PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT; LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE; LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

PREAMBLE

WHEREAS, the mission of the U.S. Army Corps of Engineers (USACE), New Orleans District (CEMVN), is to deliver vital public and military engineering services; partnering in peace and war to strengthen our Nation's security, energize the economy, and reduce risks from disasters; and

WHEREAS, the St. Tammany Parish, Louisiana Feasibility Study (STPFS) is authorized by Subtitle B, Section 1201(14) of the Water Resources Development Act of 2016, as included in the Water Infrastructure Improvements for the Nation Act (P.L. 114-322), and in accordance with the annual reports submitted to Congress in 2015 and 2016, pursuant to Section 7001 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) (Public Law 113-121), (33 U.S.C. 2282d); and

WHEREAS, this STPFS is included in the Investigations Account for Long-term Disaster Recovery Investment Plans and is funded using Supplemental Investigations funds pursuant to the Bipartisan Budget Act of 2018 (P.L. 115-123), Division B, Subdivision 1, Title IV (BBA 18); and

WHEREAS, the STPFS is authorized to be conducted at full Federal expense to the extent that appropriations provided under the Investigations heading of BBA 18 are available and used for such purpose. In the event that there are insufficient BBA 2018 funds to complete the Study, the Study will be completed subject to the cost-sharing otherwise applicable to the Study, and the amendment of the Feasibility Cost Share Agreement executed by the Department of the Army and the Coastal Protection and Restoration Authority Board of Louisiana on January 13, 2020; and

WHEREAS, the purpose of the STPFS is to investigate and identify reasonable flood risk management (FRM) and coastal storm risk management (CSRM) solutions to reduce the severity of flood damages and risks to public health and safety, caused by heavy rainfall, riverine flooding, tropical storms, and hurricanes; and

WHEREAS, P.L. 115-123 provides that a project that is studied using Supplemental Investigations funds is eligible for implementation using Supplemental Construction funds provided that the Secretary determines that the project is technically feasible, economically justified, and environmentally acceptable. The verification and the Chiefs Report will be provided to the ASA(CW) for the required determination of technical feasibility, economic justification, and environmental acceptability, after which implementation of the project may be undertaken using Supplemental Construction funds; and

WHEREAS, the study area is located in southeastern Louisiana and encompasses all of St. Tammany Parish, measuring approximately 1,124 square miles (2,911.1 km²) within a highly complex and dynamic hydrological setting; and

WHEREAS, the study area has experienced repeated, widespread flooding from both rainfall and coastal storm flood events (i.e., riverine bank overtopping, high tides, waves, drainage, and storm surge) including historic flood impacts from Hurricane Katrina (August 2005) and the flood of August of 2016. The flood events caused major disruptions, damages, and economic impacts to St. Tammany Parish; and

WHEREAS, the STPFS Project is intended to reduce risk from flooding and coastal storms in St. Tammany Parish and has three (3) measures to address flooding parish-wide: 1) 18.4 miles of a levee and floodwall alignment from west Slidell to south Slidell; 2) channel improvements in Mile Branch in Covington; and 3) nonstructural home elevations and floodproofing for eligible resources in the parish based on USACE's 25, 50, and 100-year floodplain determinations (Undertaking) (Appendix A); and

WHEREAS, this agreement is pursuant to Section 106 of the National Historic Preservation Act (NHPA); CEMVN is the lead/responsible federal agency for purposes of the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations, set out at 40 CFR parts 1500-1508 (43 FR 55978), and for Section 106 of the NHPA [54 U.S.C. § 300101 et seq.], as amended (54 U.S.C. § 306108), and its implementing regulations, set out at 36 Code of Federal Regulations (CFR) Part 800, and in accordance with 36 CFR § 800.2(a)(2) and 800.8; and

WHEREAS, a portion of the proposed west Slidell to south Slidell alignment footprint is within the Big Branch National Wildlife Refuge (NWR), administered by the U.S. Fish and Wildlife Service (USFWS); and

WHEREAS, CEMVN and USFWS have designated CEMVN as the lead federal agency for Section 106 of the NHPA for the STPFS Project pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, CEMVN as the lead federal agency has invited USFWS to concur in this Agreement pursuant to 36 CFR 800.6(c)(3); and

WHEREAS, CEMVN has determined that implementing the STPFS may result in an Undertaking with individual area of potential effects (APEs), as defined by 54 U.S.C. § 300320 and 36 CFR § 800.16(y) and 36 CFR § 800.16(d), that may affect properties listed in or eligible for listing in the National Register of Historic Places (NRHP) pursuant to 36 CFR Part 60 (historic properties) and/or properties having religious and cultural significance to Tribes, including sites that may contain human remains and/or associated cultural items; and

WHEREAS, additional project design work and engineering studies will occur upon the study moving into the Pre-Construction Engineering and Design phase (PED) and the individual footprints of structural measures and properties eligible for non-structural measures will be coordinated with stakeholders as the project is developed further; and

WHEREAS, because of the scope and programmatic nature of the STPFS, CEMVN is not able to fully identify historic properties or determine the effects of the Undertaking at the present time, CEMVN has concluded that a phased process to conduct identification and evaluation of historic properties (36 CFR § 800.4(b)(2)) and for application of the criteria of adverse effect (800.5(a)(3))

is an appropriate and necessary approach for the agency to meet the requirements of Section 106; and

WHEREAS, as CEMVN cannot fully determine how the Undertaking may affect historic properties, the location of historic properties, or their significance and character at the present time, CEMVN has elected to negotiate a Programmatic Agreement (PA) in consultation with stakeholders, as provided for in 36 CFR § 800.14(b)(1)(ii), and 800.14(b)(2) to govern the implementation of this Undertaking and fulfill its obligations under Section 106 of the NHPA including the resolution of adverse effects for this Undertaking; and

WHEREAS, as used in this PA, "Signatories" is defined in 36 CFR § 800.6(c)(1), "Invited Signatories" is defined in 36 CFR § 800.6(c)(2), and "Concurring Party" is defined in 36 CFR § 800.6(c)(3); and

WHEREAS, a Consulting Party shall be recognized by CEMVN as a Signatory, Invited Signatory, or a Concurring Party starting on the date the Consulting Party signs this PA as a Signatory, Invited Signatory, or Concurring Party, and provides CEMVN with a record of this signature; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(1), a Signatory has the authority to execute, amend or terminate the PA; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(2), Invited Signatories who sign this PA are signatories with the authority to amend or terminate the PA; and

WHEREAS, in accordance with 36 CFR § 800.6(c)(3), a Concurring Party is a Consulting Party invited to concur in the PA but who does not have the authority to amend or terminate the PA; and

WHEREAS, CEMVN initiated consultation, via letter on August 26, 2020 with the Alabama-Coushatta Tribe of Texas, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, the Tunica-Biloxi Tribe of Louisiana, the Advisory Council on Historic Preservation (ACHP), and the Louisiana State Historic Preservation Officer (LA SHPO); and

WHEREAS, on August 31, 2020, CEMVN posted a NHPA/NEPA Public Notice to the designated project website (https://www.mvn.usace.army.mil/About/Projects/BBA-2018/studies/St-Tammany/) for a 30-day comment period requesting the public's input concerning: 1) the proposed undertaking and its potential to significantly affect historic properties, 2) assistance in identifying any relevant parties who may have an interest in participating in this consultation, and 3) CEMVN's proposal to develop a project-specific PA pursuant to 36 CFR § 800.14(b). No comments to the NHPA/NEPA Public Notice were received; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the ACHP has been provided the required documentation and invited to participate in this PA. On September 10, 2020, the ACHP provided written notice that it has chosen not to participate in the consultation; and

WHEREAS, on September 25, 2020, the Choctaw Nation of Oklahoma submitted a written response to CEMVN and stated that St. Tammany Parish lies in their area of historic interest; the Choctaw Nation has sites of significance, including village locations, located in St. Tammany Parish. The Choctaw Nation of Oklahoma requested to be a Consulting Party in the PA; and

WHEREAS, CEMVN continued consultation, via letter on May 21, 2021 with the Alabama-Coushatta Tribe of Texas, Choctaw Nation of Oklahoma, Coushatta Tribe of Louisiana, Jena Band of Choctaw Indians, Mississippi Band of Choctaw Indians, the Tunica-Biloxi Tribe of Louisiana, the LA SHPO, and the Louisiana Coastal Protection and Restoration Authority (CPRA); and

WHEREAS, CEMVN has consulted with the LA SHPO on this PA pursuant to 36 C.F.R. § 800.6 and 36 C.F.R. § 800.14(b). LA SHPO confirmed that they would participate in the development of this Agreement via email on June 21, 2021, and is a Signatory to this PA; and

WHEREAS, CEMVN recognizes that the Alabama-Coushatta Tribe of Texas, the Choctaw Nation of Oklahoma, the Coushatta Tribe of Louisiana, the Jena Band of Choctaw Indians, the Mississippi Band of Choctaw Indians, and the Tunica-Biloxi Tribe of Louisiana, may have sites of religious and cultural significance on or off Tribal Lands [as defined in 36 CFR § 800.16(x)] that may be affected by the Undertaking, and in meeting its Federal trust responsibility, CEMVN initiated consultation with Tribes via letter on August 26, 2020, and May 21, 2021. Pursuant to 36 CFR § 800.2 (c)(2)(ii)(E), and in consideration of the confidentiality of information, CEMVN has invited the Tribes to enter into a PA that specifies how CEMVN shall carry out Section 106 responsibilities for the Undertaking; and

WHEREAS, on July 17, 2021 and in response to the continued consultation letter, the Choctaw Nation of Oklahoma again requested to be a Consulting Party to this PA and are an Invited Signatory to this PA; and

WHEREAS, as of the date of this Agreement, no other Tribes(s) have sought or declined to enter into this Agreement as a signatory party; and

WHEREAS, CEMVN may invite additional Federally-recognized Tribes that have sites of religious and cultural significance to enter into the terms of this Agreement as Invited Signatories or Concurring Parties in accordance with 36 CFR § 800.14(f), and nothing in this Agreement prevents a Federally-recognized Tribe from entering into a separate PA or other agreement with CEMVN for administration of USACE Programs; and

WHEREAS, on October 29, 2021, CEMVN requested by e-mail the interest of the Certified Local Governments (CLGs) of Covington, Mandeville, and Slidell (https://www.crt.state.la.us/cultural-development/historic-preservation/certified-local-government/louisiana-clgs/index) in participating in this consultation and any information concerning the proposed Undertaking and its potential to significantly affect historic properties that they wished to provide in this PA; and

WHEREAS, the CLG of Slidell submitted a response via email on November 1, 2021 that the community is interested in participating in this consultation; and is a Concurring Party to this PA; and

WHEREAS, CEMVN requested participation of the Big Branch Marsh National Wildlife Refuge on December 10, 2021, and January 18, 2022. Subsequently, the proposed west Slidell to south Slidell alignment footprint was optimized to minimize impacts to the Big Branch National Wildlife Refuge. In May 2023, the Big Branch Marsh National Wildlife Refuge engaged in consultation; and

WHEREAS, for the review of a specific Undertaking under this PA, CEMVN may invite other agencies, organizations, and individuals to participate as Consulting Parties; and

WHEREAS, consultation among all Signatories, Invited Signatories, and Concurring Parties to this PA shall continue throughout the implementation of the PA. Consultation is mutual, meaningful dialogue regarding the fulfillment of this PA, the process of Section 106 compliance, and the treatment of historic properties that may be affected by the CEMVN Undertaking; and

NOW, THEREFORE, CEMVN, LA SHPO, USFWS (Signatories), CPRA, Choctaw Nation of Oklahoma (Invited Signatories), and CLG of Slidell (Concurring Party) agree that the Undertaking resulting from the STPFS shall be implemented in accordance with the following stipulations in order to take into account the effects of the Undertaking on historic properties and to satisfy CEMVN's responsibilities under Section 106 of the NHPA.

STIPULATIONS

To the extent of its legal authority, and in coordination with other Signatories, Invited Signatories, and Concurring Parties, CEMVN shall ensure that the following measures are carried out:

I. APPLICABILITY

A. This Agreement applies to the three (3) measures of the Undertaking that may result in the STPFS to accomplish flood risk reduction, and include:
   - 18.4 miles of a levee and floodwall alignment from west Slidell to south Slidell;
   - Channel improvements in Mile Branch in Covington; and
   - Nonstructural home elevations and floodproofing for eligible resources in the parish based on USACE's 25, 50, and 100-year floodplains.

B. CEMVN will utilize this Agreement to fulfill its Section 106 responsibilities and those of other federal agencies that designate USACE as the lead federal agency pursuant to 36 CFR § 800.2(a)(2) for the STPFS Project Undertaking that falls within the scope of this PA.

C. If another Federal program or Federal agency has approved an Undertaking that lies wholly or partly within a STPFS Project APE within the past five (5) years and no new substantial information has been revealed, then Section 106 consultation and review is concluded for that portion of the STPFS Project APE within this previous Undertaking provided that CEMVN:

   1. Confirms that the Area of Potential Effects (APE) and effect [as defined by 36 CFR § 800.16(i)] of its Undertaking are the same as that of the Undertaking reviewed by the previous agency, and;

   2. Determines that the previous agency complied with Section 106, including tribal consultation, appropriately and;

   3. Adopts the findings and determinations of the previous agency.

   4. CEMVN shall notify the LA SHPO and consulting Tribes regarding this determination. If USACE, in consultation with the LA SHPO and Consulting Tribes determine that the previous Section 106 review was insufficient or involved interagency disagreements about eligibility, effect determinations, and/or resolution of

adverse effects (implementation of Treatment Measures), USACE shall conduct additional Section 106 consultation in accordance with the terms of this Agreement.

5. CEMVN shall document these findings in its project file in order to confirm that the requirements of Section 106 have been satisfied.

D. CEMVN has determined that the following types of activities have limited or no potential to affect historic properties and CEMVN has no further Section 106 responsibilities with regards to them, pursuant to 36 CFR § 800.3(a)(1):

1. Administrative actions such as personnel actions, travel, procurement of services, and supplies (including vehicles and equipment) for the support of day-to-day operational activities.

2. Providing funding for planning, studies, and design and engineering costs that involve no commitment of resources other than staffing and associated funding.

3. Funding the administrative action of acquiring properties, including the real estate transactions and transfers.

4. Boundary surveying, monitoring, data gathering, reporting in support of planning or design activities, and conducting other activities necessary for CEMVN to evaluate the eligibility of properties for nonstructural measures (e.g., conducting geotechnical boring investigations or other geophysical and engineering activities, and if warranted, additional hazardous, toxic and radioactive waste investigations, physical property inspections, evaluating the condition of resources, determining dry/wet floodproofing methods, verifying the current elevation of resources, title research, or performing appraisals, provided that such testing is shifted to avoid impacts to known cultural resources and that soil survey and geotechnical testing of sediment utilizes hand-dug test pits, hand probes, cores, and/or augers. If heavy equipment (i.e., backhoes, tractors, excavators, etc.) will be used as part of the testing process, then the activities are considered to have potential to affect historic properties.

5. Demarcation of project areas and resources (e.g., cultural sites, wetlands, threatened and endangered species habitat).

II. POINTS OF CONTACT

A. Consulting Parties, Signatories, Invited Signatories, and Concurring Parties shall each designate a primary and secondary point of contact. The primary contact is the contact to which all formal correspondence is sent. If the individual designated as the primary point of contact is not available, communications will be directed to the secondary contact. Each Consulting Party to this PA is requested to provide phone numbers, email addresses, and mailing addresses for the primary and secondary contacts.

B. CEMVN acknowledges that primary and secondary points of contacts may change over time. Addressing this is primarily a CEMVN responsibility with assistance from the Consulting Parties. The initial compilation is provided in Appendix B. Following the initial compilation, CEMVN and the Consulting Parties shall follow the process outlined in the appropriate set of roles and responsibilities below to provide and distribute updated

information for Appendix B. Alteration of Appendix B will not require executing an amendment to the PA.

C. In accordance with the process laid out in the roles and responsibilities below, CEMVN will follow-up on returned email and hard-copy mail or disconnected phone lines to ensure that a POC is re-established, and the relevant Consulting Party receives the necessary information.

III. ROLES AND RESPONSIBILITIES OF THE SIGNATORIES

A. CEMVN:

1. Shall not construct components of the Undertaking until Section 106 review is completed pursuant to this Agreement.

2. Shall notify and consult with the LA SHPO, appropriate Federally-recognized Tribes, and other Consulting Parties as provided in this Agreement. Consultations may include face-to-face meetings, as well as communications by U.S. mail, e-mail, facsimile, and/or telephone. Times and places of meetings, as well as an agenda for meetings, will be developed with mutual acceptance and done in a timely manner.

3. Shall maintain the POC List (Appendix B) and will distribute it annually to the Primary POCs as part of the consultation. CEMVN will follow up with the relevant Consulting Party to re-establish the appropriate point of contact after a returned email, returned letter, or notification of a disconnected phone line is received. CEMVN will incorporate any changes to the POC List in the annual POC update.

4. Shall consult with any Federally-recognized Tribe on a government-to-government basis in recognition of its sovereign status, whether a signatory to this PA or not, throughout any activity of Undertaking that might affect historic properties, particularly regarding sites that may have traditional, religious, and/or cultural importance to Federally-recognized Tribes. In meeting its Federal trust responsibility, CEMVN alone shall conduct all government-to-government consultation with Federally-recognized Tribes.

5. Shall be responsible for determining the APE, identifying historic properties located within the APE, providing NRHP eligibility determinations, and findings of effect.

6. Shall be responsible for consulting with LA SHPO, Federally-recognized Tribes, and other Consulting Parties following the terms of this PA.

7. Shall ensure all Cultural Resources review is conducted by qualified professional staff as outlined in Stipulation VI. A. 3.

8. Shall ensure that all documentation generated as part of the NHPA process resulting from the Undertaking shall be consistent with applicable *Standards (State and Federal)* (Stipulation VI. A.) and confidentiality provisions outlined in Stipulation IV.

9. Shall ensure that a written record of all stipulations and conditions pursuant to this PA regarding real property for which CPRA has responsibility are provided to CPRA, and

CEMVN will be available to assist CPRA with any technical questions related to its implementation. Additionally, CEMVN shall provide the CPRA with information and technical guidance on the treatment of any historic properties, if applicable.

10. Shall provide the ACHP and Consulting Parties to this Agreement, with an annual report for the previous calendar year on or about July 30th of each year that this PA is in effect.

    a. This annual report summarizes the actions taken to implement the terms of this Agreement, such as, statistics on the Undertaking; meeting Allowances; emergency reviews; streamlined project review; resolution of adverse effects; after-the-fact consultations; use of other agency's determinations; the progress and completion of all treatment measures; and recommends any actions or revisions to be considered, including updates to the appendices, A, B, D, and E.

    b. Consulting Parties, including Signatories, Invited Signatories, and Concurring Parties, may request a conference call within 30 days from the distribution of the annual report to review the annual report or discuss issues, if any, regarding implementation of the PA.

B. LA SHPO:

1. Shall coordinate with CEMVN, to identify Consulting Parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.

2. Shall consult with CEMVN regarding CEMVN's determination of the APE, NRHP eligibility, and findings of effect responding within timeframes set out in Stipulation V.

3. Upon request, LA SHPO shall provide CEMVN available information about historic properties (such as access to site files, GIS data, survey information, geographic areas of concern) for the purposes of addressing effects to historic properties. Only Qualified Staff, per Stipulation VI. A. 1. shall be afforded access to protected historic property information.

4. Shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation has occurred, CEMVN shall provide a written summary on any decisions that were reached via e-mail or regular mail to LA SHPO.

5. Shall review the annual report provided by CEMVN and will recommend any actions or revisions to be considered, including updates to the appendices in accordance with Stipulation III. A. 10.

6. Shall participate in meetings convened by CEMVN or any other Signatory, Invited Signatory, or Concurring Party to review the effectiveness of this PA.

C. USFWS:

1. Shall coordinate with CEMVN, to identify Consulting Parties, including any

communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.

2. Shall provide the required Archaeological Resources Protection Act (ARPA) permits for archaeological investigations occurring on USFWS fee-title lands.

3. Shall provide, as part of the consultation, available information about historic properties (such as access to site files, GIS data, survey information, geographic areas of concern) for the purposes of addressing effects to historic properties. Only Qualified Staff, per Stipulation VI A. 1. Shall be afforded access to protected historic property information.

4. Shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media.

D. Federally Recognized Tribes (THPOs and other designees):

1. USACE acknowledges that Federally-recognized Tribes possess special expertise in assessing the NRHP eligibility of properties with religious and cultural significance to that particular Tribe. Tribal leaders, and as appropriate, their representatives, shall designate an individual(s) for the Tribe's review of the Undertaking affecting properties with religious and cultural significance to that particular Tribe. Designations such as this will follow the intent and processes laid out in USACE's 2012 Tribal Consultation Policy (https://www.tribalconsultation.arizona.edu/docs/DOD/Army%20Corps/USACE%20Consultation%20Policy%202012.pdf)

2. May coordinate with USACE, to identify Consulting Parties, including any communities, organizations, or individuals that may have an interest in a specific Undertaking and its effects on historic properties.

3. May consult with USACE regarding USACE's determination of the APE, NRHP eligibility, and findings of effect responding within timeframes set out in Stipulation V.

4. May provide, as part of the consultation, available information about historic properties (such as access to site files, GIS data, survey information, geographic areas of concern) for the purposes of addressing effects to historic properties. Only Qualified Staff, per Stipulation VI A. 1. Shall be afforded access to protected historic property information.

5. Shall be reasonably available as a resource and for consultation through site visits, written requests, telephone conversations or electronic media. In those instances where consultation has occurred, USACE shall provide a written summary via e-mail or regular mail to THPO, including any decisions that were reached.

6. Shall, based on availability, participate in annual reviews convened by USACE to discuss the effectiveness of this PA in accordance with Stipulation III. A. 10.

E. Coastal Protection and Restoration Authority/Non-Federal Sponsor:

1. Shall coordinate with CEMVN, to identify Consulting Parties, including any communities, organizations, private land owners, or other individuals that may have an interest in a specific Undertaking and its effects on historic properties.

2. Shall participate in meetings as needed and any other roles appropriate to the completion of the goals of this PA.

3. Shall review the annual report provided by CEMVN and will recommend any actions or revisions to be considered; including updates to the appendices in accordance with Stipulation III. A. 10.

4. Shall participate in meetings convened by CEMVN or any other Signatory, Invited Signatory, or Concurring Party to review the effectiveness of this PA.

5. Shall assist in determining the final disposition of any recovered archaeological collections from a CEMVN-funded archaeological survey, evaluation, Standard Treatment Measure (STM) or project-specific Memorandum of Agreement (MOA) Treatment Measure (TM), or post-review discovery, in accordance with Stipulation IX. of this PA and shall coordinate with any private landowners regarding State of Louisiana *Archaeological Collection Donation Forms*, if necessary.

F. ACHP:

1. Shall provide guidance and advisory information to resolve disputes that may occur during the implementation of this PA, pursuant to the Dispute Resolution process in Stipulation XII.
2. Shall advise CEMVN if it will participate in consultations to resolve adverse effects, pursuant to 36 CFR § 800.6(a)(1).

IV. CONFIDENTIALITY OF HISTORIC PROPERTY INFORMATION

A. CEMVN will safeguard information about historic properties to the extent allowed by Section 304 of NHPA (54 U.S.C. § 307103), Section 9 of the ARPA, and other applicable federal laws, as well as implementing restrictions conveyed to CEMVN by LA SHPO and Federally-recognized Tribes, consistent with state and tribal guidelines. These safeguards will be included in any developed cultural resources Scopes of Work, as well.

B. Only CEMVN staff meeting the Professional Standards (Stipulation VI. A. 1.), shall be afforded access to protected historic property information provided by LA SHPO and/or Federally-recognized Tribes (54 U.S.C. § 307103);

C. Regarding sensitive information shared by Federally-recognized Tribes, CEMVN, in accordance with provisions of federal law, will not share non-public information that is so designated by the Tribes, without first confirming (in writing with the provider of the information) the appropriateness of sharing.

D. CEMVN shall provide to all Consulting Parties the documentation specified in 36 CFR § 800.11 subject to the confidentiality provisions of 36 CFR § 800.11(c) and such other documentation as may be developed during consultation to resolve adverse effects to the

extent permitted by federal law.

E. LA SHPO/THPO, Consulting Parties (including personnel and staff), and Tribal staff and/or designee(s), shall safeguard historic property information (locational and other non-public information) in accordance with the provisions of Section 304 of the NHPA and applicable state and tribal legal authorities.

F. CEMVN anticipates the presentation of historic property data as part of any STM or MOA TM and shall ensure that such products, presentations, or other publications are adequately coordinated with Consulting Parties that have an interest in their content before release/presentation to ensure that any otherwise protected information is being represented appropriately.

V. CONSULTATION STANDARDS, TIMEFRAMES, AND CORRESPONDENCE

A. Consultation Standards:

1. CEMVN will consult with the LA SHPO, Federally-recognized Tribes (based on expressed areas of interest), and other Consulting Parties as set forth in this agreement. Consultations may include face-to-face meetings, as well as communications by regular mail, electronic mail, and/or telephone. Times and places of meetings, as well as an agenda for meetings, will be arranged as mutually agreeable and notice will be provided in a timely manner.

B. Timeframes:

1. All time designations in this PA shall be in calendar days unless otherwise expressly stipulated in writing in this PA.

2. The response time for each request for comment or concurrence shall be a maximum of thirty (30) days, unless otherwise agreed by the parties to the specific consultation on a case-by-case basis.

3. The review period will be extended until the next business day if a review period included in this PA concludes on a Saturday, Sunday, state, or federal, or tribal (when a Federally-recognized Tribe is one of the reviewing parties) holiday. If requested, CEMVN may consider an extension of a review period consistent with the time designations in this PA for parties affected by an unanticipated Federal or state office closure (e.g., for a hurricane, tornado or similar).

4. Any electronic communication forwarding plans or other documents for review under the terms of this PA that is sent after 4:00 pm Central Time will be deemed to have been received by the reviewing party on the next business day.

5. E-mail comments by Consulting Parties on any documents submitted for review under this PA are timely if they are received at any time on or before the last day of a review period. Responses sent by mail will be accepted as timely if they are postmarked by the last day allowed for the review.

6. If any Signatory does not object to CEMVN's finding or determination related to an Undertaking within an agreed upon timeframe, CEMVN may proceed to the next step in the consultation process as described in Stipulation VII., Project Review.

7. Timeframes are contingent upon CEMVN ensuring that its findings and determinations are made by Qualified Staff and supported by documentation as required by 36 CFR § 800.11(d) and 36 CFR § 800.11(e), and consistent with CEMVN guidance.

C. Correspondence:

1. The Consulting Parties may send and accept official notices, comments, requests for further information and documentation, and other communications required by this Agreement in accordance with the protocol in Appendix B.

   a. If the size of an e-mail message is unusually large or an e-mail is returned to a sender because its size prevents delivery, the sender will contact the intended recipient(s) and determine alternative methods to deliver the information (including available file sharing platforms).

   b. Time-sensitive information that is not sent by e-mail should be sent by overnight mail, courier, or hand-delivered. The timeframe for requests for review not sent by e-mail will be measured by the date the delivery is received by LA SHPO, Federally-recognized Tribe, or other organization representing the Consulting Party.

VI. STANDARDS

A. In addition to the definitions utilized in 36 CFR § 800, this PA uses the definitions presented in the subsequent paragraphs to establish standards for performing all cultural resource project reviews and investigations required under the terms of this Agreement including, but not limited to, site identification, NRHP eligibility evaluations, and as appropriate, STM (Appendix E) or MOA TM, as outlined in VII B, for the resolution of adverse effects to historic properties:

1. "Qualified Staff" – shall mean staff who meet, at a minimum, the Secretary of the Interior's (SOI) *Professional Qualifications Standards* set forth at 48 FR 44738 (September 29, 1983), for History, Archaeology, Architectural History, Architecture, or Historic Architecture (https://www.nps.gov/history/local-law/arch_stnds_9.htm) and the appropriate qualifications presented in Professional Qualifications (36 CFR Part 61, Appendix A).

2. "Standards" – shall mean the SOI *Standards and Guidelines for Archaeology and Historic Preservation* [Federal Register 48(190) 1983:44716-44737] (https://www.nps.gov/history/local-law/arch_stnds_0.htm);

3. "Meeting Professional Standards" – shall mean that all cultural resource investigations shall be performed by, or under the direct (in-field) supervision of appropriate professional(s) or by contractors, who are "Qualified Staff."

4. "Field and Reporting Standards" – CEMVN shall ensure that all fieldwork and documentation resulting from the Undertaking reviewed pursuant to this PA are consistent with all applicable Louisiana Division of Archaeology (LDOA) *Field Standards* (https://www.crt.state.la.us/cultural-development/archaeology/CRM/section-106/field-standards/index) and *Reporting Standards* (https://www.crt.state.la.us/cultural-development/archaeology/CRM/section-106/report-standards/index), and the Louisiana Division of Historic Preservation (LDHP) *Louisiana Historic Resource Inventory Guidelines* (https://www.crt.state.la.us/Assets/OCD/hp/standing-structures-survey/SurveyGuidelines.pdf), or the most current versions located on the Louisiana Office of Cultural Development website.

5. "Policies and Guidelines" – shall mean guidance from any of the following:

   a. The National Park Service (NPS) publication *The Archaeological Survey: Methods and Uses* (NPS 1978);
   b. ACHP's Treatment of Archeological Properties: A Handbook (1980) (https://www.achp.gov/sites/default/files/documents/2018-11/Treatment%20of%20Archeological%20Properties-A%20Handbook-OCR.pdf);
   c. Identification of Historic Properties: A Decision-making Guide for Managers (1988, joint ACHP-NPS publication);
   d. Consulting About Archeology Under Section 106 (1990);
   e. ACHP's Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites (1999);
   f. ACHP's Policy Statement Regarding the Treatment of Burial Sites, Human Remains and Funerary Objects (2007) https://staging.achp.gov/sites/default/files/policies/2018-06/ACHPPolicyStatementRegardingTreatmentofBurialSitesHumanRemainsandFuneraryObjects0207.pdf;
   g. ACHP's Section 106 Archaeology Guidance: A reference guide to assist federal agencies in making effective decisions about archaeological sites (2009) https://www.achp.gov/sites/default/files/guidance/2017-02/ACHP%20ARCHAEOLOGY%20GUIDANCE.pdf);
   h. SOI's *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-42, September 29, 1983);
   i. *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties* (1998);
   j. Louisiana Office of Cultural Development, Division of Historic Preservation's *Elevation Guidelines for Historic Buildings in the Louisiana GO Zone* (2014) https://www.crt.state.la.us/Assets/OCD/hp/uniquely-louisiana-education/Disaster-Recovery/Final%20Elevation%20Design%20Booklet%2012-07-15%20v2.pdf; and
   k. NPS *Guidelines on Flood Adaptation for Rehabilitating Historic Buildings* (2019) https://www.nps.gov/tps/standards/rehabilitation/flood-adaptation-guidelines.pdf).

B. In developing Scopes of Work (SOW) for identification and evaluation studies, STM(s) or MOA TM(s), or any other cultural resources activities required under the terms of this PA, CEMVN will comply with the requirements of the *Standards, Professional Standards, Field and Reporting Standards*, and the *Policies and Guidelines*, in existence at the time this work is performed.

VII. PROJECT REVIEW

A. Programmatic Allowances

1. CEMVN shall determine if all the actions within the scope of an Undertaking are included in the Programmatic Allowances set forth in this PA (Appendix D). Upon such a determination, CEMVN shall complete the Section 106 review process by documenting this determination in the project file, without further LA SHPO, Tribal, or other Consulting Party review or notification. This will complete the Section 106 review for the Undertaking unless an Unexpected Discovery or unforeseen effect to historic properties is reported.

2. If the Undertaking involves a National Historic Landmark (NHL), CEMVN shall notify LA SHPO, participating Tribe(s), and NPS NHL Program Manager of the NPS Southeast Regional Office whether the Undertaking conforms to one (1) or more Allowances. CEMVN shall provide information about the proposed scope of the Undertaking and which Allowance(s) apply.

3. If CEMVN determines any portion of an Undertaking's SOW does not conform to one (1) or more Allowances listed in Appendix D, CEMVN shall conduct Section 106 review, as appropriate, for the entire Undertaking in accordance with Stipulation VII. B., Streamlined Project Review.

4. Allowances may be revised and new Allowances may be added to this PA in accordance with Stipulation XIV, Amendments.

B. Streamlined Project Review:

For the Undertaking not falling under VII. A., CEMVN shall ensure that the following project review steps are implemented. In the interest of streamlining, CEMVN may combine some or all of these steps during consultation in accordance with 36 CFR § 800.3(g).

1. CEMVN shall consider all written requests of individuals and organizations to participate as Consulting Parties and consult with LA SHPO and the appropriate Federally-recognized Tribe(s) to identify any other parties that meet the criteria to be Consulting Parties and invite them to participate in the Section 106 process. CEMVN may invite others to participate as Consulting Parties as the Section 106 consultation proceeds.

2. For all projects undergoing streamlined project review, Qualified Staff shall determine the APE, in consultation with LA SHPO and appropriate Federally-Recognized Tribe(s), in accordance with 36 CFR § 800.16(d). CEMVN may consider additional information provided by other parties, such as the CPRA, local governments, and the public, when establishing the APE.

   The APE shall incorporate both direct or indirect effects (e.g., access, staging, construction areas, introduction of visual, atmospheric, or audible elements) including all areas to be impacted by construction activities. CEMVN shall provide a map displaying the APE for each Undertaking and provide any pertinent background information relevant to CEMVN's determination of the APE to LA SHPO and

appropriate Federally-recognized Tribe(s). LA SHPO and Tribes shall provide comment and/or concurrence on the proposed APE within the timeframes outlined in Stipulation V. B. If necessary, CEMVN shall re-initiate consultation to revise the APE in accordance with the PA and ensure that LA SHPO and Tribes are provided the opportunity to comment.

APE Definition Factors:

a. Structural Measures: The APE shall be defined as all areas to be affected by construction activities and areas of associated ground disturbance including but not limited to haul roads, borrow areas, staging and stockpiling areas. The APE would generally include all areas for which a Right-of-Entry is sought by CEMVN or the NFS. Additional effects that will be considered shall include visual and auditory.

b. Nonstructural Measures (elevation of residential buildings, dry floodproofing of non-residential buildings, buyouts, and/or acquisitions):

   The APE shall be the subject property's tax parcel, unless the Undertaking is planned within a National Register Historic District (NRHD), National Historic Landmarks (NHLs), NRHP-eligible or unassessed archaeological site, or situated on a large tract of land in a rural area, wherein CEMVN shall define and establish the APE in consultation with LA SHPO and appropriate Federally-recognized Tribe(s). It is assumed that the tax parcel will on average range in size from one (1) to five (5) acres (0.4-2.2 ha), but within a tax parcel, survey will be limited to the area of ground disturbance and a reasonable buffer, unless additional area is required for construction staging or other eligible nonstructural measure activities or actions (Appendix C).

c. Viewshed Considerations for APE in NRHP eligible or listed NRHDs: In NRHP-eligible or listed NRHDs, CEMVN shall delineate the APE to include the subject property for the proposed Undertaking as well as historic properties in the vicinity which may border, be adjacent to, or located in the immediate view of the subject property. *Qualified Staff* shall determine if a site visit is required to assess the unique circumstances of the subject property; to include the position of other resources within the APE relative to vegetation, site conditions and/or irregular street layouts that may influence the final APE. At a minimum, CEMVN shall require documentation of the APE to include at least three (3) photographs of the resource, including one (1) of the main façade, and two (2) oblique views. In addition, CEMVN shall require one (1) context/streetscape photo showing properties on either side of the subject property; and one (1) context/streetscape photo showing approximately three (3) resources directly across the street (as is applicable). Additional photos may be needed, per the discretion of *Qualified Staff*.

3. Identification and Evaluation: CEMVN *Qualified Staff* shall determine, in consultation with LA SHPO and Tribe(s), if the APE contains historic properties, including properties of religious and cultural significance to Federally-recognized Tribes. This may include the review of newly developed or previously produced documentation in coordination with LA SHPO and appropriate Federally-recognized Tribe(s), and any additional Consulting Parties.

a. Level of Effort: CEMVN shall make a reasonable and good faith effort to identify historic properties in accordance with 36 CFR § 800.4(b)(1). CEMVN shall consult with LA SHPO and appropriate Federally-recognized Tribe(s) to determine the level of effort, methodology necessary to identify and evaluate a variety of historic property types, and any reporting requirements. For properties of religious and cultural significance to affected Federally-recognized Tribe(s), CEMVN shall consult with the affected Tribe(s) to determine if the APE contains such properties and determine the necessary level of effort to identify and evaluate or avoid any such historic properties. All Identification and Evaluation studies will comply with the Standards (Stipulation VI.).

b. NHL: When CEMVN identifies an Undertaking with the potential to affect an NHL, CEMVN will adhere to 36 CFR 800.10 Special Requirements for Protecting NHLs. CEMVN shall contact NPS NHL Program Manager of the Southeast NPS Regional Office in addition to the LA SHPO, Tribes, and other Consulting Parties. The purpose of this notification is to ensure early coordination for the Undertaking, which CEMVN later may determine adversely affects the NHL as outlined in Stipulation VII. B. 6 below.

c. Background Research: CEMVN shall ensure that background research is conducted as per the *Standards* and will entail a review of primary and secondary sources relevant to the environmental, geological, and cultural processes that have influenced the study area to gain an understanding of resource sensitivity, determine the kinds of resources that might be identified within the study area, develop research questions, guide fieldwork, and to facilitate the evaluation of resources using the NR Criteria. Research materials consulted may include, but are not limited to, information provided by Consulting Parties and the public, the NRHP database, the LDOA Louisiana Cultural Resources Map, historic maps, pertinent regional and local cultural resources investigations, historic aerial photography, and other appropriate sources.

d. All fieldwork and reporting shall meet the *Field and Reporting Standards* as defined in Stipulation VI. A. 4.

4. <u>Determinations of Eligibility:</u> CEMVN shall make determinations of NRHP eligibility based on identification and evaluation efforts, and consult with LA SHPO, appropriate Federally-recognized Tribe(s), and other Consulting Parties regarding these determinations. Should LA SHPO or appropriate Federally-recognized Tribe(s) disagree with the determination of eligibility, CEMVN shall:

   a. Elect to consult further with the objecting party until the objection is resolved;

   b. Treat the property as eligible for the NRHP; or

   c. Obtain a determination of eligibility from the Keeper of the National Register in accordance with 36 CFR § 63.2(d)-(e) and 36 CFR § 800.4 (c) 2.

5. <u>Findings of No Historic Properties Affected:</u>

   a. CEMVN shall make a finding of “No Historic Properties Affected” under the following circumstances:

i. If no historic properties are present in the APE; or

ii. The Undertaking shall avoid alteration to the characteristics of a historic property qualifying it for inclusion in the NRHP (including cumulative effects); or

b. CEMVN shall notify LA SHPO, appropriate Federally-recognized Tribes(s), and any other Consulting Parties of this finding and provide supporting documentation in accordance with 36 CFR § 800.11(d). The Section 106 review of the Undertaking will have concluded unless Consulting Parties object to the finding, or request additional information, within thirty (30)-days.

c. If LA SHPO and/or appropriate Federally-recognized Tribes(s) objects to a finding of "No Historic Properties Affected," CEMVN shall consult with the objecting party to resolve the disagreement.

i. If the objection is resolved, CEMVN either may proceed with the Undertaking or reconsider effects on the historic property by applying the criteria of adverse effect pursuant to Stipulation VII. B. 6. below.

ii. If CEMVN is unable to resolve the disagreement, it will forward the finding and supporting documentation to ACHP and request that ACHP review CEMVN's finding in accordance with the process described in 36 CFR § 800.4(d)1)(iv)(A) through 36 CFR § 800.4(d)(1)(iv)(C).). CEMVN shall, pursuant to 800.4(d)(1)(iv)(C), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to LA SHPO, appropriate Federally-recognized Tribes(s), and all other Consulting Parties. If CEMVN's final determination is to reaffirm its "no historic properties affected" finding, the Section 106 review of the Undertaking will have concluded. If CEMVN will revise its finding, then it shall proceed in accordance with Stipulation VII. B. 6. below.

6. <u>Application of the Criteria of Adverse Effect:</u>

a. If, through consultation, CEMVN finds an Undertaking may affect historic properties located within the APE, including those of religious or cultural significance to affected Federally-recognized Tribe(s), CEMVN shall apply the criteria of adverse effect, including cumulative effects, taking into account the views of the Consulting Parties and the public concerning effects in accordance with 36 CFR § 800.5(a).

b. If CEMVN determines that an Undertaking does not meet the adverse effect criteria, pursuant to 36 C.F.R. § 800.5(a)(1), CEMVN shall propose a finding of "no adverse effect" and consult with LA SHPO, appropriate Federally-recognized Tribes(s) and Consulting Parties in accordance with 36 CFR § 800.5(b):

i. CEMVN shall notify all Consulting Parties of its finding; describe any project specific conditions and/or modifications required to avoid or minimize effects to historic properties; and provide supporting documentation pursuant to 36 CFR §800.11(e).

ii. Unless a Consulting Party objects within thirty (30) days, CEMVN will proceed with its "no adverse effect" determination and conclude the Section 106 review.

iii. If a Consulting Party objects to a finding of "no adverse effect," CEMVN will consult with the objecting party to resolve the disagreement.

a. If the objection is resolved, CEMVN shall proceed with the Undertaking in accordance with the resolution; or

b. If the objection cannot be resolved, CEMVN shall request that ACHP review the findings in accordance with 36 CFR § 800.5(c)(3)(i)-(ii) and submit the required supporting documentation. CEMVN shall, pursuant 800.5(c)(3)(ii)(B), prepare a summary of its decision that contains the rationale for the decision and evidence of consideration of the ACHP's opinion, and provide this to all Consulting Parties. If CEMVN's final determination is to reaffirm its "no adverse effect" finding, the Section 106 review of the Undertaking will have concluded.

c. If CEMVN, during its initial review, finds the Undertaking may adversely affect historic properties, CEMVN may make a further internal review to consider ways to avoid or minimize effects. The review will consider revising the elements of the SOW affecting historic properties to substantially conform to the SOI *Preservation Standards* or otherwise avoid or minimize adverse effects.

i. If CEMVN modifies the SOW following its initial internal review to avoid or minimize effects below the "criteria of adverse effect" (36 CFR 800.5 (a)(1), (i.e., to the point CEMVN can make a finding of No Adverse Effect), CEMVN shall consult with LA SHPO, appropriate Federally-recognized Tribe(s), and all other Consulting Parties, and shall provide the *original and modified* Scopes of Work as part of its finding of "no adverse effect" following the process in Stipulation VII. B. 6. b.

ii. If CEMVN is unable to modify the Undertaking to avoid or minimize effects below the "criteria of adverse effect", CEMVN shall initiate consultation to resolve the adverse effect(s) in accordance with Stipulation VII. B. 7, Resolution of Adverse Effects.

7. <u>Resolution of Adverse Effects (AE):</u> If CEMVN determines that an Undertaking may adversely affect a historic property, it shall resolve the effects of the Undertaking in consultation with LA SHPO, the appropriate Federally-recognized Tribe(s); and other Consulting Parties by one of the methods described below. When, through consultation, CEMVN determines an Undertaking will adversely affect an NHL, CEMVN shall notify and invite the Secretary of the Interior and ACHP, as well as notifying Regional NPS staff to participate in consultation in accordance with 36 CFR § 800.10.

a. Abbreviated Consultation Process: CEMVN may propose in writing to the Consulting Parties to resolve the adverse effects of the Undertaking through the application of one or more STMs outlined in Appendix E. CEMVN shall ensure that the provisions of the STMs, as outlined in the consultation and agreed to by

Consulting Parties, are documented in writing and implemented. The use of these STMs shall not require the execution of an individual MOA or Secondary PA.

i. CEMVN shall propose in writing the implementation of a specific TM, or combination of TMs, with the intent of expediting the resolution of adverse effects, and provide documentation as required by 36 CFR § 800.11(e) and subject to the confidentiality provisions of 36 CFR § 800.11(c)). The correspondence will include a TM that outlines roles and responsibilities for accomplishment of the selected TMs, specify the deliverables, and define the timeline.

ii. The ACHP is not required to, and would not normally, participate in the development of TMs, under the Abbreviated Resolution Process. However, the ACHP will receive a copy of the Treatment Plan.

iii. Unless a Consulting Party objects to CEMVN's proposed TM within the timeframe outlined in Stipulation V. B Timeframes, CEMVN shall proceed with the implementation of the TM and will conclude the Section 106 review.

iv. If any of the Consulting Parties objects within the timeframe outlined in Stipulation V. B. Timeframes, to the resolution of adverse effects through the application of the Abbreviated Consultation Process, CEMVN shall resolve the adverse effect(s) using procedures outlined below in Stipulation VII. B. 6. b.

v. Because funding and implementation details of a TM for a specific Undertaking may vary, CEMVN shall provide written notice to the Consulting Parties within sixty (60) days of the completion of the TM(s). This written notice will serve as confirmation that the TM(s) for a specific Undertaking have been implemented. CEMVN also shall include information pertaining to the progress and completion of Treatment Measure(s) in the annual report pursuant to Stipulation III A. 9.

b. MOA: CEMVN shall provide ACHP with an adverse effect notice in accordance with 36 CFR § 800.6(a)(1) if it has not already provided such under the Abbreviated Consultation Process of this Agreement. In consultation with LA SHPO, appropriate Federally-recognized Tribe(s), and other Consulting Parties, CEMVN shall develop an MOA, in accordance with 36 CFR § 800.6(c), to agree upon TMs to avoid, minimize, and/or mitigate adverse effects on historic properties. The MOA may also include TMs that serve an equal or greater public benefit in promoting the preservation of historic properties in lieu of the TMs outlined in Appendix E.

8. Disagreements Regarding Adverse Effect Resolution Actions: Should any signatory or Consulting Party object within the timeframes established by this PA to any plans, specifications, or actions taken pursuant to resolving an adverse effect, CEMVN shall consult further with the objecting party to seek resolution. If CEMVN determines the objection cannot be resolved, CEMVN shall address the objection in accordance with Stipulation XII, Dispute Resolution.

9. Reports:
   a. CEMVN shall ensure that all reports and other documents resulting from the actions pursuant to this PA will be provided in a format acceptable to LA SHPO

and appropriate Federally-recognized Tribes. CEMVN will ensure that all such reports (e.g., identification surveys, evaluation reports, treatment plans, and data recovery reports) meet or exceed the Department of the Interior's *Format Standards for Final Reports of Data Recovery* (42 FR 5377-79) and the *Field and Report Standards* identified in Stipulation VI.A.4.

b. CEMVN shall provide all documentation for these efforts to LA SHPO, appropriate Federally-recognized Tribes, or other Consulting Parties, as appropriate, consistent with the confidentiality provisions of Stipulation IV. of this Agreement.

c. Once supporting documentation is received, LA SHPO and Tribes will have thirty (30)-days to review supporting documentation (e.g., site forms and reports). If LA SHPO or appropriate Federally-recognized Tribes intend to review and comment on documentation, and are unable to do so within the thirty (30)-day review period, a request for additional review time must be made in writing to CEMVN and specify the anticipated completion date. CEMVN will consider the request and work with the requesting party to come to a mutually agreeable timeframe. CEMVN will notify other Consulting Parties of any mutually approved extension by e-mail.

d. CEMVN shall provide documentation to USFWS for measures of the Undertaking that will occur adjacent to or within the Big Branch National Wildlife Refuge. USFWS will have thirty (30)-days to review supporting documentation as specified in Stipulation VII. B. 9. c. above. CEMVN also will provide final copies of the reports to USFWS for their files.

VIII. THE PUBLIC

A. To date, CEMVN has undertaken the public outreach and participation activities which have been memorialized in "Whereas" clauses found in this PA.

B. It is the intent of NEPA that federal agencies encourage and facilitate public involvement in decisions that may affect the quality of the environment. With respect to any Undertaking that is undergoing NEPA evaluation, CEMVN shall provide public notices and the opportunity for public comment or participation on such Undertaking through the NEPA public participation process, and if applicable, through public participation opportunities coordinated pursuant to Executive Order 12898 (Environmental Justice) provided such participation opportunities also specifically reference Section 106 as a basis for public involvement.

C. CEMVN recognizes that the views of the public are essential to informed decision making throughout the Section 106 consultation process. CEMVN shall notify the public of a proposed Undertaking in a manner that reflects the nature, complexity, and significance of historic properties likely affected by the Undertaking, the likely public interest given CEMVN's specific involvement, and any confidentiality concerns of Federally-recognized Tribe(s), private individuals and organizations.

D. CEMVN may consult with other Consulting Parties to determine if there are individuals, groups, or organizations with a demonstrated interest in historic properties that should be included as a Consulting Party for any specific Undertaking in accordance with 36 CFR § 800.2(c)(5). If such parties are identified, or identify themselves to CEMVN, CEMVN shall

provide them with information regarding the Undertaking and its effects on historic properties, consistent with the confidentiality provisions of 36 CFR § 800.11(c).

E. CEMVN shall ensure that reasonable time frames for public comment are afforded and will consider all views provided by the public regarding any specific Undertaking. CEMVN shall provide contact information and accept responses to its requests for public comments through the U.S. mail or e-mail submittals.

F. Should a member of the public object to implementation of the PA's terms, CEMVN shall notify the other Consulting Parties by e-mail and take the objection into consideration. CEMVN shall consult with the objecting party and, if that party so requests, the other Signatories, for not more than fifteen (15)-days. In reaching its decision regarding the objection, CEMVN shall take into consideration all comments from these parties. Within fifteen (15)-days after closure of this consultation period, CEMVN shall provide the other Consulting Parties with its final decision in writing.

G. Additional opportunities for NEPA participation and public comment will be relayed through appropriate means (e.g., postings, publications, social media), as is applicable

IX. CURATION

A. Recovered archaeological collections from a CEMVN-required archaeological survey, evaluation, and/or mitigation remain the property of the landowner (either private, state, federal, etc.). CEMVN, in coordination with LA SHPO and appropriate Federally-recognized Tribe(s) may, as determined through consultation, encourage private landowners to transfer any recovered artifacts and related documentation to an appropriate archive or public or Federally-recognized Tribal entity. CEMVN, in coordination with LA SHPO and Federally-recognized Tribe(s), shall work with all tribal, state, and local agents to support steps that ensure the long-term curation of these artifacts and documents through the transfer of the materials to a suitable repository as agreed to by CEMVN, LA SHPO, and appropriate Federally-recognized Tribes(s) and following applicable state or tribal guidelines. CEMVN shall ensure that collections from federal or tribal land, including field and laboratory records sufficient to document the collection, are curated at a repository meeting federal standards (36 C.F.R. 79) as agreed to by CEMVN, LA SHPO, and affected Federally-recognized Tribe(s), and follow that repository's guidelines.

X. TREATMENT OF HUMAN REMAINS, FUNERARY OBJECTS, SACRED OBJECTS, AND OBJECTS OF CULTURAL PATRIMONY

A. <u>Documenting Human Remains:</u> The recordation of human remains in a burial context or as individual elements is a task that requires sensitivity and good judgment, as defined through consultation. Consultation is a necessary part of documenting any human remains (in a discovery situation or during the treatment of historic properties) following the provisions of this stipulation. In planning how to document human remains (photography, drawing for the purposes of illustration, videography, or other), the determination will be made in consultation and concurrence with LA SHPO, Federally-recognized Tribe(s), and, as appropriate, other descendant communities. Even if it is determined to photo document the human remains, the photographs should not be

published or made publicly available in any way. The CEMVN will maintain records for the purpose of management of the human remains, with the intent of satisfying the protection provisions of the federal and state laws governing human remains, the records will be hardcopy and digital. When the records are digital, they will not be connected to externally available electronic resources like GIS servers or other and marked as restricted (per NHPA, FOIA, and, as appropriate, ARPA). As part of the consultation for each Work Item where Human Remains are present, the CEMVN will ensure that the consultation happens as appropriate to each jurisdiction to determine the course of action for each situation.

B. General Human Remains Discovery Process:

1. In the event that previously unreported or unanticipated human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are encountered during field investigations, laboratory work, or during construction or maintenance activities originating from federal, state, or private lands (Federal and Non-Federal Lands) CEMVN shall notify the relevant historic preservation interests (LA SHPO and Federally-recognized Tribal representatives) within 24-hrs of the discovery. Concurrently, CEMVN will implement provisions 2 thru 6, below:

2. Any CEMVN employee or contractor(s) who knows or has reason to know that they have inadvertently discovered human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony must provide immediate telephone notification of the inadvertent discovery to the responsible Federal construction official, with written confirmation, to CEMVN Cultural Resources Section (CRS).

3. All work must stop immediately within a one hundred (100) meter (328 ft.) radius buffer zone around the point of discovery; unless there is reason to believe that the area of the discovery may extend beyond the one hundred (100) meter (328 ft.) radius buffer zone in which case the buffer zone will be expanded appropriately. CEMVN will implement measures to protect the discovery from theft and vandalism. Any human remains or other items in the immediate vicinity of the discovery must not be removed or otherwise disturbed. CEMVN will take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony, as appropriate, including stabilization, or covering the find location.

4. CEMVN will notify local law enforcement, coroner, or medical examiner, as appropriate, and LA SHPO, per the POC in Appendix B, by telephone to assess the nature and age of the human skeletal remains within twenty-four (24) hours of the discovery of unmarked human remains and accompany local law enforcement personnel during all field investigations. CEMVN will also notify interested Federally-recognized Tribes of the discovery within the same period. If the appropriate local law enforcement official determines that the remains are not involved in a criminal investigation, CEMVN will follow jurisdictional guidelines as provided for based on land ownership (per Stipulation X. B.).

a. In cases where human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are discovered during the implementation of a CEMVN-funded undertaking on Federal Land, CEMVN will notify by telephone and e-mail, LA SHPO, Tribes, and other affected parties (e.g., living descendants) that may that might attach religious and cultural significance to the discovery at the earliest possible time, but no later than forty-eight (48) hours and inform them of the steps already taken to address the discovery.

b. In cases where the human remains are discovered on Non-Federal Lands and are determined to be Native American, the individual state's Designated Authority will notify and coordinate with Tribes as required by the appropriate state law, but not later than forty-eight (48)-hours from the time of their notification. As requested and to the extent of its legal authority, CEMVN will assist the Designated Authority, to consult with Tribes and affected parties, as appropriate.

c. In cases where the human remains are discovered on Non-Federal Lands and determined to be other than Native American, CEMVN will notify local law enforcement and the Louisiana Division of Archaeology (LDOA), and comply with the Louisiana Unmarked Human Burial Sites Preservation Act (La. R.S. 8:671 et seq.) and, if applicable, the Louisiana Cemetery Law (La. R.S. 8).

5. CEMVN will consult with LA SHPO, THPOs, and appropriate Federally-recognized Tribes, and other affected parties to develop a mutually agreeable action plan with timeframes to take into account the effects of the Undertaking on the discovery; resolve adverse effects if necessary; and ensure compliance with applicable federal laws and their implementing regulations, if the discovery of Native American human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony occurs on Federal Land (see Stipulation X. B. for the detailed process).

6. Following the outcome of any consultation (Federal Lands or Non-Federal Lands) to address the discovery of human remains, CEMVN will coordinate with any contractor(s) regarding any required scope of project modification necessary to implement recommendations from the consultation and facilitate proceeding with the Undertaking.

C. Specific Authorities and Processes for Addressing Human Remains: If human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony are encountered during project field investigations or laboratory work or during construction activities, the CEMVN will comply with the provisions based on the nature of the land ownership at the time remains or objects are encountered, in accordance with Engineering Regulation 1105-2-100 (Policy & Guidance), Appendix C-4.

1. Federal Lands: If discovered/recovered from *Federal lands*, CEMVN shall concurrently implement processes defined in this Agreement, satisfying NHPA, as well as

- ensuring consultation with appropriate Federally-recognized Tribes for any human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony (objects) as required by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), as

amended (25 U.S.C. §§ 3001-3014) and its implementing regulations (43 C.F.R. Part 10; and

- ensuring the appropriate provisions of the Archaeological Resources Protection Act, 16 USC §§ 470aa et seq., are followed.

a. For discoveries of human remains, burials, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony, CEMVN will continue to consult with LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate, whether they are Signatories to this Agreement or not, regarding additional measures to avoid and protect or mitigate the adverse effect of the Undertaking. These measures may include:

   i. Visits to the site by LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate;

   ii. Formally evaluate the archaeological site for NRHP-eligibility;

   iii. Explore potential avoidance alternatives;

   iv. Develop and implement a mitigation plan in consultation and concurrence with LA SHPO, claimant Federally-recognized Tribes, and other affected parties, as appropriate, including procedures for disinterment and re-interment.

b. Initial Determination of nature of discovered Human Remains (Native American or Other) when from Federal Lands

   i. CEMVN, in consultation with LA SHPO and Federally-recognized Tribes, whether they are Signatories to this PA or not, and other affected parties, may consult with a qualified physical anthropologist, forensic scientist, or other experts as may be needed to examine and assess the discovery. Unless the remains were inadvertently removed, the evaluation will be conducted at the site of discovery. Other than for crime scene investigation, no excavation, examination, photographs, or analysis of Native American human remains or remains suspected of being Native American will be conducted or allowed by CEMVN archaeologists or any other professional without first consulting with the claimant Federally-recognized Tribes, whether they are Signatories to this PA or not. The consulting expert will be allowed to draw and measure the exposed remains and associated funerary objects. Drawings cannot be published in any form or shown as part of scholarly presentations without the written permission of the appropriate Tribes or next living descendant.

   ii. CEMVN, in consultation with LA SHPO, Federally-Recognized Tribes, and other affected parties, as appropriate, whether they are Signatories to this PA or not, will have seven (7) days to determine if the skeletal remains are human, the degree to which they were disturbed, and if possible, using reasonable measures to assess their potential age, cultural affiliation, and identity, without any further disturbance. Upon making a determination or at the end of the seven (7) days, whichever comes first, CEMVN will notify the appropriate affected parties of its findings. This notification will include pertinent information as to kinds of human remains, funerary objects, Native American sacred

objects, or Native American items of cultural patrimony discovered, their condition, and the circumstances of their inadvertent discovery.

iii. If the remains are determined NOT to be Native American in origin, CEMVN will follow the principals outlined in the 2007 ACHP "Policy Statement Regarding Treatment Of Burial Sites, Human Remains and Funerary Objects" to respectfully treat the remains and determine proper disposition, disinterment, re-interment, and memorialization, as well as any Real Estate guidance at the time of the discovery.

c. Initiating NAGPRA Consultation following Inadvertent Discoveries/Recovery of Human Remains from Federal Lands

i. For the purposes of notification and consultation of an inadvertent discovery, CEMVN considers the Consulting Tribes, and Federally-recognized Tribes who have identified the parish as an area of interest are likely to be culturally affiliated with inadvertently discovered NAGPRA items

ii. Upon certification of an inadvertent discovery of NAGPRA items by the responsible federal official, the CEMVN shall notify the consulting Federally-recognized Tribes. This notification will be made via email and telephone call to the appropriate consulting Tribes' Primary POC within twenty-four (24) hours, and include concurrent hard copy written notification, via regular mail. Notifications shall include a copy of the field documentation and a list of all other parties being notified.

iii. No later than three (3) days after the email and telephone notification, the consulting Federally-recognized Tribes and/or claimant Federally-recognized Tribe shall agree to a date and time for a teleconference to begin the consultation process.

d. Consultation for Inadvertent Discoveries//Recovery of Native American Human Remains from Federal Lands

i. Consultation will begin with the teleconference with all consulting Federally-recognized Tribes and/or claimant Federally-recognized Tribe. At this time both parties may determine that the cause of the inadvertent discovery is not on-going, that the location where the discovery occurred is secure (or can be secured), and that the NAGPRA items do not need to be removed.

ii. If all Consulting Parties participating in the consultation reach the same conclusion under X.A above, then the CEMVN will issue a written notice to all parties concluding that the location of the inadvertent discovery is secure and that the NAGPRA items will be left in place. If any Consulting Parties disagree with this assessment, then consultation will progress with all Consulting Parties including the signatories to this Agreement.

iii. If consensus is not attained, the CEMVN will notify, in writing, all consulting Federally-recognized Tribes of its intent to complete consultation with a written plan of action in accordance with 43 CFR § 10.5(e). The CEMVN will produce a NAGPRA plan of action which details the steps it will follow to complete the NAGPRA consultation process (43 CFR § 10.5(e)). This plan will contain a) a

list of all materials considered to be NAGPRA items, b) the planned treatment, care, and handling of the materials, c) any planned recording of the find location as an archaeological site, d) any analysis planned for the remains, e) and a description of any anticipated summary reports. CEMVN and the consulting Federally-recognized Tribes will create a template plan of action to be on file.

iv. Within thirty (30) days of receipt of notice to consult and the action plan, the consulting Federally-recognized Tribes agree to provide a summary response containing the names and contact info for any potential lineal descendants, recommendations on any topics that should be included in consultation, request for any additional consultation meetings, recommendations for any treatment actions for the location of the discovery, and a list of any items that should be considered as NAGPRA items. Submission of this report does not preclude on-going discussion on any of these topics as consultation progresses.

v. Based on the responses received, CEMVN may choose to update and resubmit the plan of action to all Consulting Parties, but at a minimum will notify all Consulting Parties in writing of its intent to implement the plan of action previously presented to the Consulting Parties.

vi. At the conclusion of implementation of the plan of action, CEMVN will provide all of the Consulting Parties, in writing, copies of the draft Notice of Intended Disposition, and will provide the Consulting Parties thirty (30) days to comment.

e. Process to Determine Disposition of Native American Human Remains from Federal Lands

i. Once the thirty (30) days has commenced after providing the Consulting Parties with the draft copy of the Notice of Intended Disposition, and considering all comments, CEMVN will publish the Notice of Intended Disposition in a newspaper of general circulation in the local area, and also in a newspaper of general circulation in the local area for the Tribes. Both notices will be published a second time, at least one week later.

ii. Copies of the Notice of Intended Disposition, as well as a description of when and where it was published, will be provided to the NPS, National NAGPRA program.

iii. CEMVN anticipates that during the notice period described above, discussions will begin with the appropriate claimant Federally-recognized Tribe/s regarding disposition. Disposition will generally take the form of a physical transfer of custody and reburial on CEMVN lands, or the claimant Federally-recognized Tribe(s) may choose to rebury privately once the Tribe assumes control over the NAGPRA items.

2. <u>Non-Federal Lands:</u> If human remains are recovered *from CPRA, state, or other private land*, CEMVN will require the outlined below:

a. Louisiana Statutes related to the discovery of human remains are found in the Unmarked Human Burial Sites Preservation Act (R.S. 8:671-681).

   i. https://www.crt.state.la.us/cultural-development/archaeology/CRM/cemeteries-burials/index

   ii. The Louisiana Division of Archaeology is the lead agency and will consult with CEMVN, Tribe(s), landowner(s), and descendants as appropriate to determine the necessary course of action.

b. If the human remains are determined to be Native American, CEMVN, in conjunction with the CPRA, will identify and secure a mutually agreeable reburial location in which to reinter the human remains removed from the project area. Other arrangements may defined at the time it is determined that Native American human remains have been recovered, but will include at a minimum:

   i. In person consultation with the parties outlined in X. 2. a. ii. regarding the human remains and any objects;

   ii. The identification of a reburial location as close to the disinterment location as feasible;

   iii. A commitment on the part of CEMVN to facilitate the reburial by an affiliated Tribe and to protect the human remains and associated grave goods, at no cost to the Federally-recognized Tribes, or LA SHPO.

   iv. Acknowledgment of the establishment of the cemetery in the administrative record and in the real estate records as determined best at time of reburial.

c. If the remains are determined NOT to be Native American in origin, CEMVN will follow the principals outlined in the 2007 ACHP "Policy Statement Regarding Treatment Of Burial Sites, Human Remains and Funerary Objects" to respectfully treat the remains and determine proper disposition, disinterment, re-interment, and memorialization, as well as any CEMVN real estate guidance at the time of the discovery.

XI. PROVISIONS FOR POST-REVIEW DISCOVERIES (NON-HUMAN REMAINS)

A. CEMVN is responsible for complying with 36 C.F.R. § 800.13(a) in the event of inadvertent discoveries of historic properties during implementation of the project. Discoveries of previously unidentified historic properties or unanticipated adverse effects to known historic properties are not anticipated; however if there is an inadvertent discovery or unanticipated effect, CEMVN will ensure that the following stipulations are met. These provisions will be included in all construction, operations, and maintenance plans and project managers will brief field personnel.

B. If previously unreported properties that may be eligible for nomination to the NRHP or that may be of significance to Federally-recognized Tribes, and/or, if unanticipated effects on historic properties are found during the construction phase, CEMVN will implement the provisions outlined below that are intended to ensure that the Undertaking is in compliance with all applicable federal and state laws and regulations, including Section 106 of the

NHPA:

C. If there is no reasonable expectation that the property contains human remains, funerary objects, Native American sacred objects, or Native American objects of cultural patrimony, all work within a fifty (50) meter (164 ft.) radius buffer zone must stop immediately. CEMVN will notify LA SHPO and Federally-recognized Tribes, as appropriate, as well as any other affected party, of the discovery, and implement interim measures to protect the discovery from theft and vandalism. Construction may continue outside the fifty (50) meter (164 ft.) radius buffer zone. Within seventy-two (72) hours of receipt of notification of the discovery, CEMVN, as appropriate, will:

   1. Inspect the work site to determine the extent of the discovery and ensure that work activities have halted within the fifty (50) meter (164 ft.) radius buffer zone;

   2. Clearly mark the area of the discovery;

   3. Implement additional measures, as appropriate, to protect the discovery from theft and vandalism; and

   4. Provide an initial assessment of the site's condition and eligibility to LA SHPO and appropriate Federally-recognized Tribes; and

   5. Notify other Consulting Parties, if applicable, of the discovery.

D. If CEMVN, in consultation with LA SHPO, Consulting Tribes, and other Consulting Parties, as appropriate, determines the site is either isolated, does not retain integrity sufficient for listing in the NRHP, or will not be further disturbed by construction activities, construction may resume within the fifty (50) meter (164 ft.) radius buffer zone.

E. If CEMVN determines that the site either is, or may be, eligible for inclusion in the NRHP, CEMVN will consult with LA SHPO, Consulting Tribes, and other Consulting Parties, as appropriate, regarding appropriate measures for site treatment pursuant to 36 C.F.R. § 800.6(a). LA SHPO and Tribes will have seven (7)-days to provide their objections or concurrence on the proposed actions. These measures may include:

   1. Formal archaeological evaluation of the site;

   2. Visits to the site by LA SHPO and/or Consulting Tribes;

   3. Exploration of potential alternatives to avoid the site;

   4. Preparation and implementation of a mitigation plan by CEMVN in consultation and concurrence with LA SHPO, Consulting Tribes, and other Consulting Parties, as appropriate.

F. The notified Consulting Parties will have seven (7)-days following notification to provide comment regarding CEMVN's determination of the NRHP eligibility of the discovery.

G. A report of findings describing the background history leading to and immediately following the reporting and resolution of an inadvertent discovery will be prepared by CEMVN within

thirty (30)-days of the resolution of each inadvertent discovery.

H. CEMVN will communicate the procedures to be observed with its contractors and personnel.

CEMVN will provide Notice to Proceed to the contractor to work in the area. Notices to Proceed may be issued by CEMVN for individual construction segments, defined by CEMVN in its construction specifications, after the identification and evaluation of historic properties has been completed.

XII. DISPUTE RESOLUTION

A. Should any Signatory, or Invited Signatory or Concurring Party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, CEMVN shall consult with such party to resolve the objection. If CEMVN determines that such objection cannot be resolved, CEMVN will forward all documentation relevant to the dispute, including the CEMVN's proposed resolution, to the ACHP. The ACHP shall provide CEMVN 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, CEMVN shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, Signatories, and Invited Signatories, and provide them with a copy of this written response. CEMVN will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, CEMVN may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, CEMVN shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatories and Invited Signatories to the Agreement, and provide them and the ACHP with a copy of such written response.

C. The CEMVN's responsibility to carry out all other actions pursuant to the terms of this Agreement that are not the subject of the dispute will remain unchanged.

XIII. SEVERABILITY AND TERMINATION

A. In the event any provision of this PA is deemed by a federal court to be contrary to, or in violation of, any applicable existing law or regulation of the United States of America, only the conflicting provision(s) shall be deemed null and void, and the remaining provisions of the PA shall remain in effect.

B. Any Signatory or Invited Signatory who signs this PA may terminate this PA by providing thirty (30)-days' written notice to the other Consulting Parties, provided that the Consulting Parties consult during this period to seek amendments or other actions that would prevent termination. If this PA is terminated, CEMVN shall comply with Section 106 through other applicable means pursuant to 36 CFR Part 800. Upon such termination, CEMVN shall provide ACHP, Signatories, Invited Signatories, and Concurring Parties written notice of the termination of this PA.

C. Any Invited Signatory or Concurring Party who has signed this PA may notify the other

Consulting Parties that it is fully withdrawing from participation in the PA. Following such a withdrawal, CEMVN shall review the activities within the Undertaking that may affect historic properties of religious and cultural significance to any Tribe in accordance with 36 CFR § 800. Withdrawal from this PA by a Concurring Party does not terminate the PA. A Concurring Party that has withdrawn from the PA may at any time notify ACHP, Signatories, Invited Signatories, and Concurring Parties in writing, that it has rescinded its notice to withdraw from participation in the PA.

D. This PA may be terminated by the implementation of a subsequent Agreement that explicitly terminates or supersedes this PA, or by CEMVN's implementation of Alternate Procedures, pursuant to 36 CFR § 800.14(a).

XIV. AMENDMENTS

A. If any Signatory or Invited Signatory who signs this PA determines that an amendment to the terms of this PA must be made, the Signatory or Invited Signatory shall consult to seek amendment in the following manner:

1. The Signatory or Invited Signatory shall submit a written request for amendment to CEMVN containing the proposed amendment.

2. Upon receipt of a request to amend this PA, CEMVN shall immediately notify the Signatories and Invited Signatories who have signed this PA and initiate a (30)-day period to consult on the proposed amendment, whereupon the Signatories and Invited Signatories shall consult to consider such amendments.
3. If agreement to the amendment cannot be reached within the (30)-day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation XII.

4. An amendment to this PA, exclusive of the appendices, shall be effective only when it has been signed by all the Signatories and Invited Signatories who have signed this PA. An amendment shall be effective for an Undertaking occurring on or affecting historic properties on Tribal lands only when the affected Tribe has signed the amended PA as an Invited Signatory. The terms of this PA shall not apply to an Undertaking on or affecting Tribal lands without prior execution of the Amended PA by the affected Tribes.

5. Amendments to this PA shall take effect on the date that they are fully executed by all Signatories and Invited Signatories who have signed this PA.

6. Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the Consulting Parties do not require the PA to be amended.

B. Modifications, additions, or deletions to the appendices may be made at the request of CEMVN or another Signatory or Invited Signatory who has signed this PA in the following manner:

1. CEMVN, on its own behalf, or on the behalf of another Signatory or Invited Signatory, shall notify all Signatories and Invited Signatories to this PA of the intent to add to or

modify the current Appendix or Appendices and shall provide a draft of the updated Appendix or Appendices to all Signatories and Invited Signatories who have signed this PA.

2. If no Signatory or Invited Signatory who has signed this PA objects in writing within (30)-days of receipt of CEMVN's proposed addition or modification, CEMVN shall date and sign the amended Appendix and provide a copy of the amended Appendix to all Signatories and Invited Signatories. Such an amendment shall go into effect on the date CEMVN transmits the amendment to the other Signatories and Invited Signatories or an alternative date provided by the terms of the amendment.

XV. DURATION

A. This PA shall expire ten (10) years from the date of its execution unless its term is extending through an amendment to that effect under Stipulation XVI or through its automatic extension as detailed below.

B. The term of this PA shall be automatically extended for an additional ten (10) years on midnight of the tenth anniversary of its execution if:

   a. Within one (1) year prior to the end of the original ten (10) year term, CEMVN provides written notification to all Signatories that the term of the PA will automatically extend for an additional ten (10) years absent a written objection from any of the Signatories before the end of the original ten (10) year term;

   b. CEMVN does not subsequently receive a written objection to such an extension from a Signatory before the end of the original ten (10) year term.

XVI. EXECUTION AND IMPLEMENTATION

A. This Agreement shall be executed in counterparts, with a separate page for each Signatory, Invited Signatory, and Concurring Party, and shall become effective on the date the agreement is signed by or filed with the ACHP.

B. CEMVN shall ensure that each Signatory and Invited Signatory is provided with an electronic (.pdf) of the PA including signatures. CEMVN shall provide electronic copies of additional executed signature pages to the Consulting Parties as they are received. CEMVN shall provide a complete copy of the PA with original signatures to any Signatory on request.

C. Execution of this Agreement and implementation of its terms is evidence that CEMVN has taken into account the effects of the Undertaking on historic properties and afforded ACHP an opportunity to comment on CEMVN's proposed actions for the STPFS.

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

U.S. Army Corps of Engineers, New Orleans District (CEMVN)

C. A. Jones

CULLEN A. JONES, P.E., PMP
Colonel, U.S. Army
District Commander

Date: 30/11/23

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

The Louisiana State Historic Preservation Officer

Kristin P. Sanders

Date: 12/1/2023

Kristin P. Sanders
Louisiana State Historic Preservation Officer

SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

U.S. Fish & Wildlife Service

BRETT HUNTER

Digitally signed by BRETT HUNTER
Date: 2024.02.15 15:09:47 -05'00'

Date: _____

Mike Oetker
For Regional Director, Southeast Region

INVITED SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

Louisiana Office of Coastal Protection and Restoration Authority

Gregory M. Grandy
Deputy Executive Director
Louisiana Coastal Protection and Restoration Authority

Date: 1/5/24

INVITED SIGNATORY PAGE

PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

The Choctaw Nation of Oklahoma

Nothing in this Agreement shall be construed to waive the sovereign rights and immunities of the Choctaw Nation of Oklahoma, its officers, employees, or agents.

_____ Date: _____

Gary Batton, Chief
Choctaw Nation of Oklahoma

CONCURRING PARTY SIGNATORY PAGE

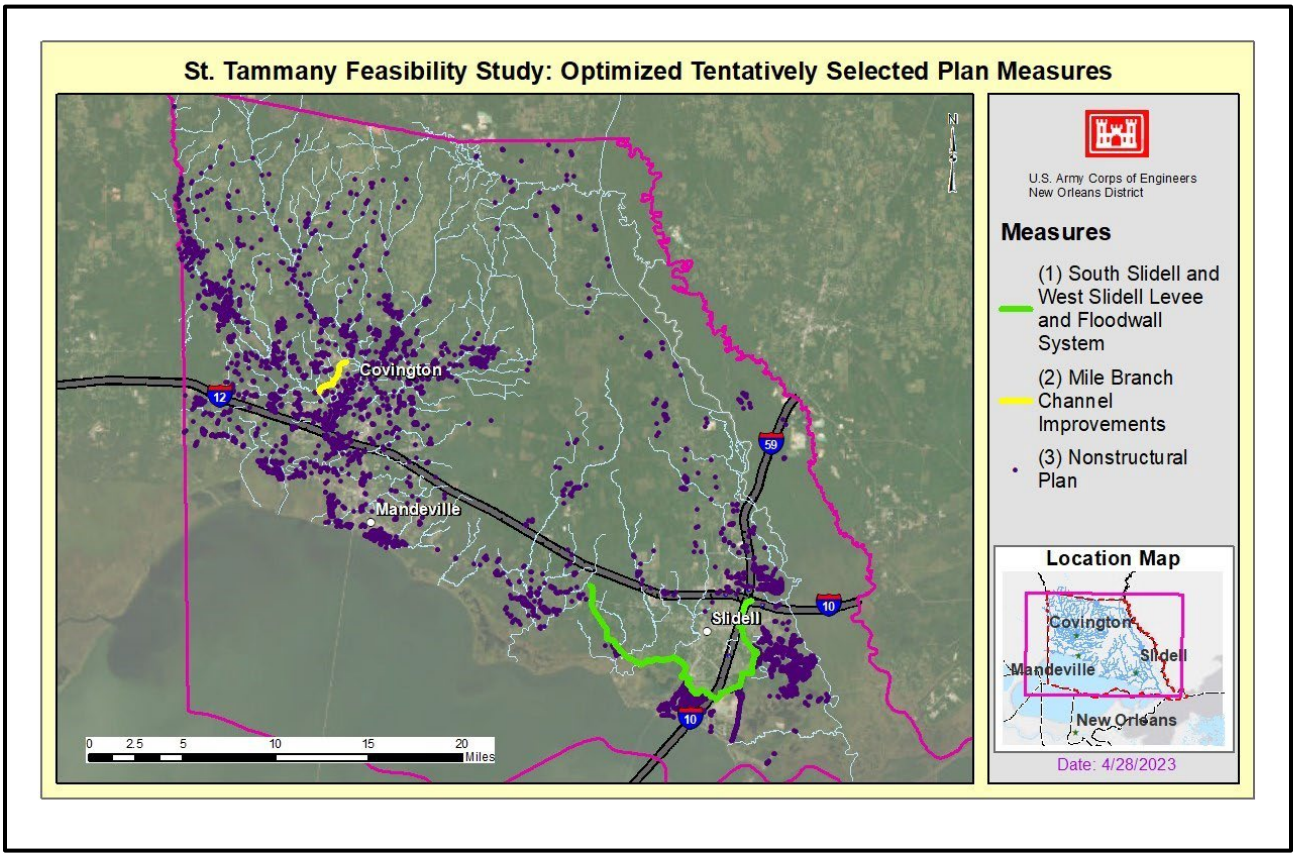
PROGRAMMATIC AGREEMENT
AMONG
THE U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT;
LOUISIANA STATE HISTORIC PRESERVATION OFFICER OF THE DEPARTMENT OF CULTURE, RECREATION & TOURISM; THE U.S. FISH AND WILDLIFE SERVICE;
LOUISIANA COASTAL PROTECTION AND RESTORATION AUTHORITY; AND
THE CHOCTAW NATION OF OKLAHOMA
REGARDING
THE ST. TAMMANY PARISH, LOUISIANA FLOOD RISK REDUCTION PROJECT

Certified Local Government of the City of Slidell

_____ Date: _____

Blaine Clancy
City Engineer
City of Slidell

Appendix A: Optimized Tentatively Selected Plan (TSP)



Appendix B: Point of Contacts (POC) List

Primary Contact	Secondary Contact
Advisory Council on Historic Preservation Mr. Christopher Daniel Program Analyst Advisory Council on Historic Preservation 401 F Street NW, Suite 308 Washington DC 20001-2637 Telephone: (202) 517-0223 E-mail: cdaniel@achp.gov	**Advisory Council on Historic Preservation** Mr. Reid Nelson, Chairman Office of Federal Agency Programs Advisory Council on Historic Preservation 401 F. Street NW, Suite 308 Washington, DC 20001-2637 Telephone: (202) 517-0228 E-mail: rnelson@achp.gov
Alabama-Coushatta Tribe of Texas Mr. Bryant Celestine Historic Preservation Officer Alabama-Coushatta Tribe of Texas 571 State Park Rd. 56 Livingston, TX 77351 Telephone: (936) 563-1181 E-mail: celestine.bryant@actribe.org	**Alabama-Coushatta Tribe of Texas** Ms. Cecilia Flores Chairwoman Alabama-Coushatta Tribe of Texas 571 State Park Rd. 56 Livingston, TX 77351 Telephone: (936) 563-1181 E-mail: histpres@actribe.org
Choctaw Nation of Oklahoma Ms. Lindsey Bilyeu, MS Program Coordinator 2 Historic Preservation Department Choctaw Nation of Oklahoma Telephone: (580) 642-8377 E-mail: lbilyeu@choctawnation.com Dr. Ian Thomson Tribal Historic Preservation Office Historic Preservation Department Choctaw Nation of Oklahoma P.O. Box 1210 Durant, OK 74702 Telephone: (580) 642-7981 E-mail: ithompson@choctawnation.com	**Choctaw Nation of Oklahoma** Chief Gary Batton Choctaw Nation of Oklahoma Attn: Choctaw Nation Historic Preservation Department P.O. Box 1210 Durant, OK 74702-1210 Telephone: (800) 522-6170 E-mail: gbatton@choctawnation.com
City of Slidell Mr. Blaine Clancy City Engineer City of Slidell 250 Bouscaren St, Ste 203 Slidell, LA 70458 Telephone: (985) 646-4320 E-mail: bclancy@cityofslidell.org	**City of Slidell** Christi Lambertson Asst. Director of Engineering City of Slidell 250 Bouscaren St, Ste 301 Slidell, LA 70458 Telephone: (985) 646-4270 E-mail: clambertson@cityofslidell.org
Coastal Protection and Restoration Authority	**Coastal Protection and Restoration Authority**

Primary Contact	Secondary Contact
Ms. Elizabeth Davoli Coastal Resources Scientist Manager Planning and Research Division Coastal Protection and Restoration Authority The Water Campus 150 Terrace Avenue Baton Rouge, LA 70802 Telephone: (225) 342-4616 E-mail: elizabeth.davoli@la.gov	Ms. Michelle Felterman Coastal Resources Scientist Supervisor Planning and Research Division Coastal Protection and Restoration Authority The Water Campus 150 Terrace Avenue Baton Rouge, LA 70802 Telephone: (225) 342-4629 E-mail: michelle.felterman@la.gov
Coushatta Tribe of Louisiana Mr. Kristian Poncho Secretary-Treasurer & THPO Coushatta Tribe of Louisiana 1940 C.C. Bell Road Elton, LA 70532 Telephone: (337) 584-1567 E-mail: kponcho@coushatta.org Ms. Kassie Dawsey Section 106 Coordinator Coushatta Heritage Department E-mail: khenry@coushattatribela.org	**Coushatta Tribe of Louisiana** Chairman Jonathan Cernek Coushatta Tribe of Louisiana 1940 C.C. Bell Road Elton, LA 70532 Telephone: (337) 584-2998
Jena Band of Choctaw Indians Ms. Johnna Flynn Cultural Department Jena Band of Choctaw Indians P.O. Box 14 Jena, LA 71342 Telephone: (318) 992-1205 E-mail: jflynn@jenachoctaw.org	**Jena Band of Choctaw Indians** Honorable B. Cheryl Smith Chief Jena Band of Choctaw Indians 1052 Chanaha Hina Street Trout, LA 71371 Telephone: (318) 992-2717 E-mail: chief@jenachoctaw.org
Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism Dr. Charles “Chip” McGimsey State Archaeologist and Director Division of Archaeology P.O. Box 44247 Baton Rouge, LA 70804-4241 Telephone: (225) 219-4598 E-mail: cmcgimsey@crt.la.gov	**Louisiana State Historic Preservation Officer of the Department of Culture, Recreation & Tourism** Ms. Nicole Hobson-Morris Executive Director Division of Historic Preservation P.O. Box 44247 Baton Rouge, LA 70804-4241 Telephone: (225) 342-8172 E-mail: nmorris@crt.la.gov
Mississippi Band of Choctaw Indians Ms. Melanie Carson Acting THPO Mississippi Band of Choctaw Indians	**Mississippi Band of Choctaw Indians** Chief Cyrus Ben Mississippi Band of Choctaw Indians 101 Industrial Road

Primary Contact	Secondary Contact
MBCI Planning Office 101 Industrial Road Choctaw, MS 39350 Telephone: (601) 650-7316 E-mail: mcarson@choctaw.org	Choctaw, MS 39350 Telephone: (601) 656-5251 E-mail: thpo@choctaw.org
Tunica-Biloxi Tribe of Louisiana Mr. Earl J. Barbry, Jr. THPO Tunica-Biloxi Tribe of Louisiana P.O. Box 1589 Marksville, LA 71351 Telephone: (318) 253-8174 x 6451 E-mail: earlii@tunica.org	**Tunica-Biloxi Tribe of Louisiana** Vice-Chairman Marshall Pierite Tunica-Biloxi Tribe of Louisiana 151 Melancon Drive Marksville, LA 71351 Telephone: (318) 253-1946 E-mail: joeypbarbry@tunica.org
U.S. Fish and Wildlife Service Rick Kanaski Regional Archaeologist U.S. Fish and Wildlife Service 694 Beech Hill Lane Hardeeville, SC 29927 Telephone: (912) 257-5434 E-mail: richard_kanaksi@fws.gov Neil LaLonde Project Leader Southeast Louisiana Refuges Complex U.S. Fish and Wildlife Service 61389 LA Hwy 434 Lacombe, LA 70445 Telephone: (985) 882-2003 E-mail: neil_lalonde@fws.gov	**U.S. Fish and Wildlife Service** Haley Messer Staff Archaeologist U.S. Fish and Wildlife Service 694 Beech Hill Lane Hardeeville, SC 29927 Telephone: (470) 597-1906 E-mail: haley_messer@fws.gov Jimmy Laurent Refuge Manager Big Branch NWR U.S. Fish and Wildlife Service 61389 LA Hwy 434 Lacombe, LA 70445 Telephone: (985) 882-2031 E-mail: jimmy_laurent@fws.gov

Appendix C: STPFS Eligible Nonstructural Activities & Actions

The STPFS program eligible nonstructural activities and actions include the below measures. This actions list is meant to be illustrative in nature and shall not be regarded as all-inclusive or disqualify future actions and/or actions not considered in this appendix from being eligible for CEMVN funding.

ELEVATION

Physically raising an existing structure to an elevation to the 100-year base flood elevation (BFE) based on year 2082 hydrology or higher if required by CEMVN or local ordinance. Foundations must be designed to properly address all loads and effects, be appropriately connected to the floor structure above, and utilities must be properly elevated.

Applicability

Residential

Actions

1. Elevation on piers, posts, columns, or piles;
2. Elevation on continuous foundation walls;
3. Elevation of reinforced slab;
4. Slab separation;
5. Pouring new reinforced slab;
6. Elevation on fill (compacted);
7. Second story conversion/attic build-out;
8. Establishment of staging areas.

DRY FLOODPROOFING

Techniques applied to keep non-residential structures watertight below the BFE. Dry floodproofing will be completed on eligible structures at or below three feet (0.9 m) depth.

Applicability

Non-Residential
Residential for historic structures only

Actions

1. Using waterproof membranes or sealants to reduce seepage of floodwater through walls and wall penetrations;
2. Use of watertight shields for doors and windows;
3. Reinforcing walls to withstand floodwater pressure and impact forces generated by floating debris;
4. Anchoring the structure to resist flotation, collapse, and lateral movement;
5. Installing drainage collection systems and sump pumps to prevent sewer backup, control the interior water level, or reduce hydrostatic pressure on the slab and walls;
6. Bracing of walls to address hydrostatic and hydrodynamic forces;
7. Installing removable/permanent flood panels;
8. Establishment of staging area

Appendix D: Programmatic Allowances

The STPFS program eligible nonstructural activities and actions include the below measures. This actions list is meant to be illustrative in nature and shall not be regarded as all-inclusive or disqualify future actions and/or actions not considered in this appendix from being eligible for CEMVN funding.

CEMVN has determined, in consultation with the other Consulting Parties, that the Programmatic Allowances (Allowances) enumerated below will have either no effect or a minimal effect only on historic properties, if implemented as specified in this Appendix. It is agreed by the Consulting Parties that the activities specified in the Allowances will not require review by the LA SHPO or Federally-recognized Tribe(s). Should a post-review discovery, or discovery of human remains occur, work must stop and compliance with Stipulations X and XI is required.

Allowances can only be used by staff meeting the applicable SOI *Professional Qualifications Standards* in accordance with Stipulation VI of this Agreement. In accordance with Stipulation VII.A, an Undertaking composed entirely of work described by the Allowances do not require further Section 106 review.

When referenced in an Allowance "previously disturbed areas" shall mean the following: alterations to the soil such that the property and associated stratification no longer has the potential to yield specific data from the past.

This list may be revised without amending this PA by a letter concurred with by CEMVN, LA SHPO, and Participating Tribes.

I. **GROUND DISTURBING ACTIVITIES AND SITE WORK.** Project review should take into account the entirety of the proposed activities including staging, site access, site cleanup, and possible site work (e.g., grading for positive drainage, vegetation removal), and excavation of borrow material as potential ground-disturbing activities. If the project ground disturbance is limited to within 3 feet (0.9 m) of the existing built resource and no known eligible or unassessed site is within the footprint and/or APE, the Allowance may be applied as documented by CEMVN to the project file. If a potential ground-disturbing activity including staging, site access, site cleanup, and site work falls within a cemetery, known NRHP eligible or unassessed archaeological site, and/or where there are unexpected finds, standard Project Review will apply. "Replacement" as noted in this allowance applies to non-historic features only.

   A. Ground-disturbing activities related to the repair, replacement, reinforcing or pouring of footings, foundations, and retaining walls, if related ground disturbing activities are substantially within 3 feet (0.9 m) of the existing structure and do not require pile driving.

   B. In kind repair or replacement of landscaping and utilities, such as planters, trellises, irrigation, exterior lighting, signs (e.g., freestanding facility signage), retaining walls, ramps, and steps. This allowance also includes decks. Minor mitigation measures (e.g., addition of new safety anchors) will be covered by this Allowance.

   C. In kind repair or replacement of walkways, paths, trails, driveways, and parking areas.

D. Removal of debris from private property, including leaning trees and hanging branches, provided that structures are not affected, ground disturbance is limited to surface scraping, and in-ground elements, such as driveways, walkways or swimming pools, are left in place.

E. Installation of scaffolding and temporary barriers (e.g., chain link fences), provided such work will not result in additional damage, irreversible alterations, significant loss of historic fabric, or substantial ground disturbance.

F. In kind repair or replacement of fencing and freestanding exterior walls.

G. Non-destructive or concealed testing for hazardous materials (e.g., lead paint, asbestos, etc.) or for assessment of hidden damages.

II. BUILT RESOURCES. Project review should take into account the entirety of the proposed activities including staging, site access, site cleanup, and possible site work (e.g., grading for positive drainage, vegetation removal), and excavation of borrow material as potential ground-disturbing activities.

A. Installation of temporary stabilization, bracing, or shoring provided such work does not result in significant loss of historic fabric, or irreversible alterations to this or adjacent areas.

B. Bracing and reinforcing of walls, chimneys, and fireplaces provided the bracing and reinforcing are either concealed from exterior view or removable in the future.

C. Strengthening and reinforcing of foundations provided that any visible new material is compatible with existing structures and the site, and no ground disturbance is required.

D. Bracing and anchoring of walls and/or foundations to address hydrostatic and hydrodynamic forces, provided the work is concealed from exterior view and if required, mortar repair and/or any disturbed historic fabric is restored in kind, and no ground disturbance is required.

E. Strengthening of entry doors and bracing of garage doors provided they do not result in altering the existing door form and appearance.

F. Replacement of exterior, utilitarian, non-character-defining metal doors and frames leading into non-character-defining spaces with flood resistant doors and frames.

G. Elevation of building contents including furniture, partitions, computers, cabinetry, supplies, and equipment and any other moveable items. This Allowance does not apply to built-in features.

H. Replacement of damaged plaster and lath with drywall or other flood-resistant wall treatment where the plaster is a non-character-defining detail, excluding properties eligible or individually listed in the NRHP or contributing to NHL historic districts.

I. Cleaning, repair, or repainting of surfaces, in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the CPRA

or sub-recipient, or by a photograph/site visit) providing that the building is not adjacent to or on a NRHP eligible or listed building or structure or within the viewshed of a NRHP eligible or listed historic district.

J. Cleaning, repair, or repainting of surfaces, provided that destructive surface cleaning and preparation treatments are not used (e.g., water blasting, sandblasting, power sanding, chemical cleaning). Surface treatments must comply with the treatment approaches outlined in Preservation Brief 6: *Dangers of Abrasive Cleaning to Historic Buildings* (https://www.nps.gov/tps/how-to-preserve/briefs/6-dangers-abrasive-cleaning.htm).

K. Reconstruction of concrete and masonry walls, columns, parapets, chimneys, or cornices, using compatible brick and mortar following the SOI *Standards for Rehabilitation*.

L. Caulking and weather-stripping to complement the color of adjacent surfaces or sealant materials.

M. In kind replacement or installation of insulation systems, provided that existing interior plaster, woodwork, or exterior siding is not altered. The Allowance does not apply to urea formaldehyde foam insulation or any other thermal insulation containing water, when installed within wall cavities. It does not apply to exterior insulation finishing systems that do not include an adequate vapor and moisture drainage system, or work in enclosed spaces that are not finished.

N. Sealing a building or installing flood panels in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the CPRA or sub-recipient, or by a photograph/site visit) to make it watertight or impermeable to floodwaters. This allowance does not apply to the use of liquid sealants as water repellants on masonry buildings unless the sealant is vapor permeable.

O. Installation of removable flood barriers for doors and windows above ground only in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the CPRA or sub-recipient, or by a photograph/site visit).

P. Providing openings and installation of flood-resistant materials above ground only in a building that is less than forty-five (45)-years of age (construction date as noted in the project documentation, or by the CPRA or sub-recipient, or by a photograph/site visit).

Q. Installation of backflow valves, pumping systems (e.g., sump pumps), and/or perimeter drainage for structures around foundations and footings, to allow for proper site drainage except when located within or immediately adjacent to NRHP eligible or unassessed archaeological sites. This allowance excludes individually listed NRHP properties or contributing properties to NRHP eligible or listed historic districts.

R. The following retrofits, provided that such retrofits are not visible on the exterior or within character-defining historic interiors: modifications to non-character defining structural elements; cross bracing on pier and post foundations; installation of plywood diaphragms beneath first floor joists, anchoring of fuel tanks; installation of automatic

gas shut off valves; concealed anchoring of furniture and/or bracing of building contents.

S. Retrofit or replacement of metal utilitarian structures (e.g., pump houses, storage buildings) less than forty-five (45)-years old (construction date as noted in the project documentation, or by the CPRA or sub-recipient, or by a photograph/site visit). Modern materials may be used provided their finish is compatible with existing structures and the site.

T. Minor interior and/or exterior modifications required for compliance with the Americans with Disabilities Act (ADA).

III. Utilities, Mechanical, and Electrical Systems

Utilities, Mechanical, and Electrical Systems are limited to distribution and collection systems for water, electricity, gas, and communications, including sewer, water, drains, electrical service and distribution, gas, communications, leaching systems, cess pools, and septic tanks, when proposed repair and replacement activities occur within previously disturbed soils as determined by "Qualified Staff" following a review of existing documentation and/or verified through a site visit. Any proposed new or upgraded construction outside of the previously disturbed soils, including associated features and structures, are limited to archaeologically surveyed areas and not in a known NRHP eligible or unassessed archaeological site.

A. Repair, replacement, or hardening of utilities within previously disturbed rights-of-way, and utilities in existing utility right-of-ways (including sewer, water, drains, electric service or distribution, gas, communications, leaching systems, cesspools, and septic tanks), and for repair, replacement, or hardening of above ground utilities where they are set in or immediately adjacent to their previous location.

B. Minor utility system work, including mechanical (e.g., HVAC), electrical, or plumbing work, which is limited to upgrading, or in kind replacement. Historic fixtures, grilles, etc., where exposed to view, shall be in kind for the Allowance to apply. The Allowance shall not apply to installation of new exposed ductwork on individually listed NRHP properties or contributing properties to NRHP eligible or listed historic districts.

C. Elevation of HVAC, electrical (e.g., electrical panels, switch boards), and mechanical equipment (e.g., generators, washers and dryers, and hot water heaters, and pumping equipment) providing they are placed or located where not highly visible from the street, or if installation does not result in significant loss of historic fabric, or character-defining details.

D. Installation of generators and similar devices within previously disturbed soils that are not adjacent to or on a NRHP eligible or listed building or structure or within the viewshed of a NRHP eligible or listed district.

E. Installation of early warning devices on existing utility poles on other existing utilities.

F. Directional boring of new/replacement service line and related appurtenances within existing rights-of-way or utility corridors.

IV. Piers, Docks, Boardwalks, and Boat Ramps

A. Minor elevation and/or upgrades such as, codes and standards, to existing piers, docks, boardwalks, and/or boat ramps, when placed in the existing footprint.

V. Temporary Buildings or Structures

A. Installation of temporary buildings or structures for uses such as offices, classrooms, medical facilities, except when located in historic districts or within or immediately adjacent to NRHP eligible or unassessed archaeological sites.

B. Removal of temporary buildings or structures provided that CEMVN confirms that no eligible or unassessed archaeological site(s) was identified on the property during the installation of the temporary structure(s).

VI. Fees and Services, shall be based upon:

a. Rental or purchase of vehicles or other motorized equipment.

b. Builder's fees and dumpster rental.

c. Fees for architectural and engineering or other design services provided the services shall not result in an adverse effect on a NRHP listed in or eligible property.

d. Fees including but not limited to costs of obtaining all required permits (e.g., zoning or land use approvals, environmental permits or other required certifications, Certificates of Appropriateness, and/or building permits), costs of title searches, surveys, appraisal fees, and state and local applicable tax.

Appendix E: Treatment Measures

As provided in Stipulation VII. B. 7, if an Undertaking may adversely affect a historic property, CEMVN may propose to resolve the adverse effect through the application of one or more of the Treatment Measures (TMs) set out below. The selected measures will be developed by CEMVN after discussions with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, and shall be documented in writing in a Treatment Plan. CEMVN shall provide LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, with the opportunity to concur on the proposed TMs as set out in Stipulation VII. B. 7. a. iii.

The Treatment Plan shall identify, at a minimum and as appropriate: the responsible party/entity that will implement and complete each TM; the scope of work and the standards that will apply to the preparation and distribution of a deliverable; the deliverable(s) (e.g. the quantity, approximate size, materials, content, final ownership/copyrights); measures to ensure that any TM documenting the condition of or requiring the data recovery on the historic property is implemented before the property is adversely affected; any professional qualifications that will be required to prepare deliverable(s) described in the TM(s); the repositories and/or parties that will receive copies of a deliverable and the disposition of any deliverable that is not curated; points when CEMVN, CPRA, agent or contractor, LA SHPO/THPO, and/or Tribes, and other Consulting Parties, as appropriate, will be given the opportunity to review and comment on the deliverable; and timeframes for each review and deliverable.

CEMVN shall provide written notice to LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, within sixty (60)-days of the completion of the TMs as required by Stipulation VII. B. 7. CEMVN shall include information pertaining to the progress of and completion of all TMs in the annual report pursuant to Stipulation III. A. 10. CEMVN Roles and Responsibilities.

Any dispute regarding the implementation of a Treatment Plan will be resolved following the process set out in Stipulation XII, Dispute Resolution.

This Appendix may be amended in accordance with the process set out in Stipulation XIV B. of this Agreement for amending appendices.

List of Treatment Measures:

I. **DESIGN REVIEW:** The purpose of this TM is to determine if there are feasible alternatives that may avoid or minimize potential adverse effects to historic properties. Avoidance and minimization of adverse effects shall be dependent on the type of historic property (e.g., archaeological site vs. historic structure) and the type of adverse effect. CEMVN anticipates that it will identify work items that may cause an adverse effect during the review of a project, or at an early stage of project planning, when the design has not been fully developed. The implementation of this TM will allow CEMVN, in consultation with LA SHPO, Tribes, and other Consulting Parties, as appropriate, to continue with plan development, and allows CEMVN and Consulting Parties the potential to influence the design. CEMVN may include this TM with other measures that are intended to mitigate any adverse effects that cannot be avoided or minimized.

   A. CEMVN shall consider ways to resolve adverse effects to a historic property by assessing feasible alternatives and/or determining if avoidance of the historic property

is feasible through redesign of the project and/or specific project elements that are causing the adverse effect.

B. If avoidance is not feasible or practical, CEMVN then shall look for ways to minimize the adverse effect to a historic property. Minimizing the adverse effect could include shifting specific project elements away from the historic property to lessen the adverse effect (e.g., buffering) and/or, considering ways to revise the scope of the project to substantially conform to the “Standards” as described in Stipulation VI. A. 2.

C. CEMVN shall provide a written assessment of any alternatives, avoidance, and/or minimization measures considered along with sufficiently developed plans to LA SHPO, Tribes, and or Consulting Parties, as appropriate, for a fifteen (15)-day review and comment period. Protective measures may be further developed in consultation with stakeholders on a case-by-case basis to avoid or minimize adverse effects.

D. Following the fifteen (15)-day review period CEMVN shall consider all comments, and if the scope of the project can be substantially revised to avoid the adverse effects, or the Undertaking no longer affects the character defining features of a historic property, CEMVN shall make a determination of “No Adverse Effect”; describe any project specific conditions; and provide supporting documentation pursuant to 36 CFR §800.11(e). Unless a Consulting Party makes a timely objection in accordance with the applicable timeframe outlined in Stipulation V. B., then design review is complete and CEMVN shall proceed with its "No Adverse Effect" determination, including any conditions, and conclude the Section 106 review and CEMVN is not required to carry out any additional TMs that may have been identified to offset the potential adverse effect.

E. Should avoidance or minimization of the adverse effect not be feasible, in whole or in part, or if the adverse effect is determined to be in the best interest of the public and unavoidable, CEMVN shall continue consultation LA SHPO, Tribes, and or Consulting Parties, as appropriate, in accordance with Stipulation VII. B. 6. a. and the following TMs outlined below are suggested for the resolution of adverse effects.

II. PHOTOGRAPHIC RECORDATION: CEMVN, in consultation with LA SHPO, Tribe(s), the CPRA, and other Consulting Parties, will select the photographic medium or mediums from the options described below and identify a list of photographs that will serve to document the historic property that will be adversely affected by an Undertaking. Photographic images may include existing drawings and plans. If the Consulting Parties determine that it is in the public interest to document a property through the preparation of measured drawings, CEMVN will initiate consultation to develop a project-specific MOA.

A. **Recordation for Standing Structures (Flexible Standards):** The responsible entity will ensure that a trained professional photographs the exterior and/or interior, if it is accessible, in the selected photographic format(s) with an emphasis on documenting those portions of the exterior and/or interior that will be altered. The trained professional will take photographs of the views identified by CEMVN, in consultation with the CPRA, agent or contractor, LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, and will print specifically identified images:

1. Digital Photography: The digital photography and color photographs must comply with the "Best" category of requirements from the NRHP Photo Policy Fact Sheet: http://www.nps.gov/nr/publications/bulletins/photopolicy/Photo_Policy_update_2013_05_15.pdf, with the following additional requirements:

    - Image files must be saved as both TIFF and JPEG files.

    - Color images must be produced in RGB (Red/Green/Blue) color mode as 24-bit or 48-bit color files.

    - In addition to the requirements specified by the latest National Register Photo Policy, photographs will be digitally labeled to state the address (name of facility, street number, street name, city, and state); date of photograph; description of view, including direction of camera; and name of photographer/agency.

2. 35mm Black/White and Color Photography: Photographs must be taken with a 35MM SLR Camera or a 35 MM point-and-shoot camera using 35 MM black/white or color film. Photographs taken with disposable cameras are not acceptable.

    - The 35 mm film black/white or color film photography package will include one (1) full set of 35mm film black/white or color photographs printed on acid free paper specifically designed for color prints, the corresponding 35mm film negatives in acid free sleeves.

    - Photographs will be labeled in pencil on the back to state the address, name of facility, street number, street name, city, and state; date of photograph; description of view, including direction of camera; and name of photographer/agency.

3. Large Format Photography: Photographs must be taken with a large-format view camera with ample movement for perspective correction. The minimal complement of lenses includes a sharp rectilinear wide angle, a normal, and a mildly telephoto lens.

    - Acceptable film formats are 4x5, 5x7, and 8x10. Acceptable polyester-based films include those of medium and slow speed (100 and 400 ASA) produced by Kodak, Ilford, and others.

    - The large format film photography package will include one (1) full set of 4 x 5 or 5 x 7-inch photographs printed on acid free paper, the corresponding 4 x 5 or 5 x 7-inch negatives in acid free sleeves.

    - Photographs will be labeled in pencil on the back to state the address name of facility, street number, street name, city, and state; date of photograph; description of view, including direction of camera; and name of photographer/agency.

4. Video: A video documentary regarding the historic property may include on-camera interviews, archival footage and/or images, current footage of the historic property, and current footage of other similar historic properties. The content and length of the video will be described in the TM.

5. Narrative History: A narrative history may be prepared to provide a context for the photographs following the Historic American Building Survey (HABS) Historical Reports: Short or Outline format.

6. Recordation Package: The recordation package will include a photo log, printed copies of selected photographs, digital copies of photographs, and may include a narrative history. The recordation package may include reproductions of historic photographs, existing building plans, contemporary sketch plans, and/or maps. All materials will be packaged in archival sleeves and boxes. Archival disks will be used for all digital materials.

7. Review: The responsible entity may informally consult with CEMVN and LA SHPO, and/or Tribe(s) to select photographs and other images that will be included in the recordation materials. The process to review and finalize the photographs and other images will be described in the TM.

8. Distribution: The responsible entity will prepare a minimum of three archival quality copies of the recordation materials and will forward two copies to LA SHPO and one copy to the CEMVN, Office of History, Humpreys Engineer Center. In consultation with the CPRA, LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, the responsible entity may identify additional archives and/or parties that will receive copies of the recordation materials. The responsible entity will provide CEMVN with documentation confirming that the recordation materials have been archived as described in the TM.

B. **Recordation for Standing Structures (Established Standards):** The Treatment Plan will document the proposed Level and Standard that will be most appropriate to capturing the significance of the historic property prior to alteration and define the responsible entity. Choices will be made between the NPS Heritage Documentation Programs: Historic American Building Standards (HABS), Historic American Engineering Standards (HAER); or Historic American Landscape Standards (HALS) at Level III, Level II or Level I. During the development of the Treatment Plan, CEMVN will coordinate with the NPS, LA SHPO, Tribe(s), as necessary, to make the selection. For any project requiring recordation to any of these standards, CEMVN will ensure that a trained professional photographs the exterior and/or interior, if it is accessible, in the selected standard with an emphasis on documenting those portions of the historic property that will be altered or demolished. The trained professional will take photographs of the views identified by CEMVN, in consultation with the CPRA, LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, and will print specifically identified images and produce the required historical narrative.

III. PUBLIC INTERPRETATION: CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to design an educational or public interpretive plan. The educational or public interpretive plan may include historical markers,

signs, displays, educational pamphlets, websites, workshops, videos, and other similar mechanisms to educate the public on historic properties within the local community, state, or region. In certain instances, LA SHPO may request that the proposed historical marker conform to the requirements of the Louisiana Historical Marker Program, in the Department of Culture, Recreation, and Tourism, and request that the CPRA apply to state programs to provide for a uniform interpretive program.

IV. **HISTORICAL CONTEXT STATEMENTS:** CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate to identify the topic, audience, framework of a historic context statement, and format for the final deliverable. The context statement may focus on an individual property, a historic district, a set of related properties, or relevant themes as identified in the specific statewide preservation plan or the NPS National Historic Landmark Thematic Framework.

V. **ORAL HISTORY DOCUMENTATION:** CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to identify the list of potential interview candidates; the parameters of the oral history project; qualifications of the individual or individuals conducting the oral interviews; the process for any ongoing coordination with the appropriate LA SHPO and relevant Tribe(s); and format for the final deliverable.

VI. **HISTORIC PROPERTY INVENTORY:** CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to establish the appropriate level of effort to accomplish an inventory/re-inventory. Efforts may be directed towards the resurvey of previously designated historic properties, per 36 CFR 800.16(l), which have undergone change or lack sufficient documentation, or the survey of new historic properties and/or districts that lack formal designation. The proposed TM will describe the boundaries of the survey area and the data collection method in keeping with LA SHPO's guidance for surveys.

VII. **NATIONAL REGISTER AND NATIONAL HISTORIC LANDMARK NOMINATIONS:** CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to identify the individual properties that would benefit from a completed NRHP or NHL nomination form. Once the Consulting Parties have agreed to a property, the responsible entity will continue to coordinate with CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, through the drafting of the NRHP nomination form or will contact the NHL Program to begin the nomination process. LA SHPO and/or Tribe(s) will provide adequate guidance to the responsible entity during the preparation of the nomination form. The responsible entity will work with LA SHPO to ensure the completed NRHP form is presented to the National Register Review Committee in a timely manner for consideration by LA SHPO and the Keeper of the Register.

VIII. **GEO-REFERENCES OF HISTORICAL MAPS AND AERIAL PHOTOGRAPHS:** CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to identify the historical maps and/or aerial photographs for scanning and geo-referencing. Once a list of maps and/or aerial photographs have been agreed upon, the responsible entity will continue to coordinate with CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, through the scanning and geo-referencing process and will submit drafts of paper maps and electronic files to CEMVN, LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, for review. The final

deliverable produced by the responsible entity will include a 1) paper copy of each scanned image, 2) a geo-referenced copy of each scanned image, 3) original high-resolution digital image of map/aerial photograph in TIFF file format, 4) copies of the user agreements for every geo-referenced image with transferability of use to all parties, 5) a process report outlining the research, and 6) the metadata relating to both the original creation of the paper maps and the digitization process.

IX. ARCHAEOLOGICAL RESEARCH DESIGN AND DATA RECOVERY PLAN: CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to recover data from archaeological properties listed in, or eligible for listing in the NRHP, which will be adversely affected by ground-disturbing activities that are part of the Undertaking. The research design and data recovery plan will be consistent with the SOI's Guidelines for Archaeological Documentation and ACHP's recommendations on the recovery of significant information from archaeological sites. All work shall conform to the most current LA SHPO guidelines as augmented by Tribal or other local guidelines, as provided in Stipulation VI. Standards, and, if applicable, Stipulation X. Treatment of Human Remains and Items of Religious and Cultural Importance.

X. SALVAGE: The CPRA shall work with CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to identify selective architectural elements that may be salvaged from a built resource slated for demolition. The elements will be removed at the agent or contractor's expense. The salvaged elements may be re-used in another resource or in displays for educational purposes. As an alternative, the agent or contractor, in consultation with CEMVN, CPRA, LA SHPO, and/or Tribe(s), and other Consulting Parties, will attempt to identify a private or public not-for-profit local or regional historic preservation organization interested in receiving a donation of the architectural features. The organization may sell the architectural features to the general public for the specific purpose of raising funds to support future historic preservation activities in the region. Any income derived by the agent or contractor from the sale of architectural features may be considered project income by the program to be deducted from proceeds of the grant. Salvage activities shall not occur at or below grade in order to avoid affecting unevaluated archaeological resources.

XI. VIBRATION MONITORING: CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to develop and implement a feasible vibratory reduction strategy. The plan will follow the best practices outlined in NCHRP 25- 25, *Current Practices to Address Construction Vibration and Potential Effects to Historic Buildings Adjacent to Transportation Projects* (2012) (https://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25(72)_FR.pdf) or similar. Generalized steps include:

- Consultation between the historic building owner, Project Delivery Team, and reviewing agencies, such as LA SHPO and local planning departments, to identify potential risks, negotiate changes, and agreement on protective measures;
- Documentation of the condition of the historic building prior to commencement of adjacent work, including a detailed photo survey of existing damage as specified in the particular treatment plan;
- Establishment of vibration limits not to be exceeded based on condition of building, founding soil conditions, and type of construction vibration;

- Implementation of vibration mitigating measures on the construction site and/or at the historic building, which could include specific means and methods or protective measures;
- Vibration monitoring during construction (use of accelerometers, seismometers and/or inclinometers) and visual inspection by trained field personnel;
- Regular condition surveys and reviews during construction to identify damage, to evaluate the efficacy of protective measures already in place, and to identify and implement additional corrective steps.

XII. RELOCATION: The CPRA shall work with CEMVN, and/or the CPRA shall consult with LA SHPO, Tribe(s), and other Consulting Parties, as appropriate, to develop and implement a feasible relocation plan. The relocation must conform to all applicable State and local regulations. Generalized steps include:

- If a historic property proposed for relocation is a contributing building within a listed or eligible NRHD, the CPRA shall make every effort to relocate the historic property within the same historic district. The CPRA shall provide documentation to LA SHPO, Tribes(s), and other Consulting Parties, that explains why relocation is required and the basis for selection of the new site. The CPRA shall provide the proposed location of the new site to LA SHPO, Tribe(s), and other Consulting Parties for their review and comment.
- A qualified archaeological professional shall determine whether there are any potential archaeological sites at the proposed new location. If such potential exists, a qualified archaeological professional shall follow the process set out in Section VII Project Review of this PA.
- Upon approval of an alternative site by Consulting Parties, the CPRA shall ensure any relocation of a historic building shall be carried out in accordance with the recognized approaches in Moving Historic Buildings (John Obed Curtis, reprinted 1991 by W. Patram for the International Association of Structural Movers, IASM, P.O. Box 1213) by a professional mover who has the capability to move historic properties properly.
- If the CPRA determines that they cannot identify an alternative site acceptable to Consulting Parties, the qualified professional shall consult with LA SHPO, Tribes(s), and other Consulting Parties to develop another TM.