

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE NATIONAL RAILROAD PASSENGER CORPORATION (Amtrak),
AND
THE CONNECTICUT HISTORIC PRESERVATION OFFICER
REGARDING THE
CONNECTICUT RIVER BRIDGE REPLACEMENT PROJECT
IN NEW LONDON AND MIDDLESEX COUNTIES, CONNECTICUT**

WHEREAS, the National Railroad Passenger Corporation (“Amtrak”), the project sponsor, is proposing to improve the operation of the rail crossing over the Connecticut River in the Northeast Corridor by replacing the Connecticut River Bridge (also known as “CONN” or the “Old Saybrook-Old Lyme Bridge”) (the “Project” or Undertaking”);

WHEREAS, the Federal Railroad Administration (“FRA”) is providing funding for the Project and is the lead federal agency pursuant to the National Environmental Policy Act (NEPA, codified at 42 USC 4321 *et seq.*) and is the federal agency responsible for compliance with Section 106 of the National Historic Preservation Act (codified at 54 U.S.C. § 306108, and herein “Section 106”);

WHEREAS, FRA and Amtrak, along with the Connecticut State Historic Preservation Office (“CTSHPO”), together the Signatories, as the result of a consultative process in accordance with Section 106, have determined that it is appropriate to enter into this Memorandum of Agreement or “Agreement,” pursuant to Section 800.6 of the regulations implementing Section 106 (codified at 36 CFR Part 800, and herein the “Section 106 Regulations”), which will govern the implementation of the Project and satisfy FRA’s compliance with Section 106;

WHEREAS, FRA has coordinated its compliance with Section 106 and NEPA, pursuant to 36 CFR § 800.8 through its preparation of an Environmental Assessment (“EA”) for the Project;

WHEREAS, FRA and Amtrak, in consultation with CTSHPO, have defined the Project’s areas of potential effect (“APEs”) (illustrated in Attachment A);

WHEREAS, through the process conducted in preparing the EA, FRA has determined that the Project will have an adverse effect on the Connecticut River Bridge, which is individually listed on the Connecticut State Register of Historic Places (SR) and individually eligible for the National Register of Historic Places (NRHP) (as the Connecticut River Railroad Bridge) within the context of the Moveable Railroad Bridges on the Northeast Corridor in Connecticut Thematic Nomination;

WHEREAS, as documented in the EA, FRA and Amtrak, in consultation with CTSHPO, identified several additional historic properties in the Project’s APEs that are eligible for listing in the NRHP. With the exception of the Connecticut River Bridge, FRA and Amtrak determined, and CTSHPO concurred, that the Project will not adversely affect these historic properties;

WHEREAS, as documented by the EA, FRA and Amtrak, in consultation with CTSHPO, identified one area with the potential to contain precontact period archaeological resources in the Project’s archaeological APE outside of the existing embankments in Old Lyme (“archaeologically sensitive area”);

WHEREAS, FRA has made a reasonable and good faith effort to identify and contact by letter Native American tribes and groups (the “Tribes”) that could attach religious or cultural significance to sites within the APEs upon which the Project could have an effect, namely the Mashantucket Pequot Tribe and Mohegan Indian Tribe, and invited them to participate as consulting parties under 36 CFR 800.2(c)(2). Neither of the tribes responded;

WHEREAS, FRA has made a reasonable and good faith effort to identify and contact by letter other potential consulting parties under 36 CFR 800.2(c). These potential consulting parties (including the Connecticut Trust for Historic Preservation; the US Department of the Interior, Office of Environmental Policy & Compliance; the Connecticut State Museum of Natural History; the Society for Industrial Archaeology; the Old Saybrook Historical Society; the Old Lyme Historical Society; the Lyme Historical Society; the Town of Lyme [First Selectman]; and the Town of Old Saybrook [Town Planner], as well as CTSHPO) were identified in consultation with CTSHPO, were invited by letter to attend a public meeting as consulting parties under Section 106, and were sent a copy of the EA for review and comment. The only invited consulting parties that attended the public meeting were the Town of Old Saybrook (Town Planner) and CTSHPO. With the exception of CTSHPO, none of the potential consulting parties responded accepting the role of consulting party;

WHEREAS, FRA notified the Advisory Council on Historic Preservation (“ACHP”) of the adverse effect, invited the ACHP to participate in the Section 106 process for this Project, and in a letter dated September 18, 2012, ACHP declined to participate;

NOW, THEREFORE, FRA, Amtrak, and CTSHPO agree that the Undertaking will be implemented in accordance with the following stipulations to take into account the effect of the Undertaking on historic properties.

STIPULATIONS

FRA, in coordination with Amtrak, will ensure the following measures are carried out:

I. MITIGATION OF UNAVOIDABLE ADVERSE EFFECTS

Amtrak will provide the following mitigation for unavoidable adverse effects on the Connecticut River Bridge:

- A. Historic American Engineering Record (HAER) documentation of Connecticut River Bridge. HAER documentation will include narratives that describe in detail the physical characteristics of the structure (including its engineering, design and setting), and that interpret its history, focusing on its design and construction as the largest of several significant movable bridges on the Northeast Corridor. The interpretation of the bridge’s significance will be based on a detailed historical engineering context of early 20th century movable bridges and will draw on other contemporary examples within the Northeast Corridor. Specific attention will be afforded to interpretation of how contemporary engineering and materials science constraints and cost considerations affected the final design and construction of this bridge. Primary and secondary resources will be used in the research effort, including historic engineering literature, United States Army Corps of Engineers Reports, the files of Amtrak, newspapers and periodicals, and the collections of libraries, historical societies, and other repositories in New York and Connecticut. Amtrak will duplicate the compiled information, which could include historic plans, photographs, and other documents to appropriate archival standards as part of the recordation document. The HAER recordation will also include photographic documentation of the

Connecticut River Bridge. Photographs, prints, and duplicates will meet appropriate HAER archival standards.

Amtrak will submit a draft copy of the report and accompanying materials to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and provide final copies of the recordation document to the CTSHPO, FRA, the Thomas J. Dodd Research Center at the University of Connecticut, the Old Saybrook Historical Society, and the Old Lyme Historical Society.

- B.** Salvage of elements of the Connecticut River Bridge, such as truss components, pier materials, tracks, etc. Amtrak will develop and submit a list of potentially salvageable items to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak will also develop and submit a draft marketing plan, which will outline a protocol for making a reasonable and good faith effort to identify entities that would accept salvaged elements for publicly visible display or reuse, to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak is not expected to pay extraordinary or burdensome costs associated with removal, remediation, transfer, or installation of any salvaged items. Amtrak will address any comments received from CTSHPO and will provide final copies of the list of potentially salvageable items and the marketing plan to CTSHPO and FRA. Amtrak will implement the agreed-upon marketing plan.
- C.** Development and implementation, prior to project completion, of an interpretive exhibit in a park, greenway, or public space to present the history of the Connecticut River Bridge and the Moveable Railroad Bridges on the Northeast Corridor. Amtrak will determine the location, format, content, and duration of this exhibit in consultation with CTSHPO. Amtrak will provide copies of the final exhibit design and content to CTSHPO and FRA.

II. DESIGN REVIEW

Amtrak will ensure that the preliminary and final plans and specifications for the proposed new bridge adhere to the recommended approaches in the Secretary of the Interior's Standards and Treatments for Historic Properties and are compatible with the historic and engineering features of the Connecticut River Bridge and the Moveable Railroad Bridges on the Northeast Corridor in Connecticut Historic District.

Upon completion of the Project's Design Criteria Report during preliminary engineering, Amtrak, in coordination with FRA, will consult with CTSHPO to identify engineering constraints and opportunities for incorporating historically compatible design into the preliminary plan. Amtrak, in coordination with FRA, will consult with CTSHPO in the development of bridge plans at the preliminary (30%) and pre-final (approximately 75%) design stages. Amtrak will submit copies of the final design to CTSHPO and FRA.

III. ADDITIONAL EVALUATION FOR AREAS OF ARCHAEOLOGICAL SENSITIVITY

A. Further Impact Analyses

Because the extent of previous disturbances associated with rail construction within the Old Lyme portion of the APE but beyond the embankments is not known, Amtrak and FRA considers those areas to have moderate potential for precontact period archaeological resources. Should Amtrak and FRA, in consultation with CTSHPO, determine, based on borings data or newly available documentary sources, that the area adjacent to the embankments has been previously

disturbed, these areas would then be confirmed to have low to no potential for prehistoric archaeological resources, and no further archaeological investigation would be warranted. If, based on borings data or newly available documentary sources, Amtrak and FRA, in consultation with CTSHPO, determine that the areas have not been previously disturbed, Amtrak will perform Phase 1B archaeological field testing as described in Stipulation III.B.

B. Field Testing to Determine Presence or Absence of Archaeological Resources

If Amtrak and FRA, in consultation with CTSHPO, determine through borings data or newly available documentary sources as described in Stipulation III.A, that the Project may affect areas of archaeological sensitivity, Amtrak will undertake field testing to identify the presence or absence of such resources (Phase 1B field testing):

1. Prior to commencing any field testing, Amtrak will submit a Phase 1B Field Testing Plan outlining the proposed methodology to CTSHPO for review and comment and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and will submit copies of the final plan to CTSHPO and FRA.
2. Subsequent to field testing in sensitive areas, Amtrak will prepare and submit a technical report to CTSHPO for review and comment, and will copy FRA on the submittal, in which one of the following conclusions is reached:
 - (i) The site does not appear to contain potentially significant (S/NR-eligible) archaeological resources;
 - (ii) The site does contain potentially significant (S/NR-eligible) archaeological resources.

Amtrak will address any comments received from CTSHPO and will provide final copies of the report to CTSHPO and FRA.

C. Field Testing to Determine Significance and Extent of Archaeological Resources

If Amtrak and FRA, in consultation with CTSHPO, determine as a result of Phase 1B field testing that potentially significant archaeological resources exist in areas that will be impacted by the Project, Amtrak will undertake additional field investigations to identify the physical extent of such resources and to determine their significance (Phase 2 field testing):

1. Prior to commencing any further field testing, Amtrak will prepare and submit a Phase 2 Field Testing Plan outlining the proposed methodology to CTSHPO for review and comment and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and will provide copies of the final plan to CTSHPO and FRA. Amtrak will implement the final plan, as appropriate.
2. Subsequent to Phase 2 field testing in sensitive areas, Amtrak will prepare and submit a technical report to CTSHPO for review and comment, and will copy FRA on the submittal, in which one of the following conclusions is reached:
 - (i) The site contains significant (S/NR-eligible) archaeological resources;

- (ii) The site does contain significant (S/NR-eligible) archaeological resources.

Amtrak will address any comments received from CTSHPO and will provide copies of the final report to CTSHPO and FRA.

D. Mitigation Data Recovery, Curation, and Public Interpretation

If Amtrak and FRA, in consultation with CTSHPO, determine as a result of Phase 2 field testing that significant archaeological resources exist in areas that will be impacted by the Project and that such impacts cannot be avoided, Amtrak and FRA, in consultation with CTSHPO, will develop and implement appropriate measures to minimize and/or mitigate adverse effects on archaeological resources in the APE:

1. Amtrak and FRA, in consultation with CTSHPO, will consider measures, such as design modification, for avoidance of significant archaeological resources.
2. If Amtrak and FRA, in consultation with CTSHPO, determine that significant archaeological resources cannot be avoided, in advance of any mitigation or data recovery efforts undertaken for significant archaeological sites in the APE, Amtrak and FRA, in consultation with CTSHPO, will develop in accordance with 36 CFR Part 79, an Analysis and Curation of Material and Records Plan for any archaeological excavations. Amtrak will submit the plan to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and will provide copies of the final plan to CTSHPO and FRA. Amtrak will implement the final plan, as appropriate.
3. During and/or following mitigation or data recovery efforts, Amtrak and FRA will consult with CTSHPO as to the appropriateness of creating and providing interpretive materials to the public. If appropriate, Amtrak will develop and submit a Public Outreach Plan for Archaeology to CTSHPO for review and comment, and will copy FRA on the submittal. Such interpretive materials could take the form of a nomination of the archaeological site as a Connecticut State Preserve, or preparation of brochure, information kiosk, or web page to provide information on the data recovery program and any archaeological resources uncovered as a result of that program. Amtrak will address any comments received from CTSHPO and will provide copies of the final plan to CTSHPO and FRA. Amtrak will implement the final Public Outreach Plan for Archaeology, as appropriate.

E. Unanticipated Discoveries Plan

Amtrak and FRA, in consultation with CTSHPO, will develop an Unanticipated Discoveries Plan for human and non-human archaeological resources in the event that any unanticipated archaeological resources are encountered during construction of the Project. Amtrak will submit the Unanticipated Discoveries Plan to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and will provide copies of the final plan to CTSHPO and FRA. Amtrak will implement the final Unanticipated Discoveries Plan.

F. Construction and Archaeology Phasing Plan

Amtrak will take all practical steps to initiate and complete all necessary archaeological field analysis and data recovery, depending on site access and testing feasibility, prior to initiating construction activities in the vicinity of affected resources. Amtrak and FRA, in consultation with CTSHPO, will develop a plan to appropriately phase the archaeological field analysis and data recovery with construction activities. Amtrak will submit the plan to CTSHPO for review and comment, and will copy FRA on the submittal. Amtrak will address any comments received from CTSHPO and provide copies of the final plan to CTSHPO and FRA. Amtrak will implement the final construction and archaeology phasing plan.

G. Professional Standards

Amtrak will ensure that all archaeological research, testing, analysis, and plans conducted pursuant to this MOA are carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of Interior's Professional Qualifications Standards for archaeology. Amtrak will ensure that all final reports are consistent with the Connecticut Commission on Culture & Tourism's *Environmental Review Primer for Connecticut's Archaeological Resources* and the Department of the Interior's *Standards for Archaeological Documentation*.

IV. IDENTIFICATION OF ADDITIONAL HISTORIC PROPERTIES AND ASSESSMENT OF PROJECT EFFECTS

- A. If Amtrak identifies additional historic properties not previously identified in the EA in the Project's APEs during preliminary engineering, final design, or construction of the Project, Amtrak and FRA in consultation with CTSHPO, will assess the potential effects on historic properties prior to construction in accordance with the Section 106 process.
- B. If construction activities or Project plans change such that the Project may affect an archaeologically sensitive area that would not have been affected under the original Project plans, Amtrak and FRA will notify CTSHPO and invite CTSHPO to participate in consultation to determine the appropriate course of action.

V. DOCUMENT REVIEW

CTSHPO will provide comments in writing to Amtrak and FRA regarding any future plans, reports and/or amendments to such plans or reports as promptly as possible but not to exceed 30 calendar days after its receipt of such plans or reports. If CTSHPO does not submit comments in writing to FRA and Amtrak within 30 calendar days of receipt of any such submissions, it is understood that CTSHPO has concurred with the proposed plans or reports. If CTSHPO objects in writing within 30 calendar days of its receipt of any submissions, then FRA, Amtrak, and CTSHPO will follow the dispute resolution procedures in Stipulation VII. Dispute Resolution.

VI. REPORTING AND OVERSIGHT

- A. Final Reports and Plans. Amtrak will provide final copies of all reports and plans resulting from this MOA, as specified in Stipulations I, II, and III, to CTSHPO and FRA.

- B.** Annual Review of this MOA. The signatories to this MOA, or their successors, will review the implementation of this MOA and determine whether revisions are needed on an annual basis. Each year from the date of execution of this MOA until it expires or is terminated, Amtrak will provide all signatories to this MOA a summary report detailing work carried out pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in Amtrak and FRA's efforts to carry out the terms of this MOA.

VII. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to the manner in which the terms of this MOA are implemented, FRA will consult with such party to resolve the objection. If FRA determines that such objection cannot be resolved, FRA will:

- A. Forward all documentation relevant to the dispute, including FRA's proposed resolution, to the ACHP. The ACHP will provide FRA 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, FRA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. FRA 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, FRA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FRA will prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. FRA's and Amtrak's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute will remain unchanged

VIII. AMENDMENTS

This MOA may be amended when such amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with ACHP.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party will immediately consult with the other signatories to attempt to develop an amendment per Stipulation VIII, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing with the Undertaking, FRA must either (a) execute an MOA pursuant to 36 C.F.R 800.6, or (b) request, take into account, and respond to the comments of the ACHP pursuant to 36 C.F.R 800.7. FRA will notify the signatories as to the course of action it will pursue.

This MOA will take effect on the date it is signed by the last signatory and will remain in effect until the stipulations set forth herein have been met.

X. SIGNATORIES

For purposes of notices and consulting pursuant to this MOA, the following addresses and contact information are to be used for the signatories:

Amtrak

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Washington, DC 20002

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FRA

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CTSHPO

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APPROVAL AND SIGNATURE PAGE FOR
MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL RAILROAD ADMINISTRATION,
THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),
AND
THE CONNECTICUT HISTORIC PRESERVATION OFFICER
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IN NEW LONDON AND MIDDLESEX COUNTIES, CONNECTICUT

Execution of this MOA by FRA, Amtrak, and CTSHPO and implementation of its terms evidence that FRA has taken into account the effects of this undertaking on historic properties.

FEDERAL RAILROAD ADMINISTRATION

By: 

Date: 8/5/2016

Michael M. Johnsen
Acting Division Chief, Environmental & Corridor Planning

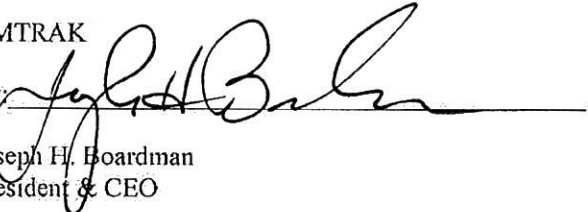
CONNECTICUT HISTORIC PRESERVATION OFFICER

By: 

Date: 6/7/16

Kristina Newman-Scott
State Historic Preservation Officer

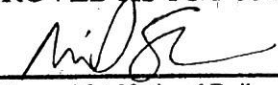
AMTRAK

By: 

Date: 7/7/16

Joseph H. Boardman
President & CEO

APPROVED AS TO FORM:

BY: 
Counsel for National Railroad
Passenger Corporation