



U.S. Department
of Transportation
**Federal Highway
Administration**

Minnesota Division

April 13, 2015

380 Jackson Street
Cray Plaza, Suite 500
St. Paul, MN 55101-4802
651.291.6100
Fax 651.291.6000
www.fhwa.dot.gov/mndiv

Mr. Reid Nelson
Director
Office of Federal Agency Programs
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, D.C. 20004

Tamara Cameron
Chief, Regulatory
United States Army Corps of Engineers
Saint Paul District
180 5th Street East, Suite 700
Saint Paul, MN 55101

Scott Anfinson
Minnesota Department of Administration
Office of the State Archaeologist
200 Administration Building
50 Sherburne Avenue
Saint Paul, MN 55155

Sarah Beimers
Manager
Government Programs and Compliance
State Historic Preservation Office
Minnesota Historical Society
345 Kellogg Blvd W
Saint Paul, MN 55101

Charles A. Zelle
Commissioner of Transportation
Department of Transportation
MS 120, Transportation Building
Saint Paul, MN 55155-1899

Re: Section 106 General Agreement
Distribution of Fully Executed Agreement
Regarding the Implementation of the Federal-Aid Highway Program in Minnesota

Dear Signatory:

The consultation and signature process for updating the 2005 *Programmatic Agreement Among the Federal Highway Administration; the Minnesota State Historic Preservation Office; the Advisory Council on Historic Preservation; the Department of the Army, Corps of Engineers, St. Paul District; and the Minnesota Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Minnesota (AGREEMENT)* is now complete. The purpose of this letter is to document background on events since the request for signatures started on October 21, 2014, and transmit a copy of the fully executed agreement to your agency.

The October 21, 2014, letter from FHWA to all other signatories initiated the process of requesting signatures on the agreement. Signatures were obtained from most of the signatories by mid-December 2014. The Corps signature was anticipated to the Colonel of the St. Paul District. The actual signature on the agreement is the Chief of Regulatory (St. Paul District).

FHWA desired an agreement signed by the Colonel that would cover all organizational units within the St. Paul District of the Corps. FHWA elected to postpone any further signatures on the agreement until after initiating a conversation with the Corps to understand the scope of the Chief of Regulatory's signature as it relates to all organizational units (Civil Works, etc) of the St. Paul District and any further consultation with the Minnesota-based signatories.

Based upon coordination with the Corps, FHWA and the Corps came to the perspective that the minor benefits to the overall Federal-aid highway program of obtaining an agreement signature covering all organization units of the St. Paul District of the Corps did not warrant reopening the entire agreement to further legal review, discussion, and resolution of organization unit perspectives.

The Minnesota-based signatories met on March 3, 2015, to discuss the proposed change to the agreement and chart a way forward to a fully executed agreement. The minor change constitutes changing language on page two of the agreement from "St. Paul District (Corps)" to "St. Paul District Regulatory Branch (Corps)". This change was proposed to clarify the scope of the Corps signature to Section 106 reviews within the control of the Regulatory Branch of the St. Paul District organizational structure. The Minnesota-based signatories agreed that the minor change:

- Adequately clarifies the organizational unit concern expressed by FHWA
- Does not constitute a substantial change to the meaning of the agreement
- Continues to provide the same benefits of the 2005 agreement
- Does not require further agreement review by signatories

Furthermore, the Minnesota-based signatories determined the agreement may move forward with the signatures acquired in 2014 plus any remaining signatures that need to be acquired.

Enclosed is a copy of the agreement for your agency. Please contact me at phil.forst@dot.gov or (651) 291-6110 if you have any questions.

Sincerely,

Philip Forst
Environmental Specialist

Enclosure

PJF/alk

cc: 1 Corps – Johnson, e-copy w/enclosure, brad.a.johnson@usace.army.mil
1 FHWA - Riesenber, e-copy w/enclosure, kris.riesenberg@dot.gov
1 MnDOT – Zschomler, e-copy w/enclosure, Kristen.zschomler@state.mn.us

PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION;
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE;
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION;
THE DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, ST. PAUL DISTRICT;
AND THE MINNESOTA DEPARTMENT OF TRANSPORTATION;
REGARDING IMPLEMENTATION OF THE FEDERAL-AID HIGHWAY PROGRAM
IN MINNESOTA (AS AMENDED 2014)

WHEREAS, the Federal Highway Administration (FHWA) proposes to administer the Federal-Aid Highway Program in Minnesota authorized by 23 USC 101 et seq. through the Minnesota Department of Transportation (MnDOT) (23 USC 315), which covers any Federal-Aid Highway Program undertaking, including those sponsored by local agencies, Transportation Alternative Program projects (or any successor programs), and Interstate Access Request modification (IAR), herein after referred to as “undertakings”; and

WHEREAS, the FHWA: (1) has determined that its undertakings may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (NRHP); (2) has consulted with the Minnesota State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to Section 800.14(b) of the regulation (36 CFR 800) implementing Section 106 of the National Historic Preservation Act (NHPA) (16 USC 470f); (3) wishes to ensure that MnDOT will conduct its undertakings in a manner consistent with 36 CFR 800 and the National Environmental Policy Act (NEPA) (36 CFR 800.8); and (4) intends to integrate its historic and archaeological preservation planning and management decisions with other policy and program requirements to the maximum extent possible consistent with Section 110 of the NHPA; and

WHEREAS, 36 CFR 800.14 encourages Federal agencies to efficiently fulfill their obligations under Section 106 of the NHPA through the development and implementation of cooperative programmatic agreements; Executive Order 13274 states that the development and implementation of transportation infrastructure projects in an efficient and environmentally sound manner is essential to the well-being of the American people and a strong American economy and the executive departments and agencies shall take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the Nation's transportation system and expedite environmental reviews of high-priority transportation infrastructure projects while protecting and enhancing the environment; and the FHWA encourages the development of Programmatic Agreements between the state FHWA offices and the SHPOs; and

WHEREAS, the parties to this Programmatic Agreement (AGREEMENT) executed an earlier agreement on May 31, 2005 entitled: *Programmatic Agreement Among the Federal Highway Administration; the Minnesota State Historic Preservation Office; the Advisory Council on Historic Preservation; the Department of the Army, Corps of Engineers, St. Paul District; and the Minnesota Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Minnesota*, which will be replaced and superseded by this AGREEMENT; and

WHEREAS, the FHWA has delegated its responsibilities, to a certain extent, for compliance with Section 106 in accordance with Federal law to the professionally qualified staff (as per 36 CFR 61) in the Cultural Resources Unit (CRU) at MnDOT (hereafter referred to as the MnDOT CRU staff), although the FHWA remains legally responsible for all findings and determinations charged to the agency official in 36 CFR 800; and

WHEREAS, for the purpose of Section 106 compliance for all FHWA undertakings, the Department of the Army, Corps of Engineers, St. Paul District Regulatory Branch (Corps) has been consulted in the development of this AGREEMENT, will recognize the FHWA as the lead Federal agency for Corps undertakings related to FHWA undertakings, has been invited to be a signatory party to this AGREEMENT pursuant to 36 CFR 800.2(a)(2), and will have no further Section 106 obligations on a specific FHWA undertaking through its signing of this AGREEMENT; however, if FHWA is no longer the lead Federal agency on a specific undertaking, the FHWA will notify the SHPO of the change in lead federal agency and this AGREEMENT would not apply, and the Corps would need to meet all the requirements of Section 106 and any executed agreement with the SHPO; and

WHEREAS, consistent with applicable Federal legislation, the SHPO reflects the interests of the state and its citizens in the preservation of their cultural heritage, and in accordance with Section 101(b)(3) of the NHPA advises and assists Federal and State agencies in carrying out their historic preservation responsibilities, including Section 106 responsibilities; and

WHEREAS, in the development of this AGREEMENT, FHWA has notified the Federally recognized Indian tribes that may ascribe traditional, religious, and cultural significance to historic properties in the State of Minnesota and afforded them an opportunity to comment on the AGREEMENT, and has or is in the process of developing separate Programmatic Agreements with them to document the consultation process; and

WHEREAS, MnDOT has been asked to participate in consultation for and to be an invited signatory to this AGREEMENT; and

WHEREAS, FHWA and MnDOT are committed to the design of transportation systems that: (1) achieve a safe and efficient function appropriately placed within the Minnesota context; (2) avoid, minimize and mitigate adverse effects on historical and cultural resources; (3) recognize that investment in historic, archaeological, and cultural resources is critical to Minnesota's continued growth and prosperity; and (4) respond to the needs of Minnesota communities; and

WHEREAS, FHWA (with the assistance of the MnDOT CRU staff), the SHPO, the Council, the Corps, and MnDOT aspire to engage in meaningful, long-term planning for the protection of historic and archaeological properties and, toward that end, desire to: (1) develop a comprehensive and efficient process for all Section 106 undertakings; (2) integrate and streamline project reviews under Federal historic preservation and environmental laws; (3) simplify procedural requirements to the maximum extent possible; (4) eliminate unnecessary paperwork; (5) affirm the role of SHPO in Federal compliance, to the extent required; (6) devote a larger percentage of time and energies to identifying transportation-related concerns that may affect historic and archaeological properties; and (7) continue creating innovative programs to address those problems.

NOW, THEREFORE, the FHWA, the SHPO, the Council, the Corps, and MnDOT agree that the Federal-Aid Highway Program shall be administered in accordance with the following stipulations to satisfy the FHWA Section 106 responsibility for all aspects of the program.

STIPULATIONS

FHWA will ensure that the following measures are carried out:

STIPULATION 1. APPLICABILITY AND SCOPE

- A) Applicability. This AGREEMENT sets forth the process by which FHWA, with the assistance of the MnDOT CRU staff, will meet its responsibilities under Section 106 of the NHPA and regulations set forth in 36 CFR 800, as amended, adopted to implement that act. For the purposes of this AGREEMENT, the definitions for terms appearing in 36 CFR 800.16(a) through (y) inclusive shall be employed whenever applicable.
- B) Scope. The objective of this AGREEMENT is to render more efficient methods for FHWA and the MnDOT CRU staff review of individual undertakings that may affect historic properties under Federal statutes, and to establish the process by which FHWA (with the assistance of the MnDOT CRU staff), the SHPO, the Council, the Corps, and MnDOT and interested persons will be involved in any such review. This review covers any FHWA undertaking as defined previously in the Whereas clauses.

STIPULATION 2. GENERAL REQUIREMENTS

In compliance with its responsibilities under the NHPA and as a condition of its award of any assistance under the Federal-Aid Highway Program to MnDOT, FHWA shall require that the MnDOT CRU staff carry out the requirements of 36 CFR 800 as set forth in this AGREEMENT, and all applicable Secretary of the Interior's standards and guidelines. FHWA will ensure that MnDOT observes the following requirements.

- A) Employment of Qualified Personnel. For the purpose of implementing this AGREEMENT, MnDOT shall continue to employ professionally qualified personnel in its CRU office who meet the requirements of 36 CFR 61. At a minimum, the professional staff shall consist of a professionally qualified Archaeologist (as per 36 CFR 61 Appendix A, Item b) and a professionally qualified Historian (as per 36 CFR 61 Appendix A, Item a). The supervisor of the MnDOT CRU shall be an individual who meets the professional qualifications for a historian or archaeologist as per 36 CFR 61.
- B) Guidelines and Highway Program Development Process. In addition to the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68), MnDOT will use the MnDOT Highway Project Development Process (HPDP) manual and the State Aid to Local Agencies (SALT) manual to assist in the implementation of this AGREEMENT.
- C) Coordination of Project Review Among MnDOT Districts, Counties, and Municipalities. MnDOT HPDP Manual and SALT Manual detail procedures for Section 106 review of FHWA undertakings. These manuals are incorporated by reference into this AGREEMENT, and the procedures in these manuals may be revised or updated, as needed, by MnDOT in consultation with FHWA and SHPO. Revisions to the procedures for Section 106 review of FHWA undertakings may go into effect upon the written concurrence of FHWA and SHPO. One month prior to the scheduled annual meeting, CRU shall submit to SHPO any changes or proposed changes to the HPDP or SALT manuals over the last year.

- D) Early Coordination. FHWA and MnDOT CRU will perform early coordination and consultation with the SHPO on unusual or complex issues of evaluation, assessment of effect, and/or mitigation in order to identify problems early in the project planning process. MnDOT CRU staff may seek assistance from SHPO, FHWA, and/or other consulting parties in defining the APE for unusual, very large, or complex projects. FHWA may seek assistance from the Council, as appropriate. During early coordination, any approaches or methods discussed at project consultation meetings or field visits will be document afterwards in writing by MnDOT CRU and submitted to the FHWA, SHPO, and other parties for the project record or for review and comment.
- E) Education. FHWA and MnDOT, in collaboration with SHPO, will provide a public education and interpretation component in its undertakings whenever appropriate.
- F) Training. FHWA and MnDOT will collaborate with SHPO in ensuring periodic training for MnDOT, county, and municipal personnel to assure compliance with Section 106 responsibilities and applicable state legislation. Creative initiatives are encouraged.
- G) Annual Reporting and Evaluation. FHWA and the MnDOT CRU staff will arrange for an annual meeting with SHPO, the Council, the Corps, and MnDOT to evaluate the AGREEMENT, suggest revisions to its provisions, and to evaluate the quality of the resource identification and protection activities carried out under the AGREEMENT. Evaluations shall take place annually, by May 15. The Council's participation in these meetings is optional, at the discretion of the Council. If any party concludes that performance under the AGREEMENT is less than satisfactory, the parties shall consult at any time to improve performance, and meet again within six (6) months to evaluate improvements. One month prior to the scheduled annual meeting, CRU shall submit to SHPO an annual report of projects reviewed by CRU over the last year.
- H) Transition. This AGREEMENT will become effective upon the date of its execution by all parties. Any projects where the Section 106 process has started prior to the signing of this document shall follow the process outlined in 36 CFR 800, or the earlier Programmatic Agreement signed on May 31, 2005, as appropriate.
- I) Delegation. FHWA delegates to the professionally qualified staff (as per 36 CFR 61) of MnDOT CRU authority to carry out the following Section 106 requirements in accordance with the Secretary of the Interior's (SOI) Standards and Guidelines for Archaeology and Historic Preservation: (1) determine if an undertaking exists; (2) initiate the Section 106 process; (3) identify the area of potential effect (APE); (4) conduct appropriate surveys to identify historic properties within the area of potential effects (APE); (5) make determinations of eligibility to the NRHP of properties within the project's APE; and (6) make findings of effect, including the interpretation of the SOI Standards for the Treatment of Historic Properties. Steps 1 and 2 will be done in coordination with FHWA, as appropriate. Steps 3 through 6 will be done in consultation with FHWA and SHPO, as appropriate. The FHWA remains legally responsible for all findings and determinations charged to the agency official in 36 CFR 800, and may exercise that authority in whole or in part. These responsibilities shall not be delegated to project sponsors. In reviewing such projects, the MnDOT CRU staff will follow the SOI Standards for Archaeology and Historic Preservation.
- J) Innovative Programs. To facilitate historic and archaeological preservation planning and actions, MnDOT will continue to fund progressive programs and activities of mutual interest

to, and in consultation with, FHWA, MnDOT CRU, the Corps, SHPO, or other consulting parties. Examples of programs envisioned may include: (i) analysis and synthesis of past data accumulated through MnDOT/FHWA projects; (ii) statewide thematic or other surveys of historic properties; (iii) statewide archaeological predictive models; (iv) improved data management and access; (v) development of historic contexts and preservation priorities; (vi) and preparation and implementation of relevant preservation or management plans.

- K) Format for Review Submittals. Documentation assembled by the MnDOT CRU staff to support any Section 106 finding shall be consistent with 36 CFR 800.11. This material will be submitted to SHPO in a format (electronic, written, or other) agreed on by MnDOT and SHPO, incorporating use of MnDOT's Cultural Resources Information System (CRIS), as appropriate.

STIPULATION 3. REQUIREMENTS FOR SECTION 106 COMPLIANCE PROJECT REVIEW BY MNDOT CRU ON BEHALF OF FHWA

For all FHWA undertakings reviewed pursuant to this AGREEMENT, FHWA and the MnDOT CRU staff shall observe the following requirements:

- A) Participants in the Section 106 Process. The terms of the AGREEMENT presented herein fulfill the obligations for identifying Federal and state participants in the Section 106 process for FHWA projects when such projects occur on non-tribal lands (lands outside of the exterior boundaries of federally recognized reservations) and with no Federal agency involvement other than the Corps.
- i) The federal government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with an Indian tribe must, therefore, recognize the government-to-government relationship between the federal government and Indian tribes. FHWA has developed, or is in the process of developing, Programmatic Agreements with the eleven federally recognized tribes in Minnesota. These agreements will identify the process for consultation with each Indian tribe for FHWA undertakings pursuant to 36 CFR 800. For Indian tribes that currently reside outside of the State of Minnesota, and in other cases where there is no signed agreement with an Indian tribe, FHWA will retain responsibility for complying with all federal requirements pertaining to direct government-to-government consultation with Indian tribes.
 - ii) The MnDOT CRU staff, on behalf of FHWA, shall, through opportunities afforded by the project development process, use existing procedures to solicit public participation early in the project planning process and consistent with 36 CFR 800.2(d).
 - iii) Consistent with 36 CFR 800.3(e) and (f), MnDOT CRU staff, on behalf of FHWA, will invite local governments and other individuals and organizations on a project-by-project basis, to be consulting parties. MnDOT CRU, at a minimum, will contact any local Historic Preservation Commissions (HPC) and may consult with the SHPO, as needed, to help identify other potential consulting parties. Unless otherwise agreed to in a Programmatic Agreement with an Indian tribe, FHWA will invite the participation of Indian tribes that ascribe traditional, religious, and cultural significance to historic properties that may be affected by the undertaking. The level of public participation will occur on a project-by-project basis. Within six (6) months of the signing of this AGREEMENT, the signatories will meet with the goal of developing a general outline that guides the appropriate level of public involvement based on the scope of typical projects reviewed under this AGREEMENT.

- B) Other Federal Agency Involvement. Should Federal agencies other than FHWA or the Corps implement an undertaking, as defined in 36 CFR Part 800.16(y), in association with a FHWA undertaking said Federal agency may satisfy their Section 106 compliance responsibilities according to 36 CFR 800.2(a)(2) by stating in a letter to FHWA and copying the SHPO that their undertaking will conform to the terms of this AGREEMENT and recognizing FHWA as the lead Federal agency. FHWA and MnDOT CRU will review the scope for any expanded undertaking and ensure that a proper APE is defined, or may determine that a separate review under Section 106 is required.
- C) Determination of Undertaking and Assessment of APE. Pursuant to 36 CFR 800.3 and 800.4, the MnDOT CRU staff shall (1) determine whether proposed projects, activities, or programs constitute an undertaking as per 36 CFR 800.16(y); and (2) establish the undertaking's APE and document it as per the terms of Stipulation 4 of this AGREEMENT.
- D) Identifying Historic Properties. Pursuant to 36 CFR 800.4, the MnDOT CRU staff (with assistance from consultants as needed) shall identify historic and archaeological properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the NRHP. Identification of historic properties shall follow the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716) and any relevant SHPO survey manuals and Multiple Property Document Forms. MnDOT programs, including MnModel, the statewide farmstead study, the statewide historic bridge study (as per the terms outlined in the Programmatic Agreement Concerning Pre-1956 Historic Bridges Among the Federal Highway Administration; The Advisory Council on Historic Preservation; the Minnesota State Historic Preservation Office; the Department of the Army, Corps of Engineers, St. Paul District; and the Minnesota Department of Transportation signed May 15, 2008, or any subsequent amendments), the statewide historic roadside structures study, the statewide historic railroad study, the statewide Woodland historic context, and others as they are developed, will be used to aid in the identification of historic properties. The MnDOT CRU staff shall document its identification process as per the terms of Stipulation 4 of this AGREEMENT. Project specific survey methodology or excavation plans shall be developed as appropriate and as requested by the parties to this AGREEMENT.
- E) Evaluating Historic and Archaeological Significance. For any undertaking that may affect properties not previously evaluated for, but identified as potentially eligible for, the NRHP, MnDOT CRU shall apply the National Register Criteria, and shall make an appropriate finding regarding eligibility pursuant to 36 CFR 800.4(c). In applying the National Register criteria, the MnDOT CRU staff will consult with Indian tribes that may ascribe traditional cultural and religious significance to historic properties in the APE. The MnDOT CRU staff shall document its determination process as per the terms of Stipulation 4 of this AGREEMENT.
- F) Finding of No Historic Properties Affected. If MnDOT CRU that either there are no historic properties present within the APE or there are historic properties present within the APE but the undertaking will have no effect upon them as defined in 36 CFR 800.11(d), the MnDOT CRU staff shall make a formal finding of "No Historic Properties Affected" and document its determination as per the terms of Stipulation 4 of this AGREEMENT. The Section 106 process will be complete, unless the MnDOT CRU staff determines that the project scope has changed and therefore will require additional review.

By execution of this AGREEMENT, the SHPO is waiving its review and concurrence action role for an undertaking where a 'No Historic Properties Affected' finding is made by MnDOT CRU. All documentation that would normally be submitted to SHPO to support a 'No Historic Properties Affected' finding will be part of the administrative record stored in CRIS.

- G) Findings of No Adverse Effect. If the MnDOT CRU staff finds that there are historic properties within the APE that will not be adversely affected by the undertaking as defined in 36 CFR 800.5, the MnDOT CRU staff shall make a formal finding of "No Adverse Effect" as per the terms of Stipulation 4 of this AGREEMENT and specify those conditions, if any, that shall be imposed to secure that finding. FHWA shall ensure that specified conditions are met. The MnDOT CRU staff shall submit its findings to the SHPO and other consulting parties, if any, who will have thirty (30) days to comment. If the SHPO or other consulting party requests additional, relevant information not provided in the original submittal, they will make such a request within the 30-day comment period. Once the additional information has been provided, the SHPO and other consulting parties will have thirty (30) days to comment. If the MnDOT CRU determines that a project scope has changed, the 30-day comment period will be recalculated from the date the SHPO and any other consulting parties receives the revised submittal.
- H) Finding of Adverse Effect. If the MnDOT CRU staff determines that there are historic properties within the APE that will be adversely affected by the undertaking as defined in 36 CFR 800.5, the MnDOT CRU staff shall make a finding of "Adverse Effect" as per the terms of Stipulation 4 of this AGREEMENT. The MnDOT CRU staff shall submit its determination to the SHPO and any other consulting parties, who will have 30 days to comment. If the SHPO or any other consulting party requests additional, relevant information not provided in the original submittal, they will make such a request within the 30-day comment period. Once the additional information has been provided, the SHPO and other consulting parties will have thirty (30) days to comment. If the MnDOT CRU determines that a project scope has changed, the 30-day comment period will be recalculated from the date the SHPO and any other consulting parties receive the revised submittal.

When a finding of "Adverse Effect" has been made, the MnDOT CRU staff, in consultation with FHWA, SHPO, and other consulting parties, if any, shall evaluate alternatives to the project that would avoid any adverse effect and document such steps as per the terms of Stipulation 4 of this AGREEMENT. If avoidance is not feasible, the MnDOT CRU staff, in consultation with FHWA, SHPO, and any other consulting party shall consider all possible steps to minimize or mitigate the adverse effect, taking into account the requirements of the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68). FHWA will enter directly into the consultation process and notify the Council of the determination. The Council will use the criteria in Appendix A of 36 CFR Part 800 to determine whether it should participate, and inform FHWA of its decision within fifteen (15) days of receipt of notification. FHWA and the MnDOT CRU staff will consult with SHPO, Indian tribes that may ascribe traditional cultural and religious value to affected historic properties, and other consulting parties to execute a Memorandum of Agreement (MOA) in accordance with 36 CFR 800.6(c).

If the MnDOT CRU staff determines that an undertaking may adversely affect a National Historic Landmark, FHWA and the MnDOT CRU staff shall request the SHPO, the Council, the Secretary of the Interior, and other consulting parties to participate in consultation to resolve any adverse effects, as outlined in 36 CFR 800.10.

STIPULATION 4. DOCUMENTATION

Documentation assembled by the MnDOT CRU staff to support any Section 106 finding shall be consistent with 36 CFR 800.11. The requirements of the supporting documentation outlined in 36 CFR 800.11 will be executed through an agreed upon format by MnDOT CRU and SHPO, incorporating use of MnDOT's CRIS, as appropriate.

- A) Other Project Documentation: When fieldwork is required, copies of resulting survey data will be provided to SHPO and other consulting parties, if any, as required under the NHPA and subject to confidentiality requirements in Section 304 of NHPA and 36 CFR 800.11(c). The official review of a project submitted in CRIS will not begin (in terms of the 30-day review period) until all supporting reports, project plans, or other relevant data are received by the SHPO and any other consulting parties.
- B) Data Sharing and Geographic Information Systems. Current MnDOT CRU procedures for incorporating pertinent documentation into Geographic Information Systems (GIS) will be used. MnDOT CRU, SHPO, and Corps will share technology and information providing mutual access to archaeological site data, architecture/history properties data, historic contexts, and other information pertaining to cultural resource data management, and cultural resource sensitivity analysis and/or site predictive modeling.

STIPULATION 5. UNANTICIPATED DISCOVERIES

- A) MnDOT CRU will notify FHWA and the SHPO as soon as practicable if it appears that an undertaking will affect a previously unidentified property that may be historic, or affect a known historic property in an unanticipated manner. In all instances, MnDOT CRU will ensure construction activities in the vicinity of the discovery are immediately halted and will take all reasonable measures to avoid or minimize harm to the property until consultation is concluded with the SHPO and other appropriate consulting parties, including the Tribes. All requirements of 36 CFR 800.13 will be met prior to resuming construction in the vicinity of the discovery.
- B) MnDOT CRU will evaluate the NRHP-eligibility of the property using professionally qualified staff or consultants, determine the project's effect on any properties that are found to be historic, and consult with the FHWA, SHPO, and consulting parties to prepare a plan for avoiding, minimizing, or mitigating any adverse effects to historic properties.
- C) MnDOT CRU will provide the FHWA, SHPO and consulting parties with a written plan to resolve any adverse effects.
 - i) If construction has not begun, consultation shall follow the process documented in Stipulation 3.
 - ii) If construction has begun, and the SHPO or other consulting parties fail to respond within two (2) business days after receipt of the plan, MnDOT CRU may carry out the plan on behalf of the FHWA.
 - iii) If the SHPO or other consulting parties object to the plan, consultation to resolve the objection will continue under Stipulation 7.

STIPULATION 6. TREATMENT OF HUMAN REMAINS

The FHWA and MnDOT are committed and will make every effort to protect and preserve all cemeteries, including prehistoric and historic graves, during transportation construction and maintenance activities. The following steps are to be taken any time human burials are

unearthed, or other artifacts associated with mortuary features are found during FHWA undertakings in Minnesota.

- A) Upon discovery of possible human remains, including unidentified animal bone or mortuary features, during construction, work shall immediately cease in the area. Appropriate steps shall be taken to secure the site, including fencing off the discovery area and covering any possible remains. If the discovery site is on non-federal land, local law enforcement and the Office of the State Archaeologist (OSA) shall be immediately notified. If the discovery is on federal land, the appropriate federal authority shall be immediately notified. The contractor shall notify MnDOT CRU, who will then notify officials with the FHWA, the OSA, SHPO, and appropriate Tribes within twenty-four (24) hours via email, fax, or telephone. The OSA shall coordinate with the Minnesota Indian Affairs Council (MIAC) if the remains are thought to be Indian in accordance with Minnesota Statute (M.S.) 307.08.
- B) If reasonably convenient and appropriate, the parties will confer at the site in a timely manner assess the site's condition and archaeological manifestation, determine the likely project impacts if left in place, and to determine the most appropriate avoidance, minimization, or mitigation measure(s) for dealing with the discovery.
- C) If it is determined that the identified bones are human remains covered under M.S. 307.08, the OSA shall have jurisdiction to ensure that the appropriate procedures in accordance with Minnesota statutes are fulfilled. OSA is the lead state agency for authentication of burial sites on non-federal lands as per M.S. 307.08. FHWA, MnDOT CRU, and OSA shall work together to perform any necessary consultation in order to meet FHWA's responsibilities under Section 106. The MnDOT CRU staff shall work with OSA, the SHPO or THPO, the tribes, MIAC, and other consulting parties to develop and implement a reburial plan. Avoidance and preservation in place is the preferred option for the treatment of human remains. MnDOT CRU shall evaluate the historical significance of the site as per Stipulation 3 of this AGREEMENT.
- D) FHWA will coordinate with other reviews as per 36 CFR 800.3(b), including the Native American Graves Protection and Repatriation Act, when applicable and required by federal law.

STIPULATION 7. DISPUTE RESOLUTION

Should any signatory to this AGREEMENT object at any time to any actions proposed or the manner in which the terms of this AGREEMENT are implemented, FHWA shall consult with such party and the MnDOT CRU staff to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

- A) Forward all documentation relevant to the dispute, including the FHWA's proposed resolution, to the Council. The Council shall provide FHWA 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, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and invited signatories, and provide them with a copy of this written response. FHWA will then proceed to approve funding of the project according to its final decision.
- B) If the Council does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall prepare a written response that takes into

account any timely comments regarding the dispute from the signatories and invited signatories to the AGREEMENT, and provide them and the Council with a copy of such written response.

- C) FHWA's responsibilities to carry out all other actions subject to the terms of this AGREEMENT that are not the subject of the dispute remain unchanged.

STIPULATION 8. AMENDMENT

Any party to this AGREEMENT may request that it be amended, whereupon the parties will consult to consider such amendment.

STIPULATION 9. TERMINATION

Any party to this AGREEMENT may terminate it by providing thirty (30) days written notice to the other parties, provided that the parties will consult during the period before termination to seek agreement on amendments or other action that would avoid termination. In the event of termination of this AGREEMENT, the FHWA (with the assistance of the professionally qualified staff of MnDOT CRU) shall comply with 36 CFR 800 for individual undertakings.

STIPULATION 10: DURATION

This AGREEMENT shall become effective upon execution by FHWA, SHPO, the Corps, the Council, and MnDOT and shall remain in effect until December 31, 2019.

STIPULATION 11. OPTION TO RENEW

No later than December 31, 2018, FHWA will consult with the signatories to this AGREEMENT to determine interest in renewing this AGREEMENT. The AGREEMENT may be extended for additional terms upon the written agreement of the signatories.

STIPULATION 12. IMPLEMENTATION

- A) This AGREEMENT may be implemented in counterparts, with a separate page for each signatory. This AGREEMENT will become effective on the date of the final signature. FHWA will ensure each party is provided with a complete copy and that the final AGREEMENT, updates to appendices, and any amendments are filed with the Council.
- B) Execution and implementation of this AGREEMENT evidences that the FHWA and the Corps have satisfied their Section 106 responsibilities for all individual undertakings of the Federal-Aid Highway Program in Minnesota, and has afforded the Council opportunity to comment pursuant to Section 106 of the National Historic Preservation Act.

SIGNATORY

FEDERAL HIGHWAY ADMINISTRATION

BY: 
David Scott, Acting Division Administrator

Date: 3/3/2015

SIGNATORY

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

BY: Barbara Howard
Barbara Mitchell Howard, Deputy SHPO

Date: 10/24/2014

SIGNATORY

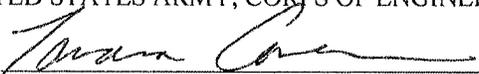
ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: *John M. Fowler*
John M. Fowler, Executive Director

Date: 4/7/15

SIGNATORY

UNITED STATES ARMY, CORPS OF ENGINEERS, ST. PAUL DISTRICT

BY: 
Col. Daniel C. Koprowski, /District Engineer and Commander

Date: 01/17/14

INVITED SIGNATORY
MINNESOTA DEPARTMENT OF TRANSPORTATION



Charles A. Zelle, Commissioner

12-12-14

Date

CONCURRING

OFFICE OF THE STATE ARCHAEOLOGIST, DEPARTMENT OF ADMINISTRATION

BY: Matt Massman
Matt Massman, Acting Commissioner

Date: 21/24/14