

APPENDIX C: DRAFT SECTION 106 PROGRAMMATIC AGREEMENT

**SECTION 106 PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL HIGHWAY ADMINISTRATION (MINNESOTA DIVISION),
THE UNITED STATES COAST GUARD,
THE ENVIRONMENTAL PROTECTION AGENCY,
THE UNITED STATES ARMY CORPS OF ENGINEERS (DETROIT DISTRICT),
THE MINNESOTA AND WISCONSIN STATE HISTORIC PRESERVATION OFFICES,
AND THE MINNESOTA AND WISCONSIN DEPARTMENTS OF TRANSPORTATION
REGARDING
REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE
ST. LOUIS COUNTY, MINNESOTA (MnDOT State Project 6981-26), AND
DOUGLAS COUNTY, WISCONSIN (WisDOT ID #1199-00-08/WHS #21-0106)**

Whereas, the Minnesota Department of Transportation (MnDOT) and Wisconsin Department of Transportation (WisDOT) are proposing to replace the John A. Blatnik Bridge which carries Interstate 535 (I-535) over the St. Louis Bay between the cities of Duluth, Minnesota, and Superior, Wisconsin, and are considering several alternatives, including replacement of the main truss span with a new structure and rehabilitation or replacement of the approach structures on the same or new alignment, and restructuring the I-535/US 53 interchange and connecting roadways in Superior (PROJECT); and

Whereas, the Federal Highway Administration (FHWA) plans to provide assistance to the PROJECT pursuant to the Federal-Aid Highway Program, 23 United States Code (USC), thereby making the PROJECT an undertaking subject to review under Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (54 USC § 306108), and its implementing regulations at 36 Code of Federal Regulations (CFR) Part 800; and

Whereas, FHWA, in consultation with the Minnesota State Historic Preservation Office (Minnesota SHPO) and the Wisconsin State Historic Preservation Office (Wisconsin SHPO) has defined and documented a preliminary Area of Potential Effects (APE) in accordance with 36 CFR 800.16(d), which is depicted in Appendix A, and the FHWA will continue to consult with the Minnesota SHPO, the Wisconsin SHPO, and other Consulting Parties regarding validity and modification of the APE, as needed, including as the preferred alternative is identified and design work is proceeding; and

Whereas, FHWA has identified the following historic properties within the preliminary APE: Goldfine's by the Bridge (SL-DUL-0025) and Elevator Row Historic District (SL-DUL-3912), both within the City of Duluth, Minnesota; and

Whereas, current conditions preclude the completion of archaeological site identification in the City of Superior, Wisconsin, prior to approval of the PROJECT; and

Whereas, FHWA, in consultation with the Minnesota SHPO and the Wisconsin SHPO and pursuant to 36 CFR 800.14(b)(1)(ii) and 36 CFR 800.14(b)(3), has determined that it is appropriate and elected to execute a PROJECT-specific Programmatic Agreement (PROJECT PA) because PROJECT-specific circumstances do not allow for completion of historic property identification efforts and an assessment of effects to historic properties under Section 106 prior to a federal Record of Decision under the National Environmental Protection Act (NEPA); and

Whereas, the United States Army Corps of Engineers (USACE), which is responsible for making a federal permit decision for the PROJECT pursuant to Sections 404 and 408 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), has determined that these federal permit decisions are undertakings subject to the requirements of Section 106 and 36 CFR Part 800, and pursuant to 36 CFR 800.2(a)(2), USACE has requested FHWA to become lead Federal agency for the PROJECT, fulfilling their collective responsibilities under the Section 106 process; and FHWA accepted lead Federal agency designation on December 7, 2022, agreeing to include USACE as an Invited Signatory to this PROJECT PA pursuant to 36 CFR 800.6(c)(2); and

Whereas, the USACE, Detroit District, and USACE, St. Paul District, have determined that the USACE, Detroit District, will be the sole office responsible for technical assistance and permit approval actions for the USACE as it pertains to the entire PROJECT; and

Whereas, the United States Coast Guard (USCG) is responsible for making a federal bridge permit decision for the PROJECT in accordance with Section 9 of the Rivers and Harbors Appropriations Act of 1899 and the General Bridge Act of 1946, as amended, has determined that a federal bridge permit decision is an undertaking subject to the requirements of Section 106 and 36 CFR Part 800, and pursuant to 36 CFR 800.2(a)(2), USCG has requested FHWA to become lead Federal agency for the PROJECT, fulfilling their collective responsibilities under the Section 106 process; and FHWA accepted lead Federal agency designation on November 21, 2022, agreeing to include USCG as an Invited Signatory to this PROJECT PA pursuant to 36 CFR 800.6(c)(2); and

Whereas, FHWA has asked the United States Environmental Protection Agency (USEPA) to be a cooperating agency for the development of the PROJECT Environmental Assessment, and USEPA has agreed, and pursuant to 36 CFR 800.2(a)(2), USEPA has requested FHWA to become lead Federal agency for the PROJECT, fulfilling their collective responsibilities under the Section 106 process; and FHWA accepted lead Federal agency designation on November 22, 2022, agreeing to include USEPA as an Invited Signatory to this PROJECT PA pursuant to 36 CFR 800.6(c)(2); and

Whereas, because FHWA has delegated certain steps in the Section 106 review process to the professionally qualified (per 36 CFR 61 and 48 FR 44783-44739) staff of the MnDOT Cultural Resources

Unit (MnDOT CRU) and the WisDOT Cultural Resources Team (WisDOT CRT), although FHWA remains legally responsible for all findings and determinations charged to the agency official in 36 CFR 800; and

Whereas, because MnDOT and WisDOT are sponsoring and carrying out the PROJECT and assume certain responsibilities under this PROJECT PA, FHWA has invited MnDOT and WisDOT to become Invited Signatories to this PROJECT PA pursuant to 36 CFR 800.6(c)(2); and

Whereas, FHWA recognizes it has a unique legal relationship with Federally recognized American Indian tribes (Tribes) set forth in the Constitution of the United States, treaties, statutes, and court decisions, and that consultation with Tribes must, therefore, recognize the government-to-government relationship between the Federal government and the Tribes; and

Whereas, pursuant to 36 CFR 800.2(c)(2)(ii) and the agreements in effect between FHWA and certain Tribes, upon initiation of the Section 106 consultation for the PROJECT, MnDOT's Cultural Resources Unit (CRU), on behalf of FHWA, has notified the following Tribes and invited their participation in consultation for the PROJECT: Bois Forte Band of Chippewa, Fond du Lac Band of Lake Superior Chippewa, Fort Peck Tribes, Grand Portage Band of Chippewa, Leech Lake Band of Ojibwe, Santee Sioux Nation, Turtle Mountain Band of Chippewa, and Upper Sioux Community; and WisDOT, on behalf of FHWA, has notified the following Tribes and invited their participation in consultation for the PROJECT: Bad River Band of Lake Superior Chippewa Indians, Forest County Potawatomi Community, Lac Courte Oreilles Band of Lake Superior Chippewa Indians, Lac du Flambeau Band of Lake Superior Chippewa Indians, Lac Vieux Desert Band of Lake Superior Chippewa Indians, Prairie Band Potawatomi Nation, Red Cliff Band of Lake Superior Chippewa Indians, Sokaogon Chippewa Community, Sac and Fox Tribe of the Mississippi in Iowa, St. Croix Band of Lake Superior Chippewa Indians; and

Whereas, FHWA received a request from the Fond du Lac Band of Lake Superior Chippewa (Fond du Lac Band) to consult on the PROJECT pursuant to 36 CFR 800.2(c)(2) and FHWA has invited them to sign this PROJECT PA as a Concurring Party pursuant to 36 CFR 800.6(c)(3); and

Whereas, MnDOT CRU and FHWA have invited the Duluth Heritage Preservation Commission (Duluth HPC) to consult on the PROJECT pursuant to 36 CFR 800.2(c)(5) and the Duluth HPC has accepted, and FHWA has invited them to sign this PROJECT PA as a Concurring Party pursuant to 36 CFR 800.6(c)(3); and

Whereas, in order to solicit public comment on the PROJECT and meet its responsibilities pursuant to 36 CFR 800.2(d), the FHWA, with assistance from MnDOT and WisDOT, has engaged the public using digital and face-to-face methods, including a project-specific website (<https://www.dot.state.mn.us/d1/projects/blatnik-bridge/>) that provides an overview of proposed work, public meeting information, NEPA documents, a summary of the Section 106 process, historic

property identification to date, and contact information for questions and comments regarding the Section 106 review; and

Whereas, FHWA, MnDOT and WisDOT will continue to update the project-specific website and information presented at public meetings when property identification is completed, when effects are assessed, when resolution of adverse effects is required, and when findings of effect are made; and

Whereas, on XXXX, 2023, and in accordance with 36 CFR 800.6(a)(1)(i)(C), FHWA notified the Advisory Council on Historic Preservation (ACHP) of its intent to enter into this PROJECT PA, and the ACHP has chosen to/not to participate in the consultation pursuant to 36 CFR 800.6(a)(1)(iii); and

Whereas, the Signatories, Invited Signatories, and Concurring Parties are all considered Consulting Parties 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, MnDOT and WisDOT will implement the PROJECT and will complete the stipulations of this PROJECT PA, and FHWA will be responsible for ensuring that implementation of the PROJECT meets the terms of this PROJECT PA; and

Now, therefore, FHWA, Minnesota SHPO, and Wisconsin SHPO agree that the PROJECT will be implemented in accordance with the following stipulations in order to take into account the effects of the PROJECT on historic properties.

Stipulations

FHWA, with the assistance of MnDOT and WisDOT, will ensure the following measures are carried out:

I. Applicability

- A.** If MnDOT or WisDOT applies for additional funding or approvals for the PROJECT from a Federal agency that is not party to this PROJECT PA, that Federal agency may remain individually responsible for their undertaking under 36 CFR 800. Alternatively, if the PROJECT as described herein remains unchanged, such funding or approving Federal agency may request in writing to FHWA of their desire to designate FHWA as lead Federal agency for their undertaking pursuant to 36 CFR 800.2(a)(2) and to become a Consulting Party to this PROJECT PA pursuant to Paragraph B of this Stipulation.
- B.** If during the implementation of this PROJECT PA, FHWA identifies other agencies, Tribes, individuals, and organizations with a demonstrated interest in the PROJECT due to the nature of their legal or economic relation to the PROJECT or affected properties, or due to

their concern with the PROJECT'S effects on historic properties, FHWA may offer such entities Consulting Party status pursuant to 36 CFR 800.2(c) and/or invite them to become a party to this PROJECT PA, with notification to the other consulting parties.

- i. If FHWA invites an entity to become an Invited Signatory and no changes are made to the body of this PROJECT PA, and neither the Minnesota SHPO nor the Wisconsin SHPO have objections, the party may accept this status by returning a completed PA signature sheet provided by FHWA. FHWA will file an updated version of the PROJECT PA with the additional executed signature page with the ACHP without formal amendment of this PROJECT PA, and will notify the Consulting Parties of any entities who agree to become an Invited Signatory.
 - ii. If FHWA invites an entity to become a Concurring Party, the entity may accept this status by agreeing in writing to the terms of this PROJECT PA and so notifying FHWA by returning a completed PA signature sheet provided by FHWA. Because Concurring Parties have no responsibility for implementation of this PROJECT PA, FHWA may add such parties to the consultation process without formal amendment of this PROJECT PA. FHWA will notify the Consulting Parties of any entities who agree to become a Concurring Party.
- C. If a Federal agency decides it no longer wishes FHWA to continue as lead on its behalf, the agency must notify FHWA and the Consulting Parties that it will be individually responsible for its own Section 106 obligations. FHWA will formally amend the PROJECT PA to remove the Invited Signatory.

II. Standards

- A. All work carried out pursuant to this PROJECT PA will meet the Secretary of the Interior's (SOI's) *Standards for Archeology and Historic Preservation* (48 Federal Register 44716) and/or the SOI's *Standards for the Treatment of Historic Properties* (36 CFR 68) (individually or collectively, SOI Standards), as applicable. Documentation in support of determinations of eligibility for listing in the National Register of Historic Places (National Register) and findings of effect will meet 36 CFR 800.11, the SOI Standards, applicable National Park Service National Register Bulletins, current survey and reporting guidance of the relevant SHPO, MnDOT CRU survey and reporting guidance, and WisDOT Facilities Development Manual Sections 26-5 and 26-10, as appropriate. Documentation of historic properties for the purposes of resolving Adverse Effects under Stipulation VII: Consultation to Resolve Adverse Effects, may follow either the SOI Standards or another appropriate documentation standard that is agreed upon in writing by the FHWA and the relevant SHPO.

- B. FHWA will ensure that all activities carried out pursuant to this PROJECT PA are done by, or under the direct supervision of historic preservation professional(s) who meet the SOI *Professional Qualifications Standards* (48 FR 44738-44739) in the appropriate field(s) for the activity (SOI-Qualified Professionals).
- C. FHWA acknowledges Tribes possess special expertise in assessing the National Register of Historic Places (National Register) eligibility of properties with religious and cultural significance to their Tribe(s).). FHWA will notify Tribes who have expressed an interest in transportation projects in this geographical region when historic property identification is completed, when effects to properties of religious or cultural significance to a Tribe under National Register criteria are assessed, when an unanticipated discoveries plan is drafted, and when substantive changes are made to the preliminary APE

III. Deliverables and Consulting Party Review Procedures

- A. To facilitate review, submittals of documentation to Consulting Parties under this stipulation may be limited to the portions of the construction plan set that illustrate the way the PROJECT may affect historic properties. If needed, additional portions of the plan set or additional information requested in writing to either the MnDOT Cultural Resources Unit (CRU) or the WisDOT Cultural Resources Team (CRT) by one or more Consulting Parties will be provided to all Consulting Parties.
- B. Submittals will be made concurrently to all Consulting Parties. The Consulting Parties will have thirty (30) calendar days to review and provide comments on all fully documented findings, determinations, documents, and deliverables, unless otherwise specified in this PROJECT PA. FHWA will share comments received with all Consulting Parties.
- C. For all fully documented findings, determinations, documents, and deliverables submitted during PROJECT construction and directly related to construction activities, the Consulting Parties will have thirty (30) calendar days to review and provide comments, unless otherwise specified in this PROJECT PA.
- D. If the deliverable is a draft document, any written comments provided within the review and comment period will be considered in the preparation of the final document. If there are any comments that are not feasible to address in the final documents, FHWA will 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, FHWA,

at its discretion, may consider the draft document final with notification to Consulting Parties.

- E. All review timeframes may be extended by mutual consent between FHWA, Wisconsin SHPO and Minnesota SHPO with notification to the other Consulting Parties. Failure of any Consulting Party to respond within the specified timeframe will not preclude FHWA from proceeding to the next step of any process under this PROJECT PA.

IV. Delineation and Revisions to the APE

- A. FHWA, in coordination with the MnDOT CRU and the WisDOT Cultural Resources Team (CRT), has developed a preliminary APE for the PROJECT which includes all potential build alternatives under evaluation at the time of the execution of this PROJECT PA and is shown in Appendix A. As the preferred alternative is identified and designed, FHWA will refine the APE in consultation with the Wisconsin SHPO, the Minnesota SHPO, and the Consulting Parties.
 - i. FHWA will submit the draft and final APE for the PROJECT along with any supporting documentation to the Minnesota SHPO, and other Consulting Parties for review and comment pursuant to Stipulation III: Deliverables and Consulting Party Review Process. Once it has considered any comments received, FHWA's determination on the APE will be final.
 - ii. Revision of the APE does not require a formal amendment to the PROJECT PA. If delineated by FHWA pursuant to Subparagraph A.i of this Stipulation, then the revised APE will be incorporated into Appendix A, distributed to all Consulting Parties, filed with the ACHP and used throughout the remainder of the PROJECT unless further revisions to the APE are necessary due to modifications to project scope.
- B. If any new and previously unsurveyed areas are added to the APE, the procedures in Stipulation V: Identification of Historic Properties will be followed to identify historic properties that may be affected.

V. Identification of Historic Properties

- A. As access to restricted locations is gained, FHWA, in consultation with the relevant SHPO and other Consulting Parties, will complete historic property identification efforts within the APE.

and effects to any historic properties identified will be assessed pursuant to Stipulation VI: Assessments of Effects.

- ii. If the relevant SHPO or other Consulting Parties object to the proposed eligibility of a property to be on the National Register, and if FHWA elects to not make a final determination of eligibility within the FHWA modal administration organizational structure, FHWA will submit a request for a formal finding, supported by documentation provided by MnDOT CRU or WisDOT CRT, to the Keeper of the National Register (Keeper). Per 36 CFR 63.2(e) the Keeper will have forty-five (45) calendar days after the receipt of adequate documentation to make their finding, which will be considered final.

VI. Assessments of Effects

- A. FHWA will assess effects pursuant to 36 CFR 800.5(a) and make a finding of effect pursuant to 36 CFR 800.5(b) for historic properties identified through Stipulation V: Identification of Historic Properties.
 - i. FHWA findings of effect made pursuant to Stipulation VI.B may be reconsidered and updated, when necessary, to account for any changes in design or the receipt of additional information that may result in newly identified historic properties, changes in the finding of effect for a historic property, or unanticipated effects (e.g., damage) to historic properties.
 - ii. As part of the finding of effect, FHWA may impose conditions to ensure an Adverse Effect to a historic property is avoided and/or minimized.
- B. FHWA will submit documentation pertaining to the assessment of effects for each historic property within the APE and the finding of effect for the PROJECT as a whole, supported by documentation that meets the requirements of Stipulation II: Standards, to the relevant SHPO and other Consulting Parties pursuant to Stipulation III: Deliverables and Consulting Party Review Process. Subject to the confidentiality requirements in Section 304 of the National Historic Preservation Act (54 USC 307103) and 36 CFR 800.11(c), MnDOT will post the effects findings on their PROJECT website for a 30-day public comment period, or other means as appropriate, in order to obtain public input. MnDOT CRU will share any comments received from the public as well as any proposed responses to substantive comments with the Consulting Parties.
 - i. If FHWA makes a finding of No Historic Properties Affected or No Adverse Effect for the PROJECT and the relevant SHPO and other Consulting Parties agree, then no further

- consultation is required pending implementation of any conditions upon which the finding is based. Implementation of conditions will be tracked by the relevant DOT as part of the reporting outlined in Stipulation XI: Reports on Agreement Implementation. FHWA will ensure the specified conditions are met as the PROJECT construction is carried out.
- ii. If FHWA makes a finding of Adverse Effect and the relevant SHPO and other Consulting Parties agree, the Adverse Effect will be resolved through Stipulation VII: Consultation to Resolve Adverse Effects.
 - iii. If the relevant SHPO or other Consulting Parties object to FHWA's finding of effect, they will provide comments to FHWA specifying the reasons for their disagreement. FHWA will consult with the relevant SHPO and other Consulting Parties to resolve the disagreement in accordance with Stipulation XII: Dispute Resolution.
- C. If FHWA determines a property is not eligible, no further assessment of effects will be required and the Section 106 process will be complete.

VII. Consultation to Resolve Adverse Effects

- A. If FHWA makes a finding of Adverse Effect pursuant to Stipulation VI: Assessments of Effects, FHWA and the relevant DOT will consult with the relevant SHPO, other Consulting Parties, and the owner of the historic property, when applicable, to seek and consider other measures to avoid, minimize, and/or mitigate the Adverse Effect(s). Consultation may take whatever form is appropriate based on the significance, character, and use of the historic property and the nature and scale of the project elements causing the Adverse Effect(s). The consultation must include an opportunity for the public to express their views in resolving the Adverse Effect(s). If, through consultation, it is determined the Adverse Effect(s) cannot be avoided entirely, a Mitigation Plan, specifying measures to resolve the Adverse Effect(s) will be prepared under Paragraph B of this Stipulation.
- B. FHWA will develop a Mitigation Plan(s) to document the measures identified through consultation under Paragraph A of this Stipulation to minimize and/or mitigate Adverse Effects. Mitigation Plan(s) may be prepared for the PROJECT as a whole, for individual and/or multiple phases of PROJECT construction, and/or for individual or groups of historic properties, as determined through consultation. The Mitigation Plan(s) must be finalized before PROJECT construction activities begin or, in the case of properties identified under Stipulation VIII: Unanticipated Discovery of Historic Properties and Unanticipated Effects,

the Mitigation Plan must be finalized before resuming construction activities in proximity to the historic property.

- i. When applicable, deliverables required by a Mitigation Plan will be prepared in accordance with the requirements of Stipulation II: Standards and will be submitted and reviewed pursuant to the timeline(s) and process outlined in Stipulation III: Deliverables and Consulting Party Review Process, or as otherwise specified in the Mitigation Plan.
 - ii. Upon completion of consultation to resolve adverse effects through agreed-upon minimization and/or mitigation measures, FHWA will submit a draft and final Mitigation Plan to the Consulting Parties and the property owner, if applicable, pursuant to Stipulation III: Deliverables and Consulting Party Review Process. The Mitigation Plan will be considered final following agreement in writing by FHWA and the relevant SHPO. In lieu of amending this PROJECT PA, FHWA will ensure that the final, agreed-upon Mitigation Plan is attached to the PROJECT PA in the FHWA administrative records, and distributed to all Consulting Parties. Implementation of the Mitigation Plan will be tracked by the relevant DOT as part of the reporting outlined in Stipulation XI: Reports on Agreement Implementation. FHWA will ensure the Mitigation Plan provisions are carried out.
- C. If FHWA and the relevant SHPO fail to agree on how to resolve the Adverse Effect(s), FHWA will consult with the relevant SHPO and other Consulting Parties to resolve the disagreement in accordance with Stipulation XII: Dispute Resolution.
- D. Construction activities associated with the PROJECT may not begin or resume in the vicinity of the historic property until after final approval of the Mitigation Plan by FHWA under Stipulation VII.B.iii, which may include minimization and mitigation measures such as completion of associated field work, implementation of protection measures outlined in the Mitigation Plan, or as otherwise specified in the Mitigation Plan.

VIII. Unanticipated Discovery of Historic Properties and Unanticipated Effects

- A. If PROJECT construction affects a previously unidentified property that may be historic or a known historic property in an unanticipated manner, FHWA will notify the relevant SHPO, the Consulting Parties, and any Tribe that might attach religious and cultural significance to the affected property within forty-eight (48) hours of the discovery. In all instances MnDOT or WisDOT 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 relevant SHPO, the Consulting Parties, and Tribes (if applicable).

- B. FHWA will evaluate the National Register eligibility of newly discovered properties, determine the project's effect on any properties that are found to be historic, and consult with the relevant SHPO, the Consulting Parties, and Tribes (if applicable) to prepare a Mitigation Plan for avoiding, minimizing, or mitigating any adverse effects to historic properties.
- C. In any instance where a property cannot be fully evaluated prior to the initiation of PROJECT construction or the resumption of PROJECT construction activities in the vicinity of the property, the FHWA, in consultation with the relevant SHPO and Consulting Parties, may treat the property as though it is eligible for inclusion in the National Register for the purpose of the Section 106 review for this PROJECT pursuant to 36 CFR 800.13(c). In these instances, and in addition to providing a justification for not performing a full evaluation, FHWA will document the National Register criterion or criteria, potential area(s) and period(s) of significance, and boundaries used to assume the property's eligibility so that this information can be used to assess effects on the historic property pursuant to Stipulation VI: Assessments of Effects.
- D. FHWA and MnDOT CRU will provide the relevant SHPO and the Consulting Parties with a Mitigation Plan to resolve any adverse effects.
 - i. If construction has not begun, consultation will follow the process documented in Stipulation III: Deliverables and Consulting Party Review Procedures.
 - 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, FHWA may carry out the plan.
 - iii. If the relevant SHPO or other Consulting Parties object to the plan, consultation to resolve the objection will continue under Stipulation VII: Consultation to Resolve Adverse Effects.
- E. Construction activities may not begin or resume in the vicinity of the historic property until after the completion of the associated field work, implementation of protection measures outlined in the Mitigation Plan, or as otherwise specified in the Mitigation Plan.

IX. Unanticipated Discovery of Human Remains

- A. If suspected human remains or mortuary features and associated objects are discovered during construction, the contractor will notify MnDOT and WisDOT within twenty-four (24) hours of the discovery. The relevant DOT will ensure construction activities in the vicinity of the discovery are immediately halted and will take all reasonable measures to avoid or minimize harm and protect the discovery from inclement weather and vandalism. The relevant DOT will notify FHWA and MnDOT CRU within twenty-four (24) hours of receipt of notification from the contractor.
 - i. If human remains are identified, the relevant DOT will notify appropriate law enforcement officials to determine whether or not the remains are subject to a criminal investigation by local or federal authorities. The relevant DOT shall provide sufficient information to allow law enforcement to determine if the remains are or are not subject to a criminal investigation by local or federal authorities.
 - ii. MnDOT CRU will notify Consulting Parties via email or telephone within forty-eight (48) hours of receiving notification of the discovery. FHWA, MnDOT and WisDOT will work together to perform any necessary consultation in order to meet FHWA's responsibilities under Section 106.
- B. If human remains or mortuary features and associated objects are discovered on land owned by the federal government, FHWA with the assistance of MnDOT CRU will immediately notify the appropriate federal land manager and Consulting Parties within twenty-four (24) hours of the discovery via email or telephone. FHWA and MnDOT CRU will provide the federal land managing agency with assistance in complying with the Native American Graves Protection and Repatriation Act (NAGPRA).
- C. MnDOT and WisDOT will comply with applicable state laws protecting burials and human remains (Minn. Stats. 307.08 and Wis. Stats. 157.70, respectively).
- D. FHWA's preferred option for the treatment of human remains is avoidance and preservation in place.

X. Unanticipated Discoveries Plan (UDP)

- A. Prior to the start of project construction, MnDOT CRU and WisDOT CRT will develop an Unanticipated Discoveries Plan (UDP) outlining the procedures to be followed in the event unanticipated historic properties, unanticipated effects to historic properties, or suspected or known human remains are identified during construction.

- B. MnDOT CRU and WisDOT CRT will submit a draft UDP to the Consulting Parties, agencies that have responsibility for overseeing compliance with state laws protecting burials and human remains, and federally recognized tribes who have expressed in interest in FHWA projects in the Duluth-Superior geographical region for review and comment.

XI. Reports on Agreement Implementation

- A. Every twelve (12) months following the execution of this PROJECT PA and until it expires or is terminated, MnDOT CRU, on behalf of FHWA, will provide all the Consulting Parties a summary report detailing work undertaken pursuant to its terms via email. Subject to the confidentiality requirements in 54 USC 307103 and 36 CFR 800.11(c), each report will include an itemized listing and status of all measures required to implement the terms of this PROJECT PA.
- B. The Consulting Parties will review the reports pursuant to the timelines established in Stipulation III: Deliverables and Consulting Party Review Procedures. At its own discretion, or at the request of any Signatory, FHWA may convene a meeting to facilitate review and comment on the reports, and to resolve any questions about their content and/or to resolve objections or concerns.

XII. Dispute Resolution

- A. Should any Signatory, Invited Signatory, or Concurring Party to this PROJECT PA object at any time to any actions proposed or the manner in which the terms of this PROJECT PA are implemented, FHWA will consult with such party and the MnDOT CRU staff to resolve the objection. If FHWA determines that such objection cannot be resolved FHWA will:
 - i. Forward all documentation relevant to the dispute including the FHWA's proposed resolution, to the ACHP. The ACHP will provide FHWA with its advice on the resolution of the objection within thirty (30) calendar 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 ACHP and the Consulting Parties and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
 - ii. If the ACHP does not provide its advice regarding the dispute within thirty (30) calendar days, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA will prepare a written response that takes into account any timely comments regarding the dispute from the Consulting Parties and provide them and the ACHP with a copy of the written response.

- B. FHWA will notify all Consulting Parties in writing of any written objections raised by a member of the public pertaining to implementation of this PROJECT PA. Any Consulting Party receiving a written objection directly from a member of the public will notify FHWA, who will notify all Consulting Parties in writing. Unless otherwise agreed upon, Consulting Parties have fifteen (15) calendar days to review and provide written comments on the objection to all Consulting Parties. FHWA will consider substantive objections and take all comments from all Consulting Parties into consideration in reaching its decision on the objection. Within fifteen (15) calendar days following closure of the comment period, FHWA will render a decision regarding the objection, respond to the objecting party, and proceed according to its decision. FHWA's decision regarding resolution of the objection will be final.
- C. FHWA's responsibility to carry out all other actions subject to the terms of this PROJECT PA that are not the subject of the dispute remains unchanged.

XIII. Amendments

- A. Any Signatory or Invited Signatory may request an amendment to this PROJECT PA by making a written request to FHWA. This PROJECT PA may be amended when such an amendment is agreed to in writing by all Signatories and Invited Signatories. The amendment will be effective on the date of the final signature by the Signatories and Invited Signatories.
- B. FHWA will provide copies of any executed amendments to the Consulting Parties and to the ACHP.

XIV. Duration

- A. This PROJECT PA will remain in effect from the date of execution for a period of ten (10) years from date of execution. If FHWA anticipates that the terms of this PROJECT PA cannot be completed within this timeframe, it will notify the Consulting Parties in writing at least sixty (60) calendar days prior to the expiration date. This PROJECT PA may be extended by the written concurrence of the Signatories and Invited Signatories.
- B. FHWA will ensure the PROJECT PA is extended if all the Stipulations have not been completed. If this PROJECT PA expires and FHWA elects to continue with the undertaking, FHWA will reinitiate Section 106 consultation in accordance with 36 CFR 800.

- C. If, prior to the expiration date, FHWA determines all the activities subject to this PROJECT PA are completed, then FHWA may terminate this PROJECT PA pursuant to Stipulation XV: Termination.

XV. Termination

- A. If all terms of this PROJECT PA have been completed prior to the expiration date, FHWA may terminate the PROJECT PA with notification to Signatories, Invited Signatories, and Concurring Parties that the terms of the PROJECT PA have been completed. If a Consulting Party feels PROJECT PA termination is premature, or that the terms of the PROJECT PA have not been met, they will respond within the timeframes outlined in Stipulation III: Deliverables and Consulting Party Review Procedures.
- B. Any Signatory or Invited Signatory may terminate this PROJECT PA by providing at least thirty (30) calendar days' notice to all Consulting Parties. FHWA will consult with the Signatories and Invited Signatories during the thirty (3) calendar day notice period in an attempt to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FHWA will reinitiate review of the undertaking in accordance with 36 CFR 800 and any active agreements FHWA has with federally recognized Tribes.

XVI. Execution

- A. This PROJECT PA may be executed in counterparts, with a separate page for each Consulting Party. This PROJECT PA will become effective on the date of the final signature by the Signatories and Invited Signatories. The refusal of any party invited to concur with this PROJECT PA does not invalidate this PROJECT PA. FHWA will ensure each Consulting Party is provided with a fully executed copy of this PROJECT PA and that the final PROJECT PA, updates to appendices, and any amendments are filed with the ACHP.
- B. Execution of this PROJECT PA by FHWA, the Wisconsin SHPO and the Minnesota SHPO, and implementation of its terms is evidence that FHWA has taken into account the effects of its undertaking on historic properties and has afforded the ACHP an opportunity to comment, pursuant to Section 106 of the National Historic Preservation Act.

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION (MN Division),

THE UNITED STATES COAST GUARD,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

THE MINNESOTA AND WISCONSIN STATE HISTORIC PRESERVATION OFFICES,

AND THE MINNESOTA AND WISCONSIN DEPARTMENTS OF TRANSPORTATION

REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

SIGNATORY

FEDERAL HIGHWAY ADMINISTRATION (FHWA)

By: _____
Wendall L. Meyer, Division Administrator

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

SIGNATORY

ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

By: _____
Reid Nelson, Acting Executive Director

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

THE UNITED STATES COAST GUARD,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

SIGNATORY

MINNESOTA STATE HISTORIC PRESERVATION OFFICE (Minnesota SHPO)

By: _____
Amy Spong, Deputy State Historic Preservation Officer

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

SIGNATORY

WISCONSIN STATE HISTORIC PRESERVATION OFFICE (Wisconsin SHPO)

By: _____
Dr. Daina Penkiunas, State Historic Preservation Officer

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

INVITED SIGNATORY

MINNESOTA DEPARTMENT OF TRANSPORTATION (MnDOT)

By: _____
Nancy Daubenberger, P.E., Commissioner

Date: _____

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SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

THE UNITED STATES COAST GUARD,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

INVITED SIGNATORY

WISCONSIN DEPARTMENT OF TRANSPORTATION (WisDOT)

By: _____
Barry Paye, P.E., Historic Preservation Officer

Date: _____

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SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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AND THE MINNESOTA AND WISCONSIN DEPARTMENTS OF TRANSPORTATION

REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

INVITED SIGNATORY

UNITED STATES COAST GUARD (USCG)

By: _____

RDML Jonathan Hickey, Commander
Ninth Coast Guard District

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

THE UNITED STATES COAST GUARD,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

THE MINNESOTA AND WISCONSIN STATE HISTORIC PRESERVATION OFFICES,

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

INVITED SIGNATORY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (USEPA)

By: _____

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

THE MINNESOTA AND WISCONSIN STATE HISTORIC PRESERVATION OFFICES,

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

INVITED SIGNATORY

UNITED STATES ARMY CORPS OF ENGINEERS, DETROIT DISTRICT

By: _____

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

CONCURRING PARTY

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

By: _____

Date: _____

SIGNATURE PAGE

SECTION 106 PROGRAMMATIC AGREEMENT

BETWEEN

THE FEDERAL HIGHWAY ADMINISTRATION,

THE UNITED STATES COAST GUARD,

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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REGARDING

REPLACEMENT OF THE JOHN A. BLATNIK BRIDGE

ST. LOUIS COUNTY, MINNESOTA, AND DOUGLAS COUNTY, WISCONSIN

CONCURRING PARTY

CITY OF DULUTH HERITAGE PRESERVATION COMMISSION

By: _____
Adam Fulton, Land Use Supervisor, City of Duluth

Date: _____

**Appendix A:
Preliminary Area of Potential Effects (APE)**

DRAFT FOR EXTERNAL REVIEW



Appendix A: Preliminary Area of Potential Effects (APE) (detail of Duluth, MN)



Appendix A: Preliminary Area of Potential Effects (APE) (detail of Superior, WI)