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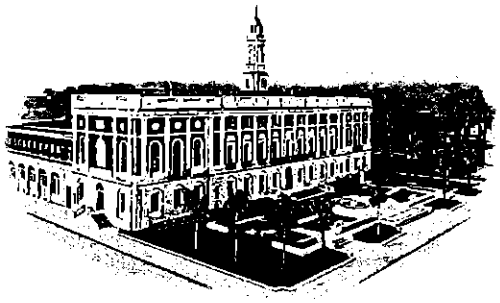

PUBLIC WORKS DEPARTMENT

THE CITY OF WATERBURY

CONNECTICUT

BUREAU OF ENGINEERING

WATERBURY CITY CLERK
2016 JAN 28 PM 1 19

Memorandum

To: Board of Aldermen

From: Salvatore D. Porzio, Project Manager, PWD

Date: January 28, 2016

Re: **Board of Aldermen Approval Request / DPW Executive Summary – Memorandum of Agreement** Between the Federal Highway Administration, the Connecticut State Historic Preservation Office, Connecticut Department of Transportation, and the City of Waterbury Regarding The Naugatuck River Greenway (Phase I) in the City of Waterbury, Connecticut, Federal Aid Project Number TBD, State Project Number 151-321 (C115)

The Public Works Department respectfully requests your approval of the above-referenced Memorandum of Agreement (MoA) between the Federal Highway Administration (FHWA), the Connecticut Department of Transportation (CTDOT), the Connecticut State Historic Preservation Officer (SHPO), and the City regarding Phase I of Waterbury Greenway Project (i.e., from Naugatuck line to Eagle Street).

As you may be aware, under applicable federal and state legislation (such as the National Historic Preservation Act and the Connecticut Environmental Policy Act) the identification and consideration of historical resources is required for all state/federally funded undertakings such as Phase I of the Greenway. Further, this legislation requires that all historic and archaeological resources determined to be adversely affected by such projects be protected, and ways to minimize or avoid any harm must be developed and incorporated into the project.

As you may be further aware, the CTDOT's Office of Environmental Planning (OEP), in conjunction with SHPO, has determined that the historical artifacts found within a small area along the riverbank (in the proposed park at the intersection of South Main Street and Platts Mill Road) are culturally significant and will be adversely affected by the project.

As a result of these determinations, the City is being required to execute the attached MoA. The general intent of the MoA is to clarify and resolve SHPO's/OEP's concerns regarding the protection

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and preservation of the Native American archaeological resources found in a small area along the riverbank.

The MoA establishes: 1) the responsibilities of CTDOT (general oversight and administration), 2) the measures to be undertaken by the City for preserving/protecting the artifacts, and 3) the costs for City's efforts.

Specifically, the MoA, in order to minimize any negative impacts on the artifacts, will require the City to: 1) perform a slight re-designed of a section of the riverside footpath, 2) perform some additional digging/artifact (data) recovery efforts and 3) install a sign/monument acknowledging the aboriginal peoples of the area and pointing out the Native land use of the site.

The "cost" for the activities required by the MoA has two (2) components: 1) $50,000 for the data/artifact recovery operation, and 2) $10,000 for the erection of the commemorative signage/monument. Both figures are "not to exceed" amounts. Additionally, these costs will be closely monitored. RBA, prior to undertaking any work, must submit a proposal, with cost figures, for approval by DPW and by CTDOT.

Funding for the activities required by the MoA will follow the same process as that of the rest of Phase I, which is being funded by an 80/20 Federal award. The City must pay 100% upfront, then, upon invoicing and approval by CTDOT, the City will be reimbursed 80% and the non-reimbursed 20% will be applied towards the City's 20% match.

There are there are four (4) parties to the MoA: CTDOT, SHPO, the FHWA and the City.

Phase I is presently at a standstill due to the discovery of the historical artifacts which are covered by the MoA. However, once the MoA is fully executed by all parties CTDOT will allow the City to authorize RBA to begin Final Design.

Lastly, it should be noted that although the archaeological issues have delayed the project, the newly discovered Native American artifacts will add another point of interest to Waterbury, in general, and will increase interest (and thus, usage) of not only Platt Park, but of the Greenway as well.

Accordingly, attached for your review and consideration are seventeen (17) copies of the Memorandum of Agreement plus one "record copy" for the City Clerk's Office.

Thank you.

SDP/sdp
Attachment

cc: Attorney Lynn McHale, Office of the Corporation Counsel (via email)

MEMORANDUM OF AGREEMENT

**Between the Federal Highway Administration,
the Connecticut State Historic Preservation Office,
Connecticut Department of Transportation,
and the City of Waterbury Regarding
The Naugatuck River Greenway (Phase I) in the
City of Waterbury, Connecticut**

**Federal Aid Project Number H127(003)
State Project Number 151-321**

Submitted Pursuant to 36 CFR §800.6(a)

WHEREAS, the City of Waterbury (hereafter, CITY) proposes to construct approximately 2 miles of bicycle path, including 1.5 miles of new shared-use path, a new parking lot, and a new recreational park along the Naugatuck River within its jurisdictional purview (hereafter, PROJECT). This undertaking will also involve construction of a pedestrian footpath loop through the park complete with a number of associated recreational facilities; and,

WHEREAS, the Federal Highway Administration (FHWA) intends to provide funding support for the PROJECT; and,

WHEREAS, the Connecticut Department of Transportation (CTDOT) intends to provide technical and logistical support in design and construction of the PROJECT; and,

WHEREAS, the recreational park area, the route of the pedestrian footpath, and at least one of the accompanying features—a recreational 'Reading Circle' constructed of individual boulders for seating and bluestone pavers set into a compacted crushed stone foundation—will affect a recently identified pre-European Contact archaeological resource (Platts Mill Road Park Site (State No. 151-07) (hereafter, SITE)); and,

WHEREAS, FHWA has consulted with the Connecticut State Historic Preservation Office (CTSHPO) and the appropriate Federally-recognized Tribes pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. §470f), regarding the anticipated effects of the PROJECT upon the SITE; and,

WHEREAS, CTSHPO finds the SITE to be eligible for inclusion in the National Register of Historic Places; and,

WHEREAS, FHWA, CTSHPO, and the CTDOT Office of Environmental Planning (OEP) find that the PROJECT will have an Adverse Effect upon the SITE; and,

WHEREAS, in a letter dated November 19th, 2015, FHWA notified the Advisory Council on Historic Preservation (ACHP) of its Adverse Effect determination and has invited ACHP to participate in the consultation regarding the resolution of those adverse effects; and,

WHEREAS, in a letter dated December 15th, 2015, the ACHP notified FHWA of its decision not to participate in the consultation; and,

WHEREAS, certain Tribal Historic Preservation Officers representing Federally-recognized indigenous nations within interests in the project vicinity (hereafter, TRIBES) have participated in the consultation and have been invited to concur in this Memorandum of Agreement (MOA);

NOW, THEREFORE, FHWA, CTSHPO, CTDOT, and the CITY agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the PROJECT on properties of archaeological significance:

STIPULATIONS

FHWA, CTDOT and the CITY will ensure that the following measures are carried out under this agreement:

1. Provision shall be made to ensure that the landform on which the SITE is located (Attachment 1) will be preserved in its present undeveloped state in perpetuity, except as outlined herein. No future ground disturbing work shall take place upon this landform except under the advisement of CTSHPO. Any Tribes that have provided formal signed concurrence with this document shall also have the opportunity to comment on such work.

2. The CITY may construct the footpath as currently proposed as part of this PROJECT (see Attachment 1). There may be no more than 6 inches of soil disturbance associated with construction of the footpath upon the landform at issue.

3. The CITY may construct a 'Reading Circle' upon the landform as currently proposed (see Attachment 1). The CITY will provide for the cost of an archaeological data recovery within the footprint of this Reading Circle, to be completed before any project construction-related activity takes place upon the landform. The cost of this data recovery operation shall not exceed $50,000.

4. CTDOT shall, in consultation with CTSHPO, develop and professionally implement the archaeological data recovery program with regard to the SITE. All data recovery excavations shall be completed prior to impacts of construction upon the landform and conducted in accord with the guidelines found within the *Environmental Review Primer for Connecticut's Archaeological Resources.*

5. Upon the completion of data analysis, CTDOT shall ensure that all field notes, photographs, artifacts, samples, and other pertinent data are professionally deposited with the Office of the State Archaeologist at the University of Connecticut for permanent curation and public accessibility.

6. CTDOT shall ensure that a professional quality final report is produced in accordance with OEP standards and the guidelines found within CTSHPO's *Environmental Review Primer for Connecticut's Archaeological Resources.*

7. The CITY shall provide for the expense of a permanent monument bearing commemorative signage set within the Reading Circle. The commemorative signage shall be all weather durable and will acknowledge the aboriginal peoples of the area and point out the Native land use attested by the SITE. The TRIBES shall be

consulted on the nature of the monument and the content of the commemorative signage. Their views shall be taken into account so long as they are in accord with the rest of this agreement and provided in a timely manner. The cost of this monument shall not exceed $10,000.

8. CTDOT OEP shall monitor progress of the PROJECT during construction to ensure that the above stipulations are being carried out.

I. DISPUTE RESOLUTION

Should FHWA or CTSHPO fail to agree on the terms of this MOA, FHWA shall request that the ACHP join the consultation and shall provide them with the documentation set forth in 36 CFR §800.11(g).

a. If ACHP decides not to join the consultation, ACHP will notify FHWA and will proceed to comment in accordance with 36 CFR §800.7(c).

b. If ACHP decides to participate in the consultation, FHWA shall consult with CTSHPO, ACHP, and other consulting parties to seek ways to avoid, minimize or mitigate the Adverse Effects.

II. AMENDMENTS

If any signatory to this MOA believes that this MOA should be amended, that signatory may propose amendments to the other signatories, whereupon all signatories shall consult to consider the amendments pursuant to 36 CFR §800.6(e)(7) and §800.6(c)(8).

III. TERMINATION

If FHWA determines that it cannot implement the terms of this MOA, or if CTSHPO determines that the MOA is not being properly implemented, either of these signatories may propose that the MOA is terminated. The signatory proposing termination shall notify the other parties to the MOA explaining the reasons for termination and affording these other parties at least thirty (30) days notice to consult and seek alternatives to termination. At that time, the parties shall consult.

a. Should such consultation fail, either FHWA or CTSHPO may terminate this MOA by so notifying the other parties.

b. In the event of termination, FHWA shall either consult in accordance with 36 CFR §800.6 to develop and execute a new MOA, or request ACHP to comment pursuant to 36 CFR §800.7.

IV. DURATION OF THIS MOA

Unless terminated pursuant to the above Stipulation entitled Termination, this MOA will continue in full force and effect until FHWA, in consultation with the other signatories, determines that all of its terms have been satisfactorily fulfilled. Upon a determination by FHWA that all the terms of this MOA have been satisfactorily fulfilled, this MOA will terminate and have no further force or effect. FHWA will promptly provide the other signatories with written notice of its determination and termination of the MOA.

EXECUTION OF MOA

Execution of this MOA by FHWA, CTSHPO, CTDOT and the CITY, and implementation of its terms, evidences that:

a. FHWA has afforded CTSHPO and opportunity to comment on the proposed undertaking and its potential impact on historic properties within the project area of potential effects.

b. FHWA has taken into account the effects of the undertaking on historic properties and sites of archaeological and cultural significance.

SIGNATORIES:

FEDERAL HIGHWAY ADMINISTRATION

By:_____ Date:_____

Amy Jackson-Grove
Division Administrator, FHWA

CONNECTICUT STATE HISTORIC PRESERVATION OFFICE

By:_____ Date: 12/21/15

Catherine Labadia
Deputy State Historic Preservation Officer, DECD

STATE OF CONNECTICUT, DEPARTMENT OF TRANSPORTATION

By: Thomas J. Maziarz Date: 12-22-2015

Thomas Maziarz
Bureau Chief, Policy and Planning

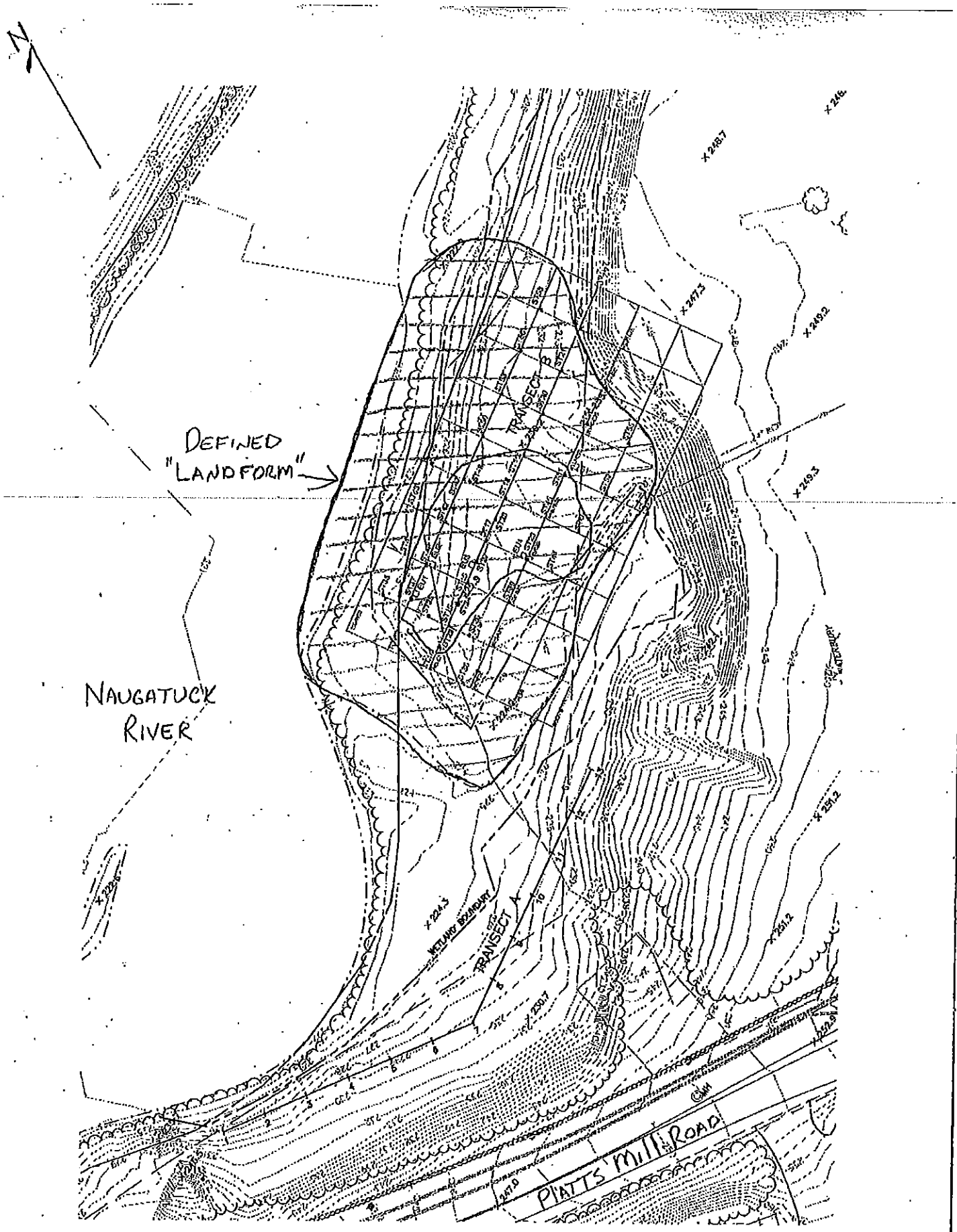
CITY OF WATERBURY

By:_____ Date:_____

Neil M. O'Leary
Mayor, City of Waterbury

CONCURRING PARTIES:

By:_____ Date:_____



ATTACHMENT 1. PLATTS MILL PARK SITE MOA