

**PROGRAMMATIC AGREEMENT AMONG  
THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION  
OFFICER, THE POARCH BAND OF CREEK INDIANS AND GULF POWER COMPANY REGARDING GULF  
POWER COMPANY NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE IN COLUMBIA,  
SUWANNEE, MADISON, JEFFERSON, LEON, GADSDEN AND JACKSON COUNTIES, FLORIDA**

**WHEREAS**, the U.S. Army Corps of Engineers (USACE or Corps) may issue a Regional General Permit (RGP) SAJ-13 (application #SAJ-2019-02708) to Gulf Power Company (Gulf Power) under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 to construct and operate the North Florida Resiliency Connection (NFRC) 161kV Transmission Line Project (Project or Undertaking), in Columbia, Suwannee, Madison, Jefferson, Leon, Gadsden, and Jackson counties, Florida; and

**WHEREAS**, the proposed Project would consist of a 176-mile long 161kV transmission line constructed employing spun concrete or steel monopole, self-support structures to support three phases and an optical wire/overhead ground wire without permanent patrol roads and including construction access roads and staging areas; and

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

**WHEREAS**, the Corps will be the Lead Federal Agency, as defined in 36 C.F.R. § 800.2(a)(2), for compliance with Section 106 of the NHPA for the Project; and

**WHEREAS**, pursuant to 36 C.F.R. § 800.14(b), the Corps as the Lead Federal Agency, will comply with Section 106 of the NHPA for the Project through the execution and implementation of this Programmatic Agreement (Agreement); and

**WHEREAS**, the Project includes lands under the jurisdiction of the United States Department of Agriculture, United States Forest Service, National Forests of Florida and the Corps has consulted with them about the effects of the Project on historic properties and has invited them to be an Invited Signatory to this Agreement and they declined to participate in this Agreement via electronic mail dated June 11, 2020; and

**WHEREAS**, Gulf Power would be responsible for constructing and operating the Project and implementing certain stipulations under this Agreement. Gulf Power may prepare information, analyses, and recommendations for this Project, in accordance with Part 800.2(a)(3), including conducting additional cultural resources investigations (such as surveys and testing), and implementing treatment plans; and

**WHEREAS**, the Corps engaged in government-to-government consultation with the Miccosukee Tribe of Indians of Florida, the Muscogee Creek Nation, the Poarch Band of Creek Indians, the Seminole Nation of Oklahoma and the Seminole Tribe of Florida regarding the Project. The Tribal Historic Preservation Officer of the Seminole Tribe of Florida has consulted with the Corps and has requested that the Corps continue government-to-government consultation concerning archaeological sites. The

Corps continues to engage in government-to-government consultation with the Tribal Historic Preservation Officer for the Seminole Tribe of Florida; and

**WHEREAS**, the Corps has invited the Poarch Band of Creek Indians as an Invited Signatory and they have accepted; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(2)(i), the Corps will continue to consult on the Project with all interested Tribe(s); and

**WHEREAS**, the Signatories, Invited Signatories, Concurring Parties, and interested Tribes collectively will be considered the Consulting Parties for this Agreement; and

**WHEREAS**, the Corps has determined that the Project has the potential to affect properties listed or eligible for listing in the National Register of Historic Places (NRHP) and has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to Section 106 of the NHPA; and

**WHEREAS**, the Corps as the Lead Federal Agency, in consultation with the Florida SHPO, has defined the Project's area of potential effects (APE) as having a Direct Effects APE and an Indirect APE per Stipulation II (Area of Potential Effects) below and as shown on the map provided in Appendix A; and

**WHEREAS**, at the end of July 2020, Gulf Power had conducted cultural resources inventories within the APE, including of approximately 93 percent of the transmission line route, temporary staging yards and temporary and permanent access areas. During those inventories, Gulf Power recorded 83 archaeological sites, 76 historic architectural resources (individual buildings or structures), one historic district, 12 resource groups (linear resources), four historic cemeteries and one historic bridge within the APE defined for the Project. A complete list of these resources is provided in Appendix B; and

**WHEREAS**, additional portions of the APE, including about seven (7) percent of transmission line route, temporary staging yards, and temporary and permanent access areas, remain to be surveyed in the future. Gulf Power shall complete future identification and evaluation investigations, and treatment at any newly found historic properties, in accordance with the stipulations of this Agreement, prior to the Corps allowing construction of any Project facilities in the vicinity of any identified historic property; and

**WHEREAS**, the Corps, in consultation with the Florida SHPO, has determined that seventeen (17) of the identified archaeological sites (8GD21, 8GD2036, 8GD2270, 8JA2082, 8JE67, 8JE872, 8JE880, 8JE881, 8JE883, 8LE1549, 8LE2102, 8LE2105, 8LE5354, 8MD107, 8MD321, 8MD345, and 8SU422), one (1) historic structure (8JE2040), and five (5) resource groups (8GD2010/8LE5209, 8GD2011/8LE6440, 8MD336, 8SU426 and 8SU509) meet the minimum criteria for listing on the NRHP or have not yet been evaluated for their NRHP eligibility and will be treated as if they were NRHP eligible until otherwise determined; and

**WHEREAS**, the Corps, in consultation with the Florida SHPO, has determined that one (1) archaeological site (8LE5354), one (1) historic structure (8JE02040), and five (5) resource groups (8GD2010/8LE5209, 8GD2011/8LE6440, 8MD336, 8SU426 and 8SU509) can be avoided by the Project and will not be affected by the Project or Project-related activities; and

**WHEREAS**, the Corps, in consultation with the Florida SHPO, has determined that the evaluation of NRHP eligibility should be completed at the following eleven (11) archaeological sites: 8GD21, 8GD2036, 8GD2270, 8JA2082, 8JE67, 8JE872, 8JE880/8LE1549, 8JE881, 8JE883, 8LE2102 and 8LE2105 per the Archaeological Site Testing Plans (ASTP) developed for these sites (Appendix C); and

**WHEREAS**, the Corps, in consultation with the Florida SHPO, has determined that the Project will have an adverse effect on five (5) NRHP-eligible properties, as defined in 36 CFR 800.16(l)(1) identified within the APE: 8LE2105, 8MD107, 8MD321, 8MD345 and 8SU422. Historic Properties Treatment Plans (HPTP) developed for these sites (Appendix C) will resolve adverse effects on these historic properties; and

**WHEREAS**, the Corps, in consultation with the Florida SHPO, has determined that the remaining sixty-six (66) archaeological sites, seventy-five (75) individual buildings or structures, one (1) historic district, seven (7) resource groups, and four (4) historic cemeteries are not eligible for listing on the NRHP and do not require treatment under the terms of this Agreement; and

**WHEREAS**, in accordance with 36 C.F.R. § 800.14(b)(3), the Corps notified and invited the Advisory Council on Historic Preservation (ACHP) per 36 C.F.R. § 800.6(a)(1)(C) to participate in this Agreement, and the ACHP did not choose to participate; and

**WHEREAS**, the public has been notified about the proposed Project and the development of this Agreement. A summary of the Public Notice events is attached as Appendix D; and

**NOW, THEREFORE**, the Signatories agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

## **STIPULATIONS**

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

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

**A. Document and Deliverable Review.** For all documents and deliverables produced in compliance with this Agreement, the Corps shall provide digital and/or hard copy draft documents via regular and/or electronic mail to Signatories, Concurring Parties, and interested Tribe(s) (herein referred to as Consulting Parties for this Agreement) for review and comment within fifteen (15) calendar days of receipt. The documents will include, but may not be limited to, work plans, inventories, evaluations, mitigation reports, and site file forms, as detailed below. Progress reports, summaries, and databases will not be forwarded unless requested by Consulting Parties. Any written comments provided by the Consulting Parties within thirty (30) calendar days from the date of receipt shall be considered in the revision of the document or deliverable. The Corps shall document and report the written comments received for the document or deliverable and how comments were addressed within ten (10) calendar days of receipt. Gulf Power Company shall provide a revised final document or deliverable to the Consulting Parties for concurrence.

The Consulting Parties shall have thirty (30) calendar days to respond. Failure of a party to respond within thirty (30) calendar days of receipt of any document or deliverable shall not preclude the Corps

from continuing through the process outlined in this Agreement. A copy of final documents shall be provided to the Consulting parties, subject to the limitations in Stipulation VII (Confidentiality) within thirty (30) calendar days of receipt.

**B. Disagreement.** Should a Signatory object to the Corps' findings of NRHP eligibility and/or findings of effect within the final document or deliverable submitted for Consulting Parties concurrence, the objecting Signatory and the Corps shall consult for a period not to exceed thirty (30) calendar days following the receipt of the written objection in an effort to come to agreement on the objections. The timeframe to consult to resolve a disagreement or objection may be extended by mutual consent of the Signatories. Should the Signatories be unable to agree on the objected issue(s), the Corps and the objecting Signatory shall proceed in accordance with Stipulation VIII (Dispute Resolution). All disagreements or objections not related to the Corps' final findings of NRHP eligibility and/or final findings of effect shall be resolved pursuant to Stipulation VIII (Dispute Resolution).

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

**A. Definition of the Area of Potential Effects.** The Corps, in consultation with the Consulting Parties, determined the APE for the Project. The APE includes the Project footprint and areas surrounding the Project footprint, as defined below and as depicted on maps in Appendix A.

1. Direct Effects APE: the Project footprint, consisting of the 100-foot wide transmission line corridor as well as the footprints of the proposed permanent and temporary easements, including off-right of way access areas and temporary staging areas.
2. Indirect Effects APE: includes the Direct Effects APE and adjacent parcels up to a distance of 328 feet (100 meters) from the centerline of the 100-foot wide transmission line corridor.

**B. Revision of the Area of Potential Effects.** If the Corps revises the APE, the Corps shall consult on that revision in accordance with Stipulation I (Timeframes and Review Procedures), and the Corps shall determine the potential for Project activities in a revised APE to affect potential historic properties pursuant to 36 C.F.R. §§ 800.3 - 800.5. The APE shall be revised as necessary during design and implementation to include all areas that will be directly or indirectly affected by new construction, staging, and access areas that will result from this Project. If the Corps finds that changes to the APE will affect historic properties, the Corps shall consult on this determination of effect in accordance with Stipulation I (Timeframes and Review Procedures).

## **III. TREATMENT OF HISTORIC PROPERTIES**

**A. Identification and Evaluation of Historic Properties.** The Corps shall ensure that Gulf Power completes any identification and evaluation of historic properties within the APE for the Project prior to Gulf Power proceeding with any ground-disturbing construction activities where no identification efforts have been undertaken, or in the vicinity of any known historic property.

1. Identification of historic properties: The Corps shall ensure that Gulf Power completes an inventory of properties within the APE, consistent with the Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines (48 FR 44716– 44740) will be completed for the Project as design details for the Project become available. The Corps shall ensure that Gulf Power will make a reasonable and good faith effort to identify historic properties within the APE.

a. The Corps shall ensure that all cultural resources surveys and associated reporting conducted by Gulf Power will comply with all applicable State of Florida guidelines (Module 3: Guidelines for Use by Historic Preservation Professionals). Survey recordation shall include features, isolates, and re-recordation of previously recorded sites, as necessary. The Corps 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. Gulf Power shall prepare recordation of historic structures, buildings, objects, and sites using the Florida Division of Historic Resources Site forms.

b. The Corps shall submit Identification and Evaluation reports for Consulting Parties to review and comment consistent with Stipulation I (Timeframes and Review Procedures).

c. The Corps will involve the public during this process and provide for a means of public involvement and comment.

2. Determinations of NRHP Eligibility: The Corps shall determine NHRP eligibility based on the identification and evaluation efforts outlined in III.A.1, above, and provide determinations to Consulting Parties for review and comment within fifteen (15) calendar days of receipt of the identification/evaluation report(s). Should a Signatory disagree with the determination of eligibility, the Corps shall either:

a. Consult further with the objecting Signatory to resolve the disagreement, in accordance with Stipulation I.B (Disagreement);

b. Treat the property as eligible for the National Register; or

c. Obtain a formal determination of eligibility from the Keeper of the National Register. The Keeper's determination will be final in accordance with 36 C.F.R. § 63.4.

## **B. Findings of Effect**

1. Findings of No Historic Properties Affected:

a. Basis for Finding. The Corps shall make a finding of "no historic properties affected" within fifteen (15) calendar days of receipt of the identification/evaluation report(s), if the Project avoids effects to historic properties, including visual and cumulative effects.

b. The Corps shall notify Consulting Parties within ten (10) calendar days of having made a finding of "no historic properties affected" and provide supporting documentation in accordance with 36 C.F.R. § 800.11(d).

c. Unless a Signatory objects to the finding within thirty (30) calendar days of receipt of notification, the Corps will proceed with its "no historic properties affected" determination and conclude the NHPA Section 106 review of the Project.

d. If a Signatory objects to a finding of "no historic properties affected," the Corps shall

consult further with the objecting Signatory to resolve the disagreement in accordance with Stipulation I.B (Disagreement) and Stipulation VIII.D (Objection on Finding of Effect).

i. If the objection is resolved, the Corps either may proceed with the Project in accordance with the resolution or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to 36 C.F.R. § 800.5(a)(1).

ii. If the Corps is unable to resolve the disagreement, it will forward the finding and supporting documentation to ACHP and request that ACHP review the Corps' finding in accordance with the process described in Stipulation VIII (Dispute Resolution). The Corps shall prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, if provided, and provide this to the Consulting parties. If the Corps' final determination is to reaffirm its "no historic properties affected" finding, the Section 106 of the NHPA review of the Project will have concluded. If the Corps revises its finding then it shall proceed to Stipulation III.B.2 or Stipulation III.B.3 (below).

2. Findings of No Adverse Effect: If the Corps determines that the Project does not meet the adverse effect criteria, within fifteen (15) calendar days of receipt of the identification/evaluation report(s) the Corps shall propose a finding of "no adverse effect" and consult with Consulting Parties in accordance with 36 C.F.R. § 800.5(b) and the process outlined in III.B.2. a-c, below.

a. The Corps shall notify all Consulting Parties within ten (10) calendar days of having made a finding of "no adverse effect"; describe any project specific conditions and/or modifications required to the Project 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 objects to the finding within thirty (30) calendar of days of receipt of notification, the Corps will proceed with its "no adverse effect" determination and conclude the Section 106 of the NHPA review of the Project.

c. If a Signatory objects to the finding of "no adverse effect," the Corps will consult with the objecting Signatory to resolve the disagreement in accordance with Stipulation I.B (Disagreement) and Stipulation VIII.D (Objection on Finding of Effect).

i. If the objection is resolved, the Corps shall proceed with the Project in accordance with the resolution; or

ii. If the objection cannot be resolved, the Corps shall request that ACHP review the findings in accordance with 36 C.F.R. § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. The Corps shall, pursuant to 36 C.F.R. § 800.5(c)(3)(ii)(B), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, if provided, and provide this to the objecting Signatory. If the Corps' final determination is to reaffirm its "no adverse effect" finding, the Section 106 of the NHPA review of the Project will have concluded. If the Corps' final determination is to revise its finding, then it shall proceed to Stipulation III.B.3 below.

d. Avoidance and Minimization of Adverse Effects: Avoidance of adverse effects to historic properties is the preferred treatment approach. The Corps will consider redesign of elements of the Project in order to avoid and/or minimize Project effects on historic properties that may be adverse. If the Corps determines that the Project cannot be modified to avoid or minimize effects, the Corps will make a finding of Adverse Effect.

3. Finding of Adverse Effect: If the Corps determines that the Project may adversely affect a historic property, within ten (10) calendar days of having made that determination, the Corps shall issue a finding of “adverse effect on historic properties” and notify the Consulting Parties of the proposed finding of adverse effect. The Corps will consult with all the Consulting Parties to resolve the adverse effect through development and implementation of a Historic Properties Treatment Plan, as outlined in Stipulation III.C. If a Signatory objects to the finding of “adverse effect on historic properties,” the Corps will consult with the objecting Signatory to resolve the disagreement in accordance with Stipulation I.B (Disagreement) and Stipulation VIII.D (Objection on Finding of Effect).

### **C. Historic Properties Treatment Plan**

If the Corps determines that the Project will result in adverse effects on historic properties, Gulf Power will develop a Historic Properties Treatment Plan (HPTP) to resolve the adverse effects on historic properties resulting from construction of the Project. The Consulting Parties will review and comment on the HPTP within fifteen (15) calendar days. The Corps will append the HPTP to this Agreement without needing to amend the Agreement. The Corps shall ensure that the HPTP identifies avoidance, minimization, and mitigation measures necessary to resolve the adverse effects to historic properties.

The Corps shall ensure that Gulf Power develops appropriate measures that consider the historic property types and identifies and implements measures to avoid or protect historic properties or minimize adverse effects on historic properties during construction, where possible, and measures to be taken for the unanticipated discovery of historic properties or inadvertent adverse effects to historic properties. If avoidance or minimization is not possible, proposed measures to mitigate adverse effects on historic properties may include, but would not be limited to, archaeological data recovery, Historic American Buildings Survey/Historic American Engineering Record (HABS/HAER) documentation, establishment of historic markers, development of interpretive brochures, and preparation of publications. If the Corps determines that archaeological monitoring during construction is necessary, Gulf Power shall include in the HPTP a plan for archaeological monitoring during construction. Should the Signatories be unable to agree on an HPTP, the Signatories shall proceed in accordance with Stipulation VIII (Dispute Resolution).

If adverse effects are identified, the Corps shall ensure that the HPTP is in effect before Project-related construction commences. The Corps will submit the HPTP to Consulting Parties for review in accordance with Stipulation I (Timeframes and Review Procedures). The Corps shall ensure that the provisions of the HPTP, as outlined in the consultation and agreed to by the Signatories, are documented in writing and implemented. The use of the measures in the HPTP developed for this Project shall not require the execution of an individual Memorandum of Agreement.

1. Review: The Corps shall submit the Draft HPTP to the Consulting Parties for review and comment pursuant to Stipulation I (Timeframes and Review Procedures).

2. Reporting: Within fifteen (15) calendar days of receipt, the Corps will distribute reports and other data pertaining to the treatment of effects to historic properties to Consulting Parties and other members of the public consistent with Stipulation VII (Confidentiality) of this Agreement, unless a party has indicated that they do not want to receive a report or data. The Corps shall ensure that reports will be consistent with the procedures outlined in the Florida Division of Historical Resources Module 3: Guidelines for Use by Historic Preservation Professionals.

3. Amendments/Addenda/Revisions: If an historic property that is not covered by the existing HPTP is discovered within the APE subsequent to the initial inventory effort, or if there are previously unanticipated effects to a historic property, or if the Consulting Parties agree that a modification to the HPTP is necessary, Gulf Power shall prepare an addendum to the HPTP. The Corps shall submit the addendum to the Consulting Parties for review in accordance with Stipulation I (Timeframes and Review Procedures) of this Agreement.

4. Archaeological Data Recovery: When archaeological data recovery is proposed, the Corps shall ensure that specific Research Design documents detailing the methods and materials for mitigating effects to historic properties are developed consistent with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, Module 3: Guidelines for Use by Historic Preservation Professionals, and the ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites (ACHP, May 18, 1999). These documents will be subject to review in accordance with Stipulation I (Timeframes and Review Procedures) of this Agreement.

5. Final Report Documenting Implementation of the HPTP: Within one year after the completion of all work for the Project, the Corps shall submit to the Consulting Parties a Final Report documenting the results of all work prepared under the HPTP, and the information learned from each of the historic properties. The submittal of the Final Report shall be in accordance with Stipulation I (Timeframes and Review Procedures).

#### IV. QUALIFICATIONS

A. **Professional Qualifications.** The Corps shall ensure that all technical work required for historic preservation activities implemented pursuant to this Agreement shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior's Historic Preservation Professional Qualification Standards for archeology or history, as appropriate (48 FR 44739). "Technical work" here means all efforts to inventory, evaluate, and perform subsequent treatment such as data recovery, excavation or recordation of potential historic properties that is required under this Agreement. This stipulation shall not be construed to limit peer review, guidance, or editing of documents by Signatories, Concurring Parties, and associated Project consultants.

B. **Historic Preservation Standards.** The Corps shall ensure that historic preservation activities carried out pursuant to this Agreement shall meet the Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines (48 FR 44716-44740, September 29, 1983), 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 will be provided to the Signatories, and are distributed in accordance with Stipulation VII (Confidentiality), and meet published standards of the SHPO, specifically, Module 3: Guidelines for Use by Historic Preservation Professionals.



## **V. TREATMENT OF HUMAN REMAINS**

The Corps shall ensure that human remains, funerary objects, sacred objects, or objects of cultural patrimony encountered during construction of the Project that are located on federal lands shall be treated in accordance with Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001). The Corps shall ensure that human remains and grave goods encountered during construction of the Project that are located on non-federal lands will be treated in accordance with the procedures outlined in the Unanticipated Discoveries Plan for Cultural Resources and Human Remains developed for the Project (Appendix E). The Corps will also ensure that the requirements in the Burial Resource Agreement (BRA) 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 are followed, the Poarch Band of Creek Indians are included in the BRA process, and the procedures outlined in Florida Statute Chapter 872 (2018), Florida State Statutes Chapter 872 (2018), Offenses Concerning Dead Bodies and Graves are followed, as appropriate.

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

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

## **VII. CONFIDENTIALITY**

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

## **VIII. DISPUTE RESOLUTION**

**A. Objection by a Signatory.** Should any Signatory to this Agreement object at any time to the manner in which the terms of this Agreement are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP within ten (10) calendar days of having made this determination. The ACHP shall provide the Corps 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, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and Signatories, and provide all Signatories with a copy of this written response within fifteen (15) calendar days of the receipt of ACHP comments/advice. The Corps will then proceed according to its final decision.
2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories to the Agreement, and provide them and the ACHP with a copy of such written response within fifteen (15) calendar days of the end of the ACHP comments/advice time period.
3. The Corps' responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

**B. Objection by the Concurring Parties, interested Tribes, or Public.** At any time during implementation of the measures stipulated in this Agreement, should an objection pertaining to the Agreement be raised by a Consulting Party or member of the public in writing, the Corps shall notify the Consulting Parties, take the objection under consideration, and coordinate with the objecting party for no longer than thirty (30) calendar days. The Corps shall consider the objection, and in reaching its decision, will consider all comments provided by the other Consulting Parties. Within fifteen (15) calendar days following closure of the comment period, the Corps will render a decision regarding the objection and respond to the objecting party. The Corps will provide written notification of its decision within fifteen (15) calendar days to the 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.

**C. Objection on NRHP Eligibility.** Should a Signatory to this Agreement object in writing to a final determination of National Register eligibility, the Corps will address the objection pursuant to 36 C.F.R. § 800.4(c)(2).

**D. Objection on Finding of Effect.** Should a Signatory to this Agreement object in writing to a final finding of effect on historic properties, the Corps will address the objection pursuant to 36 C.F.R. § 800.4(d)(ii) or 36 C.F.R. § 800.5(c)(2).

## **IX. TIMING OF AUTHORIZATION FOR CONSTRUCTION**

Requests for authorizations of construction will be approved by the Corps as follows:

A. For lands on which there are no historic properties present, Gulf Power is authorized to begin construction upon the Corps issuance of Regional General Permit (RGP) SAJ-13 (application #SAJ-2019-02708), and pending compliance with all other applicable laws and regulations.

B. For lands where Gulf Power will avoid all adverse effects on historic properties and unevaluated cultural resources (8LE5354, 8JE2040, 8GD2010/8LE5209, 8GD2011/8LE6440, 8MD336, 8SU426 and 8SU509), Gulf Power is authorized to begin construction upon the Corps issuance of Regional General Permit (RGP) SAJ-13 (application #SAJ-2019-02708) and pending compliance with all other applicable laws and regulations.

C. For lands where the provisions of an ASTP and/or HPTP are to be implemented (8GD21, 8GD2036, 8GD2270, 8JA2082, 8JE67, 8JE872, 8JE880/8LE1549, 8JE881, 8JE883, 8LE2102, 8LE2105, 8LE2105, 8MD107, 8MD321, 8MD345 and 8SU422) Gulf Power will be authorized to begin construction upon the Corp's acceptance of the end of fieldwork summary treatment or testing report and provided that any adverse effects have been resolved at each archaeological site listed above and pending compliance with all other applicable laws and regulations.

## **X. NOTICES**

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

If the Signatories agree in advance, in writing or by electronic mail, the Corps may use facsimiles, copies, electronic signatures or electronic versions of signed documents as if they bore original signatures. If individual parties agree, the Corps will use electronic versions of work plans, reports, research designs, and other documents instead of hard copies.

If Signatories agree, the Signatories may use hard copies and/or electronic communications for formal communication amongst themselves for activities in support of Stipulation I (Time Frames and Review Procedures).

## **XI. AMENDMENTS, TERMINATION, DURATION AND ANNUAL REPORT**

**A. Amendment.** Any Signatory party to this Agreement may propose that the Agreement be amended, whereupon the Corps shall consult with the Signatories to consider such amendment. This Agreement may be amended when such an amendment is agreed to in writing by all Signatories. The amendment will be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

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

**B. Termination.** Any Signatory to this Agreement may terminate this Agreement. If this Agreement is not amended as provided for in Stipulation XI.A., or if any Signatory proposes termination of this

Agreement, the Signatory proposing termination shall notify the other Signatories in writing, explain the reasons for proposing termination, and consult with the other Signatories to seek alternatives to termination, within thirty (30) calendar days of the notification.

1. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement and amend the Agreement as required.
2. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories in writing.
3. Beginning with the date of termination, the Corps shall ensure that until and unless a new Agreement is executed for the actions covered by this Agreement, such undertakings shall be reviewed individually in accordance with 36 C.F.R. § 800.4-800.6.

**C. Duration.** This Agreement shall remain in effect for a period of five (5) years after the date it takes effect and shall automatically expire and have no further force or effect at the end of this five-year period unless it is terminated prior to that time. No later than ninety (90) calendar days prior to the expiration date of the Agreement, the Corps shall initiate consultation with the Consulting Parties to this Agreement to determine if the Agreement should be allowed to expire automatically or whether it should be extended, with or without amendments, as the Signatories may determine. Unless the Signatories unanimously agree through such consultation on an alternative to automatic expiration of this Agreement, this Agreement shall automatically expire and have no further force or effect in accordance with the timetable stipulated herein.

**D. Annual Report.** Gulf Power Company shall submit annual reports outlining the progress of the work effort outlined in this Agreement to the Corps for initial review and comments. Gulf Power Company shall ensure that a copy of each report is distributed to all consulting parties, as either a hardcopy (print) version or an electronic (pdf) version, for a 30-calendar-day review period, and will request comments and concurrence with any findings or recommendations.

## **XII. ANTI-DEFICIENCY ACT**

The Corps obligations under this Agreement are subject to the availability of appropriated funds, and the stipulations of this Agreement are subject to the provisions of the Anti-Deficiency Act. The Corps shall make reasonable and good faith efforts to secure the necessary funds to implement this Agreement in its entirety. If compliance with the Anti-Deficiency Act alters or impairs the Corps ability to implement the stipulations of this agreement, the Corps shall consult in accordance with the amendment and termination procedures found at Stipulation X of this agreement.

## **XIII. EFFECTIVE DATE**

This Agreement shall take effect on the date that it has been fully executed by the Corps, the Florida SHPO, the Poarch Band of Creek Indians, and Gulf Power Company.

## **XIV. EXECUTION**

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

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICER, THE POARCH BAND OF CREEK INDIANS AND GULF POWER COMPANY REGARDING THE GULF POWER COMPANY NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE IN COLUMBIA, SUWANNEE, MADISON, JEFFERSON, LEON, GADSDEN AND JACKSON COUNTIES, FLORIDA

**SIGNATORIES TO THE GULF POWER NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE  
PROGRAMMATIC AGREEMENT**

U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT

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


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

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

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICER, THE POARCH BAND OF CREEK INDIANS AND GULF POWER COMPANY REGARDING THE GULF POWER COMPANY NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE IN COLUMBIA, SUWANNEE, MADISON, JEFFERSON, LEON, GADSDEN AND JACKSON COUNTIES, FLORIDA

**SIGNATORIES TO THE GULF POWER NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE PROGRAMMATIC AGREEMENT**

FLORIDA STATE HISTORIC PRESERVATION OFFICER

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

DATE: 1/11/2021

Dr. Timothy Parsons  
State Historic Preservation Officer

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICER, THE POARCH BAND OF CREEK INDIANS AND GULF POWER COMPANY REGARDING THE GULF POWER COMPANY NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE IN COLUMBIA, SUWANNEE, MADISON, JEFFERSON, LEON, GADSDEN AND JACKSON COUNTIES, FLORIDA

**SIGNATORIES TO THE GULF POWER NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE  
PROGRAMMATIC AGREEMENT**

GULF POWER COMPANY

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

DATE: January 4, 2021

Michael Spoor  
Vice-President, Gulf Power Company

PROGRAMMATIC AGREEMENT AMONG THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA STATE HISTORIC PRESERVATION OFFICER, THE POARCH BAND OF CREEK INDIANS AND GULF POWER COMPANY REGARDING THE GULF POWER COMPANY NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE IN COLUMBIA, SUWANNEE, MADISON, JEFFERSON, LEON, GADSDEN AND JACKSON COUNTIES, FLORIDA

**SIGNATORIES TO THE GULF POWER NORTH FLORIDA RESILIENCY CONNECTION TRANSMISSION LINE**  
**PROGRAMMATIC AGREEMENT**

POARCH BAND OF CREEK INDIANS

BY: 

DATE: Jan 5, 2021

Larry D. Haikey  
Tribal Historic Preservation Officer  
Poarch Band of Creek Indians