

**MEMORANDUM OF AGREEMENT
BETWEEN THE FLORIDA DEPARTMENT OF TRANSPORTATION AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
REGARDING STATE ROAD 70 FROM CR 721 SOUTH TO CR 559/128TH AVENUE
HIGHLANDS & OKEECHOBEE COUNTIES, FLORIDA**

WHEREAS, Pursuant to 23 United States Code (U.S.C.) § 327 and the implementing Memorandum of Understanding (MOU) executed on May 26, 2022, the Florida Department of Transportation (FDOT) has assumed Federal Highway Administration's (FHWA) responsibilities under the National Environmental Policy Act (NEPA) for highway projects on the State Highway System (SHS) and Local Agency Program (LAP) projects off the SHS; and

WHEREAS, in accordance with the MOU, FDOT's assumption of FHWA's responsibilities under NEPA for highway projects includes assumption of responsibilities for compliance with 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, FDOT will provide federal financial assistance for State Road (SR) 70 from County Road (CR) 721 South to CR 599/128th Avenue, Federal Aid Project Number (No.) D123-018-B and Financial Project Identification No. 450334-1-22-01, which represents an undertaking in accordance with 36 CFR § 800.3(a); and

WHEREAS, FDOT has defined the Undertaking's area of potential effects (APE) as the footprint of construction and adjacent parcels 200 feet from existing ROW and 500 feet from proposed ROW, as depicted in Attachment A; and

WHEREAS, FDOT has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to the requirements of 36 CFR Part 800 and has determined that the Undertaking may have an adverse effect on the SR 70 over Kissimmee River Bridge (Bridge No. 910001 [8HG01236/8OB00336]), which is eligible for listing in the National Register of Historic Places (NRHP); and

WHEREAS, FDOT has consulted with the Okeechobee Historical Society regarding the effects of the Undertaking on historic properties; and

WHEREAS, FDOT has provided opportunities for public review and comment regarding the effects of the Undertaking on historic properties; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1) FDOT has notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination with specified documentation and has invited the ACHP to comment and participate in consultation, and the ACHP has chosen **not to** participate pursuant to 36 CFR § 800.6(a)(1)(iii); and

NOW, THEREFORE, FDOT and the SHPO agree that the Undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

FDOT shall ensure that the following measures are carried out:

I. DOCUMENTATION OF THE SR 70 OVER KISSIMMEE RIVER BRIDGE

- A. Prior to any alteration or demolition of the SR 70 over Kissimmee River Bridge (8HG01236/8OB00336) and per guidance provided by the National Park Service (NPS), FDOT shall perform the following documentation in accordance with Historic American Engineering Record (HAER) Level III standards:
 - 1. Drawings - Select existing drawings, where available, may be photographed with large-format negatives or photographically reproduced on Mylar in accordance with the U.S. Copyright Act, as amended. Should existing plans not be available, sketch plans depicting existing conditions shall be prepared.
 - 2. Photographs - Photographs with large-format negatives of context and views from all sides of the bridge and approaches; roadway and deck views, and noteworthy features and details. All negatives and prints will be processed to meet archival standards. One photograph of a principal elevation shall include a scale.
 - 3. Written Data - Report with narrative description of the bridge, summary of significance, and historical context. FDOT shall coordinate with SHPO prior to starting in order to develop the appropriate context scope.
- B. FDOT shall provide draft HAER documentation (non-archival format, electronic version) to the NPS (lead content reviewer) and SHPO (courtesy reviewer) for concurrent review in accordance with Stipulation VIII.
- C. FDOT shall make requested edits and provide final copies of the HAER documentation, completed in accordance with Stipulation I.A, as follows:
 - 1. An archival copy to the NPS Southeast Regional Office for review and approval prior to salvage and demolition of the structure; per HAER guidelines; and
 - 2. An archival copy and an electronic copy to the Florida SHPO for inclusion in the Florida Master Site File (FMSF); and
 - 3. Non-archival copies and electronic copies to the Okeechobee Historical Society.
- D. The HAER documentation cannot be considered complete, and the bridge demolition cannot take place, until accepted by NPS.

II. SALVAGE OF EXISTING BRIDGE PLAQUE

- A. Prior to bridge demolition, FDOT shall salvage the existing commemorative bridge plaque, to the greatest extent possible, for use elsewhere, as identified in a proposed Salvage and Relocation Plan that will be prepared during project development, as described in Stipulation II.B.
- B. In coordination with the Okeechobee Historical Society and Highlands and Okeechobee Counties, FDOT shall prepare a Salvage and Relocation Plan to outline the process for salvaging and relocating the commemorative bridge plaque. The plan will include:
 - 1. measures to determine the feasibility of salvaging and relocating the plaque,
 - 2. the appropriateness of any proposed new locations (sites) for the plaque,
 - 3. methods for removing and storing the plaque, and,
 - 4. timeframes for completing the tasks.
- C. The proposed Salvage and Relocation Plan shall be developed and approved prior to advertising for construction. FDOT will afford the SHPO as well as the Okeechobee Historical Society and Highlands and Okeechobee Counties 30 days to review and comment on the proposed Salvage and Relocation Plan, as per Stipulation VIII.
- D. The existing commemorative bridge plaque cannot be salvaged until HAER documentation is accepted by NPS in writing as outlined in Stipulation I.

III. PUBLIC EDUCATION

- A. FDOT will assist with the development, funding, and installation of a single panel educational exhibit. The exhibit will provide a historic account of the bridge to educate the public. The text and graphics on the single panel will be prepared based on continued coordination with local interested parties and stakeholders during the project's design and construction phases. During continued coordination, FDOT will consider the appropriate location to install the exhibit which will be in proximity to the bridge location. The draft of the exhibit and location will be coordinated with the SHPO for review, as described in Stipulation VIII.
- B. FDOT will provide an electronic copy of the educational exhibit described above to appropriate local entities (such as the Okeechobee Historical Society and Highlands and Okeechobee Counties, and one or two other agencies/organizations), for installation at their discretion.

IV. PROFESSIONAL STANDARDS

All archaeological and historic preservation work carried out pursuant to this Agreement shall be conducted by, or under the direct supervision of, a person or persons meeting the Secretary of the

Interior's Professional Qualification Standards for Archaeology and Historic Preservation as set forth at 62 FR 33708-33723 (June 20, 1997).

V. DURATION

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

VI. MOA DOCUMENTATION

- A. The FDOT shall provide a summary of actions carried out pursuant to this MOA to the signatories annually. The reporting period shall be the fiscal year from July 1st to June 30th and the summary shall describe the status of mitigation activities and, as applicable, any issues that may affect the ability of the FDOT to continue to meet the terms of this MOA, any disputes and objections received, and how they were resolved.
- B. A Notice of Fulfillment will be prepared to summarize the implementation of the MOA after all stipulations have been fulfilled. This document will be submitted to the signatories for their files within six (6) months after completion of all MOA stipulations.

VII. POST-REVIEW DISCOVERIES

- A. If properties are discovered that may be historically significant, or if unanticipated effects on historic properties are found, FDOT shall implement the Post Review Discovery Plan established in Stipulation IX of the September 27, 2023, Programmatic Agreement (PA) among the ACHP, SHPO, and FDOT (2023 PA).
- B. In the unlikely event that human skeletal remains or associated burial artifacts are uncovered within the project area during construction, all work in that area must stop. The individual in charge of the activity that leads to the discovery must notify the Project Engineer and the FDOT District One Cultural Resources Coordinator per Stipulation X of the 2023 PA. The discovery must be reported to local law enforcement and the appropriate medical examiner. The medical examiner will determine whether the State Archaeologist should be contacted per the requirements of Section 872.05, Florida Statutes, and Rule 1A-44.004, Florida Administrative Code (FAC).

VIII. REVIEW STIPULATION

FDOT shall afford the SHPO and other consulting parties, a 30-day period for review and comment following the receipt of delivery of those submittals and reviews described above. If no comments are received by FDOT at the end of these 30 days, FDOT will presume there are no objections. Any objections to the findings or plans proposed in these submittals will be addressed in accordance with Stipulation IX below.

IX. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, FDOT shall consult with such party to resolve the objection. If FDOT determines that such objection cannot be resolved, FDOT will:

- A. Forward all documentation relevant to the dispute, including FDOT's proposed resolution, to the ACHP. The ACHP shall provide FDOT with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FDOT shall prepare a written response that considers any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. FDOT will then proceed according to its final decision.
- B. Make a final decision on the dispute and proceed accordingly if the ACHP does not provide its advice regarding the dispute within thirty (30) days. Prior to reaching such a final decision, FDOT shall prepare a written response that considers any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of the written response.
- C. Fulfill its responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

X. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. All signatories must signify their acceptance of the proposed changes to the MOA in writing within 30 days of their receipt. The amendment will be effective on the date a copy signed by all signatories is filed with the ACHP. In accordance with 36 CFR § 800.6(b)(7), if the ACHP was not a signatory to the original agreement and the signatories execute an amended agreement, FDOT shall file the amended agreement with the ACHP.

XI. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories in an effort to amend the MOA per Stipulation IX, above. If within thirty (30) days (or another time agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, FDOT must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FDOT shall notify the signatories as to the course of action it will pursue.

Execution of this MOA by FDOT and SHPO and implementation of its terms is evidence that FDOT has taken into account the effects of this undertaking on historic properties per the requirements

of Section 106 (Public Law 113-287 [Title 54 U.S.C. 306108]), and 36 CFR Part 800 (Protection of Historic Properties).

SIGNATORIES:

FLORIDA STATE HISTORIC PRESERVATION OFFICER

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

Date_____

FLORIDA DEPARTMENT OF TRANSPORTATION

Katasha Gruver
Interim Director, Office of Environmental Management

Date_____

CONCURRING PARTIES:

FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT ONE

Nicole E. Mills, P.E.
Director, Transportation Development

Date_____

Attachment A - Project Area of Potential Effects, Highlands & Okeechobee Counties

