

**MEMORANDUM OF AGREEMENT
BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE STATE ROAD 5 (SR 5)/US 1 OVER PELLICER
CREEK BRIDGE (No. 730008) REPLACEMENT PROJECT IN FLAGLER
AND ST. JOHNS COUNTIES, FLORIDA**

WHEREAS, Pursuant to 23 United States Code (U.S.C.) § 327 and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, 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 will provide federal financial assistance for the SR 5/US 1 over Pellicer Creek Bridge (No. 730008) Replacement, Financial ID No. 447118-1-32-01 (**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 existing SR 5/US 1 right-of-way (ROW) from approximately 335 m (1,100 ft) south of the Flagler and St. Johns County line to 188 m (617 ft) north of the line extended to the back or side property lines of parcels adjacent to the ROW or no more than 100 m (330 ft) from the ROW line, as depicted in Attachment A; 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** will have an adverse effect on FDOT Bridge No. 730008 (Florida Master Site File [FMSF] Nos. 8FL01008/8SJ08262), which is eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, FDOT has consulted with the Muscogee (Creek) Nation of Florida regarding the effects of the **Project** on historic properties; and

WHEREAS, FDOT has consulted with the Florida SHPO and the Certified Local Government representative for St. Johns 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 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

FDOT shall ensure that the following measures are carried out:

I. HISTORIC AMERICAN ENGINEERING RECORD (HAER) LEVEL III EQUIVALENT DOCUMENTATION

Prior to authorizing any demolition or other activity that could damage FDOT Bridge No. 730008 (FMSF Nos. 8FL01008/8SJ08262), per guidance provided by the National Park Service (NPS), FDOT will ensure that the bridge is documented in accordance with the standards and guidelines of the Historic American Engineering Record (HAER). FDOT shall:

A. Complete Historic American Engineering Record (HAER) Level III equivalent documentation of 8FL01008/8SJ08262, including:

B. Large format photography.

1. A HAER equivalent report, inclusive of historic context, scans of large format negatives, and a sketch plan of 8FL01008/8SJ08262.

C. Submit the final HAER equivalent report and photographic documentation to the Florida Division of Historical Resources (FDHR), including an archival copy and an electronic copy for inclusion in the FMSF. Unless otherwise agreed to by the NPS, FDOT will ensure that all documentation is completed and accepted in writing by the NPS prior to demolition.

II. 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).

III. DURATION

This Memorandum of Agreement (MOA) will expire if its terms are not carried out within ten (10) years from the date of execution or upon project acceptance, whichever comes first if the FDOT has not completed all the terms and conditions within the MOA. Prior to expiration, the parties may agree to extend the timeframe for fulfillment of the terms by letter agreement.

IV. 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 for their files within six (6) months after completion of all MOA stipulations.

V. 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 September 27, 2023 Programmatic Agreement among the ACHP, SHPO, and FDOT (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).

VI. 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 VII, below.

VII. 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.

VIII. 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.

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

FLORIDA DEPARTMENT OF TRANSPORTATION

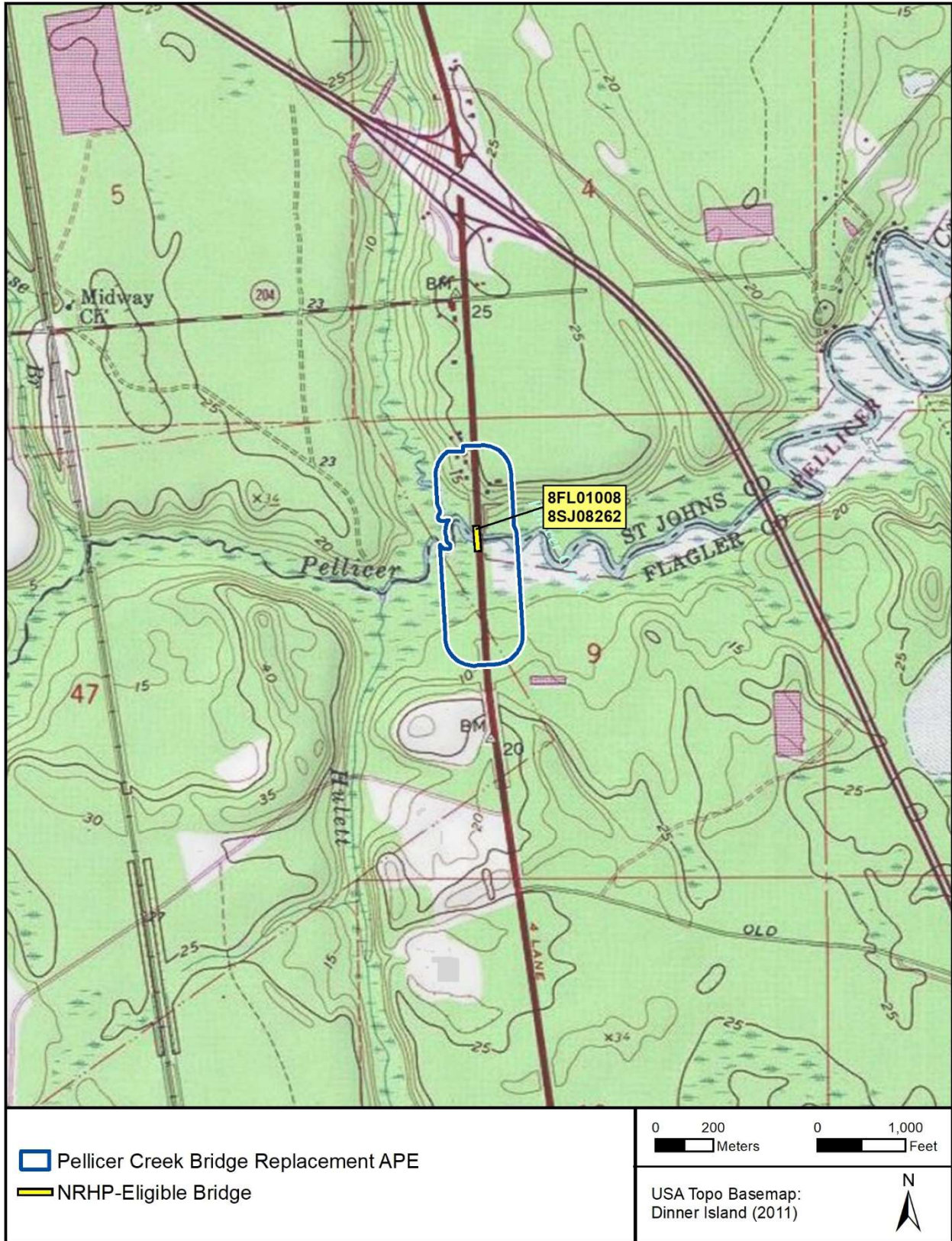
_____ Date _____
Jennifer Marshall, P.E.
Director, Office of Environmental Management

CONCURRING PARTIES:

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT 5

_____ Date _____
C. Jack Adkins
Director, Transportation Development

ATTACHMENT A



Location of NRHP-eligible bridge 8FL01008/8SJ08262.