MEMORANDUM OF AGREEMENT

BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND

THE FLORIDA STATE HISTORIC PRESERVATION OFFICER

REGARDING THE [insert project name and location]

**WHEREAS,** Pursuant to 23 United States Code (U.S.C.) § 327 and the implementing Memorandum of Understanding (MOU) executed on December 14, 2016, the Florida Department of Transportation (FDOT) has assumed Federal Highway Administration’s (FHWA) responsibilities under the National Environmental Policy Act (NEPA) for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS; and

**WHEREAS,** in accordance with the MOU, FDOT’s assumption of FHWA’s responsibilities under NEPA for highway projects includes assumption of responsibilities for compliance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

**WHEREAS,** FDOT proposes to provide federal financial assistance for the [insert project description and FPI Number] (**the** **Project**); and

**WHEREAS,** FDOT has determined that **the Project** represents an undertaking in accordance with 36 CFR § 800.3(a); and

**WHEREAS,** FDOT has defined **the Project’s** area of potential effects (APE) as [insert written description and/or "described in Attachment XXX"]; and

**WHEREAS,** FDOT has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to the requirements of 36 CFR Part 800 and has determined that **the Project** may have an adverse effect on [insert site(s) name and Florida Master Site File [FMSF] Number], which is/are [listed in/eligible for listing in] the National Register of Historic Places (NRHP); and

**WHEREAS,** FDOT has consulted with the [Miccosukee Tribe of Indians of Florida, the Mississippi Band of Choctaw Indians, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Tribe of Florida, and the Seminole Nation of Oklahoma] regarding the effects of **the Project** on historic properties; and

**WHEREAS,** FDOT has consulted with the [insert names of appropriate local government and other consulting government agencies or appropriate government entities, citizen groups and organizations and/or other parties which have a demonstrated interest in the effects of the project on historic properties] regarding the effects of **the Project** on historic properties; and

**WHEREAS,** FDOT has provided opportunities for public review and comment regarding the effects of **the Project** on historic properties; and

**WHEREAS,** in accordance with 36 CFR § 800.6(a)(1) FDOT has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination with specified documentation and has invited the ACHP to comment and participate in consultation, and the ACHP has chosen not to participate pursuant to 36 CFR § 800.6(a)(1)(iii); and

**NOW, THEREFORE,** FDOT and the SHPO agree that **the Project** shall be implemented in accordance with the following stipulations to take into account the effect of **the Project** on historic properties.

STIPULATIONS

## Prior to initiating any ground disturbing or demolition work associated with **the Project**, FDOT shall ensure that the following measures are carried out:

# STIPULATION TITLE (Heading 1)

## Stipulation text (Heading 2). The first few stipulations should cover the negotiated measures to avoid, minimize, or mitigate the adverse effects on historic properties.

### Stipulation subtext (Heading 3)

#### Stipulation subtext (Heading 4)

# STIPULATION TITLE

## Stipulation text

# STIPULATION TITLE

# PROFESSIONAL STANDARDS

## All archaeological and historic preservation work carried out pursuant to this Agreement shall be conducted by, or under the direct supervision of, a person or persons meeting the Secretary of the Interior’s Professional Qualification Standards for Archaeology and Historic Preservation as set forth at 62 FR 33708-33723 (June 20, 1997).

# DURATION

## This Memorandum of Agreement (MOA) will expire if its terms are not carried out within [xxx] (x) years from the date of execution. Prior to expiration, the parties may agree to extend the timeframe for fulfillment of the terms by letter agreement.

# POST-REVIEW DISCOVERIES

## If properties are discovered that may be historically significant, or if unanticipated effects on historic properties found, FDOT shall implement the Post Review Discovery Plan established in Stipulation X of the March 15, 2016 Programmatic Agreement among the ACHP, SHPO, and FDOT, as amended on June 4, 2017.

## In the unlikely event that human skeletal remains or associated burial artifacts are uncovered within the project area during construction, all work in that area must stop. The individual in charge of the activity that leads to the discovery must notify the Project Engineer and the FDOT District [x] Cultural Resources Coordinator. The discovery must be reported to local law enforcement and the appropriate medical examiner. The medical examiner will determine whether the State Archaeologist should be contacted per the requirements of Section 872.05, Florida Statutes, and Rule 1A-44.004, Florida Administrative Code (FAC).

# -------OR-------

## In accordance with 36 CFR § 800.13, FDOT will take the following actions if a post-review discovery is made:

### If previously unidentified historic properties are discovered, or if the potential to affect previously identified historic properties changes after FDOT has completed their appropriate reviews under this Agreement, but before construction has started, FDOT shall reinitiate consultation under Section 106 and Chapter 267, F.S.

### If previously unidentified historic properties are discovered during construction or if unanticipated impacts to known or previously unidentified historic properties occur during construction, the following procedures shall be followed:

#### All construction-related activity in the vicinity of the discovery shall stop and the contractor shall immediately notify the Project Engineer and the FDOT District [x] Cultural Resources Coordinator of the discovery. Necessary security measures will be taken to protect the discovery as appropriate.

#### FDOT will notify the SHPO of the discovery and invite them to accompany FDOT staff (or consultants) to the location within forty-eight (48) hours of the discovery.

#### FDOT will immediately notify any Indian tribe that might attach religious and cultural significance to the affected property within forty-eight (48) hours of the discovery.

#### FDOT shall consult with the SHPO/THPO and appropriate consulting parties to document and evaluate the project effects and the need, if any, for further investigation within forty-eight (48) hours of the SHPO/THPO receipts of notification.

#### If FDOT determines that the discovery does not warrant further investigation, FDOT will provide written notification to the SHPO outlining FDOT’s reasons and requesting their concurrence within two (2) business days of the visit to the discovery location. The SHPO/THPO and Indian tribes will have two (2) business days after receipt to respond. If no comments are received within this period, concurrence will be assumed, and project construction may resume.

#### If FDOT determines that the site warrants further investigation, a scope of work will be developed within forty-eight (48) hours of the site visit. The scope of work will be submitted to the SHPO and, as appropriate, the tribes. The SHPO/THPO and tribes will have two (2) business days after receipt to review and comment. If no comments are received within this period, concurrence will be assumed and work will be implemented in accordance with the scope. If comments are received, FDOT shall take them into account and carry out the scope of work. Upon completion and acceptance of the work, construction may proceed as planned. A report of the investigations will be completed within the time frame established by the scope of work and copies provided to all consulting parties. Should any party object to the proposed work plan or results, FDOT will proceed in accordance with Stipulation VIII.

#### When the discovery consists of human remains, graves, or grave-associated artifacts or other properties that federally recognized tribes with ancestral ties to Florida may ascribe with a traditional cultural or religious significance, FDOT-OEM will notify the tribes. FDOT will comply with Section 1.6 of the current version of the FDOT Standard Specifications for Road and Bridge Construction and the procedures for inadvertent discovery of human remains contained in Section 872.05, F.S. and Rule 1A-44 of the Florida Administrative Code.

# REVIEW STIPULATION

## FDOT shall afford the SHPO and other consulting parties, including the federally-recognized tribes affiliated with Florida, a 30-day period for review and comment following the receipt of delivery of those submittals and reviews described above. If no comments are received by FDOT at the end of these 30 days, FDOT will presume there are no objections. Any objections to the findings or plans proposed in these submittals will be addressed in accordance with Stipulation VIII, below.

# DISPUTE RESOLUTION

## Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FDOT shall consult with such party to resolve the objection. If FDOT determines that such objection cannot be resolved, FDOT will:

### Forward all documentation relevant to the dispute, including FDOT’s proposed resolution, to the ACHP. The ACHP shall provide FDOT 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, FDOT shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. FDOT will then proceed according to its final decision.

### Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within thirty (30) days. Prior to reaching such a final decision, FDOT shall prepare a written response that considers any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of the written response.

### Fulfill its responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

# AMENDMENTS

## This MOA may be amended when such an amendment is agreed to in writing by all signatories. All signatories must signify their acceptance of the proposed changes to the MOA in writing within 30 days of their receipt. The amendment will be effective on the date a copy signed by all signatories is filed with the ACHP. In accordance with 36 CFR § 800.6(b)(7), if the ACHP was not a signatory to the original agreement and the signatories execute an amended agreement, FDOT shall file the amended agreement with the ACHP.

# TERMINATION

## If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories in an effort to amend the MOA per Stipulation IX, above. If within thirty (30) days (or another time agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

## Once the MOA is terminated, and prior to work continuing on **the Project**, FDOT must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FDOT shall notify the signatories as to the course of action it will pursue.

*Execution of this MOA by FDOT and SHPO and implementation of its terms is evidence that FDOT has taken into account the effects of this undertaking on historic properties per the requirements of Section 106 (Public Law 113-287 [Title 54 U.S.C. 306108]), and 36 CFR Part 800 (Protection of Historic Properties)*.

**SIGNATORIES:**

FLORIDA STATE HISTORIC PRESERVATION OFFICER

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

Timothy A. Parsons

Director, Division of Historical Resources

State Historic Preservation Officer

FLORIDA DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

Jason Watts

Director, Office of Environmental Management

**CONCURRING PARTIES:**

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT [x]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date

[Name]

Director, Transportation Development