

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE,  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING THE LOXAHATCHEE  
RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES, FLORIDA**

**WHEREAS**, the U.S. Army Corps of Engineers, Jacksonville District (Corps), is studying the feasibility of constructing the Loxahatchee River Watershed Restoration Project (Project) with project components located in Martin and Palm Beach Counties, Florida, as a component of the Comprehensive Everglades Restoration Plan (CERP); and

**WHEREAS**, the Project will be constructed on property that is currently owned, or will be acquired by the SFWMD prior to construction; and

**WHEREAS**, the Project is being developed to restore the south Florida ecosystem while providing for water-related needs of the region as initially authorized in the 2000 Water Resources Development Act (WRDA 2000); and

**WHEREAS**, the South Florida Water Management District (SFWMD) is the non-Federal sponsor for the project; and

**WHEREAS**, the Corps has determined that the Project constitutes an undertaking, as defined in 36 C.F.R. § 800.16(y), and therefore, is subject to Section 106 of the National Historic Preservation Act of 1966 (Section 106 of the NHPA), 54 U.S.C. § 306108; and

**WHEREAS**, the Corps has drafted a feasibility report in the form of an integrated Project Implementation Report (PIR) and Environmental Impact Statement (EIS) wherein the Recommended Plan includes a preliminary area of potential effects (APE) for the Project which includes areas of construction, impoundment, and hydration within the larger Project study area. These areas are identified Grassy Waters Preserve, Loxahatchee Slough, Kitching Creek, Cypress Creek Canal, Mecca, Moonshine Creek, Gulfstream East, Gulfstream West, and Pal Mar. Collectively, these areas include a surface storage reservoir, aquifer storage and recovery wells, pump stations, canals, ditch plugs, new and modified culverts and weirs, and other management measures designed to rehydrate over-drained wetlands in the watershed and promote restoration of flows to the northwest fork of the Loxahatchee River. The project APE is depicted on maps in Attachment A to the Programmatic Agreement (Agreement); and

**WHEREAS**, Section 1001 of the Water Resources Reform and Development Act of 2014 (Public Law 113-121) mandates that, to the extent practicable, final feasibility reports will be completed in three years and will have a maximum Federal cost of \$3 million; therefore, Project designs and impacts are preliminary and may be subject to change. Due to these timing and budgetary constraints and the size of the Project, the Corps cannot conduct the necessary surveys to identify and evaluate cultural resources and determine effects of the Project prior to completing the appropriate National Environmental Policy Act (NEPA) documentation (PIR/EIS); and

**WHEREAS**, the Corps has determined that the APE will be further refined during Preliminary, Engineering and Design (PED) of the Project. Implementation of PED is contingent on authorization of the

Project by Congress in a WRDA. The Corps may implement PED in phases as funding is appropriated and construction authority is provided and, as a result, efforts to identify and evaluate historic properties and the determination of effects from Project features and related consultation may be conducted over a period of multiple years when a design for each Project phase and/or feature is known; and

**WHEREAS**, the Corps has determined that the Project has the potential to affect properties eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the Florida State Historic Preservation Officer (SHPO), the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, the Miccosukee Tribe of Indians of Florida, and the Thlopthlocco Tribal Town pursuant to Section 106 of the NHPA; and

**WHEREAS**, the Corps previously conducted a cultural resources survey of a portion of the APE documented in the report *Phase I Cultural Resource Survey for the Loxahatchee River Watershed Restoration Project, Martin and Palm Beach Counties, Florida* (Southeastern Archaeological Research, Inc. 2017), a manuscript on file at the Florida Master Site File; and

**WHEREAS**, the Corps has identified and evaluated thirteen cultural resources within the APE, including 8MT0517 (Ineligible for inclusion in NRHP), 8MT01600 (Ineligible for inclusion in NRHP), 8MT01516 (Ineligible for inclusion in NRHP), 8MT01518 (Ineligible for inclusion in NRHP), 8MT01519 (Ineligible for inclusion in NRHP), 8MT01515 (Ineligible for inclusion in NRHP), 8MT01520 (Ineligible for inclusion in NRHP), 8MT01453 (Insufficient information), 8MT01344 (Eligible for inclusion in NRHP), 8MT01348 (Not evaluated), 8MT01449 (Listed on NRHP), 8MT01323 (Not evaluated), and 8MT01453 (Insufficient information), that may be affected by a Project phase and/or feature, and the Corps and the SHPO have the same NRHP evaluations of these cultural resources; and

**WHEREAS**, portions of the preliminary APE have been partially surveyed as depicted on maps in Attachment A, and additional cultural resources surveys and evaluations are necessary to identify the presence of archaeological sites and determine if these sites are eligible for listing in the NRHP; and

**WHEREAS**, the Corps, with the concurrence of SHPO, has decided to comply with Section 106 of the NHPA for the undertaking, including all Project phases and/or features through the execution and implementation of this Agreement, following 36 C.F.R. § 800.14(b); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b), the USACE has notified the Advisory Council on Historic Preservation (ACHP) of its intention to develop this programmatic agreement (Agreement), pursuant to 36 C.F.R. § 800.14(b)(1)(ii) (letter dated July 3, 2019), and the ACHP has elected to participate in the consultation (letter dated July 16, 2019); and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps, in a letter dated July 3, 2019, 2019, notified and invited the Seminole Tribe of Florida, the Seminole Nation of Oklahoma, the Miccosukee Tribe of Indians of Florida and the Thlopthlocco Tribal Town per 36 C.F.R. § 800.6(a)(1)(C) to participate in this Agreement, and they have declined to participate in this Agreement and will remain Consulting Parties; and

**WHEREAS**, SHPO, ACHP, SFWMD, and interested Tribe(s) hereinafter are collectively referred to as Consulting Parties;

**WHEREAS**, the Corps, SHPO, and ACHP are collectively referred to as Signatories; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.6(a)(4) and 36 C.F.R. § 800.14(b)(2)(ii), the Corps held public meetings on April 18, 2019 at the Town of Jupiter Community Center and on April 19, 2019 at the South Florida Water Management District Headquarters in West Palm Beach to notify the public of the Project and provide an opportunity for members of the public to comment on the project. No specific concerns regarding cultural resources were expressed at these public meetings; and a notice of availability of this Agreement is being posted to the CERP website for public comment; and

**NOW, THEREFORE**, the Signatories agree that the undertaking, including all Project phases and/or features, shall be implemented in accordance with the following stipulations, which establish the process the Corps shall follow for compliance with Section 106, taking into consideration the views of the Consulting Parties; in order to take into account the potential effects of the specific Project phase or feature on historic properties.

## **STIPULATIONS**

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

### **I. TIME FRAMES AND REVIEW PROCEDURES**

**DOCUMENT AND DELIVERABLE REVIEW.** For all final documents and deliverables produced in compliance with this Agreement, the Corps shall provide a hard copy of documents via mail to the Consulting Parties for review. If Consulting Parties agree, draft documents may be sent electronically for formal review and for communications amongst themselves for activities in support of this Agreement. Any written comments provided by the Consulting Parties within 30 calendar days from the date of receipt shall be considered in the revision of the document or deliverable. The Corps shall document and report the written comments received for the document or deliverable and how comments were addressed. The Corps shall provide a revised final document or deliverable to the Consulting Parties. The Consulting Parties shall have 30 calendar days to respond. Failure of the Consulting Parties to respond within 30 calendar days of receipt of any document or deliverable shall not preclude the Corps from moving to the next step in this Agreement. A copy of the final document shall be provided to the Consulting Parties subject to the limitations in Stipulation VII (Confidentiality).

### **II. AREA OF POTENTIAL EFFECTS**

- A. **DETERMINATION OF THE AREA OF POTENTIAL EFFECTS.** The APE for the Project has been preliminarily determined by the Corps in consultation with the Consulting Parties and depicted on maps in Attachment A to this Agreement. Design and construction of the project will occur in phases in which various components of the Project shall be funded for development separately. The Corps shall continue to refine and consult on the development of each phase of project, and

consult on the APE for each project feature through PED. The preliminary APE consists of areas of construction, impoundment, and hydration within the larger Loxahatchee River Watershed Restoration Project (LRWRP) study area. These areas are identified Grassy Waters Preserve, Loxahatchee Slough, Kitching Creek, Cypress Creek Canal, J.W. Corbett Wildlife Management Area, Mecca, Moonshine Creek and Gulfstream East, Gulfstream West, and Pal Mar. Collectively, these areas include a surface storage reservoir, aquifer storage and recovery wells, pump stations, canals, ditch plugs, new and modified culverts and weirs, and other management measures designed to rehydrate over-drained wetlands in the watershed.

- B. REVISIONS. If the Corps revises the APE or an individual component of the APE, the Corps shall consult with the Consulting Parties on that revision in accordance with Stipulation I (Timeframes and Review Procedures). The Corps shall determine the potential for Project activities to affect historic properties in a revised APE in consultation with the Consulting Parties pursuant to 36 C.F.R. §§ 800.3 - 800.5. The Corps will inform the Consulting Parties of the final APE regardless of changes for each project feature or component. If the Corps determines that changes to the APE will affect historic properties, the Corps shall consult on this finding of effect in accordance with Stipulation I (Timeframes and Review Procedures). Revisions to the APE will not necessitate amendments to this Agreement.

### III. TREATMENT OF HISTORIC PROPERTIES

#### A. IDENTIFICATION AND EVALUATION

The Corps shall complete additional identification and evaluation of historic properties as early as practical, following Project authorization and funding, to assist in the avoidance and minimization of historic properties well in advance of Project construction.

1. Identification of historic properties. An inventory of properties within the final APE, agreed to under Stipulation II, consistent with the Secretary of Interior's (SOI's) *Standards and Guidelines for Archeology and Historic Preservation* (48 F.R. 44716-44740) will be initiated for each Project phase or feature as construction details become available. The Corps shall submit research designs for proposed surveys including areas excluded from survey due to previous ground disturbance to Consulting Parties for review and comment consistent with Stipulation I (Timeframes and Review Procedures).
  - a. All cultural resources surveys and associated reporting will comply with all applicable guidelines and requirements specified in Florida Division of Historical Resources' (DHR's) Module Three, *Guidelines for Use by Historic Preservation Professional*. Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The survey shall ensure that historic properties such as historical structures and buildings, historical engineering features, landscapes, viewsheds, and traditional cultural properties (TCPs), are recorded, in addition to archaeological sites. Recordation of historic structures, buildings, objects, and sites shall be prepared using the Florida SHPO Site File forms.
  - b. Cultural resources surveys will include those locations without substantial ground disturbance that have not been previously surveyed for historic properties. The Corps shall document and consult on areas of ground disturbance excluded from surveys during Consulting Party review of the survey research design.

- c. The Corps shall submit identification and evaluation reports to Consulting Parties for review and comment consistent with Stipulation I (Timeframes and Review Procedures).
2. Determinations of Eligibility. The Corps shall determine NHRP eligibility based on identification and evaluation efforts, and consult with Consulting Parties regarding these determinations. Should any Consulting Party(s) disagree in writing to the Corps' findings of NRHP eligibility and/or findings of effect within a final document or deliverable, the Corps will immediately notify the Consulting Parties of the objection and proceed to consult with the objecting Party for a period of time, not to exceed 30 calendar days, to resolve the objection. Should the objecting Party(s) and the Corps be unable to agree on the issues to which the Consulting Party(s) has objected, the Corps shall proceed in accordance with Stipulation VIII (Dispute Resolution); or
  - a. Through mutual agreement of the Signatories, elect to consult further with the objecting Party(s) until the objection is resolved, or dispute resolution is exercised through the process set forth in Stipulation VIII (Dispute Resolution);
  - b. Treat the property as eligible for the National Register; or
  - c. Obtain a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be final in accordance with 36 C.F.R. § 63.4.

#### B. DETERMINATION OF EFFECTS

The Corps may implement the Project in a phased approach as funding is appropriated and construction authority is provided and, as a result, multiple identification surveys, historic property evaluations, and determinations of effects may result for each Project phase, and or feature. The Corps reserves the right to make separate determinations of effects for each Project phase, and or feature. As necessary, the Corps will hold face-to-face consultations, and provide technical expertise to assist Consulting Party review in the results of the cultural resource investigations, modifications to the APE, determination of effects, engineering details, and hydrological impacts of the Project or Project phase.

##### 1. Findings of **No Historic Properties Affected**.

- a. Basis for Finding. The Corps shall make findings of "no historic properties affected" for each Project phase or construction feature under the following circumstances:
  - i. If no historic properties are present in the APE; or
  - ii. The Project phase or feature shall avoid effects to historic properties (including cumulative effects).
- b. The Corps shall notify Consulting Parties of each finding and provide supporting documentation in accordance with 36 C.F.R. § 800.11(d). Unless a Consulting Party objects to a finding within 30 days, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded.
- c. If a Consulting Party objects within 30 days to a finding of "no historic properties affected," the Corps shall consult with the objecting Party to resolve the disagreement.
  - i. If the objection is resolved, the Corps either may proceed with the specific Project phase or feature in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to 36 C.F.R. § 800.5(a)(1).
  - ii. If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to ACHP and request that ACHP review the Corps' finding in accordance with the process described Section VIII (Dispute Resolution). The Corps

shall prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to the Consulting Parties. If the Corps' final determination is to reaffirm its "no historic properties affected" finding, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded. If the Corps revises its finding then it shall proceed to Stipulation III.B.2 or Stipulation III.B.3 (below).

2. **Findings of No Adverse Effect.** If the Corps determines that a specific Project phase or feature does not meet the adverse effect criteria, the Corps shall propose a finding of "no adverse effect" and consult with Consulting Parties in accordance with 36 C.F.R. § 800.5(b) and following steps a-c below.
  - a. The Corps shall notify all Consulting Parties of its finding(s); describe any project specific conditions and/or modifications required to the Project phase or feature to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 C.F.R. §800.11(e).
  - b. Unless a Consulting Party objects within 30 days, the Corps will proceed with its "no adverse effect" determination and conclude the Section 106 of the NHPA review.
  - c. If a Consulting Party objects within 30 days to a finding of "no adverse effect," the Corps will consult with the objecting Party to resolve the disagreement.
    - i. If the objection is resolved, the Corps shall proceed with the Project phase or feature in accordance with the resolution; or
    - ii. If the objection cannot be resolved, the Corps shall request that ACHP review the findings in accordance with 36 C.F.R. § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. The Corps shall, pursuant to 36 C.F.R. § 800.5(c)(3)(ii)(B), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to the Consulting Parties. If the Corps' final determination is to reaffirm its "no adverse effect" finding, the Section 106 of the NHPA review of the specific Project phase or feature will have concluded. If the Corps will revise its finding then it shall proceed to Stipulation III.B.3 below.
  - d. Avoidance and Minimization of Adverse Effects. Avoidance of adverse effects to historic properties is the preferred treatment approach. The Corps will consider redesign of elements of the Project phase or feature in order to avoid and/or minimize historic properties and Project effects that may be adverse. If the Corps determines that the Project phase or feature cannot be modified to avoid or minimize adverse effects, the Corps will make a determination of "adverse effect".
3. **Determination of Adverse Effects.** If the Corps determines that a specific Project phase or feature may adversely affect a historic property, it shall notify the Consulting Parties of the determination, document why the effect cannot be avoided, and outline the alternatives considered to avoid and to minimize adverse effects, and consult to resolve the effects as outlined in Section III.C Historic Properties Treatment Plan.

#### C. HISTORIC PROPERTIES TREATMENT PLAN

If the Corps determines that Project activities will result in adverse effects to historic properties, the Corps, in coordination with the Consulting Parties, shall develop a Historic Properties Treatment Plan (HPTP) to resolve adverse effects resulting from the Project or a specific Project phase or feature. If necessary, a HPTP will also provide recommendations for the management of

historic properties that are identified during this Project and which are located within long-term routine operations and maintenance areas for the Project. A HPTP would be developed after the Corps notifies the Consulting Parties of a determination of “adverse effect” for a particular Project feature or phase, but before construction of the feature or phase. With written acknowledgement by the signatories, a HPTP would be appended to this Agreement without amending the Agreement. The use of a HPTP to resolve adverse effects resulting from the Project shall not require the execution of an individual Memorandum of Agreement or Programmatic Agreement.

A HPTP shall identify the historic properties including any TCPs, located within the APE. A HPTP shall only apply to historic properties that have been evaluated for eligibility for inclusion in the NRHP. A HPTP shall outline the minimization and mitigation measures necessary to resolve the adverse effects to historic properties. Proposed mitigation measures may include, but are not limited to, historic markers, interpretive brochures, data recovery, and publications, and other forms of creative mitigation depending on their criterion for eligibility. Development of appropriate measures shall include consideration of historic property types and provisions for avoidance or protection of historic properties where possible. The HPTP shall include a general schedule of work for each Project phase or feature, and provide a schedule of key project milestones, and decision points at which to discuss opportunities for Project modification(s) with Consulting Parties.

A HPTP shall define the process and conditions under which archaeological site monitoring is appropriate. A HPTP will outline the curation process and storage criteria for all artifacts and data recovered from historic properties listed in this document. A HPTP will detail the means and methods of public outreach and dissemination of the results of data recoveries excavations to the general public. Where possible, and when agreed upon by Consulting Parties, the Corps shall avoid excavation of known burial locations, and utilize creative or non-traditional means to mitigate adverse impacts to burial sites if they cannot be avoided. A HPTP will confirm the process for managing discovery of human remains per the *Burial Resource Agreement between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources* (See Attachment C) and/or the procedures outlined in Florida Statute Chapter 872 (2018), as appropriate.

1. Review. The Corps shall submit a draft HPTP to the Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures).
2. Concurrence. The Corps shall provide a revised final document or deliverable to Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures). Following Signatory concurrence with the HPTP, all Consulting Parties will be provided with final HPTPs which will be appended to this Agreement and implemented in a manner consistent with the procedures outlined in this Agreement and the HPTP.
3. Reporting. Reports and other data pertaining to the treatment of effects to historic properties will be distributed to Consulting Parties and other members of the public, consistent with Stipulation VII (Confidentiality) of this Agreement, unless a Consulting Party indicated through consultation that they do not want to receive a report or data. Reports will be consistent with the procedures outlined in the guidelines and requirements specified in Florida DHR’s Module Three, *Guidelines for Use by Historic Preservation Professional*.
4. Amendments/Addendums/Revisions. If a historic property that is not covered by an existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are

previously unanticipated effects to a historic property, or if the Consulting Parties agree that a modification to the HPTP is necessary, the Corps shall prepare an addendum to the HPTP. If necessary, the Corps shall then submit the addendum to the Consulting Parties and follow the provisions of Stipulation I (Timeframes and Review Procedures). The HPTP may cover multiple discoveries for the same property type.

5. Data Recovery. When data recovery is proposed, the Corps, in consultation with the Consulting Parties, shall ensure that specific Research Designs are developed consistent with the SOI's *Standards and Guidelines for Archaeology and Historic Preservation*, follow guidelines and requirements specified in Florida DHR's Module Three, *Guidelines for Use by Historic Preservation Professional*, and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).
6. Final Report Documenting Implementation of the HPTP. Within one year after the completion of all construction for the Project, the Corps shall submit to the Consulting Parties a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the historic properties. The Corps may extend this period through written consent of the Consulting Parties. The submittal of the Final Report shall be in accordance with Stipulation I and VII (Timeframes and Review Procedures and Confidentiality).

#### IV. QUALIFICATIONS

- A. Professional Qualifications. All key personnel for technical work and specialized analysis (i.e. Principal Investigator, Project Manager, Bioarchaeologist/Osteologist, and Field Director) required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, or exceeding the SOI's *Historic Preservation Professional Qualification Standards* as specified in 36 C.F.R. Part 61 for archeology or history, as appropriate (48 F.R. 44739). In addition, at least one individual supervising in the field will have a graduate degree in archaeology, anthropology, or a closely related field or equivalent, and substantive experience in conducting archaeological research and fieldwork in the state of Florida. This individual will have at least one year of experience or specialized training in the type of activities the individual will supervise. "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery excavation or recordation of potential historic properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated Project consultants.
- B. Historic Preservation Standards. Historic preservation activities carried out pursuant to this Agreement shall meet the SOI's *Standards and Guidelines for Archaeology and Historic Preservation* (48 F.R. 44716-44740, September 29, 1983), as well as standards and guidelines for historic preservation activities established by the Florida SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement will be provided to the Consulting Parties, and are distributed in accordance with Stipulation VII (Confidentiality), and meet published standards of the Florida SHPO, specifically, Module Three, *Guidelines for Use by Historic Preservation Professional*.

#### V. TREATMENT OF HUMAN REMAINS

Human remains and grave goods encountered during any Project phase or component that are located on non-federal lands will be treated in accordance with the requirements in the *Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources* (See Attachment B) and/or procedures outlined in Florida Statute Chapter 872 (2018), as appropriate. No portion of this Project will be constructed on Federal lands.

## **VI. PUBLIC COORDINATION AND PUBLIC NOTICE**

The interested public will be invited to provide input during the implementation of this Agreement. The Corps shall carry this out through letters of notification, public meetings, environmental assessment/environmental impact statements, site visits and/or other appropriate methods. The Corps shall ensure that any comments received from members of the public are taken under consideration and incorporated where appropriate. Review periods shall be consistent with Stipulation I (Timeframes and Review Procedures). In seeking input from the interested public, locations of historic properties will be handled in accordance with Stipulation VII (Confidentiality). In cases where the release of location information may cause harm to the historic property, this information will be withheld from the public in accordance with Section 304 of the NHPA (54 U.S.C. § 307103).

## **VII. CONFIDENTIALITY**

Signatories to this Agreement acknowledge that historic properties are subject to the provisions of Section 304 of the NHPA (54 U.S.C. § 307103) and 36 C.F.R. § 800.11(c), relating to the disclosure of information about the location, character or ownership of a historic property, and will ensure that any disclosure of information under this Agreement is consistent with the terms of this Agreement and with Section 304 of the NHPA, 36 C.F.R. § 800.11(c), and the Freedom of Information Act (5 U.S.C. § 552), as amended. Confidentiality regarding the specific nature and location of the archaeological sites and any other cultural resources discussed in this Agreement shall be maintained to the extent allowable by law. Dissemination of such information shall be limited to appropriate personnel within the Corps (including their contractors), the Signatories, Consulting Parties and those parties involved in planning, reviewing, and implementing this Agreement. When information is provided to the Corps by SHPO or others who wish to control the dissemination of that information more than described above, the Corps will make a good faith effort to do so, to the extent permissible by federal law.

## **VIII. DISPUTE RESOLUTION**

- A. Should any Consulting Party to this Agreement object in writing to any action proposed or carried out pursuant to this Agreement, the Corps will immediately notify the Consulting Parties of the objection and proceed to consult with the objecting Party for a period of time, not to exceed 30 calendar days, to resolve the objection. If the objection is resolved through consultation, the Corps may authorize the disputed action to proceed in accordance with the terms of such resolution. If the Corps determines that such objection cannot be resolved, the Corps will:
  1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within 30 days of receiving adequate documentation. Prior to reaching a final

- decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Consulting Parties, and provide them with a copy of the written response. The Corps will then proceed according to its final agency decision.
2. If the ACHP does not provide its advice regarding the dispute within the 30 day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Consulting Parties to the Agreement, and provide them and the ACHP with a copy of such written response.
  3. The Corps' responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.
- B. Objection by the Public. At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to the Agreement be raised by a member of the public, the Corps shall notify the Consulting Parties and take the objection under consideration, consulting with the objecting Party and, should the objecting Party request, any of the Consulting Parties to this Agreement, for no longer than 15 calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other Consulting Parties. Within 15 calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting Party. The Corps will promptly provide written notification of its decision to the other Consulting Parties, including a copy of the response to the objecting Party. The Corps' decision regarding resolution of the objection will be final. Following issuance of its final decision, the Corps may authorize the action that was the subject of the dispute to proceed in accordance with the terms of that decision. The Corps' responsibility to carry out all other actions under this Agreement shall remain unchanged.

## **IX. NOTICES**

All notices, demands, requests, consents, approvals or communications from all parties to this Agreement to other parties to this Agreement shall be either personally delivered, sent by United States Mail, or electronic mail, and all Parties shall be considered in receipt of the materials five (5) calendar days after deposit in the United States mail or on the day after being sent by electronic mail.

If Consulting Parties agree in advance, in writing or by electronic mail, facsimiles, copies, or electronic versions of signed documents may be used as if they bore original signatures.

If Consulting Parties agree, electronic documents and/or electronic communications may be used for formal communication amongst themselves for activities in support of Stipulation I (Time Frames and Review Procedures).

## **X. AMENDMENTS, TERMINATION, AND DURATION**

- A. Amendment. Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the Signatories to consider such amendment.

This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

All appendices to this Agreement, and other instruments prepared pursuant to this Agreement including, but not limited to, the maps of the APE, may be revised or updated by the Corps through consultation consistent with Stipulation I (Timeframes and Review Procedures) and agreement in writing of the Signatories without requiring amendment of this Agreement, unless the Signatories through such consultation decide otherwise. In accordance and Stipulation VI (Public Coordination and Public Notice), the Signatories and interested members of the public, will receive amendments to the Project's APE as appropriate, and copies of any amendment(s) to the Agreement.

- B. Termination. Any Signatory to this Agreement may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation X.A., or if any Signatory proposes termination of this Agreement, the Signatory proposing termination shall notify the other Signatories in writing, explain the reasons for proposing termination, and consult with the other Signatories to seek alternatives to termination, within 30 calendar days of the notification.
1. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement and amend the Agreement as required.
  2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.
  3. Beginning with the date of termination, the Corps shall ensure that until and unless a new agreement is executed for the actions covered by this Agreement, such Project phase and/or feature shall be reviewed individually in accordance with 36 C.F.R. §§ 800.4-800.6.
- C. Duration. This Agreement shall remain in effect for a period of 30 years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this 30-year period unless it is terminated prior to that time. No later than 90 calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

## **XII. EFFECTIVE DATE**

This Agreement shall take effect on the date that it has been fully executed by the Corps, the SHPO, and the ACHP.

## **XIII. EXECUTION**

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE (SHPO), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) REGARDING THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES, FLORIDA

Execution and the implementation of its terms of this Agreement by the Corps, the SHPO, and the ACHP evidence that the Corps has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment.

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE (SHPO), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) REGARDING THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES, FLORIDA

SIGNATORIES TO THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES FLORIDA PROGRAMMATIC AGREEMENT:

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Andrew Kelly  
Colonel, U.S. Army  
District Commander

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE (SHPO), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) REGARDING THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES, FLORIDA

SIGNATORIES TO THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES FLORIDA PROGRAMMATIC AGREEMENT:

FLORIDA STATE HISTORIC PRESERVATION OFFICE

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Timothy A. Parsons,  
State Historic Preservation Officer

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICE (SHPO), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP) REGARDING THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES, FLORIDA

SIGNATORIES TO THE LOXAHATCHEE RIVER WATERSHED RESTORATION PROJECT, MARTIN AND PALM BEACH COUNTIES FLORIDA PROGRAMMATIC AGREEMENT:

ADVISORY COUNCIL ON HISTORIC PRESERVATION

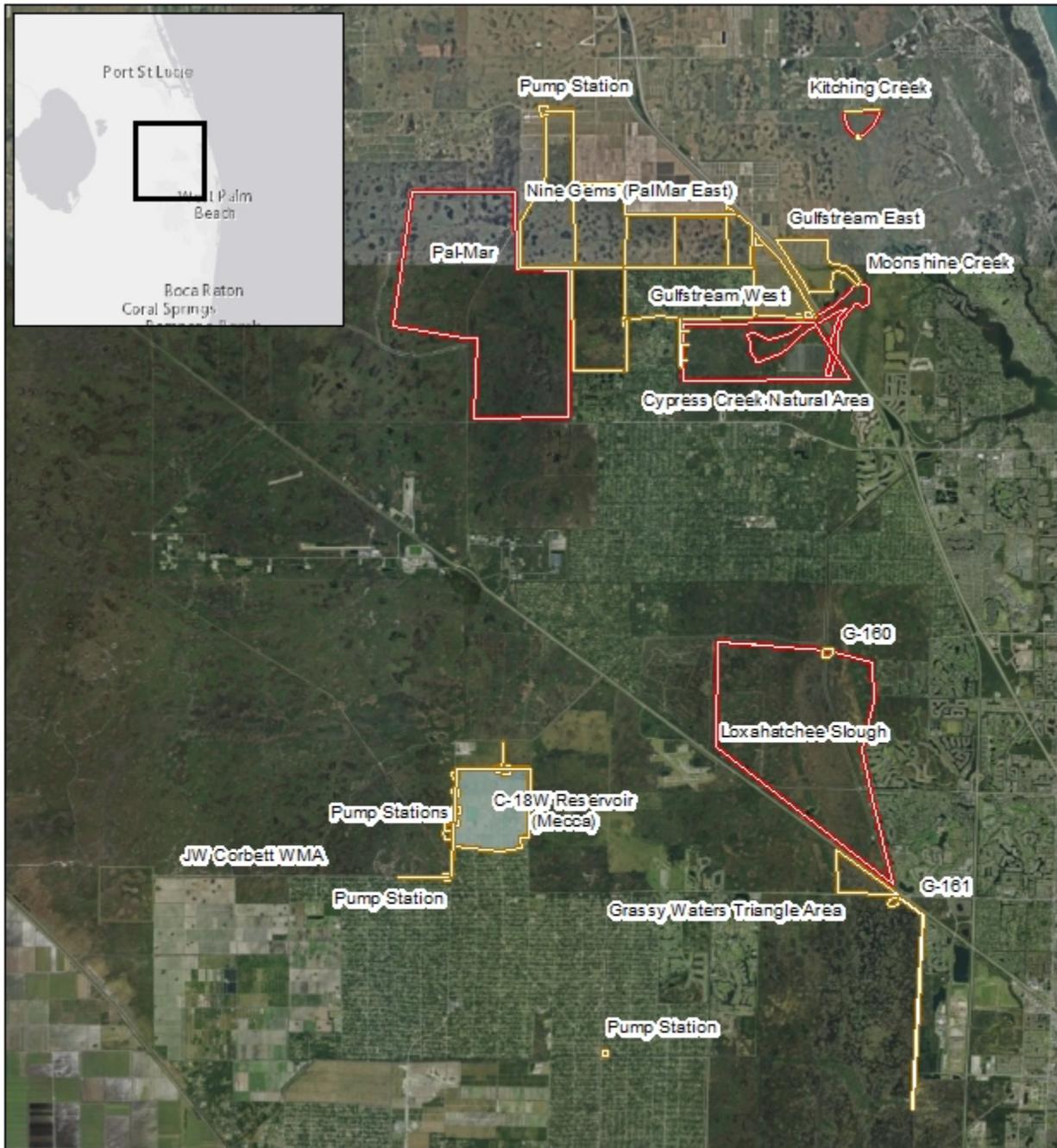
BY: \_\_\_\_\_

DATE: \_\_\_\_\_

John M. Fowler  
Executive Director

## **Attachment A**

### Map of the Overall Project APE



 <p><b>US Army Corps of Engineers</b> Jacksonville District</p>	<p>Loxahatchee River Watershed Restoration Project Areas of Potential Effects</p> <p>Palm Beach and Martin Counties Florida</p>	<table border="0"> <tr> <td></td> <td>Construction Area</td> </tr> <tr> <td></td> <td>Impoundment Area</td> </tr> <tr> <td></td> <td>Restoration Area</td> </tr> <tr> <td></td> <td>Archaeological Site</td> </tr> </table> <div style="text-align: right;">  </div> <div style="text-align: center;">  </div>		Construction Area		Impoundment Area		Restoration Area		Archaeological Site
	Construction Area									
	Impoundment Area									
	Restoration Area									
	Archaeological Site									

**Attachment B**

*Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources*

## **Attachment C**

### Definitions

## Glossary of Definitions

**Adverse Effect** – an effect of an undertaking that “may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Consideration shall be given to all qualifying characteristics of an historic property, including those that may have been identified subsequent to the original evaluation of the property’s eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a)(1).

**Area of Potential Effects (APE)** – “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.” 36 C.F.R. § 800.16(d).

**Construction** – Ground disturbing activities which have the potential to effect historic properties.

**Consultation** – “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process.” 36 C.F.R. § 800.16(f).

**Day(s)** – calendar days.

**Eligible for inclusion in the National Register** - Includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

**Historic Property** – “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties.” See 36 C.F.R. § 800.16(l)(1), providing elaboration on the statutory definition codified at 54 U.S.C. § 300308.

**Interested Member of the Public** – an individual or entity that is not a consulting Party (until invited to be so), but which the Lead Federal Agency believes may be interested in information about the undertaking and its effects on historic properties based on, for example, the Lead Federal Agency’s prior experience or contact with the individual or entity, the recommendations of a SHPO or THPO, affected Indian tribes, or the individual or entity’s own initiative in providing its views. See 36 C.F.R. § 800.2(d).

**National Register of Historic Places (National Register)** – the National Park Service through the authority of the Secretary of the Interior maintains the National Register of Historic Places. Sites are determined eligible for listing on the National Register using criteria defined in 36 C.F.R. § 60.4.

**Signatory** – In accordance with 36 C.F.R. § 800.6(c)(1), a signatory has the sole authority to execute, amend, or terminate the agreement.

**State Historic Preservation Officer (SHPO)** – “the official appointed or designated pursuant to Section 101(b)(1) of the NHPA to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.” 36 C.F.R. § 800.16(v).

**Undertaking** – “a project, activity, or program funded in whole or in part under the jurisdiction of a Federal agency, including those carried out with Federal financial assistance; those requiring a Federal permit, license or approval.” 36 C.F.R. § 800.16(y).