

**MEMORANDUM OF AGREEMENT
AMONG
THE FEDERAL EMERGENCY MANAGEMENT AGENCY,
THE NEW YORK STATE HISTORIC PRESERVATION OFFICE,
THE NEW YORK STATE EMERGENCY MANAGEMENT OFFICE,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE TOWN OF PHILIPSTOWN
REGARDING A HAZARD MITIGATION PROPOSAL FOR
THE OLD ALBANY POST ROAD,
TOWN OF PHILIPSTOWN, PUTNAM COUNTY, NEW YORK**

WHEREAS, the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security, pursuant to Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121-5206) and implementing regulations in Title 44 of the Code of Federal Regulations (44 CFR) Part 206, proposes to provide assistance to the Town of Philipstown, Putnam County, New York (Applicant), through the New York State Emergency Management Office (SEMO), to mitigate damage to the Old Albany Post Road-Philipstown Section (Road) located in the town of Philipstown, Putnam County, New York (Undertaking) during storms that occurred April 14-18, 2007 and resulted in Presidential Disaster Declaration DR-1692-NY; and

WHEREAS, a 6.6-mile portion of the Road was listed in the National Register of Historic Places (NRHP) on July 8, 1982; and

WHEREAS, the Applicant submitted a request for funding under the FEMA Public Assistance (PA) Program that proposed repairing damages and restoring the Road to pre-existing conditions and FEMA's review of this project resulted in a finding of No Adverse Effect, with which the New York State Historic Preservation Office (SHPO) concurred; and FEMA provided funding for this project that consisted of filling the scoured sections of the road surface with gravel and grading to restore the road surface to pre-disaster design, function, and appearance; and

WHEREAS, the Applicant also requested Section 406 mitigation funding under the FEMA PA Program in order to prevent recurring damage due to drainage of the Road and address the safety and emergency issues that arise when the Road is eroded, and as part of its Section 406 mitigation project initially proposed: to add catch basins along the Road's shoulder for a distance of 1,100 feet north of the intersection of the Road and Sprout Brook Road; to pave the Road with asphalt and integral asphalt curbing on both sides for a distance of approximately 450 feet north of the edge of existing paving; to widen the Road from a current average width of 18 feet to a width from between 20 and 22 feet at certain portions; to realign the Road by straightening existing curves; and to remove an unspecified amount of mature roadside vegetation and a portion of a large boulder around the Road was originally constructed; and

WHEREAS, FEMA proposed that the Area of Potential Effect (APE) for the Undertaking should encompass the Road and its right of way that was designated as the historic property's boundary in the Road's NRHP nomination, for a distance of 1,100 feet north of the intersection of the Road and Sprout Brook Road, because of the potential of additional drainage work proposed by the Applicant; and

WHEREAS, FEMA determined in correspondence to the SHPO on February 21, 2008 that the Undertaking would result in adverse effects on the Road; and the SHPO concurred in its March 17, 2008 response; and

WHEREAS, FEMA and the Consulting parties have identified measures in this Memorandum of Agreement (MOA) to avoid, minimize, and mitigate the effects of the Undertaking, as provided by 36 CFR Part 800 (Section 106) of the National Historic Preservation Act (NHPA), and have thereby met the requirements of Section 106; and

WHEREAS, the junction of the Road and Sprout Brook Road is located in an area determined by the SHPO to be archeologically sensitive; and FEMA has determined that historic and prehistoric archeological resources may be present within the area physically affected by the Undertaking, but has additionally determined that the wheel paths of the roadbed have been disturbed by repeated erosion, scour, and repair; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) has asked to participate in this consultation and execute this MOA as a Signatory Party; and

WHEREAS, SEMO, as the Grantee, has asked to participate in this consultation and FEMA has invited SEMO to execute this MOA as a Signatory Party; and

WHEREAS, the Town of Philipstown, as the Applicant, has asked to participate in this consultation and will be conducting the Undertaking within the terms of the Stipulations of this MOA, and FEMA has invited the Applicant to execute this MOA as a Signatory Party; and

WHEREAS, the Old Road Society of Philipstown (ORSP), a local historic organization, has asked to participate in this consultation and execute this MOA as a Concurring Party;

NOW, THEREFORE, FEMA, SHPO, SEMO, ACHP, the Applicant, and ORSP (Consulting Parties) agree that the Undertaking will be implemented in accordance with the following Stipulations that take into account the effects of the Undertaking on historic properties and satisfy FEMA's Section 106 responsibilities for the Undertaking.

STIPULATIONS

To the extent of its legal authority and in coordination with SHPO, SEMO, ACHP, the Applicant, and ORSP, FEMA will require that the following measures that avoid, minimize, or mitigate the effects of the Undertaking, as provided by Section 106, are implemented:

I. MINIMIZATION OF ADVERSE EFFECTS

FEMA and the other Consulting Parties identified the following project specifications with which the adverse effects of the Undertaking will be minimized to the greatest extent possible, given the overlapping needs to provide hazard mitigation to protect the Road from future damage; to protect the public; and to preserve the character-defining features of the Road.

- A. **Road Surface:** The Applicant will surface the existing gravel roadway with asphalt to a depth of four inches, for a distance of no greater than 450 feet north, beginning at a point at the edge of existing paving about 80 feet north of the intersection of the Road and Sprout Brook Road. It is understood that this paving is more easily reversible than concrete and other traditional road materials.
- B. **Width:** Although some widening of the Road will occur where it is necessary to safely and adequately implement the drainage improvements, the Applicant will not widen the Road from its current width of 18 feet to a uniform 22 feet.
- C. **Alignment:** The Applicant will retain the Road's current alignment.
- D. **Drainage:** The Applicant will install drainage for a distance of approximately 650 feet north of the intersection of the Road and Sprout Brook Road, consisting of a 48-inch main line, eleven catch basins, and up to six cross pipes.
- E. **Landscape and Setting:** The Applicant will minimize its impact on the Road's landscape and setting throughout the course of the project by:
 - (1) replacing any vegetation removed as part of the resurfacing of the Road and the installation of drainage components with indigenous plants and trees; and
 - (2) not removing any part of the large boulder on the east side of the Road around which the Road was built.

II. RECORDATION TREATMENT MEASURES

- A. Prior to the Applicant's implementation of the Undertaking as described in Stipulation I, FEMA will digitally photograph all historic features of the Road that may be demolished or altered by the Undertaking. Additionally, FEMA will take digital photographs along the remaining length of the Road's NRHP boundary, approximately every half mile and where notable features are present, including all historic markers and mileposts. The recordation will be performed by or under the direct supervision of an individual who meets the Secretary of the Interior's Professional Qualification Standards (48 FR 44716, Sept. 1983) for History, Architectural History, Architecture, or Historic Architecture. The digital photography must comply with the following requirements from the National Archives and

Records Administration's (NARA's) guidance to supplement requirements in 36 CFR 1228.270 for transferring permanent electronic records to NARA.

1. Image files must be saved as JPEG files using high quality compression settings at a minimum. These files must be transferred as first generation JPEG files that have not been degraded in quality by multiple revisions and re-saving. The image files must be saved on archival quality CD-R media.
 2. Digital camera files must be captured as 6 megapixel files or greater with a minimum pixel array of 3,000 pixels by 2,000 pixels.
 3. Color images must be produced in RGB (Red Green Blue) color mode as 24-bit or 48-bit color files.
- B.** Photographic prints must comply with the National Park Service's (NPS) revised March 2008 Updated Photo Policy for the National Register of Historic Places and National Historic Landmarks Survey.
1. The photographs must meet the NPS Photo Expansion Policy 75-year permanence standard.
 2. Paper prints must follow the "Acceptable Ink and Paper Combinations for Digital Images" guidelines in the Photo Expansion Policy.
 3. Paper prints must be identified by the name and location of the historic resource, a description of the view including the direction of the camera, the date of the photograph, and the name of the photographer.
- C.** FEMA will prepare copies of the digital photographs, electronically and as prints, and submit them to (1) SHPO for submission to the New York State Archives; (2) the Putnam County Historical Society in Cold Spring; and (3) the Julia L. Butterfield Memorial Library in Cold Spring.

III. ARCHEOLOGICAL TESTING [to be completed]

IV. DISCOVERIES AND UNFORESEEN EFFECTS

- A.** The Applicant's construction activities and contracts will require the Applicant and its contractors to exercise care in all excavation activities, and to be alert to any indication of prehistoric archaeological deposits or concentrated historical building materials, i.e., Native American materials, foundations, privies, collections of refuse, etc. If in the course of the Undertaking intact archaeological materials are uncovered, the Applicant shall ensure that it or its contractor immediately stop work in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the finds. The Applicant shall ensure that the archaeological findings are secured

and access to the area of the discovery is restricted until the consultation described below is completed.

- B.** The Applicant will notify both FEMA and SEMO of a discovery or an unforeseen effect as soon as practicable and will e-mail digital photographs of the discovery or unforeseen effect with the notification. FEMA will notify and consult with SHPO to determine if further steps to minimize effects on the Road or to evaluate the National Register eligibility of the discovery and identify its treatment are necessary. FEMA will provide the Applicant, SEMO, and ORSP the opportunity to participate in this consultation. FEMA may, in consultation with the SHPO, assume that a newly discovered property is eligible for the National Register for purposes of this MOA. FEMA and the SHPO will conclude this consultation if the discovery does not contain human remains and FEMA and the SHPO determine that the discovery is not eligible for the National Register or FEMA and the SHPO determine that the unforeseen effect will not adversely affect a historic property, and FEMA will notify the Applicant that work may be resumed in the area of the discovery or unforeseen effect.
- C.** If FEMA and the SHPO determine that further steps are necessary to evaluate or treat the unforeseen effect or the newly discovered property and it does not contain human remains, FEMA shall work with SHPO, SEMO, and the Applicant to agree on timeframes and determine ways to avoid, minimize, or mitigate under Section 106 any adverse effects. Any Consulting Party may request a meeting to review the situation. At the conclusion of this consultation, FEMA will provide all parties that participated in the discovery consultation with a written summary of the consultation and its resolution. This summary may be provided by e-mail.
- D.** If human skeletal remains are uncovered during the Undertaking, the Applicant first will immediately notify the Putnam County Sheriff's Office and/or the Putnam County Coroner's Office and then shall notify FEMA and SEMO. The local law enforcement officials shall assess the nature and age of the human skeletal remains. FEMA will coordinate with SHPO and ORSP and shall ensure that the SHPO's Historic Remains Discovery Protocol is followed and that notice of the discovery is given to SHPO by contacting its Archeology Unit at 518-237-8643 within seventy-two hours of the discovery. FEMA shall take the lead in working with SHPO, Indian tribes, the Applicant, and SEMO to ensure compliance with applicable state and federal laws and this MOA. In addition, FEMA shall require that the guidelines contained in the ACHP's 2007 "Policy Statement Regarding Burial Sites, Human Remains, and Funerary Objects" or any subsequent Policy Statements that are issued after the execution of this MOA are followed.

V. ANTICIPATORY ACTIONS

FEMA will not grant assistance to the Applicant should it, with intent to avoid the requirements of this MOA or Section 106 of the NHPA, significantly adversely affect those portions of the Road to which this assistance is related.

VI. DISPUTE RESOLUTION

- A.** Should any Consulting Party object to FEMA in writing within five business days of receipt of any plans, specifications, or actions provided for review under this MOA, FEMA shall notify the Consulting Parties and consult further with the objecting party and the Consulting Parties to seek resolution.
- B.** If FEMA determines that the dispute cannot be resolved, FEMA shall forward its proposed resolution of the dispute and all relevant documentation to the ACHP. Within seven days after receipt of the documentation the ACHP will:
 - 1.** Advise FEMA that it concurs with FEMA's resolution of the dispute; or
 - 2.** Provide FEMA with recommendations, which FEMA shall take into account in reaching a final decision regarding the dispute; or
 - 3.** Notify FEMA that it shall comment pursuant to 36 CFR §800.7(c), and proceed to comment. Any comment provided shall be taken into account by FEMA in accordance with 36 CFR §800.7(c)(4) with reference to the subject of the dispute.
- C.** If the ACHP does not provide FEMA with comments or recommendations within seven days, FEMA may assume that the ACHP does not object to its recommended approach and it shall proceed accordingly.
- D.** Any recommendation or comment provided by ACHP shall be understood to pertain only to the subject of the dispute, and FEMA's responsibilities to fulfill all actions that are not subject of the dispute shall remain unchanged.
- E.** Any dispute regarding National Register eligibility that is not resolved pursuant to this Stipulation will be resolved in accordance with 36 CFR § 800.4(c)(2).

VII. AMENDMENTS, TERMINATION, AND COMPLIANCE

- A.** If the Applicant determines that it is not feasible to complete the Undertaking or fulfill the requirements of this MOA, the Applicant will immediately notify FEMA, SHPO, and SEMO in writing of this determination. Within 21 days of the notice, FEMA will meet with the other Consulting Parties, in person or by telephone, to determine if the MOA must be amended or terminated, and proceed accordingly.
- B.** Any Signatory Party may request in writing that the MOA be amended or terminated. Within 21 days of such a request, FEMA will meet with the other Consulting Parties, in person or by telephone, to consider this request. The Parties will make a good faith effort to amend the MOA prior any party taking steps to terminate it. The MOA may

be amended only upon the written agreement of all Signatories, and the process will comply with 36 CFR § 800.6(c)(7).

- C. If the MOA is not amended, the Signatory Parties may terminate the MOA by providing a 30-day written notice to the other Consulting Parties. These Parties will consult during this 30-day time frame to seek amendments or other actions that would prevent termination. Should consultation fail, FEMA will promptly notify the other Parties in writing of termination. This MOA may be terminated without further consultation by execution of a subsequent agreement that explicitly terminates or supersedes this MOA.
- D. The Applicant will not initiate construction, drainage, or other activities before complying with applicable terms of this MOA. Failure by the Applicant to fulfill its responsibilities under this MOA will jeopardize FEMA assistance for this Undertaking.

VIII. DURATION

Unless amended or terminated in accordance with Stipulation VII, this MOA will remain in effect through December 31, 2014, or until FEMA determines that it has been satisfactorily fulfilled. The Applicant will notify FEMA and SEMO when the Undertaking is completed, and FEMA will notify the Consulting Parties by mail or e-mail when it determines that the Stipulations of this MOA have been fulfilled.

IX. EFFECTIVE DATE AND IMPLEMENTATION OF MOA

This MOA shall become effective immediately upon signature by all Signatory Parties. FEMA shall provide each Signatory and Concurring Party with a complete copy of the MOA including all executed signature pages.

EXECUTION AND IMPLEMENTATION of this Memorandum of Agreement evidences that FEMA has afforded ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties, that FEMA has taken into account the effects of the Undertaking on historic properties, and that FEMA has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and applicable implementing regulations. Moreover, execution and implementation of this MOA by New York State agencies evidences that those agencies have concluded their consultation under Section 14.09 of the New York States Parks, Recreation, and Historic Preservation Law.

SIGNATORY PARTIES:

**DEPARTMENT OF HOMELAND SECURITY
FEDERAL EMERGENCY MANAGEMENT AGENCY**

Michael F. Moriarty, Acting Regional Administrator

Date: _____

NEW YORK STATE HISTORIC PRESERVATION OFFICE

Carol Ash, State Historic Preservation Officer

Date: _____

NEW YORK STATE EMERGENCY MANAGEMENT OFFICE

John A. Agostino, Alternate Governor's Authorized Representative

Date: _____

ADVISORY COUNCIL ON HISTORIC PRESERVATION

John M. Fowler, Executive Director

Date: _____

TOWN OF PHILIPSTOWN

Richard Shea, Deputy Town Supervisor

Date: _____

CONCURRING PARTY:

THE OLD ROAD SOCIETY OF PHILIPSTOWN

Howard Kaplowitz, President

Date: _____

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