

Attachment D  
Programmatic Agreement

**DRAFT PROGRAMMATIC AGREEMENT**

**AMONG**

**THE FEDERAL TRANSIT ADMINISTRATION,  
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER,  
AND  
THE METROPOLITAN TRANSPORTATION AUTHORITY  
REGARDING IMPLEMENTATION OF THE  
PENN STATION ACCESS PROJECT IN  
QUEENS, BRONX, NEW YORK AND WESTCHESTER COUNTIES, NEW YORK**

**WHEREAS**, the Metropolitan Transportation Authority Construction and Development (“MTACD”) is proposing to construct the Metro-North Railroad Penn Station Access Project (the “Project”), that will provide one-seat passenger rail service to Penn Station New York and improve commuter rail service between the counties of New York, the Bronx, and Westchester in the state of New York; and

**WHEREAS**, MTACD is proposing to use funding assistance from the Federal Transit Administration (“FTA”) to implement the Project, assistance that would render the Project a Federal undertaking subject to Section 106 of the National Historic Preservation Act (“Section 106”), 16 U.S.C. § 470(f); and

**WHEREAS**, MTACD is the Project sponsor responsible for all construction, and FTA is serving as the Project’s lead federal agency pursuant to the National Environmental Policy Act (“NEPA,” codified as 42 U.S.C. § 4321 *et seq.*), and is the federal agency responsible for compliance with Section 106; and

**WHEREAS**, FTA, in cooperation with MTACD, has prepared an Environmental Assessment (“EA”) in accordance with NEPA to evaluate the Project’s potential environmental impacts and consider various project alternatives; and

**WHEREAS**, FTA and MTACD have consulted with the New York State Historic Preservation Office (“SHPO”) about the Project in accordance with the Section 106 regulations (codified at 36 CFR Part 800); and

**WHEREAS**, FTA has invited the Advisory Council on Historic Preservation (“ACHP”) to participate in consultation in accordance with the Section 106 regulations (codified at 36 CFR Part 800); and

**WHEREAS**, FTA, MTACD, and SHPO, as the result of a consultative process in accordance with Section 106, have determined that it is appropriate to enter into this Programmatic Agreement (“PA”) pursuant to Section 800.14(b) of the regulations implementing Section 106, which will govern the implementation of the Project; and

**WHEREAS**, this PA has been prepared to assist with the Project’s proposed Design/Build project approach wherein not all project components are designed and impacts remain undetermined; and

**WHEREAS**, FTA has coordinated its compliance with Section 106 and NEPA, pursuant to 36 CFR § Part 800.8 through its preparation of an EA for the Project; and

**WHEREAS**, through the process conducted in preparing the EA, FTA has determined that the Project may have an effect on historic resources under Section 106 consisting of those properties listed or eligible for listing on the National Register of Historic Places and/or the New York State Register of Historic Places (“Historic Properties”); and

**WHEREAS**, pursuant to Section 106 regulations, FTA, in consultation with SHPO, identified the Project's areas of potential effect ("APEs") for Historic Properties and determined that the APEs are the areas where potential effects on Historic Properties caused by the Project may occur; and

**WHEREAS**, generally, Historic Properties can be categorized as archaeological resources or architectural resources (see 36 CFR § 800.16(1)); and this PA specifies the appropriate approaches for archaeological resources and architectural resources in the Project's APE separately, due to the different issues presented by each category; and

**WHEREAS**, the identification and evaluation of Historic Properties within the Project's APEs was conducted by MTACD, in consultation with FTA and SHPO, as documented in the EA. As part of this process, FTA and MTACD identified properties that meet the criteria for listing on the State and National Registers of Historic Places provided at 36 CFR Part 63 (herein "Historic Properties criteria"); and

**WHEREAS**, the Project will be constructed entirely within the State of New York, beginning in southeastern Westchester County where New Haven Line trains will divert onto the Hell Gate Line ("HGL"), leading them into eastern Bronx, western Queens, and Manhattan (see Attachment A); and

**WHEREAS**, the Project will require the design and construction of additional passenger tracks within Amtrak's HGL right-of-way and four new Metro-North Railroad passenger rail stations in the eastern Bronx at Co-op City, Parkchester-Van Nest, Morris Park, and Hunts Point; and

**WHEREAS**, the Project would include other construction activities that would be conducted primarily in the HGL right-of-way; New Rochelle Yard and Penn Station New York ("PSNY"), including realigning existing tracks; realigning, removing and constructing new freight tracks; constructing new interlockings, power supply and distribution; realigning and installing new catenary; replacing ballast and performing drainage work along the HGL corridor; upgrading the signal system; rehabilitating or replacing the bridges at Bronx River, Bronxdale Avenue, Eastchester Road, and Pelham Lane; constructing a new, single-track, two-span bridge over the Bronx River; and expanding Metro-North's New Rochelle Yard in Westchester County; and

**WHEREAS**, the APE is defined to include the 15.4 miles of railroad right-of-way, the proposed station sites, and other areas of construction activity; and Historic Properties that are both within line-of-sight of areas of construction activities and close enough to undergo changes in their character or use as a result of the Project; and

**WHEREAS**, areas where new ground disturbance will occur from construction of stations, utility installations, and other infrastructure improvements are also considered part of the APE; and

**WHEREAS**, FTA contacted the Delaware Nation, Delaware Tribe, Stockbridge-Munsee Community, Unkechaug Nation, and Shinnecock Indian Nation by letter dated November 5, 2019, identified as the Native American tribes and groups (the "Tribes") that could attach religious or cultural significance to sites within the Project APE, and upon which the Project could have an effect; and

**WHEREAS**, the Delaware Nation responded in a letter dated December 16, 2019 indicating the Project does not endanger cultural or religious sites of interest to the Delaware Nation, but should an archaeological site or artifact inadvertently be uncovered, all construction and ground disturbance should be immediately halted until their office is notified (within 24 hours) and a proper archaeological assessment can be made; and

**WHEREAS**, the Shinnecock Indian Nation responded to previous consultation in a letter dated April 7, 2016 indicating that the Shinnecock Indian Nation must be notified and consulted where ancestral remains as well as funerary and sacred objects are potentially present in the Project APE; and

**WHEREAS**, no other Tribes responded to the consultation; and

**WHEREAS**, FTA and MTACD, in consultation with SHPO and based upon projected construction and rehabilitation activities, anticipates that all work on or near historic structures will conform to the Secretary of the Interior's standards, preserving the historic fabric and integrity of such resources (as further stipulated subsequently in this agreement); and

**WHEREAS**, FTA has determined, and SHPO has concurred, that there are no further concerns regarding archaeological resources at the Hunts Point Station and the Parkchester-Van Nest Station sites, the location of the new, single-track, two-span railroad bridge over the Bronx River, the New Rochelle Yard, and previously disturbed sections of the HGL right-of way; and

**WHEREAS**, FTA has determined, and SHPO has concurred that the Co-op City and Morris Park Station sites are potentially sensitive for pre-contact resources beneath approximately 22 inches of ballast and review of geotechnical studies found that the Co-op City Station site has moderate archaeological sensitivity and the Morris Park Station site low archaeological sensitivity; and

**WHEREAS**, on November 13, 2020, SHPO determined that the Pelham Lane Pathway Bridge in Pelham Bay Park is eligible for listing in the National Register of Historic Places as an example of a steel thru-plate girder bridge; and

**WHEREAS**, this PA sets forth measures that shall be implemented for identified resources or any other architectural resources or archaeologically-sensitive areas within the current or future-modified APE; and

**WHEREAS**, this PA was developed with appropriate public participation during the NEPA public comment period pursuant to Subpart A of Section 106 Regulations, and a copy of this Agreement was included in and distributed with the Draft EA and will be distributed with the Final EA. The public shall be duly notified as to the execution and effective dates of this PA through the issuance of the Final EA and FTA's NEPA Finding of No Significant Impact for the Project.

**NOW, THEREFORE**, FTA, MTACD, and SHPO agree that the Penn Station Access Project shall be implemented in accordance with the following stipulations to satisfy Section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR Part 800 to ensure that potential effects on Historic Properties shall be taken into account.

## STIPULATIONS

FTA, as the Federal lead agency, remains responsible for the implementation of the terms of this Agreement and will require, as a condition of any approval of Federal funding for the Project, adherence to the stipulations set forth herein. MTACD, the project sponsor, will have the lead in the implementation of each stipulation, unless otherwise noted in the stipulation.

### I. ARCHITECTURAL RESOURCES

MTACD, in consultation with the SHPO, determined that within the APEs for the Penn Station Access Project, there are currently nine (9) identified known historic properties/structures that are eligible for listing on the State and National Registers and/or as New York City Landmarks. These properties are as follows:

1. Parkchester Apartment Complex;
2. Amtrak Hell Gate Line Bascule Bridge over Pelham Bay and Hutchinson River;
3. Pelham Lane Pathway Bridge in Pelham Bay Park;
4. Cross Bronx Expressway Corridor (I-95) over the Sheridan Expressway (I-895), Bronx River, Bronx River Avenue and the Amtrak Hell Gate Line;
5. New York Westchester & Boston Railway Anchor Bridge;
6. Amtrak Hell Gate (Northeast Corridor) Line Bascule Bridge over the Bronx River;
7. IRT No. 6 Subway Truss Bridge over Westchester Avenue;
8. Lafayette Avenue Bridge over Amtrak Hell Gate Line; and
9. The Kaufman Building at 271 North Avenue in New Rochelle.

In addition, it is anticipated that the Project will have temporary physical effects and permanent indirect visual effects on the Amtrak Hell Gate (Northeast Corridor) Line Bascule Bridge over the Bronx River.

The Parkchester Apartment Complex could experience indirect effects (noise, vibration and particulate matter), due to construction activities on the new station and substation, and it is anticipated that the Project will also create permanent indirect visual (contextual) effects on the resource.

MTACD proposes to rehabilitate or replace the Pelham Lane Pathway Bridge. Due to the nature of the design-build process, the exact construction methodology and design are not known at this time and will be determined by the design-build contractor.

#### A. Design Specifications for Project Components within Amtrak Hell Gate (Northeast Corridor) Line Bascule Bridge over the Bronx River APE:

The addition of new Metro-North PSA rail service along the Hell Gate Line Right of Way (ROW) in New York will create permanent indirect visual effects on the Amtrak Hell Gate (Northeast Corridor) Line Bascule Bridge over the Bronx River. The design specifications for the architectural resources are described below. No modifications are proposed to the Amtrak Hell Gate Line Bascule Bridge over Pelham Bay and the Hutchinson River as part of the Project. MTACD will continue consultation with FTA and SHPO to take into account project effects.

1. MTACD will avoid the demolition or removal of historic properties. The Project will stabilize, strengthen, and rehabilitate the eligible historic bridge.
2. All bridge rehabilitation work will be undertaken in accordance with the Secretary of the Interior's Standards for Rehabilitation.
3. Design of the new bridge over the Bronx River will maximize compatibility with and minimize the obstruction of the historic bridge.

4. Design drawings and specifications at the 30%, 60%, 90%, and 100% phases for the bridge will be reviewed and approved by SHPO.
5. Construction staging areas and access roads for the bridge work will be reviewed and approved by SHPO.
6. A construction monitoring plan will be implemented by the design-builder, under the oversight of MTACD, to monitor the effects of noise, vibration and particulate matter on the historic bridge. The construction monitoring plan will be reviewed and approved by SHPO.
7. The new bridge construction planning will adopt special measures to avoid damage to the piers or abutment of the historic bridge during the drilling and installation of the piers and the abutment of the new bridge.
8. In order to protect the historic bridge during construction of the new bridge, there will be protective screens and temporary barricades, where appropriate, used to prevent any spoils or new concrete from fouling the tracks or from hitting the truss. Safety precautions will be put in place to prevent any construction equipment (cranes, back hoes) from contacting the historic bridge.

**B. Design Specifications for Project Components within the Parkchester Apartment Complex  
APE:**

The addition of new Metro-North PSA rail service and the construction of the Parkchester-Van Nest station on the Hell Gate Line ROW in New York and construction of a new Van Nest AC Substation will create temporary effects (noise, vibration and particulate matter) due to construction and permanent indirect visual (contextual) effects on the Parkchester Apartment Complex. Design specifications for this architectural resource are described below. MTACD will continue consultation with FTA and SHPO to take into account project effects.

1. The Parkchester/Van Nest Station will be compatible in design and materials to the Parkchester Apartment Complex to minimize the effects of the new station with its elevators, overpasses and stairways on the Parkchester Apartment Complex and be compatible to the character defining features of the Complex.
2. The design of the Parkchester/Van Nest Station will be conducted in compliance with the Secretary of the Interior's Standards for compatible new construction (36 CFR part 68) and applicable guidelines.
3. MTA's Arts & Design program will commission site specific permanent artwork for the Parkchester-Van Nest Station that responds to the community's character defining features and history.
4. Design drawings and specifications at the 30%, 60%, 90% and 100% phases for the new station facility will be reviewed and approved by SHPO.
5. The façade of the Van Nest AC Substation will incorporate contextually sensitive design elements, based on community input and design review by SHPO.
6. A construction monitoring plan will be implemented by the design-builder, under the oversight of MTACD, to monitor the effects of noise, vibration and particulate matter on the historic district. The construction monitoring plan will be reviewed and approved by SHPO.

7. Construction staging areas and access roads for the station work will be reviewed and approved by SHPO.

During Final Design, MTACD, in consultation with FTA and SHPO, will develop Penn Station Access component designs and specifications that will be visually and contextually compatible with this Historic Property, so as not to not impair its integrity or alter its character-defining features. MTACD will ensure that its work will be in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68). As the Penn Station Access project design advances, MTACD will submit proposed plans of the Parkchester-Van Nest Station to FTA and SHPO for review.

### **C. Consultation with SHPO Regarding Known Architectural Resources**

1. MTACD will submit any plans developed pursuant to potential physical and contextual effects on architectural resources described above to FTA and SHPO at 30%, 60%, and 90 % completion of design stages, in advance of any construction that may result in any such effects. FTA and SHPO will review and comment on such submissions within 30 days or it will be presumed that they have no comments, as governed by the process set forth in Section III.A of this Agreement.
2. The addition of new Metro-North PSA rail service and the rehabilitation or replacement of the Pelham Lane Pathway Bridge on the Hell Gate Line ROW in Pelham Bay Park in New York may have an Adverse Effect on the State and National Register-eligible bridge. MTACD and FTA will continue consultation with SHPO during the Final Design phase to explore alternatives to demolition of the bridge and identify minimization and/or mitigation measures, if necessary. MTACD will submit the findings of an alternatives analysis and any other requested analysis to SHPO for review and approval. If it is determined that work on the bridge would result in an Adverse Effect, MTACD and FTA will consult with SHPO regarding any minimization or mitigation measures to be implemented following the procedures in item I.D.4b.
3. If adverse effects to the Pelham Lane Pathway Bridge cannot be avoided, FTA will prepare, or cause to be prepared, the following documentation of this bridge in accordance with Historic American Engineering Record (HAER) Standards and SHPO Documentation Guidelines (dated January 2019, enclosed as Attachment B) prior to demolition:
  - a. Drawings – Select drawings of the existing bridge plans, as available, scanned and provided in an acceptable digital format
  - b. 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.
  - c. Written Data – Report including narrative description of the bridge, summary of significance, and historical context.
  - d. FTA will provide copies of the documentation completed in accordance with this stipulation as follows:
    - i. An archival copy to SHPO for inclusion in the collection of the State Archives, and a digital copy to SHPO for uploading to the Cultural Resource Information System (CRIS) website.
    - ii. An archival or digital copy to an appropriate local repository, as identified through consultation with consulting parties and the SHPO.

#### **D. Consultation with SHPO Regarding Additional Architectural Resources**

MTACD, FTA and SHPO may identify additional architectural resources not referenced in this PA as project engineering proceeds and if new project elements are added to the Project. The potential effects on those additional architectural resources will be assessed prior to construction by FTA and MTACD and in consultation with SHPO, in accordance with the Section 106 process (36 CFR Part 800).

1. If additional or newly-eligible historic properties or additional indirect effects are identified within the existing or modified APE, the stipulations of this PA will apply.
2. If additional or newly-eligible historic properties are identified outside the APE, the APE will be expanded in accordance with the potential effects, and these stipulations will apply to those architectural resources. The revised APE will be documented and submitted to SHPO for review.
3. Any previously unevaluated architectural resources identified in currently proposed project areas or in newly affected areas will be identified and evaluated in consultation with SHPO for their eligibility for listing in the National Register of Historic Places. In order to make such an evaluation of potential historic resources, the associated documentation will be comprised of the following:
  - a. A new APE map,
  - b. Resource evaluation form, per CRIS website submittal requirements,
  - c. A physical description,
  - d. Secondary research to support a history of the property,
  - e. A statement of significance, and
  - f. Photographs of the resources in question.
4. If SHPO finds that there are additional historic architectural resources which may be affected by the Project, an assessment of adverse effects will be prepared by FTA and MTACD. The assessment will be submitted to SHPO for 30-day review and may have one of the following findings:
  - a. No adverse effect. FTA shall maintain a record of the finding and the Project may be implemented in accordance with the finding as documented.
  - b. Adverse effect. FTA and MTACD shall consult with SHPO further to resolve the adverse effect pursuant to 36 CFR Part 800.6.
5. MTACD will consult with FTA and SHPO annually to ensure that FTA and MTACD maintain up-to-date lists of properties that have been listed, determined eligible for, or have been opinioned to be Historic Properties as the construction of Penn Station Access proceeds, and to assess potential effects on any such properties in the Penn Station Access APE. Note that the SHPO's CRIS website has the most up-to-date information regarding the State and National Register eligibility status of architectural and archeological resources ("Historic Properties").

#### **E. Construction Protection Plan for Historic Properties**

Prior to construction, the design-builder will develop a Construction Protection Plan (CPP) for architectural resources located within 100 feet of construction in consultation with FTA, SHPO, and the Landmarks Preservation Commission (for work in New York City). MTACD will include this PA, as well as relevant CPPs, within specific contract packages to inform contractors of their responsibilities relative to Historic Properties. The CPP will consist of the following:



- Inspection and documentation of existing conditions at the historic resources adjacent to construction activities, prior to the start of Project construction activities;
- Establishment of protection measures and procedures;
- Development of a monitoring program to measure vibration impacts and ground movements during construction;
- Existing foundation and structural condition information and documentation for the historic property;
- Formulation of maximum vibration tolerances based on impact and duration and considerations using accepted engineering standards for historic buildings; and
- Post-construction inspection and documentation of existing conditions at historic resources subject to a CPP.

## **F. Professional Standards**

MTACD shall, in consultation with FTA and SHPO, ensure that all work related to architectural resources carried out pursuant to this Agreement is completed by or under the direct supervision of a person, or persons, meeting or exceeding the professional qualifications standards of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (36 CFR Part 61).

## **II. ARCHAEOLOGICAL RESOURCES**

The Parties to this Agreement concur that the Penn Station Access Project may have adverse effects on potential Archaeological Historic Properties (AHP). Further, it is possible that additional, previously unidentified, AHPs may be identified within the Penn Station Access archaeological APE in the future or in the area of any new Penn Station Access elements, and that these previously unidentified properties may be affected by Penn Station Access. Accordingly, this PA sets forth the following measures that will be implemented for Penn Station Access AHPs within the Penn Station Access APE.

### **A. Additional Evaluation for Archaeologically Sensitive Areas**

#### **1. Soil Boring Analysis**

At all locations where archaeologically sensitive areas were identified through the preparation of Phase IA studies prepared as part of the EA, and/or any subsequent studies, and where soil borings are determined to be appropriate, MTACD, in consultation with SHPO, will develop and implement a soil boring program. The purpose of the soil boring program will be to better delineate subsurface conditions, such as previous disturbance including filling and grading, and/or the presence of original soils, to better indicate the potential, or lack thereof, for AHPs.

#### **2. Reporting to SHPO**

Following completion of any borings, MTACD shall prepare a report summarizing the results and shall submit this report(s) as addenda to the Phase IA reports to SHPO and FTA.

### **B. Additional Documentary Research and Field Testing**

1. As design and/or construction plans are finalized for the Project and the APE is refined, or if design and/or construction plans change and new project features or associated construction projects are planned as part of the Project or expanded into areas where archaeological site potential has not been considered, then MTACD shall conduct Phase IA Archaeological Assessments and subsequent Phase IB Archaeological field testing as warranted to make an adequate effort to identify AHPs in those areas of new and/or additional project construction.

2. At all sites where the potential for archaeological resources is confirmed to exist by soil borings conducted under II.A.1 above, MTACD shall undertake Phase IB field testing to identify the presence or absence of AHPs.
3. Prior to commencing any field testing, MTACD shall submit a Field Testing Protocol outlining the proposed methodology for SHPO's concurrence that the field evaluation and testing program would be conducted at a level sufficient to determine if the potential resource meets the Historic Properties criteria. SHPO shall review and comment on such submissions.
4. For all field testing sites, MTACD shall provide a report to FTA and SHPO in which the Historic Properties criteria has been applied to reach one of the following conclusions:
  - a. The site does not meet the Historic Properties criteria; in which case no further action is required.
  - b. The site does meet the Historic Properties criteria, in which case the site will be treated in accordance with II.6 below.
5. Where potential AHPs are identified, an MTACD-designated qualified professional will evaluate eligibility for listing in the National Register of Historic Places, using the Secretary of Interior's Standards and Guidelines for Evaluation (48 Federal Register 44723-44726, and National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation).
6. MTACD shall make an assessment of the effects of planned ground disturbing construction activities on AHPs and shall request FTA's and SHPO's comments on the assessment.
7. MTACD shall request FTA's and SHPO's comments on MTACD's plans for treating AHPs that will be adversely affected by construction activities. If an adverse effect cannot be avoided, MTACD shall develop a data recovery plan (DRP) to be reviewed and approved by SHPO. The DRP shall be consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-44737), the Council's Treatment of Archaeological Properties, and the standards of SHPO (NYAC 1994, 2000; OPRHP 2005), as appropriate. The DRP shall specify the exact location of data recovery; the identification of any property that will be destroyed or altered without data recovery; the research questions to be addressed by the data recovery, with an explanation of their relevance and importance; the methodology of analysis, management and, dissemination of the data, including a schedule; the disposition and curation standards for recovered materials and records; the procedure for including the interested public; proposed methods for disseminating results of the work to the interested public; and a proposed schedule for submission of progress reports to SHPO. MTACD shall ensure that the DRP is implemented. If MTACD and SHPO cannot agree on how to resolve an adverse effect, then MTACD shall resolve the disagreement in accordance with 36 CFR § 800.6(b).

### **C. Unanticipated Discoveries Plan**

1. MTACD, in consultation with FTA and SHPO, shall develop an Unanticipated Discovery Plan that will be followed in the event that any unanticipated archaeological and/or human remains are encountered during construction of the Project.
2. SHPO's review and comment on such plans shall be governed by the process set forth in III.1-4.
3. FTA, MTACD, and SHPO acknowledge that extraordinary costs would be incurred if construction were to be halted or delayed once underway. Accordingly, the Parties shall make every effort to

implement the approved Unanticipated Discovery Plan expeditiously in circumstances requiring its use.

4. Discovery of human skeletal remains. If human skeletal remains are encountered, then MTACD will treat them in accordance with the current guidelines of SHPO, and with the applicable provisions of the New York Cemetery Act, 2003. In addition, compliance with NYC regulations or those of other local jurisdictions would be required, including notifying both the New York City Police Department (NYPD) and the New York City Office of the Chief Medical Examiner (OCME). If it is determined that the skeletal remains (and any associated grave goods) are Native American, then MTACD will additionally, and as soon as possible, consult with SHPO and FTA regarding the applicability and implementation of relevant procedures under the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (43 CFR Part 10). No human remains would be removed from the site without a NYC Department of Health (DOH) Disinterment Permit.
5. MTACD, in consultation with FTA and SHPO, shall treat all unanticipated discoveries in accordance with the procedures outlined in 36 CFR §§ 800.11 and 800.13.

#### **D. Professional Standards**

1. MTACD shall, in consultation with FTA and SHPO, ensure that the adequacy of efforts to identify AHPs, the professional qualifications of archaeological personnel, and the standards for all submitted reports are in accordance with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (48 Federal Register 44716), as well as the standards of SHPO (NYAC 1994, 2000; OPRHP 2005).
2. MTACD shall ensure that all archaeological research, testing, and analysis conducted pursuant to this Agreement are carried out by or under the direct supervision of a person or persons meeting at a minimum the *Secretary of Interior's Professional Qualifications Standards*.
3. MTACD shall ensure that artifacts recovered from archaeological investigations conducted under this Agreement will be curated according to SHPO's Guidelines (NYAC 1994, 2000; OPRHP 2005). MTACD shall provide the New York State Museum with the right of first refusal for all collections recovered under this Agreement. MTACD shall reimburse institutions curating these collections for their initial costs.

### **III. DOCUMENT REVIEW**

SHPO will provide comments on documents for their review, as set forth below:

1. SHPO will provide comments to FTA regarding any plan(s) submitted pursuant to this Agreement, as promptly as possible, but not to exceed 30 calendar days from the receipt of such revisions.
2. If SHPO does not submit comments in writing within 30 calendar days of the receipt of any such submissions, then it is understood that SHPO has concurred with the proposed plans.
3. If SHPO requests further consultation within 30 calendar days of the receipt of any submissions, then FTA, MTACD, and SHPO will consult expeditiously in an effort to resolve the topics under discussion.
4. FTA, MTACD, and SHPO acknowledge that the timeframes set forth in Section III.1-3, above will be the maximum allowable under normal circumstances. In exigent circumstances (such as when

construction activities have been suspended or delayed pending resolution of the matter), each Party agrees to expedite their respective document review and dispute resolution obligations.

#### **IV. DURATION**

This PA will be voided if MTACD does not commence Final Design and/or construction within 10 years from the date that all Parties have executed this Agreement. If within 10 years of the date that all Parties have executed this Agreement, MTACD does not complete the Penn Station Access Project, or if any stipulations are not met by the Parties, then the Parties shall consult to determine if the Agreement shall be amended, extended, or terminated. Prior to such time, MTACD, FTA and SHPO may reconsider the terms of the PA and amend it in accordance with Stipulation VIII.

#### **V. REPORTING AND OVERSIGHT**

- A.** Semi-Annual Reports. Commencing six months from the date that this PA is fully executed, and every six months thereafter until Penn Station Access is completed or terminated by MTACD, MTACD will submit semi-annual reports to SHPO and FTA, providing information concerning implementation of this PA.
- B.** Annual Review of the Programmatic Agreement. MTACD and FTA will review implementation of this PA to determine whether to revise the PA during each annual reporting period. MTACD and FTA will recommend any PA revisions to SHPO who may amend it in accordance with Stipulation VI below.
- C.** Revisions to the Programmatic Agreement. If FTA, MTACD, and SHPO agree that revisions to this PA are necessary, such revisions will be considered and implemented, pursuant to a consultative process involving the Parties to this PA.

#### **VI. DISPUTE RESOLUTION**

If SHPO objects to any plan or report proposed or the manner in which the terms of this PA are implemented, FTA shall consult with MTACD and SHPO to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will:

- A.** Forward documentation relevant to the dispute, including FTA's proposed resolution of the dispute, to the Advisory Council on Historic Preservation ("ACHP").
- B.** When a dispute occurs, ACHP will provide FTA with recommendations or comments within 30 calendar days after receipt of pertinent documentation.
- C.** Prior to reaching a final decision on the dispute, FTA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from ACHP and Signatories, and provide them with a copy of this written response. FTA will then consider such recommendations or comments in reaching a final decision regarding the dispute.
- D.** If ACHP fails to respond to FTA's request for recommendations or comments within 30 calendar days of receiving pertinent documents, then FTA may make a final decision on the dispute and proceed accordingly.

## VII. OTHER

- A. MTACD will cooperate with FTA and SHPO in carrying out SHPO's monitoring and reviewing responsibilities. Requests to review activities carried out pursuant to this PA shall be submitted to SHPO through the current digital submission process.
- B. Notwithstanding any other provision in this PA, any Signatory may propose an amendment hereto, whereupon the Parties will consult to consider such amendments.
- C. For purposes of notices and consulting pursuant to this PA, the following addresses and contact information should be used for the following agencies:

### **MTA**

Eve Michel  
Penn Station Access Program  
Executive  
MTACD  
2 Broadway, 16th Floor  
New York, NY 10004-3357  
Tel: (646) 252-4107

### **FTA**

Stephen Goodman  
Regional Administrator  
Federal Transit Administration  
One Bowling Green, Room 428  
New York, NY 10004-1415  
Tel: (212) 668-2170  
Fax: (212) 668-2136

### **Deputy State Historic Preservation Officer**

Daniel Mackay  
Deputy Commissioner  
New York State Division for  
Historic Preservation  
Pebbles Island State Park  
P.O. Box 189  
Waterford, NY 12188-0189  
Tel: (518) 268-2171  
<https://parks.ny.gov>

## VIII. AMENDMENTS

Any Signatory to this Agreement may request that it be amended, whereupon the Signatories will consult in accordance with 36 CFR Part 800 to consider such amendment. The Parties will develop and execute any resulting amendments in the same manner as the original Agreement. Any amendment of this Agreement will go into effect only upon written agreement of all Parties.

## IX. ADOPTABILITY

In the event that a Federal agency, not initially a party to or subject to this PA, receives an application for financial assistance, permits, licenses, or approvals for the Project as described in this PA, such Federal agency may become a signatory to this PA as a means of complying with its Section 106 responsibilities for its undertaking as part of the Project. For a Federal agency to be a signatory to this PA, the agency official, as defined under 36 CFR § 800.2, must provide written notice to the Signatories that the Federal agency agrees to the terms of the PA, specifying the extent of the agency's intent to participate in the PA, and identifying the lead Federal agency for the undertaking. The participation of the agency is subject to approval by the Signatories. Upon approval, the agency must execute a signature page to this PA, file the signature with the ACHP, and implement the terms of this PA, as applicable. Any necessary amendments to the PA will be considered in accordance with Stipulation VIII.

## X. TERMINATION

If any Signatory to this PA determines that its terms will not or cannot be carried out, then that Signatory will immediately consult with the other Signatories to attempt to develop an amendment per Section VIII above. If within 30 calendar days (or another time period agreed to by all Signatories), the Signatories do not agree to an amendment, then any Signatory may terminate the PA upon written notification to the other Signatories. Once the PA is terminated, and prior to work continuing on the undertaking, FTA will comply

with 36 CFR § 800.6 or request, consider, and respond to the comments of ACHP under 36 CFR §§ 800.3-800.7. FTA will notify the Signatories of the course of action that it will pursue.

When MTACD completes construction of the Penn Station Access Project, MTACD will notify FTA and SHPO in writing. This Agreement will terminate five (5) years after MTACD completes construction of the Penn Station Access Project.

APPROVAL AND SIGNATURE PAGE FOR PROGRAMMATIC AGREEMENT

Among


The Federal Transit Administration (FTA)  
The Metropolitan Transportation Authority (MTA)  
New York State Historic Preservation Officer (SHPO)

Regarding The

PENN STATION ACCESS PROJECT in  
Queens, Bronx, New York, and Westchester Counties, New York

Execution and Implementation of this Programmatic Agreement Evidences that FTA and MTA have Satisfied Their Section 106 Responsibilities for Individual Undertakings of the Penn Station Access Project.

FEDERAL TRANSIT ADMINISTRATION

 Digitally signed by  
STEPHEN C GOODMAN  
Date: 2021.09.24  
13:06:52 -04'00'

By: \_\_\_\_\_

Date \_\_\_\_\_

Stephen Goodman, P.E.  
Regional Administrator, Region 2

APPROVAL AND SIGNATURE PAGE FOR PROGRAMMATIC AGREEMENT

Among

The Federal Transit Administration (FTA)  
The Metropolitan Transportation Authority (MTA)  
New York State Historic Preservation Officer (SHPO)

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Execution and Implementation of this Programmatic Agreement Evidences that FTA and MTA have Satisfied their Section 106 Responsibilities for Individual Undertakings of Penn Station Access.

METROPOLITAN TRANSPORTATION AUTHORITY

By: 

Eve Michel  
Senior Vice President, PSA Program Executive  
MTACD

Date 8/26/2021



APPROVAL AND SIGNATURE PAGE FOR PROGRAMMATIC AGREEMENT

Among

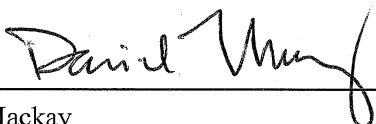
The Federal Transit Administration (FTA)  
The Metropolitan Transportation Authority (MTA)  
New York State Historic Preservation Officer (SHPO)

Regarding The

PENN STATION ACCESS PROJECT in  
Queens, Bronx, New York, and Westchester Counties, New York

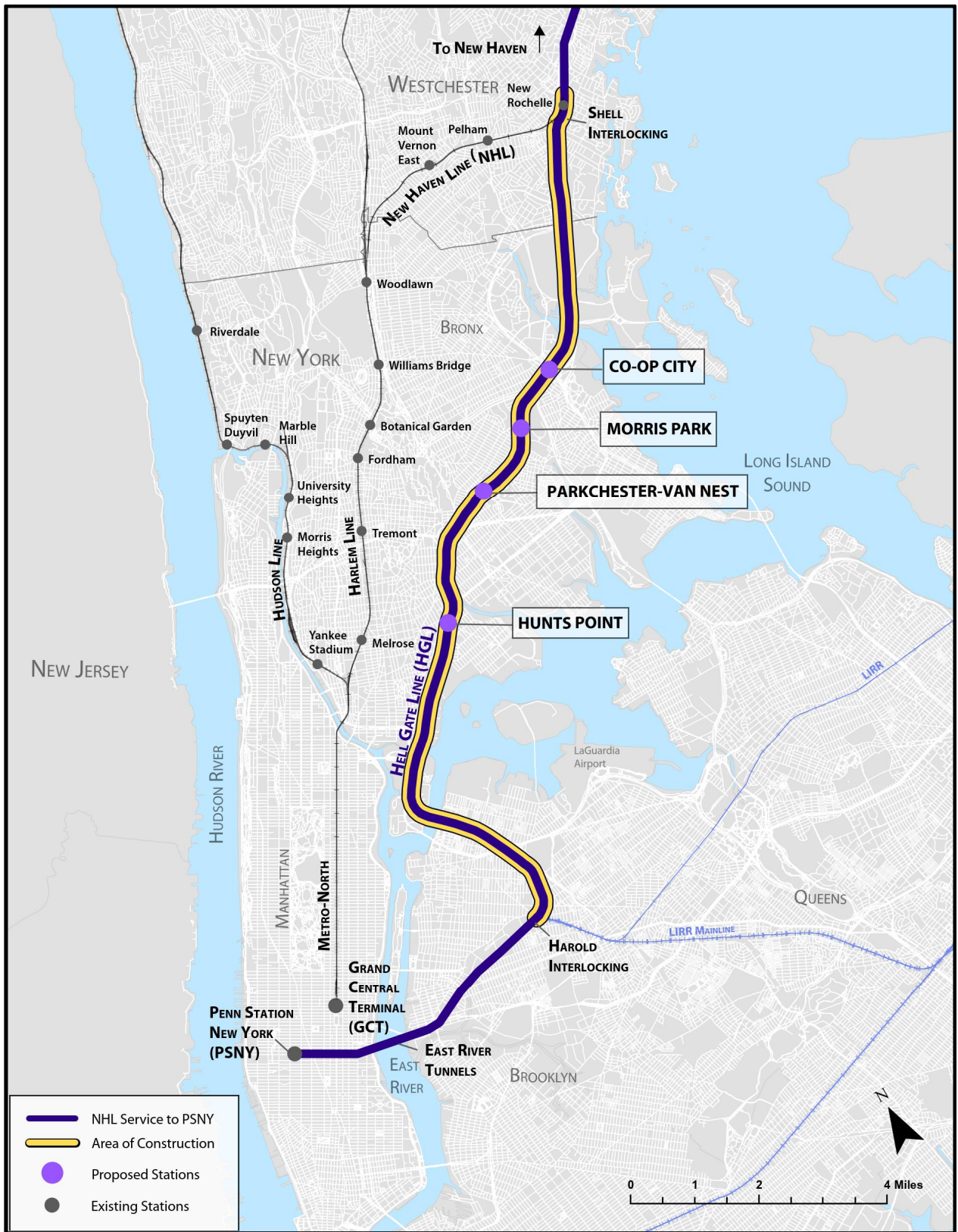
Execution and Implementation of this Programmatic Agreement Evidences that FTA and MTA have Satisfied their Section 106 Responsibilities for Individual Undertakings of Penn Station Access.

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By:   
Daniel Mackay  
Deputy State Historic Preservation Officer

Date 7/14/2021

ATTACHMENT A  
PROPOSED PROJECT



Source: WSP, 2021

ATTACHMENT B  
SHPO DOCUMENTATION GUIDELINES



### **Property Documentation**

The photographic and historical documentation of a historic property to be demolished, relocated, or substantially altered is standard practice in the field of historic preservation, and is intended to provide a record of the property in perpetuity as mitigation for adverse impacts. Federal documentation guidelines are provided under the Historic American Building Survey/Historic American Engineering Record/Historic American Landscape Survey (HABS/HAER/HALS) program. This sheet provides state-level guidance for producing digital and hard-copy documentation reports to be held by our office (the State Historic Preservation Office/SHPO) and by the New York State Archives. Historic properties are to be documented using the following format:

#### Photographs\*

- Photographs should be clear, well composed, and should provide an accurate visual representation of the property and its significant features. Submit as many photographs as needed to depict the current condition and character-defining features of the property.
- Digital photographs should be taken using a ten (10) megapixel or greater digital SLR camera.
- Images should be saved in Tag Image File format (TIFF) or RAW format images. This allows for the best image resolution. RGB color digital TIFFs are preferred.
- Selected images for the hard-copy documentation package should be printed as follows: one to three 8x10-inch views of the overall property. Sufficient 5x7-inch supplemental images to fully document the present condition of all aspects of the property (important site features, all façade elevations, major architectural features and details, and representative views of the interior spaces).
- Historical photos (if available) depicting the property should be reprinted at 5x7-inch size and included in the documentation.
- Images should be printed on a high quality color printer using compatible high quality photographic paper stock (HP printer use HP Paper, Epson printer use Epson paper)
- Each photograph must be numbered and that number must correspond to the photograph number on an accompanying Photo Log or Key. For simplicity, the name of the photographer, photo date, etc. may be listed once on the Photo Log or Key and doesn't need to be labeled on every photograph.
- Write the label information within the white margin on the front of the photograph using a photo labeling pen. Label information can also be generated by computer and printed directly in the white margin (adhesive labels are not recommended).
- Do not print information on the actual image – use only the photo margin or back of the photograph for labeling.
- At a minimum, photographic labels must include the following information: Photograph number, name or address of the property, date photograph was taken, and the county the property is located in.
- Photos should be placed in folders or photo sleeves.

#### Historical Narrative\*\*

A narrative description should be prepared and should include the relevant historical context, a discussion of the development and construction history of the property, and a summary of the property's historical significance. Copies of primary source documentation (such as historic photographs, archival records, original architectural plans, and maps), if available, should be included, appropriately labeled, and referenced in the narrative text (e.g., Figure 1, Figure 2).



1/25/19

Plans/Drawings\*\*\*

Copies of existing recent or current construction plans, if available, should be included.

Final Report

Two bound or boxed hard copies of the final documentation report (including photographs, historical narrative, and drawings) are requested: one copy of the report should be submitted to the SHPO for forwarding to the New York State Archives, and one copy of the report should be provided directly to an appropriate local repository. A digital copy of the report (saved on a thumb drive, CD or DVD) shall accompany the SHPO hard copy. **Completed documentation reports are to be submitted prior to demolition/relocation/renovations.**

*PLEASE NOTE:*

*\*Large-format (4 by 5) film photography may be warranted for National Historic Landmarks and properties possessing a high level of local significance, or statewide or national significance.*

*\*\*Creation of as-built drawings may be warranted, and could be done using traditional drawing methods, CAD-type programs, or laser scanning.*

*\*\*\*A useful model for the historical narrative is the HABS/HAER narrative report form, equivalent to HABS Level 2 documentation. The HABS Historical Report Guidelines can be found on the web at: <https://www.nps.gov/hdp/standards/HABS/HABSHistoryGuidelines.pdf>*

**NOTICE:** This form is meant to be used as general guidance. Requirements may vary depending on the historic property and project in question. Property-specific requirements such as number of buildings/structures may be called out in the Letter of Resolution (LOR) agreement document or as a modification of this document appended to an LOR.