MEMORANDUM OF AGREEMENT

Among

The Federal Highway Administration
The New York State Historic Preservation Office
And
The New York State Department of Transportation

Pursuant to 36 CFR 800

For

RECOVERY OF SIGNIFICANT ARCHAEOLOGICAL INFORMATION

For

at the ___________ Archaeological Site (OPRHP USN#)

PIN: ______________
(C)(V)(T), ___________County, New York
PR # ___

WHEREAS, the New York State Department of Transportation (NYSDOT) and Federal Highway Administration (FHWA) propose a federally-funded project on Route __ in ___________ (insert location) to ___________ (insert project description); and

WHEREAS, the NYSDOT has established the Area of Potential Effect (APE) for the undertaking, as the term is defined in 36 CFR 800.16(d), as ________________ ; and

WHEREAS, the NYSDOT and FHWA have conducted cultural resource studies and determined pursuant to 36 CFR 800.4(c), and in consultation with the SHPO, that the following historic properties within the APE are eligible for / listed in the National Register of Historic Places (insert above and below-ground resources); and

WHEREAS, the proposed project will avoid impact to ________________ (insert above-ground resources) by ________________ (insert appropriate avoidance measures); and

OR

WHEREAS, the proposed project necessitates ________________ (e.g. removal of mature trees contributing to the setting, grading of slope in front of property, construction of new sidewalk, etc.) at the eligible/ listed ____________ property; AND

WHEREAS, in consultation with the State Historic Preservation Office (SHPO) [and property owner], the following conditions have been agreed upon to minimize the
project’s effect on the ________________ (insert name of building/structure) property; and

WHEREAS, FHWA and NYSDOT, and in consultation with the SHPO, have applied the Criteria of Adverse Effect, as defined by 800.5(a)(1), and determined the project will have an adverse effect on the ________ archaeological site(s) within the APE; and

WHEREAS, in accordance with Section 101 (d)(6)(B) of the National Historic Preservation Act, the FHWA and the NYSDOT have contacted federally-recognized tribal nations in New York State that have identified aboriginal territory in ______ County, and ensured a reasonable opportunity for consultation in the Section 106 process; and

WHEREAS, in accordance with 36 CFR Part 800, the Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT) ensure that Conditions 1 through 12 outlined in the Advisory Council on Historic Preservation’s (Council) “Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites,” and attached as Appendix 1 to this document shall be satisfied; and

WHEREAS, the FHWA, the NYSDOT, NYSHPO, (and _____ Indian nation or consulting parties as appropriate) agree that recovery of significant information from the archaeological sites listed above may be done in accordance with the published guidance; and

WHEREAS the FHWA, the NYSDOT, NYSHPO, (and _____ Indian nation or consulting parties as appropriate) agree that the ______ Archaeological Site is significant and of value chiefly for the information on prehistory or history that it is likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation, and

WHEREAS, the FHWA, the NYSDOT, NYSHPO and (other parties) agree that it is in the public interest to expend funds to implement this project through the recovery of significant information from the ______ Archaeological Site and mitigate the adverse effects of the project; and

WHEREAS, based on available information, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work;

NOW, THEREFORE, the FHWA, the NYSDOT, NYSHPO, (and other parties) agree that execution of this agreement evidences that the FHWA has taken into account the effects of this undertaking on significant archaeological properties and fulfilled its responsibilities under Section 106 of the 1966 National Historic Preservation Act (as amended).
STIPULATIONS:

FHWA, in coordination with NYSDOT, shall ensure the following stipulations are carried out:

1. Data Recovery investigations shall be implemented in accordance with the approved Archaeological Data Recovery Plan attached as Appendix 2, accepted by the NYSDOT, FHWA and SHPO.

2. Investigation and documentation shall be conducted in accordance with the current New York State Education Department’s (SED) Cultural Resource Survey Program Work Scope Specifications for Cultural Resource Investigations for NYSDOT Projects, which incorporates the New York Archaeological Council’s [NYAC’s] "Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State", 1994 (NYAC Standards).

3. In the event that evidence of a human burial is encountered during data recovery or construction operations, NYSDOT procedures shall be implemented to initiate consultation with Native American and other appropriate groups, and determine the appropriate treatment and disposition of identified human remains and associated artifacts.

4. Any conditions or measures agreed upon to avoid or minimize effects to other historic properties shall be implemented.

TERMS AND CONDITIONS:

- Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

- Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council to assist in resolving the dispute.

- If the Data Recovery Plan is not implemented within two years of the execution of this agreement, it shall be updated and submitted to the SHPO for review. Upon the mutual written consent of all signatories, revisions to the Data Recovery Plan shall be adopted and implemented, without necessitating amendments to this agreement.
Execution of this Memorandum of Agreement by FHWA, NYSDOT, PBA, and SHPO, and filing with the Council as specified in 36 CFR 800.61b)(1)(IV) and the implementation of its terms evidence that the FHWA has taken into account the effects of the project on historic properties.

Federal Highway Administration: 

Date: 

State Historic Preservation Officer: 

Date: 

NYS Department of Transportation Official: 

Date:
ATTACHMENTS:

Appendix 1 - Advisory Council on Historic Preservation Conditions: Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites.

Appendix 2 - Data Recovery Plan
Appendix 1

1. The archaeological site(s) should be significant and of value chiefly for the information on prehistory or history they are likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.

2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).

3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.

4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site’s excavation and removal of its contents.

5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.

6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO and other stakeholders that is consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties, the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation and the Advisory Council on Historic Preservation’s Treatment of Archaeological Properties: A Handbook. The Plan should specify:

   a) The results of previous research relevant to the project;
   b) research problems or questions to be addressed with an explanation of their relevance and importance;
   c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs;
   d) the methods to be used in artifact, data and other records management;
   e) explicit provisions for disseminating the research findings to professional peers in a timely manner;
   f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results;
   g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and
h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.

7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior’s Professional Qualifications Standards (48 FR 44738-44739).

8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.

9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior’s Format Standards for Final Reports of Data Recovery Programs (41 FR 5377-79).

10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.

11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.

12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per § 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.