

**SECTION 106 PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION
AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
REGARDING THE CONSTRUCTION OF
THE INTERCHANGE PROJECT
MINNEAPOLIS, MINNESOTA**

WHEREAS, the Hennepin County Regional Railroad Authority (HCRRRA) and the Metropolitan Council (MC) are proposing to construct The Interchange Project (PROJECT), an intermodal transit facility in downtown Minneapolis as more fully described in the project Environmental Assessment (EA); and

WHEREAS, HCRRRA and MC are proposing to use funding assistance from the Federal Transit Administration (FTA) to implement the PROJECT, assistance that would render the PROJECT a Federal undertaking pursuant to Section 106 of the National Historic Preservation Act (Section 106), 16 U.S.C. Section 470(f), as amended; and

WHEREAS, FTA, HCRRRA and MC have consulted with the Minnesota State Historic Preservation Officer (MnSHPO) pursuant to federal regulations at 36 CFR Part 800 implementing Section 106; and

WHEREAS, the FTA invited the Advisory Council on Historic Preservation (ACHP) to participate in the development of this AGREEMENT and the ACHP stated that it will not participate in the consultation by letter dated November 21, 2011 to the FTA; and

WHEREAS, the City of Minneapolis (CITY) has elected to participate as a consulting party in the Section 106 process for this PROJECT and has been invited to concur with this AGREEMENT; and

WHEREAS, the Minnesota Ballpark Authority, as owner of the adjacent Target Field stadium, has participated in this consultation and has been invited to concur with this AGREEMENT; and

WHEREAS, upon initiation of the Section 106 consultation process and in accordance with 36 CFR 800.2(c)(2)(ii), the FTA contacted the Shakopee Mdewakanton Sioux Community, the Prairie Island Indian Community, the Lower Sioux Indian Community, and the Upper Sioux Indian Community, all federally recognized tribes, inviting their participation in the consultation process for this project, and received no responses requesting further consultation; and

WHEREAS, this AGREEMENT was developed with appropriate public involvement (pursuant to 36 CFR 800.2(d) and 800.6(a)) coordinated with the scoping, public review and comment, and public hearings conducted by FTA and HCRRA to comply with NEPA and its implementing regulations; and

WHEREAS, the FTA and the Minnesota Department of Transportation Cultural Resources Unit (MnDOT CRU), in consultation with MnSHPO, have determined the Area of Potential Effect (APE) for the project as shown on Attachment A to this AGREEMENT; and

WHEREAS, FTA and MnDOT CRU, in consultation with MnSHPO have identified historic properties in the PROJECT's APE which are listed in or eligible for the National Register of Historic Places (NRHP), as shown in Attachment A to this AGREEMENT, and MnSHPO has concurred with these determinations; and

WHEREAS, the full range of effects on historic properties will not be known prior to the approval of grant funds, and this AGREEMENT provides for ongoing consultation to assess effects and stipulate measures to avoid, reduce, or mitigate adverse effects, in fulfillment of the requirements of Section 106 in accordance with 36 CFR 800.14(b)(1)(ii); and

WHEREAS, the FTA will be responsible for ensuring that HCRAA and MC ensure that all aspects of PROJECT implementation meet the terms of this AGREEMENT, in consultation with MnDOT CRU, which assisted the FTA in the preparation of information, analysis, and recommendations regarding the Section 106 process; and

WHEREAS, the HCRRA and MC will administer the implementation of the PROJECT and will complete the stipulations of the AGREEMENT;

NOW, THEREFORE, the FTA, MnSHPO, HCRRA, and MC agree that the PROJECT will be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS

FTA will ensure that HCRAA and MC will carry out the terms of this AGREEMENT and will require, as a condition of any approval of FTA funding for the PROJECT, adherence to the stipulations of this AGREEMENT. The parties understand that time is of the essence in the delivery of the PROJECT, and will use good faith efforts in implementing the terms of this AGREEMENT so as not to cause unreasonable delay in the PROJECT schedule.

I. PROJECT DESIGN DEVELOPMENT

- A. The PROJECT design will effectively meet the project purpose and need, while avoiding, minimizing, and/or mitigating adverse effects to historic properties in the area. Avoidance of adverse effects is preferable and will be considered to the extent feasible.

- B. New construction on the project site, located immediately across 5th Street North from the Minneapolis Warehouse Historic District, has potential visual and functional effects on the historic features of the district, including its setting, buildings and streetscape features. HCRRA and MC will develop the project design in accordance with the Secretary of the Interior's Standards for Archaeology and Historic Preservation (SOI STANDARDS), taking into account the suggested approaches to new construction in historic areas in the *Secretary of the Interior's Guidelines for the Rehabilitation of Historic Properties*. The CITY's *Minneapolis Warehouse Historic District Design Guidelines* (Minneapolis Heritage Preservation Commission, March 2, 2010) also provide general guidance for new construction in the adjacent historic district. (In any design issue reviewed pursuant to this AGREEMENT where there may be a conflict between the SOI STANDARDS and the CITY's guidelines, the SOI STANDARDS will take precedence.)
 1. HCRRA or MC will contract with an historical architect to work with the design-build contractor to ensure that the above-referenced standards are taken into account throughout the design-build process. The architect will meet the Secretary of the Interior's Professional Qualifications Standards for Historical Architect (36 CFR 61 Appendix A).
 2. HCRRA or MC, through MnDOT CRU, will submit the PROJECT design documents for architectural and site project elements (including the bridge structure, the LRT platform and overhead catenary system, and the site architectural and landscape elements including the plazas and the vertical circulation system) to MnSHPO and the CITY for a 30-day review and comment, with a copy to FTA. If no comments are received in this period, HCRRA and MC may presume there are no comments. The PROJECT Conceptual Plans (10/20/11) and the PROJECT Urban Design Guidelines (11/29/11 draft) have been submitted to MnSHPO and the CITY for review and comment. The following documents will be submitted to MnSHPO and the CITY during the design process:
 - a. The PROJECT Design-Build Concept Drawings, developed by the selected design-build contractor as part of their project proposal.
 - b. The PROJECT Design Development Drawings, developed by the design-build contractor in consultation with HCRRA.
 - c. The PROJECT Final Design Plans, developed by the design-build contractor in consultation with HCRRA.
 3. HCRRA or MC and the design-build contractor will incorporate comments from MnSHPO and the CITY, as feasible, on the PROJECT Design-Build Concept Drawings and on the

PROJECT Design Development Drawings, for all PROJECT elements with potential effects on historic properties. Within two weeks of receipt of comments, HCRRA or MC's historic architect will provide MnSHPO and the CITY with a summary of how the comments have been addressed in the PROJECT design, with a copy to MnDOT CRU. If there are any portions of the PROJECT where it is not feasible to incorporate comments from MnSHPO and the CITY, HCRRA or MC will provide an explanation.

4. Following MnSHPO review and comment on the PROJECT Design Development Drawings, pursuant to Stipulation I.B.2.b., above, HCRRA or MC's historic architect (see Stipulation I.B.1, above) will continue to monitor development of PROJECT plans to ensure that the above-referenced standards are taken into account, and will provide periodic reports to MnSHPO, the CITY, and MnDOT CRU on a schedule mutually agreed upon by MnSHPO, MnDOT CRU, and HCRRA or MC.
5. HCRRA or MC, through MnDOT CRU, will submit the PROJECT Final Design Plans to MnSHPO and the CITY, pursuant to Stipulation I.B.2.c., above, for 30-day review and comment on any aspects of the PROJECT design which are not in conformance with SOI STANDARDS or otherwise have effects on historic properties. It is recognized that, at this stage of review, many project elements will be completed or under construction.
6. If there are any portions of the PROJECT that do not meet the SOI STANDARDS, based on MnSHPO's written comments, the project elements at issue will be considered to have an adverse effect, and mitigation measures will be developed and implemented in accordance with Stipulation V of this AGREEMENT.
7. If there are any portions of the PROJECT that do not meet MnSHPO's written comments based on factors other than the SOI STANDARDS, FTA, in consultation with MnSHPO, will make a determination on whether the project elements at issue will have an adverse effect, and if, so, mitigation measures will be developed and implemented in accordance with Stipulation V of this AGREEMENT.

II. NOISE AND VIBRATION ASSESSMENT AND MIGITATION

- A. The assessment of noise and vibration issues conducted for the PROJECT Environmental Assessment (EA) (*Noise and Vibration Impact Assessment Technical Report, Interchange Light Rail Transit Enhancement Project, Kimley-Horn and Associates, Inc., October 2011*) has identified potential adverse effects from construction noise and from construction vibration on the Ford Building, a historic property located in the Minneapolis Warehouse Historic District.

- B. HCRRA or MC will develop and implement a Historic Properties Vibration and Noise Management and Remediation Plan (VNMRP) to address construction noise and vibration issues related to the Ford Building. The VNMRP will include the following elements:
1. Pre-construction survey. The VNMRP will include a methodology for a pre-construction survey of the Ford Building, which will include:
 - a. A visual survey of historically significant features of each building, completed by a historical architect (including the 7/11/11 memo *Noise and Vibration Control Review of the Ford Centre* from Chuck Liddy of Miller Dunwiddie Architecture to Chuck Ballentine of The Interchange Project).
 - b. A structural survey to identify and document pre-existing defects, completed by a qualified professional engineer.
 - c. A discussion of any fragile or loose elements needing to be temporarily removed, secured or repaired.
 2. Construction vibration and construction noise limits. The VNMRP will stipulate thresholds for construction vibration and construction noise limits at the Ford Building. Limits will be set using the criteria in the *Transit Noise and Vibration Impact Assessment* guidance manual (FTA 2006); if different thresholds are set, the plan will include supporting documentation.
 3. Construction vibration. The VNMRP will include a methodology for vibration monitoring during PROJECT construction, including details about the process, equipment, documentation standards, frequency of monitoring, and use of alternate construction means and methods when it is not possible to meet the limits.
 4. Construction noise. The VNMRP will include a discussion of specific measures to be followed to reduce and/or mitigate the effects of construction noise on tenants of the Ford Building during the construction process, including monitoring and documentation standards.
 5. Reporting of results to MnSHPO, FTA, and property owners. The VNMRP will include provisions for timely reporting of the results of the pre-construction survey, construction monitoring, and any remediation requests to MnSHPO and FTA.
 6. Notifying HCRRA or MC of noise or vibration effects. The VNMRP will include a process for notifying HCRRA or MC of any observed vibration or noise effects on the Ford Building, along with any specific provisions to address problems (including, but not limited to, cessation of construction activity, changing of construction means and methods, and other appropriate measures).
- C. HCRRA or MC will include the VNMRP by reference in the design-build contract to ensure its implementation.
- D. HCRRA or MC will develop the VNMRP in consultation with MnSHPO and the CITY, and the draft plan will be submitted to FTA and MnSHPO, through MnDOT CRU, for a 30-day review and comment period. The HCRRA or MC shall consider all comments received in a timely fashion prior to issuing the final report.

- E. The owner of the Ford Building will be consulted regarding the provisions of the VNMRP. This consultation will provide information on the purpose of, and process for completing, the pre-construction survey. This consultation will also provide the property owner information on whom to contact during construction in the event any questions or concerns may arise related to construction, including blocked access, excessive noise or vibration. In addition, the property owner will be informed of the process for seeking remediation of any potential damage during construction. Any agreements with the owner of the Ford Building that contain provisions related to vibration or noise issues will be consistent with the provisions of the VNMRP. Copies of any such agreements will be made a part of the VNMRP and/or forwarded to MnSHPO and FTA.

III. ARCHAEOLOGY

- A. The archaeological assessment of the project's Archaeological Area of Potential Effect (Attachment B to this AGREEMENT) did not identify any archaeological properties eligible for the NRHP. It did, however, identify one location within the archaeological APE along 5th Avenue North which has potential for a historical archaeological site. Subsequent PROJECT planning has determined that there is no anticipated PROJECT-related work planned for this location.
- B. HCRRA and MC will ensure that no PROJECT-related work will occur on 5th Avenue North beyond a line 50 feet north, and parallel to, the north curb line of 5th Street.
- C. HCRRA and MC will include in construction contracts appropriate provisions to ensure that Stipulations III.A. and III.B, above, are carried out by the contractor.

IV. TRAFFIC AND PEDESTRIAN CIRCULATION

- A. The re-design of the intersection of 6th Avenue North and 5th Street North may increase future vehicular traffic on 6th Avenue North between 5th Street North and Washington Avenue, through the Minneapolis Warehouse Historic District. The parties to this AGREEMENT recognize the CITY's *Warehouse District Heritage Street Plan* (adopted August 2011) as an appropriate guideline to protecting the historic features along 6th Avenue North while accommodating potential increases in vehicular and pedestrian traffic through the area.
- B. The PROJECT facilitates the coming together of several light rail lines, and, together with other developments in the area, cumulatively contributes to the need for pedestrian connections to the larger downtown area. The parties to this AGREEMENT recognize the CITY's *Minneapolis Warehouse Historic District Design Guidelines* (adopted March 2010), the CITY's *Downtown East/North Loop Master Plan* (adopted October 2003), and the CITY's *North Loop Small Area*

Plan (adopted April 2010) as appropriate guidelines to protecting the character of historic properties while providing for pedestrian connections.

V. RESOLUTION OF ADVERSE EFFECTS

- A. In any instance where the final design of PROJECT components does not meet the SOI STANDARDS, or if, in consultation with MnSHPO, FTA, HCRRA and MC determine it is not practicable to avoid other adverse effects, HCRRA or MC and MnDOT CRU will consult with MnSHPO and the CITY to develop a mitigation plan appropriate to the historic property and type and degree of effect.
- B. HCRRA or MC shall notify consulting parties to this agreement when a mitigation plan will be prepared pursuant to this stipulation. The mitigation plan shall be developed within 60 calendar days of such notification. If more time is required to develop the mitigation plan, HCRRA or MC will notify consulting parties to this AGREEMENT regarding the reason for the delay and the anticipated timeframe for mitigation plan distribution. HCRRA or MC, through MnDOT CRU, will provide a copy of the draft mitigation plan to consulting parties for a 30-day comment period during which consulting parties may provide written comments to HCRRA or MC.
- C. HCRRA or MC agrees to take into account any timely comments of consulting parties in the development of final mitigation plans. A mitigation plan will be final upon acceptance by FTA and MnSHPO. Consulting parties will receive copies of all final mitigation plans and may also be invited to concur in mitigation plans.

VI. DISCOVERY

- A. If previously unidentified historic properties are discovered unexpectedly during construction of the PROJECT, all ground-disturbing activities will cease in the area where any historic property is discovered as well as in the immediately adjacent area. The contractor will immediately notify HCRRA of the discovery and implement interim measures to protect the discovery from looting and vandalism. HCRRA will contract with a qualified archaeologist to record, document, and provide an opinion on the NRHP eligibility of the discovery to FTA within seventy-two (72) hours of receipt of notification, and will notify MnSHPO and other consulting parties, including any Indian tribes that may attach religious and cultural significance to the property, of the discovery.
- B. FTA will have ten (10) business days following notification provided in accordance with Stipulation VI.A., above, to determine the National Register eligibility of the discovery after considering timely filed views (received within seven (7) business days of notification) of the MnSHPO and other consulting parties. FTA may assume the newly discovered property to be eligible for the NRHP for the purposes of Section 106 pursuant to 36 CFR 800.13(c).

- C. For properties determined eligible, HCRRA and its qualified archaeologist, in consultation with MnSHPO, consulting parties, and FTA, will design a plan for resolving adverse effects taking into account the nature of identified properties and the feasibility of avoiding the adverse effects. Consulting parties will have seven calendar days to provide their views on the proposed plan. FTA will ensure that the timely filed recommendations of consulting parties are taken into account prior to granting approval of the measures that HCRRA will implement to resolve adverse effects. HCRRA will carry out the approved measures prior to resuming ground-disturbing work in the area of discovery.

- D. Any human remains encountered during PROJECT construction will be addressed pursuant to the Minnesota Private Cemeteries Act (Minnesota Statutes Sect. 307.08); the Native American Graves Protection and Repatriation Act of 1990, as amended, the Archaeological Resource Protection Act of 1979, as amended, and the ACHP's *Policy Statement on the Treatment of Burial Sites, Human Remains and Funerary Objects* (February 23, 2007), as applicable. If any human remains are encountered, all ground-disturbing activities will cease in the area where such remains are discovered as well as in the immediately adjacent area. The contractor will immediately notify appropriate law enforcement agencies in order to determine whether the site discovered is a crime scene, and will notify HCRRA. HCRRA will immediately notify the Office of the State Archaeologist (OSA), MnSHPO, and FTA. FTA will consult with OSA and Indian tribes to develop treatment measures for the remains. FTA will take into account the recommendations of consulting parties prior to granting approval of the plan. The FTA will ensure that HCRRA or MC has fully implemented the terms of any treatment plan prior to allowing ground-disturbing work to proceed in the area of discovery.

- E. HCRRA or MC will include in appropriate construction contracts provisions to ensure that the Stipulations VI.A through VI. D, above, are carried out by the contractor.

VII. STANDARDS

- A. All work carried out pursuant to this AGREEMENT will meet the Secretary of the Interior's Standards for Archaeology and Historic Preservation (SOI STANDARDS), taking into account the suggested approaches to new construction in the SOI STANDARDS for Rehabilitation. In instances where this is not feasible, mitigation measures will be developed and implemented pursuant to Stipulation V of this AGREEMENT.

- B. HCRRA and MC will ensure that all work carried out pursuant to this AGREEMENT will be done by or under the direct supervision of historic preservation professionals who meet the Secretary of the Interior's Professional Qualifications Standards (36 CFR 61 Appendix A). The MnDOT CRU, assisting in AGREEMENT implementation through FTA designation, meets these standards for history, architectural history, precontact archaeology, and historic archaeology. FTA, HCRRA

and MC shall ensure that consultants retained for services pursuant to the AGREEMENT meet these standards.

VIII. DISPUTE RESOLUTION

- A. Should any signatory to this AGREEMENT, including any invited signatory, object at any time to any action proposed or the manner in which the terms of this AGREEMENT are implemented, FTA shall consult with such party to resolve the objection. FTA consultation shall take place within ten (10) days of receipt of written documentation of said objection and shall be documented in the form of meeting notes and/or a written letter of response. If FTA determines, within thirty (30) days of documenting consultation efforts with the objecting party that the objection cannot be resolved, FTA shall:
1. Forward all documentation relevant to the dispute, including the FTA's proposed resolution, to the ACHP. The ACHP shall provide FTA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FTA shall prepare a written response that takes into account any advice or comments from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. FTA will then proceed according to its final decision.
 2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period after receipt of adequate documentation, FTA may render a final decision regarding the dispute and proceed accordingly. In reaching its decision, FTA shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the AGREEMENT and provide them and the ACHP with a copy of such written response.
 3. FTA's responsibility to carry out all other actions subject to the terms of this AGREEMENT that are not the subject of the dispute remains unchanged.

IX. AMENDMENTS

Any signatory or invited signatory to this AGREEMENT may request that it be amended, whereupon the signatories and consulting parties shall consult to consider such amendment. Any amendments shall be in writing and shall be signed by all signatories to be effective.

X. TERMINATION OF AGREEMENT

Any signatory to this AGREEMENT may terminate it by providing ninety (90) days notice to the other parties. The parties must consult with each other during the notice period in an attempt to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FTA will comply with 36 CFR 800.3 through 800.13 with regard to the undertaking covered by this AGREEMENT.

XI. DURATION OF AGREEMENT

This AGREEMENT will terminate one year after the PROJECT enters revenue service operation or within ten (10) years, whichever comes first, or upon mutual agreement of the signatories. Prior to such time, FTA may consult with the other signatories to reconsider the terms of the AGREEMENT and revise, amend, or extend it in accordance with Stipulation IX.

XII. EXECUTION OF AGREEMENT

This agreement may be executed in counterparts.

Execution of this AGREEMENT and implementation of its terms is evidence that the FTA has afforded the ACHP a reasonable opportunity to comment on the PROJECT and that the FTA has taken into account the effects of the PROJECT on historic properties.

SIGNATORIES:

FEDERAL TRANSIT ADMINISTRATION

By: Rebecca Reed
for Marisol Simon, Region V Administrator

Date: 2/23/2012

MINNESOTA STATE HISTORIC PRESERVATION OFFICE

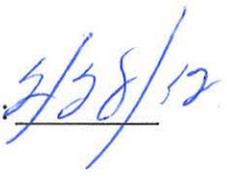
By: Barbara Howard
Barbara Howard, Deputy State Historic Preservation Officer

Date: 2/28/2012

INVITED SIGNATORY:

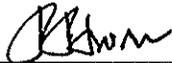
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

By: 
Peter McLaughlin, Chair

Date: 

INVITED SIGNATORY:

METROPOLITAN COUNCIL

By: 
Patrick P. Born, Regional Administrator

Date: 3.6.2012

CONCURRING PARTY:

I concur with the Programmatic Agreement between the Federal Transit Administration and the Minnesota State Historic Preservation Office regarding the Interchange project in Minneapolis. MN.

CITY OF MINNEAPOLIS

By:  Date: 2-26-12
Jack Byers, Planning Manager, Community Planning and Economic Development

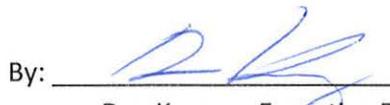
CONCURRING PARTY:

I concur with the Programmatic Agreement between the Federal Transit Administration and the Minnesota State Historic Preservation Office regarding the Interchange project in Minneapolis, MN.

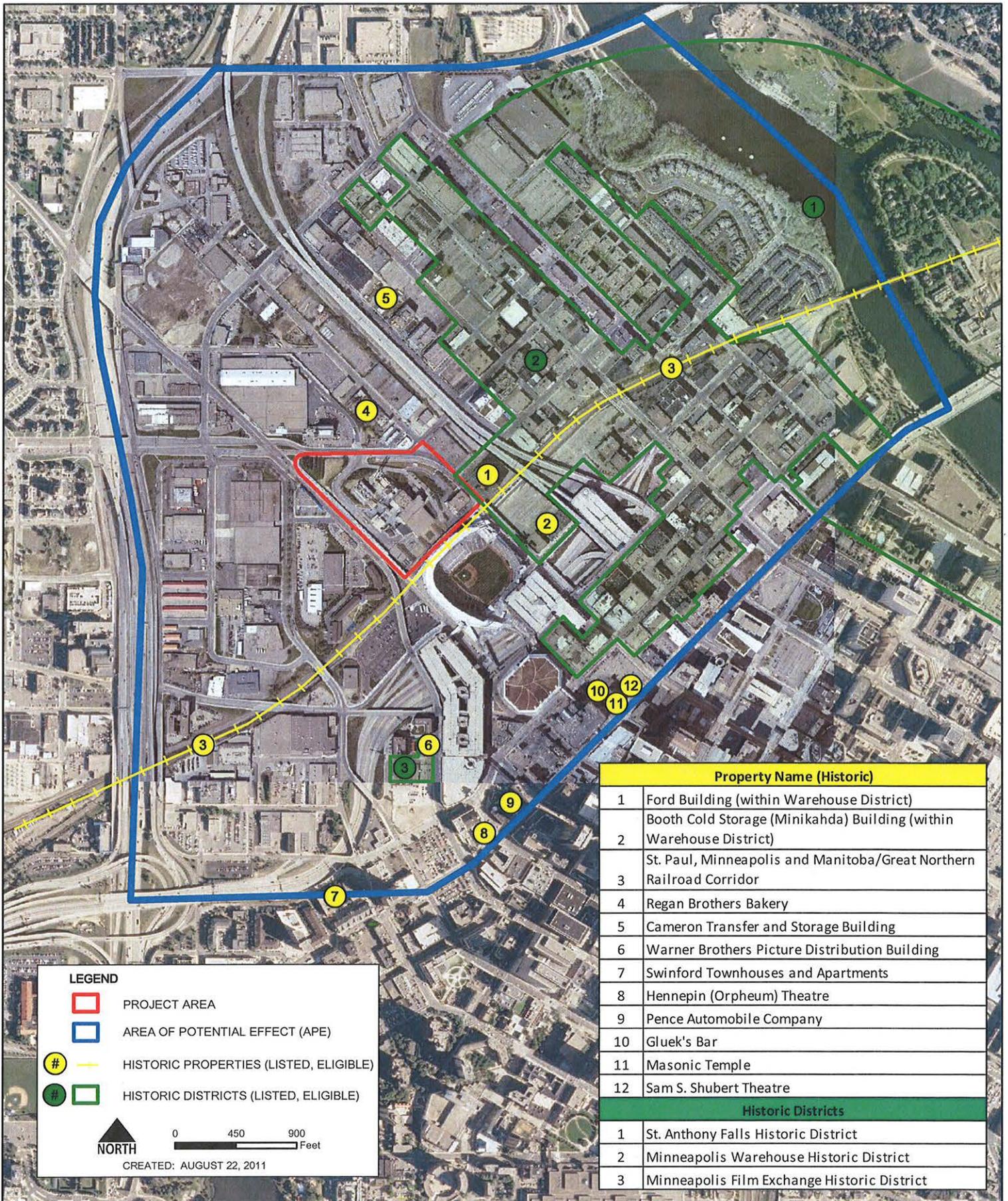
MINNESOTA BALLPARK AUTHORITY

By:  _____
Steve Cramer, Chair

Date: 2/21/12

By:  _____
Dan Kenney, Executive Director

Date: 2.21.12



LEGEND

- PROJECT AREA
- AREA OF POTENTIAL EFFECT (APE)
- # HISTORIC PROPERTIES (LISTED, ELIGIBLE)
- # HISTORIC DISTRICTS (LISTED, ELIGIBLE)

NORTH

0 450 900 Feet

CREATED: AUGUST 22, 2011

Property Name (Historic)	
1	Ford Building (within Warehouse District)
2	Booth Cold Storage (Minikahda) Building (within Warehouse District)
3	St. Paul, Minneapolis and Manitoba/Great Northern Railroad Corridor
4	Regan Brothers Bakery
5	Cameron Transfer and Storage Building
6	Warner Brothers Picture Distribution Building
7	Swinford Townhouses and Apartments
8	Hennepin (Orpheum) Theatre
9	Pence Automobile Company
10	Gluek's Bar
11	Masonic Temple
12	Sam S. Shubert Theatre
Historic Districts	
1	St. Anthony Falls Historic District
2	Minneapolis Warehouse Historic District
3	Minneapolis Film Exchange Historic District

SECTION 106 PROGRAMMATIC AGREEMENT

ATTACHMENT A. AREA OF POTENTIAL EFFECT AND HISTORIC PROPERTIES

