

**MEMORANDUM OF AGREEMENT
BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE PROPOSED ROADWAY IMPROVEMENTS TO US 301 FROM
COUNTY ROAD 470 EAST TO STATE ROAD 44 IN
SUMTER COUNTY, FLORIDA**

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, it is anticipated that FHWA will provide federal financial assistance for the widening of US 301 (State Road [SR] 35) from County Road (CR) 470 East to SR 44 in Sumter County, Florida (Financial Project No. 430132-1-22-01) (**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 existing and proposed US 301 mainline and truck route right-of-way extending to a distance of no more than 100 meters (330 feet) from the existing or proposed right-of-way for the mainline and truck route alignment (see Attachment 1); 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 the Shady Brook site (8SM00933), an archaeological property which is eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, FDOT is also developing roadway improvements for CR 470 (Financial Project No. 434912-1-22-01), which intersects with the proposed improvements and APE of the **Project** in the location of the Shady Brook site (8SM00933; see Attachment 2), for which it is anticipated federal funding will be provided; and

WHEREAS, FDOT and SHPO shall execute a separate Memorandum of Agreement (MOA) pursuant to Section 106 of the National Historic Preservation Act (NHPA) to resolve the adverse effects to historic properties of the CR 470 roadway improvements; and

WHEREAS, although it is unknown which project will proceed to construction first, FDOT and SHPO recognize that the area of intersection shall be treated the same for each project; and

WHEREAS, FDOT has coordinated with the Miccosukee Tribe of Indians of Florida, 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 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 in order to take into account the effects of the **Project** on historic properties.

STIPULATIONS

The FDOT shall ensure that the following measures are carried out:

I. INTERIM PROTECTION PLAN

Following acquisition of the **Project's** right-of-way, FDOT shall implement an interim site protection plan to avoid and, where avoidance is not possible, minimize ground disturbing activities within and adjacent to the boundaries of 8SM00933 to the maximum extent practical. FDOT shall ensure that 8SM00933 is secured and protected against damage until the measures agreed upon in Stipulations II-IV are implemented. To achieve such security and protection within and adjacent to the boundaries of 8SM00933, FDOT shall:

- A. Prohibit staging, storage, and parking, without disclosing the presence of the archaeological site.
- B. Require work be conducted by vehicles with rubber tires only.
- C. Require the FDOT District 5 Cultural Resources Coordinator to be contacted a minimum of two weeks prior to any work being conducted.

II. ARCHAEOLOGICAL DATA RECOVERY PLAN

- A. In consultation with the SHPO and appropriate consulting parties, FDOT shall develop a Phase III Data Recovery Plan for the portion of site 8SM00933 being impacted by the ground disturbing activities associated with the **Project**.

B. This Data Recovery Plan shall be developed in accordance with Rule Chapter 1A-46, Florida Administrative Code (FAC), the Florida Department of Historical Resources' (FDHR) Cultural Resource Management Standards & Operations Manual, Module Three: Guidelines for Use by Historic Preservation Professionals, and FDOT's Cultural Resources Management Handbook.

C. This Data Recovery Plan shall include a provision for the contents and completion of a Site Management Plan to be implemented following the completion of the Phase III Excavation of Site 8SM00933.

D. FDOT shall provide the proposed Data Recovery Plan to the SHPO and appropriate consulting parties for their review and comment in accordance with Stipulation X.

III. ARCHAEOLOGICAL DATA RECOVERY

A. Following review and comment in accordance with Stipulation X, FDOT shall perform Archaeological Data Recovery at site 8SM00933 in accordance with the approved Data Recovery Plan.

B. Within sixty (60) days following the completion of the Phase III Excavation at 8SM00933, FDOT shall prepare a Site Management Plan which shall include:

1. The initial assessment of the Data Recovery Effort at the site; the confirmed boundaries of the site in relation to the **Project**; and a preliminary evaluation of the data collected at the site.
2. The additional research efforts and considerations needed to complete the analysis to answer the research questions set forth in the Data Recovery Plan.
3. Appropriate measures to be implemented for the avoidance and, where avoidance is not possible, the minimization of harm to site 8SM00933, during the construction of the **Project**.
4. The proposed time frame for completing any additional research including artifact analysis and the Phase III Excavation Report.
5. Identify any areas in the project vicinity where the staging and storage of equipment and vehicles shall be avoided, as determined appropriate by SHPO and the federally-recognized tribes.

C. The Site Management Plan shall be submitted to SHPO and appropriate consulting parties for review and comment in accordance with Stipulation X.

D. Ninety (90) days following the completion of the additional research identified in the Site Management Plan, FDOT shall prepare a draft Phase III Excavation Report for site 8SM00933. FDOT shall provide the Phase III Excavation Report to the SHPO and appropriate consulting parties for review and comment in accordance with Stipulation X.

IV. DISPOSITION OF ARCHAEOLOGICAL COLLECTIONS

In consultation with the SHPO, the Florida Bureau of Archaeological Research, and appropriate consulting parties, FDOT will ensure that all materials and records resulting from data recovery excavations at site 8SM00933 are curated by the FDOT in accordance with 36 CFR Part 79.

V. INITIATION OF CONSTRUCTION

Following final acceptance of the Site Management Plan, FDOT may initiate construction activities within and adjacent to the boundaries of 8SM00933 for the **Project** consistent with the conditions contained in the Plan.

VI. ARCHAEOLOGICAL MONITORING

FDOT shall ensure that a qualified archaeological monitor be on site during ground-disturbing construction activities within the boundary of site 8SM00933. Such activities include, but are not limited to, clearing and grubbing within the site boundary, construction of drainage structures or stormwater facilities, the removal and/or relocation of buried utility lines, and road grading. FDOT will submit a monitoring report to the SHPO and other appropriate consulting parties within 90 days of completion of the monitoring effort.

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 X of the March 15, 2016 Programmatic Agreement among the ACHP, SHPO, and FDOT, as amended on June 4, 2017.

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. 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 Chapter 1A-44.004, FAC.

VIII. PROFESSIONAL STANDARDS

All archaeological and historic preservation work carried out pursuant to this MOA 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 CFR 33708-33723 (June 20, 1997).

IX. DURATION

This MOA will expire if its terms are not carried out within ten (10) 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.

X. REVIEW STIPULATION

FDOT shall afford the SHPO and appropriate 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 XI, below.

XI. 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 remain unchanged.

XII. 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.

XIII. 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 XII, 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 FIVE

_____ Date
Loreen Bobo, P.E.
Director, Transportation Development