MEMORANDUM OF AGREEMENT BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

I. GENERAL

A. Purpose

This Memorandum of Agreement (MOA or Agreement) is entered into by and between the Florida Department of Environmental Protection (FDEP) and Region IV of the United States Environmental Protection Agency (EPA) for the purpose of defining the federal and state roles in carrying out the policies, regulations, and procedures necessary to administer the State of Florida permit program established pursuant to Section 404 of the Clean Water Act (CWA), Title 33 of the United States Code (U.S.C.), § 1251 *et seq.* (hereinafter "State 404 Permit Program"), and to facilitate program coordination between FDEP and EPA. FDEP does not exercise jurisdiction over Indian country, as that term is defined in 18 U.S.C. § 1151 and does not seek such authority through this Agreement. This Agreement does not create any substantive standards relating to any aspect of the 404 Permit Program or impose any legal obligations on the public.

B. Authorities

(1) The legal basis for the State's assumption of the 404 program is provided by Section 404(g)(1) of the CWA. The regulations implementing Section 404(g)(1) and assumption of the 404 program under the CWA are found at 40 C.F.R. Parts 230, 231, 232 and 233.

(2) FDEP shall administer and enforce the State 404 Permit Program in accordance with those state laws and administrative rules that are components of the federally authorized State 404 Permit Program in the State of Florida (40 C.F.R. § 233.72), and in accordance with Section 404 State Program Regulations (40 C.F.R. Part 233), the CWA, Section 404(b)(1) Guidelines (40 C.F.R. Part 230, Section 404(b)(1) Guidelines for Specifications of Disposal Sites for Dredged or Fill Material) (hereinafter "404(b)(1) Guidelines"), and provisions contained in this Agreement and the Memorandum of Agreement between FDEP and the United States Army Corps of Engineers (Corps). The State 404 Permit Program will operate in accordance with any applicable biological opinion issued in accordance with the Endangered Species Act of 1973 (ESA). FDEP will not administer or enforce authority over Indian country, as that term is defined in 18 U.S.C. § 1151. In the event a question arises whether activities proposed in a permit application or draft general permit are within Indian country, and thus should be processed by the Corps, information regarding the issue may be presented to FDEP during the comment period and may also be provided to EPA. Such information shall be considered by EPA in exercising its CWA authority

to oversee FDEP's program and may, as appropriate, provide a basis for EPA to comment upon, object to, or make recommendations with respect to the permit application or draft general permit.[1]

C. Effective Date and Revisions

(1) This Agreement shall be executed by FDEP and EPA and shall take effect at the time of EPA approval of the State 404 Permit Program, which shall be the effective date published in the Federal Register.

(2) FDEP and EPA agree to maintain a high level of cooperation and coordination and to work in partnership to assure successful and effective administration of the State 404 Permit Program.

(3) Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under the CWA, nor shall it restrict FDEP's enforcement responsibilities under Florida law.

(4) This Agreement, and procedures established in conformance with it, shall be reviewed periodically by FDEP and EPA. Either party may request in writing an amendment or modification to the Agreement. Amendments and modifications to this Agreement shall be in writing and shall be effective upon completion of the process outlined in 40 C.F.R. § 233.16 and upon signature of both parties. If the State 404 Permit Program authorization is amended or modified in a manner that would affect this Agreement, this Agreement shall be amended or modified as appropriate.

(5) This Agreement shall remain in effect until it is amended, modified, or replaced; EPA withdraws authorization pursuant to 40 C.F.R. § 233.53(b); or FDEP voluntarily transfers the program to the Corps according to the criteria and procedures established in 40 C.F.R. § 233.53(a).

D. Confidentiality

(1) All of the information EPA transfers to FDEP will be provided subject to the procedures and limitations of 40 C.F.R. § 233.3 and Florida will handle this information pursuant to applicable Florida law.

(2) Any information obtained or used in the administration of the State 404 Permit Program shall be available to EPA and EPA will manage this information in accordance with any

[1] Title 18 U.S.C. § 1151 defines "Indian country" as: (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, Indian reservations include lands held in trust by the United States for an Indian tribe even if such lands have not been formally designated as an Indian reservation.

rights and privileges under applicable laws and regulations. If information has been submitted to FDEP under a claim of confidentiality, FDEP must inform EPA of such a claim. All information submitted by FDEP subject to a claim of confidentiality shall be treated in accordance with the procedures of 40 C.F.R. Part 2, 40 C.F.R. § 233.3(c), and applicable law.

E. Computing Time Periods

In computing any period of time prescribed by this Agreement, the day on which the designated period of time begins shall not be included. Saturdays, Sundays, and state and federal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

F. Florida DEP Agreement with Corps

(1) Prior to the assumption of the 404 Permit Program by FDEP, the Jacksonville District of the Corps administered the 404 Permit Program in Florida. The District Engineer of the Jacksonville District has been delegated the authority to enter into a Memorandum of Agreement which will identify procedures to facilitate the transfer of the 404 Permit Program to FDEP as laid out in the regulations at 40 C.F.R. Part 233 and pursuant to CWA requirements.

(2) FDEP's Memorandum of Agreement with the Corps stipulates permit processing responsibilities for activities which involve non-assumable waters, as well as transfer of permitting authority from the Corps to FDEP. The Memorandum of Agreement identifies the state waters to be regulated, coordination procedures, general permit procedures, transfer of records, protection of navigation or anchorage, permitting for Corps water resource projects, mitigation and instrument approval, and permitting for emergency work. The legal effect of the Memorandum of Agreement between FDEP and the Corps is conditioned upon approval of the State 404 Permit Program.

G. Florida Memorandum of Understanding with the United States Fish and Wildlife Service and the Florida Fish and Wildlife Conservation Commission (FWC)

(1) In the event that a programmatic biological opinion and incidental take statement are issued by the USFWS, and that biological opinion's conclusion or reasonable and prudent alternatives or measures relies on the establishment of a technical assistance process with FDEP, FDEP will engage in a technical assistance process with the USFWS for State 404 Permits. The roles and responsibilities of each agency in the technical assistance process will be established in the Memorandum of Understanding between FDEP, FWC, and the USFWS.

(2) Given the existing relationship between FDEP and FWC regarding the protection of fish and wildlife resources for the FDEP Environmental Resource Permitting Program, and the existing relationship between FWC and the USFWS established in the ESA Section 6 Coordination Agreement, the FWC may engage with the USFWS on behalf of FDEP for the species coordination reviews in the State 404 Permit Program. The roles and responsibility for

each agency will be established in the Memorandum of Understanding between FDEP, FWC, and the USFWS.

H. Operating Agreement with the Florida Division of Historical Resources – State Historic Preservation Officer (SHPO)

The Operating Agreement between FDEP and SHPO sets forth a consultation process, called the "historic properties review," for assessing the potential effects a State 404 Program permit application may have on historic properties and for avoiding, minimizing, or mitigating any adverse effects on historic properties. The historic properties review includes consultation with tribes, local governments, applicants and the public and is designed to complement established procedures for permit processing and public notice under the State 404 Program.

I. Florida Memorandum of Understanding with Other Agencies

FDEP may enter into agreements with other agencies. To the extent any of these agreements, understandings, or parts of these agreements or understandings conflict with the requirements of the CWA, implementing regulations, or other assumption related statutes or implementing regulations, the agreement or that part of the agreement will not become part of the assumed program. Any revisions to the State 404 Permit Program must comply with the procedures established in 40 C.F.R. § 233.16.

II. PERMIT APPLICATION REVIEW AND PERMIT ISSUANCE

A. Lead Agency Responsibility for State 404 Permit Program

(1) FDEP will be the lead agency in Florida for administering the State 404 Permit Program in State-assumed waters, as defined in section 373.4146(1), F.S. FDEP shall administer the State 404 Permit Program as approved by EPA using this Agreement, applicable state and federal laws, and any separate working agreements entered into by FDEP and included as part of the EPA approved state program. EPA shall review the State 404 Permit Program established by FDEP in order to ensure consistency with the program reporting requirements of 40 C.F.R. § 233.52. FDEP shall also allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program consistent with 40 C.F.R. § 233.13(b). This does not preclude EPA from initiating independent or parallel enforcement actions in accordance with Sections 309 and 404(n) of the CWA.

(2) FDEP is responsible for making final permit decisions pursuant to Rule 62-331, F.A.C., including final determinations of compliance with FDEP State 404 permit regulations and protective measures recommended by the USFWS during project technical assistance. FDEP acts as the project manager for the evaluation of all permit applications and is responsible for requesting and evaluating information concerning all permit applications. FDEP will obtain and utilize this information in a manner that moves the regulatory process towards a final permit decision as rapidly as practicable. FDEP will not evaluate applications as a project opponent or advocate – but

instead will maintain an objective evaluation, fully considering all relevant factors. FDEP will fully consider and address EPA's views, permit conditions, and objections when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit. Pursuant to its authority under Section 404(b)(1) of the CWA, EPA may provide comments identifying its views regarding compliance with the Section 404(b)(1) Guidelines and as authorized under Section 404(c) of the CWA. The comments will be submitted within the time frames established in this agreement and applicable statutes and regulations.

(3) FDEP may delegate the State 404 Permit Program to other State governmental regulatory agencies in Florida but will maintain oversight and will retain the ability to revise or rescind permits issued by the delegated entities. If FDEP proposes to delegate all or part of the State 404 Permit Program, such delegation is not effective until the EPA Regional Administrator approves the delegation pursuant to 40 C.F.R. § 233.16.

B. Waiver of EPA Review

(1) Pursuant to Section 404(k) of the CWA and 40 C.F.R. § 233.51, EPA waives the requirements of Section 404(j) and the regulations adopted thereunder regarding federal review of FDEP permit applications for all but the following categories of permits:

a. Draft general permits;

b. Discharges with reasonable potential for affecting endangered or threatened species as determined by USFWS;[2]

c. Discharges with reasonable potential for adverse impacts on waters of another state or tribe;

d. Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the CWA) or hazardous substances in reportable quantities (Section 311 of the CWA);

e. Discharges located in proximity of a public water supply intake;

f. Discharges within critical areas established under state or federal law, including but not limited to national and state parks; fish and wildlife sanctuaries or refuges; national and historical monuments; wilderness areas and preserves; sites identified or proposed under the National Historic Preservation Act; and components of the National Wild and Scenic Rivers System;

[2] For the purposes of the State 404 Program, a project has a reasonable potential for affecting endangered or threatened species (40 C.F.R. § 233.51(b)(2)) if it has been determined during the technical assistance process described in the anticipated biological opinion and MOU referenced in Section I.G, above, that the project may affect federally listed species or their critical habitat.

g. Discharges impacting compensatory mitigation sites, including mitigation banks, in lieu fee program sites, and permittee responsible mitigation sites; and

h. Discharges impacting sites that are owned or managed by federal entities, and activities by an applicant that is a federal entity.

(2) EPA may terminate waiver of the review of categories of permit applications outlined in this Agreement pursuant to 40 C.F.R. § 233.51(a).

(3) FDEP shall supply the EPA Regional Administrator with copies of public notices for permit applications for which permit review has been waived whenever requested by EPA, pursuant to 40 C.F.R. § 233.50(a)(1).

(4) FDEP or the applicant may request EPA review of specific projects that would otherwise not require EPA oversight.

(5) When FDEP receives a new permit application for continued work on a long term project for which a permit with a long term planning document attached for reference had been previously issued, pursuant to subsection 62-331.051(2), F.A.C., or receives an application for a permit to complete a project that a permittee is unable to complete within the original duration of the permit, pursuant to subsection 62-331.051(3), F.A.C., FDEP will identify fundamentally new factual information included in the new permit application that was not in the prior permit application. In such instances, EPA intends to focus its review on matters related to such new factual information.

C. Coordination with Other States and Tribes

(1) Whenever FDEP receives an application for a permit that has a reasonable potential to impact the waters of the states of Alabama or Georgia, or waters within "Indian country," as that term is defined at 18 U.S.C. § 1151, FDEP shall transmit a copy of the public notice to the potentially impacted state or federally recognized tribe (per the list published annually by the Secretary of the Interior pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994 (Pub. L. No. 103-454, 108 Stat. 4791, 4792)) and to EPA. EPA and FDEP shall work together to identify regulatory contacts in these other states and tribes.

a. FDEP shall provide the potentially impacted state or tribe the opportunity to submit written comments within the public comment period and suggest permit conditions regarding the potential impact of the proposed project. In addition to the comment period, tribes may, to the extent desired, engage with FDEP during its initial review of an application, as set forth in the FDEP/SHPO Operating Agreement described in Section I.H above.

b. FDEP shall consider the comments and concerns of the potentially impacted state or tribe when making a decision on the application and shall provide a copy of the final permit decision to a state or tribe that provides comments. If FDEP does not accept these

recommendations, FDEP shall provide written notification to the affected state or tribe and the EPA Regional Administrator prior to permit issuance of FDEP's decision not to accept the recommendations together with supporting rationale. The EPA Regional Administrator shall then have the time provided for in 40 C.F.R. § 233.50(d) to comment upon, object to, or make recommendations with respect to a permit application.

c. Pursuant to 40 C.F.R. § 233.50, EPA may object to the issuance of a State 404 permit by FDEP if it finds that the proposed project would fail to comply with the 404(b)(1) Guidelines due to the impact on waters of another state or waters within "Indian country," as that term is defined at 18 U.S.C. § 1151. In this instance, FDEP shall proceed as specified in Section 404(j) of the CWA and Section D of this Agreement.

(2) Both EPA and FDEP agree that this Agreement does not determine what constitutes "Indian country" as that term is defined in 18 U.S.C. § 1151.

D. Permit Processing and Federal Comment

(1) Federal oversight of State permits shall proceed in accordance with the requirements of Section 404(j) of the CWA and 40 C.F.R. Part 233, Subpart F. The subsequent paragraphs in this section highlight certain aspects of that oversight process for the sake of clarity for the agencies and members of the public, but do not override or replace the comprehensive applicable statutory and regulatory requirements.

(2) FDEP shall promptly submit public notices, via weblink, providing EPA access to complete permit applications in the categories identified in Section II.B.(1) of this Agreement for review and coordination in accordance with Section 404(j) of the CWA and 40 C.F.R. Part 233, Subpart F.

(3) In addition to the information required by 40 C.F.R. § 233.32(d), the public notice shall include: (1) a determination of the effect the proposed activity will have on listed species and/or their critical habitat and proposed protection measures resulting from the species coordination process; and (2) a determination of the effect the proposed activity will have on historic properties and any recommendations to avoid, minimize, or mitigate adverse effects on historic properties resulting from the historic properties review process.

(4) Material submitted to EPA, which may be forwarded by electronic means, shall include:

a. A copy of the public notice for any complete permit application received by FDEP, except those for which permit review has been waived under this Agreement. Any supplemental or additional materials submitted to FDEP, including but not limited to information on project alternatives, environmental assessment, or mitigation plans, shall also be forwarded promptly to EPA. Whenever requested by EPA, FDEP shall supply copies of public notices for

permit applications, or supplemental materials, even for projects for which permit review has been waived.

b. A copy of each draft general permit whenever FDEP intends to issue a general permit that affects State-assumed waters, including minor project categories defined under State law.

c. For permit applications that are subject to federal review, and for draft general permits, notification of when FDEP takes a significant action pursuant to 40 C.F.R. § 233.50(a)(3).

d. A copy of every permit issued and a copy of any denial of a permit.

e. A copy of FDEP's response to comments or recommendations made by another state or tribe if FDEP does not accept such recommendations.

(5) EPA shall, within 30 calendar days from the date of receipt of a permit application or draft general permit from FDEP, notify FDEP if EPA intends to review the permit application or draft general permit. EPA reserves the right to object within 90 days based upon information received during the public comment period. If FDEP has been so notified, the permit shall not be issued until after the receipt of such comments or 90 days of the Regional Administrator's receipt of the public notice, draft general permit or FDEP's response (40 C.F.R. § 233.31(a)), whichever comes first. The Regional Administrator may notify FDEP within 30 days of receipt that there is no comment but that EPA reserves the right to object within 90 days of receipt, based on any new information identified by the public during the comment period or at a hearing. 40 C.F.R. § 233.50(d).

(6) EPA shall provide a copy of each public notice, each draft general permit, and other information needed for review of the application to the Corps, USFWS, and National Marine Fisheries Service (NMFS) within 10 days of receipt, pursuant to 40 C.F.R. § 233.50(b). The final decision to comment, object, or make recommendations with respect to permit conditions shall be made by EPA. EPA shall submit a written statement of its comments, objections or recommendations to FDEP in accordance with the requirements of, and in the timeframes specified in, Section 404(j) of the CWA and 40 C.F.R. § 233.50. EPA will endeavor to provide comments, objections, or recommendations within the timeframe specified in Florida law, to the extent that the timeframe does not conflict with federal law. FDEP shall notify EPA of FDEP's decision deadlines for each application or draft general permit.

(7) FDEP shall respond to any such comments or objections received from EPA in the manner specified in Section 404(j) of the CWA and 40 C.F.R. Part 233. FDEP shall provide a copy of a draft permit that satisfies the EPA Regional Administrator's objection or requirement for a permit condition, or FDEP shall provide its intent to deny the permit application to EPA as provided by Section 404(j) of the CWA and 40 C.F.R. Part 233.

(8) FDEP also administers a State Environmental Resource Permit (ERP) program, which is a separate permitting program from the State 404 Program and may cover similar or the same projects as those permitted under the State 404 Program. If FDEP does not resolve an objection or requirement for a Section 404 permit condition for which there is a State ERP Permit, the State ERP permit does not provide authorization under Section 404 of the CWA, and the applicant shall be notified of this fact in writing.

(9) FDEP shall contact EPA, the Corps, USFWS, and NMFS to solicit comments pertaining to issuance of an emergency permit as soon as possible after the emergency permit is requested, but no later than the day of issuance of the emergency permit. FDEP shall send a copy of the written emergency permit to the EPA.

(10) FDEP may administratively continue expiring Corps-issued or State-issued permits until the effective date of a new permit, if any, consistent with 40 C.F.R. § 233.38, or a decision is made not to issue a new permit.

E. Coordination of Mitigation Banking

FDEP and EPA agree that mitigation banking projects shall be subject to review according to procedures established in 40 C.F.R. Part 230, Subpart J. Mitigation banking instruments and in-lieu fee program instruments shall be processed by the Corps in accordance with 40 C.F.R. Part 230, Subpart J. FDEP may co-chair any applicable interagency coordination effort and EPA may participate at its discretion.

III. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA will continue to directly implement its authority for the 404 Permit Program in "Indian country," as that term is defined at 18 U.S.C. § 1151, including conducting necessary compliance monitoring and enforcement actions for activities and sites located on Indian country.

B. EPA will retain responsibility for any pending enforcement actions undertaken by EPA prior to the date of EPA's approval of the State 404 Permit Program. FDEP shall have primary responsibility for compliance monitoring and enforcement of the State 404 Permit Program. FDEP will take timely and appropriate enforcement action against persons in violation of permit conditions of permits issued pursuant to the State 404 Permit Program and against persons conducting unauthorized discharges of dredged or fill material into waters of the United States over which FDEP has assumed jurisdiction under the State 404 Permit Program.

C. FDEP shall notify EPA of the status of compliance and enforcement actions through submission of an annual report described in Section IV.B. of this Agreement.

D. EPA may request the opportunity to review any compliance and enforcement record. FDEP shall provide to EPA a copy of the file when requested. Claims of confidentiality for such information shall be governed by 40 C.F.R. § 233.3.

E. FDEP shall coordinate with EPA when a violation is identified that is within the permit and discharge categories in Section II.B.(1) of this Agreement. FDEP shall provide a summary of the unauthorized activity and inform EPA of the status of the file as enforcement actions are taken, including any decision to accept an after-the-fact permit application. In the event that an after-the-fact permit application is accepted, FDEP shall follow the permit review procedures set forth in this Agreement, the CWA and its implementing regulations.

F. FDEP may refer information regarding possible or alleged violations to EPA and may request that EPA consider initiating a parallel or independent enforcement action. Such circumstances include, but are not limited to:

(1) Violations that have or have a reasonable potential to have direct impacts on waters of a tribe or another state;

(2) Major or repeat offenses; and

(3) Violations that have, or will potentially have, major adverse resource impacts or impacts on special federal resources, such as federally listed threatened or endangered species.

G. EPA may initiate independent or parallel enforcement actions in accordance with Sections 309 and 404(n) of the CWA.

H. If FDEP proposes to resolve a compliance or enforcement issue through a consent agreement (administrative or judicial), and where the impact of the violation is such that federal review would not be waived as described in Section II.B.(1) of this Agreement, FDEP shall provide EPA 30 days to review and comment on the draft consent agreement prior to signature. If EPA objects to a provision of the draft consent agreement, the executed consent agreement implementing that provision shall not constitute authorization under Section 404 of the CWA. FDEP shall provide a copy of the executed consent agreement and any after-the-fact State 404 permits to EPA.

I. FDEP shall provide for public participation in the State 404 Permit Program enforcement process pursuant to 40 C.F.R. § 233.41(e)(2).

J. Prior to proceeding with federal enforcement action against a possible or alleged State 404 Permit Program permit violator or unauthorized discharge, and for purposes of providing notice only, EPA shall inform FDEP (specifically to the Secretary of FDEP or his/her designee) that federal enforcement action is to be initiated. It is expected that preliminary staff discussions will take place between EPA and FDEP representatives before initiation of federal enforcement actions.

K. When a violation is identified that may affect the waters of tribes and/or other states, FDEP shall provide a summary of the violation and inform the tribes and/or other states of the

status of the file as enforcement actions are taken, including any decision to accept an after-the-fact permit application.

IV. PROGRAM MAINTENANCE

A. Program Review and Oversight

EPA may conduct periodic evaluations of the State 404 Permit Program in accordance with Section 404(i) of the CWA.

B. Reporting

(4) FDEP shall submit to EPA, and make available for public inspection, an annual report evaluating Florida's administration of the State 404 Permit Program, providing a summary of any significant changes in program operations or procedures and identifying problems encountered in administration of its program and recommendations for resolving those problems. The report shall include the elements required by 40 C.F.R. § 233.52(b).

(5) Within 60 days of receipt of the draft annual report, EPA will complete review of the report and transmit comments, questions, or requests for additional evaluation and/or information to FDEP.

(6) Within 30 days of receipt of EPA's comments, FDEP will finalize the annual report, incorporating and/or responding to EPA's comments and will transmit the final report to EPA. EPA will publish notice of availability of the final annual report upon acceptance.

(7) The period for the annual report shall be the State fiscal year ending June 30th, and the report shall be submitted to EPA by September 30th of each year.

C. State 404 Permit Program Modifications

(1) FDEP shall promptly notify EPA of any proposed or actual change to FDEP's statutory or regulatory authority or any other modifications which are significant to administration of the State 404 Permit Program, including, but not limited to:

a. An action by the State Legislature to strike down or limit State authorities, or that contemplates cessation of the administration of the Section 404 Permit Program by the State of Florida.

b. An action by a State court striking down or limiting State authorities.

c. Revision of the State's legal authorities needed to maintain consistency with changes to applicable federal regulations.

d. Proposed transfer of the program in whole or in part to another State agency.

(2) In response to notification of a change in the State 404 Permit Program in accordance with paragraph (1), EPA shall inform FDEP in writing of any specific concerns regarding State authority and shall provide the State an opportunity to make any necessary program revisions in accordance with 40 C.F.R. § 233.16(d).

a. If the proposed revisions are not substantial, notice of approval may be given by letter to the Governor or designee, per 40 C.F.R. § 233.16(d)(2).

b. If EPA determines that the proposed revisions are substantial, EPA shall publish notice of the proposed revisions, provide opportunity for a public hearing, consult with the Corps, USFWS, and NMFS, and review the proposed modification in accordance with 40 C.F.R. § 233.16(d)(3). Such changes shall not be effective until review and approval by EPA and publication of notice in the Federal Register.

(3) Whenever EPA has reason to believe that circumstances have changed with respect to the State 404 Permit Program, EPA may request, and FDEP shall provide, a supplemental Attorney General's statement, program description, or other documents or information necessary to evaluate the State 404 Permit Program's compliance with the requirements of the CWA and regulations at 40 C.F.R. Part 233.

(4) If FDEP determines that it will no longer administer the State 404 Permit Program, FDEP shall provide notice to EPA and the Corps not less than 180 days prior to cessation of program operation, and shall arrange for transfer of all program materials to the Corps.

(5) Pursuant to 40 C.F.R. § 233.16(b), FDEP shall revise the State 404 Permit Program as necessary because of a modification to 40 C.F.R. Part 233 or any other applicable Federal statute or regulation. The program shall be revised within one year of the date of promulgation of such regulation, except if the State must amend or enact a statute in order to make the required revision, the revision shall take place within two years.

(6) Any program modifications that necessitate modifications to this Agreement shall not be effective until the modified agreement is signed by FDEP and EPA, and EPA gives notice of approval of program modifications.

V. GENERAL PROVISIONS

A. The Parties are entering into this Agreement based solely on the representations and warranties herein and not based on any promises, representations, and/or warranties not found herein.

B. This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by any persons, their officers or employees, or any other person. This MOA does not apply to any person outside of FDEP and EPA.

C. The signatory agencies do not waive any administrative claims, positions, or interpretations they may have with respect to the applicability or enforceability of the CWA, the ESA, the NHPA, Florida laws, or implementing regulations.

D. Nothing in this MOA shall be interpreted as obligating the signatory agencies for the expenditure of funds in excess of appropriations authorized by law, or otherwise commit the signatory agencies to actions for which they lack statutory authority.

E. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

F. If any provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall be deemed to be severed and deleted, and neither such provision, nor its severance and deletion, shall affect the validity of the remaining provisions.

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VI. SIGNATURES

Florida Department of Environmental Protection

7/31/2020

Noah Valenstein (Date)
Secretary

United States Environmental Protection Agency Region IV

7/31/2020

Mary S. Walker (Date)
Regional Administrator

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