

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**CONVEYANCE OF FEDERAL PROPERTY AT  
THE UPPER ST. ANTHONY FALLS LOCK AND DAM  
MINNEAPOLIS, HENNEPIN COUNTY, MINNESOTA**

**WHEREAS**, the U.S. Army Corps of Engineers, St. Paul District (Corps) constructed, operates, and maintains the Upper St. Anthony Falls Lock and Dam (USAF), located at Upper Mississippi River (UMR) mile 853.9 at St. Anthony Falls in Minneapolis, Hennepin County, Minnesota, as an authorized feature of the Federal UMR Nine-Foot Navigation Project; and

**WHEREAS**, Section 356 of the Water Resources Development Act of 2020, Public Law 116-260, Division AA (Section 356 of the WRDA 2020), directed that the Secretary of the Army shall, upon request, convey all or substantially all of the real property owned by the United States adjacent to and in the vicinity of the lock and dam to the City of Minneapolis (City) or its designee, subject to the right to retain certain easements for continued operation and maintenance of the USAF and terms and conditions necessary to protect the interests of the United States (hereinafter, the “Conveyance”), and to provide the City, or its designee, certain access, use and development rights on real property and structures at the site of USAF that are not conveyed in fee (hereinafter, the “Outgrant”); and

**WHEREAS**, pursuant to the terms of the real estate instruments necessary for the Conveyance and Outgrant directed by Section 356 of the WRDA 2020, some future alterations, access, use, and development at the USAF will require Corps review and approval; and

**WHEREAS**, the Conveyance and Outgrant directed by Section 356 of the WRDA 2020 does not include disposition or other transfer of ownership or operation of the lock and dam at USAF, which is the subject of a separate ongoing study (“Disposition Study”); and

**WHEREAS**, the Conveyance and Outgrant directed by Section 356 of the WRDA 2020 may be accomplished separate from and prior to completion of the Disposition Study and any potential Congressional deauthorization of the USAF; and

**WHEREAS**, the “Undertaking” that is subject to the requirements of 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) 54 USC § 306108), encompasses the multiple actions to carry out Section 356 of the WRDA 2020, as described in Stipulation I.A, and referred to herein as “actions of the Undertaking,” in the area shown in Attachment A attached hereto and incorporated by reference; and

**WHEREAS**, the multiple actions of the Undertaking to carry out Section 356 of the WRDA 2020, as described in Stipulation I.A. and referred to herein as “actions” of the Undertaking, comprise a complex undertaking, as the individual actions would be designed and implemented independently of one another and consequently Section 106 responsibilities may be conducted and concluded at different times for each individual action; and

**WHEREAS**, the Corps, in consultation with the Minnesota State Historic Preservation Officer (SHPO), has defined the Undertaking’s area of potential effects (APE) as shown in Attachment B1 and described in Attachment B2; and

**WHEREAS**, the Corps has determined that the Undertaking has the potential to cause adverse effects to identified historic properties within the APE, including the USAF, a historic property which has been previously determined eligible for listing on the National Register of Historic Places (NRHP) and is associated with the UMR Nine-Foot Navigation Project, and the St. Anthony Falls Historic District, a historic property listed in the NRHP; and

**WHEREAS**, the Corps has determined that the Undertaking has the potential to affect other historic properties listed in or eligible for listing in the NRHP for which identification efforts have not yet been fully completed within the APE; and

**WHEREAS**, the Corps has consulted with the SHPO, pursuant to 36 CFR § 800.14(b)(3), about this Undertaking, and the Signatories (defined below) have determined that a phased approach for compliance with Section 106 is reasonable, and because not all of the identification of historic properties or assessment of effects on historic properties can be completed prior to Federal approval of an initial actions of the Undertaking, pursuant to 36 CFR § 800.4(b)(2), 36 CFR § 800.5(a)(3), and 36 CFR § 800.14(b)(3), the Corps has determined that a Programmatic Agreement (PA) is needed due to the nature of the Undertaking; and

**WHEREAS**, the City will have certain roles and responsibilities for any real property, interests, and rights conveyed or outgranted to the City in accordance with Section 356 of the WRDA 2020, and the City has been invited to be an Invited Signatory to this PA and has been invited to consult on the Undertaking and participate in the development and subsequent implementation of this PA; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its decision to enter into this PA and has invited the ACHP to enter into consultation, and the ACHP has chosen to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

**WHEREAS**, pursuant to the special relationship between the Federal government and Federally recognized Indian tribes (Tribes), and Section 101(d)(6)(B) of the NHPA and 36 CFR § 800.2(c)(2)(ii), the Corps is responsible for government-to-government consultation with Tribes; and

**WHEREAS**, the Corps has invited the following Tribes to consult on this Undertaking and participate in the development and subsequent implementation of this PA: Bad River Band of

Lake Superior Chippewa, the Bois Forte Band of Chippewa, the Fond du Lac Band of Lake Superior Chippewa, the Fort Belknap Community, the Forest County Potawatomi Community, the Grand Portage Band of Lake Superior Chippewa, the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas and Nebraska, the Iowa Tribe of Oklahoma, the Lac Courte Oreilles Band of Lake Superior Chippewa, the Lac du Flambeau Band of Lake Superior Chippewa, the Lac Vieux Desert Band of Lake Superior Chippewa, the Leech Lake Band of Ojibwe, the Lower Sioux Indian Community, the Menominee of Wisconsin, the Mille Lacs Band of Ojibwe, the Ojibwe-Missouri, the Prairie Island Indian Community, the Red Cliff Band of Lake Superior Chippewa, the Red Lake Nation, the Sac and Fox Nation of Missouri in Kansas and Nebraska, the Sac and Fox Nation, the Meskwaki Nation, the Shakopee Mdewakanton Sioux Community, the Sisseton-Wahpeton Oyate, the Spirit Lake Sioux, the Standing Rock Sioux, the Upper Sioux Indian Community, the White Earth Band of Ojibwe, and the Winnebago Tribe of Nebraska; and

**WHEREAS**, the Forest County Potawatomi, the Iowa Tribe of Kansas and Nebraska, the Lower Sioux Indian Community, the Mille Lacs Band of Ojibwe, the Prairie Island Indian Community, the Shakopee Mdewakanton Sioux Community, the Sisseton-Wahpeton Oyate, and the Upper Sioux Indian Community have agreed to consult on this Undertaking and participate in the development of this PA, and have been invited to be Concurring Parties to this PA; and

**WHEREAS**, the Corps shall continue to consult with the Tribes throughout the implementation of this PA regarding identification of and effects to historic properties to which they may attach religious and cultural significance, notwithstanding any decision by any Tribe to decline to be a Concurring Party; and

**WHEREAS**, the USAF is within the Mississippi National River and Recreation area (MNRRA) and the National Park Service (NPS) has been invited to consult on this Undertaking and this PA, has been afforded Consulting Party status pursuant to 36 CFR § 800.3(f)(1), and has been invited to be a Concurring Party to this PA; and

**WHEREAS**, the USAF is in the vicinity of certain Minnesota Department of Transportation (MNDOT) projects, and the MNDOT has been invited to consult on this Undertaking and this PA, has been afforded Consulting Party status pursuant to 36 C.F.R. § 800.3(f)(1), and has been invited to be a Concurring Party to this PA; and

**WHEREAS**, the City has designated Owámníyomni Okhódayapi (formerly Friends of the Falls) as its agent in evaluating and negotiating the Conveyance and Outgrant to the City or its designee, has been invited to consult on this Undertaking and this PA, has been afforded Consulting Party status pursuant to 36 C.F.R. § 800.3(f)(1), and has been invited to be a Concurring Party to this PA; and

**WHEREAS**, the Minneapolis Park and Recreation Board has been invited to consult on this Undertaking and this PA, and has been invited to be a Concurring Party to this PA; and

**WHEREAS**, the Minneapolis Heritage Preservation Commission has been invited to consult on this Undertaking and this PA, has been afforded Consulting Party status pursuant to 36 C.F.R. § 800.3(f)(1), and has been invited to be a Concurring Party to this PA; and

**WHEREAS**, the Signatories and Concurring Parties are all considered Consulting Party/ies pursuant to 36 CFR § 800.2(c) and their roles described herein are consistent with those described in 36 CFR § 800.6(c)(1), (2), and (3), respectively; and

**WHEREAS**, the Corps will continue to consult with any Consulting Party throughout the implementation of this PA regarding effects to historic properties, notwithstanding any decision by a Consulting Party to decline to be a Concurring Party; and

**WHEREAS**, the Corps has formed a Section 106 Working Group, with participants identified in Attachment C of this PA, to facilitate public involvement and an appropriate level of public notification and opportunities for comment pertaining to the Section 106 review of the Undertaking, pursuant to 36 CFR § 800.2(d), which will be coordinated with the concurrent scoping, public review and comment, public meetings, and technical reviews as required under the National Environmental Policy Act (NEPA) and its implementing regulations;

**NOW, THEREFORE**, the Corps, the SHPO, the City of Minneapolis, and the ACHP (individually a “Signatory” and collectively “Signatories”) agree that the Undertaking shall be implemented in accordance with the following Stipulations to take into account the effects of the Undertaking on historic properties and to satisfy the Corps’ Section 106 responsibilities for the Undertaking.

### **Stipulations**

To the extent of its legal authority, the Corps shall ensure that the following stipulations are carried out:

#### **I. SCOPE AND APPLICABILITY**

- A. The Corps shall continue consultation among all Consulting Parties throughout the implementation of this PA as it phases the identification and evaluation of historic properties and the assessment and resolution of the Undertaking’s potential adverse effects to historic properties. Consultation is mutual, meaningful dialogue regarding the fulfillment of this PA, the process of Section 106 compliance, and the treatment of historic properties that may be affected by the individual Federal actions and the Undertaking as a whole. The Undertaking may include concurrent or sequential work on the following actions in accordance with Section 356 of the WRDA 2020:
  1. Corps Conveyance of real property to the City or its designee, in one or more transactions, subject to the right of the Corps to retain certain easements necessary for operation and maintenance of the USAF and require other terms and conditions to protect the interests of the United States, which conveyance, terms and/or conditions may include application of Section 14 of the Rivers and Harbors Act of 1899, codified at 33 USC § 408 (Section 408), for alterations or occupation of the USAF, and

2. Corps Outgrant to the City or its designee of certain access, use and development rights to real property and structures at the site of the USAF, through one or more appropriate real estate instruments such as a license, easement, or lease, and
  3. Corps consents to easement or other Corps approval of alterations/occupations on the conveyed real property when required pursuant to the terms of real estate instruments necessary for the Conveyance, including any consent or other approval pursuant to the real estate instruments' terms requiring application of Section 408, and
  4. Corps approval of specific access, use, and development plans on Corps real property and structures at the USAF when required pursuant to the terms of a real estate instrument such as a license, easement, or lease, including any such real estate instrument requiring application of Section 408.
- B. This PA applies to the Undertaking. For any action of the Undertaking that has the same or larger APE and effects as a Corps authorization required under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act, the Corps may adopt this PA for compliance for the Section 10 and/or Section 404 activity.
- C. The Corps will consult with any Tribe, whether a Concurring Party to this PA or not, on a government-to-government basis as requested in recognition of their sovereign status, on the identification of, assessment of, and resolution of adverse effects to historic properties of religious and cultural significance to them, particularly Traditional Cultural Properties.

D. Public Participation

1. The views of the public are essential to informed decision making. The Corps has provided information about the Undertaking and its effects on historic properties to the public and have provided them an opportunity to comment. In addition, the Corps has formed a Section 106 Working Group to facilitate consultation among Federal and state agencies, Tribes, non-government agencies, other Consulting Parties, and the public regarding the development and fulfillment of this PA, the process of Section 106 compliance, and the treatment of historic properties that may be affected by the Undertaking identified through consultation under the terms of this PA. The Corps has coordinated its responsibilities for public involvement under Section 106 with its responsibilities under NEPA.
2. The Corps shall continue to involve the public in the Section 106 process as provided at 36 CFR§ 800.2(d) and 36 CFR § 800.3 throughout the implementation of this PA. The Corps shall ensure that the public is informed through press releases, posting of documents on the internet, or other

mechanisms including the Section 106 Working Group, about the manner in which the Corps is meeting its Section 106 responsibilities, and how the Corps is coordinating Section 106 with other public involvement processes, including NEPA. A draft of this PA has been made available on the Corps' public website: <https://www.mvp.usace.army.mil/USAF/>

## II. STANDARDS

- A. The Corps shall ensure that all work carried out pursuant to this PA meets the Secretary of the Interior's (SOI) *Standards for Archaeology and Historic Preservation* (48 FR 44716) and/or the SOI's *Standards for the Treatment of Historic Properties* (36 CFR Part 68), as applicable (individually or collectively, SOI Standards). The Corps shall ensure the City provides documentation to support determinations of eligibility and findings of effect that meets 36 CFR § 800.11, the SOI Standards, and SHPO survey and reporting guidance, as appropriate. Documentation of historic properties for the purposes of resolving adverse effects under Stipulation VII, may follow SOI Standards or another appropriate documentation standard that is agreed upon in writing by both Corps and SHPO.
- B. The Corps shall ensure that all activities carried out pursuant to this PA shall be done by, or under the direct supervision of, historic preservation professional(s) who meet the SOI's *Professional Qualification Standards* (48 FR 44738-44739) in the appropriate field(s) for the activity (SOI Qualified Professional(s)).
- C. The Corps acknowledges that the Tribes possess special expertise in assessing both the NRHP eligibility of properties and potential adverse effects to historic properties with religious and cultural significance to their communities. The Corps shall seek input from the Tribes to determine whether an SOI-Qualified Professional is qualified to assess the potential religious and/or cultural significance to the Tribes under NRHP criteria and/or the criteria of adverse effect.

## III. DELIVERABLES AND REVIEW PROCEDURES

- A. The Corps shall provide Consulting Parties to this PA with thirty (30) calendar days to review and comment on all Corps findings, determinations, documents, and deliverables, unless otherwise specified.
- B. If the deliverable is a draft document, the Corps will consider any written comments provided to it within the review and comment period in preparation of the final document. If there are any comments that are not feasible to incorporate into the final document, the Corps shall provide an explanation to the Consulting Parties as part of issuing the final document. If no comments on a draft document are provided within the specified review timeframe, the Corps, at its discretion, may consider the draft document final with notification to Consulting Parties.
- C. Any Consulting Party may request an extension of time for their review and comment on a finding, determination, document, or deliverable. The Corps may grant an



extension to a requesting Consulting Party or extend any review timeframe for all Consulting Parties. Failure of any Consulting Party to respond within the specified timeframe shall not preclude the Corps from proceeding to the next step of any process under this PA.

#### **IV. AREA OF POTENTIAL EFFECTS**

- A. The Corps, in consultation with the SHPO, has defined the area of potential effects (APE) for the Undertaking (shown and described in Attachment B1 and B2).
- B. The APE for the Undertaking includes the Corps USAF structures, land held in fee by the Corps at the USAF, and an area roughly bounded by both banks of the Mississippi River between the Third Avenue Bridge and Interstate 35W Bridge where the USAF would be reasonably visible. This area includes: the USAF; the St. Anthony Falls horseshoe and chord dams; the Falls of St. Anthony Dike (beneath the river, 2<sup>nd</sup> Ave SE to 5<sup>th</sup> Ave S); the falls apron; the Intermediate Pool; the Lower St Anthony Falls Lock and Dam; the St. Anthony Falls Historic District below the Third Avenue Bridge; the NRHP eligible St. Anthony Falls Locks and Dams Historic District and numerous other previously identified historic properties and unevaluated properties.
- C. If the Corps determines that changes to the Undertaking require modifications to the currently defined APE, then the Corps, in consultation with the SHPO and in coordination with the other Consulting Parties, shall modify the APE using the following process.
  - 1. The Corps shall submit the currently defined and revised APE(s), along with supporting documentation describing the Corps' rationale, to the SHPO and Consulting Parties for review and comment, pursuant to Stipulation III. The Corps' determination on the revised APE shall be final and the Corps shall distribute the revised APE to all Consulting Parties.
  - 2. Revisions to the APE do not require a formal amendment to this PA. If revised and documented by the Corps pursuant to Stipulation IV.C.1, then the Consulting Parties shall use the revised APE throughout the remainder of the Undertaking unless the Corps determines further revisions to the APE are necessary due to modifications to the Undertaking's scope and extent.

#### **V. HISTORIC PROPERTY IDENTIFICATION**

- A. Following the execution of this PA and prior to carrying out any actions of the Undertaking, the Corps shall complete and document historic property identification efforts and NRHP eligibility recommendations within the Undertaking's APE in accordance with 36 CFR § 800.4. The Corps, in consultation with the SHPO, may decide that certain identification efforts and eligibility recommendations should be completed under Stipulation V.B. rather than for the APE as a whole. The Corps, in consultation with the SHPO, may presume eligibility of properties for an action prior to completion of eligibility recommendations for later actions.

- B. Because the Undertaking will be carried out by the Corps as individual actions, the Corps may undertake additional historic property identification efforts in support of those actions where appropriate, after the initial identification efforts and eligibility recommendations in V.A. above.
- C. The Corps shall ensure that the City completes a literature review and assessment for the APE. This literature search will include consulting Minnesota historic inventory and site files, previous survey reports, historic contexts, and other relevant documents at the SHPO and the Office of the State Archaeologist (OSA) for information on previously developed historic contexts, recorded historic properties, site leads, and previously surveyed areas. The Corps and SHPO shall use the literature review and assessment to determine adequacy of existing documentation and to inform the scope of any additional surveys. The Corps shall submit the literature review and assessment, along with Corps recommendations pertaining to the proposed scope of historic property identification, to the Consulting Parties for review and comment pursuant to Stipulation III.
- D. The Corps shall conduct, or ensure the City conducts, surveys and property evaluations/reevaluations, including a traditional cultural properties (TCP) study. The Corps shall make formal determinations regarding identification of historic properties within the APE. The Corps shall ensure the City provides the results of historic property identification efforts, including any supporting documentation, in accordance with Stipulation II. The Corps shall submit the agency's formal historic property determination and supporting documentation to the Consulting Parties for review and comment pursuant to Stipulation III.
1. If the SHPO concurs with the Corps' NRHP eligibility determinations, then the Corps determination shall be final, and the Corps shall proceed to assess effects to any historic properties identified pursuant to Stipulation VI.
  2. If the Corps and the SHPO do not agree on the NRHP eligibility of a historic property, or if the Corps and a Tribe that attaches religious and cultural significance to a property do not agree on NRHP eligibility of such property, the Corps shall consult with the SHPO and/or Tribe, as applicable, for no more than 30 days upon receipt of the notification to resolve the disagreement. The Corps shall provide copies of the disagreement to other Consulting Parties within 5 days of receipt. Upon request and at its discretion, the Corps may extend the consultation period to resolve the disagreement.

If, after the 30-day consultation period, as extended by the Corps, the Corps determines that the relevant parties do not agree on the NRHP eligibility, the Corps shall obtain a determination from the Secretary of the Interior in accordance with 36 CFR 800.4(c)(2).



## **VI. ASSESSMENT OF EFFECTS ON HISTORIC PROPERTIES**

- A. Because the Corps may carry out the Undertaking in actions, the Corps may sequence its assessment of effects to historic properties contemplated by this stipulation to correspond to those actions.
- B. The Corps shall consider resolution of adverse effects to historic properties, if any, in the preferred order of avoidance, minimization, and mitigation, and the Corps shall ensure that resolution will result in specific, agreed upon measures which ensure appropriate treatment of historic properties under each scenario.
- C. If the Corps finds that an action of the Undertaking will have no effect upon historic properties as defined in 36 CFR § 800.16(i), then the Corps shall make a No Historic Properties Affected finding and provide this finding, along with supporting documentation in accordance with 36 CFR § 800.11(d), including, but not limited to, the results of historic property identification efforts completed pursuant to Stipulation V, photographs, maps, and drawings/plans, to the SHPO, and all Consulting Parties except the ACHP for review and comment pursuant to Stipulation III.
  - 1. If the Corps makes a finding of No Historic Properties Affected and the SHPO does not object, no further consultation is required, and the Corps may carry out the action in accordance with the finding.
  - 2. If the SHPO objects to the Corps' No Historic Properties Affected finding, SHPO shall provide comments to the Corps specifying the reasons for its disagreement. The Corps shall consult with the SHPO to resolve the disagreement in accordance with Stipulation X.A.
- D. If the Corps finds that historic properties within the APE have the potential to be adversely affected by the action of the Undertaking, then the Corps shall assess adverse effects in accordance with 36 CFR § 800.5 and proceed to Stipulation VI.E. or VI.F as applicable. -.
- E. Following the assessment of adverse effect, the Corps may make a finding of No Adverse Effect to historic properties for the action of the Undertaking. If so, then the Corps shall provide this finding, along with supporting documentation in accordance with 36 CFR § 800.11(e), including, but not limited to the results of historic property identification efforts completed pursuant to Stipulation V, photographs, maps, drawings/plans, and any other pertinent documents to the SHPO and all other Consulting Parties for review and comment pursuant to Stipulation III.
  - 1. If the Corps makes a finding of No Adverse Effect to historic properties and the SHPO agrees with the finding or has not provided a response, and no other Consulting Party has objected, no further consultation is required, and the action of the Undertaking may be carried out in accordance with the finding,

as documented including implementation of any conditions upon which the finding is based.

2. If the SHPO disagrees with the Corps' No Adverse Effect finding or if any other Consulting Party objects to the finding, they shall provide comments to the Corps specifying the reasons for their disagreement. If upon receipt of the disagreement or objection, the Corps agrees with the SHPO and/or objecting Consulting Party that the action of the Undertaking will have an adverse effect on historic properties, it may proceed directly to Stipulation VII. If the Corps disagrees, the Corps shall consult with the SHPO and other Consulting Parties to resolve the disagreement in accordance with Stipulation X.A.
- F. Following the assessment of adverse effect, the Corps may make a finding of Adverse Effect to historic properties for action of the Undertaking. If an Adverse Effect finding is made, the Corps shall proceed with consultation to resolve the adverse effect by seeking ways to avoid, minimize, or mitigate the adverse effect to historic properties in accordance with Stipulation VII.

## **VII. CONSULTATION TO RESOLVE ADVERSE EFFECTS**

- A. If the Corps finds, pursuant to review under Stipulation VI of this PA, that an action of the Undertaking will have an adverse effect on historic properties, then the Corps shall consult with the SHPO and Consulting Parties to develop and evaluate alternatives or modifications to the action that could avoid, minimize or mitigate adverse effects on historic properties.
- B. If the Corps and SHPO reach agreement in writing on modifications or measures to avoid adverse effects and essentially revise the finding to a No Adverse Effect finding, as reviewed pursuant to Stipulation III of this PA, and no Consulting Party objects, then the Corps shall document the agreement in the Corps' administrative record and share findings with the SHPO and Consulting Parties. The action shall then be carried out according to the Corps' written agreement to avoid adverse effects.
- C. If the Corps and SHPO fail to reach agreement on modification or measures to avoid adverse effects, or if any Consulting Party objects to the Corps' finding that the modification or measures agreed upon with SHPO will avoid adverse effects, then the Corps shall make a determination that the adverse effect cannot be avoided and will continue consultation with the SHPO and Consulting Parties to identify appropriate minimization and/or mitigation measures to resolve the adverse effect pursuant to Stipulation VII.D.
- D. The Corps shall consult with the SHPO and Consulting Parties to determine appropriate minimization and/or mitigation measures to resolve the adverse effect. Once an agreement on resolution of the adverse effect has been reached in writing by the Corps, SHPO, the City, and ACHP, the Corps shall develop a Mitigation Plan (Mitigation Plan) appropriate to the historic property(ies) and the nature and scale of

the adverse effect(s). The Mitigation Plan shall incorporate minimization and mitigation measures, along with provisions for unanticipated discoveries during implementation of the Mitigation Plan, agreed upon during consultation under Stipulation III of this PA. The Corps shall provide a final draft of the Mitigation Plan to the SHPO and Consulting Parties for review and comment pursuant to Stipulation III.

- E. The Corps, SHPO and City shall agree in writing to the final Mitigation Plan. The City shall carry out the Mitigation Plan according to its terms to resolve adverse effects. If the Corps, the SHPO, and the City cannot reach agreement on the Mitigation Plan, the Corps will proceed with consultation in accordance with Stipulation X.A.

## **VIII. POST-REVIEW DISCOVERIES**

- A. If the Corps determines that implementation of an action of the Undertaking will affect a previously unidentified cultural resources that may be eligible for the NRHP or affect a known historic property in an unanticipated manner, the Corps will address the discovery or unanticipated effect in accordance with the following provisions.
  - 1. If previously unidentified cultural resources are discovered during implementation of an action of the Undertaking where the Corps retains oversight either pursuant to an agreed-upon Mitigation Plan or due to the Corps' real estate interests, the Corps shall ensure the following:
    - a. If the Corps, SHPO, and City have agreed to a Mitigation Plan for that action of the Undertaking, the City shall implement the requirements outlined in the post-review discoveries provisions of the Mitigation Plan.
    - b. If the Corps, SHPO and City have not agreed to a Mitigation Plan or no Mitigation Plan is applicable to the implementation of the action:
      - i. The City shall ensure all ground-disturbing activities will cease in the area of the cultural resource, as well as within fifty (50) feet of it, to avoid and/or minimize harm to the cultural resource. The City will immediately notify the Corps of the discovery and implement interim measures to protect the cultural resources from damage, looting, and vandalism, including but not limited to protective fencing and covering the cultural resources with appropriate materials.
      - ii. Upon receipt of the notification, the Corps shall notify the SHPO, ACHP, and Tribes that might attach religious or cultural significance to the affected property within forty-eight (48) hours of the discovery and will provide its

assessment of the NRHP eligibility and the measures proposed to resolve adverse effects, if applicable. During this timeframe, SHPO and/or Tribes may inspect the site of the ground disturbing activities to ensure that the activities have halted. The SHPO and Tribes may jointly confer at the site to assess the cultural resource and potential impacts and propose measures to resolve adverse effects.

- iii. The SHPO, Tribes, and ACHP shall respond within 48 hours of the notification. The Corps shall take into account their recommendations regarding NRHP eligibility and proposed actions, and then carry out or require the City to carry out appropriate actions. The Corps shall provide the SHPO, Tribes and ACHP a report of the actions when completed.
2. For purposes of carrying out Stipulation VIII.A., the Corps, in consultation with the SHPO, may assume any discovered cultural resource to be eligible for inclusion in the NRHP.

## **IX. TREATMENT OF HUMAN REMAINS AND RELATED CULTURAL ITEMS**

- A. If unmarked human burials or skeletal remains are encountered by the City during implementation of an action of the Undertaking where the Corps retains oversight either pursuant to an agreed-upon Mitigation Plan or due to the Corps' real estate interests:
  1. The City will immediately stop work and notify local law enforcement, the Office of the State Archaeologist (OSA), and the Corps, and bring in a qualified consultant as appropriate. The City will ensure its consultant will comply with Federal laws as well as take into account the principles within the ACHP's Policy Statement on Burial Sites, Human Remains, and Funerary Objects, dated March 1, 2023.
  2. The City will immediately cease all work within a fifty (50) foot radius from the point of discovery. The City, through its consultant, will secure the area with appropriate markers and ensure that appropriate measures are taken to protect the discovery from further disturbance, looting, etc. All human remains, regardless of ancestry, will be treated with dignity and respect.
  3. The Corps will request local law enforcement to investigate the human remains and contact the medical examiner. If the human remains are modern, the local law enforcement and/or medical examiner will assume responsibility.
  4. If the human remains appear to be precontact or Native American, when on Federal land as defined in the Native American Graves Protection and Repatriation Act (NAGPRA), the Corps will meet the requirements of

NAGPRA for all Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony on a case-by-case basis, in accordance with 43 CFR Part 10. The Corps will write an action plan for each case in consultation with appropriate consulting parties.

5. If human remains or associated items are discovered on non-Federal lands, the City shall ensure that they are treated in accordance with state laws., Per Minnesota Statutes § 307.08, the Office of the State Archaeologist (OSA) has the authority in determining if the remains are human and to ensure appropriate procedures are carried out in accordance with the statutes, including coordination with the Minnesota Indian Affairs Council if the remains or associated burial items are thought to be Native American. Measures to protect the human remains and any associated items will remain in effect until the remains and associated items have been fully evaluated and appropriate treatment of the discovery (if applicable) has been completed. The City will not resume work in the vicinity of the find until the Corps has granted clearance to do so.
- B. If it is immediately obvious that the skeletal remains found are non-human and are in association with cultural material, the procedures described in Stipulation VIII.A and VIII.B shall be followed.

## **X. ADMINISTRATION**

### **A. Dispute Resolution**

1. Should any Signatory or Concurring Party to this PA object at any time to any actions proposed or the manner in which the terms of this PA are implemented, the Corps shall consult with such party to resolve the objection for no more than 30 days upon receipt of the notification. The Corps shall provide copies of the written objection to other consulting parties within five days of receipt of the written objection. Upon request and at its discretion, the Corps may extend the consultation period.
2. The Corps shall take into account the reasons for the objection and evaluate the solutions suggested by the objecting party.
3. If, after the 30-day review period, as extended by the Corps, the Corps determines that the objection cannot be resolved, the Corps shall forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP.
4. The ACHP shall provide the Corps 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 Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and other Signatories and Concurring Parties and

provide them with a copy of this written response. The Corps will then proceed according to its final decision.

5. If the ACHP does not provide its advice regarding the dispute within the thirty (30) daytime period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the SHPO, Signatories, and Concurring Parties to this PA, and provide them and the ACHP with a copy of such written response.
6. The Corps' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

#### B. Duration

Unless amended pursuant to Stipulation X.C or terminated pursuant to Stipulation X.D, this PA will remain in effect for a period of ten (10) years from the date of execution; at such time, if the terms of the PA have not been implemented, this PA will be null and void. If the Corps anticipates that the terms of this PA will not be completed within this timeframe it will notify the other Signatories in writing at least thirty (30) calendar days prior to the expiration date. The Signatories will then consult to determine whether the terms of this PA have been met, whether revisions are needed, and whether the duration of the PA should be extended by amendment. The duration of this PA does not affect the applicability of Section 106 of the NHPA and the requirements of 36 CFR Part 800, the regulations implementing Section 106 of the NHPA, to the Undertaking, nor does the duration of this PA expand the applicability of the PA to activities of the Parties that are not actions of the Undertaking.

#### C. Amendments

1. This PA may be amended when such an amendment is agreed to in writing by the Signatories. Any Signatory to this PA may request that it be amended, whereupon the Signatories will consult and the Corps will share any proposed amendment with all consulting parties in accordance with Stipulation III of this PA. The amendment will be effective on the date that the amendment is signed by the ACHP.
2. If, in accordance with Section 356 of the WRDA 2020, the City designates another entity for Conveyance or Outgrant, the Signatories will consult to amend this PA to add the designee as an Invited Signatory and modify the Stipulations related to City responsibilities as appropriate. The Corps will share the proposed amendment with all consulting parties in accordance with Stipulation III of this PA. The amendment will be effective on the date that the amendment is signed by the ACHP. If the City designates another entity for Conveyance or Outgrant and the Signatories cannot reach agreement on



an amendment to add the designee and modify City responsibilities as appropriate, the Signatories shall follow the terms of Stipulation X.D.

#### D. Termination

1. If any Signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatories and to attempt to develop an amendment per Stipulation X.C., 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 PA upon written notification to the other Signatories.
2. Once the PA is terminated, and prior to work continuing on the Undertaking, the Corps must either (a) execute one or more agreements 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 Corps shall notify the other Signatories as to the course of action it will pursue.

#### E. Anti-Deficiency Act

All obligations on the part of the Corps under this PA shall be subject to the appropriation, availability, and allocation of sufficient funds to the Corps for such purposes. If compliance with the Anti-Deficiency Act alters or impairs the Corps' ability to implement the stipulations of this PA, the Corps shall consult in accordance with the amendment and termination procedures found in Stipulations X.C and X.D of this PA.

### **XI. IMPLEMENTATION OF THIS PA**

This PA may be executed in counterparts, with a separate page for each signature. This PA will become effective on the date of the signature of the ACHP. The Corps will ensure each party is provided with a complete copy.

Execution of this PA by the Corps, the SHPO, the City, and the ACHP, and implementation of its terms, is evidence that the Corps has taken into account the effects of this Undertaking on historic properties and has afforded the ACHP opportunity to comment.

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**The Conveyance of Federal Property at the Upper St. Anthony Falls Lock and Dam  
Minneapolis, Hennepin County, Minnesota**

**SIGNATORY**

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

\_\_\_\_\_. Date: \_\_\_\_\_.

**Colonel Eric R. Swenson, St. Paul District Commander**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**The Conveyance of Federal Property at the Upper St. Anthony Falls Lock and Dam  
Minneapolis, Hennepin County, Minnesota**

**SIGNATORY**

**MINNESOTA STATE HISTORIC PRESERVATION OFFICE**

\_\_\_\_\_. Date: \_\_\_\_\_.

**Amy H. Spong, Deputy State Historic Preservation Officer**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**The Conveyance of Federal Property at the Upper St. Anthony Falls Lock and Dam  
Minneapolis, Hennepin County, Minnesota**

**SIGNATORY  
ADVISORY COUNCIL ON HISTORIC PRESERVATION**

\_\_\_\_\_. Date: \_\_\_\_\_.

**Sara Bronin, Chair**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**The Conveyance of Federal Property at the Upper St. Anthony Falls Lock and Dam  
Minneapolis, Hennepin County, Minnesota**

**INVITED SIGNATORY  
CITY OF MINNEAPOLIS**

**Dushani Dye  
Its: Finance Officer**

\_\_\_\_\_. **Date:** \_\_\_\_\_.

**Department Head Approval**

\_\_\_\_\_. **Date:** \_\_\_\_\_.

**Jeff Johnson, Chair  
Downtown Assets Committee**

**Approved as to form**

\_\_\_\_\_. **Date:** \_\_\_\_\_.

**Assistant City Attorney**

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT,  
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE,  
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND  
THE CITY OF MINNEAPOLIS**

**REGARDING**

**The Conveyance of Federal Property at the Upper St. Anthony Falls Lock and Dam  
Minneapolis, Hennepin County, Minnesota**

**CONCURRING PARTY**

\_\_\_\_\_. Date: \_\_\_\_\_.



## Attachment A: Map of the Conveyance and Outgrant area





## Attachment B1: Map of the Area of Potential Effect



**Attachment B2:** Written Description of the Area of Potential Effect

The project's APE is bounded on the southwest by South 2<sup>nd</sup> Street and North 2<sup>nd</sup> Street (above Hennepin Avenue), on the northwest by the Burlington Northern Santa Fe (BNSF) railroad corridor, on the northeast by a line one block north of the Mississippi River or the distance equivalent, and on the southeast by the Interstate I-35W corridor in Minneapolis, Hennepin County, Minnesota.