

**MEMORANDUM OF AGREEMENT
BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE US HIGHWAY 17/92 (US 17/92) FROM IVY MIST
LANE TO AVENUE A PROJECT IN OSCEOLA COUNTY, FLORIDA**

This Memorandum of Agreement (MOA) is made and entered into between the Florida Department of Transportation (FDOT) and Florida State Historic Preservation Officer (SHPO), pursuant to the following:

WHEREAS, Pursuant to 23 United States Code (U.S.C.) § 327 and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, the 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 executed a Section 106 Programmatic Agreement among the FHWA, the FDOT, the Advisory Council on Historic Preservation (ACHP), and the SHPO regarding the implementation of the Federal-Aid Highway Program in Florida on September 27, 2023 (2023 PA); and

WHEREAS, FDOT will provide federal financial assistance for the US17/92 Ivy Mist Lane to Avenue A Project, Financial ID No. 437200-2-22-01 (**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 the maximum proposed right-of-way (ROW) and the back or side property lines of parcels adjacent to the ROW for no more than 328 ft (100m) and proposed pond construction with a 100 ft (30.5 m) buffer for each pond; and

WHEREAS, FDOT has identified the South Florida Railroad (8OS02540), the CSX Railroad Bridges 1, 2, and 3 (8OS03176, 8OS03177, and 8OS03178, respectively), [REDACTED] and the South Orange Blossom Trail Bridges (8OS03182) resource group and its contributing resources (US 17/92 [8OS02796] and FDOT Bridge Nos. 920004, 920003, and 920002 [8OS01747, 8OS01748, and 8OS01749, respectively]), within the **Project's** APE; and

WHEREAS, FDOT has consulted with the SHPO pursuant to the requirements of 36 CFR Part 800 and has determined that the **Project** will have an adverse effect on the South Orange Blossom Trail Bridges (8OS03182) resource group and contributing resources 8OS02796, 8OS01747,

8OS01748, and 8OS01749, which are eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, FDOT has consulted with the SHPO pursuant to the requirements of 36 CFR Part 800 and has determined that the **Project** will have no adverse effect on the South Florida Railroad (8OS02540) and CSX Railroad Bridges 1, 2, and 3 (8OS03176, 8OS03177, and 8OS03178, respectively); and

WHEREAS, pursuant to Section 4(f) of the U.S. Department of Transportation Act, FDOT has determined that proposed mitigation measures presented herein will result in a net benefit to the South Orange Blossom Trail Bridges (8OS03182) resource group and contributing Orange Blossom Trail (8OS02796) road segment by returning them to an operational state and restoring them to their historic use as transportation facilities while preserving the characteristics that qualify them for listing on the NRHP; and

WHEREAS, FDOT has consulted with the Miccosukee Tribe of Indians of Florida, the Muscogee (Creek) Nation, the Poarch Band of Creek Indians, the Seminole Tribe of Florida (STOF), and the Seminole Nation of Oklahoma regarding the effects of the **Project** on historic properties and has invited them to sign this MOA as concurring parties; and

[REDACTED]

WHEREAS, FDOT has consulted with the Florida SHPO and the Certified Local Government representative for Osceola County 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, as appropriate; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1) FDOT has notified the 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

FDOT shall ensure that the following measures are carried out:

I. ARCHITECTURAL HISTORY SURVEY OF TWENTIETH CENTURY BRIDGES

A. Conduct survey of up to 35 bridges constructed between 1900 and 1945 located within District Five that are owned or maintained by FDOT, and municipal and county owned bridges that may utilize federal or state highway funds for maintenance and/or improvement projects. The survey will be completed within five (5) years from MOA execution and follow SHPO

guidance and standards promulgated by Florida Department of Historical Resources (FDHR) current at the time of proposed survey.

B. Develop a revised historic context on transportation development in District Five between 1900 and 1945. The historic context will include the development history of the Orange Blossom Trail including the South Orange Blossom Trail Bridges (8OS03182) resource group and its contributing resources.

C. Address all surveyed bridges in a report, including significance recommendations according to NRHP evaluation criteria, and complete Florida Site Master Forms according to the current FDHR guidance and standards, at the time of survey.

D. Provide SHPO an opportunity to review and comment on the proposed methodology and survey plan, subject bridge list, survey report and historic context content, and other aspects associated with the development and execution of this stipulation. Unless otherwise agreed upon by the parties, review and comment period will follow Stipulation VIII of this agreement.

II. PUBLICALLY AVAILABLE HISTORIC INTERPRETATION

A. Collect visual documentation including but not limited to existing conditions photography and videography of the South Orange Blossom Trail Bridges (8OS03182) resource group, contributing resources 8OS02796, 8OS01747, 8OS01748, and 8OS01749, and the surrounding corridor, which will be utilized in the production of the historic interpretation materials, prior to initiation of construction and demolition activities.

B. Within five years of MOA execution, host information about Resource 8OS03182 and its contributing resources on the Project Map, a GIS-based story map within the department's website *Preservation and Progress*.

C. Develop language that highlights the significance of Resource 8OS03182 to be presented with current photographs, and if available, historic photographs, in the story map.

D. Provide SHPO an opportunity to review the resource content prior to finalization in the story map. Unless otherwise agreed upon by the parties, review and comment period will follow Stipulation VIII of this agreement.

III. ARCHAEOLOGICAL MONITORING

A.



B. Supporting documentation for the SOI qualified archaeological monitor(s) will be provided to the FDOT Office of Environmental Management (OEM) prior to monitoring initiation.

C. FDOT will submit a monitoring report to OEM, the SHPO, and other appropriate consulting parties within 90 days of completion of the monitoring effort for review and comment in accordance with Stipulation VIII of this agreement.

IV. 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) and in accordance with 36 CFR 800.2(a)(1).

V. DURATION

This Memorandum of Agreement (MOA) will conclude upon satisfactory completion of all its terms and conditions or expire within ten (10) years from the date of execution or upon Construction Final Acceptance, whichever comes first, if the FDOT has not completed all the terms and conditions within the MOA. Prior to expiration, the parties must agree to extend the timeframe for fulfillment of the terms by letter agreement.

VI. MOA DOCUMENTATION

A. The FDOT shall provide a summary of actions carried out pursuant to this MOA to the FDOT Office of Environmental Management (OEM) annually. The reporting period shall be the fiscal year from July 1st to June 30th and the summary shall describe the status of mitigation activities and, as applicable, any issues that may affect the ability of the FDOT to continue to meet the terms of this MOA, any disputes and objections received, and how they were resolved.

B. A Notice of Fulfillment will be prepared to summarize the implementation of the MOA after all stipulations have been fulfilled. This document will be submitted to OEM and SHPO within six (6) months after completion of all MOA stipulations in accordance with Stipulation VIII of this agreement.

VII. POST-REVIEW DISCOVERIES

A. If properties are discovered that may be historically significant, or if unanticipated effects on historic properties are found, FDOT shall implement the Post Review Discovery Plan established in Stipulation IX of the 2023 PA.

B. 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 5 Cultural Resources Coordinator per Stipulation X of the 2023 PA. 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).

VIII. REVIEW STIPULATION

FDOT shall afford the SHPO and other consulting parties, including the federally recognized Tribes affiliated with Florida, a thirty (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 thirty (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 IX, below.

IX. 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:

A. 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.

B. 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.

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

X. 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 thirty (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.

XI. 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

Alissa S. Lotane
Director, Division of Historical Resources
State Historic Preservation Officer

Date _____

FLORIDA DEPARTMENT OF TRANSPORTATION

Jennifer Marshall, P.E.
Director, Office of Environmental Management

Date _____

CONCURRING PARTIES:

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT 5

James S. Stroz, Jr., P.E.
Director, Transportation Development

Date _____

