DRAFT

PROGRAMMATIC AGREEMENT

AMONG THE UNITED STATES COAST GUARD,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PROPOSED BRIDGE REPLACEMENT AT MILE 1315.0 ON THE MISSOURI RIVER NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

WHEREAS, the United States Coast Guard (USCG) is the lead federal agency, responsible for making a federal bridge permit decision for the BNSF Railway Company (BNSF) Bridge Replacement Project (Undertaking) in accordance with the General Bridge Act of 1946, as amended; and

WHEREAS, the Undertaking is defined as construction of a railroad bridge to replace the existing BNSF Bridge 0038-196.6, a historic through-truss bridge over the Missouri River, Jamestown Subdivision, Milepost 1315.0 (hereafter known as Bismarck Bridge), in Burleigh County, North Dakota, constructed 1880-1883 (substructure) and 1905-1906 (superstructure); and

WHEREAS, the USCG has consulted with the North Dakota State Historic Preservation Officer (SHPO) pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA) (54 United States Code [U.S.C.] Section 306108) and its implementing regulations at 36 *Code of Federal Regulations* (CFR) Part 800, as amended; and

WHEREAS, the USCG has defined the Area of Potential Effects (APE) as the footprint of the proposed Undertaking within which all proposed construction and ground disturbing activity is confined, including existing and proposed right of way for replacement of the Bismarck Bridge (Attachment A – APE map), and the North Dakota SHPO provided formal written concurrence with the APE on October 2, 2019, with the request that they would like to see any additional areas to be used for disposal, borrow or staging as those areas are identified; and

WHEREAS, the USCG, in consultation with the North Dakota SHPO, has determined the Bismarck Bridge is eligible for listing in the National Register of Historic Places (NRHP) under Criterion A for its association with broad patterns of railroad, commercial, and military history in the United States, and under Criterion C for design and construction, and for its association with engineers George Shattuck Morison and Ralph Modjeski; and

WHEREAS, the residents of Bismarck, Mandan, and surrounding areas regard the Bismarck Bridge to be an iconic landmark for their community identity and a compelling visual feature in the cultural landscape of the Missouri Valley; and

WHEREAS, the National Trust for Historic Preservation listed the Bismarck Bridge on *America's 11 Most Endangered Historic Places for 2019* because it was the first bridge to cross the upper Missouri River, George Shattuck Morison designed and oversaw its construction between 1880 and 1883, and the project employed advanced construction methods including pneumatic caissons such as those used to build its contemporary, the Brooklyn Bridge; and

Commented [BM1]: An APE should be prepared for visual impacts as well, not just the footprint of ground disturbance. The rationale that there are no historic properties outside the footprint is clearly erroneous. For example, the Bridge is part of the 80-mile corridor of the Northern Plains National Heritage Area, which runs along the Missouri River. The Bridge also crosses the Lewis & Clark National Historic Trail, which runs along the Missouri River. In addition, as noted in the Whereas Clauses below, there are a number of significant ancestral and traditional cultural sites within the viewshed of the historic bridge.

Commented [BM2]: In addition to visual impacts, it will be important to assess potential construction vibration impacts, which will extend beyond the footprint itself.

Commented [BM3]: Make sure there's a provision to address this in the stipulations

Commented [BM4]: This confirms the importance of developing an APE for visual impacts.

WHEREAS, Mandan, Hidatsa, and Arikara (MHA) Nation ancestral sites overlook this industrial infrastructure that altered the history of their lands and people, and the bridge is upriver from On-A-Slant Village where Mandan Chief Sheheke was born and later accompanied Lewis and Clark back to Washington, D.C. where Sheheke and President Jefferson met; and

WHEREAS, known ancestral sites upriver of the APE include Chief Looking's Village (site 32BL3), Crying Hill (site 32BLXXX), and areas of the Missouri River bottomlands used to plant corn, beans, and squash; and

WHEREAS, the USCG, in consultation with the North Dakota SHPO, has determined that the Undertaking would have an adverse effect on the Bismarck Bridge, and may have an adverse visual effect on additional historic properties; and

WHEREAS, in accordance with 36 CFR Section 800.6(a)(1), the USCG has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR Section 800.6(a)(1)(iii); and

WHEREAS, the USCG, in consultation with the ACHP and the SHPO, has determined that the development of a Programmatic Agreement (PA), in accordance with 36 CFR 800.14(b)(1)(ii), is warranted because effects of the Undertaking are not fully known for all reasonable alternatives; and

WHEREAS, "Signatories" as defined in 36 CFR 800.6(c)(1) have the sole authority to execute, amend, or terminate this agreement, and "Invited Signatories" as defined in 36 CFR 800.6(c)(2) have the same rights with regard to seeking amendment or termination of this agreement as the Signatories; and

WHEREAS, any reference within this PA to a "Signatory" includes Signatories and Invited Signatories; and

WHEREAS, Concurring Parties are asked to concur in this PA, indicating acceptance of the process leading to the PA and a desire and willingness to participate in future consultations if needed, but cannot prevent the PA from being executed, amended, or terminated; and

WHEREAS, BNSF is the project proponent and has been invited to participate in this consultation and to sign this PA as an Invited Signatory; and

WHEREAS, Friends of the Rail Bridge (FORB) has specific responsibilities under this PA and they have been invited to participate in this consultation and to sign this PA as an Invited Signatory; and

WHEREAS, because the Undertaking requires authorization by the United States Army Corps of Engineers (USACE) under the Clean Water Act Section 404, and may require authorization under Section 408, the Omaha District of USACE (North Dakota Regulatory Office) has been invited to participate in this consultation and to sign this PA as a Concurring Party; and

WHEREAS, the USCG has consulted with Bismarck Parks and Recreation District, Bismarck Historical

Commented [BM5]: More confirmation that a visual APE is necessary.

Commented [BM6]: More confirmation that a visual APE is necessary.

Commented [BM7]: This should not be contingent upon signing as a concurring party.

Society, Bismarck-Mandan Historical and Genealogical Society, Bismarck Tour Company, Bismarck-Mandan Metropolitan Planning Organization, Burleigh County, Captain's Landing Township, City of Bismarck, City of Mandan, Fort Abraham Lincoln Foundation, Historic Bridge Foundation, Mandan Historical Society, Lakota Consulting, Morton County, Morton County Historical Society, National Trust for Historic Preservation, North Dakota Department of Transportation, North Dakota Parks and Recreation Natural Resources Division, North Dakota State Railroad Museum, North Dakota State University Department of Landscape Architecture, Preservation North Dakota, Rails to Trails Conservancy, and the North Dakota Indian Affairs Commission regarding the effects of the undertaking on historic properties and has invited them to participate in this consultation and to sign this PA as Concurring Parties; and

WHEREAS, in accordance with 36 CFR 800.2(c)(2)(ii), the USCG invited the following Federally recognized Indian tribes to participate in consultation on this Undertaking and to sign this PA as Concurring Parties: Cheyenne River Sioux Tribe, Chippewa Cree, Crow Creek Sioux Tribe, Crow Nation, Flandreau Santee Sioux Tribe, Fort Peck Assiniboine and Sioux Tribes, MHA Nation, Northern Cheyenne Nation, Oglala Sioux Tribe, Rosebud Sioux Tribe, Santee Sioux Nation, Sisseton-Wahpeton Oyate, Spirit Lake Tribe, Standing Rock Sioux, Turtle Mountain Band of Chippewa, and Yankton Sioux Tribe; and

WHEREAS, the USCG invited the Wahpekute Band of Dakotah, a non-Federally recognized Indian tribe, to participate in consultation on this Undertaking and to sign this PA as a Concurring Party; and

WHEREAS, the MHA Nation and the Northern Cheyenne Nation accepted the invitation to participate in consultation; and

WHEREAS, the USCG held a public meeting and open house on December 14, 2017, in compliance with Section 106 of the NHPA and with the National Environmental Policy Act (NEPA) to provide the public with information about the Undertaking and its effects on historic properties, seek public comment and input, explain the NEPA process for this project, and provide general information about the project;

NOW, THEREFORE, the USCG, North Dakota SHPO, ACHP, BNSF, and FORB agree that the USCG shall ensure that the following stipulations are implemented to take into account the effects of the Undertaking on historic properties, and that these stipulations shall govern the Undertaking and all of its parts.

STIPULATIONS

Commented [SSC8]: Time frames for this section will be discussed at the next consultation meeting.

The USCG shall ensure that the following measures are implemented:

[Before getting into the alternatives a process needs to be added for the following:

- Determine the Visual APE;
- Identify historic properties within the Visual APE;
- Assess the potential adverse visual effects of the project on those historic properties.]

I. **NEW ALTERNATIVE WITH NO NET RISE**

FORB and/or other interested consulting parties may conduct an independent floodplain evaluation to determine if there is another alternative that meets the Federal Emergency Management Agency (FEMA) no net rise requirement.

Commented [BM9]: It would be helpful to have a citation to this.

A. If such an alternative is identified, FORB and/or other interested consulting parties will submit a flood model evaluation of a new railroad bridge adjacent to the existing bridge that would cause no net rise in the floodplain. This evaluation and explanation of such alternative must be submitted to the USCG at least one month prior to the USCG publishing the draft environmental impact statement for public comment.

B. The USCG will then analyze this alternative and its potential impacts on the environment and include it in the draft environmental impact statement for public comment, giving it the same level of consideration as BNSF's preferred alternative.

II. **NEW ALTERNATIVE WITH A NET RISE**

If any party identifies a new alternative(s) to be carried forward that results in a net rise to the floodplain, such party(s) must document the potential mitigation measures associated with the net rise for that alternative(s).

A. Any new alternative(s) resulting in a net rise must go through the Conditional Letter of Map Revision (CLOMR) process and be accepted by the local floodplain administrators for the cities of Bismarck and Mandan, as well as the state water commission. The process begins with FEMA's acceptance of the CLOMR. Then the floodway review application (which includes the CLOMR) is submitted to the state water commission by the local floodplain administrators for review and acceptance. Coordination of the submittal review is led by the state's National Flood Insurance Program Coordinator. Upon approval and acceptance by the state water commission, the floodplain development permits are issued by the local floodplain administrators for the cities of Bismarck and Mandan. In addition, a Sovereign Lands Permit from the Office of the State Engineer is required for any work completed below the Ordinary High Water Mark. Any ditch modifications require a North Dakota Surface Drain Application, also from the Office of the State Engineer. Local city permits may also be required, depending on the type and extent of mitigation considered.

B. Explanation of such alternative(s) and its mitigation measures must be submitted to the USCG at least one month prior to the USCG publishing the draft environmental impact statement for public comment.

C. The USCG will then analyze this alternative(s) and its potential impacts on the environment and include it in the draft environmental impact statement for public comment.

III. **RETAIN EXISTING BRIDGE**

If the USCG determines that retaining the existing bridge and constructing a new adjacent bridge is feasible and reasonable, then the following actions will be implemented.

A. Effects to historic properties, including how the new bridge will visually affect the existing bridge and the surrounding historic properties within the new visual APE, will either be addressed in the draft environmental impact statement or in this PA (see Stipulation XX).

B. The actions in the table below must be completed by the indicated responsible party, [insert appropriate amount of time before commencement of construction], in order to provide BNSF sufficient time to let a contract to begin work:

Responsible Party	Action
USCG	• If applicable, include timelines in this PA associated with mitigation measures and the approval process for accepting the floodplain net rise. [Add those additional steps and timelines here]
Bismarck Historic Preservation Commission	• Establish a Bridge Design Review Committee to consider how design of the new bridge could be visually compatible with the Bismarck Bridge and its landscape, setting, and viewshed. Committee may include representatives from the North Dakota SHPO, FORB, North Dakota State Water Commission, USCG, BNSF, and tribes
FORB	• Establish a public/private partnership that could accept ownership of the Bismarck Bridge and other responsibilities listed below

Public Private Partnership	• Take ownership of the existing bridge or sign a contract or lease agreement with BNSF
	• Provide reasonable assurance that the following will be obtained:
	  • Pedestrian access to Bismarck Bridge right-of-way
	  • Pedestrian access to recreational trails adjacent to the Bismarck Bridge
	  • Interpretive signage documenting the history of the Bismarck Bridge
	• Establish restricted endowment fund for ongoing maintenance and management of the Bismarck Bridge and raise funds for initial phase of bridge-to-trail conversion. BNSF will donate funds to the Public Private Partnership equivalent to the cost of demolishing the bridge (approximately $4 million).
	• Develop a hold harmless agreement with the BNSF
	• Document steps and timelines in this PA associated with obtaining the above listed items

SHPO, BNSF, and Bismarck Historic Preservation Commission	• BNSF will fund and select a Secretary of the Interior-qualified consultant to prepare NRHP nomination

Commented [SSC10]: Insert times at a future meeting

Commented [BM11]: This chart is a useful format. We recommend using it for Stipulation IV. as well.

Commented [SSC12]: Need to add mitigation measures and approval steps here, including timeframes associated with that process

Commented [BM13]: This is also important for Option IV (Remove Existing Bridge)

	• Bismarck Historic Preservation Commission will review and process the Bismarck Bridge NRHP nomination, and submit the nomination to the SHPO • SHPO will oversee the NRHP nomination process for the Bismarck Bridge • Nomination must be completed and accepted by the SHPO prior to ~~demolition~~ construction of the new bridge • Include steps in this PA documenting the timeline associated with nominating the Bismarck Bridge to the NRHP
BNSF	• Secure additional right-of-way as needed • Protect water intake/water plant, underground reservoir, and piping • Ensure adequate slope stability • Develop a vibration monitoring plan for construction. Make the draft plan available for comment by the consulting parties, and the plan must be approved by the USCG. • Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, access, and services to Lewis & Clark Riverboat, Fort Abraham Lincoln Foundation, Captain's Landing Township, Bismarck Parks & Recreation District, Mandan/Morton County Parks, and the City of Bismarck. Make the draft plan available for comment by the consulting parties and the plan must be approved by the USCG. • Include steps in this PA documenting the timeline associated with the above listed steps

Commented [BM14]: But this alternative does not involve demolition.

Commented [BM15]: We need to add a process for reviewing and approving the plan.

IV. REMOVE EXISTING BRIDGE

If the USCG determines that the existing bridge cannot be retained, the following measures will be required as conditions of any permit issued by the USCG to BNSF.

A. BNSF will:

1. Protect water intake/water plant, underground reservoir, and piping
2. Ensure adequate slope stability
3. Establish a Bridge Design Review Committee to consider how design of the new bridge could be visually compatible with the Bismarck Bridge and its landscape setting and viewshed. Committee may include representatives from the North Dakota SHPO FORB North Dakota State Water Commission USCG BNSF and tribes. In addition the design of the new bridge shall include a pedestrian/bicycle crossing.

Commented [BM16]: This is copied from Stipulation III. above. This is not just a mitigation measure, but will also help to reduce adverse visual effects to surrounding historic properties.

~~2.~~4. Develop a vibration monitoring plan for construction. Make the draft plan available for comment by the consulting parties, and the plan must be approved by the USCG.

~~3.~~5. Develop and implement a mitigation and compensation plan to minimize the effects of construction on economic impacts, access, and services to Lewis & Clark Riverboat, Fort Abraham Lincoln Foundation, Captain's Landing Township, Bismarck Parks & Recreation District, Mandan/Morton County Parks, and the City of Bismarck. Make the draft plan available for comment by the consulting parties and the plan must be approved by the USCG.

Commented [BM17]: We need to add a process for reviewing and approving the plan.

B. Possible Mitigation Suggestions for Discussion (responsible parties to be determined through consultation):

1. Before the final environmental impact statement is issued by the USCG, explore what, if any, portions of the existing bridge can be retained in place to preserve the history of the bridge while still maintaining no net rise. Impacts related to keeping a portion of the bridge in the waterway shall be documented in the environmental impact statement and associated mitigation for these impacts will be included in this PA (See Stipulation XX).

2. Develop and implement "The Bridge Project: An International Site of Conscience," an interpretative program to foster truth and reconciliation in the American story over dislocation and subjugation of indigenous peoples with participating Tribes, SHPO, National Trust for Historic Preservation, and Preservation North Dakota.

3. ~~-~~Provide ample funding for trail enhancements on both east and west sides of the Missouri River and at points of interest throughout the Bismarck-Mandan trail system to include historic interpretive signage, emergency stations, and funds for ongoing maintenance of these trails and associated amenities.

4. Provide funding for the development of a multi-use trail(s) and associated interpretative displays, as well as public art, preserving the memory of the Bismarck Bridge.

Commented [BM18]: What would be the relationship of this new trail to the existing Lewis & Clark National Historic Trail?

5. Develop, in consultation with Preservation North Dakota and the Bismarck Historic Preservation Commission, interpretive signage content that illustrates, as comprehensively as possible, the significance of the Bismarck Bridge under all Criteria for which it is eligible, and that acknowledges the varied historic and cultural values of the community and its relationship to the bridge. Install one of these signs on the east side of the new bridge and one on the west side of the new bridge.

6. ~~-~~Provide funding to survey ~~the Bismarck Bridge and~~ other historic resources around the Bismarck and Mandan communities for possible nomination to the NRHP.

Commented [BM19]: There would be no point in nominating the Bridge itself to the National Register since it would be destroyed under this scenario.

7. ~~-~~Provide funding to document the history of the Bismarck Bridge and its impact on the region and nation for presentation as a museum exhibit. As part of this effort, fund a qualified historian under the *Secretary of the Interior's Historic Preservation Professional Qualification Standards* to write a comprehensive history of the bridge. This comprehensive history should include the impact of the railroad and bridge on Native

Americans and their descendants.

8. -Endow a Chair of History at a local public educational institution, such as Bismarck State College or United Tribes Technical College, to further promote the study and understanding of local historic themes the rail bridge embodies, such as the history of the railroad and its effect on the development of this area and the American West, a layered history of the Missouri River Valley as a hub of transportation and commerce, and the subjugation and displacement of Native indigenous people.

9. -Sponsor an annual event promoting FORB's mission of history, education, and recreation that engages people in both the Bismarck and Mandan communities.

10. Establish an endowment to assist Preservation North Dakota—North Dakota's only statewide non-profit organization dedicated to Historic Preservation—in its general operations, giving the organization's board of directors authority to use the interest earnings from the fund in administering the existing Grass Roots Grant program that supports hands-on bricks-and-mortar preservation projects across the state; enhance its education, outreach, and advocacy programming to advance the public's understanding of history, heritage, and the importance of place; and promote the preservation crafts and professions in this state.

11. Develop a 5,000-square-foot travelling exhibit to be on display at various locations including, but not limited to, the Heritage Center Museum in Bismarck that tells the history of the Bridge; and create a student send trunk for use in public schools throughout the state that could offer three potential focuses: 1) the design, construction and engineering aspects of the Bismarck Bridge's historic significance as it relates to STEM curricula, 2) the cultural and historic significance of the Bismarck Bridge in the role the railroad played in the displacement of Native indigenous people and the settlement of the American West—themes taught in the North Dakota Studies curricula, and 3) the importance of place identity in understanding history and heritage as learned from the historic preservation movement, teaching with historic places based on North Dakota sites listed in the NRHP and geared toward history, social studies, and geography curricula.

12. Develop a permanent Interpretive installation at the North Dakota Railroad Museum in Mandan, including:

a) Interpretive panels that discuss the history of the bridge,

b) Exhibit that includes portions of the bridge,

c) A series of professionally produced documentaries (10-15 minutes in length) on:

(1) the history of Bismarck prior to construction of the bridge,

(2) the history of the selection of the final bridge crossing point and its ramifications (halted land speculation) on the west river bank and the final location of the City of Mandan,

(3) the historic Bismarck Bridge,

(4) the new bridge design and construction; and

d) A monetary donation in order to purchase viewing equipment for the video series.

13. Create, develop content for, and host an interpretive website on the history of the Project area. Website will also include periodic updates based on milestones agreed upon in this PA.

a) The content of this interpretive website will be structured to appeal to the general public and to be useful for educational purposes (e.g., it may include interactive components and activities suitable for K-12 students and educators). By means of keyword indexing, solicited links from other sites, and similar techniques, this material will be formatted to be readily found by educators and students using search engines.

b) Continue to host the website throughout the Project construction period. Once Project construction is completed, the website will be archived at [To Be Determined].

14. Deconstruct the granite piers of the Bismarck Bridge in a way so the individual pieces or portions thereof can be used for public purposes elsewhere in the community.

15. Create a 3-D scan of the Bismarck Bridge for conversion into a 3-D model.

16. Provide photographic documentation of the Bismarck Bridge in color photographs, as well as aerial photographs obtained by drone or similar means.

17. Record a video with color, digital, time lapse photos of the removal of the historic Bismarck Bridge and the construction of the new replacement bridge. The video/time lapse photos shall be made available via electronic media (for example, CD or external drive). Provide one copy of the completed video/time lapse photos to the North Dakota SHPO and offer a copy to the Bismarck Historical Society, Bismarck-Mandan Historical and Genealogical Society, FORB, Mandan Historical Society, Morton County Historical Society, North Dakota State Railroad Museum, Preservation North Dakota, and the North Dakota State University library system within sixty (60) calendar days of final acceptance of the new bridge by BNSF.

18. Ensure that the site of Camp Frazier, a World War I era military camp located on the flatland immediately south of the east end of the Bismarck Bridge and established to protect the bridge from possible sabotage, shall receive an archeological and historic study to determine the site's cultural resource value and NRHP eligibility.

19. Ensure that funds are made available to the Bismarck Historical Society and to the Mandan Historical Society sufficient to allow these local history repositories and interpreters opportunities to conduct necessary additional research (if any) to prepare interpretive presentations (written, audible and/or visual) to accompany bridge-related exhibits (static and/or mobile) if they choose to design, equip, construct and maintain such exhibits by agency staff or by contract.

Commented [BM20]: Add Northern Plains Heritage Foundation / Northern Plains National Heritage Area to one of these lists.

C. HISTORIC AMERICAN ENGINEERING RECORD DOCUMENTATION (Level of documentation to be determined through consultation)

1. BNSF shall develop comprehensive documentation that records the bridge in accordance with the Historic American Engineering Record (HAER) documentation guidelines. This shall include measured drawings; professional quality black and white photographs taken with a digital camera, printed on archival paper with an accompanying archival "gold" compact disc (CD); and an architectural and historical narrative, all in an archive-stable format.

a) Architectural and Historical Narrative

The narrative shall contain a description of the bridge and a detailed history of the bridge. The narrative shall include a history of the Jamestown Subdivision between Mandan and Bismarck, including construction of the railroad and its major features, historic ownership information, the impact of the railroad on the growth and development of the towns and counties along the route, any significant historic users of the railroad, any significant alterations or new construction on the railroad, and any significant historic events or patterns of history related to the railroad. The historical narrative should include information about the substructure from HAER NE-2 (citing it as such), and new research about the superstructure, additional changes over time, and a description of current conditions.

b) Measured Drawings of the Bridge

The documentation shall include reproduction of all existing drawings of the current bridge, and its original design, minus duplicates. A site plan/aerial photograph of the bridge and the quadrangle map of the project area shall also be included. The final version of these drawings shall be submitted on archival CDs and printed in hard copy on 11 x 17, acid-free, 100-year archival paper.

c) Photographs

The documentation shall include no more than 20 black and white digital photographs or large format (to be resolved) to include all four elevations of the bridge, bridge details, and at least four context photographs. The documentation shall include a photograph key showing the location and view direction of each image. Final versions of the photographs will be printed on 8½ x 11, acid-free, 100-year archival paper and the digital photos shall be submitted electronically on archival CDs.

2. HAER DOCUMENTATION: REVIEW AND COMMENT

a) Prior to the start of construction activity, BNSF shall prepare the draft HAER photo documentation in accordance with Stipulation IV.C. and shall distribute it via electronic mail or CD to the USCG and the North Dakota SHPO for review. The USCG and the North Dakota SHPO shall review and provide comments to BNSF within fifteen (15) calendar days of receipt of the photo documentation.

b) If comments are provided to BNSF, BNSF shall revise the photo documentation in response to the comments, as needed, and resubmit the photo documentation as described in Stipulation IV.C.2.a). within fifteen (15) calendar days of receipt of comments. If no comments are provided to BNSF by the end of the 15-day comment period, the photo documentation shall be considered complete and final.

c) BNSF shall prepare the draft HAER narrative and measured drawings in accordance with Stipulation IV.C.1.a) and b), and shall distribute them via electronic mail or CD to the USCG and the North Dakota SHPO for review within one hundred eighty (180) calendar days of the execution of this PA. The USCG and the North Dakota SHPO shall review and provide comments to BNSF within thirty (30) calendar days of receipt of the draft HAER narrative and/or measured drawings.

d) If comments are provided to BNSF, BNSF shall revise the draft HAER narrative and measured drawings in response to the comments, as needed, and resubmit the report as described in Stipulation IV.C.2.c) within thirty (30) calendar days of receipt of comments. If no comments are provided to BNSF by the end of the 30-day comment period, BNSF shall finalize the HAER narrative and measured drawings as described in Stipulation IV.C.3. and submit a final copy to the USCG and the North Dakota SHPO within fifteen (15) calendar days of the end of the comment period.

3. HAER DOCUMENTS: FINALIZATION

a) Once photo documentation is final as defined in Stipulation IV.C.2.b), construction on the substructure of the new bridge may proceed, in accordance with USCG permits. No demolition of the existing bridge shall occur until the photo documentation is declared final by the North Dakota SHPO, with the exception provided in Stipulation V.

b) Final HAER documentation shall be produced on acid-free, 100-year archival paper, with the photographs and drawings on archival CDs.

c) Upon finalization of the HAER documentation, BNSF shall submit one copy of the documentation to the North Dakota SHPO (or two if it is being submitted to NPS) and shall offer one copy of the documentation to the State Historical Society of North Dakota State Archives, Historic Bridge Foundation, Bismarck Historical Society, FORB, Mandan Historical Society, North Dakota State Railroad Museum, Burleigh County Library System, and North Dakota State University library. Documentation shall be made available in print on acid-free, 100-year archival paper and/or electronically on archival CDs. BNSF shall consult with the recipients to determine which media the recipients wish to receive and whether they wish to receive all of the photographs and drawings or only selected images and/or sheets.

d) Evidence of transfer to the recipients listed in Stipulation IV.C.3.c), which may include a copy of the transmittal letter(s), shall be provided to the North Dakota SHPO by BNSF.

e) The HAER documentation shall be considered final upon issuance of a written notice from the USCG that all comments have been satisfactorily addressed.

V. IMMINENT FAILURE

The parties acknowledge that, if the existing Bismarck Bridge is determined by BNSF to be subject to imminent failure, derailment, or other physical breakdown, BNSF would notify the

Commented [BM21]: We strongly object to allowing a unilateral determination by BNSF as to whether the historic bridge is subject to imminent failure or "other physical breakdown." A process needs to be established that involves the signatories & invited signatories.

USCG, the USACE, and the North Dakota SHPO, and immediately commence the emergency approval process with the USCG and the USACE prior to bridge removal and replacement.

VI. POST-REVIEW DISCOVERIES

A. If properties are discovered that may be historically significant, or if unanticipated effects on historic properties are found, the USCG shall implement the inadvertent discovery plan included as Attachment B of this PA.

B. In the event of a discovery, any project activity in the vicinity of the discovery shall cease. The USCG and/or BNSF shall notify the SHPO, City of Bismarck Historic Preservation Commission, and other relevant authorities of the discovery within 24 hours of the discovery. If human remains are discovered during construction, work in that portion of the project shall stop immediately. The remains shall be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains, and the USCG shall immediately consult with the SHPO and the Intertribal Reinterment Committee in compliance with *North Dakota Century Code* 23-06-27 and the North Dakota Administrative Code 40-02-03. If the remains are found to be Native American, in accordance with applicable law, a treatment plan shall be developed by the USCG and SHPO in consultation with appropriate federally recognized Indian tribes. The USCG shall ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American, the appropriate local authority shall be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

Administrative Provisions

VII. PROFESSIONAL QUALIFICATIONS

All work carried out pursuant to this PA will be developed and/or implemented by, or under the direct supervision of a person or persons meeting or exceeding the minimum professional qualifications, appropriate to the affected resource(s), listed in the *Secretary of the Interior's Professional Qualification Standards* (Appendix A of 36 CFR Part 61, amended in 1992).

Commented [BM22]: Are you sure there was an amendment to the 1983 Standards? I don't think this is correct. I think the only choices are the 1983 standards, cited here, and the proposed 1997 Standards, which are much more comprehensive, but weren't formally adopted as final. 62 Fed. Reg. 33,708 (June 20, 1997). Nonetheless, we often cite the 1997 Standards as a PA requirement because they're published, and specific, and so much better than the 1983 Standards.

VIII. EFFECTIVE DATE

The terms of this agreement will become effective upon signature of all Signatories, and a copy filed by the USCG with the ACHP.

If an emergency is declared in the area of the Undertaking by the President of the United States or Governor of North Dakota, any deadlines written into this PA are automatically extended 60 days.

IX. DURATION

This PA will expire if its terms are not carried out within 10 years from the date of issuance of the USCG bridge permit. Prior to such time, the USCG may consult with the other signatories to reconsider the terms of the PA and amend it in accordance with Stipulation XII.

X. MONITORING AND REPORTING

BNSF shall each provide all ~~parties, including~~ consulting parties~~,~~ to this PA a monthly summary report detailing work undertaken pursuant to its terms on the 1st of each month following the

execution of this PA until the environmental impact statement is finalized, at which point reporting can occur quarterly, commencing on the 1st of the month three months after the date of the signed Record of Decision, until the PA expires or is terminated. Such reports shall include all proposed scheduling changes and disputes or objections received in BNSF's efforts to carry out the terms of this PA. These reports will be emailed to the USCG point of contact (POC). Periodic (quarterly or annual) consulting party meetings may be held, depending on timelines developed in this PA.

XI. DISPUTE RESOLUTION

If any consulting party to this agreement objects to any actions conducted during the term of this PA or to the manner in which the terms of this PA are implemented, the USCG shall consult with such party to resolve the objection. If the USCG determines that such objection(s) cannot be resolved, the USCG will:

A. Forward all documentation relevant to the dispute, including the USCG's proposed resolution, to the ACHP. The ACHP shall provide the USCG with its advice on the resolution of the objection within thirty (30) calendar days of receiving documentation. Prior to reaching a final decision on the dispute, the USCG shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and Signatories and provide them with a copy of this written response. The USCG will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, the USCG may make a final decision regarding the dispute and proceed accordingly. Prior to reaching a final decision, the USCG shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Signatories to the PA and provide them and the ACHP with a copy of such written response.

C. The USCG's responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

XII. AMENDMENTS AND NONCOMPLIANCE

This Agreement may be modified upon the mutual written consent of the signatories in accordance with 36 CFR 800.6(c)(7).

XIII. TERMINATION

A. If any signatory determines that the terms of this PA will not or cannot be carried out, that party shall immediately consult with the other signatories and concurring parties to attempt to develop an amendment per Stipulation XII above. If within ninety (90) days (or another time period agreed to by all signatories) an amendment cannot be reached, the signatory may terminate the PA upon written notification to the other signatories. The Party proposing to terminate the Agreement shall so notify all parties to this Agreement explaining the reasons for termination and affording at least sixty (60) days to consult and seek alternatives to termination. The parties shall then consult.

B. Should such consultation fail to resolve the dispute, any signatory may terminate the Agreement by so notifying all ~~parties, including concurring~~ consulting parties. Should this Agreement be terminated, the USCG shall either:

Commented [BM23]: We strongly recommend that the dispute resolution procedure be available to all consulting parties. Otherwise, you're pushing some parties to take their objections to court rather than trying to work it out with the Coast Guard first.

Commented [BM24]: This should either be all consulting parties or just the signatories & invited signatories.

Commented [BM25]: This term is ambiguous. Do you mean to include all consulting parties? Or just signatories & invited signatories?

Commented [BM26]: Ditto

1. Consult in accordance with 36 CFR 800.6(a) in an effort to resolve any adverse effects, or
2. Terminate consultation and request ACHP comment in accordance with 36 CFR 800.7(c).

XIV. POINTS OF CONTACT

The USCG POC will be Brian Dunn, Chief, Office of Bridge Programs, Coast Guard Headquarters [redacted]. The SHPO POC will be Lorna Meidinger, Architectural Historian [redacted]. The ACHP POC will be Christopher Wilson, Program Analyst [redacted]. The BNSF POC will be Mike Herzog, Director of Bridge Construction [redacted].

Execution of this PA by the USCG, North Dakota SHPO, ACHP, BNSF, and FORB, and implementation of its terms, is evidence that the USCG has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

Commented [BM27]: Don't we need to specify that the Army Corps gets credit for 106 compliance as well?

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT

AMONG THE UNITED STATES COAST GUARD,
THE NORTH DAKOTA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE PROPOSED BRIDGE REPLACEMENT AT MILE 1315.0 ON THE MISSOURI RIVER NEAR BISMARCK AND MANDAN, BURLEIGH COUNTY, NORTH DAKOTA

Signatory:

United States Coast Guard

_____ Date _____

David R. Callahan, Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District

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Signatory:

North Dakota State Historic Preservation Officer

_____ Date _____
Claudia Berq, State Historic Preservation Officer

SIGNATORY PAGE

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Signatory:

Advisory Council on Historic Preservation

_____ Date _____

John M. Fowler, Executive Director

INVITED SIGNATORY PAGE

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Invited Signatory:

BNSF Railway Company

_____ Date _____

Xxx, BNSF Railway Company

INVITED SIGNATORY PAGE

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Invited Signatory:

Friends of the Rail Bridge

_____ Date _____

Xxx, Friends of the Rail Bridge

CONCURRING PARTY PAGE

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Concurring Party:

Historic Bridge Foundation

_____ Date _____
Kitty Henderson, Executive Director

Commented [PL28]: This is an example page. Each concurring party that wishes to have a signature page will have one.

CONCURRING PARTY PAGE

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Concurring Party:

City of Bismarck

_____ Date _____

Name, Title

CONCURRING PARTY PAGE

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Concurring Party:

_____ Date _____

Name, Title

Commented [PL29]: Placeholder for additional concurring party signature pages