

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE,
THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION
REGARDING THE REPLACEMENT OF THE LIVINGSTON AVENUE BRIDGE
CITY OF ALBANY & CITY OF RENSSELAER
ALBANY & RENSSELAER COUNTIES, NEW YORK
PURSUANT TO 36 CFR § 800.6(a)(1)
PIN 1935.49
BIN 7092890
NYSOPRHP # 12PR00935**

WHEREAS, the Federal Rail Administration (FRA) in coordination with the New York State Department of Transportation (NYSDOT) is progressing a federally funded project to remove and replace the Livingston Avenue Bridge (BIN 7092890) which spans the Hudson River between the Cities of Albany and Rensselaer, in Albany and Rensselaer Counties, to improve reliability and reduce passenger and freight train delays; achieve a long-term state of good repair for the bridge; eliminate existing bridge and track deficiencies; and maintain or improve waterway navigation near the bridge; and

WHEREAS, the Project involves modifications to the approach tracks on the west and east sides of the Hudson River, including rehabilitation of the rail bridges of Water and Centre Streets in Albany and changes to the approach in Rensselaer; and

WHEREAS, the Preferred Alternative replaces the Livingston Avenue Bridge with a new multi-span, multi-track, moveable bridge on a new, parallel southern alignment (approximately 50 feet south from the existing bridge location); and

WHEREAS, the Area of Potential Effect (APE) is approximately 100 to 200 feet wide along the CSX/Amtrack tracks from Montgomery Street in Albany to the west abutment; 900 feet in length, 400 feet wide, and 1,272 feet in length across the river to Rensselaer; and 400 feet wide and 1,500 feet long on the east shore from the east abutment to its terminus along the existing track; and

WHEREAS, the Project was selected for federal funding provided by the United States Department of Transportation through the Federal Railroad Administration (FRA) utilizing 2010 High Speed Intercity Passenger Rail grant funds and would be authorized through permits issued by the United States Army Corps of Engineers (USACE) and the United States Coast Guard (USCG); and

WHEREAS, FRA's funding is considered an Undertaking under the National Historic Preservation Act of 1966 (54 U.S.C. § 306108) (NHPA), as amended, and it's implementing regulations at 36 Code of Federal Regulations [C.F.R.] § 800 (hereinafter collectively referred to as Section 106) and FRA is acting as the lead Federal Agency for compliance with Section 106; and

WHEREAS, on April 28, 2021, USCG designated FRA as the lead Federal Agency for compliance with Section 106 and agreed to serve as a Consulting Party; and on May 19, 2021 USACE designated FRA as lead agency and agreed to serve as a Consulting Party on the Project; and

WHEREAS, FRA's action requires review under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 *et seq.*); and

WHEREAS, FRA and NYSDOT initiated consultation with the New York State Historic Preservation Office (NYSHPO), pursuant to 36 CFR § 800.3(c) via letter dated March 7, 2012; and

WHEREAS, pursuant to 36 CFR § 800.4(b) FRA made a reasonable and good faith effort to identify properties that are listed in or determined eligible for listing in the National Register of Historic Places (NRHP) (Historic Properties) within a preliminary study area through development of a Cultural Resource Reconnaissance Survey

Report (CRRSR) completed in two volumes in April and June 2011. The CRRSR identified the Livingston Avenue Bridge and the Albany Railroad Viaduct as eligible for the NRHP. The CRRSR identified no archaeological resources within the APE. NYSHPO concurred with the findings of this report on May 8, 2012; and

WHEREAS, the Livingston Avenue Bridge (BIN 7092890) (Unique Site Number [USN] 00140.004481), was determined eligible under NRHP Criterion C as an intact example of an early 20th-century swing bridge. It is a Baltimore-truss bridge constructed in 1901, on cut limestone circa 1866 piers, 1272 feet long, 27.8 feet wide, carrying CSX/Amtrak Rail over the Hudson River, and consists of a 260-foot continuous truss swing span, four trusses that span the navigation channel, and four plate girder spans; and

WHEREAS, the Project's APE as an area encompassing that which contributes to the Albany Railroad Viaduct. This part of the Albany Railroad Viaduct, within the APE, includes two bridges; the Centre Street-Erie Boulevard Bridge [USN 00140.004789; BIN 7709021]) and the Water Street Bridge [USN 00140.004788; BIN 7092900]). Both are through-girder bridges built in 1948 and were determined eligible under Criterion A, in the 2015 Cultural Resources Survey Report, for their association with the railroad right-of-way and spanning development of national rail service in the Hudson River from the Montgomery Street Railroad Bridge in the City of Albany on the west to Tracy Street on the north and Pine Street on the south in the City of Rensselaer. Pursuant to 36 CFR § 800.4(a)(1), a Draft Finding Documentation was submitted to NYSHPO March 10, 2015 that recommended this undertaking would have a No Adverse Effect on the Albany Railroad Viaduct. NYSHPO concurred April 29, 2015; and

WHEREAS, on April 29, 2015, NYSHPO, in response to the Draft Finding Documentation, requested that an analysis of alternatives to removing the Livingston Avenue Bridge be conducted. The NYSHPO's response did not include comment on FRA's definition of the APE; and

WHEREAS, in response to the NYSHPO's request for additional information regarding alternatives to removing the Livingston Avenue Bridge, NYSDOT provided additional information on alternatives considered in a revised Finding Document submitted to the NYSHPO on June 17, 2015. On August 05, 2015 NYSDOT and NYSHPO met to discuss alternatives presented in the revised Finding Documentation and to discuss additional alternatives. On November 10, 2015, NYSDOT submitted to NYSHPO an Explanation of Alternatives evaluating the additional alternatives considered and measures to minimize harm; and

WHEREAS, NYSDOT considered alternatives to avoid and minimize the adverse effect to the Livingston Avenue Bridge in accordance with 36 CFR 800.6 (as summarized in the Finding Documentation) and concluded that the adverse effect could not be avoided; and

WHEREAS, in a letter dated August 24, 2020, FRA re-initiated consultation with NYSHPO, pursuant to 36 CFR § 800.3(c), because several years had elapsed since the previous consultation. FRA provided an updated Finding Documentation and information about the Project. It included a reiteration of the definition of the APE pursuant to 36 CFR § 800.4(a)(1), a summary of historic property identification efforts within the APE pursuant to 36 CFR § 800.4(b) and a recommendation that the Undertaking would result in an Adverse Effect to the Livingston Avenue Bridge and that the Undertaking would have No Adverse Effect on the Albany Railroad Viaduct pursuant to 36 CFR § 800.5; and

WHEREAS, in a letter dated September 23, 2020, NYSHPO concurred the Undertaking would have an Adverse Effect on the Livingston Avenue Bridge (BIN 7092890), that the Undertaking would have No Adverse Effect on the Albany Railroad Viaduct again, and requested that NYSDOT contact the City of Albany to determine if the City was interested in taking possession of the western end of the Livingston Avenue Bridge for use as a pedestrian pier; and

WHEREAS, NYSDOT contacted the City of Albany on October 27, 2020 to determine if the City was interested in taking possession of the western end of the bridge, and the City of Albany responded on March 4, 2021 and declined to take possession of the Livingston Avenue Bridge; and

WHEREAS, pursuant to 36 C.F.R. § 800(3)(f)(2), in a letter dated February 2, 2015, NYSDOT, on behalf of FRA, invited the Saint Regis Mohawk Tribe, the Stockbridge Munsee Community Band of Mohican Indians, and the Delaware Tribe to participate in the Section 106 process as Consulting Parties; and

WHEREAS, FRA and NYSDOT met with Bonney Hartley of the Stockbridge-Munsee Community Band of Mohicans on June 26, 2015 to discuss the Project and resolve concerns raised by the tribe. The Saint Regis Mohawk Tribe and the Delaware Tribe responded that they had no concerns but requested that they be notified if human remains, or objects of cultural patrimony are encountered during construction of the Project; and

WHEREAS, in a letter dated August 12, 2020, FRA re-initiated consultation with the Stockbridge-Munsee Community Band of Mohican Indians, the Saint Regis Mohawk Tribe, and the Delaware Tribe; and the Stockbridge Munsee Community Band of Mohican Indians and the Delaware Tribe responded that they had no concerns but requested that they be notified if human remains or objects of cultural patrimony are encountered during construction of the Project, while the Saint Regis Mohawk did not respond; and

WHEREAS, pursuant to 36 CFR § 800.3(f), in letters dated May 26, 2017, NYSDOT, on behalf of FRA, invited the following organizations with a demonstrated interest in the Project to participate in the Section 106 process and be Consulting Parties: the Arbor Hill Neighborhood Association; the Bridge Line Historical Society; the City of Albany Historian; the City of Rensselaer Historian; the Historic Albany Foundation; the Livingston Avenue Bridge Coalition; the National Railway Historical Society, Mohawk and Hudson Chapter; the New York Central Historical Society; and Partners for Albany Stories; and

WHEREAS, the City of Rensselaer Historian; the Historic Albany Foundation; the Livingston Avenue Bridge Coalition; the National Railway Historical Society, Mohawk and Hudson Chapter; and the New York Central Historical Society accepted FRA's invitation; and the Capital District Transportation Committee requested and was granted Consulting Party status; and

WHEREAS, the Arbor Hill Neighborhood Association; the Bridge Line Historical Society; and Partners for Albany Stories did not respond to FRA's invitation, and the City of Albany Historian declined the invitation; and

WHEREAS, FRA sought and considered the views of the public regarding Section 106 for this Project at a public information meeting held on xxx. A recording of the event was made available to the public online and information on the Project and public comments were solicited through the Project website at: <https://www.dot.ny.gov/livingstonavebridge>. [FOLLOWING PUBLIC REVIEW AND COMMENT ON THE EA AND THIS MOA, THIS CLAUSE OF THE MOA WILL BE REVISED AS APPROPRIATE]; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1), in a letter dated December 3, 2020, FRA notified the Advisory Council on Historic Preservation (ACHP) of the adverse effect determination, providing the specified documentation, and FRA's intention to enter into a Memorandum of Agreement, and the ACHP chose not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii) (Appendix C); and

WHEREAS, FRA and NYSDOT, along with NYSHPO, have determined that it is appropriate to enter into this Memorandum of Agreement (Agreement) pursuant to 36 CFR § 800.6, which will govern the implementation of the Project and satisfy FRA's, USCG's, and USACE's obligation to comply with Section 106; and

WHEREAS, NYSDOT, as the Project Sponsor, will have roles and responsibilities in the implementation of this MOA and FRA invited NYSDOT to sign this MOA as an Invited Signatory; and

WHEREAS, FRA, NYSDOT, and NYSHPO will collectively be referred to as the Signatories; and

NOW, THEREFORE, FRA, NYSDOT and NYSHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the effects of the Project on Historic Properties.

STIPULATIONS

NYSDOT, in coordination with FRA, shall ensure that the following measures are carried out:

I. MITIGATION MEASURES FOR HISTORIC ARCHITECTURAL PROPERTIES

To mitigate the adverse effect of the removal of the NRHP-eligible Livingston Avenue Bridge (BIN 7092890):

- A. NYSDOT shall complete Level II **Historic American Engineering Record (HAER)** documentation (HAER Documentation) through the New York State Museum in accordance with the *Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation: HABS/HAER Standards* (as originally published in the Federal Register, Vol. 48, No. 190, Thursday, September 29, 1983, pp. 44730-34.).
1. All documentation work shall be performed by an individual meeting the Secretary of the Interior's *Professional Qualification Standards* (48 FR 44716, September 1983) for historic architect, architectural historian, or historian.
 2. All photography shall comply with the *National Register Photo Policy Fact Sheet* (http://www.nps.gov/nr/publications/guidance/Photo_Policy_final.pdf).
 3. NYSDOT shall provide FRA and NYSHPO the opportunity to review and comment on the draft HAER documentation. NYSDOT will revise the HAER documentation as necessary based on comments received from FRA and NYSHPO. NYSDOT shall provide the revised Final-Draft HAER documentation to FRA and NYSHPO for review. This review shall be limited to ensuring that NYSDOT addressed all comments provided during initial document review. All reviews will be completed in accordance with Stipulation III Timelines and Communications. Following this review NYSDOT shall finalize the HAER documentation in accordance with Stipulation I.A.4.
 4. NYSDOT shall prepare five (5) copies of the Final HAER documentation. NYSDOT shall retain a copy of the documentation for its permanent records, one copy shall be submitted to each of the following organizations: NYSHPO, Rensselaer Historical Society, Albany County Historical Society, and the City of Albany. Each distribution shall consist of one hard copy and one electronic copy in Adobe pdf format on a CD.
 5. NYSDOT will complete HAER documentation prior to start of construction.
- B. NYSDOT shall develop two Interpretive Signs that addresses the history of this unique Baltimore Truss swing, railroad bridge; the materials used in the bridge's construction; growth of the railroad; and the history of the area.
1. NYSDOT shall coordinate with the City of Albany to identify a location of one interpretive sign e.g. along the Mohawk-Hudson Bike-Hike Trail within Corning Riverfront Park and shall coordinate with the City of Rensselaer to identify a location of one interpretive sign on a similar trail or park in the City of Rensselaer.
 2. NYSDOT will provide a draft interpretive sign to NYSHPO and the Cities of Albany and Rensselaer for review and comment. NYSDOT will revise the interpretive sign based on NYSHPO and Cities of Albany and Rensselaer comments and will provide a revised Final-Draft to NYSHPO and the Cities of Albany and Rensselaer for a final round of review, as necessary. NYSDOT will revise the sign as necessary and provide a final electronic version of the interpretive sign to NYSHPO and the Cities of Albany and Rensselaer prior to fabrication and installation. All reviews shall be completed in accordance with Stipulation III Timelines and Communications.

3. In the event that the interpretive signs are on City of Albany and/or City of Rensselaer property and the City of Albany and/or City of Rensselaer will not allow installation of the signs and/or accept responsibility to maintain the interpretive signage for reasons beyond the NYSDOT's control, NYSDOT will notify NYSHPO and NYSDOT's responsible party and this stipulation will be considered fulfilled. If one of the two cities approves installation and accepts maintenance responsibility for the sign the interpretive sign will be installed in that city.

C. Bridge Design

NYSDOT shall ensure that the design of the proposed new bridge is a truss bridge that incorporates key visual elements relating to the existing Livingston Avenue Bridge: the pulley housing and operator's building, as requested by NYSHPO on April 14, 2021. If any of these elements would be substantially altered, NYSDOT shall request an Amendment to the MOA pursuant to Stipulation VII.

II. BRIDGE MARKETING AND REUSE

1. NYSDOT shall actively seek new ownership of the existing Livingston Avenue Bridge for adaptive reuse, or, because of its overall size, partial reuse at a new location. Advertising the bridge for transfer will be the responsibility of NYSDOT.
2. Marketing shall consist of a combination of print and web-based ads that will include an advertisement in the local newspaper for a minimum of fourteen (14) days and an announcement posted on the internet for a minimum of two (2) months. A signed affidavit from the newspaper will be provided to NYSDOT as proof of publication to fulfill this stipulation. All inquiries and offers must be submitted to NYSDOT by the date specified in the advertisement.
3. NYSDOT will only consider viable offers that meet the following criteria: A willing new owner must dismantle, transport, and provide a guaranteed future use at a new location. The prospective new owner should demonstrate financial feasibility, understanding of the bridges' condition and explain how it will account for disassembly, transport, reassembly, and reuse of the bridge. The plan must include a timeline demonstrating the disassembly, relocation, and reassembly of the bridge within twelve (12) months of ownership. When the ownership of the bridge is transferred for reuse, the transfer deed will include a preservation covenant that requires the new owner to retain the feature intact for a minimum of twenty (20) years.
4. If after 2 months of marketing, no party is found to take possession of the existing bridge or a viable offer, as defined in Stipulation II.B, is not received, NYSDOT shall notify all consulting parties, via email, and the bridge will be demolished as part of the construction contract.
5. If ownership of the bridge is transferred for reuse, 100% percent of the cost to demolish the bridge from its current location will be provided to the new owner by NYSDOT. The exact amount of funding to be provided is subject to approval by NYSDOT. Any costs not covered by NYSDOT such as reassembly, rehabilitation, maintenance, will be the responsibility of the new owner of the Livingston Avenue Bridge.
6. NYSDOT will give preference to proposed plans that salvage and reuse a minimum of 1 span of the structure. If no proposed plans are received that would reuse a minimum of 1 span of the structure, proposals that salvage and preserve components of the bridge (as an educational or interpretive display, for example) would be reviewed by NYSDOT, FRA, and NYSHPO on a case-by-case basis to determine whether the proposed plan would qualify as appropriate mitigation under this agreement. If NYSDOT, FRA, and NYSHPO agree that the proposed plan qualifies as appropriate mitigation, the bridge will be transferred to the new owner. Plans shall be reviewed in accordance with Stipulation III Timelines and Communications.
7. If solicitation has occurred without a future bridge recipient being identified within the timeframe allowed, NYSDOT will proceed with demolition in accordance with Stipulation II.A.4.

- B. NYSDOT will ensure that the HAER documentation is completed and approved prior to the transfer of ownership or demolition.

III. TIMEFRAMES AND COMMUNICATIONS

- A. All time designations are in calendar days unless otherwise stipulated. If a review period ends on a Saturday, Sunday, or Federal holiday, the review period will extend until the first following business day.
- B. Unless otherwise stipulated in this Agreement, all review periods are thirty (30) calendar days, starting on the day a complete submission is provided by NYSDOT to the relevant parties via the specified notification processes.
- C. NYSDOT will consult with responding parties as appropriate to ensure that all comments received within the 30 calendar-day review period are considered. If NYSDOT does not receive comments within the 30 calendar-day review period, it is understood that the non-responding parties have no comments on the submittal, and NYSDOT may proceed to the next step of the consultation process.
- D. In exigent circumstances (e.g., concerns over construction suspensions or delays), all Signatories agree to expedite their respective document review within seven (7) calendar days.
- E. All official notices, comments, requests for further information, documentation, and other communications will be sent by e-mail or other electronic means.
- F. FRA is responsible for all government-to-government consultation with Tribes.
- G. NYSDOT shall provide an annual letter report to all Signatories and Consulting Parties on the anniversary date of execution of this Agreement. At a minimum the report shall include: a Project status summary to date, list of activities and mitigations completed in the previous year, and a list of activities and mitigations to be completed in the coming year.

IV. PROJECT MODIFICATION AND CHANGES

If NYSDOT proposes changes to the Project that may result in additional or new effects on historic properties, NYSDOT will notify FRA and NYSHPO of such changes within 15 calendar days. Before NYSDOT takes any action that may result in additional or new effects to historic properties, NYSDOT, in coordination with FRA, will consult with NYSHPO and Consulting Parties and take appropriate steps to identify historic properties in accordance with 36 CFR 800.4 and assess effects in accordance with 36 CFR 800.5. If new adverse effects on historic properties are identified, NYSDOT, in coordination with FRA, will consult with NYSHPO and the Consulting Parties as appropriate, to determine the appropriate course of action. If FRA determines that an amendment to the MOA is required, it will proceed in accordance with Stipulation VII Amendments.

V. POST-REVIEW DISCOVERIES

A. UNANTICIPATED ARCHEOLOGICAL DISCOVERIES DURING CONSTRUCTION

If during construction, a previously unidentified archeological resource is discovered, NYSDOT will immediately halt construction in the vicinity of the discovery. If the NYSDOT in consultation with the FRA, NYSHPO, the Saint Regis Mohawk Tribe, the Delaware Tribe, and the Stockbridge Munsee Community Band of Mohican Indians determines that the Project will affect a previously unknown and unidentified archeological resource that may be eligible for the National Register or will affect a known archeological property in an unanticipated manner, the procedures in 36 CFR 800.13(b) will be followed. NYSDOT shall make a reasonable effort to avoid or minimize effects to such properties.

B. UNANTICIPATED DISCOVERY OF HUMAN REMAINS

The ***NYSDOT Procedures for Inadvertent Discovery of Human Remains during Construction*** (Appendix A) shall be implemented if human remains, or potential human remains, are discovered during construction. If a discovery consists of a burial site, human remains, or bones thought to be human remains, the Engineer-in-Charge (EIC) will report the discovery to the State Police. Work will be stopped, and measures will be taken to secure and protect the site from further disturbance. The NYSDOT will notify NYSHPO, the FRA, within 48 hours of the discovery. The FRA will contact the Saint Regis Mohawk Tribe, the Delaware Tribe, and the Stockbridge Munsee Community Band of Mohican Indians to initiate consultation regarding the discovery.

If the human remains are identified as potentially Stockbridge Munsee (Mohican), the NYSDOT in coordination with the Stockbridge-Munsee Tribal Historic Preservation Officer and FRA will carry out procedures outlined in the ***Stockbridge-Munsee Community Band of Mohican Indians Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities*** (Appendix B).

VI. DISPUTE RESOLUTION

A. Any Signatory to this MOA or Tribe may object to any proposed action(s) or the manner in which the terms of this MOA are implemented by submitting its objection to FRA in writing, after which FRA will consult with all Signatories to resolve the objection. If FRA determines such objection cannot be resolved, FRA will, within thirty (30) days of such objection:

1. Forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP (with a copy to the Signatories). ACHP may provide FRA with its comments on the resolution of the objection within thirty (30) days of receiving documentation.
2. If the ACHP does not provide comment regarding the dispute within thirty (30) days, FRA will make a final decision on the dispute and proceed accordingly.
3. FRA will document this decision in a written response that takes into account any timely comments received regarding the dispute from ACHP and the Signatories and provide them with a copy of the response.
4. FRA will then proceed according to its final decision.
5. The Signatories remain responsible for carrying out all other actions subject to the terms of this MOA that are not the subject of the dispute.

B. A Consulting Party to this MOA or a member of the public may object to the manner in which the terms of this MOA are being implemented by submitting its objection to FRA in writing. FRA will notify the other Signatories of the objection in writing and take the objection into consideration. FRA will consult with the objecting party, and if FRA determines it is appropriate, the other Signatories for not more than thirty (30) days. Within fifteen (15) days after closure of this consultation period, FRA will provide the Signatories, participating Tribes, Consulting Parties, and the objecting party with its final decision in writing.

VII. AMENDMENTS

Any Signatory to this Agreement may request in writing to the other Signatories that it be amended. The Signatories will consult for no more than thirty (30) calendar days (or another time period agreed upon by all Signatories) to consider such amendment. The amendment will be effective on the date the amendment is signed by all of the Signatories. FRA will file the executed amendment with the ACHP.

VIII. TERMINATION

If any Signatory to this Agreement determines that the terms of the MOA will not or cannot be carried out, that Signatory will immediately notify the other Signatories in writing and consult with them to seek resolution or amendment pursuant to Stipulation VI and VII of the Agreement. If within sixty (60) days a resolution or amendment cannot be reached, any Signatory may terminate the Agreement upon written notification to the other Signatories.

Once the Agreement is terminated, and prior to work continuing the Project, FRA must either (a) execute a new Agreement pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FRA will notify the Signatories as to the course of action it will pursue.

IX. DURATION

This Agreement will expire when all its stipulations are complete or in five (5) years from the effective date, whichever comes first, unless the Signatories agree in writing to an extension in accordance with Stipulation VII Amendments. The Signatories to this MOA will consult six (6) months prior to expiration to determine if there is a need to extend or amend this MOA.

X. EFFECTIVE DATE

This Agreement will become effective immediately upon execution by all Signatories.

XI. APPENDICES

- A. NYSDOT Procedures in the Event of the Inadvertent Discovery of Human Remains During Construction*
- B. Stockbridge-Munsee Community Band of Mohicans Policy for Treatment and Disposition of Human Remains and Cultural Items That May be Discovered Inadvertently during Planned Activities*
- C. Letter from the Advisory Council on Historic Preservation (ACHP)*

XII. EXECUTION AND IMPLEMENTATION

Execution of this Agreement by the Signatories and its subsequent filing with the ACHP by FRA demonstrates that FRA has considered the effects of this Project on Historic Properties, afforded the ACHP a reasonable opportunity to comment, and satisfied its responsibilities under Section 106 of the NHPA and its implementing regulations.

**MEMORANDUM OF AGREEMENT
for
PIN 1935.49**

Signatory:
FEDERAL RAILROAD ADMINISTRATION

By: _____ Date: _____
Name: Katherine Zeringue
Title: Federal Preservation Officer

DRAFT

**MEMORANDUM OF AGREEMENT
for
PIN 1935.49**

Signatory:
NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: _____ Date: _____
Name: Daniel Mackay
Title: Deputy Commissioner of the State Historic Preservation Office

DRAFT

**MEMORANDUM OF AGREEMENT
for
PIN 1935.49**

Invited Signatory:
NEW YORK STATE DEPARTMENT OF TRANSPORTATION

By: _____ Date: _____
Name: Patrick Barnes, P.E.
Title: Regional Director

DRAFT

Livingston Avenue Bridge Project – Memorandum of Agreement

APPENDIX A

**NYS DOT PROCEDURES IN THE EVENT OF THE
INADVERTENT DISCOVERY OF HUMAN REMAINS
DURING CONSTRUCTION**

NYS DOT Procedures in the Event of the Inadvertent Discovery of Human Remains during Construction¹

1. If a burial site, human remains, or bones thought to be human remains, are encountered during construction for a NYS DOT undertaking, the work will be stopped immediately and rescheduled to avoid disturbing the area. The remains will be left in place and protected from further damage.
2. In accordance with the current NYS DOT Standard Specifications, Section 107-01 D. *Archaeological Salvage*², the Engineer-in-Charge (EIC) will, through proper channels, notify appropriate Department personnel and other authorities. The EIC will report the discovery of human remains to the local police, and the county coroner having jurisdiction, or to the medical examiner, and will arrange immediate inspection of the site³.
3. If the site is determined to be part of a criminal investigation, the police will notify the EIC when work in the area may resume.
4. If determined that the remains are not a police issue, the Regional Cultural Resources Coordinator (CRC) will notify the Federal Highway Administration (FHWA), the Office of Parks, Recreation and Historic Preservation/ State Historic Preservation Office (OPRHP/SHPO), appropriate Indian tribal contacts, and archaeologists, and arrange site visits accordingly. Work will be temporarily suspended in the area, and measures will be taken to secure the burial site and protect the remains from disturbance, including the placement of a twenty-five foot protective buffer around the burial site.
5. The NYS DOT Environmental Science Bureau (ESB), in coordination with the Region, will arrange for a qualified physical anthropologist to examine the remains. NYS DOT in coordination with FHWA will invite designated Indian tribal representative(s) to participate in the consultation process. Representatives will be determined on the basis of established Department contacts and identified areas of interest for tribal nations. The remains will not be removed until determined by the qualified physical anthropologist to be non-native.
6. NYS DOT, in consultation with the OPRHP/SHPO, Indian tribes and other identified consulting parties, will arrange for an archeologist to establish horizontal and vertical extent of the burial(s) and assess measures for avoiding the human remains if possible. The avoidance of human remains is the preferred choice.
7. Any new location or alignment developed to avoid the burial(s) will be subject to archaeological investigation, and the results will be provided to the OPRHP/SHPO, Indian tribes, and other consulting parties as appropriate for comment before the project proceeds in this area.
8. If the alignment is unchanged, a plan will be developed in coordination with FHWA, NYSHPO, the Indian tribal representatives, and other consulting parties as appropriate, to preserve the site and protect the burial(s) before the project proceeds in this area.
9. If removal and reburial of the remains is necessary, it will be undertaken in a manner agreed to by all involved parties. Temporary disposition of the remains until reburial will be determined in consultation with the Indian tribes, and other consulting parties as appropriate.
10. Any actions relating to the treatment, disposition, removal, or reburial of human remains will comply with all applicable State and Federal laws and regulations.

¹ Last updated April 21, 2016.

² <https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

³ In Erie County, the discovery must be reported to the medical director.

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APPENDIX B

**STOCKBRIDGE-MUNSEE COMMUNITY BAND OF
MOHICAN INDIANS POLICY FOR TREATMENT AND
DISPOSITION OF HUMAN REMAINS AND CULTURAL
ITEMS THAT MAY BE DISCOVERED INADVERTENTLY
DURING PLANNED ACTIVITIES**



**Stockbridge-Munsee Community
Band of Mohican Indians
Policy for
Treatment and Disposition of Human Remains and Cultural Items
That May be Discovered Inadvertently during Planned Activities**

Purpose

The purpose of this policy is to describe the procedures that will be followed by all federal agencies, in the event there is an inadvertent discovery of human remains that are identified as potentially Stockbridge-Munsee (Mohican).

Treatment and Disposition of Human Remains and Cultural Items

- 1) The federal agency shall contact the Stockbridge-Munsee Community immediately, but no later than three days after the discovery of the remains, using the contact information below: *updated Nov. 2020*

Nathan Allison, Tribal Historic Preservation Officer (THPO)	Nathan.Allison@mohican-nsn.gov	413-884-6029 office
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If unavailable, contact:

Bonney Hartley, Tribal Historic Preservation Manager	Bonney.Hartley@mohican-nsn.gov	413-884-6048 office
Heather Bruegl, Cultural Affairs Director	Heather.Bruegl@mohican-nsn.gov	715-793-4270 office
Linda Mohawk Katchenago, Administrator	Linda.Katchenago@mohican-nsn.gov	715-793-4355 office

- 2) Place tobacco with the remains and funeral objects.
- 3) Cover remains and funeral objects with a natural fiber cloth such as cotton or muslin when possible.
- 4) No photographs to be taken.
- 5) The preferred treatment of inadvertently discovered human remains and cultural items is to leave human remains and cultural items in-situ and protect them from further disturbance.
- 6) Non-destructive "in-field" documentation of the remains and cultural items will be carried out in consultation with the Tribe, who may stipulate the appropriateness of certain methods of documentation.
- 7) If the remains and cultural items are left in-situ, no disposition takes place and the requirements of 43 CFR 10 Section 10.4 – 10.6 will have been fulfilled.
- 8) The specific locations of discovery shall be withheld from disclosure (with the exception of local law officials and tribal officials as described above) and protected to the fullest extent by federal law.
- 9) If remains and funeral objects are to be removed from the site, consideration will begin between the Stockbridge-Munsee Tribe and the federal agency.

Livingston Avenue Bridge Project – Memorandum of Agreement

APPENDIX C

**LETTER FROM THE ADVISORY COUNCIL
ON HISTORIC PRESERVATION (ACHP)**



January 6, 2021

Ms. Katherine Zeringue
Federal Preservation Officer
U.S. Department of Transportation
Federal Railroad Administration
Office of Railroad Policy and Development
1200 New Jersey Avenue, SE
Washington, DC 20590

Ref: *Proposed Livingston Avenue Bridge Project*
City and County of Albany; City and County of Rensselaer, New York
(PIN 1935.49, BIN 7092890
ACHP Project Number: 16277

Dear Ms. Zeringue:

On December 3, 2020, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the potential adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Because the ACHP did not respond within 15 days with a decision regarding participation, the ACHP assumes that the Federal Railroad Administration has continued the consultation to resolve adverse effects.

Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Memorandum of Agreement (MOA) developed in consultation with the New York State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the MOA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.

If you have any questions or require our further assistance, please contact Sarah Stokely at 202-517-0224 or via e-mail at sstokely@achp.gov.

Sincerely,

LaShavio Johnson
Historic Preservation Technician
Office of Federal Agency Programs