

**MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE FLORIDA DEPARTMENT OF TRANSPORTATION, AND
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER**

This is a memorandum of agreement (hereinafter, "MOA") between the United States Department of Transportation Federal Highway Administration (hereinafter, "FHWA"), the Florida State Historic Preservation Officer (hereinafter, "Florida SHPO"), and the Florida Department of Transportation (hereinafter, "FDOT") regarding compliance with relevant federal laws and regulations for historic resources that were determined eligible for the National Register of Historic Places (hereinafter, "NRHP") located within an area to be improved.

1. WHEREAS, FHWA proposes to provide improvements to State Road 542-Segment B from 6th Street SE to 14th Street SE in Polk County, Florida (hereinafter the "Project"), as shown on the map entitled, "Project Map," and attached hereto as Appendix 1, which has historic resources determined eligible for the NRHP; and
2. WHEREAS, FHWA is a participant in the Project, and 36 C.F.R. Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f), and Section 110(f) of the same Act (16 U.S.C. §470h-2(f)) apply to this Project; and
3. WHEREAS, in consultation with Florida SHPO, FDOT, the City of Winter Haven, Lake Elbert Neighborhood Association, and members of the public, FHWA has determined the following:
 - a. An area of potential effect (APE) for the Project, as defined in 36 C.F.R. Part 800.16(d), is as described in Page 3-1 of the document entitled "*Section 106 Documentation and Determination of Effect for SR 542 from 1st Street in Winter Haven to US 27 in Dundee, Florida*" (hereinafter "*Section 106 Effect Documentation*").
 - b. Pursuant to 36 C.F.R. Part 800.5, the Project will have an adverse effect on the South Lake Elbert Historic District, 35 Lake Elbert Drive South, 708 Lake Elbert Drive South, 934 Lake Elbert Drive South, and 130 Lake Elbert Drive East, all of which are eligible for inclusion in the NRHP. These resources were identified in the document entitled "*Cultural Resource Assessment Survey for State Road 542 PD&E Study From 1st Street in Winter Haven to US 27 in Dundee, Polk County, Florida.*"

4. WHEREAS, FHWA, Florida SHPO, FDOT, residents and property owners of the eligible South Lake Elbert Historic District, and City of Winter Haven have participated in the consultation regarding minimization and mitigation options and agree the mitigation options presented in this document will meet the purpose and need for the Project; and

NOW, THEREFORE, FHWA and the Florida SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effect of the Project on the NRHP-eligible historic resources:

STIPULATIONS

FHWA will ensure that the following stipulations are implemented:

- I. **Design and Construction of the Project**
 - A. FDOT will construct the Project within the right-of-way and elevations delineated on the Preferred Alternative Concept Plans (hereinafter, "Plans") that were selected after the Public Hearing, subject to alterations that may be necessary during further Project design to achieve the Project's purpose.
 - B. It is expressly understood that the Project right-of-way and elevations delineated in these Plans have been designed with the goal of minimizing adverse effects on the historic resources identified in the *Section 106 Effect Documentation*. FDOT will ensure that this goal continues to be observed as Project design proceeds.
 - C. In order to maintain physical access to Lake Elbert for lakefront property owners within the South Lake Elbert Historic District with riparian rights, the FDOT will evaluate design elements for individual property access.
 - D. Visual connectivity between the lakefront residences and Lake Elbert will be maintained through the use of design elements, which will continue to provide a vista of the lake. These design elements may include lower barriers or incorporating railings that are not solid and allow for some transparency. FDOT will also commit to higher levels of aesthetic treatment within the South Lake Elbert Historic District for crossings, surface design, landscaping, railings, benches, sidewalks, trash receptacles, and lighting. Design elements of the Plans resulting from the Public Hearing will be further developed in the Design Phase. The Cultural Resources Committee (hereinafter, "CRC") will be involved at the appropriate stage to review these design elements. The CRC members include FDOT, FHWA, SHPO, City of Winter Haven, and affected residents and property owners of the historic district.

- E. FDOT will notify FHWA, who in turn will notify the Florida SHPO and the Advisory Council on Historic Preservation (hereafter referred to as the Council), of any substantive alteration in the Project design that could result in adverse effects to historic resources not previously addressed during the course of consultation, and afford each the opportunity to consider amending the agreement pursuant to Stipulation IV.B.
- F. FDOT will provide signage or markers along SR 542, as appropriate, identifying the South Lake Elbert Historic District once it is designated in the NRHP.

II. Mitigation of Adverse Effects to South Lake Elbert Historic District

- A. Preparation of NRHP Historic District Nomination.
 - 1. In order to mitigate effects to the South Lake Elbert Historic District, an NRHP nomination will be prepared by FDOT and submitted by the CITY. Qualified cultural resources consultants, who meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation (36 C.F.R. Part 61), will conduct a survey of the historic resources (to include the preparation of Florida Master Site File forms). The mitigation activities in Stipulations IIA.1 and 2 will commence after the final environmental document and receipt of Location Design Concept Acceptance from FHWA for the improvements to this segment of SR 542 and will be submitted to the Florida Division of Historical Resources Survey and Registration Section for review within 18 months.
 - 2. Upon completion of the survey of the historic resources, a complete NRHP nomination form will be prepared according to National Register Bulletins 16A and 16B, "How to Complete the National Register Registration Form" and "How to Complete the National Register Multiple Property Documentation Form" (U.S. Department of the Interior, National Park Service, 1991) and will be submitted, with appropriate background materials, to the Florida Division of Historical Resources Survey and Registration Section. FDOT will respond to comments received from the Florida Division of Historical Resources Survey and Registration Section on the submitted NRHP nomination form. A copy of the NRHP nomination form and background materials will be provided to the CITY for their use to proceed with the formal nomination proposal process through the Florida Department of State division of Historical Resources Survey and Registration Section.

B. The City of Winter Haven has requested that the HABS Level III documentation of 35 Lake Elbert Drive South, which will be a full acquisition as part of this Project, be completed and provided to the City for archiving.

1. Pursuant to Section 110(b) of the National Historic Preservation Act, FHWA will ensure that:

- i. FDOT will complete the documentation required by Stipulation II.B and ensure that such documentation is submitted to the City of Winter Haven, before allowing the historic building to which such stipulation is applicable to be demolished.
- ii. All final documentation will be completed in accordance with the "Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation Level III" (48FR44730-38).
- iii. FHWA will file copies of all HABS Level III documentation prepared pursuant to this MOA with the City.
- iv. For the affected historic building (35 Lake Elbert Drive South) within the aforementioned historic district FDOT will prepare the following HABS Level III documentation:

1. Drawings-sketch drawing.
2. Photographs - Photographs with large-format negatives of exterior and interior views.
3. Written Data -short form for historical reports.

2. The mitigation activities in Stipulations IIB.1 will commence with the design contract for the improvements for this segment of SR 542 and will be submitted to the City of Winter Haven for archiving within 18 months.

III. Archeological Monitoring/Discoveries

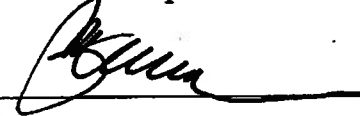
- A. Should unmarked human burials be encountered during construction of the Project, FHWA will ensure that they are recovered and treated in accordance with Fla. Stat. §872.05.
- B. FHWA, in consultation with the Florida SHPO, shall ensure efforts to avoid, minimize or mitigate adverse effects to any discoveries of significant archaeological resources during the Project are addressed according to 36 C.F.R. Part 800.13(b). All records resulting from archaeological discoveries shall be in accordance with 36 C.F.R. Part 79; and shall be submitted to the Florida SHPO.

IV. Administrative Stipulations

- A. Pursuant to 36 C.F.R. Part 800.6(c), this agreement shall be considered an agreement with the Council for the purposes of Section 106 of the National Historic Preservation Act.
- B. Any party to this agreement may propose to the other parties that it be amended, whereupon the parties will consult and consider the amendment pursuant to 36 CFR 800.6(c)(7).
- C. FHWA will ensure that information resulting from the work completed for this MOA is provided to the Florida SHPO in a form acceptable to the Florida SHPO for inclusion in the SHPO's files, Florida Master Site File, and archives.
- D. FDOT/FHWA will ensure that all documentation of historic properties carried out pursuant to this MOA is conducted by or under the direct supervision of a person or person meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation (36 CFR Part 61); and that all archaeological work is carried out by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation (36 CFR Part 61). The Secretary of the Interior's Professional Qualifications Standards for Archaeology and Historic Preservation define minimum education and experience required to perform identification, evaluation, registration, and treatment activities.
- E. Should any party to this agreement object within (30) days after receipt to any plans, specifications, contracts, or other documents provided for review pursuant to this agreement, or to the manner in which this agreement is being implemented, FHWA shall consult with the objecting party to resolve the objection. FHWA shall forward all documentation relevant to the dispute to the Council. Within thirty (30) days after receipt of all pertinent documentation, the Council will either:
 - 1. Provide FHWA with recommendations, which FHWA will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify FHWA that it will comment pursuant to 36 CFR 800.6 (b)(1)(v) and proceed to comment. Any Council comment provided in response to such request will be taken in to account by FHWA in accordance with 38 CFR 800.7(a) with reference to the subject of the dispute.


This MOA was prepared pursuant to the requirements of Section 106 of the National Historic Preservation Act, 16 U.S.C. §470f, and FHWA, shall ensure that the Project is carried out in accordance with the MOA.

Florida Department of Transportation

Approved by: 
Stanley Cann, Secretary

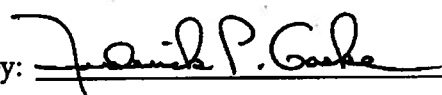
Date: 1/27/09

United States Department of Transportation, Federal Highway Administration

Approved by: 
for Martin Knopp, Division Administrator

Date: 2/17/09

Florida State Historic Preservation Officer

Approved by: 
Frederick Gaske, SHPO

Date: 3/27/09

FL Memorandum of Agreement for State Road 542 Segment B from 6th Street SE to 14th Street SE in Polk County, Florida.

APPENDIX 1
Project Map

