

**PROGRAMMATIC AGREEMENT
BETWEEN
THE NATIONAL PARK SERVICE,
THE MINNESOTA DEPARTMENT OF NATURAL RESOURCES AND
THE MINNESOTA HISTORIC PRESERVATION OFFICE
REGARDING
THE PROGRAM CHANGE OF THE FORT SNELLING UPPER POST COMPLEX
IN HENNEPIN COUNTY, MINNESOTA, FROM FEDERAL LANDS TO PARKS TO
HISTORIC MONUMENTS SURPLUS PROPERTY**

WHEREAS, by a Quit Claim Deed dated August 17, 1971, and an Amended Quit Claim Deed dated ____ 2016 (Deed), the United States of America (United States) acting by and through the Secretary of Interior (Secretary) deeded the 141-acre Fort Snelling Upper Post Complex (Complex) as legally described in Appendix A and depicted in Appendix B Map of Ft. Snelling Upper Post Complex to the State of Minnesota (Minnesota) acting by and through its Department of Natural Resources (DNR) under the Federal Lands to Parks Program and retained certain administrative responsibility and authority for the Complex;

WHEREAS, the State through its DNR owns and administers the Complex and the DNR has requested transfer of the Complex from the Federal Lands to Parks Program to Historic Monument Status under the Historic Surplus Property Program 40 U.S.C. § 484(k)(3) and 41 C.F.R. 101-47-308.3 because the latter permits greater flexibility in use including leasing of buildings within the Complex, the rehabilitation and adaptive reuse of the buildings, and limited new construction (Program Change);

WHEREAS, due the Program Change, a new Program of Preservation and Utilization (PPU) has been prepared by DNR for approval by the General Services Administration (GSA) following the execution of this PA; and

WHEREAS, the Deed as amended in 2016 the Complex be used and maintained for Historic Monument purposes and includes provisions for the treatment, use, preservation, and maintenance of historic properties on the Complex; and

WHEREAS, many of the historic structures located on the Complex are in a state of significant disrepair such that if immediate action is not taken they are in danger of being lost;

WHEREAS, 40 U.S.C. § 484(k)(3) and 41 C.F.R. 101.47 through 308.3 requires the Secretary to approve the DNR's plans for repair, rehabilitation, restoration, and maintenance of the Complex;

WHEREAS, the Complex is located within and is a part of the Fort Snelling Historic District, a historic property listed in the National Register of Historic Places (National Register) and is also designated as a National Historic Landmark (NHL)(Fort Snelling Historic District /NHL);

WHEREAS, the Program Change constitutes an Undertaking within the meaning of Section 106 of the National Historic Preservation Act and 54 U.S.C. § § 306107, 306108 and 300320;

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WHEREAS, the DNR and the Secretary have agreed, that prior to implementing any repair, rehabilitation, restoration, new construction, or other change to any historic attribute of the Complex the DNR should submit to and obtain written approval from the Secretary and the Minnesota State Historic Preservation Officer (MnHPO) for all “detailed plans and specifications covering the proposed change or improvement”;

WHEREAS, the Secretary and the DNR, in the Deed, have agreed that the DNR shall prepare all such plans and specifications “in accordance with the recommended treatment in the ‘*Secretary of Interior’s Standards for Treatment of Historic Properties and Guidelines for Preserving, Restoring, and Reconstructing Historic Buildings* (Secretary’s Standards) and *Guidelines for the Treatment of Cultural Landscapes* (Secretary’s Guidelines)’”;

WHEREAS, 54 U.S.C. § 306107 provides that “prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall to the maximum extent possible undertake such planning and actions as may be necessary to minimize the harm to the landmark”;

WHEREAS, 54 U.S.C. § 306108 provides that the “head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any State . . . shall take into account the effect of the undertaking on any historic property”;

WHEREAS, the National Park Service (NPS) has been designated by the Secretary as the “Agency Official” and designee of the Secretary responsible for compliance with Section 106 of the Historic Preservation Act of 1966 as amended and the implementing regulations set forth at 36 CFR 800.16(u);

WHEREAS, the MnHPO is authorized to administer the State Historic Preservation Program and applicable provisions of the National Historic Preservation Act pursuant to 54 U.S.C. Ch. 302303 and Minn. Stat. §§138.081 and is responsible for advising, assisting, reviewing, and consulting with Federal Agencies as they carry out their historic preservation responsibilities and to respond to Federal agencies’ requests within a specified period of time;

WHEREAS, to meet the requirements of 54 U.S.C. § §306107 and 306108 the Secretary acting by and through the NPS, the MnHPO, and the DNR (collectively referred to as “the Parties”) have agreed that any construction, rehabilitation, restoration, or modification to the Complex constitute an Undertaking within the meaning of 54 U.S.C. § 300320 and must comply with the applicable provisions of the National Historic Preservation Act and requirements of the applicable provisions of 36 CFR 800 *et. seq.*;

WHEREAS, the Parties have determined that the condition of historic buildings located in the Complex must be rehabilitated if they are to be preserved and the DNR has indicated its intent to repurpose both the existing historic buildings and other properties in the Complex in a manner consistent with the Deed and the National Historic Preservation Act and these actions constitute Undertakings within the meaning of 54 U.S.C. § 300320 and must comply with the applicable provisions of the National Historic Preservation Act and requirements of the applicable provisions of 36 CFR 800 *et. seq.*;

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WHEREAS, the NPS has initially defined the Area of Potential Effects (APE) for the Program Change to generally include the Complex and immediate surrounding geographic areas as documented on the map included as Appendix C;

WHEREAS, the APE may be further refined as a result of additional consultation;

WHEREAS, 36 CFR 800.14(b) authorizes the NPS, in consultation with the State Historic Preservation Office, to enter into a Programmatic Agreement (PA) with non-federal parties, setting forth procedures to implement Section 106 of the National Historic Preservation Act for complex projects when the effects on historic properties cannot be fully determined prior to approval of an undertaking, when non-federal parties are delegated major decision making responsibilities for the property, and when other circumstances warrant departure from the “normal 106 process”;

WHEREAS, the NPS has determined that the need to rehabilitate, reuse, and modify the Complex, as proposed in concept by the DNR, is a complex project meeting the requirements for a Programmatic Agreement: and

WHEREAS, the NPS has concluded that both the Program Change and any reasonably foreseeable rehabilitation, modification, and adaptive reuse of buildings located on the Complex or alteration of the Complex landscape constitute Undertakings within the meaning 54 U.S.C. § 300320 and 36 CFR 800.16(y) requiring review under the National Historic Preservation Act 54 U.S.C. § 300101 *et seq.*;

WHEREAS, the NPS has determined that these Undertakings, individually or collectively, may have an effect on historic properties listed in or eligible for listing in the National Register of Historic Places, including the Fort Snelling Historic District/NHL, and the effects on historic properties arising out of these Undertakings cannot be fully determined prior to the amending the Deed transferring the Complex to the DNR;

WHEREAS, the NPS has consulted with the MnHPO and the DNR in the preparation of this Programmatic Agreement (PA) pursuant to 36 CFR 800;

WHEREAS, pursuant to the requirements of 36 CFR 800.14(b) the NPS has notified the eleven federally recognized Minnesota Indian Tribes, the Cheyenne River Sioux Tribe, the Crow Creek Sioux Tribe, the Flandreau Santee Sioux Tribe, the Fort Peck Assiniboiné and Sioux Tribe, the Ho-Chunk Nation of Wisconsin, the Iowa Tribe of Kansas and Nebraska, the Santee Sioux Nation, the Sisseton-Wahpeton Oyate, the Spirit Lake Nation, and the Winnebago Tribe of Nebraska of the proposed Program Change and invited the same to participate in government-to-government consultation;

WHEREAS, the following tribes have indicated their interest in consulting on this PA, and the NPS will continue to consult with _____ on a government-to-government basis in accordance with 36 CFR 800.2(c)(ii);

WHEREAS, pursuant to the requirements of 36 CFR § 800.3(e) the NPS has provided applicable local units of government and the public an opportunity to provide public input on the proposed Program Change;

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WHEREAS, the following parties have indicated their interest in consulting on this PA, and the NPS will continue to consult with _____ on an ongoing basis in accordance with 36 CFR 800.2(c)(ii);

WHEREAS, pursuant to 36 CFR 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (Council) that this PA would be prepared and invited the Council to participate in consultation, in accordance with 36 CFR § 800.14(b); and

WHEREAS, the Council has elected not to participate in this PA.

NOW, THEREFORE, the NPS, DNR, and the MnHPO agree that the review of the DNR's undertakings on the Complex shall be administered according to the following Stipulations which together constitute the PA for the Complex:

STIPULATIONS

I. APPLICABILITY AND INTENT

A. Applicability:

1. Entry into this PA satisfies the National Park Service's responsibilities under Section 106 for the Program Change (the Deed/Monument Undertakings).
2. This PA shall also apply to any additional DNR Undertakings administered on the Complex for which the DNR is the lead state agency, including but not limited to any project or activity on the Complex that involves any repair, rehabilitation, new construction, or other change to any historic attribute of the Complex.

B. Intent:

1. It is the intent of the Parties that they work collaboratively under the terms of this PA to assure that the repair, rehabilitation, and new construction on the Complex is undertaken in a manner that protects those important attributes of the Complex that caused it to be listed as a National Historic Landmark and to prevent further deterioration of the Complex.
2. It is the intent of the Parties that all Undertakings whether by the Parties or by a lessee on or at the Complex be governed by the terms of this PA.
3. For non-DNR Undertakings on the Complex, the signatory and consulting parties may mutually agree to allow the use of the process outlined in this PA to satisfy Section 106 requirements.

II. ROLES AND RESPONSIBILITIES

A. The NPS:

1. The Superintendent of the Mississippi National River and Recreation Area (NPS-MNRRRA) has been delegated the authority to act on behalf of the NPS Director for purposes of this PA.
2. Authorized Representative: the Superintendent of the MNRRRA (Superintendent) is the

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NPS Authorized Representative for purposes of implementing the terms of this PA. All notices to the NPS required under this PA shall be by mail or e-mail and shall be sent to:

Superintendent
Mississippi National River and Recreation Area
Suite 105
111 Kellogg Blvd. E.
St. Paul, MN 55101-1256

The NPS may change its Authorized Representative by written notice to the Authorized Representatives for the MnHPO and the DNR.

3. The Technical Preservation Services (NPS-TPS) will be engaged as necessary for addressing issues pertaining to the Federal Historic Preservation Tax Incentives Program relative to Undertakings at the Complex for which Federal Historic Tax credits are sought.

B. MnHPO:

1. MnHPO is the designated State Historic Preservation Officer with authority to administer the Minnesota State Historic Preservation Program pursuant to 54 U.S.C. § 301.303 and Minn. Stat. § 138.X with the authority to act on behalf of the State of Minnesota for purposes of implementing federal and state historic preservation requirements.
2. Authorized Representative: The Manager of Government Programs and Compliance is the MnHPO Authorized Representative for purposes of implementing the terms of this PA. All notices to the MnHPO required under this PA shall be by mail or e-mail and shall be sent to:

Manager of Government Programs and Compliance
State Historic Preservation Office
Minnesota Historical Society
345 Kellogg Blvd. W.
St. Paul, MN 55102-1903

The MnHPO may change its Authorized Representative by written notice to the Authorized Representatives for the NPS and the DNR.

C. DNR

1. The DNR is the agency authorized to manage the Complex on behalf of the State of Minnesota and is responsible for assuring that all Undertakings on the Complex will be in accord with the obligations set forth in the Deed and this PA.
2. Authorized Representative: The Director of Parks and Trails is the DNR Authorized Representative for purposes of implementing the terms of this PA. All notices to the DNR required under this PA shall be by mail or e-mail and shall be sent to:

Director of Parks and Trails
Minnesota Department of Natural Resources
500 Lafayette Rd. N.

St. Paul, MN 55101

The DNR may change its Authorized Representative by written notice to the Authorized Representatives for the NPS and the MnHPO.

3. Cultural Resource Specialist: The DNR shall assign a Cultural Resource Specialist to work on all Undertakings on the Complex. Said Cultural Resource Specialist shall meet the Secretary's Professional Qualifications Standards in the appropriate discipline.

III. DEFINITIONS

- A. Complex: The term Complex shall mean that portion of the Fort Snelling Historic District/NHL conveyed by Quitclaim Deed dated _____, 2016 to the State of Minnesota acting by and through the DNR and as more fully described in Exhibits A and B which are attached hereto and made a part hereof. This PA applies only to Complex as defined herein.
- B. Fort Snelling Historic District: is the area listed on the National Register of Historic Places with a boundary as depicted in Appendix D, which is attached hereto and made a part hereof.
- C. Fort Snelling National Historic Landmark (NHL): is the area designated and listed as an NHL on the National Register of Historic Places with a boundary as depicted in Appendix D.
- D. Undertaking: For purposes of this PA, the term Undertaking is as defined in 36 CFR 800.16(y) and includes both the Program Change as well as any rehabilitation, modification or other construction projects at or on the Complex that might occur subsequent to execution of the amendment to the Quit Claim Deed, which includes the Program Change.
- E. Tribes: For purposes of consultation under this PA tribes shall mean those federally-recognized Indian tribes who were contacted pursuant to 36 C.F.R. 800.2(c)(ii) and have indicated their intent to participate in this PA as described in the Whereas Clauses of this PA.
- F. All other terms in this PA shall have the meanings set forth in this PA or in 54 U.S.C. §§ 3003301 through 300321 and 36 CFR 800.16

IV. REVIEW OF UNDERTAKINGS

A. DETERMINE THE UNDERTAKING

1. Early in the planning process and consistent with the requirements of 36 CFR 800.1(c) the DNR shall determine if a proposed project, which may originate from the DNR, DNR permittees, federal or non-federal tenants, or other parties, constitutes an Undertaking within the meaning of 36 CFR 800.16(y).

- a. If the DNR determines that the proposed project is an Undertaking which

has no potential to cause effects on historic properties, then the DNR has no further obligations pertaining to said Undertaking under this Stipulation. Any decision made under this paragraph shall be documented by the DNR in its Annual Report.

- b. If the DNR determines that the proposed project is an Undertaking with the potential to cause effects on historic properties, then the DNR will proceed to the next step in the review process in accordance with Stipulation IV(A)(2).

2. The DNR will assign one of the following categories to the Undertaking:

- a. **Little or No Effect:** For Undertakings that have little or no potential to affect historic properties, as described in Appendix E: *Activities Not Requiring Additional Review* which is attached hereto and make a part hereof, the DNR has no further obligations under this stipulation pertaining to said Undertaking. The DNR will describe activities undertaken pursuant to this paragraph in its Annual Report.
- i. The list of Undertakings not requiring additional review as set forth in Appendix E may be updated without invoking the formal requirements for an amendment to this PA by mutual written agreement of the signatories to this PA. Any amendments to Appendix E will be deemed a modification of this PA.
- b. **Tax Incentive Qualifying Undertakings:** Undertakings that seek to obtain certification under the Federal Historic Preservation Tax Incentives Program (known as Tax Credit Reviews) will be reviewed in accordance with that program and such further requirements as provided in Stipulation V of this PA.
- c. **Undertakings Potentially Affecting Historic Properties:** Undertakings that may affect historic properties but do not fit into one of the above categories listed in Stipulation IV(A)(2)(a-b) shall be reviewed in accordance with Stipulation IV(B-C).

B. DEFINE THE AREA OF POTENTIAL EFFECTS AND IDENTIFY HISTORIC PROPERTIES

1. **Determination Area of Potential Effects:** The DNR shall determine and document the Undertaking's area of potential effects (APE). For purposes of this PA, this area is the geographic area or areas within which an Undertaking may directly or indirectly cause alteration in the character or use of historic properties, taking into account direct, indirect, and cumulative effects of the Undertaking on historic properties within the Complex and the Fort Snelling Historic District/NHL.
2. **Historic Property(ies) Identification:** The DNR shall identify historic properties within the APE consistent with the procedures set forth in 36 CFR 800.4.
3. **Analysis of Undertaking:** If the DNR determines that the APE contains no contributing or eligible historic properties, the DNR shall consider the effect the Undertaking may have on the Fort Snelling Historic District/NHL as a whole. If

the DNR determines that the Undertaking will have no effect on the Fort Snelling Historic District/NHL, then the DNR shall make a proposed “no historic properties affected” determination and shall submit the proposed determination together with sufficient documentation to enable the NPS and MnHPO to understand the basis of the DNR decision pursuant to 36 CFR 800.11(a). Said documentation shall include, at a minimum, the documentation outlined in 36 CFR 800.11(d)(1-3) and (e).

- a. The DNR shall deliver the determination together with supporting documentation to the NPS Authorized Representative and the MnHPO Authorized Representative. The NPS and MnHPO will have thirty (30) days following date of receipt of DNR’s determination and supporting documentation to provide written comments to the DNR regarding the determination of effect. If either the MnHPO or NPS does not concur with a “no historic properties affected” determination made by the DNR, the DNR will continue consultation in an effort to resolve the disagreement.
- b. If the NPS and MnHPO do not provide written comments to the DNR within the 30 days or notify the DNR in writing that either the NPS or the MnHPO do not concur with the DNR’s draft recommendation, the DNR’s responsibilities under this PA for the review of the Undertaking at issue are fulfilled.

4. **Determination of Effect:** If the DNR determines that historic property(ies) within the APE may be directly, indirectly, or cumulatively affected by the proposed Undertaking, the DNR will continue the review process as outlined under Stipulation IV(C).

C. ASSESSMENT OF EFFECTS FROM THE UNDERTAKING AND RESOLUTION OF ADVERSE EFFECTS

1. **Assessment Requirement:** The DNR will assess the effects of the proposed Undertaking, including cumulative effects, on historic properties within the APE using the criteria of adverse effect set forth in 36 CFR 800.5(a)(1) and complete the review process as outlined below.
2. **Review Package:** The DNR shall submit a review package describing the proposed Undertaking to the NPS and MnHPO. The review package will consist of a project summary document, plans, drawings, specifications, photographs, any other information the parties mutually agree will be useful for describing and analyzing the proposed Undertaking, and any documentation not included herein but required by 36 CFR 800.11 (e)(1-6)

a. Impact on Historic Properties: The DNR review package shall also include analysis of the Undertaking’s potential impact on properties located within the APE as delineated through the process outlined in Stipulation IV(B)(2).

b. Proposed Effect Determination: The DNR review package shall also include a proposed effect determination of either “No Adverse Effect” or “Adverse Effect.”

3. Review of DNR “effect determination”:

a. Historic Property(ies) Affected, No Adverse Effect: The DNR shall submit its “no adverse effect” determination together with the supporting documentation outlined in paragraphs C.1-3 above to the NPS and MnHPO Authorized Representatives. The NPS and MnHPO will have thirty (30) days following date of receipt of the DNR determination and supporting documentation to either provide concurrence with the “no adverse effect” finding, or provide reasons for disagreement with the determination of effect, including recommended changes to the Undertaking, or conditions, if any, that are needed for the Undertaking in order to meet the Secretary’s Standards pertaining to a “no adverse effect” determination or to meet the requirements for rehabilitation under the Federal Historic Preservation Tax Incentives Program, where applicable.

i. *Failure to Respond*: If the NPS and MnHPO fail to respond in writing to the DNR’s “no adverse effect” determination within thirty (30) days after receipt the DNR’s adequately documented determination, the DNR’s responsibilities under this PA for the specific undertaking are fulfilled.

ii. *Notice of Non-concurrence*: If within thirty (30) days following receipt of the DNR recommendation, the NPS and MnHPO determine they do not concur with the DNR’s “no adverse effect” determination they shall notify the DNR in writing of the non-concurrence determination. Said notice shall include written recommendations or modifications to the Undertaking in order to conform to the Standards. Written notice may be by e-mail to the Authorized Representative for each party. If, however, the MnHPO and the NPS disagree on the modifications required for any given item the DNR, NPS, and MnHPO shall meet and confer within 15 days in an attempt to resolve the disagreement. If after 15 days no resolution is reached, the parties may elect to exercise Dispute Resolution Provisions of this PA.

iii. *Modification to achieve a “no adverse effect determination”*: If the DNR makes the modifications recommended by the NPS and MnHPO in the Notice of Non-concurrence, it shall resubmit the determination documents to the NPS and MnHPO Authorized Agents. The NPS and MnHPO will have thirty (30) days following receipt to review and provide written comments on the revised review materials. If the NPS and MnHPO fail to respond in writing to the DNR’s modified “no adverse effect” determination within thirty (30) days after receipt the DNR’s determination, the DNR’s responsibilities under this PA for the specific undertaking are fulfilled.

b. Historic Property(ies) Affected, Adverse Effect:

- i. *Statement of Intent:* Because, pursuant to the requirements set forth in the Deed and the associated Program Change, all changes to the Complex must be in accordance with the Secretary's Standards, an adverse effect should only occur in rare and exceptional circumstances.
- ii. *DNR Evaluation of "Adverse Effect":* : Applying the criteria set forth in 36 CFR 800.5 the DNR, in consultation with the NPS, the MnHPO, and any Tribe that has elected to be a consulting party to this PA shall determine whether a proposed Undertaking will have an "adverse effect" to historic properties within the area of potential impact. The DNR shall submit its "adverse effect" determination together with the supporting documentation to the NPS and evaluation of alternatives and modifications to the Undertaking that could avoid, minimize, or mitigate any potential "adverse effect."
- iii. *Adverse effects review.* The NPS and MnHPO will have thirty (30) days to either issue a letter of written concurrence with the "adverse effect" determination or written comments to the DNR delineating its objections to the determination and requested modifications thereto. The thirty (30) day review period shall commence either upon receipt of the DNR submission or notice from the ACHP that it will not join the consultation, whichever is later. If the MnHPO and the NPS disagree on the modifications required for any given item the NPS, MnHPO, and DNR shall meet and confer within 15 days in an attempt to resolve the disagreement. If after 15 days no resolution is reached, the parties may elect to exercise Dispute Resolution Provisions of this PA.
- iv. *Failure to provide written comments or concurrence:* If the NPS and MnHPO fail to respond in writing to the DNR's "adverse effect" determination within thirty (30) days after receipt the DNR's determination, the DNR will contact the Authorized Representatives by telephone. The NPS and MnHPO will respond within fifteen (15) days or the DNR's responsibilities under this PA for that review are fulfilled.
- v. *Comments and consultation:* If the NPS and/or MnHPO submit written comments specifying their non-concurrence with the DNR's determination the DNR, NPS, and MnHPO, within 45 days after the notice of non-concurrence, shall collectively evaluate and reach agreement on alternatives to the proposed Undertaking that will avoid, mitigate, or minimize the adverse effect. The final agreement shall be in writing and the parties shall retain all documents that they relied upon in reaching their agreement as part of the

administrative record.

- vi. *Referring to ACHP.* If the DNR in consultation with the NPS and MnHPO fails to reach agreement regarding avoidance or minimization of adverse effects, the NPS shall consult with the Advisory Council on Historic Preservation (ACHP) and signatories to this PA in accordance with the requirements set forth in 36 CFR 800.6 and 800.10.

V. COORDINATION WITH THE FEDERAL HISTORIC PRESERVATION TAX INCENTIVES PROGRAM

A. SCOPE OF APPLICATION

1. This stipulation applies to all Undertakings on the Complex proposed by lessees of the DNR or others (hereby referred to as Applicants) seeking to participate in the Federal Historic Preservation Tax Incentives Program. It defines steps and responsibilities for coordinated Section 106 consultation and Certified Rehabilitation review so that the regulatory objectives of both processes may be met.

B. FEDERAL HISTORIC PRESERVATION TAX INCENTIVE PROGRAM PROCESS

1. Applicants seeking to participate in the Federal Historic Preservation Tax Incentives Program for a historic property or properties located in the Complex shall follow the process delineated in 36 CFR Part 67.
 - a. For Tax Incentive project review, Applicants are encouraged to engage in early conversations and coordination with the MnHPO and the NPS.
 - b. Applicants will be responsible for submitting two copies each of Parts One, Two, and Three applications and amendments to MnHPO for review and approval.
 - c. At the same time of submittal to the MnHPO, Applicants shall provide copies of all tax credit submittals to the DNR and NPS

C. CONCURRENT REVIEW

1. **Concurrent Review for New Construction and Undertakings Determined to Impact Historic Properties:** Concurrent with the Tax Incentive Project review, Section 106 review will also be undertaken for any new construction or other impacts causing direct, indirect, or cumulative effects. New construction includes but is not limited to new buildings, additions to historic buildings, roadways, parking lots, infrastructure, signage, lighting, and landscaping. Applicants will provide information to DNR, which will consider the Undertaking's direct, indirect, and cumulative effects pursuant to the requirements of Stipulation IV.
 - a. Undertakings that may affect historic properties shall be reviewed in accordance with Stipulation IV.B-C.

- b. The DNR shall supplement review packages with information from the Parts One and Two applications that may assist in the review and comment of participating parties.

2. **No Review Required:** Undertakings that have little or no potential to affect historic properties as described in Appendix E and therefore do not require any additional review will be documented by the DNR for inclusion in the Annual Report.

D. INABILITY TO MODIFY TO MEET CONDITIONS

1. **Inability to Modify:** In the event that the Applicant cannot or will not modify their project to comply with conditions placed on the project by NPS or in the event the Applicant chooses to withdraw their project from the tax incentive program, the Undertaking must be reviewed in accordance with Stipulation IV.

VI. STANDARDS

A. SECRETARY OF THE INTERIOR'S STANDARDS.

1. **Applicable Standards:** Consistent with the requirements of the Deed, all work carried out pursuant to this PA shall meet the *Secretary of the Interior's Standards for Archaeology and Historic Preservation* (Secretary's Standards).
2. **Applicable Professional Qualifications:** The DNR shall ensure that all work carried out pursuant to this PA shall be done by or under the direct supervision of historic preservation professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* in the appropriate discipline.
3. **Consultant Qualifications:** The NPS and DNR shall ensure that consultants retained for services pursuant to this PA meet the Professional Qualifications Standards.

B. FORT SNELLING UPPER POST GUIDANCE DOCUMENTS

1. **Fort Snelling Specific Guidance Documents:** Fort Snelling Upper Post Guidance Documents (Fort Snelling Guidance Documents) have been developed to provide the parties to this PA with the necessary guidance to fulfill the obligations of this PA. A listing of the Fort Snelling Guidance Documents are attached hereto in Appendix F which is attached hereto and made a part hereof. New documents may be added to this list by mutual agreement of the Parties without amendment to this PA. Prior to adding said documents to Appendix F they must be reviewed and approved in writing by the Parties.

VII. PROJECT CHANGES AND UNANTICIPATED DISCOVERIES

A. PROJECT CHANGES.

1. **Post 106 Review Changes:** If a change to an Undertaking is proposed following completion of a Section 106 review under Stipulation IV of this PA the DNR will review the proposed change to determine if it requires additional review. For any changes requiring review, the DNR will re-initiate consultation and complete review pursuant to Stipulation IV.

B. UNANTICIPATED DISCOVERIES

1. Discovery of Unidentified Resources:

- a. Notification: If previously unidentified archaeological resources are discovered or a known historic property will be impacted in an unanticipated manner after the DNR has completed the 106 process as set forth in Stipulation IV, the DNR will notify NPS and the MnHPO as soon as practicable.
- b. Halt in Construction: In all instances, DNR will ensure construction activities at the location 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 NPS, the MnHPO, and other appropriate consulting parties.
- c. Recommendation of Construction: All requirements of 36 CFR 800.13 will be met prior to resuming construction at the location of the discovery.

2. Evaluation and Review of New Discoveries:

- a. Review of Discovery: DNR will evaluate the National Register Historic Property (NRHP)-eligibility of the newly discovered resource or property using professional staff or consultants meeting the Professional Qualification Standards set forth in Stipulation VI of this PA.
- b. Discoveries Eligible for NRHP: If the resource or property is found to be eligible for the NRHP, the DNR shall determine the Undertaking effect on the resource or property and, in consultation with NPS, MnHPO, and applicable consulting parties, prepare a plan for avoiding, minimizing, or mitigating any adverse effects to the newly discovered resource or historic properties.
- c. Avoidance Mitigation Plan Requirements: DNR will provide the NPS, MnHPO, and consulting parties with a written plan to resolve any adverse effects. The plan shall be in writing and delivered to the NPS and MnHPO Authorized Agents and any applicable consulting party as defined in 36 CFR 800.2(c).
 - i. *Pre-construction Discoveries:* If construction has not begun, the plan shall be reviewed pursuant to the requirements set forth in Stipulation IV.
 - ii. *Post Construction Discoveries:* If construction has begun, and the NPS, MnHPO or other consulting parties fail to respond in writing within two (2) business days after receipt of the plan, DNR may carry out the plan.
 - iii. If the NPS, MnHPO or other consulting parties object to the plan, the matter will be resolved according to the Dispute Resolution provisions of this PA set forth in Stipulation VIII.

C. TREATMENT OF HUMAN REMAINS

1. **Statement of Intent:** The NPS, MnHPO, and DNR will make every effort to protect and preserve all cemeteries, including prehistoric and historic graves, during construction and maintenance activities. Avoidance and preservation in place is the preferred option for the treatment of human remains. The following steps will be taken any time human burials are unearthed, or other artifacts associated with mortuary features are found during construction.
2. **Construction Contract Requirements:** Every construction contract on the Complex shall require the contractor to:
 - a. Upon discovery of possible human remains during construction, including unidentified bones or mortuary features, immediately cease work in the area of the discovery;
 - b. Take appropriate steps to secure the site, including fencing off the discovery area and covering any possible remains; and
 - c. Immediately notify local law enforcement, the Office of the State Archaeologist (OSA), and the DNR.
3. **Notification Requirements:** DNR shall notify the NPS, MnHPO, and any consulting parties within twenty-four (24) hours of discovery of potential human remains as set for in this Section. The OSA, shall coordinate with the Minnesota Indian Affairs Council (MIAC) on any remains thought to be Indian remains in accordance with Minn. Stat. § 307.08.
4. **Protocol for Dealing with Human Remains:**
 - a. If it is determined that the identified bones are human remains, the OSA and the DNR shall work together according to each agency's respective jurisdiction to assure compliance with Minn. Stat. § 307.08.
 - b. If it is determined that the identified bones are human remains, NPS, DNR, and OSA shall work together to perform any necessary consultation in order to meet NPS's responsibilities under Section 106.

VIII. EMERGENCY REPAIRS

A. EMERGENCY DEFINED.

1. For purpose of this Stipulation an emergency repair is a repair necessitated by immediate health and safety issues including water infiltration, storm/earthquake damage, fire damage, structural integrity of historic buildings or vandalism

B. EMERGENCY WORK.

1. Emergency work shall be undertaken pursuant to the requirements of 36 CFR 800.12(d).

IX. DISPUTE RESOLUTION

A. OBJECTIONS.

1. **Notice of Objection:** Any Signatory Party to this PA may object in writing at any time to the manner in which the terms of this PA are being implemented, or to any document prepared in accordance with the terms of this PA.

B. THIRTY (30) DAY CONSULTATION PERIOD.

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1. **Consultation:** The non-objecting Signatory Parties will consult with the objecting party in an attempt to resolve the objection for no more than thirty (30) calendar days following the receipt of notice of the objection.

C. APPEAL TO COUNCIL.

1. **Appeal Process:** If at the end of thirty (30) calendar days, the objection cannot be resolved, the NPS will request recommendations/comments from the Council pursuant to 36 CFR 800.2(b) (2) and/or 36 CFR 800.7(c). If the NPS requests comments from the Council, the parties will consider the Council's comments, and in accordance with 36 CFR 800.7(c)(4), the NPS will make a final decision.

X. REPORTING, AMENDMENTS, AND TERMINATION

A. REPORTING.

1. **Annual Report and Meeting:** The DNR shall schedule an Annual meeting and submit an Annual Report to the Authorized Agents for the NPS and the MnHPO. The Annual Report shall summarize all Undertakings on the Complex reviewed pursuant to Stipulation IV of this PA over the one (1)-year period. The report will highlight any significant issues regarding preservation of the Complex.
 - a. The first Annual Report will be due one (1) years after final execution of the PA and every year thereafter. The Annual Report shall be completed prior to the Annual Meeting between the Authorized Agents and shall be reviewed at the Annual Meeting.
 - b. The Annual Report shall convert to a Biennial Report in year five (5) of this PA

B. AMENDMENTS.

1. **PA Amendments:** Consistent with the requirements of 36 CFR 800.6(c)(1), this PA may be amended upon written request of any Signatory Party to the PA, provided that any such amendment is in writing and executed by the Signatory Parties to this PA.

C. TERMINATION.

1. **Termination of PA:** Any Signatory Party to this PA may terminate the PA by providing at least ninety (90) days written notice to the other parties. Notwithstanding the forgoing, during the ninety (90)-day termination period, the Signatory Parties shall consult in order to seek agreements, amendments, or other actions to avoid termination. In the event of termination of this PA, the NPS (with the assistance of DNR) shall comply with 36 CFR 800 for individual Undertakings on the Complex.

XI. DURATION

A. DURATION.

1. **PA Duration:** This PA shall become effective upon execution by all Signatory Parties and shall remain in effect for ten (10) years. Upon expiration, all proposed Undertakings must be reviewed in accordance with 36 CFR 800.

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B. RENEWAL.

1. **PA Renewal:** One year before this PA is set to expire, the NPS shall consult with the Signatory Parties to this PA to determine interest in renewing this PA. The PA may be extended for additional terms upon the written consent of the Signatory Parties to this PA.

Execution and implementation of this PA by the NPS, the MnHPO, and the DNR evidences that the NPS has taken into account the effects of any proposed Undertakings on historic properties.

NATIONAL PARK SERVICE

John Anfinson, Superintendent

Date

MINNESOTA HISTORIC PRESERVATION OFFICE

Barbara Mitchell Howard, Deputy State Historic Preservation Officer

Date

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Thomas J. Landwehr, Commissioner

Date

APPENDIX A

LEGAL DESCRIPTION OF FORT SNELLING UPPER POST COMPLEX

Consisting of four separate areas, known respectively as the “Golf Course,” the “Polo Grounds,” “Officer’s Row,” and “Area J”, situated in Sections Twenty (20) and Twenty-nine (29), Township Twenty-eight (28) North, Range Twenty-three (23) West of the Fourth Principal Meridian, Hennepin County, State of Minnesota, and more particularly described as follows:

Commencing at a concrete monument with an aluminum disk marking the southwest corner of Section Twenty (20); thence S 0°16’33” E along the west line of Section Twenty-nine (29) 771.38 feet; thence S 60°34’28” E 2326.03 feet; thence S 46°14’26” E 166.37 feet; thence N 37°44’49” E 229.13 feet to an iron pipe; thence S 60°34’28” E 30.08 feet to the point of beginning;

Thence S 60°34’28” E 2375 feet, more or less, to a point in the west right-of-way boundary of State Highway Number 5;

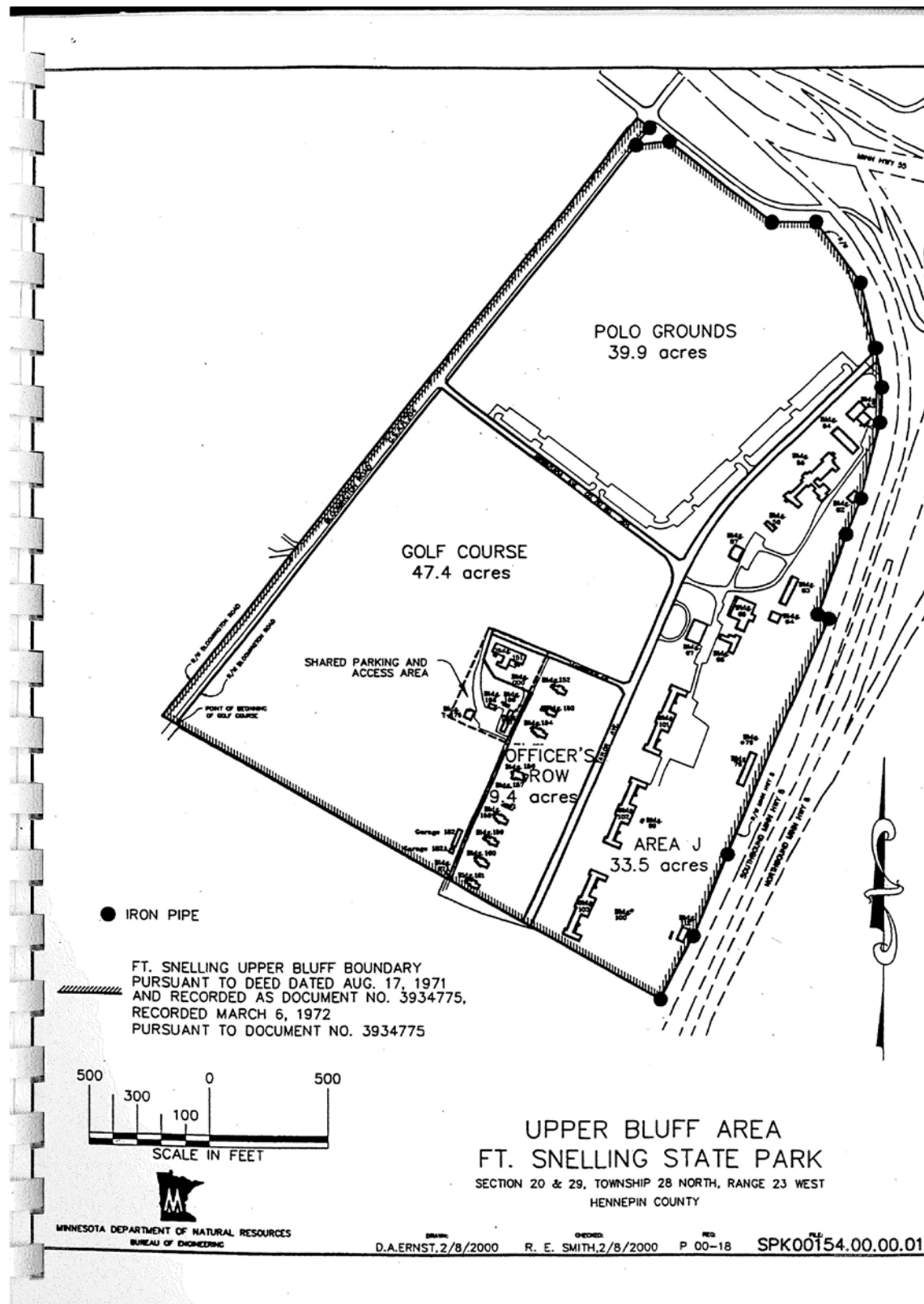
Thence in a northeasterly and northwesterly direction along said boundary to its point of intersection with the west boundary of the right-of-way of Bloomington Road;

Thence S 37°44’49” E 3197 feet, more or less, along the said west boundary of Bloomington Road to the point of beginning, containing 141 acres, more or less, and being a portion of the Veterans Administration Hospital Reservation, Fort Snelling, Minnesota.

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APPENDIX B

MAP OF FORT SNELLING UPPER POST COMPLEX



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APPENDIX C

MAP OF THE AREA OF POTENTIAL EFFECTS

This map documents the area of potential effects (APE) and takes into account potential direct and indirect effects for the transfer from Lands to Parks to Historic Surplus Property.

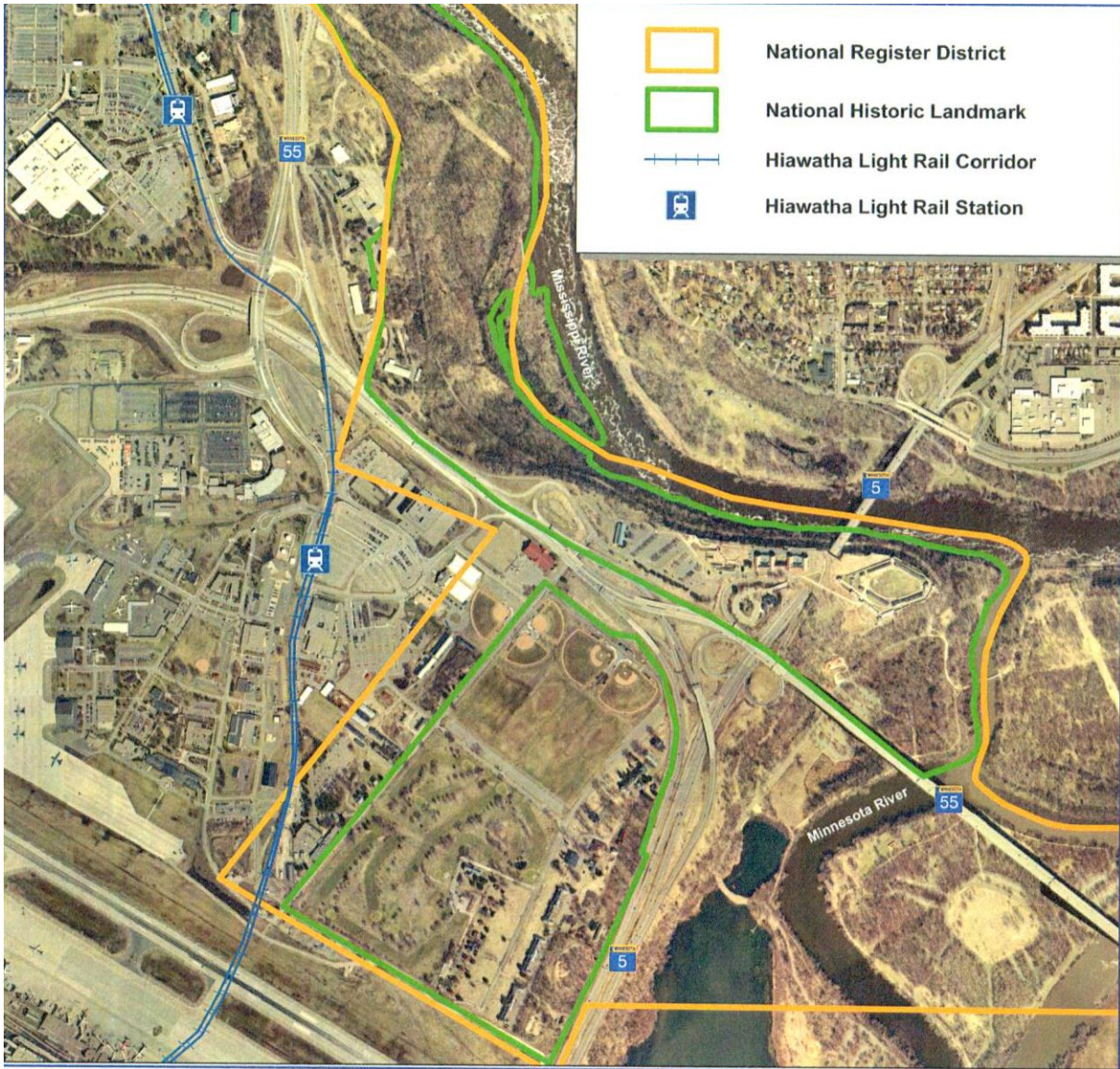
APEs for individual Undertakings will be determined pursuant to Stipulation II of the PA.



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APPENDIX D

FORT SNELLING HISTORIC DISTRICT & NATIONAL HISTORIC LANDMARK BOUNDARIES



APPENDIX E ACTIVITIES NOT REQUIRING ADDITIONAL REVIEW

The following projects are exempt from further review or consultation with the NPS or MnHPO under the terms of this PA.

1. Maintenance, exterior and interior, of buildings and structures and in-kind repair of existing architectural features provided that the work does not result in alteration of the integrity of the historic material or feature and which includes:
 - a. Housekeeping, routine maintenance, building monitoring, and other such actions that do not damage historic fabric.
 - b. Painting of historic structures (exterior and interior) or previously painted surfaces and to match existing color.
 - c. In-kind replacement of non-historic building components
 - d. In-kind replacement of mechanical and electrical components, equipment and appliances with items similar in appearance and function to originally approved items.
 - e. Fair housing requests for internal ADA reasonable accommodations such as grab bars in showers, counter height adjustments, or plumbing fixture modifications.
2. Maintenance and in-kind repair of roofs or parts of a roof, including existing gutter systems, that are deteriorated beyond repair and that does not result in alteration of the integrity of the historic material or feature.
3. 3. Minor grading of terrain within four feet of building perimeter to achieve positive water runoff. Grading can only occur in zones that have had previous archaeological investigations with negative results. Routine grounds maintenance such as grass cutting and treatment, maintenance of shrubs, and tree trimming. In-kind replacement of non-historic vegetation is permitted.
4. Maintenance and repair of existing roads, parking areas, and sidewalks, including repaving and grading, within previously disturbed areas.
5. Repair, maintenance, or in-kind replacement of utility lines, transmission lines, and non-historic fences and walls within previously disturbed areas.
6. Health and safety activities such as removal of non-historic debris from buildings and non-destructive testing for radon gas, asbestos, lead-based paint, lead pipes, and hazardous materials and wastes.
7. Minor energy improvements such as the installation of weather-stripping and door sweeps.
8. Conducting non-building/structure altering or non-ground disturbing activities for pest control.

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9. Maintenance of existing facilities that does not involve new or additional ground disturbance (e.g. maintenance or in-kind replacement of barriers, signage, light fixtures, non-historic curbs and sidewalks).
10. Mitigation or abatement of hazardous materials where this work can be accomplished without impact to historic integrity or character-defining features of historic properties in situations such as the following:
 - a. Removal of asbestos insulations from piping and around duct work in open areas;
 - b. Removal of damaged asbestos floor tile and replacement with similar non-asbestos tile;
 - c. Carpeting over damaged asbestos floor tiles which do not contribute to the historic significance of the structure;
 - d. Encapsulation of lead-based paint in window trim and molding where there is no change to appearance.
11. Conducting small-scale and select destructive testing in contributing buildings to expose and assess concealed structural conditions (such as removal of small areas of plaster wall finish) and/or to assess material capacities (such as masonry push testing or concrete slab coring) when performed in areas that are easily repairable or otherwise inconspicuous.
12. Emergency repairs for health and safety issues such as water infiltration, storm/earthquake damage, structural stabilization, fire damage, or significant vandalism. Such repairs shall be limited to the minimum amount of work necessary to ensure life safety and health of residents, and permanent repairs must be reviewed as provided for elsewhere in this agreement.

APPENDIX F

FORT SNELLING UPPER POST GUIDANCE DOCUMENTS

Each document is available digitally from the MnDNR or the NPS upon request and can be found on the Mississippi National River and Recreation Area web site at www.nps.gov/miss/parkmgmt/index.htm.

“Fort Snelling Upper Post Open Space and Landscape Development Guidelines” (Summer 2008).

“Fort Snelling West District – Historical Context Study and Development Guidelines” (April 2010).

“Fort Snelling Light Rail Transit and Upper Post Master Plan” (February 2011).

“Fort Snelling State Park Area J and Officer’s Row Development Design Guidelines” (Winter 2003).

Applicable portions of the Design Guidelines for Minneapolis Park and Recreation Board Development at Fort Snelling (April 1999).

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