
Appendix E
Memorandum of Agreement

**SECOND AMENDED
MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER
REGARDING THE INTERMODAL FERRY TRANSPORTATION CENTER
CITY OF SOUTH AMBOY, MIDDLESEX COUNTY, NEW JERSEY**

This agreement further amends the Memoranda of Agreement
executed on July 25, 2003, amended December 22, 2009, and extended December 17, 2019 by
agreement of all consulting parties

USACE PERMIT APPLICATION NUMBER NAN-2020-00587-EMI

WHEREAS, the City of South Amboy proposes to construct an intermodal ferry facility [including access roadways, parking, inter-connecting pedestrian access walkways, terminal and in-water improvements] to accommodate up to three ferry vessels in South Amboy, Middlesex County using funds provided by the Federal Highway Administration (FHWA) via the New Jersey Department of Transportation (NJDOT); and

WHEREAS, the FHWA, the New Jersey State Historic Preservation Office (NJSHPO), the Advisory Council on Historic Preservation (Council), and the NJDOT executed a Programmatic Agreement in November of 1996 which stipulates how FHWA's Section 106 responsibilities for NJDOT-administered federal aid projects will be satisfied; and

WHEREAS, in accordance with that agreement, the NJDOT has consulted with the NJSHPO in order to determine the area of potential effect (APE), to identify significant National Register eligible and listed properties, and to assess the effects of the project on both eligible and listed properties within the APE pursuant to the requirements of 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C.470f); and

WHEREAS, background and field research indicated that physical remains of the Camden & Amboy [ca. 1831 - 1871] and Pennsylvania [ca. 1871- 1965] Railroads persist within and beyond the APE, but the survival and integrity of the physical remains in the APE were initially thought to be low due, primarily to physical alterations of the topography; and

WHEREAS, the historic significance of the property within the APE initially resulted primarily from it being the location of nationally significant events, the feeling or sense of place conveyed by the few physical remains, and the setting of the former rail yard and piers; and

WHEREAS, previous consultation on other projects resulted in an initial June 26, 1975 opinion (and several reiterations of that opinion in the context of federally funded

roadway and other projects) that the Camden & Amboy Railroad (Main Line) Historic District is eligible for listing in the National Register of Historic Places; and

WHEREAS, previous consultation has also indicated that the period of significance for the Camden & Amboy Railroad (Main Line) Historic District spans the tenures of both railroad companies; and

WHEREAS, consultation for other projects affecting the Camden & Amboy Railroad (Main Line) Historic District has focused on identifying and protecting contributing resources and features of the historic district; introducing historically compatible new bridges, stations, and structures; and adequately mitigating the adverse effects resulting from new construction or removal of original features; and

WHEREAS, Hunter Research, Inc. (HRI) initially compiled an inventory of visible railroad remains within the APE [*The Catenary Structures at the Intermodal Ferry Transportation Center, South Amboy, Middlesex County, New Jersey with a note on Camden and Amboy Railroad Stone Sleepers, Historic Context, Description and Recommendations*; Ian Burrow, December 2002] which recommended that the overall integrity of the Camden & Amboy Railroad yards at this location is low due to the heavy and continual modification of the landscape for railroad and industrial use, and the explosion event of May 19, 1950 which destroyed buildings and facilities along the waterfront; and

WHEREAS, in consultation comments dated December 14, 2001 and February 27, 2002 the NJSHPO concurred with FHWA's determination that the construction of this project as proposed would have an adverse effect on the Camden & Amboy Railroad (Main Line) Historic District due to the alteration and/or removal of the catenary structures and stone sleepers; and

WHEREAS, in correspondence dated October 24, 2002 the NJ SHPO recognized the cumulative effect of multiple projects on the Camden & Amboy Railroad (Main Line) Historic District; and

WHEREAS, in 2002 the NJDOT and FHWA considered alternatives to avoid or minimize the adverse effects and found that they were not feasible; and

WHEREAS, a general Camden & Amboy corridor management study entitled *Camden and Amboy Railroad Historic Districts Study, Volume 1 and Volume 2* [Archaeological and Historical Consultants, Inc., 2001] identified appropriate mitigation strategies and additional opportunities which were considered by the project sponsors in developing a mitigation program to offset the adverse effects of the proposed construction; and

WHEREAS, consultation for the Southern New Jersey Light Rail Transit System (SNJLRTS) has involved extensively researched considerations of appropriate standard design features for new construction within the Camden & Amboy Railroad (Main Line) Historic District; and

WHEREAS; it is desirable to utilize a single design vocabulary for all projects within the historic district; and

WHEREAS, as part of the initial Section 106 consultation, two public meetings were held on February 8, 2001 and June 27, 2001 in the City of South Amboy to describe the project and the environmental studies which had been conducted to the public, and to allow the public to ask questions and provide comments on the work conducted to date; and

WHEREAS, questions and comments at that meeting related primarily to traffic engineering issues; and

WHEREAS, in 2001 and 2002 the FHWA, NJSHPO, NJDOT and City of South Amboy, consulted to develop a plan to mitigate the adverse effects; and

WHEREAS, the Council was notified of the adverse effect and was invited to participate in the consultation process via letter from the Federal Highway Administration's NJ Division Office dated March 21, 2002 and declined to participate in the consultation process; and

WHEREAS, in order to resolve adverse effects to historic properties, a Memorandum of Agreement (MOA), developed in consultation with consulting parties, was executed on July 25, 2003 which stipulated specific mitigation activities that must be completed in order to advance to construction; and

WHEREAS, a combined Environmental Assessment (EA) and Section 4(f) Evaluation were prepared pursuant to 42 U.S.C. 4332(2)(c), 54 U.S.C. 306108, 470(f), 49 U.S.C. 303 and 23 U.S.C. 138 (December 4, 2003), and a Finding of No Significant Impacts (FONSI) was made by FHWA on January 3, 2005; and

WHEREAS, for the purposes of construction the project was broken into four project phases: the Main Street Bridge, Radford Ferry Road Phase I, Radford Ferry Road Phase II, and the Intermodal Ferry Transportation Center (IFTC) site (remediation and construction); and

WHEREAS, the Main Street Bridge project was completed in Spring of 2007, the construction of the Radford Ferry Road Phase I project was completed in May 2009, the Radford Ferry Road Phase II project was completed in September 2012 and remediation of the IFTC site was completed in 2018; and

WHEREAS, although construction of the Main St. bridge project had been completed and construction on the Radford Ferry Road bridge had been initiated prior to the July 25, 2008 expiration of the MOA executed on July 25, 2003 ("2003 MOA") as required by Administrative Condition V *Review of Implementation* of that agreement, the consulting parties agreed it would be prudent to execute an Amended MOA to address changes to the project and needed changes to the Stipulations of the 2003 Agreement; and

WHEREAS, the design for the IFTC was subsequently revised (from the 2003 proposal) prior to the issuance of a New Jersey Department of Environmental Protection (NJDEP) Waterfront Development permit on June 19, 2009 (Permit No. 1220-02-0002.2, WFD 050001) the location of the waterfront walkway was moved landward of the wetland transition area, the breakwater was significantly reduced in size, and the ferry dock and access locations were changed, thus both the dredging of approximately 36,000 CY of material and the containment area for the dredged materials were eliminated from the project; and

WHEREAS, an Amended MOA was executed on December 22, 2009; and

WHEREAS, archeological monitoring protocols were initially developed in 2009, revised in response to NJ SHPO comments (Gregg to Marcopul, 5/28/2009, and email, Hughes to Rappleye, 8/14/2009) in February of 2010, resubmitted to the NJ SHPO for comment on February 17, 2010, and revised in November of 2011 in response to comments from both NJDOT and the NJ SHPO as required by Stipulation I of the 2009 Amended MOA; and

WHEREAS, archeological monitoring was undertaken using the approved protocols 2012 as an adjunct to the construction of Radford Ferry Road Phase II and related soil remediation actions, and the work reported in Chapter 7 (*Identification and Evaluation of Archaeological Resources*), and Appendix F *Documentation of Wooden Trestle Structure. November 15, 2012*) of the report *Cultural Resources Investigations, Intermodal Ferry Transportation Center* (Hunter Research, Inc. December 2015); and

WHEREAS, archeological monitoring protocols involving both observational and documentary monitoring as required by the MOA were revised on mid-2016 and were employed in 2016 and 2017 in connection with the remediation of contaminated soils at the IFTC site; and

WHEREAS, for the purpose of managing and describing data, eighteen remediation areas were identified within the former Conrail and Spectrserve sites; and

WHEREAS, documentary monitoring following the unexpected discovery of a mid-19th century Camden & Amboy era railroad turntable beneath the remains of a late 19th/early 20th century engine house in Remedial Area 15, and traces of the original Camden & Amboy Railroad rail bed laid down in 1832, along with numerous re-used stone sleepers and evidence of underlying Native American occupation in Remedial Area 16 and registered as the Camden and Amboy Railroad/Pennsylvania Railroad Terminal Archaeological Site (28-Mi-289) revealed significant information about the natural and culturally modified stratigraphy of the site (and the locale), as well as the potential for other features of both the Camden & Amboy and Pennsylvania Railroads' tenures of the site to be extant; and

WHEREAS, observational monitoring in other remedial areas of the IFTC site provided for the documentation of additional archeological resources; and

WHEREAS, the locations of the eighteen remedial areas are identified and the data collected during all monitoring efforts conducted to date are described in the report *Archaeological Monitoring and Testing, Environmental Remediation at the Former Conrail and Spectraserve Sites* (Hunter Research, Inc. June 2018); and

WHEREAS, additional archeological monitoring will be required during the construction of the IFTC site and terminal building in order to fully satisfy the requirements of Stipulation I of the 2009 Amended MOA, as extended in 2019; and

WHEREAS, the photographic documentation required by Stipulation II of the 2009 Amended MOA, as extended in 2019, has been taken at various times between 2002 and 2015, and selected photographs from the inventory of photos appear in the December 2015 report, *Cultural Resources Investigations, Intermodal Ferry Transportation Center* (Hunter Research, Inc.) in Chapters 6 (*Identification and Evaluation of Historic*

Architectural Resources) and 7 (*Identification and Evaluation of Archaeological Resources*), and Appendices C (*Hunter Research, Inc. The Catenary Structures at the Intermodal Ferry Transportation Center, South Amboy, Middlesex County, New Jersey. 2002*) and F (*Documentation of Wooden Trestle Structure. November 15, 2012*); and

WHEREAS, the requirements for Field Verification of Pier/Wharf Locations of Stipulation III of the 2009 Amended MOA have been exceeded through the use of georectified drone-acquired aerial photography for precise mapping, inspection and documentation (notes and photography) of all piling and pier/wharf remains, and Historic American Engineering Record (HAER)-level recording of the Westmoreland and Lehigh piers, and is documented in *Archaeological Documentation Camden and Amboy Railroad/Pennsylvania Railroad Wharves Westmoreland Pier and Lehigh Pier (Intermodal Ferry Transportation Center Site) City of South Amboy, Middlesex County, New Jersey* (Harshbarger, Hunter, and Butchko, December 2020); and

WHEREAS, a landscape architect working with HRI staff developed *Style Guidelines for the Intermodal Ferry Transportation Center, South Amboy, Middlesex County, New Jersey* (B. W. Bosenberg & Company, Inc. 2012) as a catalogue of design ideas responsive to the Secretary of the Interior's Standards for the Treatment of Historic Properties that would be appropriate for incorporation into the design of the IFTC site as required by Stipulation IV.A of the 2009 Amended MOA, as extended in 2019; and

WHEREAS; the IFTC site design must be responsive to the need to consider other environmental features and cannot be finalized until any restrictions to or modifications of the design are identified through the various state and federal permitting processes; and

WHEREAS, a stakeholder's meeting was held in the City of South Amboy on January 8, 2019 and a Pre-Application meeting was held with NJDEP's Office of Permit Coordination (12 NJDEP Units represented) and a representative of the United States Army Corps of Engineers (USACE) on May 28, 2019, for the purpose of identifying issues/concerns about the project that may affect the proposed design and/or the issuance of permits; and

WHEREAS, the design of the IFTC site was again revised prior to seeking permits from the NJDEP in 2020, to include an additional ferry berth (total 3), the elimination of the proposed breakwater, an elevated walkway and a detention basin, and to reintroduce approximately 24,400 CY of dredging and reuse of dredged materials on site to increase the site grade; and

WHEREAS, based on the revised site plan, a combined NJDEP Waterfront Development Individual Permit, Water Quality Certificate/Acceptable Use Determination was issued on June 8, 2020 that authorized construction of a ferry terminal comprised of a terminal building, staging plaza with canopy, floating docks, parking for approximately 626 cars, sidewalks, landscaping, lighting, five timber clusters, steel sheet bulkhead, and a stormwater management system, and required both filling of intertidal shallows and dredging; and

WHEREAS, the NJDEP permit also included Pre-Construction Conditions that repeated the outstanding conditions in the 2009 Amended MOA and new historic

property concerns required submission of cross sections showing cut/fill of the IFTC site, for impacts on identified archeological properties completion of outstanding reports of cultural resources investigations, completion of additional archeological studies and appropriate consultation as warranted by the discovery of additional archeological resources or changes to the project design, and completion of the outstanding design work (interpretive and aesthetic); and

WHEREAS, the terminal site plan was again revised in response to pre-application consultation with the USACE and others in order to avoid impacts to intertidal mudflats considered to be a *special aquatic site*; and

WHEREAS, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, 33 U.S.C. § 403 and 33 U.S.C. § 1344, USACE has been requested to issue a permit authorizing the discharge of fill, dredging and construction of ferry berthing structures along the Raritan Bay waterfront as described by the City of South Amboy in Department of the Army permit application NAN-2020-00587-EMI; and

WHEREAS, the discharge of fill, dredging and installation of waterfront structures, by the applicant is identified as the "Undertaking" in the permit application; and

WHEREAS, USACE has defined the Permit Area for the Undertaking, as defined at 33 CFR Part 325, Appendix C, as:

- Construction of ferry berthing structures
- Construction of new bulkhead (approximately 1,225 linear feet constructed waterward of existing around a solid, filled pier)
- Discharge of fill within a reconstructed bulkhead on a solid filled pier (approximately 748 cubic yards of fill discharged over approximately 3,770 square feet/0.087 acres below plane of Spring High Water (SHW))
- Construction of an approximately 42-inch diameter outfall and associated scour protection (approximately eight cubic yards of fill discharged over approximately 560 square feet below the plane of SHW)
- Maintenance dredging (approximately 15,205 cubic yards dredged over approximately 148,181 square feet/3.40 acres)

And the following upland activities per 33 CFR Part 325, Appendix Section (1)(g)(1):

- Construction of a ferry terminal building
- Construction of a ferry plaza building
- Construction of parking lots and roadways
- Construction of walkways
- Construction of upland retaining wall/bulkhead (approximately 536 linear feet); and

WHEREAS, USACE has determined that the Permit Area for the Undertaking is identical to the Area of Potential Effect; and

WHEREAS, FHWA and the NJDOT have continued consultation with the NJSHPO pursuant to Section 106 of the National Historic Preservation Act (54 U.S.C. §

306108); Advisory Council of Historic Preservation (Council) implementing regulations at 36 CFR Part 800; and

WHEREAS, modifications to the project resulting from consultation with the NJDEP and USACE prompted a modification to the project's APE, and additional investigations to identify historic properties and assess effects; and

WHEREAS, consultation with the NJSHPO resulted in the determination that additional elements of the Camden and Amboy Railroad/Pennsylvania Railroad Terminal Archaeological Site (28-Mi-289) extend eastward within the project site and that the Westmoreland and Lehigh Piers contribute to the Camden and Amboy Railroad Main Line Historic District (emailed comments, Marcopul to Rappleye 5/6/2021); and

WHEREAS, consultation for the dredging of a slightly less than four (4) acre area between the Westmoreland and Lehigh piers, resulted in agreement that the potential for the construction to encounter any contributing submerged archaeological resources is low based on prior dredging data from the 1870's, but noted that timber piles or crib remnants of the northeast end of the Westmoreland Pier demolition ca. 1910 may be present (Marcopul to Rappleye 5/6/2021); and

WHEREAS; the NJSHPO concurred that the proposed archaeological monitoring of construction in that area would be appropriate to treat any historic properties or unanticipated archaeological discoveries per 36 CFR 800.13; and

WHEREAS, the NJSHPO also concurred that the installation of steel sheeting around portions of the perimeter of the Westmoreland pier, a portion of the Lehigh piers and the intervening waterfront as required by the revised plan resulted in concurrence that this new component of the proposed construction would have no adverse effect [Marcopul to Rappleye 5/6/2021], but would not change the overall finding of adverse effect for the project; and

WHEREAS, the City of South Amboy has continued to develop the physical and aesthetic components of the IFTC Site Plan in accordance Stipulation IV of the 2009 Amended MOA; and

WHEREAS, the combined historic and archeological investigations of the IFTC site have provided important information on the Camden & Amboy Railroad's original construction methods, locations and use of the site through the nineteenth century, a more extensive understanding of site stratigraphy at this location, and both the existence of and the potential for undiscovered archeological remains to be present at the IFTC site; and

WHEREAS, elevation +15 above sea level has been established in consultation with Hunter Research, Inc. (HRI) as the highest elevation at which historically significant Camden & Amboy railroad and pre-Contact strata can reasonably be expected atop the pre-twentieth century sand peninsula where the *circa* 1832 Camden & Amboy Railroad rail alignment is located; and

WHEREAS, the site plan has been modified to avoid and/or minimize impacts to discovered archeological features/artifact bearing deposits and recently identified former land surfaces which have the potential to contain archeological features associated with the Camden & Amboy Railroad/Pennsylvania Railroad South Amboy Terminal

Archaeological Site to the degree possible by raising the grade of the site and removing sub-grade drainage basins; and

WHEREAS, the cross sections submitted to the NJSHPO for review on July 24, 2020 demonstrated that the grade of the IFTC site has been designed to avoid construction below elevation +16 above sea level whenever possible; and

WHEREAS, the NJSHPO provided comments (email Baratta to Thein, 9/4/2020) concurring that construction would occur in only one area of high archeological sensitivity, but a minimum cap approximately two feet deep would be maintained at that location, thereby precluding the need for additional archeological investigations unless unexpected resources are discovered during project implementation; and

WHEREAS, the City of South Amboy has determined it is not feasible to construct a “gateway” to the IFTC facility, as originally envisioned, that preserves in place two types of catenary structures as required by Stipulation IV.B of the 2009 Amended MOA, but has proposed to preserve the one remaining catenary structure and three existing catenary vertical sections which will be modified to serve as light standards) elsewhere on the IFTC site and provide appropriate interpretation; and

WHEREAS, in consultation with the NJSHPO, the City of South Amboy has proposed a site plan that includes preservation and interpretation of extant historic features, reconstruction of interpretive features with appropriate signage, commemorative features, and an alternate gateway design that acknowledges the Camden & Amboy Railroad Historic District and uses materials and design that are compatible with the setting; and

WHEREAS, upon review of the draft landscape design documents and interpretive elements, in continuing consultation comments dated February 18, 2021, the NJSHPO found that the components of the plan are in conformance with the 2009 Amended MOA, as extended in 2019 and are generally compatible with the historic property (email Marcopol to Rappleye, 2/18/2021); and

WHEREAS, after posting information (including technical reports describing historical, architectural and archeological research undertaken for the project, non-technical summaries, and related documents) on the City’s web site, the City of South Amboy sought comment from the public on the proposed IFTC site design during a February 25, 2021 virtual meeting; and

WHEREAS, those in attendance were supportive of the proposed design, and no objections to the proposed site plan have been raised or modifications to the plan requested; and

WHEREAS, the City of South Amboy has invited the Historical Society of South Amboy to participate in the further development of interpretive features for the IFTC; and

WHEREAS, a conceptual rendering of the ferry terminal building has been submitted to the NJSHPO for comment, was included in information posted on line and displayed at the February 25, 2021 public meeting; and

WHEREAS, the ferry terminal building will be built in the future, subject to continuing Section 106 consultation, and addressed in the stipulations below; and

WHEREAS, during the 2016-2017 archeological monitoring large Camden & Amboy Railroad artifacts were recovered and stockpiled on site for use in future interpretive or landscape features; and

WHEREAS, archaeological fieldwork has identified large quantities of Camden & Amboy Railroad stone rail sleepers and blocks that are present on-site and has documented their existence and location (HRI December 2020 report); and

WHEREAS the FHWA, NJSHPO, NJDOT, and City of South Amboy have agreed that all such artifacts in the tidal zone remain in-situ regardless of whether or not they are in their original locations; and

WHEREAS, the City of South Amboy has agreed to retain ownership of all archeological materials (artifacts and related records) recovered from the site during the current project for use in educational/interpretive exhibits on site, at City-owned properties, or through loan agreements with other facilities in lieu of offering them to other facilities as described in Stipulation V of the 2009 Amended MOA, as extended in 2019; and

WHEREAS, the additional historic research required by Stipulation VI.A of the 2009 Amended MOA, as extended in 2019, has been completed and the information obtained has been integrated into the several reports of investigations completed for IFTC project, but notably in Chapter 5 [*Historic Context for The Camden and Amboy Railroad (Main Line) Historic District (1831-1970)*] of *Cultural Resources Investigations, Intermodal Ferry Transportation Center* (Hunter Research, Inc. December 2015); and

WHEREAS, the technical reporting requirement included in the 2009 Amended MOA, as extended in 2019, as Stipulation VI.B has been satisfied through the compilation of three documents:

- *Cultural Resources Investigations, Intermodal Ferry Transportation Center* (Hunter Research, Inc. December 2015 which consolidates information from several earlier studies conducted prior to the execution of the 2009 Amended MOA,
- *Archaeological Monitoring and Testing, Environmental Remediation at the Former Conrail and Spectraserve Sites* (Hunter Research, Inc. June 2018), and
- *Archaeological Documentation Camden and Amboy Railroad/Pennsylvania Railroad Wharves, Westmoreland Pier and Lehigh Pier (Intermodal Ferry Transportation Center, City of South Amboy, Middlesex County, New Jersey* (Hunter Research, Inc. December 2020); and

WHEREAS, reporting of the archeological monitoring for the construction of the IFTC site and, later, the terminal building will be compiled as addenda to the existing report (or in an alternate format as agreed with the NJSHPO) as defined in Stipulations II below; and

WHEREAS, pursuant to the 2009 Amended MOA, an initial non-technical descriptive summary of information about the history of the rail facility in the context of the Camden & Amboy and Pennsylvania rail systems, *The Intermodal Ferry Transportation Center, New Jersey's First Tidewater Railroad Terminal* (Hunter Research, October 2015) was prepared in the NJDOT's *Cultural Resources Digest* format and posted on the City's web site pursuant to Stipulation VI.C of the 2009 Amended MOA, as extended in 2019; and

WHEREAS, a second non-technical summary addressing the results of the 2016-2017 archaeological monitoring program, *The Intermodal Ferry Transportation Center, New Jersey's First Tidewater Railroad Terminal, Archaeological Monitoring Supplement* (Hunter Research, May 2018) was also prepared in the Cultural Resources Digest format and posted on the City's web site pursuant to Stipulation VI.C of the 2009 Amended MOA, as extended in 2019; and

WHEREAS, the City of South Amboy reposted the two non-technical summaries along with all cultural resources reports prepared to date (and relevant documents) on their website on February 12, 2021 pursuant to Stipulation VI.C of the 2009 Amended MOA, as extended in 2019; and

WHEREAS, the City of South Amboy has created an "Updated Ferry Project Information" Quick Link on their web site to continue to make existing and subsequent cultural resources reports and related documents publicly available, to provide an address where information about the IFTC site design and interpretive features will be available for public review and comment during the final design process, and to provide updates on the project during construction; and

WHEREAS, the City has agreed to continue to maintain all (present and future) cultural resources reports prepared for this project and related documents as a feature of the City's website for at least ten (10) years, with the documents becoming part of the site's archive once they no longer appear as a feature of the site; and

WHEREAS, FHWA has determined that the undertaking will have an effect which is not adverse on the newly identified (and subsequently expanded) Camden & Amboy Railroad/Pennsylvania Railroad South Amboy Terminal Archaeological Site, 28-Mi-289, which is individually eligible for listing in the National Register of Historic Places and eligible as a contributing element of the Camden & Amboy Railroad (Main Line) Historic District, and the undertaking in its entirety continues to have an adverse effect on the New Jersey and National Register eligible Camden & Amboy Railroad (Main Line) Historic District; and

WHEREAS, FHWA initiated consultation with the Delaware Nation, the Delaware Tribe of Indians of Oklahoma and the Shawnee Tribe on February 16, 2021, to request their comments on the proposed undertaking, and sent a second request on March 16, 2021; and

WHEREAS, the Delaware Nation responded on March 16, 2021 (Paden to To Whom It May Concern) noting the possibility of endangering cultural or religious sites of interest to the Delaware Nation and stating that as long as an archeological monitor is present and could halt construction to allow for consultation with the Delaware Nation

should artifacts or a site be inadvertently discovered, the project could continue as planned; and

WHEREAS, the Delaware Tribe of Indians responded on April 26, 2021 stating they have no objection to the proposed project, but asked that if any archaeological or human remains are discovered during construction that work be halted, the tribe notified immediately, and appropriate consultation be initiated; and

WHEREAS, the Shawnee Tribe did not respond to either request for comments; and

WHEREAS, the requests from the tribal nations will be specifically included in the archaeological monitoring plan and discussed at the preconstruction conference to be held after selection of a contractor for the work and prior to the initiation of any on-site construction activities; and

WHEREAS, all federally recognized tribal nations will continue to be consulted if any additional Pre-Contact period archaeological resources or historic properties are identified during project implementation; and

WHEREAS, this agreement amends the previous Memoranda of Agreement [executed on July 25, 2003, as amended on December 22, 2009] and extended on December 17, 2019 via agreement by the Signatories;

NOW, THEREFORE, the FHWA, and the NJSHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The FHWA and USACE shall ensure that the following measures are carried out:

The City of South Amboy, using the services of a qualified consultant, in accordance with Administrative Condition II and prior to the initiation of construction, shall implement the following stipulations.

I. Design Considerations

A. Site Design

The City of South Amboy, using the services of a landscape architect working with a qualified consultant, in accordance with Administrative Condition II shall develop site plans and specifications that minimize the visual impacts of the new construction on the remaining features of the historic rail facility. The City of South Amboy shall continue to consult with the NJSHPO and any consulting parties that may wish to participate, for review and comment on the design of the IFTC site, including the planned gateway, interpretive features and site amenities (benches, trash receptacles, lighting, etc.) to ensure the design is responsive to the standards, guidelines, and recommended approaches for new construction

affecting historic properties as set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Historic compatibility considerations shall include design, location, size, scale, materials, color, workmanship, and visual impacts. As the design progresses, the City shall post site design information on its website to inform the public of the progress of the design.

B. Site Interpretive Features

The City of South Amboy using the services of a qualified consultant, in accordance with Administrative Condition II shall provide plans and specifications for the use of artifacts and historic documents as part of interpretive displays on-site, in the new terminal facility and as part of the purpose-built gateway structure. The City of South Amboy shall seek and consider the comments of the Historical Society of South Amboy NJSHPO and any consulting parties that may wish to participate as they continue to develop the interpretive components of the IFTC site.

C. Site Design Review

The City of South Amboy shall ensure that site plans, including design details, and specifications are submitted to the NJSHPO for review as soon as possible, but at least sufficiently prior to seeking authorization of funding for the project from NJDOT that any comments provided by the NJSHPO can be addressed. Any design issues raised by the NJSHPO shall be addressed and resolved through consultation among the City, NJSHPO, and NJDOT prior to advertisement of the project and/or prior to the initiation of any actions which may limit or preclude the consideration of alternatives. NJDOT shall request that FHWA participate in the consultation if the issues cannot be resolved without their intervention.

D. Terminal Design

The City of South Amboy shall continue to consult with the NJSHPO and any other consulting parties that may wish to participate, on the design of the terminal building to ensure the design is responsive to the standards, guidelines, and recommended approaches for new construction affecting historic properties as set forth in the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. Historic compatibility considerations shall include design, location, size, scale, materials, color, workmanship, and visual impacts. As the design progresses, the City shall post site design information on its website to inform the public of the progress of the design. The site plans, including design details, and specifications shall be submitted to the NJSHPO for review as soon as possible, but at least sufficiently prior to advertising for the construction of the project that any comments provided by the NJSHPO can be addressed. Any design issues raised by the NJSHPO shall be addressed and resolved through consultation among the City and NJSHPO and/or pursuant to Administrative Condition V prior to advertisement of the job and/or prior to the initiation of any actions which may limit or preclude the consideration of alternatives.

II. Archeological Monitoring

A. Revised Protocols

The City of South Amboy shall ensure that monitoring protocols developed for earlier phases of construction are updated to reflect the greater understanding of the site; the requests of the Tribal Nations; and the potential for resources to exist/be discovered during construction of both the IFTC site and the terminal building. The revised protocols shall identify specific construction activities that will require archaeological monitoring based on current plans and cross sections, and any subsequent revisions that are made. The revised protocols shall provide for inclusion of appropriate preconstruction notification of all construction inspectors and contractors; procedures for notification of the project archaeologist(s), NJDOT-Bureau of Environmental Program Resources (BEPR), NJSHPO, and the Tribal Nations of the unexpected discovery of archeological features/resources; immediate cessation of work; and consultation to identify additional measures required for Section 106 compliance. The revised protocols shall be submitted to the NJSHPO and the NJDOT-BEPR for review and comment prior to advertising the construction contract; shall be included in the construction bid package; and shall be an item of discussion during the preconstruction conference. In accordance with Stipulation III, the results of the archaeological monitoring shall be submitted to the Signatories for review and comment.

B. Artifact Inventory

The project archaeologist(s), in coordination with the City of South Amboy and the Historical Society of South Amboy, shall prepare a final inventory of artifacts, including sleeper stones, recovered, stored or stockpiled during all phases of the project. The City of South Amboy shall retain ownership of all artifacts, but may loan them to other repositories that also meet the curation standards found at 36 CFR Part 79 for an extended period of time. The final inventory will indicate the disposition of the artifacts (either as interpretive components of the IFTC Site or placed in storage or on display at other locations) and shall indicate whether a loan agreement has been executed. The City of South Amboy, as the owner of the collection, shall retain the responsibility for maintaining information about the location of any loaned artifacts. If any materials are culled from the collection due to such reasons as limited significance or contamination, the project archaeologist(s) shall provide a written justification of the procedure used to cull artifacts. This artifact inventory shall be made part of the project's final reporting.

III. Final Reporting

The City shall ensure that appropriate reporting of the research conducted for all phases of the project is completed. Any new data collected during subsequent monitoring shall be placed in the context of the existing body of knowledge about the use of this locale. Reporting for monitoring work shall be completed within three (3) months of the completion of fieldwork. A paper copy of all final reports/cultural resources documentation must be provided to NJSHPO and NJDOT-BEPR; a digital submission containing the same documentation must

also be submitted with the final reports. A digital submission containing all of the cultural resources reports and documentation should be provided to the Historical Society of South Amboy, Library at the Stevens Institute, the NJ Transportation Museum and the NJ State Library. Additional copies should be provided to other institutions upon request.

ADMINISTRATIVE CONDITIONS

I. USACE Authorization

USACE shall ensure implementation of the terms of this MOA as a condition of the Permit.

II. Professional Qualifications

The City and NJDOT, on behalf of FHWA and USACE, shall ensure that all work is carried out by/under the direct supervision of a person or persons meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards* for Archaeology, History and/or Architectural History [48 FR 44738-44739] as appropriate.

III. Duration

This MOA will expire if construction is not initiated within ten (10) years from the date of execution. If, after ten (10) years without action the City of South Amboy chooses to continue with the Project, NJDOT shall re-initiate its review in accordance with the provisions of 36 CFR Part 800. Prior to the expiration, FHWA may consult with all signatories to reconsider the terms of the MOA and amend it in accordance with Administrative Condition VI below.

IV. Design Changes

If any changes to the IFTC project design occur which have the potential to affect historic properties, the City of South Amboy shall notify the NJDOT-BEPR. NJDOT, with the assistance of the FHWA, shall consult with the NJSHPO in accordance with the provisions of 36 CFR Part 800.

A. For any such changes, the City shall submit a plan sheet or design sketch showing the proposed change; a written description of why the change is needed; and a description of alternatives considered to achieve the same goals. If formal consultation is initiated, the NJSHPO shall provide written comments to the City, FHWA, NJDOT [Bureau of Environmental Program Resources and Local Aid] within five working days of receipt of documents. Review comments shall evaluate the change for its potential to affect historic properties and its conformance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*.

- B. Should the changes require a modification of an NJDEP-issued permit, the request for modification (including the information enumerated in Administrative Condition IV.A) shall be provided to all Signatories at the time of the request for modification. Comments provided by the NJSHPO in the context of the permit modification process shall suffice for the purpose of complying with the provisions of Administrative Condition IV.A and 36 CFR Part 800. If additional consultation with Tribal Nations is required, that consultation must also be completed in order for consultation to be in compliance with 36 CFR Part 800.

V. Dispute Resolutions

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

- A. Forward all documentation relevant to the dispute, including the City of South Amboy's proposed resolution, to the Council. The Council shall provide FHWA 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, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the Council, signatories and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.
- B. If the Council does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA shall 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 Council with a copy of such written response.
- C. FHWA's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. Amendments

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

VII. Project Completion

The City shall submit a short narrative report with appropriate illustrations/photographs to all Signatories documenting the completed project within 90 days of completion of construction.

VIII. Termination

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation 5 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 on the undertaking, the FHWA must either (a) execute an MOA pursuant to 36 CFR 800.6 or (b) request, take into account, and respond to the comments of the Council under 36 CFR 800.7. The FHWA shall notify the signatories as to the course of action it will pursue.

Execution of this MOA and implementation of its terms evidence that FHWA has taken into account the effects of this undertaking on historic properties and has afforded the Council an opportunity to comment.

SIGNATORY:

FEDERAL HIGHWAY ADMINISTRATION, NEW JERSEY DIVISION

By: **HADI PEZESHKI** Digitally signed by HADI PEZESHKI
Date: 2021.07.08 10:30:50 -04'00' Date: **7-8-21**
Robert Clark
Division Administrator

Final 7/4/2021

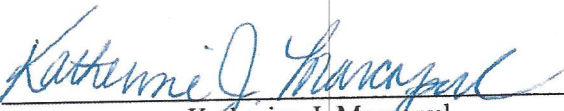
**SECOND AMENDED
MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER
REGARDING THE INTERMODAL FERRY TRANSPORTATION CENTER
CITY OF SOUTH AMBOY, MIDDLESEX COUNTY, NEW JERSEY**

This agreement further amends the Memoranda of Agreement
executed on July 25, 2003, amended December 22, 2009, and extended December 17, 2019 by
agreement of all consulting parties

USACE PERMIT APPLICATION NUMBER NAN-2020-00587-EMI

SIGNATORY:

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: 
Katherine J. Marcopul
Deputy State Historic Preservation Officer

Date: 7/7/2021

Final 7/4/2021

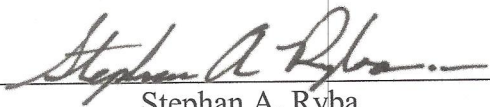
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USACE PERMIT APPLICATION NUMBER NAN-2020-00587-EMI

INVITED SIGNATORY:

UNITED STATES ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT

By:  Date: 9 JULY 2021
Stephan A. Ryba
Chief of Regulatory Branch

**SECOND AMENDED
MEMORANDUM OF AGREEMENT
BETWEEN THE FEDERAL HIGHWAY ADMINISTRATION AND
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USACE PERMIT APPLICATION NUMBER NAN-2020-00587-EMI

INVITED SIGNATORY:

CITY OF SOUTH AMBOY

By:  Date: JUL 06 2021
Fred Henry
Mayor

Appendix A

South Amboy Intermodal Ferry Transportation Center Reports/Documents

Note: Parenthetical references are to documents posted on the City of South Amboy's web site found at www.southamboy.nj.gov

Administrative

- 7/25/2003 Memorandum of Agreement [*MOA-Superseded*]
11/2003 Environmental Assessment & Section 4(f) documentation (FONSI signed 12/4/2003) [*SA Ferry NEPA Vol 1; SA Ferry NEPA Vol 2*]
12/ 22/2009 Amended MOA [*FHWA Memorandum of Agreement*]
Mid-December 20019 MOA extended per agreement of Consulting Parties [*SA MOA Extension*]

Technical

- 7/23/2001 Geophysical Investigation Report, South Amboy Regional Intermodal Transportation Center, South Amboy, New Jersey [Geo-Graf, Inc] [*included as an appendix in IFTC Final Report*]
- 10/31/2001 *Coal Thawing Plants: Context, Description and Preliminary Evaluation of Significance and Assessment of Effects*[Hunter Research, Inc.] [not posted on South Amboy website]
- 12/2002 *The Catenary Structures at the Intermodal Ferry Transportation Center, South Amboy, Middlesex County, New Jersey with a Note on the Camden and Amboy Stone Sleepers* [*included as an appendix in IFTC Final Report*]
- 11/15/2012 Documentation of Wooden Trestle Structure [Hunter Research] [*included as an appendix in IFTC Final Report*]
- October 2012 *Style Guidelines for the Intermodal Ferry Transportation Center, South Amboy, Middlesex County, New Jersey* [B.W. Bosenberg & Company, Inc., Landscape Architects] [Appendix E Style Guide]
- July 2015 (Dec.2015 rev.) *Cultural Resources Investigations, Intermodal Ferry Transportation Center, City of South Amboy, Middlesex County, New Jersey* [Hunter Research] – includes identification surveys from 2000 to 2003; reports of additional investigations in 2011 and 2012; and documentation of work in compliance with Stipulations II (Photographic Documentation), Stipulation III (Field Verification of Pier/Wharf locations)' Stipulation VI.A (Additional Research – including historic context study), Stipulation VI.B (Technical Report), and Stipulation I (Archeological monitoring of Construction to date) [*IFTC Final Report*]
- October 2015 *The Intermodal Ferry Transportation Center, New Jersey's First Tidewater Railroad Terminal*; NJDOT Cultural Resources Digest Series [Hunter Research] [*SA Non-tech Report 1*]
- May, 2016 Photographic Documentation: *Catenary Structures, South Amboy Yard of the Pennsylvania Railroad, South Amboy, Middlesex County, New Jersey* [Hunter Research] [*Catenary Report*]
- March 2018 (June 2018 rev.) *Archaeological Monitoring and Testing, Environmental Remediation at the Former Conrail and Spectraserve Sites, Intermodal Ferry Transportation Center, City of South*

Amboy, Middlesex County, New Jersey [Hunter Research] [IFTC Monitoring South Amboy]

- May 2018 *The Intermodal Ferry Transportation Center, New Jersey's First Tidewater Railroad Terminal, Archaeological Monitoring Supplement; NJDOT Cultural Resources Digest Series [Hunter Research] [SA Non-tech Report 2]*
- Dec. 2020 *Archaeological Documentation Camden and Amboy Railroad/Pennsylvania Railroad Wharves, Westmoreland Pier and Lehigh Pier (Intermodal Ferry Transportation Center, City of South Amboy, Middlesex County, New Jersey [Hunter Research] [South Amboy Wharves & Piers Documentation Report]*
- February 17, 2021 *Memo, Hunter and Harshbarger to Tardy, South Amboy Intermodal Ferry Terminal, Supplemental Archaeological Sensitivity Assessment of Dredging Area for Section 106 Compliance, City of South Amboy, Middlesex County, New Jersey*