

65106

**TO:** Board of Acquisition and Contract

**FROM:** Hugh J. Greechan, Jr., P.E.  
Commissioner of Public Works and Transportation

**DATE:** September 18, 2018

**SUBJECT:** AGREEMENT NO. 18-925  
Authority to Enter into a Memorandum of Agreement with the New York State Historic Preservation Office and the United States Army Corps of Engineers pursuant to the Section 106 requirements of the National Historic Preservation Act of 1966 and pursuant to Section 404 of the Clean Water Act, regarding the Replacement of Butlerville Road Bridge (BIN 3348590) over the Croton River, Town of Somers, Westchester County, NY

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Authority is requested for the County of Westchester ("county") to enter into a Memorandum of Agreement with the New York State Historic Preservation Office (SHPO) and the United States Army Corps of Engineers New York District (USACE), pursuant to the Section 106 requirements of the National Historic Preservation Act of 1966 and pursuant to Section 404 of the Clean Water Act, regarding the replacement of Butlerville Road Bridge (BIN 3348590) over the Croton River, Town of Somers, Westchester County, NY.

Pursuant to Section 404 of the Clean Water Act (33 USC § 1344), the United States Army Corps of Engineers New York District ("USACE") received a request for authorization of the discharge of fill material to the Croton River for purposes of replacement of the structurally deficient Butlerville Road Bridge, BIN 3348590, which has been found eligible for listing on the National Register of Historic Places.

The discharge of fill material to the Croton River by Westchester County in its request for USACE authorization is identified as "the Undertaking". The USACE has established the Permit Area for the Undertaking, as required under Title 33 CFR, Part 325 Appendix C, to be approximately 0.32 acre, including the area within Croton River to be enclosed by cofferdam structures and the upland approach areas to be excavated. The County has defined the Undertaking's area of potential effect (APE) as approximately 280 feet in length (including the existing 70 foot long bridge), width of 26 feet, and a depth of approximately 1.5 feet, which increases at the bridge to a structure excavation depth of approximately 18 feet to accommodate removal of the existing substructures, along Butlerville Road between Butler Hill Road and Croton Falls Road. USACE has determined that the undertaking may have an adverse effect on the historic Butlerville Road Bridge over the Croton River which is eligible for listing in the National Register of Historic Places.

This Memorandum of Agreement stipulates the documentation required to permit the removal and replacement of the existing structure, the treatment of cultural resources, the treatment of historic landscapes, the examination of archeological sites and the coordination of reviews for project activities. The Memorandum of Agreement commences upon execution and will continue in full force and effect until construction of the project is complete, however, any party may terminate on 30 days written notice provided that the parties consult prior to termination to see if some other action can be taken that avoids termination.

Board of Acquisition and Contract  
Memorandum of Agreement No. 18-925  
New York State Historic Preservation Office and United States Army Corps of Engineers  
Replacement of Butlerville Road Bridge (BIN 3348590) over the Croton River  
Town of Somers, Westchester County, NY  
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Entering into this Memorandum of Agreement is in the public's best interest because it will promote the health and safety of the general public by permitting the replacement of a structurally deficient bridge along Butlerville Road.

Attached for your consideration is a proposed form of Resolution, which, if adopted, would authorize the County to enter into a Memorandum of Agreement with SHPO and the USACE. Approval is recommended.

HJG/RSD/JAD  
Attachment

APPROVED BOARD OF ACQUISITION & CONTRACTING 10/11/2018 LISA MRIJAJ, SECRETARY

# RESOLUTION

Upon communication from the Commissioner of Public Works and Transportation,

**WHEREAS**, the County of Westchester (“County”) plans to carry out the locally funded project to replace the Butlerville Road Bridge over the Croton River in the Town of Somers, New York pursuant to the Section 106 requirements of the National Historic Preservation Act of 1966 (NHPA); and

**WHEREAS**, the United States Army Corps of Engineers New York District (“USACE”) has consulted with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f); 36 CFR Part 800; 33 CFR Part 325, App’x C; and agency guidance; and

**WHEREAS**, the County has explored all prudent and feasible alternatives to avoid and minimize the impacts upon the Butlerville Road Bridge; and the deterioration and condition of the bridge is too severe for rehabilitation. No feasible alternatives exist that would avoid or satisfactorily mitigate adverse impacts to the identified property, while also meeting current structural and safety standards. Bridge Replacement is identified as the only feasible and prudent alternative remaining under consideration; and

**WHEREAS**, the SHPO concurs with the alternative analyses and mitigation stipulations presented herein, and its concurrence with this MOA is recognized through signature of this document; and

**WHEREAS**, in accordance with 36 CFR § 800.6(a)(1) and 33 CFR Part 325, App’x C (7)(d), USACE has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); now, therefore, be it

**RESOLVED**, that the Memorandum of Agreement shall commence upon execution and continue in full force and effect until construction of the project is complete, however, any party may terminate on 30 days written notice provided that the parties consult prior to termination to see if some other action can be taken that avoids termination; and be it further

**RESOLVED**, that the County Executive or his duly appointed designee be, and hereby is, authorized to take such actions and execute such documents as may be necessary and appropriate to effect the purposes hereof.

Agreement No. 18-925

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	366	46	RB03B-01-E		BA #30-2013	N/A

Budget Funding Year(s)   N/A   Start Date   upon execution   End Date   upon construction completion    
(must match resolution)

Funding Source: Tax Dollars   N/A  

State Aid \_\_\_\_\_

  \$N/A   Federal Aid \_\_\_\_\_  
(must match resolution)

Other \_\_\_\_\_