

Appendix V

Draft Programmatic Agreement

**PROGRAMMATIC AGREEMENT
AMONG
THE U.S. DEPARTMENT OF ENERGY
AND
THE U.S. ARMY CORPS OF ENGINEERS
AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
FOR
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED
BY THE
GREAT NORTHERN TRANSMISSION LINE PROJECT**

WHEREAS, pursuant to the authority delegated by the President of the United States under Executive Order 10485, as amended by Executive Order 12038, the U.S. Department of Energy (“DOE”) receives and considers applications for permits for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States (“Presidential permit”); and

WHEREAS, Executive Order 10485, amended by Executive Order 12038, authorizes DOE to issue a Presidential permit if, *inter alia*, the issuance of the permit is found to be consistent with the public interest; and

WHEREAS, in deciding whether issuance of a Presidential permit is in the public interest, DOE determines the proposed project’s impact on electric reliability as well as its potential environmental impacts, including potential impacts to cultural and historic resources; and

WHEREAS, Minnesota Power, an operating division of ALLETE, Inc., has applied to DOE’s Office of Electricity Delivery and Energy Reliability for a Presidential Permit for the Great Northern Transmission Line Project (“Project”) in accordance with the DOE’s applicable administrative procedures at 10 CFR § 205.320 *et. seq.*; and

WHEREAS, the issuance of a Presidential permit by DOE for the border crossing indicates that there is no federal objection to the proposed international border crossing and Project, but does not mandate that the Project be undertaken; and

WHEREAS, the proposed Project consists of an approximately 220-mile, overhead, single-circuit 500 kV AC transmission line between the Minnesota - Manitoba border crossing northwest of Roseau, Minnesota, and terminating at the existing Blackberry 230/115 kV Substation near Grand Rapids, Minnesota; includes associated substation facilities and new transmission system modifications at the Blackberry Substation site, and construction of a new 500 kV Series Compensation Substation adjacent to and east of the existing Blackberry 230/115kV Substation; and ancillary facilities (such as temporary work areas, contractor yards, lay down areas, access roads, borrow and disposal sites); and

WHEREAS, Section 106 of the National Historic Preservation Act of 1966, as amended (16U.S.C. 470f) (“Section 106”), directs federal agencies to take into account the effects of their

undertakings on historic properties listed in or eligible for inclusion in the National Register of Historic Places (“National Register”) and to afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment; and

WHEREAS, the procedures set forth in 36 CFR Part 800 - Protection of Historic Properties define how federal agencies meet their statutory responsibilities pursuant to Section 106; and

WHEREAS, in considering whether issuance of a Presidential permit to Minnesota Power would be consistent with the public interest, the DOE has determined to treat the issuance of a Presidential permit for the proposed Project is an undertaking (“Undertaking,”) as defined in 36 CFR § 800.16(y); and

WHEREAS, construction of portions of the Project will also require authorization by the U.S. Army Corps of Engineers (“USACE”) pursuant to Section 404 of the Clean Water Act of 1973 (33U.S.C. §1344), and of the Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C § 403), and the USACE and the DOE have agreed that the DOE is the lead federal agency for purposes of compliance with Section 106, in accordance with 36 CFR § 800.2(a)(2); and

WHEREAS, consistent with 36 CFR § 800.4(a) and 800.16(d), DOE has determined that the area of potential effects(“APE”) for this undertaking is defined to include all areas that could be directly or indirectly affected by construction and/or operation of the Project, including ground-disturbing activities associated with installation of the transmission line, construction of the converter station, and ancillary facilities (such as temporary work areas, contractor yards, laydown areas, and access roads), whether contiguous with the route or not; and

WHEREAS, consistent with 36 CFR § 800.4(a) and 800.16(d), DOE has determined that the APE for this undertaking includes a direct APE which encompasses the maximum width of a route alternative, an area approximately 3000-feet wide for initial identification and evaluation efforts; and

WHEREAS, the proposed Project will be constructed within a 200-foot right-of-way (“ROW”) that is located within a 1000-3000 foot-wide route alternative; and

WHEREAS, the Minnesota Public Utilities Commission (“MN PUC”) will select the final route alternative and proposed alignment and issue a Route Permit for the Project under the Minnesota Power Plant Siting Act (“PPSA”), and

WHEREAS, DOE has determined the direct APE will encompass the 200-foot wide ROW for detailed identification and evaluation efforts once the route for the proposed Project is determined by the MN PUC; and

WHEREAS, consistent with 36 CFR § 800.4(a) and 800.16(d), DOE has determined that the APE for this undertaking includes an indirect APE that will address the potential indirect visual effects of the undertaking, which will extend for a maximum of [one-quarter mile] on either side of the centerline (will vary with topography) of the proposed 200-foot ROW once the final alignment is established by the MN PUC; and

WHEREAS, the Project's APE generally includes the geographic area defined in the attached maps and may be further refined as a result of additional consultation and/or cultural resources investigations and/or engineering assessments; and

WHEREAS, the Project is located within the identified area of interest of federally recognized Indian tribes, and DOE invited the Assiniboine and Sioux Tribes of the Fort Peck Reservation; Bad River of Lake Superior Chippewa; the Bois Forte Band of Ojibwe; the Cheyenne River Sioux Tribe; the Crow Creek Sioux; the Flandreau Santee Sioux; the Fond du Lac Band of Lake Superior Chippewa; the Forest County Potawatomi Community; the Grand Portage Band of Ojibwe; the Hannahville Indian Community; the Keweenaw Bay Indian Community; the Lac Courte Oreilles Band of Lake Superior Chippewa; the Lac Vieux Band of Lake Superior Chippewa; the Leech Lake Band of Ojibwe; the Lower Brule Sioux; the Lower Sioux Tribe; Mille Lacs Band of Ojibwe; the Northern Arapaho Tribe; the Northern Cheyenne Nation; the Prairie Island Indian Community; the Shakopee Mdewakanton Sioux Community; the Sokaogon Chippewa Community; the Red Cliff Band of Lake Superior Chippewa; the Red Band of Chippewa Nation; the Rosebud Sioux Tribe; the Santee Sioux Nation; Sisseton-Wahpeton Oyate of Lake Traverse Reservation; the Spirit Lake Tribe; the Standing Rock Sioux Tribe; the Three Affiliated Tribes of Fort Berthold; the Turtle Mountain Band of Chippewa; the Upper Sioux Community; the Wahpekute Band of Dakota; the White Earth Band of Ojibwe; and the Yankton Sioux Tribe to participate in government-to-government consultation for the Project; and

WHEREAS, the DOE has consulted and continues to consult with the Assiniboine and Sioux Tribes of the Fort Peck Reservation; Bad River of Lake Superior Chippewa; the Bois Forte Band of Ojibwe; the Cheyenne River Sioux Tribe; the Crow Creek Sioux; the Flandreau Santee Sioux; the Leech Lake Band of Ojibwe; the Lower Brule Sioux; the Lower Sioux Tribe; Mille Lacs Band of Ojibwe; the Northern Arapaho Tribe; the Northern Cheyenne Nation; the Red Cliff Band of Lake Superior Chippewa; the Red Lake Band of Chippewa Nation; the Rosebud Sioux Tribe; the Santee Sioux Nation; Sisseton-Wahpeton Oyate of Lake Traverse Reservation; the Spirit Lake Tribe; the Standing Rock Sioux; the Turtle Mountain Band of Chippewa; the Wahpekute Band of Dakota; and the White Earth Band of Ojibwe on a government-to-government basis in accordance with 36 CFR § 800.2(c)(ii); and

WHEREAS, for the purposes of providing the public the opportunity to comment on the National Historic Preservation Act Section 106 Consultation process and in accordance with 36 CFR §800.3(b), DOE makes cultural resources reports and information, including any "adverse effect" determinations publicly available on the GNTL project EIS website (<http://www.greatnortherneis.org>); and

WHEREAS, the DOE has determined that its undertaking associated with the Project has the potential to adversely affect historic properties listed in or eligible for the National Register and has consulted with the ACHP, the USACE, the Minnesota State Historic Preservation Office (SHPO), federally recognized Indian tribes, additional consulting parties, and the public, pursuant to 36 CFR § 800.14 of the regulations implementing Section 106; and

WHEREAS, DOE is phasing identification and evaluation of historic properties and application of the criteria of adverse effects in accordance with 36 CFR § 800.4(b)(2) and 36 CFR § 800.5(a)(3), respectively, because the GNTL project alternatives consist of route corridors covering a large land area; and

WHEREAS, pursuant to 36 CFR § 800.14(b)(1)(ii) and § 800.14(b)(1)(v), DOE has elected to execute this Programmatic Agreement (“PA”) because effects on historic properties cannot be fully determined prior to the undertaking and other circumstances warrant a departure from the normal Section 106 process; and

WHEREAS, for the purposes of this PA, Consulting Parties are parties that have consultative roles in the Section 106 consultation under 36 CFR §800.2; Signatories are parties with sole authority to execute, amend, or terminate this PA under 36 CFR §800.6(c)(1) and §800.14(b)(2)(iii); Invited Signatories are parties that sign this PA at the invitation of DOE under §800.6(c)(2) and by signing have the same rights with regard to seeking amendment or termination of this PA as other signatories except that refusal of any party invited to become a signatory to this PA does not invalidate this PA, as set forth in §800.6(c)(2)(i)-(iv); and

WHEREAS, pursuant to 36CFR §§ 800.2(c)(2), 800.6(c)(3), and 800.2(c)(4), the Red Lake Band of Chippewa Indians (“Red Lake Nation”) and Minnesota Power have participated in consultation and have been asked to be Invited Signatories to this PA; and

WHEREAS, pursuant to 36CFR §§ 800.2(c)(2), 800.6(c)(3), and 800.2(c)(4), the Bois Forte Band of Chippewa Indians, and White Earth Band of Ojibwe, Leech Lake Band of Ojibwe, and Mille Lacs Band of Ojibwe have participated in consultation and have been asked to be Concurring Parties to this PA; and

WHEREAS, on January 14, 2015, DOE invited the ACHP to participate in consultation, in accordance with 36 CFR § 800.6(a)(1)(i)(C), providing the specific documentation; and

WHEREAS, the ACHP has elected to participate in consultation pursuant to 36 CFR § 800.6(a)(1)(iii).

NOW, THEREFORE, the DOE, the USACE and the Minnesota SHPO (the “Signatory Parties”) agree that the Project shall be administered and implemented in accordance with the following stipulations to satisfy the responsibilities of the DOE under Section 106 for all aspects of the Project.

STIPULATIONS

I. APPLICABILITY

DOE, USACE, and Minnesota Power and Red Lake Nation shall ensure that the following stipulations are carried out:

- A. DOE, USACE, and SHPO will review the undertaking in accordance with the terms of this PA.
- B. This PA will be in effect for a period of five (5) years from the date of its execution.
- C. Six (6) months prior to the date on which the PA will expire; the DOE shall notify the Signatories, Invited Signatories and Consulting parties of the impending expiration. DOE, as appropriate, may consult with the signatory and consulting parties to reconsider the terms of the PA to amend it and shall notify the parties as to the course to be pursued.
- D. This PA may be amended when such an amendment is agreed to in writing by all Signatories to this PA. The amendment will be effective on the date it is executed by all of the Signatories to this PA and filed with the ACHP.
- E. DOE will send a copy of this PA to the ACHP upon execution.

II. CONDITIONS

This PA is prepared with reference to:

1. The ACHP's Section 106 Archaeological Guidance (1/1/2009);
2. The ACHP's February 23, 2007 *Policy Statement Regarding the Treatment of Burial Sites, Human Remains, and Funerary Objects*;
3. The ACHP's *Meeting the "Reasonable and Good Faith Effort" Identification Standard in Section 106 Review*.
3. The Native American Graves Protection and Repatriation Act of 1990(25 USC 3001 *et seq.*) (NAGPRA) and its implementing regulations at 43 CFR Part 10;¹
4. Minnesota Statute 307.8, "Private Cemeteries Act", provisions established by the State Archaeologist and the Indian Affairs Council;
5. The Minnesota Historical Society's *SHPO Guidelines for History/Architecture Projects in Minnesota* (July 2009) and the Minnesota Historical Society's *SHPO Manual for Archaeological Projects in Minnesota* (July 2005);

¹Pursuant to 43 CFR Part 10, NAGPRA applies to human remains, sacred objects, and items of cultural patrimony (described as "cultural items" in the statute) located on federal or tribal lands or in the possession and control of federal agencies or certain museums. The Project will not occupy federal or tribal lands. Notwithstanding the limits of NAGPRA's applicability, the principles described in NAGPRA and its implementing regulations will serve as guidance for MN Power's actions should remains or associated artifacts be identified as Native American, and to the extent such principles and procedures are consistent with any other applicable requirements.

6. *The Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-44742, September 29, 1983), as amended and revised;
7. The DOE's *American Indian and Alaska Native Tribal Government Policy* (DOE 2006); and
8. DOE Policy 141.1: *Management of Cultural Resources*.

III. PROFESSIONAL STANDARDS

- A. The identification, evaluation and other surveys and studies required under the terms of this PA will be carried out by or under the direct supervision of an individual who meets, or individuals who meet, at minimum, the professional qualification standards for Archaeology and/or Architectural Historian defined in the *Secretary of the Interior's Professional Qualification Standards* (48 FR 44738-44739, September 29, 1983).

IV. IDENTIFICATION AND EVALUATION

A. Level of Effort

1. In accordance with 36 CFR §800.4(a) through (c), DOE and USACE shall consult with SHPO, Minnesota Power, Red Lake Nation, THPO(s), participating tribes, and other consulting parties to ensure that the level of effort for the cultural resource survey (or surveys) that will be conducted to identify and evaluate historic properties, including those to which Indian tribes might attach religious or cultural significance, that may exist within the APE.
2. In implementing Stipulation III.B, DOE and USACE shall acknowledge the special expertise of Indian tribes in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them.

B. Identification of Historic Properties Within the APE for Visual Effects

DOE and USACE shall consult with the SHPO to determine the level of effort, including survey scope, methods and procedures, needed to identify National Register listed or eligible architectural resources in the visual APE which might be affected by the Project.

1. In determining the level of effort for survey, DOE and USACE shall take into account the influence of the existing topography, vegetation, landuse, with the recognition that, pursuant to 36 CFR §800.5(a), an adverse effect occurs when the integrity, specifically the setting and feeling, of one or more of the qualifying characteristics of a historic property is diminished.

2. Minnesota Power shall implement the level of effort for any identification survey once its scope, methods and procedures have been agreed upon by DOE, USACE and the SHPO. If the parties cannot reach agreement, the matter will be resolved in accordance with Stipulation XII.
3. Upon completion, Minnesota Power will describe the implementation of the survey in a draft report prepared pursuant to Stipulation XI.

C. Identification and Evaluation of Historic Properties Within the APE for Direct Effects

DOE and USACE shall consult with SHPO, Minnesota Power, Red Lake Nation, THPO(s), participating tribes, and other consulting parties to ensure that the level of effort for the identification survey meets the reasonable and good faith effort per 36 CFR 800.4(b)(1) and that identification will be in accordance with the *Secretary of the Interior's Standards and Guidelines for Identification*.

1. For those portions of the APE for direct effects lying within the exterior boundaries of Red Lake Reservation, DOE and USACE shall consult with Red Lake Nation in lieu of the SHPO in accordance with 36 CFR §800.3(c)(1).
2. DOE, USACE, Red Lake Nation, THPO(s) and participating tribes agree that the APE for Direct Effects may represent only a portion of a larger traditional landscape that is considered eligible for listing in the National Register for the purposes of Section 106 review under the terms of this PA. Traditional resources identified in the APE for Direct Effects by DOE, therefore, may be considered contributing to this eligible traditional landscape. Traditional resources that are part of this National Register eligible landscape will be treated in a manner that preserves their integrity and potential to contribute to the historic property.
3. DOE and USACE shall consider applicable guidance prepared by the SHPO, the ACHP, DOE, USACE, and the National Park Service as discussed in Stipulation II and be guided by the findings and recommendation of the *Great Northern Transmission Line Cultural Resources Phase 1A Report*.
4. DOE and USACE shall consult with the SHPO, Red Lake Nation, THPO(s) and participating tribes to determine the level of effort, including the scope, methods and procedures, of the survey or surveys to be conducted to identify National Register listed or eligible archeological sites and traditional resources in the APE for direct effects.
5. In determining level of effort, DOE and USACE will consult with SHPO, Red Lake Nation, THPO(s), and other participating tribes to ascertain that:

- a. survey results of identification activities are integrated into the preservation planning process; and
 - b. identification activities include explicit procedures for record keeping and information distribution that takes into account the need to restrict certain information that may be sensitive to tribal culture or history.
- 6. The identification of direct effects effort will include:
 - a. an archaeological survey (Phase I, and recommendations for Phase II evaluation, if necessary);
 - b. an history architecture survey (Phase I and recommendations for Phase II survey, if necessary); and
 - c. an ethnographic, ethnohistoric, or traditional cultural properties study.
- 7. Minnesota Power shall implement the level of effort for the identification survey once its scope, methods and procedures have been agreed upon by DOE, USACE, the SHPO, and, as appropriate, THPO(s) and participating tribes. If the parties cannot reach agreement, the matter will be resolved in accordance with Stipulation XII.
- 8. Upon completion, the Minnesota Power will describe the implementation of the Survey(s) in a report prepared pursuant to Stipulation IV.F.

D. Evaluation

- 1. When applying the National Register criteria to identified architectural resources, DOE, USACE, and Minnesota Power shall consult with the SHPO. If Minnesota Power and the SHPO can agree on National Register eligibility, then the resource will be treated on the basis of that agreement. If the parties fail to reach agreement, Minnesota Power shall submit the matter to DOE and USACE for resolution in accordance with 36 CFR §800.4(c)(2).
- 2. When applying the National Register criteria to identified historic architectural, archeological and traditional resources located *off tribal lands*, Minnesota Power shall evaluate the historic properties and consult with the SHPO and participating tribes. If Minnesota Power, the SHPO, and participating tribes can agree on National Register eligibility, then the resource will be considered in accordance with this determination. If the parties fail to reach agreement, Minnesota Power shall submit them after to DOE and USACE for resolution in accordance with 36CFR§800.4(c)(2).
- 3. When applying the National Register criteria to identified archeological and traditional resources located *on tribal lands*, DOE, USACE, and Minnesota

Power shall consult with the SHPO and participating tribes. If Minnesota Power, the SHPO, and participating tribes can agree on National Register eligibility, then the resource will be considered in accordance with this determination. If the parties fail to reach agreement, Minnesota Power shall submit them after to DOE and USACE for resolution in accordance with 36CFR§800.4(c)(2).

4. In implementing Stipulation IV, DOE and USACE shall acknowledge the special expertise of Indian tribes in assessing the National Register eligibility of historic properties that may possess religious and cultural significance to them.

E. Avoidance

1. Prior to completing an evaluation in accordance with Stipulation IV.D, Minnesota Power may propose measures to avoid effects to identified archeological, architectural, or traditional resources.
2. Under the terms of this PA, avoidance of adverse effects is preferred.
3. DOE and USACE shall consult with the SHPO, Red Lake Nation, THPO(s) and participating Indian tribes to identify reasonable avoidance measures. Minnesota Power shall incorporate agreed upon measures into the Great Northern Transmission Line Project plans and specifications.

F. Reporting

1. The survey report(s) drafted in accordance with Stipulations IV.B and C shall include a map or maps showing the APE and ROW along with the location of identified archeological, architectural, or traditional resources, including any that are National Register listed or have been previously determined eligible.
2. The draft reports shall also contain recommendations regarding the National Register eligibility of identified resources; specify those resources for which additional study might be needed; and make recommendations regarding effects and those measures that might avoid, minimize or mitigate adverse effects.
3. Minnesota Power shall submit the draft report to DOE, USACE, Red Lake Nation, THPOs, and participating tribes for review. All parties shall have thirty (30) days from receipt to provide written comments to DOE and Minnesota Power on the findings and recommendations presented in the draft survey report.
4. DOE and Minnesota Power shall ensure that written comments submitted in a timely manner are taken into account in the preparation of the final report(s) and implementation of the terms of the PA.

5. Minnesota Power shall provide each federal agency, the SHPO, Red Lake Nation and participating parties with one (1) bound hard copy of the final survey report with unbound individual historic property inventory forms.
6. Red Lake Nation shall provide each federal agency, the SHPO, and Minnesota Power with one (1) unbound hard copy of their final survey report.

V. TREATMENT

- A. If, through implementation of Stipulation IV historic properties are identified in the APE, DOE and USACE shall consult with the SHPO, Red Lake Nation, other THPO(s) and participating Indian tribes to apply the criteria of adverse effect in accordance with 36 CFR §800.5(a).
- B. If historic properties will be adversely affected, DOE and USACE shall consult in accordance with 36 CFR §800.6(a) to identify appropriate measures that are in the public interest to avoid, minimize or mitigate adverse effects to historic properties, following public notification of an “adverse effect” determination. If National Register eligible archeological or traditional resources that are on tribal lands will be adversely affected, DOE and USACE shall consult with Red Lake Nation instead of SHPO in accordance with 36 CFR §800.3(c)(1).
- C. When agreement between DOE, USACE, the SHPO, Red Lake Nation, THPO(s) and participating tribes can be reached on how to resolve the adverse effect, Minnesota Power shall prepare a Treatment Plan (Plan) describing the measures to be carried out, the manner in which they will be carried out, and a schedule for their implementation.
 1. In resolving adverse effects to National Register listed or eligible archeological sites, the federal agencies and consulting parties shall not be limited to the consideration of data recovery.
 2. When treatment measures include archeological data recovery, the Plan will identify the specific research questions to be addressed with an explanation of the irrelevance, the archeological methods to be used, and provisions for public interpretation and education subject to restrictions established by 36 CFR §800.6(a)(5).
 3. In resolving adverse effects to National Register eligible traditional cultural properties or those contributing to the traditional landscape identified in Stipulation IV.B, DOE shall take into account the recommendations of the Red Lake Nation Report and participating tribes.
- D. Minnesota Power shall submit the Plan to DOE, USACE, Red Lake Nation, THPO(s) and the participating Indian tribes for review. These parties shall have thirty (30) days from receipt to submit a written review of the measures and terms

of the Plan. DOE and USACE shall ensure that the Plan which is implemented takes into account timely comments and recommendations submitted by the consulting parties.

- E. If the agencies and consulting parties cannot agree on measures to resolve adverse effects, the dispute shall be resolved in accordance with Stipulation XII.

VI. TIMING

- A. DOE and USACE shall ensure that the requirements of Stipulations IV and V are implemented prior to the start of Great Northern Transmission Line Project construction.
- B. [OTHER TIMING CONSTRAINTS IDENTIFIED THROUGH CONSULTATION OR DUE TO OTHER ENVIRONMENTAL CONCERNS (e.g., for threatened or endangered species)]

VII. CURATION

- A. Minnesota Power shall return all artifacts and materials recovered through implementation of the terms of this PA to the respective landowner. Prior to the return, Minnesota Power shall afford the landowner an opportunity to donate the artifacts and materials to Red Lake Nation or appropriate THPO(s) for curation of tribal archives.
- B. Any artifacts, materials, or records removed from federal land that are not subject to the Native American Graves Protection and Repatriation Act (NAGPRA) or will be curated in accordance with 36 CFR Part 79, "*Curation of Federally-Owned and Administered Archaeological Collections*."
- C. Artifacts and materials retrieved from *tribal lands* will be curated in accordance with appropriate THPO standards and policy.

VIII. CONSTRUCTION MONITORING

- A. If determined as a treatment measure (Stipulation V), Minnesota Power will develop a Monitoring Plan for the monitoring of construction activities in close proximity to historic properties. Construction monitors (archaeological consultants or tribal) will be under the direct supervision of a professional who meets the SOI Professional Qualifications Standards for archaeology. Any unanticipated discoveries or effects will be treated in accordance with Stipulation X.

- B. It is understood that Minnesota Power will permit Red Lake Nation or other construction monitors (archaeological or other tribal) to inspect construction in a manner that is both safe and unimpeded.
- C. Costs associated with construction monitoring by contractors or Red Lake Nation will be the responsibility of Minnesota Power.

IX. CONFIDENTIALITY

DOE will protect information about historic properties of religious and cultural significance to Indian tribes, including location information or information provided by Indian tribes to assist in the identification of such properties, to the extent allowed by Section 304 of the National Historic Preservation Act [16 U. S. C. 470w3], 36 CFR §800.11(c) and other applicable laws, including Exemption 3 of the Freedom of Information Act [5 U.S.C. 552(b)].

X. POST-REVIEW UNANTICIPATED DISCOVERIES

- A. If previously unidentified historic properties or unanticipated effects to historic properties are discovered during the Great Northern Transmission Line Project construction, the construction contractor shall immediately halt all activity within a one hundred (100) foot radius of the discovery, notify Minnesota Power of the discovery and implement interim measures to protect the discovery from looting and vandalism.
- B. Immediately upon receipt of the notification required in Stipulation X.A, Minnesota Power shall ensure that construction activities have halted, inspect the construction site to determine the extent of the discovery, clearly mark the area of the discovery, implement additional measures, as appropriate, to protect the discovery from looting and vandalism, and notify DOE, SHPO, Red Lake and the following Indian tribes upon discovery: – **[TRIBES]**.
- C. Upon receipt of notification, DOE, as appropriate, shall treat the discovery in accordance with 36 CFR § 800.13(b)(3) and (c).
- D. Treatment of Human Remains
 - 1. When the unanticipated discovery contains human remains or funerary objects and is located on federal tribal lands, DOE shall comply with NAGPRA [25 U.S.C. 3001 et. seq.] and its implementing regulations (43 CFR Part 10). Minnesota Power will implement the procedures in Attachment A for inadvertent discoveries of NAGPRA human remains and cultural items on non-tribal federal lands.
 - 2. Immediately following the discovery of human remains, Minnesota Power will notify Red Lake Nation and the following Indian tribes of the discovery: **[TRIBES]**

3. If the construction contractor for Minnesota Power believes that a discovery contains human remains and the discovery is not located on federal or tribal lands, the construction contractor shall comply with Stipulation X.A. Immediately upon receipt of such notification, Minnesota Power shall comply with the procedures required by Minnesota Statute 390.005.
 - a. Minnesota Power shall notify the county coroner. Under the terms of this PA, Minnesota Power will also notify DOE, SHPO and consulting tribes of the discovery.
 - b. If the unidentified human remains are found outside of platted, recorded, or identified cemeteries and in contexts which indicate antiquity of greater than fifty (50) years, the coroner shall notify the Minnesota Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council in compliance with Section 307-08 of the Minnesota Private Cemeteries Act.
 - c. Suspected human remains shall not be further disturbed or removed until disposition has been determined by the OSA and the Minnesota Indian Affairs Council consistent with the guidance titled *State Archaeologist's Procedures for Implementing Minnesota's Private Cemeteries Act*. (Anfinson, 2008).
- F. At all times human remains must be treated with the utmost dignity and respect, and in a manner consistent with the ACHP's Policy Statement on the Treatment of Human Remains, Burial Sites and Funerary Objects (February 23, 2007).
- G. Minnesota Power shall ensure that the requirements of Stipulation X are incorporated into all construction contracts.

XI. REPORTING

Quarterly following the execution of this PA until construction is complete, Minnesota Power shall submit a written report to DOE, USACE, SHPO, Red Lake Nation, THPO(s) and participating tribes describing progress on implementation of the terms of this PA.

- A. At a minimum the report shall contain a summary of construction completed and underway during the period covered by the report and describe the location of this work.
- B. If mitigation measures are implemented as part of a Treatment Plan, Minnesota Power will also describe any mitigation measures that have been implemented, the schedule for completion of mitigation, the treatment of any post-review discoveries pursuant to Stipulation X, any scheduling changes proposed, any problems encountered, and any disputes addressed pursuant to Stipulation XII in the report.

- C. Minnesota Power may submit the report electronically to DOE, USACE, SHPO and consulting parties.

XII. DISPUTE RESOLUTION

- A. If at any time during implementation of this PA, a Signatory, Invited Signatory, or Concurring parties object to any action or any failure to act pursuant to this PA, they may file written objections with the DOE.
 - 1. The DOE will consult with the objecting party, and with other Signatory and/or Concurring parties as appropriate, to resolve the objection. The DOE may initiate on its own such consultation to resolve any of the DOE's objections to actions taken or products produced by any party pursuant to this PA.
 - 2. If the DOE determines that the objection cannot be resolved through consultation alone, the DOE will forward all documentation relevant to the dispute to the ACHP and request that the ACHP comment. After receiving all pertinent documentation, the ACHP will either:
 - a) Provide the DOE with recommendations, which the DOE will take into account in reaching a final decision regarding the dispute; or
 - b) Notify the DOE that it will comment pursuant to 36 CFR § 800.7(c)(1) through (c)(3) and Section 110(l) of the National Historic Preservation Act of 1966, as amended, and proceed to comment.
 - 3. The DOE will take into account any ACHP comments provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The DOE's responsibility to carry out all actions under this PA that are not the subject of dispute will remain unaffected.

XIII. DURATION, AMENDMENT, AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. This PA shall take effect on the date it has been fully executed by the Signatories to this PA and will remain in effect for a period of five (5) years.
- B. Any amendments to this PA shall take effect on the dates they are fully executed by the Signatories to this PA and filed with the ACHP.
- C. Any Signatory to this PA may propose that the PA be amended, whereupon the parties that have signed this PA shall consult to consider such an amendment. This PA is amended when such an amendment is agreed to in writing by all of those parties. The DOE or its

designess shall provide a copy of the amended PA to the ACHP within thirty (30) days of execution.

D. Any party that signs this PA may terminate this agreement by providing thirty (30) days written notice to the other signing parties, provided that the other signing parties are consulted during the thirty (30)-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the DOE will comply with 36 CFR Part 800 with regard to individual actions covered by this PA.

EXECUTION of this PA by the Signatories and implementation of the stipulations provided herein evidences that the DOE and USACE have taken into account the effects of this Project on historic properties and afforded the ACHP an opportunity to comment on those effects.

SIGNATORIES

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

BY: _____ DATE: _____

Name Barbara M. Howard
Title Deputy State Historic Preservation Officer

U.S. DEPARTMENT OF ENERGY

BY: _____ DATE: _____

Name Meghan Conklin
Title Deputy Assistant Secretary
National Electricity Delivery Division
Office of Electricity Delivery and
Energy Reliability

U.S. ARMY CORPS OF ENGINEERS

BY: _____

Name
Title

INVITED SIGNATORIES

MINNESOTA POWER

BY: _____ DATE: _____

Name
Title

RED LAKE NATION

BY: _____ DATE: _____

Name
Title

CONCURRING PARTIES

BOIS FORTE BAND OF OJIBWE

BY: _____ DATE: _____
Name
Title

WHITE EARTH BAND OF OJIBWE

BY: _____ DATE: _____
Name
Title

LEECH LAKE BAND OF OJIBWE

BY: _____ DATE: _____
Name
Title

OTHER

BY: _____ DATE: _____
Name
Title

OTHER

BY: _____ DATE: _____
Name
Title

OTHER

BY: _____ DATE: _____
Name
Title

OTHER

BY: _____ DATE: _____

Name