective organizations and acknowledges proper action of each organization to enter into the same.

VI. POST-REVIEW DISCOVERIES

- A. In the event that previously unidentified archeological resources are discovered during ground-disturbing activities within the area of potential effects, the Applicant will immediately cease construction work involving ground disturbance in the area of the resource and in the surrounding area where further archeological resources can reasonably be expected to occur and will notify the District, SHPO, and the NPS of the discovery.
- B. An IDNR Archaeologist will inspect the work site and determine the extent of the affected archaeological resource. Construction work may then continue in the area outside the archaeological resource, as it is defined by the District, SHPO and NPS in consultation with the IDNR Archaeologist.
- C. Within 7 days of the original notification of discovery, the IDNR Archaeologist will provide the District, SHPO, and NPS with an evaluation of the discovery's potential to contribute to the I&M Canal NHL district. The City / IDNR may extend this 7-day calendar period one time by an additional 7 days by providing written notice to the District, SHPO and NPS prior to the expiration date of said 7-day calendar period.
- D. If the SHPO determines that the newly identified resource is either eligible for listing to the NRHP or a contributing element to the I&M Canal NHL, the Applicant and IDNR, in consultation with the SHPO, will submit to the District a treatment plan.
- E. Construction activities in the affected area shall resume pending either:
 - a. determination by the SHPO that the newly identified resource is not eligible for listing to the NRHP or does not contribute to the I&M Canal NHL, or
 - b. District's approval and implementation of the submitted treatment plan.
- F. Any disputes concerning the evaluation or treatment of previously unidentified archaeological resources will be resolved as provided in Section V of this agreement entitled Dispute Resolution.

VII. ACCIDENTAL DISCOVERY OF HUMAN REMAINS OR HUMAN BURIALS

All human burials in the State of Illinois are protected by the Human Skeletal Remains Protection Act (20 ILCS 3440). In the event that human remains or burials are encountered

during additional archaeological investigations or construction activities, the Applicant and IDNR or their designated representative will immediately consult with the SHPO, cease work in the area of discovery, take appropriate steps to secure the site, and notify law enforcement and the county coroner.

VII. COUNTERPARTS, FACSIMILE OR PDF SIGNATURES

This MOA may be executed in counterparts, each of which shall be considered an original and together shall be one and the same MOA. A facsimile or .pdf copy of this MOA and any signatures thereon will be considered for all purposes as an original.

[Signature Pages to follow]

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(SHPO LOG NO. 017042720)**

SIGNATORY:

UNITED STATES ARMY CORPS OF ENGINEERS, ROCK ISLAND DISTRICT
(DISTRICT)


By: _____ Date: _____

Ward Lenz
Chief, Regulatory Branch
Operations Division
United States Army Corps of Engineers, Rock Island District

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SIGNATORY:

ILLINOIS STATE HISTORIC PRESERVATION OFFICE (SHPO)

By:  Date: 7-30-20
Colleen Callahan
Director Illinois Department of Natural Resources
and State Historic Preservation Officer

APPROVED FOR EXECUTION


Date: 7/29/2020

Legal Counsel: Ren Fvhr/Rs

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SIGNATORY:

NUCOR TUBULAR PRODUCTS (APPLICANT)

By:  _____ Date: 7.29.20
SHARON FERRON FERRIN
Nucor Tubular Products

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CONCURRING PARTY:

CANAL CORRIDOR ASSOCIATION

By: _____ Date: _____
Ana Koval, AICP
President/CEO
Canal Corridor Association

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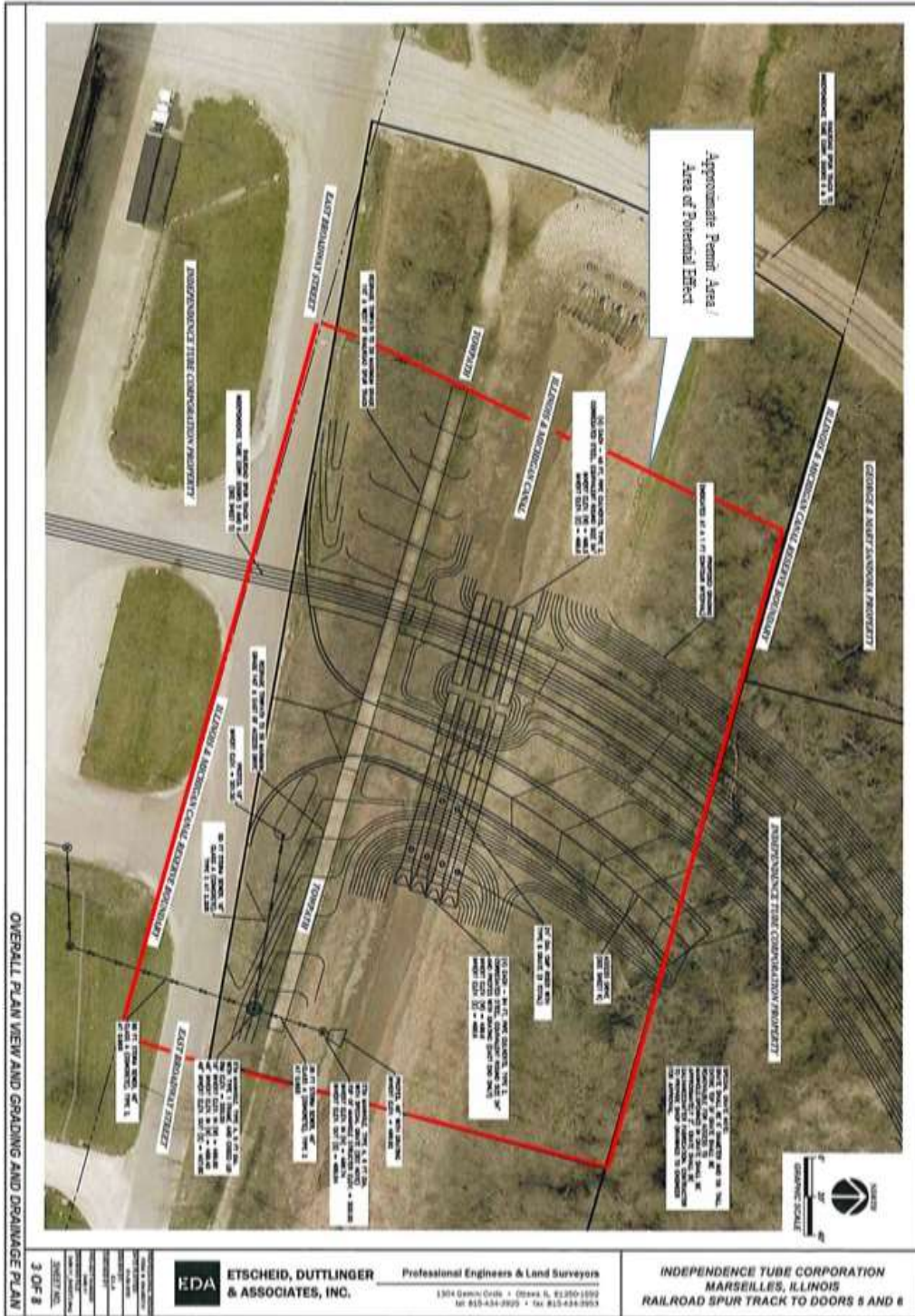
CONCURRING PARTY:

NATIONAL PARK SERVICE (NPS)

By: _____ Date: _____
 ?????
 ?????
 National Park Service

Appendix A

Project Map: Area of Potential Effects



Nucor MOA
 SHPO log #017042720

Appendix B

Consulted Parties

Mr. Reid Nelson, Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
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Ms. Dawn Cobb
Archaeologist for Office of Realty and
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Ms. Ana Koval
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Mr. Dan Adrian
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Ms. Laura Verden
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Mr. Dan Bell
Site Superintendent
I&M Canal State Trail
Gephard Woods State Park
401 Ottawa Street
Morris IL 60450
dan.bell@illinois.gov

Appendix C

Project Map: Area of Mitigation



Appendix D

Photographs of Proposed Tow Path Design



