

**DRAFT PROGRAMMATIC AGREEMENT
AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS,
THE LOUISIANA STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE NATIONAL ECONOMIC DEVELOPMENT COMPONENT OF THE
SOUTHWEST COASTAL LOUISIANA STUDY**

WHEREAS, historically, the low elevation and proximity of the Calcasieu, Cameron and Vermilion Parishes to the Gulf of Mexico puts these southwest coastal Louisiana communities at risk of damages from storm surge flooding and coastal erosion; and

WHEREAS, the U.S. Congress through separate reciprocal authorizations, authorized the investigation of alternatives to: (1) provide hurricane and storm damage risk reduction measures; and (2) significantly restore environmental conditions that existed prior to the large scale alteration of the natural ecosystem in this three (3) parish area. This study, hereafter referred to as the Southwest Coastal Louisiana Study (SWC Study), focuses on a 4,700 square mile study area located in Calcasieu, Cameron, and Vermilion Parishes (the Study Area); and

WHEREAS, the Louisiana Coastal Protection and Restoration Authority Board (CPRAB) is the non-federal sponsor for SWC Study; and

WHEREAS, the hurricane and storm damage risk reduction component of the SWC Study, referred to as the National Economic Development (NED) plan (NED Plan), is the subject of this Programmatic Agreement (PA or this Agreement), and the ecosystem restoration component of the SWC Study, referred to as the National Ecosystem Restoration (NER) component, is the subject of a separate programmatic agreement; and

WHEREAS, the NED component of the SWC Study was authorized based on language in the River and Harbor Act of 1962 and a resolution of the Committee on Transportation and Infrastructure of the United States House of Representatives following the impact of Hurricane Rita in 2005, to wit:

“Surveys of the coastal areas of the United States and its possessions, including the shores of the Great Lakes, in the interest of beach erosion control, hurricane protection and related purposes: Provided, ‘That surveys of particular areas shall be authorized by appropriate resolution of either the Committee on Public Works of the United States Senate or the Committee on Public Works of the House of Representatives.”

AND

“Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, that, in accordance with Section 110 of the River and Harbor Act of 1962, the Secretary of the Army is requested to survey the coast of Louisiana in Cameron, Calcasieu, and Vermilion parishes with particular reference to the advisability

of providing hurricane protection and storm damage reduction and related purposes to include the feasibility of constructing an armored 12-foot levee along the Gulf Intracoastal Waterway.” (December 7, 2005 – Committee on Transportation and Infrastructure, U.S. House of Representatives, Resolution Docket 2747, Southwest Coastal Louisiana); and

WHEREAS, the NED Plan includes nonstructural hurricane and storm damage risk reduction measures for residential and non-residential structures that meet the eligibility criteria for the NED Plan located in the Study Area with first-floor elevations at or below the 25-year base flood elevation based on year 2025 hydrology (NED Structures); and

WHEREAS, pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. § 306108), the U.S. Army Corps of Engineers (USACE) has determined that implementation of the NED Plan will result in Undertakings that have the potential to cause effects on properties listed in or eligible for listing in the National Register of Historic Places (NRHP) and properties that have religious and cultural significance for federally-recognized Indian Tribes as defined in 36 CFR § 800.16(m) (Tribes) (collectively, "historic properties" as defined in 36 CFR § 800.16(l)(1)); and

WHEREAS, an Undertaking, as defined in 36 CFR § 800.16(y) may include any one the following nonstructural hurricane and storm damage risk reduction measures and any related project activities that have the potential to cause effects on historic properties: 1. elevation of residential structures, 2. dry flood proofing of non-residential structures, 3. construction of localized storm surge risk reduction measures of less than 6 feet in height around non-residential structures, and 4. acquisition and demolition of residential and/or non-residential structures; and

WHEREAS, each Undertaking with its respective area of potential effects (APE) will be treated separately for the purposes of Section 106 consultation; and

WHEREAS, USACE has elected to fulfill its Section 106 obligations through execution and implementation of a programmatic agreement as provided for in 36 CFR § 800.14(b); and

WHEREAS, USACE has notified the Advisory Council on Historic Preservation (ACHP) of the potential for the Undertakings to affect historic properties and that a programmatic agreement will be prepared, and the ACHP has chosen to participate in consultation to develop this Agreement; and

WHEREAS, USACE has consulted with the Louisiana State Historic Preservation Officer (SHPO), Tribes, Tribal Historic Preservation Officers (THPOs), ACHP, CPRAB, and other appropriate consulting parties in developing this Agreement in order to define efficient and cost effective processes for taking into consideration the effects of the Undertakings upon historic properties; and

WHEREAS, USACE acknowledges Tribes as sovereign nations which have a unique government-to-government relationship with the federal government and its agencies; USACE further acknowledges its Trust Responsibility to those Tribes; and

WHEREAS, USACE has made a reasonable and good faith effort to identify any Tribes that may attach religious and cultural significance to historic properties that may be affected by the Undertakings; and

WHEREAS, USACE has invited the Alabama-Coushatta Tribe of Texas, Caddo Nation of Oklahoma, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Muscogee (Creek) Nation, Quapaw Tribe of Oklahoma, Seminole Nation of Oklahoma, Seminole Tribe of Florida, and the Tunica-Biloxi Tribe of Louisiana, Tribes for which historic properties located in the State of Louisiana have religious and cultural significance, to consult in the development of this Agreement; and

WHEREAS, the Quapaw Tribe of Oklahoma and the Muscogee (Creek) Nation have determined that the Undertakings are not within their geographic area of interest and have chosen not to participate in the development of this Agreement; and

WHEREAS, the Alabama-Coushatta Tribe of Texas, Caddo Nation of Oklahoma, Chitimacha Tribe of Louisiana, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, Seminole Nation of Oklahoma, and Seminole Tribe of Florida have chosen to participate in the development of this Agreement and have been invited to sign this Agreement as an Invited Signatory Party; and

WHEREAS, the Tunica-Biloxi Tribe of Louisiana and those Tribes that have not participated in the development of this Agreement but that may choose to participate in Section 106 consultation will be invited to sign this Agreement as a Concurring Party; and

WHEREAS, CPRAB has participated in the development of this Agreement and has been invited to sign this Agreement as an Invited Signatory Party; and

WHEREAS, USACE has taken appropriate measures to identify other consulting parties that may be interested in Section 106 consultation, by notification to the Parish Presidents of Calcasieu, Cameron, and Vermilion parishes, as well as the Abbeville Community and Historic Preservation Commission, Abbeville Main Street, Calcasieu Historical Preservation Society, Foundation for Historical Louisiana, Lake Charles Historic Preservation Commission, Louisiana Trust for Historic Preservation, National Trust for Historic Preservation, Vermilion Historical Society, and the Atakapa-Ishak Nation. Consulting parties that participate in Section 106 consultation may be invited to sign this Agreement as a Concurring Party; and

WHEREAS, USACE has involved the public through the National Environmental Policy Act (NEPA) process, which affords all persons, organizations, and government agencies the right to review and comment on proposed major federal actions that are

evaluated by a NEPA document. Public meetings to collect input during planning were held in March 2009, July 2009, February 2010, March 2010, July 2010, October 2011, April 2012, July 2013, and August 2013. On December 13, 2013, USACE released an Integrated Draft Feasibility Report and Environmental Impact Statement for the SWC Study (Draft Report) to the public for a review period of forty-five (45) calendar days, which was extended an additional fourteen (14) days until February 13, 2014. This document included a general discussion of cultural resources within the study area. Public hearings of the Draft Report were held on January 7 and 9, 2014. On March 20, 2015, USACE released a Revised Integrated Draft Feasibility Report and Environmental Impact Statement for the SWC Study (Revised Draft Report) to the public for a review period of forty-five (45) calendar days. Public hearings of the Revised Draft Report were held on April 14, 15, and 16, 2015. USACE has also notified the public of the development of this Agreement with newspaper announcements in the *Abbeville Meridional*, *American Press*, and *The Advocate*; and

NOW, THEREFORE, USACE, SHPO, and ACHP agree that the Undertakings shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertakings on historic properties.

STIPULATIONS

To the extent of its legal authority, USACE shall ensure that the following terms are carried out:

I. Consultation and Coordination

- A. Following Congressional authorization and appropriation to implement the entirety or some portion of the NED Plan, USACE shall meet with Signatory and Invited Signatory parties to review the NED Nonstructural Implementation Plan and this Agreement.
- B. USACE shall make a reasonable and good faith effort to identify any additional Tribes that might attach religious and cultural significance to historic properties in the APE for an Undertaking and invite those Tribes to participate in Section 106 consultation.
- C. USACE shall consult with Tribes that are Invited Signatory Parties and Concurring Parties, as well as any other Tribe that requests in writing to be a consulting party (collectively, "Consulting Tribes").
- D. USACE shall provide Consulting Tribes with an executed copy of this Agreement and with copies of all plans, determinations, and findings provided to the SHPO.
- E. Owners of NED Structures (Property Owners) are entitled to participate as consulting parties in the Section 106 process as it relates to the property in which they hold an ownership interest.

- F. Individuals or organizations with a demonstrated interest in an Undertaking, including certified local governments, may be invited to participate as consulting parties due to the nature of their legal or economic relations to an Undertaking or affected properties, or their concern with an Undertaking's effects on historic properties, if agreed upon by the USACE and SHPO.
- G. To the extent permitted under applicable federal laws and regulations, for example, Section 304 of the NHPA (54 U.S.C. § 307103), 36 CFR § 800.11(c), and Section 9 of the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. 470aa-mm; Public Law 96-95 and amendments to it), USACE will make available to the public documents developed pursuant to this Agreement.
- H. Electronic mail (email) will serve as the official correspondence method for all communications regarding this Agreement and its provisions. See Appendix A for a list of contacts and email addresses. Contact information in Appendix A may be updated as needed without an amendment to this Agreement. It is the responsibility of each signatory to immediately inform the USACE of any change in name, address, email address, or phone number of any point-of-contact. USACE will forward this information to all signatories by email. Failure of any party to this Agreement to notify the USACE of any change to a point-of-contact's information shall not be grounds for asserting that notice of a proposed action was not received.
- I. All standard response timeframes established by 36 CFR Part 800 will apply to this Agreement, unless an alternative response timeframe is agreed to by the SHPO and Consulting Tribes on a case-by-case basis.
- J. All time designations will be in calendar days. If any party does not comment within the agreed upon timeframes, USACE may assume that party's concurrence with the USACE's determination, and will notify all consulting parties of the action and proceed in accordance with this Agreement.

II. Standards

- A. All work carried out pursuant to this Agreement shall be done by or under the direct supervision of historic preservation professionals who meet the *Secretary of the Interior's Professional Qualifications Standards* (36 CFR Part 61).
- B. All work carried out pursuant to this Agreement shall meet the *Secretary of the Interior's Standards for the Treatment of Historic Properties* (36 CFR Part 68).
- C. The elevation of residential structures carried out pursuant to this Agreement that may affect historic properties shall meet the Louisiana Division of Historic Preservation's *Elevation Guidelines for Historic Buildings in the Louisiana GO Zone*.

- D. All historic standing structures surveys carried out pursuant to this Agreement shall be completed in accordance with the Louisiana Historic Resource Inventory Guidelines of the Louisiana Division of Historic Preservation.
- E. All archaeological investigations carried out pursuant to this Agreement shall be completed in accordance with the Field Standards and documented in accordance with the Report Standards of the Louisiana Division of Archaeology.

III. Identification and Evaluation of Historic Properties

- A. USACE, in consultation with the SHPO and Consulting Tribes, will determine and document the geographic areas within which an Undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist, hereafter referred to as an APE. USACE will conduct a reasonable and good faith effort to identify historic properties located within an APE.

- 1. USACE shall seek input from consulting parties, as appropriate, concerning:
 - a. the historic significance of structures that have not previously been evaluated for eligibility for listing in the National Register, either individually or as contributing to a historic district;
 - b. the potential for archaeological properties to be present; and
 - c. the potential for properties of religious and cultural significance to Tribes to be present.

Any comments provided to the USACE shall be considered by the USACE and SHPO in evaluating National Register eligibility.

- 2. USACE shall ensure that a Louisiana Historic Resource Inventory (LHRI) Form will be completed for each eligible and participating NED Structure 50 years of age or older and for additional structures 50 years of age or older located within an APE that have not been previously surveyed in accordance with the guidelines for Intensive Level Survey of the Louisiana Division of Historic Preservation. An LHRI Update Addendum will be completed for each eligible and participating NED Structure and additional structures located within an APE that have been previously surveyed.
- 3. USACE will consult with the SHPO and Consulting Tribes to determine the level of effort necessary to identify the anticipated type and location of archaeological properties or properties of religious and cultural significance to Tribes. The level of survey to be conducted within an APE and the survey methodology will be developed in consultation with the SHPO and Consulting Tribes and completed in a manner that meets the standards for Reconnaissance or Phase I Investigations as defined by the Louisiana Division of Archaeology. These efforts will be documented in reports that

USACE will submit to SHPO and Consulting Tribes for review and comment. USACE will ensure that the comments provided by the SHPO and Consulting Tribes are addressed and incorporated into a final report.

4. USACE will consult with the SHPO on the eligibility of all structures located in an APE, and with the SHPO and Consulting Tribes on the eligibility of all archaeological properties and properties of religious and cultural significance to Tribes located in an APE. For properties already eligible or listed in the National Register, USACE will consult to determine whether or not the property retains the characteristics that make it eligible for listing in the National Register.
- B. Consultation under this Agreement for an Undertaking will be concluded for USACE findings of *no historic properties affected* when the SHPO and Consulting Tribes have been provided the opportunity to review and comment on the documentation specified in 36 CFR § 800.11(d) and either concur or do not object within the agreed upon response timeframe. USACE shall notify any additional consulting parties and make documentation of the finding available to the public. This shall complete the USACE's Section 106 responsibilities for these properties.
 - C. In the event of disagreement between the USACE, SHPO, and/or Consulting Tribes concerning the eligibility of a property for listing in the NRHP under 36 CFR Part 60, USACE shall request a formal determination of eligibility for that property from the Keeper of the NRHP (Keeper). The determination by the Keeper will serve as the final decision regarding the NRHP eligibility of the property.
- IV. Historic Properties Affected
- A. USACE shall notify the SHPO, Consulting Tribes, and other consulting parties, as appropriate, that an Undertaking may affect historic properties and shall continue consultation with the aforementioned parties to apply the criteria of adverse effects to historic properties within an APE in accordance with 36 CFR § 800.5.
 - B. Consultation under this Agreement will be concluded for USACE findings of *no adverse effect* when the SHPO and Consulting Tribes have been provided the opportunity to review and comment on the documentation specified in 36 CFR § 800.11(e) and either concur or do not object within the agreed upon response timeframe.
 - C. In the event of an objection by the SHPO and/or Consulting Tribes regarding a USACE finding of *no adverse effect*, USACE shall seek to resolve such objection through consultation in accordance with procedures outlined in Stipulation IX.

V. Resolution of Adverse Effects

- A. USACE shall continue consultation with the SHPO, Consulting Tribes, and other consulting parties, as appropriate, pursuant to 36 CFR § 800.6 to avoid, minimize, or mitigate adverse effects to historic properties.
- B. USACE shall notify the ACHP and other consulting parties, as appropriate, and determine their participation. The notification of the adverse effect shall include the documentation specified in 36 CFR § 800.11(e), subject to the confidentiality provisions of 36 CFR § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects, including views and summaries of the consulting parties. If the project activity will affect a National Historic Landmark, USACE shall also notify the National Park Service (NPS).
- C. Once the USACE, SHPO, Consulting Tribes, and ACHP, should they decide to participate in consultation, agree on how the adverse effects will be resolved, they shall execute and implement a Memorandum of Agreement (MOA) pursuant to 36 CFR § 800.6(c). USACE shall submit a copy of the executed MOA, along with the documentation specified in 36 CFR § 800.11(f), to the ACHP prior to approving an Undertaking. A copy of the executed MOA shall be forwarded to all Signatory, Invited Signatory, and Concurring Parties.
- D. Should the USACE, SHPO, and Consulting Tribes disagree on how the adverse effects will be resolved, USACE shall seek to resolve such objection through consultation in accordance with procedures outlined in Stipulation IX.

VI. Curation

- A. USACE shall ensure that all collections resulting from identification and evaluation surveys, data recovery operations, or other studies pursuant to this Agreement are maintained in accordance with 36 CFR Part 79 as long as there is a USACE interest in the collections, minimally until the analysis is complete and the final report is accepted by the Division of Archaeology. USACE shall be responsible for costs to process, catalog, and accession all collections in accordance with 36 CFR Part 79.
- B. USACE shall be responsible for consulting with landowners regarding the curation of collections resulting from identification and evaluation surveys, data recovery operations, or other studies pursuant to this Agreement. USACE shall encourage non-federal landowners to donate collections to the Division of Archaeology or other facility meeting the standards of 36 CFR Part 79 for long-term curation. USACE shall be responsible for negotiating the return of collections to non-federal landowners should they elect not to donate the collections, including any costs required to return the collections.
- C. USACE shall be responsible for costs to prepare federally-owned collections, including the associated records of non-federal collections, and any non-federal collections donated to the Division or Archaeology or other facility agreed upon

by SHPO and Consulting Tribes for long-term curation. Collections to be deposited with a curation facility shall be prepared in accordance with the standards of that facility.

- D. USACE shall be responsible for costs to curate federally-owned collections, including the associated records of non-federal collections, long-term in accordance with 36 CFR Part 79 and the curation agreement in effect with the facility accepting the collections. For non-federal collections donated to the Division of Archaeology or other facility, USACE shall be responsible for the one-time accession fee assessed by the Division of Archaeology or other facility meeting the standards of 36 CFR Part 79.

VII. Discovery of Human Remains

- A. The following language shall be included in construction plans and specifications:

When human remains, suspected human remains, or indications of a burial are discovered during the execution of an Undertaking, the individual(s) who made the discovery shall immediately notify the local law enforcement, coroner/medical examiner, and the USACE, New Orleans District, and make a reasonable effort to protect the remains from any harm. The human remains shall not be touched, moved, or further disturbed. All activities shall cease within a minimum of 50 feet from the area of the find (50-foot radius “no work” buffer) until authorized by the USACE.

- B. Upon notification, USACE shall ensure that the area of the find is secured and protected from further disturbance. USACE shall ensure that the following procedures will be followed if the area of the find is located on private or state land, or federal or tribal land.

1. Private or State Land. In the event that the area of the find is located on private or state land, the procedures established by the Louisiana Unmarked Human Burial Sites Preservation Act (La. R.S. 8:671-681) are applicable.
 - a. USACE shall immediately notify the State Archaeologist of the discovery.
 - b. USACE shall continue consultation with SHPO, Consulting Tribes, and additional consulting parties, as appropriate.
 - c. USACE shall ensure that no remains will be removed from the area of the find until jurisdiction is established and the appropriate permits are obtained from the Division of Archaeology.
2. Federal or Tribal Land. In the event that the area of the find is located on federal or tribal land, the procedures established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. § 3001-3013, 18 U.S.C. § 1170) and the implementing regulations (43 CFR

- Part 10), and ARPA and the implementing regulations (43 CFR Part 7) are applicable.
- a. USACE shall immediately notify the responsible federal agency official or Indian tribe official with jurisdiction over the remains.
 - b. USACE shall continue consultation with SHPO, Consulting Tribes, and additional consulting parties, as appropriate.
 - c. If the USACE is the responsible federal agency, then the USACE shall ensure that the procedures established by NAGPRA and ARPA are followed, as applicable.
- C. All Signatory and Invited Signatory Parties agree that the most appropriate treatment, if feasible, is to protect human remains and permanently preserve burial sites in situ.

VIII. Unanticipated Discoveries and Effects

- A. The following language shall be included in construction plans and specifications:
- When a previously unidentified cultural resource, including but not limited to archeological sites, standing structures, and properties of traditional religious and cultural significance to Tribes, is discovered during the execution of an Undertaking, the individual(s) who made the discovery shall immediately secure the vicinity, make a reasonable effort to avoid or minimize harm to the resource, and notify the USACE, New Orleans District. All activities shall cease within a minimum of 50 feet from the inadvertent discovery (50-foot radius “no work” buffer) until authorized by the USACE.
- B. Upon notification, USACE shall implement any additional reasonable measures necessary to avoid or minimize effects to the resource. Any previously unidentified cultural resource will be treated as though it is eligible for the NRHP until such other determination may be made.
- C. USACE shall immediately notify the SHPO, Consulting Tribes, and additional consulting parties, as appropriate, within 48 hours of the finding and request consultation to resolve potential adverse effects.
1. If consulting parties agree that the cultural resource is not eligible for the NRHP, then the suspension of work will end.
 2. If consulting parties agree that the cultural resource is eligible for the NRHP, then the suspension of work will continue, and the USACE, in consultation with the SHPO and Consulting Tribes, will determine actions to avoid, minimize, or mitigate adverse effects to the historic property and will ensure that the appropriate actions are carried out.

- D. In the event that the USACE is notified of the discovery of previously unidentified archaeological resources on federal or tribal land during the execution of an Undertaking, USACE shall ensure that procedures established by ARPA and implementing regulations (43 CFR Part 7) will be followed.
- E. In the event that the USACE is notified of the discovery of funerary objects, sacred objects, or objects of cultural patrimony on federal or tribal land during the execution of an Undertaking, USACE shall ensure that procedures outlined in Stipulation VII will be followed.
- F. In the event that effects to historic properties are identified following the completion of a project activity, any party may provide the USACE with evidence of such effects for a period of twelve (12) months from the completion of the affecting work. USACE shall review the evidence and consult with the SHPO, Consulting Tribes, and ACHP, as appropriate, to resolve any adverse effects.
- G. If the USACE, SHPO, and Consulting Tribes cannot agree on an appropriate course of action to address an unanticipated discovery or effects situation, then the USACE shall initiate the dispute resolution process set forth in Stipulation IX.

IX. Dispute Resolution

- A. Except for the resolution of eligibility issues as set forth in Stipulation III, should any Signatory, Invited Signatory, or Concurring Party object in writing to the USACE at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, USACE shall consult with such party to resolve the objection.
- B. If the USACE determines that such objection cannot be resolved, the USACE shall forward all documentation relevant to the dispute, including USACE's proposed resolution, to the ACHP.
- C. The ACHP shall provide the USACE 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, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, Invited Signatories, and Concurring Parties, and provide them with a copy of this written response. USACE will then proceed according to its final decision.
- D. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories, Invited Signatories, and Concurring Parties, and provide them and the ACHP with a copy of such written response. USACE will then proceed according to its final decision.

E. USACE's responsibility to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute remain unchanged.

X. Administration, Effect, and Duration

A. This Agreement shall take effect upon execution by the ACHP, USACE, and SHPO. USACE shall provide Signatory, Invited Signatory, and Concurring Parties with a complete copy of this Agreement including all executed signature pages.

B. This Agreement will remain in effect for twenty (20) years from the date of execution unless the Signatory Parties agree that there is a need to extend the term. Prior to the end of the twenty-year term, USACE will consult with ACHP and SHPO to determine interest in extending this Agreement. This Agreement may be extended by written agreement negotiated by Signatory Parties and by amending this Agreement consistent with Stipulation XII.

C. Each year following the execution of this Agreement until it expires or is terminated, USACE shall provide all Signatory, Invited Signatory, and Concurring Parties a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this Agreement.

D. Following authorization and appropriation, USACE shall coordinate a meeting of the Signatory, Invited Signatory, and Concurring Parties to be held annually on a mutually agreed upon date to evaluate the effectiveness of this Agreement and discuss activities carried out pursuant to this Agreement during the preceding year and activities scheduled for the upcoming year. After five (5) years, USACE will initiate the discussion of cumulative effects as provided for in Stipulation XI. The meeting shall be held in a location agreed upon by consensus of the Signatory Parties.

XI. Comprehensive Review

A. Upon completion of the implementation of the NED Plan, USACE will analyze the Undertakings holistically to assess cumulative effects upon historic properties. Cumulative effects are those which result from the incremental impacts of an undertaking when added to other past, present, and reasonably foreseeable future federal or non-federal undertakings.

B. USACE, in consultation with the Signatory and Invited Signatory Parties, will identify and implement measures, as appropriate, to mitigate adverse cumulative effects on historic properties. If there is a disagreement that cannot be resolved, USACE shall initiate the dispute resolution process set forth in Stipulation IX.

C. Agreed upon measures to resolve adverse cumulative effects will be documented in a report that meets the standards of the Louisiana Division of Historic

Preservation and the Division of Archaeology and will be submitted to SHPO and Consulting Tribes for review and comment. The final cumulative report will be distributed to the Signatory, Invited Signatory, and Concurring Parties.

XII. Amendment and Termination

- A. Notwithstanding any provision of this Agreement, Signatory and Invited Signatory Parties may request that it be amended, whereupon these parties will consult to consider such amendment. USACE shall facilitate such consultation within thirty (30) days of receipt of the written request. Where no consensus can be reached, this Agreement will not be amended. Any amendment to this Agreement will be in writing and will be signed by Signatory and Invited Signatory Parties, and shall be effective on the date of the final signature.
- B. Any Invited Signatory Party may withdraw its participation in this Agreement by providing thirty (30) days advance written notification to all other Signatory and Invited Signatory Parties. In the event of withdrawal by an Invited Signatory Party, this Agreement will remain in effect for the other Signatory and Invited Signatory Parties.
- C. This Agreement may be terminated in accordance with 36 CFR Part 800, provided that the Signatory and Invited Signatory Parties consult during the period prior to termination to seek agreement on amendments or other actions that could avoid termination. Any Signatory Party requesting termination of this Agreement shall provide thirty (30) days advance written notification to all other Signatory and Invited Signatory Parties.
- D. Termination of this Agreement does not relieve USACE of any remaining obligations it may have, as of the date of termination, under 36 CFR Part 800.

Execution of this Agreement by the ACHP, USACE, and SHPO and implementation of its terms, evidences that the USACE has taken into account the effects of the NED Plan upon historic properties and has afforded the ACHP an opportunity to comment.