



US Army Corps of Engineers®

PROGRAMMATIC AGREEMENT AMONG

THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICER, THE BUREAU OF OCEAN ENERGY MANAGEMENT, AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION REGARDING COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT DURING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS

WHEREAS, the United States Army Corps of Engineers (Corps), Jacksonville District (SAJ) proposes to implement aspects of the Operations, Navigation, and Shore Protection Programs as authorized by the Rivers and Harbors Act of 1899, Coastal Zone Management Act of 1972 and the Water Resources Development Act (various years); and

WHEREAS, the Corps has constructed, and continues to construct, operate and maintain numerous civil works projects within the SAJ area of responsibility in Florida, pursuant to its existing authorities; and

WHEREAS, the Corps is authorized to partner in numerous programs and projects designed to protect the economy and environment of the nation's coastal areas by reducing the effects of storms, coastal erosion, and climate change; and

WHEREAS, the Corps has determined that the projects and activities associated with the SAJ Operations, Navigation, and Shore Protection Programs constitute undertakings as defined in 36 C.F.R. § 800.16(y), which may have an effect upon properties that are included in or eligible for inclusion in the National Register of Historic Places (NRHP), hereafter referred to as historic properties, and has consulted, and will continue to consult, with the Florida State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) pursuant to 36 C.F.R. § 800.6; and

WHEREAS, the Corps has determined that certain categories of undertakings under the Operations, Navigation, and Shore Protection programs that constitute or pose little or no potential to affect historic properties and, as such, SAJ developed a process for expediting the review of those undertakings (see **Attachment 1** for Programmatic Allowances); and

WHEREAS, this Programmatic Agreement (Agreement) also establishes the phased review process that the Corps will follow for compliance with the National Historic Preservation Act (NHPA), (54 U.S.C. § 306108 ,formerly 16 U.S.C. § 470f) (referred to hereinafter as "Section 106"), when the constraints of individual undertakings preclude completion of the Section 106 review process prior to completing the appropriate National Environmental Policy Act (NEPA) documentation, pursuant to 36 C.F.R. § 800.6; and

WHEREAS, the Corps had determined that use of this agreement during the appropriate NEPA documentation satisfies the consideration of effects to cultural resources as part of the NEPA process as provided in 40 CFR § 1508; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(1)(i), this Agreement will also establish the process SAJ shall follow for compliance with Section 106 when the Programmatic Allowances, routine and/or reoccurring undertakings, that may have been previously consulted on and have no change in area of potential effects (APE, as described in **Attachment 1** and defined in **Attachment 2**), but may require

supplemental NEPA review, due to an extended interval in time between nourishment and/or events, will not require additional coordination among the Consulting Parties; and

WHEREAS, pursuant to Section 8 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1337(k), certain activities within the SAJ Operations and Federal Navigation and Shore Protection Programs – namely, borrow-area dredging for beach nourishment located on the submerged Federal lands of the Outer Continental Shelf – constitute undertakings by the U.S. Department of the Interior, Bureau of Ocean Energy Management (BOEM), for which BOEM has designated the Corps to be the Lead Federal Agency pursuant to 36 C.F.R. § 800.2(a)(2) for these activities; and

WHEREAS, the Corps, with the concurrence of the SHPO, has decided to comply with Section 106 for undertakings associated with the SAJ Operations and Navigation and Shore Protection Programs through of the development of this Program-wide Programmatic Agreement, pursuant to 36 C.F.R. § 800.14(b)(2); and

WHEREAS, the Corps has decided that this Agreement will not be applicable to consultations for undertakings on tribal lands or undertakings which may impact historic properties on tribal lands, and will instead follow 36 C.F.R. Part 800; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1) and 36 C.F.R. § 800.14(b), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its intent to develop this Agreement to govern the implementation of a SAJ Operations, Navigation, and Shore Protection Programs, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps invited BOEM to participate as a Consulting Party or sign this Agreement as an Invited Signatory Party; the refusal of an Invited Signatory Party to sign the Agreement does not prevent the Agreement from being executed; however, an Agreement cannot impose a duty or responsibility on a party that has not signed it; BOEM elected to participate as an Invited Signatory Party; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps invited the Seminole Tribe of Florida (STOF) to participate as a Consulting Party or sign this Agreement as a Concurring Party; the STOF declined to participate as a Concurring Party and will remain a Consulting Party; and

WHEREAS, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps invited the Miccosukee Tribe of Indians of Florida (MTIF), the Seminole Nation of Oklahoma (SNOK), the Thlopthlocco Tribal Town (TTT), and the Muskogee (Creek) Nation (MCN) to participate as Consulting Parties or sign this Agreement as a Concurring Party and the MTIF, SNOK, TTT, and MCN have not responded and therefore, will remain Consulting Parties to this Agreement; and

WHEREAS, the implementation of this Agreement does not preclude additional consultation with Indian Tribes, SHPO, local governments, or interested members of the public; and

WHEREAS, The ACHP, SHPO, and the Corps hereinafter are referred to as Signatory Parties; and

WHEREAS, BOEM hereinafter is referred to as an Invited Signatory Party; and

WHEREAS, SHPO, BOEM and Interested Tribe(s) hereinafter are referred to as Consulting Parties; 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 has provided meaningful notification and an opportunity for additional public comment on this Agreement by utilizing the Corps SAJ Environmental Documents Website and shall provide a link to that location through social media and/or a press release, NEPA scoping meetings associated with the Navigation and Shore Protection Programs and communications for those proposed actions, and existing stakeholder engagement meetings including those for the South Atlantic Coastal Study, the Keeping History Above Water conference, and the Tidally United Summit; and

WHEREAS, the definitions set forth in 36 C.F.R. § 800.16 are incorporated herein by reference and apply throughout this Agreement; and

NOW, THEREFORE, the Signatory Parties agree that undertakings implemented as part of the Corps' SAJ Operations, Navigation, and Shore Protection Programs shall be administered in accordance with the following stipulations to allow for the effects of the undertaking on historic properties.

STIPULATIONS

The Corps will ensure that the following measures are carried out, consistent with the Program-wide actions of this Agreement.

I. PURPOSE OF THIS PROGRAMMATIC AGREEMENT

The purpose of this Agreement is to streamline the Corps' compliance with the ACHP's regulations, Protection of Historic Properties (36 CFR Part 800), for undertakings associated with the SAJ Operations and Navigation and Shore Protection Programs whenever:

- A. There are no historic properties and unevaluated cultural resources identified within an APE; or
- B. Historic properties and unevaluated cultural resources that could be eligible for the NRHP, until proven otherwise, are within an APE but will be managed and maintained in such a way that they are protected, and no adverse effects will result; or
- C. The routine and recurrent nature of the undertaking is such that it is unlikely to affect historic properties and unevaluated cultural resources, and therefore, will not require further review and consultation, or there are cultural resources that are not eligible for inclusion on the NRHP, as specified in **Attachment 1**, and exempt from the provisions of 36 C.F.R. Part 800; or
- D. The Corps cannot, due to timing and budgetary constraints, fully determine the effects on historic properties of an individual undertaking implemented as part of the SAJ Operations and Navigation and Shore Protection Programs prior to the completion of the appropriate NEPA documentation or other USACE decision document.

- E. This Agreement will also identify certain categories of routine and/or reoccurring undertakings that have little or no potential to cause adverse effects to historic properties, and are therefore, excluded from further consultation, provided those undertakings are identified in **Attachment 1** and meet the criteria identified in **Stipulation III (Programmatic Allowance Review Process for Section 106 Compliance)**.
- F. This Agreement also ensures that, prior to implementation of an undertaking, the necessary steps to identify historic properties, assess direct and indirect effects to historic properties, and resolve adverse effects to historic properties, when necessary, consistent with Section 106, 36 C.F.R. § 800 and 40 C.F.R. § 1500, are completed.

II. TIME FRAMES AND REVIEW PROCEDURES

The Corps shall conduct review procedures of planned undertakings associated with the SAJ Operations and Navigation and Shore Protection Programs to determine their potential to affect identified and unidentified historic properties. The Corps' undertakings shall be classified as either, Programmatic Allowances (see **Stipulation III**), a Phased and Expedited Review Process for Program Activities Not Covered by Allowances (see **Stipulation IV**) or a Standard Review (see **Stipulation V**). For all documents and deliverables produced in accordance with the stipulations of this Agreement, the Corps shall provide a draft document to the Consulting Parties, the ACHP will only receive those documents and deliverables they have requested for review (see **Stipulation III** and **Stipulation IV**). If the Signatory Parties and Consulting Parties agree, draft documents may be sent electronically for formal review and for communications among themselves for activities in support of this Agreement. Any written comments, provided 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 received were addressed. The Corps shall provide a revised final document or deliverable to the Consulting Parties. The Consulting Parties shall have 30 calendar days from receipt of the deliverables to respond. Failure of the Consulting Parties to respond within 30 calendar days of receipt of any submittal 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 XII (Confidentiality)**.

III. PROGRAMMATIC ALLOWANCE REVIEW PROCESS FOR SECTION 106 COMPLIANCE

This Stipulation allows the Corps to meet its Section 106 responsibilities for routine, or reoccurring undertakings through the implementation of the procedures outlined below. These undertakings will also be consistent with all aspects of the SAJ Operations and Navigation and Shore Protection Programs as authorized by the Rivers and Harbors Act of 1899, Coastal Zone Management Act of 1972 and the Water Resources Development Act (various years). The procedures are intended to streamline undertakings associated with the SAJ Operations and Navigation and Shore Protection Programs that pose little or no effect to historic properties (Programmatic Allowances as defined in **Attachment 1**).

- A. This Agreement applies only to undertakings under the SAJ Operations and Navigation and Shore Protection Programs, including certain activities that also constitute undertakings by the BOEM that are associated with the utilization of Outer Continental Shelf mineral resources for shore protection, beach or coastal wetlands restoration, or other projects..

- B. For purposes of this Agreement, the undertakings included as Programmatic Allowances encompass all construction (routine and non-routine) and operation and maintenance activities required for current and future operation of the SAJ Operations and Navigation and Shore Protection Programs. See **Attachment 1**.
- C. The Allowance review process will always be completed prior to the award of a construction or operation contract and implementation of a SAJ Operations and Navigation and Shore Protection undertaking.
- D. The Corps will ensure all Programmatic Allowances reviewed under this Agreement will be conducted by qualified professionals, consistent with 36 C.F.R. § 800.2(a)(1), and any work product of such professionals satisfy 36 C.F.R. § 800.11.
- E. After the Federal interest has been determined by the Corps and funds are provided to begin work on a SAJ Navigation and Shore Protection undertaking, or an Operations undertaking is initiated, the SAJ Archaeologist assigned to the undertaking will review the undertaking footprint. The SAJ Archaeologist will conduct the following activities to complete the Programmatic Allowance review process at the earliest point feasible.
 - 1. The SAJ archaeologist will determine an APE for the undertaking, following 36 C.F.R. § 800.4(a)(1), and will confirm that efforts to identify historic properties are complete, making a reasonable and good faith effort following 36 C.F.R. § 800.4.
 - 2. The SAJ archaeologist will assess effects on identified historic properties within the APE and consult on all determinations of effect if necessary, following 36 C.F.R. §§ 800.4 - 800.5.
- F. At the initial review of an undertaking and its potential to meet the criteria listed above, the SAJ archaeologist will establish an initial APE for evaluation. If the SAJ archaeologist determines that an undertaking is a Programmatic Allowance as stipulated below, and no further SHPO consultation associated with the re-evaluation of historic properties is required. If that determination is made, the Corps has no further obligation to consult on that undertaking and will document this finding in the Corps' undertaking file. Documentation of a determination that an undertaking meets the criteria of an Allowance in the undertaking file shall, at a minimum, consist of a written summary that describes the specific routine activity, describes review or identification efforts and the results, identifies any avoidance/protective measures taken, indicates the SAJ archaeologist reviewer and date reviewed, and provides maps showing the location of the activity and the APE as defined by the SAJ archaeologist. SAJ will prepare an annual report of these summaries to include the information in the undertaking file detailed above. The annual report will include information on Programmatic Allowances undertaken between January 01 and December 31 and made available by January 31 of the following year.
- G. To make the determination whether an undertaking meets the criteria of a Programmatic Allowance, the SAJ archaeologist will review available materials, such as published and archival records, prior reports, and/or maps and photographs. The purpose of the review is to: determine the nature and reliability of past investigations; determine if there are known historic properties in the area; assess the extent of any past disturbance; and determine if

further investigation is warranted in order to establish if historic properties are present or would be affected. The undertaking under review must be limited to one of the activities specified in **Attachment 1** and must meet all the following conditions:

1. The undertaking is part of a previously authorized, constructed, and/or reoccurring project;
 2. The undertaking does not involve movement, removal, or alteration of culturally modified material or culturally utilized material, or natural rock that contributes to properties of religious and cultural significance to Indian Tribes;
 3. The undertaking does not require further investigation of the APE or re-evaluation of historic properties will be consistent with 36 C.F.R. § 800.4(c)(1);
 4. The undertaking does not occur within fill that is a material component of a built structure (e.g., dam, dike, weir, pump station and seawalls) that may be a historic property;
 5. The undertaking has no coastal structures less than 45 years in age that will be altered or demolished without the prior assessment by a cultural resource specialist to determine if the structures have a level of importance that would require consultation at a lesser age to determine eligibility;
 6. The undertaking does not occur on tribal lands; and
 7. For undertaking areas that have been previously surveyed but not yet dredged or disturbed, the methods utilized in an identification survey will be compared to existing guidance (either from the State of Florida or, for portions of the APE located on the Outer Continental Shelf, from BOEM) to determine whether the original survey remains sufficient.
- H. Programmatic Allowances (see **Attachment 1**) may include, but are not limited to, the following activities: ebb or flood shoal dredging; operation and maintenance (O&M) dredging; coastal erosion control; placement of dunes and shoreline berms; road-raising; breach response along the barrier islands; beach and dune fill with periodic nourishment; modifications and in-place construction of groins, levees, storm surge barriers, seawalls, revetments, breakwaters; habitat restoration; submerged pipelines sub-aqueous utility and transmission lines; regional sediment management; docks/piers; fish and wildlife and other natural resources management.
- I. The list of Programmatic Allowances (see **Attachment 1**) may be revised and new Programmatic Allowances may be added to this Agreement only by the mutual written consent of the Signatory Parties. Amending the Programmatic Allowances will not constitute an amendment of the agreement as provided in **Stipulation XV (Amendments and Termination)**.
- J. If the SAJ archaeologist finds there is insufficient information to assess whether cultural resources are present or if the cultural resources do not meet the criteria above, the undertaking will be subject to the expedited processes outlined in **Stipulation IV (Phased and Expedited Review Process for All Program Activities Not Covered by Allowances)** of this Agreement or a standard Section 106 review, see **Stipulation V (Standard Review Process)**.
- K. If a determination of effects cannot be finalized prior to completion of the appropriate NEPA documentation due to time and budgetary constraints, the Corps will follow the measures set

forth in **Stipulation IV (Phased and Expedited Review Process for All Program Activities Not Covered by Allowances)**

IV. PHASED AND EXPEDITED REVIEW PROCESS FOR PROGRAM ACTIVITIES NOT COVERED BY ALLOWANCES

The following stipulation outlines the expedited steps the Corps will take to comply with Section 106 when the Corps cannot fully determine the effects of the undertaking on historic properties prior to the completion of the appropriate NEPA documentation related to the undertaking. The Corps will make every effort to follow standard Section 106 review processes when assessing an undertaking; however, if , due to timing and schedule constraints, the Corps cannot fully determine the effects on historic properties in an individual undertaking implemented as part of the SAJ Operations and Navigation and Shore Protection Programs prior to the completion of NEPA documentation or other Corps decision document, the following processes will be carried out during Preliminary Engineering and Design (PED) and prior to construction.

A. Determination and Documentation of the APE:

1. To make the determination whether an undertaking will have effects on historic properties, the Corps' cultural resource specialists will establish the APE, which includes the footprint of all activities associated with an undertaking and a reasonable buffer determined through consultation with the Signatory and Consulting Parties. The Corps may consider information provided by other interested parties, such as local governments and the public, when establishing the APE.
2. The SAJ Operations, Navigation, and Shore Protection Programs, includes more than 7,000 miles of coastal areas from the Florida Panhandle to the Florida/Georgia state line, with at least 7 major physiographic provinces: Florida Bay, Biscayne Bay, Florida Reef Tract, nearshore coastal waters, Atlantic Coastal Ridge, Florida Keys, Immokalee Rise; and within 23 Florida counties, including but not limited to; Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, Martin, Palm Beach, Broward, Miami-Dade, Monroe, Collier, Lee, Charlotte, Sarasota, Manatee, Hillsborough, Pinellas, Hernando, Citrus, Levy, and Dixie (**Attachment 3**). The SAJ Operations, Navigation, and Shore Protection Programs includes emergency management, recreation, invasive species management, and operations and maintenance of lock and dam structures throughout Florida. It may be necessary to further refine the APE as PED of individual projects progress. The Corps ensures that the APE for each specific undertaking will include:
 - a. All areas that will be directly or indirectly affected by seabed- or ground-disturbing activities or cumulative effects that will result from this undertaking; and
 - b. All ancillary staging and access area utilized during construction as part of the Operations or Navigation and Shore Protection Programs' features; and
 - c. All areas used for and associated with dredging, including but not limited to, the excavation of borrow material, anchoring and spudding areas, habitat creation, structural modification areas, mainland locations for non-structural measures, staging areas, access routes, spoil areas, stockpiling areas, pipeline emplacements, and dredge material placement areas.

B. Identification and Evaluation of Historic Properties:

1. The Corps shall complete identification and evaluation of historic properties as early as practicable, following undertaking authorization and receipt of funding, to assist in the avoidance and minimization of historic properties well in advance of undertaking construction. The Corps will make every effort to complete identification and evaluation efforts prior to the completion of NEPA documentation; however, if the Corps cannot fully determine the effects of the undertaking on historic properties during that time period, a determination will be made in PED and prior to construction.
2. An inventory of cultural resources within the final APE, agreed to under **Stipulation IV.A (Determination and Documentation of the APE)**, will be initiated for the undertaking as project design and construction details become available. Cultural resources surveys will be consistent with the *Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 F.R. 44716–44740) and in accordance with *Archaeological Reports Standards and Guidelines, Florida Administrative Code* (Chapter 1A-46). If the APE is located on the OCS, surveys will also follow the applicable parts of BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (2020, or as amended) The Corps will make a reasonable and good faith effort to identify historic properties within the APE consistent with these guidelines.
 - a. For portions of the APE located onshore or in state waters, all cultural resource assessment surveys (CRAS) and associated reporting will comply with applicable State of Florida guidelines (*Module 3: Guidelines for Use by Historic Preservation Professionals* or subsequent guidelines provide by the State of Florida). Survey recordation shall include targets/anomalies, features, isolates, and re-recordation of previously recorded resources, 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 Division of Historic Resources Site File forms.
 - b. If the APE is located on the OCS, surveys will also follow the [relevant parts] of BOEM's *Guidelines for Providing Archaeological and Historic Property Information Pursuant to 30 CFR Part 585* (2020, or as amended).
 - c. The Corps shall conduct a maritime remote sensing survey(s) of all submerged areas of the APE that may have not been previously surveyed or have not been previously dredged or disturbed by the placement of sand. For those areas that have been previously surveyed but not yet dredged or disturbed, the methods utilized in the identification survey will be compared to existing guidance (either from the State of Florida or, for portions of the APE located on the Outer Continental Shelf, from BOEM) to determine whether the original survey remains sufficient.
 - d. For all undertakings on OCS, the corps will provide to BOEM a copy of the report and, upon request, supporting data (both raw and processed datasets) for BOEM's review, use, or archive. If targets/anomalies are identified during maritime remote sensing surveys, the Corps will designate a buffer zone around each potential cultural resource, as determined by the nature of the anomaly/return and coordination with Consulting Parties. Buffer zone(s) shall be

clearly delineated on construction plans. No construction activities (e.g., the removal of sand, anchoring), which could potentially impact the potential resource, will occur within the designated buffer zones. However, at the discretion of the Corps, placement of dredge material may occur within a buffer area when it has been determined that placement will have no potential to affect historic properties or may serve to protect historic properties, provided subsequent removal of material will not be conducted without consideration as to the continued protection of said historic properties.

- e. If any targets and/or anomalies cannot be avoided, and the Corps has determined that there is potential to affect historic properties, the Corps will consult with the Signatory and Consulting Parties to consider alternatives and determine the type and level of additional investigations required (e.g., diving, documentation, additional reconnaissance diving, Phase II survey).
- f. If, after performing additional investigations and in consultation with the Signatory and Consulting Parties, the Corps determines that anomalies/targets represent a potential historic property, the Corps, in coordination with the Signatory and Consulting Parties, will determine alternatives, including data recovery through underwater archaeological investigations, and documentation. The Corps will resolve adverse effects to historic properties in accordance with **Stipulation IV.D (Historic Properties Treatment Plan)** below.
- g. The Corps shall submit all CRAS reports for Consulting Parties to review and comment consistent with **Stipulation II (Time Frames and Review Procedures)**.
- h. The Corps shall determine NHRP eligibility based on the significance and integrity of the Property as determined during evaluation efforts and consult with Signatory and Consulting Parties regarding these determinations. Should any Signatory or 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 other Signatory and 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 objecting Party(s) has objected, the Corps shall proceed in accordance with 36 C.F.R. § 800.4(d)(1)(ii); or
 - i Through mutual agreement of the Signatory and Consulting Parties, 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 XIII (Dispute Resolution)**;
 - ii Agree to treat the property as eligible for the National Register; or
 - iii 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.

C. Determination of Effects:

- 1. Findings of No Historic Properties Affected:
 - a. The Corps shall make a finding of "no historic properties affected" under the following circumstances:
 - i If no historic properties are identified within the APE; or

- ii The undertaking shall avoid effects to historic properties (including cumulative effects).
 - b. The Corps shall notify the Signatory and Consulting Parties of each finding and provide supporting documentation in accordance with 36 C.F.R. § 800.11(d). As necessary, the Corps will hold face-to-face consultations, and provide technical expertise to assist the Signatory or Consulting Parties' review of the results of the cultural resource investigations, determination of effects, engineering details, and hydrological impacts of the undertaking. Unless a Consulting Party objects to the finding within 30 calendar days, the Section 106 review of the undertaking will have concluded.
 - c. If a Signatory or Consulting Party objects within 30 calendar days to a finding of "no historic properties affected," the Corps shall consult with the objecting Party to resolve the disagreement. If the objection is resolved, the Corps either may proceed with the undertaking in accordance with the resolution or reconsider effects on the historic property by applying the adverse effect criteria pursuant to 36 C.F.R. § 800.5(a)(1).
 - i If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to the ACHP and request that the ACHP review the Corps' finding in accordance with the process described in 36 C.F.R. § 800.4(d)(1)(ii).
 - ii 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 Signatory and Consulting Parties. If the Corps' final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the undertaking will have concluded. If the Corps revises its finding, then it shall proceed to **Stipulation IV.C.2 or Stipulation IV.C.3** below.
- 2. Findings of No Adverse Effect:

If the Corps determines that an undertaking does not meet the adverse effect criteria, the Corps shall propose a finding of "no adverse effect" and consult with the Signatory and Consulting Parties in accordance with 36 C.F.R. § 800.5(b) and following steps a-c below.

 - a. The Corps shall notify all Signatory and Consulting Parties of its finding; describe any undertaking's specific conditions and/or modifications required to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 C.F.R. §800.11(e).
 - b. Unless a Signatory or Consulting Party objects within 30 calendar days of the notification under (a), the Corps will proceed with its "no adverse effect" determination and conclude the Section 106 review.
 - c. If a Signatory or Consulting Party objects 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 undertaking in accordance with the resolution; or
 - ii. If the objection cannot be resolved, the Corps shall request that the 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 35 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 all Signatory and Consulting Parties. If the Corps' final determination is to reaffirm its "no adverse effect" finding, the Section 106 review of the undertaking will conclude. If the Corps revises its finding, the Corps shall proceed to the provisions of **Stipulation IV.C.3** below.

3. Avoidance and Minimization of Adverse Effects:
 - a. Avoidance of adverse effects to historic properties is the preferred approach. The Corps will consider redesign of elements of the undertaking to avoid and/or minimize historic properties and adverse effects. If necessary, the Corps will delineate an avoidance buffer zone for the resource(s).
 - b. If the Corps determines that the undertaking cannot be modified to avoid or minimize effects, the Corps will make a determination of "adverse effect."
4. Determination of Adverse Effects:
 - a. If the Corps determines that an undertaking may adversely affect a historic property, it shall notify the Signatory and Consulting Parties of its determination.
 - b. Documentation will be provided to include why the effect cannot be avoided, outline the alternatives it considered to avoid and to minimize adverse effect, and consult with the Signatory and Consulting Parties to resolve the effects as outlined in **Stipulation IV.D (Historic Properties Treatment Plan)**.

- D. Historic Properties Treatment Plan:** If the Corps determines that undertaking activities will result in adverse effects, the Corps, in coordination with the Signatory and Consulting Parties, shall develop a Historic Properties Treatment Plan (HPTP) to resolve all adverse effects through minimization and mitigation measures resulting from the undertaking. Any HPTP developed will be held in the project files for the undertaking, and the Corps will provide copies to all relevant parties. serve to clarify this Agreement.
1. In accordance with 36 C.F.R. § 800.6(a)(1), the Corps will notify the ACHP of its adverse effect determination with specified documentation, and the HPTP will outline the minimization and mitigation measures necessary to resolve the adverse effects to historic properties.
 2. The HPTP shall be developed in compliance with the NHPA of 1966, as amended (P.L. 89- 665); the Archaeological and Historic Preservation Act, as amended (P.L. 93-291); the Abandoned Shipwreck Act of 1987 (P.L. 100-298); and the Guidelines for Permitting Archaeological Investigations and Other Activities Directed at Sunken Military Craft and Terrestrial Military Craft Under the Jurisdiction of the Department of the Navy (32 C.F.R. Part 767).
 3. Where applicable, mitigation measures shall also comply with Section 267.12, Florida Statutes, Chapter 1A-32 and 46 of the Florida Administrative Code, and the Florida Division of Historical Resources, Performance Standards for Submerged Remote Sensing Surveys. Proposed mitigation measures may include, but are not limited to, oral history, historic markers, interpretive brochures, data recovery, and publications, depending on their criterion for eligibility. Development of appropriate mitigation measures shall include consideration of historic property types and provisions for avoidance or protection of historic properties where possible. If it is determined that archaeological monitoring is appropriate, the HPTP shall include a Monitoring Plan.

4. If adverse effects are identified, the HPTP shall be in effect before an undertaking associated with the SAJ Operations, Navigation, and Shore Protection Programs commence. The HPTP will be reported in all annual reports consistent with **Stipulation XII (Confidentiality)**. The Corps shall submit the HPTP for review, in accordance with **Stipulation II (Time Frames and Review Procedures)**. The Corps shall notify the interested public, which may include local historical societies and museums, and solicit their input on the potential adverse effect and mitigation measures outlined in the HPTP in accordance with **Stipulation XI (Public Consultation and Public Notice)**. The Corps shall ensure that the provisions of the HPTP, as outlined in the consultation and agreed to by the Signatory and Consulting Parties, are documented in writing and implemented. The use of these treatment measures in a HPTP will not require the execution of an individual Memorandum of Agreement or Programmatic Agreement.
 - a. Review: The Corps shall submit the draft HPTP to the Signatory and Consulting Parties for review and comment pursuant to **Stipulation II (Time Frames and Review Procedures)**.
 - b. Concurrence: Following SHPO concurrence with the HPTP, or SHPO and BOEM concurrence when the APE is located on the Outer Continental Shelf, all Signatory and 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.
 - c. Reporting: Reports and other data pertaining to the treatment of effects to historic properties will be distributed to the Signatory and Consulting Parties, consistent with **Stipulation XII (Confidentiality)**, unless the Signatory and Consulting Parties have indicated through consultation that they do not want to receive a report or data. Reports will be consistent with the procedures outlined in the DHR Cultural Resource Management Standards and Operational Manual (Module 3) or subsequent guidelines provided by the State of Florida.
 - d. Amendments/Addendums/Revisions: If an historic property, which is not covered by an existing HPTP, is discovered within the APE subsequent to the initial inventory effort, if there are previously unanticipated effects to an historic property, or if the Corps, the Signatory and Consulting Parties mutually 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 Signatory and Consulting Parties in accordance with **Stipulation II (Time Frames and Review Procedures)**, and if necessary, shall follow the provisions of **Stipulation VIII (Inadvertent Discoveries and Unanticipated Effects)**. The HPTP may cover multiple discoveries for the same property type.
 - e. Data Recovery: When data recovery is proposed, the Corps, in consultation with the Signatory and Consulting Parties, shall ensure that specific Research Designs are developed consistent with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation*, DHR Cultural Resource Management Standards and Operational Manual (Module 3) or subsequent guidelines provided by the State of Florida, and the ACHP's "Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites" (ACHP, May 18, 1999).
 - f. Final Report Documenting Implementation of the HPTP: Within one year after the completion of all construction for the Undertaking, the Corps shall submit to the

Signatory and Consulting Parties a Final Report documenting the results of all work prepared under the HPTP and the information acquired from each of the historic properties. The Corps may extend this one-year period with the written consent of the Signatory and Consulting Parties. The submittal of the final report shall be in accordance with **Stipulations II and XII (Time Frames and Review Procedures and Confidentiality)**.

V. STANDARD REVIEW PROCESS

If, at any time during review of a specific routine undertaking, information becomes available that indicates that the specific undertaking may have a higher potential for effects, or that undisturbed or previously undredged portions of the APE require additional surveys to meet professionally accepted standards as to what constitutes a reasonable and good faith effort to identify historic properties (i.e., Florida's current guidelines or, for portions of the APE on the Outer Continental Shelf, BOEM's guidelines), a standard Section 106 review shall be initiated following 36 C.F.R. Part 800.3-800.6.

VI. QUALIFICATIONS

- A. Professional Qualifications: All key personnel (Contracting Officer Representative, undertaking Manager, Principal Investigator, Underwater/Marine Archaeologist, and Remote Sensing Specialist) for technical work and specialized analysis, required for historic preservation activities implemented pursuant to this Agreement, shall be carried out by or under the direct supervision of a and individual(s) meeting or exceeding the *Secretary of the Interior's Historic Preservation Professional Qualification Standards*, as specified in 36 C.F.R. Part 61 for archaeology 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 degree, 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. The term "Technical work" as used in this paragraph is defined as all efforts to inventory, evaluate, and perform subsequent treatment of potential historic properties that is required under this Agreement such as data recovery excavation or recordation. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by SHPO and associated undertaking consultants.
- B. Marine Archaeologist Standards: For submerged Areas of Potential Effect, the archaeological survey should be designed with input from a qualified marine archaeologist and specialists in other fields as appropriate (e.g., geology and geomorphology), in a manner that is capable of identifying the precontact and historic period site types that are present offshore Florida. The Report and analyses presented therein should be prepared by a qualified marine archaeologist and specialists in other fields as appropriate (e.g., geology, geomorphology). A qualified marine archaeologist must meet the Secretary of the Interior's Professional Qualification Standards (48 F.R. 44738-44739) and have experience in conducting high-resolution geophysical surveys of submerged environments and processing and interpreting the resulting data for archaeological potential.

- C. Historic Preservation Standards: Historic preservation activities carried out pursuant to this Agreement shall meet the *Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 F.R. 44716-44740), as well as standards and guidelines for historic preservation activities established by the SHPO. The Corps shall ensure that all reports prepared pursuant to this Agreement are provided to the Consulting Parties, are distributed in accordance with **Stipulation XII (Confidentiality)**, and meet the published standards of the Florida State Historic Preservation Office, specifically, DHR Cultural Resource Management Standards and Operational Manual (Module 3) or subsequent guidelines provided by the State of Florida.
- D. Archaeological Monitoring Standards: Archaeological monitoring activities required for exploratory, construction, or construction-related, ground disturbing activities implemented pursuant to this Agreement shall be carried out by an individual meeting, at a minimum, the *Secretary of Interior's Professional Qualifications Standards* for prehistoric or historic archaeology, as appropriate (48 C.F.R. 44739). "Archaeological monitoring" in this paragraph is defined as monitoring ground-disturbing activities that have been determined by the Corps to be occurring in areas potentially sensitive for historic properties or buried resources.

VII. NOTICES TO PROCEED WITH CONSTRUCTION

- A. If the SAJ archaeologist determines an undertaking meets the criteria of a Programmatic Allowance the Corps will issue a Notice to Proceed upon completion of the steps outlined in **Stipulation III (Programmatic Allowance Review Process for Section 106 Compliance)**.
- B. After the identification and evaluation of Historic Properties have been completed for the undertaking, and an effects determination has been made per **Stipulations IV and V (Phased and Expedited Review Process for Program Activities Not Covered by Allowances and Standard Review for Approved Undertakings)**, the Corps may issue Notices to Proceed for individual activities, defined by the Corps in its construction specifications associated with undertakings, prior to resolution of the adverse effects on Historic Properties, provided that:
 1. The HPTP has been finalized for the undertaking in accordance with **Stipulation IV.D (Historic Properties Treatment Plan)**; and
 2. Activities associated with the undertaking do not encroach within 30 meters of the known boundaries of any Corps avoidance buffer zones, submerged cultural resource, or historic property as determined from archaeological-site record forms, other documentation, or as otherwise defined in consultation with the Signatory and Consulting Parties, as appropriate; and
 3. If an archaeological monitor is deemed necessary by the Corps after consultation with the Signatory and Consulting Parties (except in phases of construction where visual inspection of the construction area cannot be safely or feasibly accomplished), an archaeological monitor that meets the professional qualifications described in **Stipulation VI (Qualifications)**, will be present during any activities that are anticipated to extend either vertically or horizontally into any areas designated as archaeologically sensitive.

VIII. INADVERTENT DISCOVERIES AND UNANTICIPATED EFFECTS

- A. The Corps is responsible for complying with 36 C.F.R. § 800.13(a) if historic properties are inadvertently discovered or if unanticipated adverse effects to known historic properties are made during implementation of an undertaking. When there is an inadvertent discovery or unanticipated effect, the Corps will ensure that the following stipulations are met, and that the following provisions will be included in all construction, operations, and maintenance plans.
- B. When a previously unidentified cultural resource, including but not limited to, archaeological sites, shipwrecks and the remains of ships and/or boats, standing structures, and properties of traditional religious and cultural significance to Indian Tribes, are discovered during the execution of the undertaking, the individual(s) who made the discovery shall immediately notify the Corps and the undertakings' Contracting Officer (KO), secure the vicinity, make a reasonable effort to avoid or minimize harm to the resource. and comply with the following:
1. All activities shall cease within a minimum of 30 meters from the inadvertent discovery until the Corps' agency official issues a Notice to Proceed (NTP) following the procedure outlined in **Stipulation VII (Notices to Proceed with Construction)**.
 2. The Corps will notify the Signatory and Consulting Parties by email or telephone within 48 hours of the discovery or unanticipated effect.
 3. The Corps will consult with the Signatory and Consulting Parties by email or telephone to determine whether additional investigations are needed to determine if the resource is a historic property or if the available information is sufficient to make such a determination.
 - a. If the Corps determines through consultation that the resource does not warrant further investigation, they will provide written notification by email to the SHPO, outlining the Corps' justification and requesting the SHPO's concurrence. If no comments are received within 72 hours, construction may resume.
 - b. If the Corps determines through consultation that the site warrants further investigation, a scope of work will be developed consistent with **Stipulation V (Standard Review for Approved Undertakings)**.
 - i. The scope of work will be submitted to the Signatory and Consulting Parties for review and comment within a time frame established in the scope of work. If no comments are received within this period, work shall be implemented in accordance with the scope. If comments are received, the Corps shall take them into account and carry out the scope of work. A report of the investigations will be completed within the time frame established by the scope of work and copies provided to all Signatory and Consulting Parties. Should any party object to the proposed work plan or results, the Corps will proceed in accordance with **Stipulation XIII (Dispute Resolution)**.
 - ii. If the resources are found to be ineligible for listing in the NRHP, construction may proceed as planned.
 - iii. If the resources are determined to be eligible for listing in the NRHP, the Corps shall then initiate communication with the undertaking design team to determine if alternative design or construction methods can be implemented to avoid, protect, or minimize adverse effects to the resource. If the resources cannot be avoided by construction activities, then a mitigation/treatment plan or other measures will be adopted in accordance with **Stipulation IV.D (Historic Properties and Treatment Plan)**.

Undertaking activities in the 30-meter buffer, or other appropriate distance determined by the Corps, will remain suspended until the Corps resolves the adverse effect.

4. Human Remains: Inadvertent discovery and the treatment of human remains is governed by **Stipulation X (Tribal Consultation and Treatment of Human Remains)**.

IX. CURATION

Archaeological items and materials from State, Federal, or privately owned lands will not be collected from Phase I cultural resources surveys. Materials excavated as a result of Phase II NRHP eligibility testing and Phase III data recovery excavations shall be maintained in accordance with 36 C.F.R. Part 79 until any specified analyses are complete. The final disposition of collected material will be specifically outlined in the HPTP.

X. TRIBAL CONSULTATION AND TREATMENT OF HUMAN REMAINS

- A. Throughout any activity or undertaking that might affect historic properties, particularly Traditional Cultural Properties, the Corps will consult with any Indian Tribe whether or not the Tribe is a Signatory or Consulting Party to this Agreement. The Corps will consult the Tribe on a government-to-government basis in recognition of their sovereign status.
- B. The Corps will make every effort to avoid the disturbance of historic and prehistoric human remains. For undertakings where there is a potential to identify human remains during cultural resources survey, the Corps will follow the provisions outlined in the agreement entitled, "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," which is **Attachment 4** of this Agreement.
- C. If encountered, human skeletal remains and the artifacts found in association with human remains, whether in association with marked graves or unmarked burials, will be left in situ, and all work within 30 meters of the remains will cease. The contractor will contact the KO immediately and the guidelines of Florida Statute § 872.05 will apply. When human remains are encountered, all activity that might disturb the remains shall cease and may not resume until authorized by the District Medical Examiner (if the remains are less than 75 years old) or the State Archaeologist (if remains are more than 75 years old). If human remains that are less than 75 years old are encountered, or if the remains are involved in a criminal investigation, the District Medical Examiner shall assume jurisdiction over and responsibility for the remains. If the remains are determined to be more than 75 years in age, the State Archaeologist has jurisdiction to determine the appropriate treatment and options for the remains following additional coordination with the Consulting Parties. If human remains are identified during analysis, the Consulting Parties will be immediately contacted to determine the appropriate treatment of the remains. No photographs or scientific analysis beyond the identification of the remains are permitted. Minimal contact with such remains is permitted by those conducting the fieldwork or laboratory analysis.

XI. PUBLIC CONSULTATION AND PUBLIC NOTICE

The interested public shall be invited to provide input during the implementation of this Agreement. The Corps may carry this out through letters of notification, public meetings, site visits, and by utilizing the Corps SAJ Environmental Documents Website and will provide a link to that location through social media and/or a press release. The Corps shall ensure that any comments received from members of the public are considered and incorporated where appropriate. Review periods for such comments shall be consistent with **Stipulation II (Timeframes and Review Procedures)**. In seeking input from the interested public, locations of historic properties will be handled in accordance with **Stipulation XII (Confidentiality)**.

XII. CONFIDENTIALITY

Signatory Parties 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 an historic property, and will ensure that any disclosure 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 Signatory and 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.

XIII. DISPUTE RESOLUTION

At any time during the term of the Agreement, should any Signatory Party object to any actions proposed or the manner in which the terms of this Agreement are implemented, the Corps will immediately notify the other Signatory Parties and the Consulting Parties of the objection and proceed to consult with the objecting Party(s) 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:

- A.** Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its recommendation on the resolution of the objection within 30 calendar days of receiving adequate documentation (See 36 C.F.R. § 800.11). Prior to reaching a final Agency decision, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, and other relevant Consulting Parties, and provide the objecting Party with a copy of this written response. The Corps will then proceed according to its final Agency decision.
- B.** If the ACHP does not provide its recommendation regarding the dispute within the 30-day time period, the SAJ Commander may make a final Agency decision and proceed accordingly. Prior to reaching such a final Agency 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.

- C. 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.
- D. At any time while this Agreement is in effect, should an objection pertaining to measures implementing the Agreement be raised by a member of the public, the Corps shall notify the Signatory Parties and the Consulting Parties and take the objection under consideration. The Corps will consult with the Signatory and Consulting Parties to this Agreement, if requested, regarding the objection 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 Signatory and Consulting Parties. Within 15 calendar days following closure of the comment period, the Corps will render a written decision regarding the objection and respond to the objecting Party. The Corps will promptly provide written notification of its decision to the Signatory and 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.

XIV. NOTICES

- A. Unless otherwise agreed by all Signatory Parties, notices, demands, requests, consents, approvals or any other types of communications from all Consulting Parties to this Agreement to other parties to this Agreement, shall be sent digitally, requiring confirmation of receipt. If a party to this Agreement requests communication sent by United States Mail, all parties shall be considered in receipt of the communication five (5) calendar days after the initial communication is deposited in the United States Mail, certified and postage prepaid, return receipt requested.
- B. The ACHP has requested electronic documents and/or electronic communications be used for formal communication among themselves for activities in support of **Stipulation II (Time Frames and Review Procedures)** as well as all notices, demands, requests, consents, or approvals. Any Consulting Party may consent to electronic documents and/ or electronic communications used in lieu of hard copies.

XV. AMENDMENTS AND TERMINATION

- A. Amendment: Any Signatory Party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the Signatory Parties to consider such amendment. This Agreement may only be amended when all Signatory Parties agree in writing to such an amendment. The amendment will be effective as of the date the amendment is signed by all of the Signatory Parties and filed with the ACHP.
- B. Amended Signatory Parties: In the event another Federal agency not initially a party to or subject to this Agreement receives an application for funding/license/permit for the undertaking as described in this Agreement, that agency may fulfill its Section 106 responsibilities by notifying the Signatory Parties in writing that it concurs and will comply with the terms of this Agreement. Such agreement will be evidenced by execution of an

addendum to his Agreement, filed with the ACHP, and implementation according to the terms of this Agreement.

- C. Amended Appendices: All appendices to this Agreement, and other instruments prepared pursuant to this Agreement, may be revised or updated by the Corps through consultation consistent with **Stipulation II (Time Frames and Review Procedures)** and written agreement of the Signatory Parties without requiring amendment of this Agreement. In accordance and **Stipulation XI (Public Consultation and Public Notice)**, the Signatory Parties and interested members of the public, will receive copies of any amendment(s) to the Agreement.
- D. Termination: Any Signatory Party to this Agreement may terminate this Agreement. If any Signatory Party proposes termination, the Signatory Party proposing termination shall notify the other Signatory Parties in writing, explain the reasons for proposing termination, and consult with the other Signatory Parties to seek alternatives to termination.
1. The Corps shall consult with the Signatory Parties for a period not to exceed 30 calendar days to resolve the termination request.
 2. Should such consultation result in an agreement on an alternative to termination, the Signatory Parties shall proceed in accordance with that agreement and amend this Agreement as required.
 3. Should such consultation fail, the Signatory Party proposing termination may terminate this Agreement by promptly notifying the other Signatory Parties in writing.
 4. 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 undertakings shall be reviewed individually in accordance with 36 C.F.R. §§ 800.4-800.6.
- E. Duration: This Agreement shall remain in effect for a period of 10 years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this ten-year period, unless it is terminated by all Signatory Parties prior to that time. No later than 90 calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation with all Signatory Parties to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments. Unless the Signatory Parties unanimously agree in accordance with **Stipulation XV (Amendments and Termination)**, this Agreement shall automatically expire and have no further force or effect.

XVI. THE ANTIDEFICIENCY ACT

The Corps' obligations under this Agreement are subject to the availability of appropriated funds, and the stipulation of the Agreement are subject to the provisions of the Antideficiency Act, 31 U.S.C. § 1341, et seq. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement its obligations under this Agreement. If compliance with the Antideficiency Act alters or impairs the Corps' ability to implement its obligations under this Agreement, the Corps shall consult in accordance with the amendment and termination procedures found in **Stipulation XV (Amendments and Terminations)**.

XVII. EFFECTIVE DATE

This Agreement shall take effect on the date that it has been fully executed by the Signatory Parties.

XVIII. EXECUTION

By execution of this Agreement in the pages provided below, the Signatory Parties agree to the terms of this Agreement, and the execution and the implementation of the terms of this Agreement by the Signatory Parties evidence that the Corps and, where applicable, BOEM, have taken into account the effects of these undertakings on historic properties and afforded the ACHP an opportunity to comment

DRAFT

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS IN FLORIDA FOR COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

BY: _____

DATE: _____

Andrew D. Kelly Jr.
Colonel, U.S. Army
District Commander

DRAFT

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS IN FLORIDA FOR COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

DIVISION OF HISTORIC RESOURCES

BY: _____

DATE: _____

Timothy Parsons, Ph.D.
State Historic Preservation Officer
Division Director

DRAFT

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS IN FLORIDA FOR COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

BUREAU OF OCEAN ENERGY MANAGEMENT

BY: _____

DATE: _____

William Brown
Chief Environmental Officer

DRAFT

SIGNATORIES TO THE PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS IN FLORIDA FOR COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: _____ DATE: _____

Aimee Jorjani
Chairman

DRAFT

ATTACHMENTS

Attachment 1: Programmatic Allowances for the Operations, Navigation, and Shore Protection Programs

Attachment 2: Glossary of Definitions for this Programmatic Agreement

Attachment 3: Map of Coastal Area of Responsibility

Attachment 4: Burial Resource Agreement

DRAFT

Attachment 1

Programmatic Allowances

This list of Programmatic Allowances (Allowances) enumerates Corps; activities associated with the operation and maintenance of the SAJ Operations, Navigation, and Shore Protection Programs that, based on Corps experience, may have no or minimal effect on historic properties if implemented as specified in this Appendix and will not require further review by the SHPO/THPO and Tribe(s). Should an unexpected discovery, unidentified property, or unexpected effect be encountered, work must stop and compliance with Stipulation III.B is required.

These allowances can only be used by staff meeting the applicable SOI Professional Qualifications Standards in accordance with Stipulation I.B(1)(a) of this Agreement. In accordance with Stipulation II.A, undertakings composed entirely of work described by the Allowances do not require further Section 106 review.

“In-kind,” when referenced in the Allowances for historic materials and features shall be in accordance with the Standards and otherwise consistent with the relevant Preservation Brief (<https://www.nps.gov/tps/how-to-preserve/briefs.htm>), and shall mean that it is either the same or a similar material, and the result shall match all physical and visual aspects, including design, design form, texture, profile, dimensions, proportion, and workmanship. Where severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture and, where possible, materials.

The following Allowances are covered under the terms of this Agreement:

1. When proposed activities substantially conform to the original footprint and/or performed in previously disturbed soils, including the area where the activity is staged.
2. When proposed activities fall within an area that has been created in modern times (less than 45 years old and documented).
3. When proposed activities fall within an area which have been adequately surveyed for cultural resources meeting current SHPO standards and no eligible or unassessed/unevaluated properties have been recorded.
4. Use of previously constructed offloading sites, and upland borrow areas, including further materials extraction and stockpiling within the site, where no horizontal expansion of the previously excavated area of the site will occur.
5. Replacement or restoration of existing rip rap within the demonstrated vertical and horizontal limits of previous construction or disturbance.
6. In-kind repair or replacement, or minor upgrades of storm-water treatment lagoon systems and storm water outfall pipes.
7. In-kind repair or replacement of submerged pipelines, sub-aqueous utility and transmission lines within the demonstrated vertical and horizontal limits of previous construction, and within previously surveyed areas.

PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS

8. Multi-year and/or “as needed” maintenance dredging of but not limited to, shipping/navigation channels, turning basins, bar channels, entrance channels, berthing areas, inland waterways and ebb shoals which have an authorized undertaking depth.
9. Excavations for maintaining, removing, or replacing groins, levees, storm surge barriers, seawalls, revetments, breakwaters, when the property or items are less than 50 years in age or have been determined “not eligible” in consultation with the SHPO, where they are not within or part of an historic property, and where excavations, including heavy equipment operation, occur within the demonstrated vertical and horizontal limits of previous construction, and within previously surveyed areas.
10. The addition of dune templates and other features to future designs of authorized Shore Protection Projects (SPP). The height, width, and slopes of the dune template are based on naturally existing dunes within the undertaking areas. The dune features could therefore be added or modified as standalone design changes or could be implemented in conjunction with shoreline nourishment following significant erosion.
11. In-kind modification and maintenance to pedestrian and vehicle access locations.
12. Periodic nourishment of beaches and breach response along barrier islands, provided the work occurs in previously disturbed soils and there are no known shipwrecks within the undertaking’s area of potential effect.
13. Restoration of coastal process features and habitat restoration including planting of dune vegetation, installation of sand fencing.
14. In-kind repair of shore structures and related features, including docks and piers, provided the work occurs in previously disturbed soils.
15. The maintenance of bluffs, shoreline berms, and offshore sand bars and their nourishment to protect against storm surge and wave-generated erosion.

Attachment 2

Glossary of Definitions for this Programmatic PA

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).

Advisory Council on Historic Preservation (ACHP) – an independent agency created by the National Historic Preservation Act (NHPA). 54 U.S.C. Chapter 3041. The review process established by NHPA Section 106, 54 U.S.C. § 306108, is conducted according to regulations issued by the ACHP, 36 C.F.R. Part 800, as authorized by 54 U.S.C. § 304108.

Affected Indian Tribe or Affected Tribe – consistent with 36 C.F.R § 800.14(f)(1), an affected Indian Tribe includes Federally recognized Indian Tribes that attach religious and cultural significance to historic properties potentially affected by the undertaking, and Federally recognized Indian Tribes with jurisdiction over tribal lands on which the undertaking has the potential to affect historic properties.

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).

Bureau of Ocean Energy Management— the U.S. Government bureau in the Department of the Interior that manages leasing and development of marine minerals, as well as oil and gas and renewable energy, on the U.S. Outer Continental Shelf. BOEM jurisdiction is from 3-200 nautical miles offshore the east coast of Florida. BOEM jurisdiction is from 9-200 nautical miles offshore the west coast of Florida. See 43 U.S.C. 1337(k)(2)(A).

Breakwater-- Structure built parallel to the shoreline and seaward of the beach designed to protect the beach and upland areas by causing waves to break and dissipate their energy before reaching the shore.

Concurring Party – in accordance with 36 C.F.R. § 800.6(c)(3), a concurring party means an entity with an interest in the subject matter of this Agreement and which has agreed to signal concurrence with its terms (as evidenced by the signature of an authorized representative), but has no authority or responsibility under this Agreement. Like an invited signatory’s signature, a concurring party signature is not required to execute the agreement; a concurring signature is essentially an endorsement of the agreement. The refusal to sign by any party asked to concur in the Agreement does not prevent the Agreement from being executed.

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).

Consulting Party – any entity that has a consultative role in the Section 106 process for this Agreement, as defined by 36 C.F.R. § 800.2(c). This includes, among others, the ACHP, SHPO, Interested Indian Tribes, other affected agencies, Concurring Parties, and any additional entities invited to participate due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking’s effects on historic properties (see 36 C.F.R. § 800.2[c][5]).

Ebb Shoal-- Because these bodies are located seaward of tidal inlets, the shape and amount of sand contained in a given ebb shoal is determined by the dominant wave and current action. As is the case with longshore sand bars, these accumulations are part of the active shoreline and their use as sources of sand, along with the resulting change in bathymetry, can significantly alter wave interaction and cause significant shoreline impacts.

Groin-- Shore protection structures which extend from the beach backshore into the surf zone, perpendicular to the shoreline. A groin is intended to build up an eroded beach by trapping littoral drift or to retard the erosion of a stretch of beach.

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. The term includes properties of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization and that meet the National Register criteria.” See 36 C.F.R. § 800.16(l)(1), providing elaboration on the statutory definition codified at 54 U.S.C. § 300308.

Indian Tribe or Tribe – “an Indian Tribe, band, nation, or other organized group or community, including Native village, Regional corporation or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 54 U.S.C. § 300309.

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 affected Indian Tribes, or the individual or entity’s own initiative in providing its views. See 36 C.F.R. § 800.2(d).

Invited Signatory Party – In accordance with 36 CFR § 800.6(c)(2), an invited signatory, upon signing, has the authority to amend and terminate the agreement. The agency official may invite additional parties to sign the agreement, such as an Indian tribe or NHO who attaches religious and cultural significance to historic properties affected by the undertaking (off tribal lands), or any party that assumes a responsibility under the agreement. The refusal of an invited signatory to sign the agreement does not prevent the agreement from being executed; however, an agreement cannot impose a duty or responsibility on a party that has not signed it. Asking parties to be invited signatories to a Section 106 agreement can evidence a higher level of commitment

to success in the agreement's implementation as well as continued engagement and partnership in the process.

Levee – An embankment constructed along the banks of a river, wetland, the Intracoastal Waterway or irrigation channel to prevent high flows or tides from flowing out onto the adjacent area.

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.

Nearshore Environment-- Nearshore sediment sources include flood shoals, tidal-deltas, and ebb shoals located landward and seaward of tidal inlets, respectively. These bodies are generally formed by wave action and tidal influence on sand moving through inlets.

Operation and Maintenance Dredging-- Maintenance dredging operations involve the repetitive removal of naturally recurring deposited bottom sediment such as sand, silt, and clays in an existing navigation channel.

Outer Continental Shelf— all submerged lands lying seaward of state coastal waters (3 miles offshore) which are under U.S. jurisdiction.

Undertaking Operations – see “undertaking” defined below.

Regional Sediment Management-- a “system-based approach” that seeks to solve sediment-related problems by designing solutions that fit within the context of a regional strategy.

Reservoir – a body of water impounded by a dam and operated for water storage and other purposes. This differs from “lakes,” which are bodies of water impounded by dams and where storage is not a purpose of the undertaking. The reservoir or lake boundary fluctuates between authorized minimum and maximum pool levels.

Revetment-- facing of stone, concrete or rubble built to protect an embankment or upland against erosion by wave action or currents.

Rip-Rap-- loose stone used to form a foundation for a breakwater or other structure.

SAJ Archaeologist – A cultural resources specialist that is employed by SAJ under the United States Office of Personnel Management Archaeology Series, 0193.

SAJ Operations, Navigation, and Shore Protection Programs – The Corps implementation of aspects of the Operations, Navigation, and Shore Protection Programs as authorized by the Rivers and Harbors Act of 1899, Coastal Zone Management Act of 1972 and the Water Resources Development Act (various years). The Corps is authorized to partner in numerous programs and projects designed to protect the economy and environment of the nation’s coastal areas by reducing the effects of storms, coastal erosion, and climate change. For a list of activities associated with these programs, see **Attachment 1**.

Seawall -- vertical or near vertical shore-parallel structures designed to prevent upland erosion and storm surge flooding. Seawalls are generally massive concrete structures emplaced along a

considerable stretch of shoreline at urban beaches. The term "seawall" is commonly used to describe a variety of shoreline armoring structures including revetments.

Shoreline Berms-- feature usually located at mid-beach and characterized by a sharp break in slope, separating the flatter backshore from the seaward-sloping foreshore.

Signatory Party (or Parties) – An entity bound by this Agreement (as evidenced the signature of its authorized representative) and has the authority or responsibility according to the terms of this 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).

Storm-water Treatment Lagoon System—are constructed wetlands divided into flow-through treatment cells that remove nutrients from storm-water runoff.

Traditional Cultural Property (TCP) – a property that may be “eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community.” National Park Service, National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1990). The property must meet the requirements defined in 36 C.F.R. § 60.4 and Bulletin 38. Historic properties of religious and cultural significance to Indian Tribes (HPRCSIT) are a type of TCP.

Treatment – actions taken by a Federal agency to mitigate or resolve adverse effects on historic properties. 36 C.F.R. § 800.6.

Tribal Historic Preservation Officer (THPO) – the official appointed or designated by an Indian Tribe to implement the Tribal Historic Preservation Program. The term applies only for Indian Tribes on the National Park Service list that, in accordance with Section 101(d)(2) of NHPA, have formally assumed the responsibilities of the SHPO for purposes of Section 106 compliance on their tribal lands.

Tribal Lands – “(A) all lands within the exterior boundaries of any Indian reservation; and (B) all dependent Indian communities.” 54 U. S. C. § 300319. For the purposes of implementing this Agreement, the Lead Federal Agencies assume that “tribal lands” includes lands held in trust by the United States for a Tribe external to the boundaries of a reservation if the lands are under Federal superintendence, but does not include allotments external to the boundaries of a reservation.

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). For purposes of this Agreement, the undertaking includes all construction (routine and non-routine) and operation and maintenance activities required for current and future operation of the Navigation and Shore Protection Programs. See Attachment 1.

Upland Borrow Areas-- Upland sand sources are often in the form of relict sand dunes, dredge disposal areas and quarries. Upland sand sources are typically well sorted by wind and, as a consequence, lack shell content. Sediment size may also be too fine and undesirable for fill undertakings. Regardless,

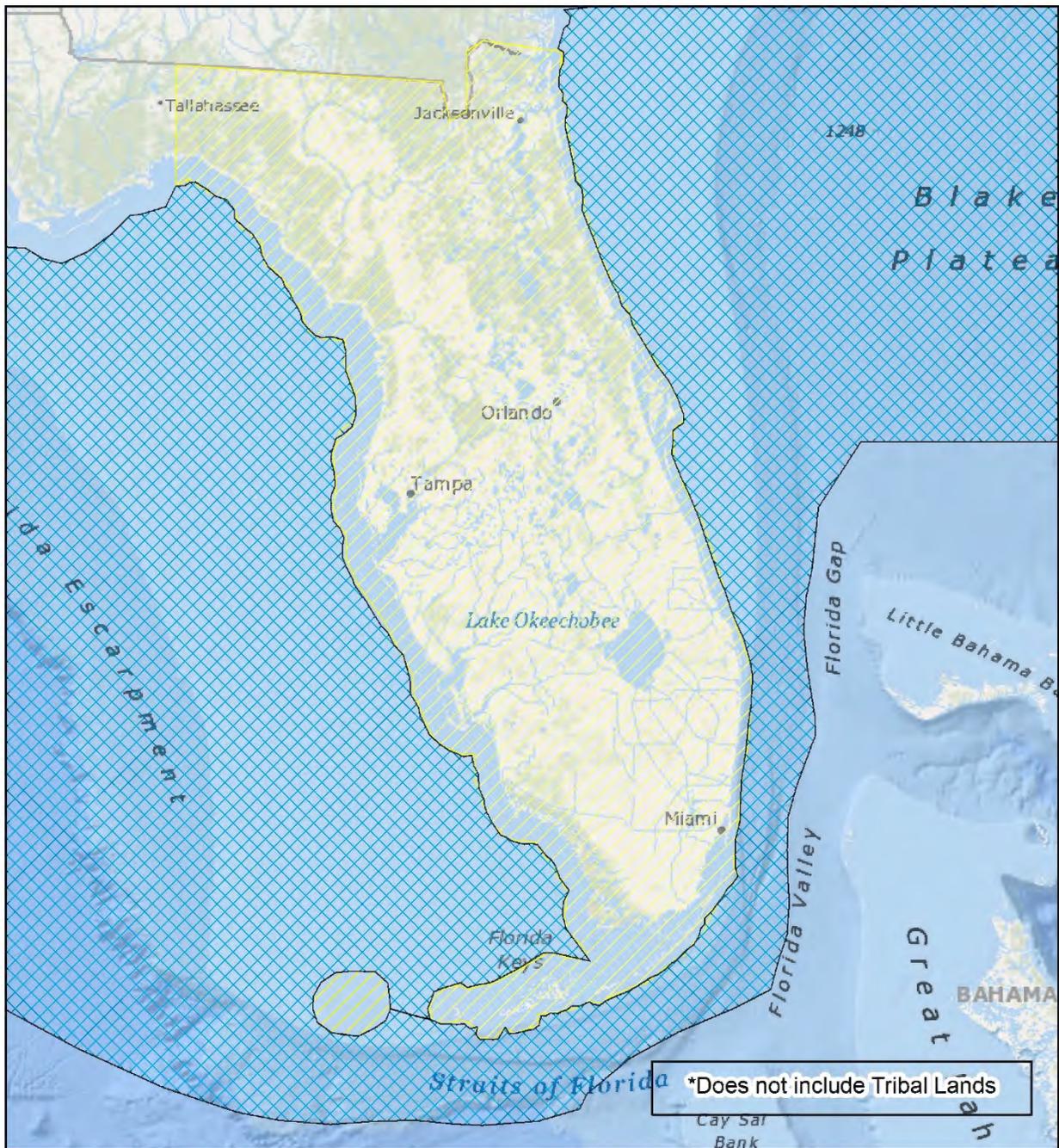
PROGRAMMATIC AGREEMENT REGARDING IMPLEMENTATION OF THE SAJ OPERATIONS, NAVIGATION, AND SHORE PROTECTION PROGRAMS

upland sources are often the most economically feasible option because transport requires only overland transport by truck.

Upland Offloading Sites- Any designated area, which may include a Dredged Material Management Area, utilized for mechanically offloading material for upland disposal.

DRAFT

Attachment 3



Operations, Navigation, and Shore Protection Programs

Area of Responsibility
Jacksonville District
U.S. Army Corps of Engineers (USACE)

BOEM Area of Responsibility
 USACE Area of Responsibility

0 100 Miles

Attachment 4

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

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

The Jacksonville District of the U.S. Army Corps of Engineers (Jacksonville District) and the Seminole Tribe of Florida (Seminole Tribe) as Parties to this Agreement hereby acknowledge and declare as follows:

I. Purpose

This Agreement establishes a framework that will serve as the basis for consultation regarding the presence of burial resources within the Jacksonville District's area of action and jurisdiction for the Civil Works and Regulatory Programs, respectively, and sets forth procedures that will ensure culturally sensitive treatment of burial resources pursuant to the U.S. Army Corps of Engineers' (USACE) Trust Responsibility. The Jacksonville District and the Seminole Tribe agree that it is in both Parties' interests to adhere to the principles and procedures described herein in order to maintain their Government-to-Government relationship, to promote the timely recognition and consideration of each Parties' interests, and to foster meaningful and open lines of communication.

The following Agreement is the product of multiple project-specific and policy-oriented consultations with the Jacksonville District's federal, state, and tribal partners and is intended to address broad ranging potential impacts to burial resources arising from the execution of the Civil Works and Regulatory missions. This agreement is not intended to clarify or interpret the responsibilities of either the Civil Works or the Regulatory Missions pursuant to Section 106 of the National Historic Preservation Act (NHPA), nor does it guide investigations required by Section 106 of the NHPA. Rather it is intended to set forth procedures that will ensure the consideration of the culturally sensitive treatment of burial resources pursuant to the Jacksonville District's obligations to the Seminole Tribe including the Trust Responsibility.

II. Authority

The Parties have entered into this Agreement pursuant to the USACE Trust Responsibility as outlined in the November 1, 2012 Chief of Engineers Memorandum, "Tribal Consultation Policy." The USACE Tribal Consultation Policy identifies numerous statutes, regulations, and Executive Orders which define the scope of the USACE Trust Responsibility,

including, but not limited to, the NHPA, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act (NAGPRA), Executive Order 13007 (May 24, 1996), Department of Defense American Indian and Alaska Native Policy (Oct. 20, 1998), Executive Order 13175 (Nov. 6, 2000), Department of Defense Instruction No. 4710.02 (Sep. 14, 2006), and USACE Tribal Policy Principles (Feb. 18, 1998 and May 10, 2010). Other federal regulations, Executive Orders, Departmental policies, Agreements, treaties, United States Constitutional provisions, and judicial decisions may also apply to the Jacksonville District's implementation of its Trust Responsibility.

III. Definitions

Terms used in this Agreement shall have meanings as defined in Appendix A or when not specifically defined in Appendix A shall have their ordinary meaning within the context of this Agreement and are not intended to create a conflict when the USACE implements its responsibilities under existing laws and regulations including the NHPA and/or NAGPRA.

IV. Background and Guiding Principles for Consultation on Burial Resources

The Jacksonville District executes two primary missions – the Civil Works Program, which carries out specific congressionally authorized projects, and the Regulatory Program, which regulates certain activities in waters of the United States and oceans. In executing these missions within the Programs' respective areas of jurisdiction, the Jacksonville District is required to consider the effect of its actions on cultural resources under Section 106 of the NHPA. Additionally, in recognizing the unique Government-to-Government relationship between the U.S. Government and American Indian Tribes, the Jacksonville District has a Trust Responsibility to give special consideration to the environmental and cultural/religious resource interests of Federally-recognized American Indian Tribes. The Jacksonville District holds its Trust Responsibility to American Indian Tribes in the highest regard.

The Jacksonville District recognizes its responsibility to conduct government-to-government consultations with American Indian Tribes on actions that have tribal implications. Consultation also serves as the most common means to facilitate implementation of the Trust Responsibility with the Federally-recognized tribes who have ancestral connections within the boundaries of the Jacksonville District's geographic area of operation (Appendix B). These include the two Federally-recognized tribes currently residing within the State of Florida as well as several relocated and removed tribes located in Oklahoma, Alabama, and Texas. In implementing its mission responsibilities, the Jacksonville District is sensitive to the various tribal concerns regarding the impact that its Civil Works and Regulatory duties have on the

respective tribes' environmental and cultural resources, particularly with respect to burial resources. The Jacksonville District views its Trust Responsibility as a means to consult on and protect these burial resources in addition to the framework established by Section 106 of the NHPA.

The unique legal relationship that exists between Indian tribes and the United States government was born out of the first treaties entered into by the government and the tribes. "In these treaties, the United States pledged to 'protect' Indian tribes, thereby establishing one of the bases for the federal Trust responsibility in our Government-to-Government relations with Indian tribes" (DOJ, 1995). The Trust Responsibility is the cornerstone of the USACE relationship with Federally-recognized American Indian tribes. It is a special, fiduciary obligation that carries the duty to act in good faith and in the best interests of American Indian tribes. It is a fiduciary obligation to protect tribal lands and cultural and natural resources for the benefit of the American Indian tribes and individual tribal members. The Department of Defense implemented its *American Indian and Alaska Policy* in October 1998 ("Department of Defense American Indian Policy"), recognizing the significance that American Indian tribes "ascribe to certain natural resources and properties of traditional or customary religious or cultural importance." Specifically, the USACE has stated that it "will act to fulfill obligations to preserve and protect trust resources." See *Memorandum for Commanders, Major Subordinate Commands, and District Commands*, dated February 18, 1998 as reaffirmed on May 10, 2010. The Supreme Court, Congress, and Executive Orders have, over the years, reaffirmed this Trust Doctrine or Trust Responsibility and directed federal agencies to honor this policy in all activities that may impact tribal resources, tribal rights/interests, and Indian lands.

In 2008, Jacksonville District recognized and acknowledged that Section 106 of the NHPA did not address all of the cultural/religious significance that Native American Tribes attributed to burial resources. Therefore, Jacksonville District concluded that burial resources will be treated as a Trust resource protected under the Federal Trust Responsibility. This approach of treating burial resources as Trust resources was further developed by the Jacksonville District in connection to its Everglades Restoration efforts. By treating burials as part of the USACE's Trust relationship with Sovereign Indian Nations, the Jacksonville District concluded that it could satisfy both its Trust Responsibility and NHPA obligations while also acting in a manner consistent with Florida Statutes. In 2008, the Jacksonville District committed, pursuant to its Trust relationship with Sovereign Indian Nations, to protecting burials from unnatural inundation to the greatest extent possible. The Seminole Tribe's cultural/religious beliefs define unnatural inundation to represent hydroperiods that are at variance, due to anthropogenic influences, to those hydroperiods that existed at the time of interment. The

Jacksonville District will make a good faith effort to respect the Seminole Tribe's views on unnatural inundation in applying its Trust Responsibility.

Throughout this document, meaningful consultation between the Jacksonville District, the Seminole Tribe, and appropriate parties is stressed. The Jacksonville District and the Seminole Tribe acknowledge that each burial resource is unique, that each burial resource will require consultation between interested parties, and that unique procedures may be required for each burial resource. Therefore, the Jacksonville District and the Seminole Tribe acknowledge that the procedures set forth herein should be implemented in a flexible manner when it is best for the protection of burial resources. After consultation with all interested parties and with due consideration of the effects of the proposed action and of the terms of this Agreement, the District Engineer will make a final decision. The Jacksonville District acknowledges and understands that tribal representatives may legitimately refuse to discuss matters involving possible burial resources based on traditional cultural/religious beliefs concerning these subjects. It is the Jacksonville District's principle intent to avoid adverse effects to sites with burial resources to the greatest extent possible when carrying out its Civil Works and Regulatory missions.

The Seminole Tribe has expressed that its cultural/religious beliefs are rooted in historic traditions and that, as a result of colonialism and encroachment of non-indigenous ideology, the Seminole Tribe is challenged to protect these historic traditions and beliefs while adapting to a colonized world. For the Seminole Tribe of Florida there is no distinction between culture and religion, both concepts are synonymous especially with regards to burial resources which are sacred to the Seminole Tribe. Therefore, cultural/religious decision-making should be understood against the background that these decisions are often time-consuming and formative for the Seminole Tribe. Changes in cultural/religious positions should be expected and viewed in this context as decisions are made case-by-case due to the unique nature of each site. Further, for many situations there is no cultural/religious precedent in addressing impacts to burial resources (Tribal beliefs would dictate that no impact of burial resources occur). Therefore, tribal decision-making on one project or action should not be interpreted as precedent for future projects or actions.

V. Early Identification of Burial Resources

Employing appropriate measures to identify burial resources and/or the likelihood of burial resources is critical to a meaningful implementation of this Agreement. The Jacksonville District and the Seminole Tribe will consult early in the Civil Works planning or Regulatory permitting process to ensure project-specific site identification methodologies are sufficient.

Additionally, and pursuant to the USACE definition of consultation in Appendix A of this document, the Parties acknowledge that consultation includes communication such as (i) Civil Works Annual Project Meetings, (ii) Regulatory Bimonthly Status Meetings, (iii) scoping of National Environmental Policy Act (NEPA) documents and/or feasibility studies, and (iv) reconnaissance studies. The Civil Works Annual Project Meeting will include a list of all projects anticipated to be undertaken during the year to include an identification of those projects determined to be high priority by the Jacksonville District. However, the Jacksonville District further acknowledges that the level of coordination above will not substitute for the Three-Step Process as described below.

VI. Process for Identification and Treatment of Burial Resources

The Jacksonville District will actively consult with the Seminole Tribe to: (i) determine if the Seminole Tribe desires to have impacts to specific burial resources avoided, minimized or mitigated; and (ii) develop culturally/religiously acceptable, feasible, and prudent avoidance, minimization and mitigation measures, which may include operational changes, construction of structures (i.e., berms), or relocation of burial resources. The Jacksonville District and the Seminole Tribe are committed to exploring an array of alternatives to protect burial resources from impacts, including but not limited to, impacts to resources of cultural/religious significance to the Seminole Tribe.

Upon request by the Seminole Tribe, the Jacksonville District will develop with the Seminole Tribe's Tribal Historic Preservation Officer (THPO) a brief summary of the potential impacts of the proposed action on burial resources. This summary will be written in layman's terminology without overly technical language or acronyms so that the tribal government can relay the cultural information to tribal members. The summary will include, factoring the sensitive/confidential nature of such information, at a minimum:

- The geographic location of the burial resource.
- The context of the burial resource to include estimated temporal affiliation, environmental setting, and whether the find is singular or associated with other finds as well as any other information considered valuable to the Seminole Tribe.
- Specific information regarding how the proposed project may affect the burial resource.

The Jacksonville District will timely implement the following Three-Step Process for each activity that it determines, through consultation with the Seminole Tribe, may impact burial resources. It is critical to emphasize that this process is intended to ensure: (i) that consideration of avoidance alternatives that protect the resources in situ from man-induced

disturbances is fully explored and documented in detail; and (ii) that consideration of minimization and mitigation measures such as excavation or relocation of burial resources is only contemplated after full consideration of avoidance measures are exhausted or the avoidance measures are unsuccessful. Therefore, the resolution of effects to burial resources will be accomplished through the Three-Step Process whereby avoidance is the first priority and minimization or mitigation is only considered as a last resort.

The following Three-Step Process is also illustrated in Appendix C to this agreement.

Step 1: The Jacksonville District will develop, in consultation with the Seminole Tribe and other appropriate consulting parties (e.g., other Federally-recognized Tribes, SHPO, non-federal sponsor, permit applicant and State Archeologist): (i) identification methods for burial resources; (ii) treatment alternatives that avoid man-induced impacts; and (iii) proposed consultation schedule. The Jacksonville District will carefully evaluate, in consultation with tribal representatives and other appropriate parties, these avoidance alternatives. The Jacksonville District will document the factors considered, how they were considered, and feasibility and prudence determinations relative to cultural/religious values in a memorandum for the record (MFR). As part of this MFR, the Jacksonville District and the Seminole Tribe will develop a proposed consultation schedule and protocols for sharing information. The Jacksonville District will provide the Seminole Tribe an opportunity to review the draft MFR and verify its understanding of the consultation efforts through a concurring signature. If the Jacksonville District and the Seminole Tribe cannot agree on the feasibility and prudence of the alternatives relative to cultural/religious values or the alternatives fail to avoid man-induced impacts, this process will proceed to Step 2.

Step 2: The Jacksonville District will circulate the MFR developed in Step 1 to all appropriate consulting parties for a 30 calendar day commenting period. After 30 calendar days, the Jacksonville District will finalize the MFR and provide a copy to the appropriate consulting parties' leadership. Jacksonville District staff will coordinate a meeting date for the District Engineer and Deputy Project Management (DPM) to meet with leadership of the Seminole Tribe and the Seminole Tribe of Florida's THPO and other appropriate consulting parties to discuss the alternatives considered during Step 1 with the goal of facilitating a meaningful avoidance alternative. The Jacksonville District will prepare a second MFR memorializing the meeting between leadership to provide guidance to staff on how to proceed. The Jacksonville District will provide the Seminole Tribe an opportunity to review the draft MFR and verify its understanding of the meeting through a concurring signature. If the leadership of the respective parties concludes there are no feasible and prudent

avoidance alternatives relative to cultural/religious values, then the staff for the respective parties will proceed to Step 3.

Step 3: The Jacksonville District will develop, in coordination with the Seminole Tribe and other appropriate consulting parties, mitigation measures to address impacts to burial resources that cannot be avoided. These measures could include minimization efforts and possible relocation of burial resources. The Jacksonville District, in coordination with the Seminole Tribe, will prepare a third MFR discussing the feasibility and prudence relative to cultural/religious values of the mitigation measures comparing the mitigation measures to the alternatives developed in Steps 1 and 2. This MFR will include, at a minimum, the alternatives that were considered, the factors considered for each alternative and how they were considered, the determination of feasibility and prudence relative to cultural/religious values for each alternative, and any differing opinions on feasibility and prudence relative to cultural/religious values. The Jacksonville District will circulate the final MFR to the leadership of the appropriate consulting parties. After the MFR is circulated, the leadership of the Jacksonville District and the Seminole Tribe will meet again to determine the best course of action or treatment. Though the Jacksonville District will make the ultimate decision considering the interests of all stakeholders, it will make a good faith effort to honor any requests by the Seminole Tribe for the appropriate treatment and acknowledges that such decisions are on a case-by-case basis.

Where a proposed USACE or USACE regulated activity is undertaken to respond to an emergency, the Jacksonville District will immediately contact the Seminole Tribe to discuss consultation procedures. The Seminole Tribe will make a good faith effort to meet the request in a timely manner.

In order to meaningfully implement this Agreement, including the process outlined above, the Jacksonville District Civil Works program will make a good faith effort to budget for funding necessary for identification, evaluation, and treatment of burial resources and historic properties consistent with ER 1105-2-100, 22 Apr 2000. Further, the USACE acknowledges that the Seminole Tribe of Florida has limited staff and resources and will coordinate with the Seminole Tribe to overcome these limitations when implementing this Agreement. The Jacksonville District Regulatory program determines the level of investigations associated with permit applications; however, all cultural resource or archeological work performed for a regulatory project is hired, funded and directed by the permit applicant. The Jacksonville District Regulatory program does not design or fund projects for permit applicants and is not responsible for paying costs for curation, repatriation, or compliance work.

Note, the Corps will normally be “lead agency” when undertaking a Civil Works project. Determination of “lead agency” for Regulatory permit applications will be made pursuant to 40 C.F.R. § 1501.5(c). However, where the Jacksonville District is not the “lead agency,” it will adhere to this policy to the extent commensurate with its role and responsibility.

The Jacksonville District notes for purposes of this Agreement that avoidance includes, but is not limited to, protection from unnatural inundation in situ. Further, the Jacksonville District acknowledges that it is the cultural/religious significance that the Seminole Tribe attributes to burial resources that makes burial resources important Trust resources. As such, the Jacksonville District acknowledges that the ultimate cultural valuation of a burial resource can only be made by the Indian Tribes that are culturally affiliated with the burial resource.

VII. Basic Tenets of Jacksonville District Treatment of Burial Resources

When burial resources are likely to be affected by a proposed action under either the Civil Works or Regulatory Programs, the Jacksonville District agrees to adhere to the following principles in addition to the Principles set forth in the Advisory Council on Historic Preservation’s Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.

1. In recognizing the unique Government-to-Government relationship between the U.S. Government and American Indian Tribes, the Jacksonville District will continue to give special consideration to the Tribes’ environmental and cultural resources, pursuant to its Trust Responsibility. The Jacksonville District holds its Trust Responsibility to American Indian Tribes in the highest regard; and
2. The Jacksonville District will direct that no photographs or other form of data collection be taken of burial resources. Analysis of burial resources will not be permitted beyond that necessary to identify the remains as human and temporal affiliation if necessary. Any analysis that occurs must be non-destructive. All discoveries must be reported to the THPO immediately; and
3. The Jacksonville District will work collaboratively with the Seminole Tribe, and other Federally Recognized Tribes culturally affiliated with Florida that would like to participate, to develop a cultural sensitivity training program. Until such time, for purposes of Civil Works Programs, the Jacksonville District will require that all cultural resource contractors view “Working Effectively with Tribal Governments,” an online training course located at <http://www.tribal.golearnportal.org/>. The Jacksonville District may require completion of a

cultural sensitivity course administered by the Seminole Tribe. For purposes of Regulatory Program, the Jacksonville District will recommend that all cultural resource contractors, to include those working at the direction of a permit applicant or permittee, view “Working Effectively with Tribal Governments,” an online training course located at <http://www.tribal.golearnportal.org/> and will recommend completion of a cultural sensitivity course administered by the Seminole Tribe.

VIII. Adaptive Management

Adaptive management means the development of a management strategy that anticipates likely challenges associated with a project and provides for the implementation of actions to address those challenges, as well as unforeseen changes to those projects. It requires consideration of the risk, uncertainty, and dynamic nature of some projects and guides modification of those projects to optimize performance. It includes the selection of appropriate measures that will ensure that performance standards are met and involves analysis of monitoring results to identify potential problems of a project and the identification and implementation of measures to rectify those problems.

The Jacksonville District’s Civil Works and Regulatory authorities allow for coordination and development of appropriate adaptive management measures, also known as contingency measures, if warranted, as a result of site conditions or as the plan/design, construction and operations are refined and implemented. The Jacksonville District and the Seminole Tribe acknowledge the importance of developing adaptive management plans for activities or projects where impacts to cultural resources, including burial resources, are not fully known. In such cases, the Jacksonville District, in consultation with the Seminole Tribe, will develop adaptive management plans to address uncertainty in the effect of a proposed action on burial resources. For the Jacksonville District’s Civil Works mission, the development of such adaptive management plans should occur during the Planning, Engineering and Design (PED) phase when sufficient detail regarding the proposed project is available. For the Jacksonville District’s Regulatory mission, the development of adaptive management plans should occur during the development of special conditions related to issuance of a Department of the Army permit.

In a situation where an adverse effect to burial resources is anticipated, it will be the Jacksonville District's responsibility to monitor to affirm that the predicted conditions prove accurate and that the avoidance and/or mitigation measures (which include minimization measures) were successful. Such monitoring plans will include the development of “triggers” or thresholds as part of the monitoring plan. The triggers or thresholds will represent changed site condition unanticipated by the Corps monitoring team. Actuation of the established triggers will necessitate re-initiation of consultation with the Seminole Tribe and other

consulting parties. If analysis of trigger actuation is found to be within the Corps' control and the result of anthropogenic activities (i.e., would not have occurred but for the man-induced activities), the Jacksonville District will evaluate the mitigating opportunities, developed in the Adaptive Management Plan, to address the situation. If the range of available adaptive management measures is not feasible, prudent, or effective, then the Jacksonville District and the Seminole Tribe will enter into the Three-Step Process in accordance with this Agreement.

IX. Restriction on the Release of Certain Information to the Public

To the extent authorized by Federal law (Section 304 of the NHPA, 16 U.S.C. 470w-3, Section 9 of the Archaeological Resources Protection Act, 16 U.S.C. 470-hh, and the Freedom of Information Act, 5 U.S.C. 552), the Jacksonville District will not provide information concerning the location, character or ownership of human burial resources, other cultural resources items, historic properties, Traditional Cultural Properties, or sacred sites to the public. Before the Jacksonville District releases such information to the public, the Jacksonville District will first provide the Seminole Tribe advanced notice. Where the Jacksonville District is not the lead Federal agency for a proposed action, the Jacksonville District will coordinate with the appropriate lead Federal agency to protect such information to the extent of the Jacksonville District's authority.

X. Administration of the Agreement

- A. **Effective Date.** This Agreement will be in effect until such time as it is superseded by another agreement developed and agreed upon by the Jacksonville District and the Seminole Tribe. The effective date of this Agreement is the date of the last required signature on the signature page of this Agreement.
- B. **Applicability.** This Agreement will apply to all consultations with the Seminole Tribe initiated after the effective date. For projects that are in consultation with the Seminole Tribe at the effective date, the parties to this Agreement will make a good faith effort to apply this Agreement to the consultation process where appropriate.
- C. **Dispute Resolution.** While retaining ultimate responsibility for making determinations and exercising individual responsibilities in accordance with existing statutory and regulatory responsibilities, the Jacksonville District and the Seminole Tribe will consult with one another to resolve disputes using existing dispute resolution methods in accordance with this Agreement. If no agreement can be reached, either party may refer the matter to a higher

management level within its organization. The Jacksonville District reserves the right to make a final decision on any matter within its authorities.

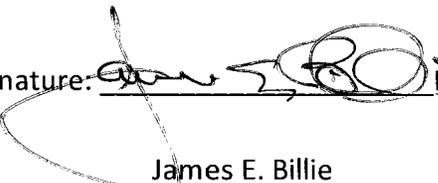
- D. Modification and Termination. This Agreement may be modified or amended at any time upon written request of either the Jacksonville District or the Seminole Tribe and the subsequent written concurrence of the other. This Agreement may be terminated by either the Jacksonville District or the Seminole Tribe upon providing sixty (60) days advance written notice. Any changes, amendments, corrections, or additions to this Agreement, shall be in writing; shall be executed and approved by the same positions (or their designees) of the Jacksonville District and Seminole Tribe who execute and approve this original Agreement and in accordance with applicable law; and shall become effective upon signature by both the Jacksonville District and the Seminole Tribe.
- E. Acknowledgement that the authority and responsibilities of the parties under their respective jurisdictions are not altered by the Agreement.
1. This Agreement is not a final agency action by the Jacksonville District and is not intended to, and does not grant, expand, create, or diminish any legally enforceable rights or benefits, substantive or procedural, not otherwise granted or created under existing law or equity by any person or party against the United States, its agencies, its officers, or any other person. Nor shall this Agreement be construed to alter, repeal, interpret, or modify tribal sovereignty, any treaty rights, or other rights of any Indian Tribe, or to preempt, modify or limit the exercise of any such right.
 2. This Agreement neither enlarges nor diminishes the U.S. Army Corps of Engineers' legal obligations with respect to the Seminole Tribe, nor does this Agreement provide an independent cause of action against the U.S. Army Corps of Engineers beyond any existing legal responsibilities.
 3. This Agreement does not, and is not intended to, impose any legally binding requirements on other Federal agencies, States, or the public, and does not restrict the authority of the employees of the Jacksonville District or the Seminole Tribe to exercise their discretion in each case to make decisions based on their judgment about the specific facts and application of relevant statutes and regulations.
 4. While this Agreement is intended to be implemented in addition to the framework established by Section 106 of the NHPA and NAGPRA, this Agreement is not intended to create a conflict when the USACE implements its responsibilities under existing laws and

regulations including the NHPA and/or NAGPRA. Therefore, this Agreement should be construed in a manner to avoid conflicts with existing laws and regulations. The potential for this Agreement to enhance the level of protection for burial resources above that prescribed by existing laws and regulations shall not be considered a conflict.

5. This Agreement does not direct or apply to any party outside of the Jacksonville District and the Seminole Tribe.
6. This Agreement is neither a fiscal nor funds obligation document. It does not obligate, commit or authorize the expenditure of funds and cannot be used as the basis for the transfer of funds. Any endeavor involving the reimbursement or contribution of funds between the Jacksonville District and the Seminole Tribe will be in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the Jacksonville District and the Seminole Tribe and shall be independently authorized by appropriate statutory authority. This Agreement does not provide such authority.
7. Nothing in this Agreement, in and of itself, requires the Jacksonville District or the Seminole Tribe to enter into any contract, grant, or interagency agreement.
8. All provisions in this Agreement are subject to the availability of funds.

Accordingly, the Jacksonville District and the Seminole Tribe have signed this Agreement on the dates set forth below, to be effective for all purposes as of the date last signed. The signatures may be executed using counterpart original documents.

SEMINOLE TRIBE OF FLORIDA

Signature:  Date: 12-5-14

James E. Billie
Chairman
Seminole Tribe of Florida

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

Signature: Alan M. Dodd Date: 2 Feb 15

Alan M. Dodd
Colonel, U.S. Army
District Commander

Appendix A

Definitions

“Adverse Effect” means, for purposes of this Agreement, an impact that alters, directly or indirectly, any characteristic of a burial resource that makes it culturally/religiously significant to the Seminole Tribe of Florida in a manner that would diminish the significance to the Seminole Tribe of Florida and/or diminish the integrity of the burial resource’s location, design, setting, materials, workmanship, feeling, or association. For purposes of the NHPA, the term means 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)

“Burial resource” includes

- *Human remains*, meaning all physical remains of a human body of a person of American Indian ancestry, even if in fragmentary form unless it is determined that the human remain had been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets or individual teeth. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item and as a cultural resource item.
- *Burial/Burial Site*, meaning any physical location whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony (as understood by the Seminole Tribe traditions) of a culture, individual human remains are deposited. This term includes locations no longer with tangible material evidence as recorded or culturally documented.
- *Funerary objects*, meaning items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains.

- *Objects of cultural patrimony*, meaning items having ongoing historical, traditional, or cultural importance central to the Indian tribe itself rather than property owned by an individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe at the time the object was separated from the group.

“Consultation” means “an open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. To the greatest extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning/permitting stages before decisions are made and actions are taken so as to provide the Seminole Tribe of Florida meaningful input in the decision-making process; an active and respectful dialogue concerning actions taken by the Jacksonville District that may appreciably affect tribal resources, tribal rights (including treaty rights) or Indian lands.” 2013 USACE Tribal Consultation Policy (modified).

“Cultural affiliation” means “that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present-day Indian tribe ... and an identifiable earlier group.” 43 C.F.R. § 10.2(e)(1).

“Cultural resources” means (1) any product of human activity culturally or historically significant to the Seminole Tribe of Florida; (2) any object or place culturally or historically significant to the Seminole Tribe of Florida; and any flora, fauna, scenery, landscape, or other product of nature culturally or historically significant to the Seminole Tribe of Florida. This term includes the location containing cultural resources. This term may include archaeological resources, historical resources, burial resources, and Historic Properties (i.e., National Register of Historic Places listed or eligible properties as defined at 36 CFR Part 60).

“Feasible and prudent” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of project purpose.

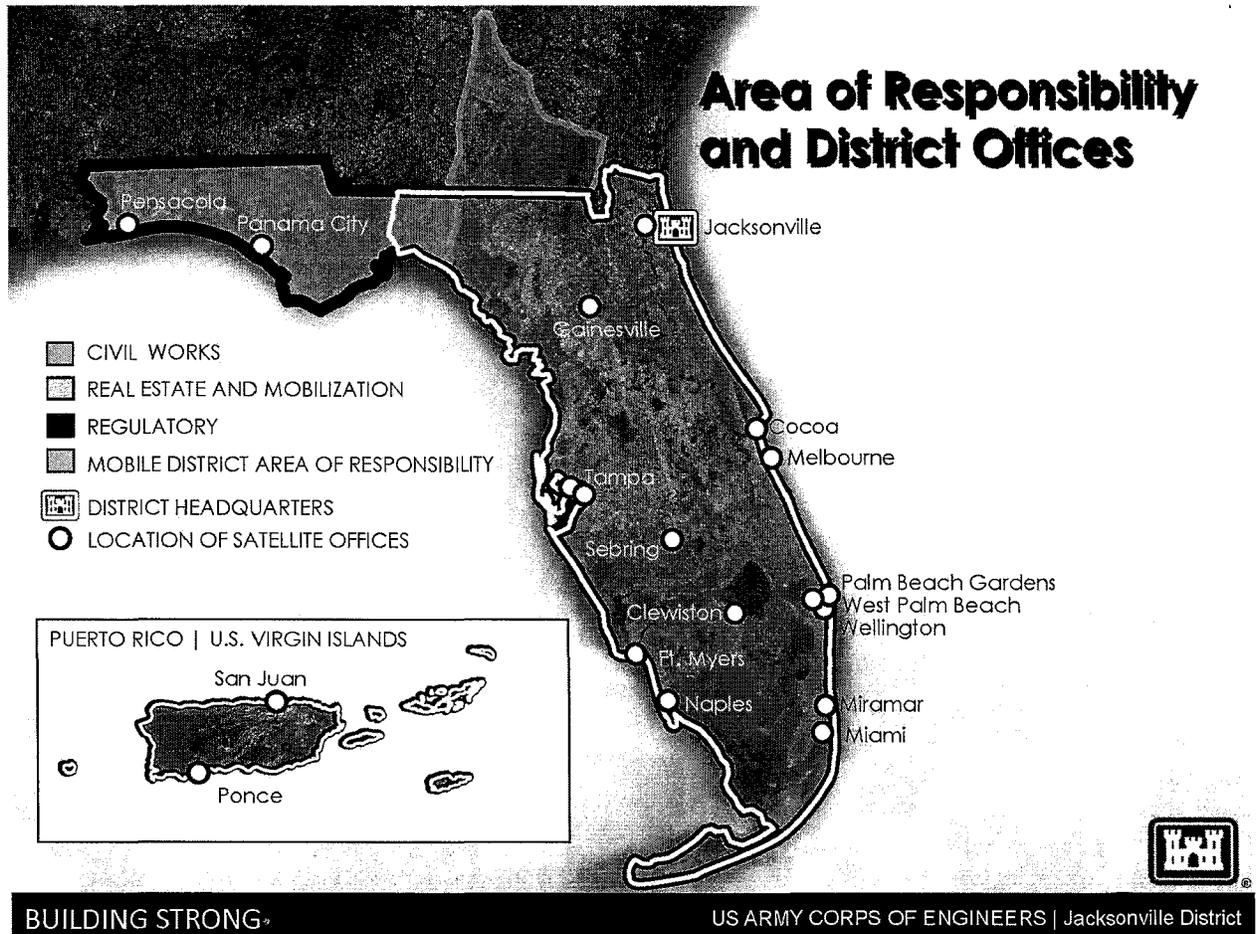
“Good Faith” means faithfulness to an agreed common purpose and consistency with the justified expectations of the other party to this Agreement.

“Indian tribe,” or “tribe,” means “an Indian tribe, band, nation, or other organized group or community, including Native village, Regional corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. § 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 16 U.S.C. § 470w(4).

“Tribal Historic Preservation Officer (THPO)” means the official appointed or designated by an Indian tribe to implement the Tribal Historic Preservation Program. The term applies only for tribes on the National Park Service list that, in accordance with Section 101(d)(2) of NHPA, have formally assumed the responsibilities of the SHPO for purposes of Section 106 compliance on their tribal lands.

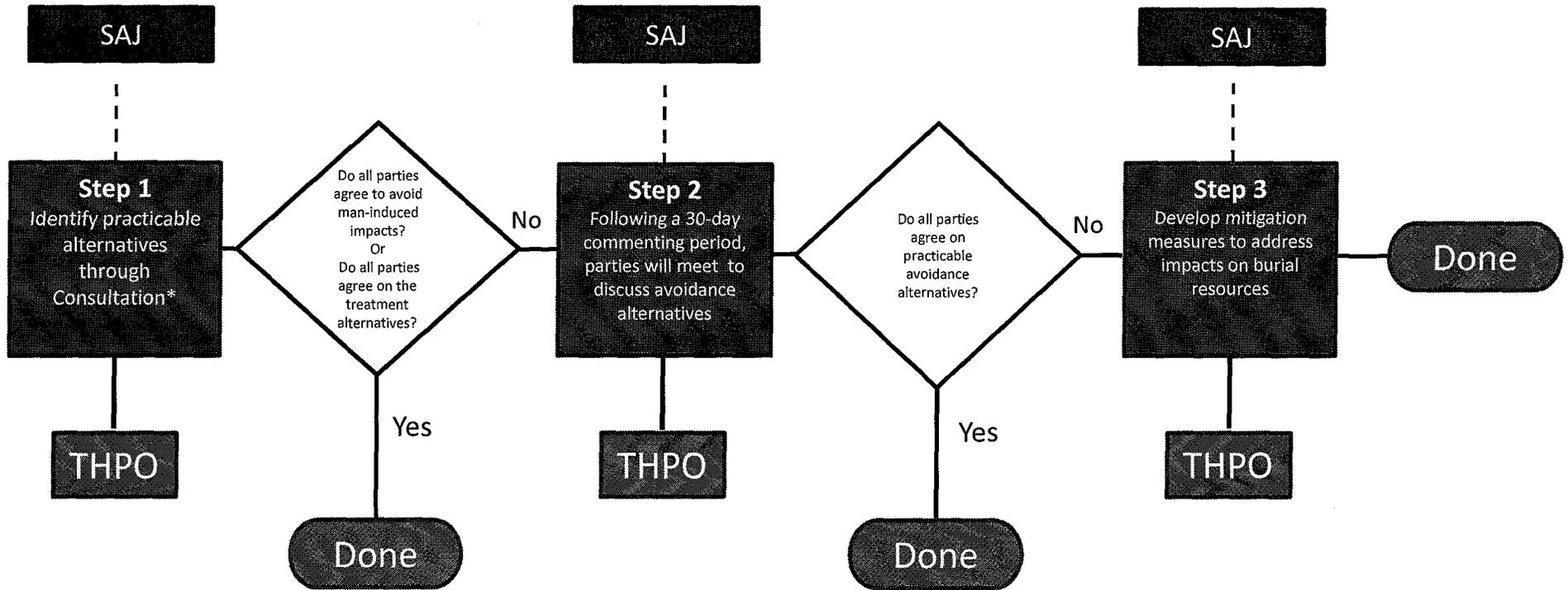
“Treatment” means, for purposes of this Agreement, actions taken by or required by the USACE to resolve impacts on cultural resources (avoidance and mitigation/minimization). For purpose of the NHPA, the term means actions taken by a Federal agency to mitigate or resolve adverse effects on historic properties. 36 C.F.R. § 800.6

Appendix B



Appendix C-Three Step Process

SAJ's Process for Treatment of Burial Resources

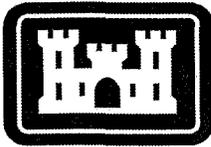


SAJ and STOF Leadership will be involved in the decision making process during steps 2 and 3

Consultation will occur at a minimum via the following:

1. Civil Works Annual Project Meeting
2. Regulatory Bimonthly Status Meetings
3. Scoping of NEPA and/or feasibility studies
4. Reconnaissance studies

Note: the Consultation meetings listed above are not to be recognized as a substitute for this Three-Step Process.



This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

Step 1. Thru consultation with appropriate parties the Jacksonville District has completed these tasks:

- Developed identification methods for burial resources
Attach methodology
- Identified potential treatment alternatives
Attach potential treatment alternatives including feasibility analysis relative to cultural/religious values and the likelihood of man-induced impacts
- Developed a proposed consultation schedule
Attach proposed consultation schedule and protocols for information exchanges
- Circulated MFR No. 1 to all consulting parties for a 30 calendar day review and commenting period
Attach comment matrix

Date Document
Routed for Review:

*If the Jacksonville District and the Seminole Tribe of Florida cannot agree on the feasibility and prudence of the alternatives relative to cultural/religious values or the alternatives fail to avoid man-induced impacts, this process will proceed to **Step 2**.*

<p>_____ Name of USACE SAJ Representative</p> <p>_____ Title of USACE SAJ Representative</p> <p>_____ Signature of USACE SAJ Representative</p> <p>_____ Date of Signature</p>	<p style="text-align: center;"> <input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur </p> <p>_____ Name of Seminole Tribe of Florida Representative</p> <p>_____ Title of Seminole Tribe of Florida Representative</p> <p>_____ Signature of Seminole Tribe of Florida Representative</p> <p>_____ Date of Signature</p> <p><input type="checkbox"/> Seminole Tribe of Florida Comments Attached</p>
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This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

Step 2. The Jacksonville District has completed the following tasks:

- Established meeting date for USACE-SAJ and Seminole Tribe of Florida leadership and staff and other consulting parties to discuss alternatives considered during Step 1.

Meeting Date/Time:

- Prepared notes from meeting between leadership, to include guidance to staff on how to proceed.
Attach meeting summary and guidance to staff

- Circulated MFR No. 2 to the Seminole Tribe of Florida to review and verify understanding of results of leadership meeting, to include guidance to staff on how to proceed. *Attach comment/response matrix*

Date Document Routed for Review:

If the leadership of the respective parties concludes there are no feasible and prudent avoidance alternatives relative to cultural/religious values, then the staff for the respective parties will proceed to Step 3.

<p>_____</p> <p>Name of USACE SAJ Representative</p> <p>_____</p> <p>Title of USACE SAJ Representative</p> <p>_____</p> <p>Signature of USACE SAJ Representative</p> <p>_____</p> <p>Date of Signature</p>	<p style="text-align: center;"> <input type="checkbox"/> Concur <input type="checkbox"/> Do Not Concur </p> <p>_____</p> <p>Name of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Title of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Signature of Seminole Tribe of Florida Representative</p> <p>_____</p> <p>Date of Signature</p>
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Seminole Tribe of Florida Comments Attached



This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

Step 3. The Jacksonville District has completed the following tasks:

In coordination with the Seminole Tribe of Florida, prepared this third MFR discussing the feasibility and prudence relative to cultural/religious values of the mitigation measures comparing the mitigation measures to the alternatives developed in Step 1 and Step 2.

This MFR includes the following, as prescribed by the agreement:

- List of alternatives that were considered
- List factors of each alternative and how they were considered
- Determination of feasibility and prudence relative to cultural/religious values for each alternative
- List differing opinions on feasibility and prudence relative to cultural/religious values
- Circulated this MFR to leadership of the appropriate consulting parties.

Date Document Routed for Review:

- Leadership of the Jacksonville District and Seminole Tribe of Florida meet to determine the best course of action or treatment. *Attach meeting summary*

Meeting Date/Time:

Though the Jacksonville District will make the ultimate decision considering the interests of all stakeholders, it will make a good faith effort to honor any requests by the Seminole Tribe of Florida and acknowledges that such decisions are on a case-by-case basis.

Concur

Do Not Concur

Name of USACE SAJ Representative

Name of Seminole Tribe of Florida Representative

Title of USACE SAJ Representative

Title of Seminole Tribe of Florida Representative

Signature of USACE SAJ Representative

Signature of Seminole Tribe of Florida Representative

Date of Signature

Date of Signature

Seminole Tribe of Florida Comments Attached



This Memorandum for Record is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.

MEMORANDUM FOR RECORD

MFR No.:

SUBJECT:

Additional Information:

Name of USACE SAJ Representative

Signature of USACE SAJ Representative

Title of USACE SAJ Representative

Date of Signature



This Memorandum for Record Attachment is pursuant to the Trust Agreement Between the Jacksonville, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that May Adversely Affect American Indian Burial Resources. The resolution of effects to burial resources will be accomplished through the Three-Step Process established in part VI of the agreement.

MEMORANDUM FOR RECORD – Attachment

MFR No.:

SUBJECT:

Attachment Title:
