U.S. Department
of Transportation
**Federal Railroad
Administration**

1200 New Jersey Ave, SE
Washington, DC 20590

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TREASURE COAST
REGIONAL PLANNING COUNCIL

Date: **August 28, 2015**

To: **Interested Parties**

Re: **All Aboard Florida Intercity Passenger Rail Project Final Environmental Impact Statement; Revised Draft Section 106 Memorandum Of Agreement**

Earlier this month, the Federal Railroad Administration (FRA) issued the Final Environmental Impact Statement (FEIS) for the *All Aboard Florida Intercity Passenger Rail Project*. FRA has since found that one of the appendices to the Final EIS included incorrect information. The Draft Section 106 Memorandum of Agreement (MOA) (Appendix 5.4.5-A) included an incorrect Attachment; specifically Attachment 1 Draft Archeological Monitoring/Unanticipated Discoveries Plan. Enclosed with this letter is a revised Appendix 5.4.5-A with the correct Attachment 1. The revised Draft MOA is also available on the FRA's internet site (www.fra.dot.gov).

If you have any questions regarding this project or why you have received this mailing, you may contact Mr. Michael Johnsen at (202) 493-1310 or michael.johnsen@dot.gov.

Sincerely,

John Winkle
Office of Railroad Policy and Development

Enclosure: Revised All Aboard Florida Final Environmental Impact Statement Appendix 5.4.5-A Draft Section 106 Memorandum of Agreement

Appendix 5.4.5-A

Draft Section 106 Memorandum of Agreement

MEMORANDUM OF AGREEMENT
AMONG THE FEDERAL RAILROAD ADMINISTRATION,
THE FLORIDA STATE HISTORIC PRESERVATION OFFICER
AND ALL ABOARD FLORIDA – OPERATIONS, LLC
FOR THE EAU GALLIE RIVER AND ST. SEBASTIAN RIVER BRIDGES
ASSOCIATED WITH THE ALL ABOARD FLORIDA INTERCITY PASSENGER RAIL PROJECT
ORLANDO TO MIAMI, FLORIDA

WHEREAS, the Federal Railroad Administration (FRA) has determined that the construction of the All Aboard Florida Intercity Rail Project will have an Adverse Effect upon the Eau Gallie River (Florida Master Site File Number 8BR3058) and Sebastian River Bridges (Florida Master Site File Numbers 8BR3062/8IR1569), which are eligible for inclusion in the National Register of Historic Places (NRHP); and

WHEREAS, the proposed undertaking will require the removal of the existing Eau Gallie River (Florida Master Site File Number 8BR3058) and Sebastian River Bridges (Florida Master Site File Numbers 8BR3062/8IR1569); and,

WHEREAS, the FRA has consulted with the Florida State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)); and

WHEREAS, through consultation the Florida SHPO has concurred that the proposed project will have an Adverse Effect on the Eau Gallie River (Florida Master Site File Number 8BR3058) and Sebastian River Bridges (Florida Master Site File Numbers 8BR3062/8IR1569); and,

WHEREAS, the FRA has notified the Advisory Council on Historic Preservation (Council) of the Adverse Effect, and the Council has declined to comment or participate in the consultation; and

WHEREAS, local consultation was undertaken at the scoping meetings and DEIS public meetings, where the Section 106 of the National Historic Preservation Act process and historic resources were presented to the public and locally affected parties; and

NOW THEREFORE, FRA and the Florida SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in consideration of the effects this undertaking will have on the referenced historic properties:

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STIPULATIONS

The FRA and All Aboard Florida – Operations, LLC (All Aboard Florida) will ensure that the following measures are carried out:

I. Design and Construction of Replacement Bridges

A. All Aboard Florida will consult with the Florida SHPO to serve in an advisory capacity regarding appropriate design elements for the two replacement bridges that may be addressed during the development of the Project. The Florida SHPO will be provided with the opportunity to review the 60% and 90% design plans directly related to the two replacement bridges.

B. Should there be any substantive alterations to the project design of the two bridges that could result in adverse effects to historic resources not addressed in this agreement, the FRA shall notify the Florida SHPO of these alterations and provide the Florida SHPO with an opportunity to review and comment on the alterations.

II. Documentation of Current Conditions

A. Prior to the demolition of the bridges, All Aboard Florida will perform the following documentation of the Eau Gallie River (Florida Master Site File Number 8BR3058) and Sebastian River Bridges (Florida Master Site File Numbers 8BR3062/8IR1569) in accordance with Historic American Engineering Record (HAER) standards;

i. Drawings – Select drawings of the existing bridge plans, as available, scanned and provided in an acceptable digital format (i.e. jpeg files).

ii. Photographs – Photographs with large-format negatives of context and views from all sides of the bridges and approaches, roadway and deck views, and noteworthy features and details. All negatives and prints will be processed to meet archival standards. One photograph of a principal elevation shall include a scale.

iii. Written Data – Reports with narrative description of each bridge, summary of significance, and historical context.

B. All Aboard Florida will provide copies of the documentation completed in accordance with Stipulation I.A as follows :

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i. An archival copy of documentation for both bridges to the U.S. Department of Interior, National Park Service Southeast Regional Office for review and approval prior to demolition of the structure, per HAER guidelines; and

ii. An archival copy of documentation for both bridges to the Florida SHPO for inclusion in the Florida Master Site File (FMSF); and

iii. A copy of documentation for both bridges to the Florida Historical Society in Cocoa, Florida, and a copy of the Sebastian River Bridge documentation to the Indian River County Historical Society in Vero Beach, Florida.

III. Historic Website

A. All Aboard Florida shall consult with the Florida SHPO as part of the development of a website that will focus and highlight the contributions of Henry Morrison Flagler, the history of the Florida East Coast Railway and its passenger rail service along the corridor.

B. Prior to the public having access to the website, All Aboard Florida will meet with Florida SHPO and demonstrate the website content to ensure that all historic information is accurate and consistent with historic records.

C. The website will be available for public access for a minimum of five (5) years from the start of revenue service by All Aboard Florida and will be updated as appropriate.

D. All Aboard Florida will provide a link on its website to the historic website to enable both interested passengers and the general public with access to the historic information.

IV. Archeological Monitoring/Discoveries

A. Should an inadvertent discovery of unmarked human burials be encountered during construction of the Project, All Aboard Florida will ensure that they are recovered and treated in accordance with Chapter 872.05, Florida Statutes and FDOT Standard Specifications for Road & Bridge Construction 2010, Section 7-1.6, "Discovery of Human Unmarked Burials."

B. All Aboard Florida, in consultation with the Florida SHPO, will ensure efforts to avoid, minimize or mitigate adverse effects to any discoveries of significant archaeological resources inadvertently discovered during the Project are addressed in accordance with 36 CFR 800.13(b). All records resulting from archaeological discoveries shall be handled in accordance with 36 CFR 79; and shall be submitted to the Florida SHPO.

C. All Aboard Florida commits to archaeological monitoring during ground-disturbing activities related to project construction within and adjacent to the following potentially significant archaeological sites that may extend into the FECR Right-Of-Way (ROW): Gifford Bones (8IR7), Vero Man (8IR9), Railroad (8IR846), Hobe Sound National Wildlife Refuge #3 (8MT1287) (See Attachment 1 – Hobe Sound Archaeological monitoring plan), Ft. Capron (8SL41), and Avenue A (8SL1772). Such monitoring will be conducted at the discretion of the archaeological monitor, and will be in compliance with the project Unanticipated Finds/Monitoring Plan. Further AAF commits to coordinate monitoring results, discoveries and findings with the Florida SHPO for their concurrence.

V. Professional Qualifications

A. All architectural history work or archaeological work carried out pursuant to this Agreement shall be conducted by, or under the direct supervision of, a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards for Architectural History (48 FR 44738-9); and that all archaeological work is carried out by, or under the direct supervision of, a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology (48 FR 44738-9).

VI. Dispute Resolution

A. Should any signatory party object in writing to FRA regarding any action carried out or proposed with respect to the undertaking or implementation of this Agreement, FRA shall consult with the objecting party to resolve the objection. If after initiating such consultation FRA determines that the objection cannot be resolved through consultation, FRA shall forward all documentation relevant to the objection to the Council, including FRA's proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council shall either:

i. Provide FRA with recommendations, which FRA will take into account in reaching a final decision regarding the dispute;

ii. Notify FRA that it will comment pursuant to 36 CFR Part 800, and proceed to refer the objection and comment. Any Council comment provided in response to such a request will be taken into account by the FRA in accordance with 36 CFR Part 800.7 (c) (4) with reference to the subject of the dispute.

B. Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; FRA and All Aboard Florida's

responsibility to carry out of the actions under this agreement that are not the subject of the dispute will remain unchanged.

VII. Amendments

A. Any signatory party to this Agreement may request that it be amended, whereupon the signatory parties will consult in accordance with CFR Part 800.6 to consider such an amendment. All parties must signify their acceptance of the proposed changes in writing within 30 days of their receipt. This Agreement shall only be amended by a written instrument executed by all the parties. The amendment will be effective on the date of signature of the last party to sign the amendment. When no consensus can be reached, the Agreement will not be amended and the dispute resolution process set forth in Stipulation VI will be followed.

VIII. Termination

A. Any of the signatory parties may terminate this Agreement by providing notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Termination of this Agreement will require compliance with 36 CFR 800. This Agreement may be terminated by the execution of a subsequent Agreement that explicitly terminates or supersedes its terms.

IX. Duration

A. Unless terminated pursuant to Stipulation VIII above, this Agreement will be in effect until FRA, in consultation with the other Signatory Parties determines that all of its terms have been satisfactorily fulfilled or if All Aboard Florida is unable or decides not to construct the Project.

Execution of this MOA by the FRA and Florida SHPO, and implementation of its terms, provides evidence that the FRA has taken into account the effects of the Project on the historic properties.

SIGNATORIES:

_____ _____

David Valenstein
Chief, Environment and Systems Planning Division
Federal Railroad Administration

Date

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Robert F. Bendus
Florida State Historic Preservation Officer

Date

Michael Reininger
President
All Aboard Florida – Operations, LLC

Date

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Attachment 1

Archaeological Monitoring/Unanticipated Discoveries Plan

This Archaeological Monitoring/Unanticipated Discoveries Plan (Plan) provides requirements for archaeological monitoring during construction activities of the All Aboard Florida (AAF) project (Project) along the approximately 235-mile Project corridor between Miami and Orlando and establishes a process for identifying and protecting unmarked human remains and significant archaeological resources that may be encountered during project implementation. This Plan will be implemented, in accordance with state and federal laws, including Florida laws Chapter 872 Offenses Concerning Dead Bodies and Graves, Chapter 267 Historical Resources at the following six known sites within the APE:

- Hobe Sound National Wildlife Refuge #3 Site (8MT1287);
- the Fort Capron Site (8SL41);
- Vero Man/Vero Locality Site (8IRI/8IR9);
- Fort Pierce (8SL31);
- Railroad (8IR846); and
- Avenue A-Downtown Fort Pierce (8SL1772).

This Plan provides methods to avoid impacts to these sites during construction with archaeological monitoring. This will ensure that any deposits of archaeological materials are identified, documented and protected.

Monitoring Methods and Documentation

AAF will engage the services of a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards for Archaeology (48 FR 44738-9) (Archaeologist) to implement this Plan. All archaeological monitoring will be conducted by, or under the direct supervision of, the Archaeologist. The Archaeologist will determine the appropriate number and placement of monitors for each site dependent on subsurface conditions and the nature of the construction activity. An archaeological monitor will be present for all ground disturbing activities at the six identified archaeological sites.

Construction Crew Education: Prior to the commencement of any ground disturbing activities, the Archaeologist will brief a designated construction supervisor on the monitoring goals and procedures, the stratification in the project area, and applicable federal, state, and local laws pertaining to the discovery of human remains and archaeological materials.. The Archaeologist will show construction crew members involved in ground disturbing activities study collections of midden soil, faunal remains, shell, bone, and stone tools, lithic fragments, pottery sherds, and other types of artifacts that could potentially be encountered at each of the six archaeological sites.

Field Methods: An Archaeologist will be present to monitor all ground disturbing activity at each identified archaeological site. AAF will inform a designated construction crew supervisor that the Archaeologist will be present and has the authority to stop or redirect work in the event of an unanticipated discovery. In most cases, an unanticipated discovery should not cause any unnecessary delays or work stoppages, as the contractor would be able to move to another location so that the Archaeologist would have sufficient time to properly record and collect the features and artifacts.

Archaeological monitoring will consist of the observation, collection, and documentation of archaeological features or artifacts encountered during subsurface activities. The documentation of archaeological features and artifacts will involve plotting their approximate locations on a map of the project area; writing a

description of the resources encountered that includes their location, size, approximate depth, type of material encountered, and any other pertinent information; drawing of profiles; and the taking of photographs, if deemed appropriate by the Archaeologist. The Archaeologist will keep a daily log of construction and monitoring activities.

Any artifacts collected during the course of monitoring will be bagged and recorded separately by the Archaeologist with the appropriate provenience information noted on the field bags. Obvious features will be treated as separate collection proveniences. The Archaeologist will bag artifacts collected from these features separately with the appropriate provenience information. The Archaeologist will assign all artifact and soil sample bags Field Specimen (FS) numbers in the field. The Archaeologist will also conduct laboratory processing, which will consist of the cleaning, inventorying, packaging, and temporary storage of the artifacts recovered. Artifact analysis will involve the morphological and techno-functional classification of artifacts and, if possible, will establish their temporal/cultural affiliations.

In the event of a potentially significant find, as determined by the Archaeologist in the field based on a preliminary assessment, following procedures will be followed:

- The Archaeologist will stop/redirect all work within 50 feet of the find, and flag and secure the find. The Archaeologist will immediately notify the construction supervisor and AAF of the find.
- AAF will immediately notify FRA and SHPO of the find. AAF will consult with SHPO and FRA to evaluate the find and develop appropriate treatment measures.

Curation: Janus Research will provide temporary storage and curation of all archaeological material (artifacts, ecofacts, etc.) recovered during the course of monitoring. Collected archaeological material will be transferred to AAF upon completion of the project. AAF will consult with the SHPO regarding the appropriate disposition of any recovered archaeological material or records.

Analysis and Report: The Archaeologist will present the results of the archaeological monitoring to AAF, FRA, and SHPO in a brief letter report addressing methods, findings, daily logs, and photographs of monitoring operations, at the conclusion of ground disturbing activities at each archaeological site. The Archaeologist will complete a Florida Master Site File (FMSF) Archaeological Site Form (available at http://dos.myflorida.com/historical/preservation/master-site-file/documents-forms/) for any archaeological sites identified during the monitoring.

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