

PROGRAMMATIC AGREEMENT

**AMONG THE FEDERAL TRANSIT ADMINISTRATION,
NEW JERSEY TRANSIT,
AND THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICER,
REGARDING THE NEW JERSEY TRANSIT HUDSON-BERGEN LIGHT RAIL ROUTE 440 EXTENSION,
CITY OF JERSEY CITY,
HUDSON COUNTY, NEW JERSEY**

WHEREAS, New Jersey Transit Corporation (“NJ TRANSIT”), potentially using funds provided by the Federal Transit Administration (“FTA”), proposes to extend the existing Hudson-Bergen Light Rail (“HBLR”) system’s West Side Avenue Branch approximately 3,700 feet from its current terminus at West Side Avenue Station to a new station to be constructed west of New Jersey Route 440, along with other improvements such as alterations to the existing West Side Avenue Station (including demolition and replacement of the existing pedestrian bridge), removal of the stone railroad bridge abutment and associated stair, and construction of new pedestrian access stairs and ramps (hereinafter, “the Project”);

WHEREAS, the portion of the Project which intersects with Route 440 has the potential to affect the National and State Register of Historic Places listed Morris Canal;

WHEREAS, the FTA is the Project’s lead federal agency pursuant to the National Environmental Policy Act (NEPA, codified at 42 USC 4321 *et seq.*) and is the federal agency responsible for compliance with Section 106 of the National Historic Preservation Act (codified at 16 USC § 470f, and herein “Section 106”);

WHEREAS, FTA has coordinated its compliance with Section 106 and NEPA, pursuant to 36 CFR § 800.8, through its preparation of an Environmental Assessment (“EA”) for the Project;

WHEREAS, the funds provided by the FTA constitute an “undertaking” as defined in the Section 106 regulations (36 CFR 800.16(y)) and could have an effect on archaeological resources;

WHEREAS, NJ TRANSIT and FTA consulted with the New Jersey Historic Preservation Office (“NJ SHPO”) in order to initiate Section 106 consultation, determine the direct and indirect area of potential effects (“APE”), identify consulting parties, and discuss the public involvement activities (NJ SHPO Initial Consultation Comments July 19, 2012);

WHEREAS, initial consultation with the NJ SHPO resulted in an agreement that the APE for direct effects on archaeological resources lies within the former elevated right of way of the Central Railroad of New Jersey (“CRRNJ”) Newark and New York Branch including 19th century industrial properties;

WHEREAS, as part of the Section 106 consultation process, NJ TRANSIT, in consultation with the NJ SHPO, identified the NJ SHPO, the FTA, the City of Jersey City in Hudson County, the Jersey City Historic Preservation Commission, the Delaware Nation, and the Delaware Tribe of Indians as the appropriate parties for the initiation of consultation (see Exhibit A);

WHEREAS, FTA has completed a reasonable and good faith effort to identify and contact by letters dated October 26, 2012 to the Delaware Nation and Delaware Tribes (the "Tribes") that could attach religious or cultural significance to sites within the APE, and upon which the project could have an effect;

WHEREAS, NJ TRANSIT, in consultation with the NJ SHPO, identified additional interested parties (see Exhibit A), including:

- The Hudson County Office of Cultural Affairs and Tourism
- The Jersey City Landmarks Conservancy, Inc.
- The Society for Industrial Archaeology, Roebling Chapter
- The National Railway Historical Society, Jersey Central Chapter
- The United Railroad Historical Society of New Jersey
- Friends of the New Jersey Railroad and Transportation Museum, Inc.
- The Canal Society of New Jersey
- The New Jersey Archaeological Society;

WHEREAS, the NJ SHPO has approved the Public Participation Plan (see Exhibit B) for the Project, as a result of which all consulting parties and interested parties were provided copies of the Historic Architectural Resources Background Study (HARBS), Phase IA Archaeological Survey, and Effects Assessment Report and provided an opportunity to comment;

WHEREAS, NJ TRANSIT continued consultation with the NJ SHPO in September 2012 by submission of a HARBS, Phase IA Archaeological Survey, and Effects Assessment Report in order 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 APEs pursuant to the requirements of 36 CFR Part 800, Protection of Historic Properties, as published in the Federal Register on December 12, 2000 (65 FR 777698-77739) as amended on July 6, 2004 (69 FR 40544-40555), and the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

WHEREAS, the NJ SHPO, in a letter dated November 21, 2012, concurred with the findings of the Phase IA Archaeological Survey report regarding the areas of moderate to high prehistoric and historic period archaeological sensitivity (as illustrated on the attached Figures 5.1 and 5.2 and appended as Exhibit C to this document);

WHEREAS, the NJ SHPO concurred that, in areas of high prehistoric archaeological sensitivity, a geomorphological examination of soil borings collected by NJ TRANSIT from these

areas prior to construction of the Project is an appropriate means of identifying intact soil horizons and confirming prehistoric archaeological sensitivity;

WHEREAS, the NJ SHPO concurred that a phased program of archaeological investigation may be required pending the results of the analyses of geotechnical boring data by a geomorphologist;

WHEREAS, the NJ SHPO concurred that since the potential exists for construction of the Project to affect extant archaeological remains of the Morris Canal, Standard Oil Pipeline, and New York & New Jersey Water Company Pipeline, archeological monitoring during construction within this area of high historic period sensitivity would be required to document any remains of these resources;

WHEREAS, the NJ SHPO concurred that the New Jersey and National Register of Historic Places eligible Former Candy Factory located at 374-378 West Side Avenue & 346-370 Claremont Avenue lies within the boundaries of the Project APE, and that the design of new project elements adjacent to it (including demolition of an existing bridge abutment and pair of staircases, construction of a new bridge abutment, new access stair, and ADA-compliant ramp) has the potential to affect the Former Candy Factory; and

WHEREAS, the FTA, NJ SHPO, and the NJ TRANSIT agreed that a Programmatic Agreement (PA) should be developed in accordance with § 800.14 of the Section 106 regulations to stipulate how FTA's Section 106 responsibilities pertaining to the aforementioned archaeological resources for the Project will be satisfied; and

WHEREAS, the Advisory Council on Historic Preservation ("ACHP") was invited to be a signatory to this PA but declined to participate in the consultation process by letter dated March 29, 2013,

NOW, THEREFORE, the FTA, NJ TRANSIT, and the NJ SHPO agree that the Project shall be implemented in accordance with the following stipulations in order to take into account the Project's potential effect on archaeological properties.

STIPULATIONS

FTA, NJ TRANSIT, AND NJ SHPO AGREE THAT THE FOLLOWING STEPS WILL BE UNDERTAKEN IN CONNECTION WITH THE NEW JERSEY TRANSIT HUDSON-BERGEN LIGHT RAIL ROUTE 440 EXTENSION, AND THAT FTA WILL INCLUDE THE OBLIGATIONS SET FORTH IN THIS PA AS PART OF THEIR FINDING OF NO SIGNIFICANT IMPACT AND A CONDITION OF FTA APPROVAL OF ANY GRANT ISSUED FOR CONSTRUCTION OF THE NEW JERSEY TRANSIT HUDSON-BERGEN LIGHT RAIL ROUTE 440 EXTENSION TO ENSURE THAT THESE MEASURES WILL BE IMPLEMENTED AS PART OF THE COMPLIANCE WITH THE SECTION 106 PROCESS AND THE SUBSEQUENT PLANNING, DESIGN, AND CONSTRUCTION OF ANY APPROVED ALTERNATIVE.

1. Pre-Contact Period Archaeological Investigations

A qualified geomorphologist will complete a geomorphological examination of geotechnical boring logs from areas identified as having high archaeological sensitivity within the APE for prehistoric archaeological resources. If intact soil horizons are identified through the geotechnical data analyses, a program of phased archaeological investigation will be carried out in locations with probable intact prehistoric period soil horizons within the APE. Prior to any archaeological investigation, NJ TRANSIT will prepare an archaeological testing protocol for Phase IB testing in consultation with the NJ SHPO.

The Phase IB survey will be designed to confirm the presence or absence of archaeological resources and to determine if additional archaeological investigations (i.e., a Phase II survey) are necessary. If it is determined that adverse impacts to resources eligible for listing on the National Register of Historic Places may occur as a result of construction of the Project, NJ TRANSIT will coordinate with the NJ SHPO and any relevant Section 106 Consulting Parties to design ways to avoid, minimize, and/or mitigate adverse effects, as appropriate.

2. Archaeological Monitoring for Historic Period Resources

A plan for archaeological monitoring and documentation during construction in the area identified as having high historic period archaeological sensitivity associated with the Morris Canal, Standard Oil Pipeline, and the New York & New Jersey Water Company Pipeline shall be developed and submitted to the NJ SHPO for review and approval before construction activities are under way. The archaeological monitoring and documentation plan shall include:

- 1) A provision that all work related to the archaeological monitoring and documentation of any archaeological resources is performed by an archaeologist who meets the *Secretary of the Interior's Professional Qualifications Standards (48 CFR 44739)*;
- 2) A protocol outlining the responsibilities of the FTA, NJ TRANSIT, and the NJ SHPO with respect to the archaeological monitoring and documentation to be performed during construction;
- 3) A provision that the archaeological monitoring report and documentation will conform to the *Guidelines for Preparing Cultural Resources Management Archaeological Reports Submitted to the Historic Preservation Office (1994)*.

In addition, NJ TRANSIT, shall include within the Project plans and specifications provisions for archaeological monitoring and documentation during construction. NJ TRANSIT shall submit that portion of the Project plans and specifications to the NJ SHPO for review and approval. This section shall include:

- a) the name, address, phone number, and e-mail address of the qualified archaeologist who will conduct the archaeological monitoring and documentation;
- b) the individual who will contact the qualified archaeologist in advance of the construction of the Project;

- c) how far in advance of construction of the Project the notification will occur; and
- d) delineation of which sections of the Project will be subject to archaeological monitoring and documentation as necessary.

The plan for archaeological monitoring and documentation shall be referenced in the Project documents and be either included or appended to them.

3. Architectural Detail Design Review

All proposed work adjacent to the Former Candy Factory shall be performed in accordance with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*. NJ TRANSIT shall select materials, finishes, textures, and treatments for new construction near the Former Candy Factory through consultation with the NJ SHPO. NJ SHPO will be provided an opportunity to review and approve preliminary and pre-final design plans as they may affect the eligibility of the Former Candy Factory.

ADMINISTRATIVE CONDITIONS

1. Professional Qualifications

NJ TRANSIT, on behalf of the FTA, shall ensure that all work pursuant to Stipulations 1, 2, and 3 of this PA is carried out by or under the direct supervision of a person or persons meeting at a minimum, the *Secretary of the Interior's Professional Qualifications Standards* [48 FR 44738-44739].

2. Construction Protection Plan for Historic Properties

NJ TRANSIT will develop a Construction Protection Plan (CPP) for built properties located within 90 feet of construction in consultation with FTA, NJ SHPO and other appropriate New Jersey agencies. The CPP will consist of the following:

- 1) inspection and documentation of existing conditions at the historic resources adjacent to the project construction activities;
- 2) establishment of protection measures and procedures;
- 3) development of a monitoring program to measure vibration impacts and ground movements during construction;
- 4) existing foundation and structural condition information and documentation for the historic property;
- 5) formulation of maximum vibration tolerances based on impact and duration; and
- 6) considerations using accepted engineering standards for historic buildings.

3. Identification of Additional Built Properties and Assessments of Project Effects

Additional built properties not referenced in this PA may be identified by NJ TRANSIT with FTA, NJ SHPO and other appropriate New Jersey agencies as project engineering proceeds and if new project elements are added. If additional properties are identified within the existing APE, the stipulations of this PA will apply. If additional properties are identified outside the APE, the APE will be expanded and these stipulations will apply to those built properties. Any previously unevaluated built properties identified in newly affected areas will be identified and evaluated by NJ TRANSIT for listing in the National Register of Historic Places in consultation with NJ SHPO. The associated documentation will be comprised of an inventory form, a physical description, a statement of significance, and photographs of the resources in question. The potential effects on those additional built properties will be assessed prior to construction by FTA and NJ TRANSIT, in consultation with NJ SHPO, in accordance with the Section 106 process (36 CFR 800).

4. Notification Procedures and Treatment of Human Remains

If any human remains will be encountered during subsurface work for field testing or project construction, and in accordance with the New Jersey Cemetery Act noted above, the following steps will occur:

- 1) NJ TRANSIT will stop work and secure the site.
- 2) NJ TRANSIT will notify the State Medical Examiner, local Police Department and NJ SHPO. The remains will be evaluated to determine the origin.
- 3) If descendent communities have been identified, the appropriate descendent community(s) will be notified, so that the remains may be treated in an appropriate manner, as previously agreed upon by the descendent community(s) and NJ TRANSIT.
- 4) Once NJ TRANSIT, in conjunction with NJ SHPO, indicates that the remains have been properly treated, construction may proceed.

5. Mitigation, Data Recovery, Curation, and Public Interpretation

- A) For each site identified as meeting the Historic Properties Criteria, FTA and NJ TRANSIT, in consultation with NJ SHPO, will consider measures, such as design modification, for avoidance of archaeological resources.
- B) For those sites identified as meeting the Historic Properties Criteria where FTA and NJ TRANSIT determine, in consultation with NJ SHPO, that avoidance is not practicable, NJ TRANSIT, in consultation with NJ SHPO, will develop and implement a Data Recovery Plan. The Data Recovery Plan will be designed to recover data sufficient to address significant research issues and test assumptions, and, thus, substantially preserve the archaeological value of Section 106-protected sites. The Data Recovery Plan will be consistent with: the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716); and the ACHP handbook on Treatment of Archaeological

Resources (1980). NJ SHPO review and comment on such plan will be governed by the process set forth in III.A-B that follows. NJ TRANSIT will be responsible for the implementation of such a plan, as appropriate.

- C) In advance of any mitigation or data recovery efforts undertaken pursuant to II.C.5.a and b above, NJ TRANSIT, in consultation with NJ SHPO, will develop, in accordance with 36 CFR Part 79, an Analysis and Curation of Material and Records Plan for any archaeological excavations. NJ SHPO review and comment on such plans will be governed by the process set forth in III.A-B that follows. NJ TRANSIT will be responsible for the implementation of such a plan, as appropriate.
- D) In advance of data recovery or mitigation efforts, NJ TRANSIT will develop a plan to provide interpretive materials to the public in consultation with NJ SHPO. Upon the development of an acceptable public outreach plan, NJ TRANSIT will ensure the plan is implemented.

6. Unanticipated Discoveries Plan

NJ TRANSIT, in conjunction with FTA, along with and NJ SHPO will develop and implement an Unanticipated Discoveries Plan for non-human archaeological resources and human remains, in the event that any unanticipated archaeological resources and/or human remains are encountered during construction of the Project. Any human remains discovered will follow #4 Notification Procedures and Treatment of Human Remains above under Administrative Conditions.

7. Document Review

- A) NJ SHPO will provide comments to NJ TRANSIT regarding any plan submitted pursuant to this PA, as promptly as possible, but not to exceed 30 calendar days of the receipt of such revisions.
- B) If NJ SHPO does not submit comments in writing within 30 calendar days of the receipt of any such submissions, it is understood that NJ SHPO have concurred with the proposed plans.
- C) If NJ SHPO objects within 30 calendar days of the receipt of any submissions, then FTA, NJ TRANSIT, and NJ SHPO will consult expeditiously in an effort to resolve the objection.
- D) If FTA and NJ TRANSIT cannot resolve a NJ SHPO objection, and if further consultation with NJ SHPO is deemed unproductive by any party, then the parties will adhere to the dispute resolution procedures detailed below.
- E) FTA, NJ TRANSIT, and NJ SHPO acknowledge that the timeframes set forth 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.

8. Reporting and oversight

- A) *Final Reports.* NJ TRANSIT will provide to NJ SHPO and FTA the final historic reports and final archaeological resources reports resulting from this PA.
- B) *Annual Reports.* Commencing one year from the date that this PA is fully executed, and every year thereafter until the Project is completed or terminated by NJ TRANSIT, NJ TRANSIT will submit annual reports to NJ SHPO, and FTA, providing information concerning implementation of this PA.
- C) *Annual Review of the Programmatic Agreement.* NJTRANSIT will review implementation of this PA to determine whether to revise the PA during each annual reporting period. NJ TRANSIT will recommend any revisions to the PA, FTA and NJ SHPO will amend it in accordance with Stipulation VIII below.
- D) *Revisions to the Programmatic Agreement.* After review of the annual reports, if FTA, NJ TRANSIT, and NJ 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.

9. Dispute Resolutions

- A) At any time during the implementation of the measures stipulated in this PA, should an objection to any such measure or its manner of implementation be raised, the FTA shall notify all signatories to the agreement, take the objection into account, and consult as needed to resolve the objections.
- B) Disputes regarding the completion of the terms of this PA as necessary shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the FTA shall then initiate appropriate actions in accordance with the provisions of 36 CFR 800.6(b) and 800.7 as appropriate.

10. Notices

For purposes of notices and consulting pursuant to this PA, the following addresses and contact information should be used for the following agencies:

Steven H. Santoro
Assistant Executive Director
Capital Planning and Programs
NJ TRANSIT
One Penn Plaza East
Newark, NJ 07105-2204

Anthony G. Carr
Deputy Regional Administrator
Federal Transit Administration, Region 2
One Bowling Green, Room 428
New York, NY 10004-1415

Daniel D. Saunders
Deputy State Historic Preservation Officer
New Jersey Historic Preservation Office
Department of Environmental Protection
Mail Code 501-04B
Post Office Box 420
Trenton, New Jersey 08625-0420

11. Modification, Amendment, and Termination

- A) Modification of this PA as necessary shall be accomplished by the signatories of this PA.
- B) This PA may only be amended upon written agreement of the signatories of this PA and the amendment of this PA shall be accomplished by the signatories in the same manner as the original PA.
- C) Termination of this PA shall be accomplished by the signatories of this PA. The signatories' obligations under this PA shall terminate upon completion of construction of the Project or at such time as NJTRANSIT notifies the other parties in writing that construction has been terminated.

12. Design Changes

If any major changes to the proposed Project occur, the FTA shall consult with the NJ SHPO in accordance with the provisions of 36 CFR Part 800. If formal consultation is initiated, the NJ SHPO will provide written comments to NJ TRANSIT and the FTA within thirty (30) calendar days of receipt of the documents.

13. Review of Implementation

This PA shall become null and void if construction is not initiated within ten (10) years from the date of execution unless the signatories agree in writing to an extension. If, after ten (10) years without action the FTA chooses to continue with the undertaking, it shall re-initiate its review in accordance with the provisions of 36 CFR Part 800.

Execution of the PA by the FTA, the NJ SHPO, and NJ TRANSIT, and the implementation of its terms, is evidence that the FTA has afforded the ACHP an opportunity to comment on the Project, and that the FTA has taken into account the effects of the undertaking on archaeological properties in accordance with Section 106 regulations.

Signatories:

FEDERAL TRANSIT ADMINISTRATION

By: 


Date: 8/20/13

NEW JERSEY STATE HISTORIC PRESERVATION OFFICER

By: 

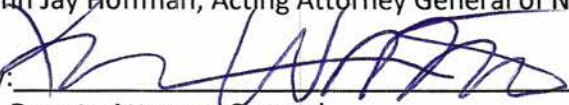
Date: 8/14/13

NEW JERSEY TRANSIT

By: 

Date: 8/19/13

Approved as to form;
John Jay Hoffman, Acting Attorney General of New Jersey

By: 
Deputy Attorney General

Date: 8/14/13

EXHIBIT A
CONSULTING PARTIES LIST

CONSULTING AND INTERESTED PARTIES

List of Consulting Parties

Federal Transit Administration (FTA)

New Jersey Transit Corporation (NJ TRANSIT)

New Jersey Historic Preservation Office (NJHPO)

Tamara Francis
Delaware Nation
NAGPRA/Cultural Preservation
PO Box 825
Anadarko, OK 73005

Dr. Brice Obermeyer
NAGPRA Representative
Delaware Tribe of Indians
1417 West Street
Emporia, KS 66801

Thomas A. DeGise
Hudson County Executive
Office of the County Executive
William J. Brennan Court House
583 Newark Avenue
Jersey City, NJ 07306

Honorable Jerramiah Healy, Mayor
City of Jersey City
City Hall
280 Grove Street
Jersey City, New Jersey 07302

Identified Local Historic Preservation Groups/Local Individuals with an Identified Interest in Preservation:

William LaRosa, Director
Hudson County Cultural Affairs and Tourism
William J. Brennan Courthouse Building
583 Newark Avenue, 1st Floor
Jersey City, NJ 07306

David Goodwin, Chairman
Jersey City Historic Preservation Commission
280 Grove Street
Jersey City, NJ 07302

John J. Hallanan III, President
Jersey City Landmarks Conservancy, Inc.
P.O. Box 68
Jersey City, NJ 07303-0068

Jim Mackin, President
Roebling Chapter
Society for Industrial Archeology
370 Riverside Drive, Apt. 2B
New York, NY 10025

Richard Wilson, President
Jersey Central Chapter, National Railway Historical Society
P.O. Box 700
Clark, NJ 07066

Frank T. Reilly, President
United Railroad Historical Society of New Jersey
c/o 460 Elm Street
Stirling NJ 07980

Friends of the New Jersey Railroad and Transportation Museum Inc.
c/o William McKelvey, Director/Curator
103 Dogwood Lane
Berkeley Heights, NJ 07922

Canal Society of New Jersey
P.O. Box 737
Morristown, New Jersey 07963-0737

Dr. Richard F. Veit, President
Archaeological Society of New Jersey
Department of History and Anthropology
Monmouth University
400 Cedar Avenue
West Long Branch, NJ 07764

**EXHIBIT B
PUBLIC PARTICIPATION PLAN**

PUBLIC PARTICIPATION PLAN

Soliciting the views of the public and those groups/individuals with interests in historic preservation is a valued part of the Section 106 process. A Public Participation Plan has been developed to involve the public and interested parties in the identification and evaluation of historic properties that might be affected by the project.

The Public Participation Plan for the Hudson Bergen Light Rail (HBLR) Route 440 Extension project includes the following:

A letter notifying and soliciting input on the identification of historic resources in the APEs will be sent to local preservation groups/individuals with an identified interest in preservation (see attached list). A copy of and responses to the letter will be attached to the final cultural resources documentation.

Community involvement will be coordinated with the requirements of the National Environmental Policy Act. Documentation of the notification and response to all public involvement will become part of the final cultural resources documentation.

The cultural resources documentation will be circulated to the following entitled consulting parties: Hudson County Board of Chosen Freeholders, City of Jersey City, FTA, NJ TRANSIT, and the HPO. No other consulting parties have been identified at this time.

The cultural resources documentation will be sent to local preservation groups/individuals with an identified interest in historic preservation (see attached list). Responses to the report will be attached to the final cultural resources documentation.

In the event that the project results in an adverse effect to historic resources, the consulting parties will be consulted on this determination. Comment on the draft Memorandum of Agreement, if required, will also be requested from those sources.

The Public Participation Plan is commensurate with the Scope of Work, defined at this time as the construction of the HBLR Route 440 Extension, City of Jersey City, Hudson County, New Jersey.

EXHIBIT C
ARCHAEOLOGICAL SENSITIVITY MAPS



0 500 FEET
SCALE