

**PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL TRANSIT ADMINISTRATION,
THE METROPOLITAN TRANSPORTATION AUTHORITY
NEW YORK CITY TRANSIT,
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
SECOND AVENUE SUBWAY PROJECT
IN NEW YORK CITY, NEW YORK**

WHEREAS, the New York City Transit Authority, an affiliated agency of the Metropolitan Transportation Authority of the State of New York (“MTA NYCT”) is proposing to construct the Second Avenue Subway Project (the “Project”), a new 8.5-mile-long subway line located on the east side of Manhattan that will improve transit services, transportation and access to the east side of Manhattan and includes new or improved rail yards in Manhattan and Brooklyn and subway car maintenance facilities in Manhattan and the Bronx;

WHEREAS, MTA NYCT has applied to the Federal Transit Administration (“FTA”) for monies to assist MTA NYCT in constructing the Project. Accordingly, 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, due to the length and complexity of the Project and the potential for exigent circumstances to arise during construction of the Project, MTA NYCT will provide funding, subject to final MTA/MTA NYCT and the New York State Historic Preservation Office (SHPO) approvals for expedited review services. Such review services will be fulfilled by a full-time SHPO designee stationed in New York City with full SHPO-delegated review and decision-making authority;

WHEREAS, FTA and MTA NYCT, along with SHPO and the New York City Landmarks Preservation Commission (“LPC”) as consulting parties, as the result of a consultative process in accordance with Section 106, have determined that it is appropriate to enter into this Programmatic Agreement, pursuant to Section 800.14(b) of the regulations implementing Section 106 (codified at 36 CFR Part 800, and herein the “Section 106 Regulations”), which will govern the implementation of the Project and satisfy FTA’s compliance with Section 106;

WHEREAS, FTA has invited the Advisory Council on Historic Preservation (“ACHP”) to participate in the Section 106 process for this Project and ACHP has declined;

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

WHEREAS, through the process conducted in preparing the EIS, FTA has determined that the Project may have an effect on properties qualifying for protection under Section 106, consisting of those properties listed or eligible for listing on the State and National Registers of Historic Places (“Historic Properties”);

WHEREAS, pursuant to the Section 106 Regulations, FTA and MTA NYCT, 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;

WHEREAS, generally, Historic Properties can be categorized as archaeological or built (see 36 CFR § 800.16(l)); and this Programmatic Agreement specifies the appropriate approaches for Archaeological and Built Properties in the Project’s APEs separately, due to the different issues presented by each category;

WHEREAS, the identification and evaluation of Historic Properties within the Project’s APEs was conducted by MTA NYCT, in consultation with FTA and SHPO, as documented in the EIS. As part of this process, FTA and MTA NYCT identified properties that appeared to 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 therefore to qualify for Section 106 protection, but for which SHPO had not yet made determinations of eligibility. FTA in consultation with SHPO, subsequently determined whether these properties constitute Historic Properties and qualify for Section 106 protection;

WHEREAS, as documented in the EIS, FTA and MTA NYCT, in consultation with SHPO and LPC, identified three Built Properties in the Project’s APEs—the Daily News Building and Chrysler Building at 42nd Street and the Brooklyn Bridge—that are National Historic Landmarks, and a total of 87 Built Properties that qualify for Section 106 protection. These Built Properties are identified in Table 9-1 of the EIS, “Known Historic Resources Within the Second Avenue Subway APEs and Potential Project Effects” annexed hereto as Exhibit A. Additionally, Figures 9-1 through 9-9 of the EIS, annexed hereto as Exhibit B, depict the approximate locations of these Built Properties;

WHEREAS, as documented by the EIS, FTA and MTA NYCT, in consultation with SHPO and LPC, identified areas with the potential to contain Archaeological Properties in the Project’s APEs (“archaeologically sensitive areas”) and identified archaeologically sensitive areas in which construction might occur, including six areas that are potentially sensitive for human remains, and these resources are identified in Table 10-1 of the EIS, annexed hereto as Exhibit C. Additionally, Figures 10-1 through 10-6 of the EIS, annexed hereto as Exhibit D, depict the approximate locations and depths of the areas identified in Exhibit C;

WHEREAS, it is possible that as the Project evolves or as a result of the addition of new Project elements beyond the boundaries of the current APEs, FTA and MTA NYCT, in consultation with SHPO and LPC, may identify additional, previously unidentified Built Properties or archaeologically sensitive areas, which may be affected by the Project;

WHEREAS, this Programmatic Agreement sets forth measures that will be implemented for all Built Properties or archaeologically sensitive areas within the Project’s current or future APEs;

WHEREAS, the length and complexity of the Project necessitate that the design and construction of the Project be phased over a 12- to 16-year period and a phasing schedule has not yet been developed;

WHEREAS, more detailed information on historic and archaeological resources will become available during the Preliminary Engineering, Final Design, and Construction stages of the Project. Preliminary Engineering is currently ongoing, Final Design will follow Preliminary Engineering, and Construction will commence after completion or concurrent with Final Design;

WHEREAS, a Cultural Resources Management Plan that includes measures to protect Built Properties and Archaeological Properties prior to and during construction of the Project has been developed for the Project and contains separate plan components that are annexed hereto as Exhibits E through M of this Programmatic Agreement;

WHEREAS, FTA has made a reasonable and good faith effort to identify and contact by letter the appropriate Native American tribes and groups (the “Tribes”) that could attach religious or cultural significance to sites within the APEs upon which the Project could have an effect;

WHEREAS, FTA and MTA NYCT have made a reasonable and good faith effort to identify and contact and seek the involvement of any descendant groups or communities associated with the areas potentially sensitive for human remains that may be affected by the Project;

WHEREAS, this Programmatic Agreement was developed with appropriate public participation during the NEPA public comment period pursuant to Subpart A of the Section 106 Regulations and a draft copy of this agreement was included and distributed with the Supplemental Draft EIS. The public will be duly notified as to the execution and effective dates of this Programmatic Agreement through either the Final EIS and/or FTA’s Record of Decision for the Project;

NOW, THEREFORE, FTA, MTA NYCT, and SHPO agree that the Project shall be implemented in accordance with the following stipulations to ensure that potential effects on Historic Properties are taken into account.

STIPULATIONS

FTA, MTA NYCT, AND SHPO AGREE THAT THE FOLLOWING STEPS WILL BE UNDERTAKEN IN CONNECTION WITH THE PROJECT AND THAT FTA WILL INCLUDE THE OBLIGATIONS SET FORTH IN THIS AGREEMENT AS PART OF ITS RECORD OF DECISION AND AS A CONDITION OF FTA'S APPROVAL OF ANY GRANT ISSUED FOR CONSTRUCTION OF THE PROJECT, TO ENSURE THAT THESE MEASURES ARE IMPLEMENTED AS PART OF THE COMPLIANCE WITH THE SECTION 106 PROCESS AND THE SUBSEQUENT PLANNING, DESIGN, AND CONSTRUCTION OF ANY APPROVED PROJECT ALTERNATIVE.

I. BUILT PROPERTIES

The EIS demonstrated that the Project could have potential adverse effects on certain Built Properties, primarily due to the proximity of the resources to proposed construction activities, including tunnel and station construction, shaft sites and/or staging areas, and building underpinning activities. The EIS also demonstrated that it is possible that additional, previously unidentified Built Properties may be identified within the Project's APEs in the future or in the area of any new project elements (see I.C. below) and that these previously unidentified properties may be affected by the Project. Accordingly, this Programmatic Agreement sets forth the following measure that will be implemented for all Built Properties within the Project's APEs.

A. Construction Protection Plan

1. To avoid Project-related construction damage to any Built Property and any additional Built Property that may not have been previously identified, as set forth below in I.C., MTA NYCT, in consultation with FTA and SHPO and all other appropriate New York City agencies, will develop Construction Protection Plans for Built Properties. Annexed hereto as Exhibit E is a list of procedures that will be included in Construction Protection Plans, which will be developed prior to construction of the Project. MTA NYCT shall ensure that any Built Property that could be adversely affected by Project construction will be included in a Construction Protection Plan, and MTA NYCT shall implement such plans as appropriate.

B. Design Specifications Governing Potential Permanent Contextual Effects

1. FTA and MTA NYCT have determined, through the EIS, that the Project has the potential to result in permanent visual effects and changes to the historic setting (herein "contextual effects") to MTA Metro-North's Harlem-125th Street Station and Comfort Station, which have been determined eligible for listing on the National Register of Historic Places. MTA NYCT, in consultation with SHPO, will develop design specifications to ensure that project-related construction activities in and around MTA Metro-North's Harlem-125th Street Station are compatible with the station's historic and architectural qualities. Annexed hereto as Exhibit F is a description of the components of the design specifications plan for MTA Metro-North's Harlem-125th Street Station and Comfort Station, which will be developed beginning with Final Design of the Project.
2. MTA NYCT, in consultation with SHPO and LPC, will develop design specifications to ensure that any permanent Project elements that may affect the visual context or historic setting of a Built Property in the Project's APEs, including Project construction within an existing Built Property, are compatible with the historic and architectural qualities of that property. MTA's transportation facilities are exempt from local laws and ordinances pursuant

to the New York State Public Authorities Law Section 1266, Subdivision 8. MTA nevertheless intends to continue to seek LPC's advice and counsel as it goes forward in the manner it has in the past for proposed work on LPC individually designated landmarks or in historic districts. Examples of such potentially visible project elements may include subway entrances and exits and ventilating structures. Annexed hereto also as Exhibit F is a description of the components for the design specifications plan for visible project elements, which will be developed beginning in Final Design of the Project.

C. Identification of Additional Built Properties and Assessment of Project Effects

1. If additional Built Properties not previously identified as Built Properties in the EIS are identified in the Project's APEs during Preliminary Engineering, Final Design, or Construction of the Project or if new project elements are added to the Project in areas that were not previously assessed for Built Properties in the EIS, it is possible that potential effects on Built Properties, in addition to those described in the EIS, may occur. For any such new project elements, the potential effects on Built Properties will be assessed prior to construction by FTA and MTA NYCT, in consultation with SHPO and LPC, in accordance with the Section 106 process.
2. MTA NYCT will consult with FTA, SHPO and LPC annually to ensure the FTA and MTA NYCT maintain up-to-date lists of properties that are determined to be Historic Properties as construction of the Project proceeds, and to assess potential effects on any such properties in the Project's APEs.

D. Consultation with SHPO Regarding Built Properties

MTA NYCT shall submit any plans developed pursuant to design specifications governing potential permanent contextual effects described in I.B. to FTA, SHPO and LPC in advance of any construction that may result in any such effects. FTA's and SHPO's review and comment on such submissions shall be governed by the process set forth in III.A-B.

E. Consultation with LPC Regarding LPC Designated Properties and Historic Districts

MTA's transportation facilities are exempt from local laws and ordinances pursuant to the New York State Public Authorities Law Section 1266, Subdivision 8. MTA nevertheless intends to continue to seek LPC's advice and counsel as it goes forward in the manner it has in the past for proposed work on LPC individually designated landmarks or in historic districts.

II. ARCHAEOLOGICAL PROPERTIES

A. Additional Evaluation for Archaeologically Sensitive Areas

The EIS first identified archaeologically sensitive areas in the Project's APEs and then identified those areas in which construction might occur. The following stipulations describe the processes that will be followed in conducting further research to determine the potential for Archaeological Properties to be affected by the Project.

1. Soil Borings Program

- During Preliminary Engineering of the Project, MTA NYCT established a soil borings program to establish geotechnical and environmental subsurface conditions along the subway corridor. MTA NYCT has consulted with SHPO and LPC regarding the establishment of a protocol for the borings to be used for archaeological purposes to reassess the potential for archaeological resources, or lack thereof; and a protocol for the taking of borings in areas potentially sensitive for human remains. MTA NYCT will implement and follow the procedures set forth in the Soil Borings Plan, annexed hereto as Exhibit G.
2. Protocol to Prioritize Archaeologically Sensitive Areas for Field Testing and Field Testing Plan
 - a. At all sites where the potential for archaeological resources is confirmed to exist by soil borings conducted under II.A.1. above, MTA NYCT shall:
 - (i) Prioritize archaeologically sensitive areas for testing. MTA NYCT will commence this work during Preliminary Engineering of the Project. It will include an assessment of site access and testing feasibility for all archaeologically sensitive areas that would be affected by the Project. For areas sensitive for historic-period resources, MTA NYCT shall undertake additional documentary research to document historic disturbance, refine archaeological sensitivity, and evaluate research potential so as to prioritize the sites for testing based on the site's potential to yield significant information and address meaningful research issues according to the Historic Properties criteria. The work will be undertaken as per the procedures set forth in the Site Prioritization and Additional Documentary Research Protocol, which was developed in consultation with SHPO and LPC, and annexed hereto as Exhibit H; and/or
 - (ii) Undertake field testing investigations to identify the presence or absence of potential Archaeological Properties. Field investigations may consist of testing well in advance of Project construction, testing just prior to construction, or archaeological monitoring during construction. The method of field investigations selected will be based on site feasibility and testing appropriateness as determined by MTA NYCT in consultation with SHPO and LPC.
 - b. Prior to commencing any field testing, MTA NYCT shall submit a Field Testing Plan outlining the proposed methodology for SHPO's and LPC'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. Annexed hereto as Exhibit I is a description of the components of the Field Testing Plan that will be developed beginning with Preliminary Engineering of the Project. SHPO's and LPC's review and comment on such submissions shall be governed by the process set forth in III.A-B.
 - c. In areas identified as potentially sensitive for human remains, field testing will proceed in accordance with the requirements for testing in areas potentially sensitive for human remains established in the Field Testing Protocol. Subsurface work will only be undertaken in areas potentially sensitive for human remains following the prior notification of and opportunity for consultation with the appropriate descendant community (if such appropriate descendant community can be reasonably identified and located) as outlined below in II.A.3.

- d. For all field tested sites, MTA NYCT shall provide a report to FTA, SHPO and LPC in which the Historic Properties criteria have been applied to reach one of the following conclusions:
 - (i) The site does not meet the Historic Properties criteria; in which case no further action is required.
 - (ii) The site does meet the Historic Properties criteria, in which case the site will be treated in accordance with II.A.4 below.
 - e. SHPO's and LPC's review and comment on such reports shall be governed by the process set forth in III.A-B.
3. Protocol for Work in Areas Potentially Sensitive for Human Remains
- a. Consultation with Descendant Community(s) Associated with Areas Potentially Sensitive for Human Remains

At all sites sensitive for human remains where subsurface work is required for borings and/or field testing as described in II.A.1.d. and II.A.2.c. above, MTA NYCT shall:

 - (i) Make a reasonable and good faith effort, prior to any excavation, to locate and contact the appropriate descendant community(s). In the event that an appropriate descendant community(s) has been identified and located, MTA NYCT shall seek the involvement of the descendant community(s) during Preliminary Engineering of the Project and prior to any excavation.
 - (ii) Follow the protocol set forth in II.A.3.b below that outlines the appropriate notification procedures and treatment of human remains in the event that human remains are encountered. Such protocol will be in place prior to any excavation.
 - b. Notification Procedures and Treatment of Human Remains

If any human remains are encountered during subsurface work for borings, field testing, or Project construction the following will occur:

 - (i) MTA NYCT shall stop work and secure the site.
 - (ii) MTA NYCT shall notify the New York City Medical Examiner and Police Department. MTA NYCT's Cultural Resources Manager(s), a professional archaeologist, shall notify FTA, SHPO and LPC.
 - (iii) The appropriate descendant community(s) shall be notified, so that the remains may be exhumed and treated in an appropriate manner as previously agreed upon by the descendant community(s) and MTA NYCT.
 - (iv) Once the Cultural Resources Manager(s), in consultation with SHPO, indicates that all remains have been properly exhumed, construction may proceed.
4. Mitigation, Data Recovery, Curation, and Public Interpretation

- a. For all sites identified as meeting the Historic Properties criteria, MTA NYCT, in consultation with FTA, SHPO and LPC, shall consider measures, such as design modification, for avoidance of Archaeological Properties.
- b. For those sites identified as meeting the Historic Properties criteria where FTA and MTA NYCT determine, in consultation with SHPO and LPC, that avoidance is not practicable, MTA NYCT, in consultation with SHPO and LPC, shall 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. SHPO's and LPC's review and comment on such plan shall be governed by the process set forth in III.A-B. MTA NYCT shall be responsible for the implementation of such a plan, as appropriate. Annexed hereto as Exhibit K is a description of the components of the Data Recovery Plan, which will be developed beginning with the Final Design of the Project.
- c. In advance of any mitigation or data recovery efforts undertaken pursuant to II.4.a and b above, MTA NYCT, in consultation with SHPO and LPC, will develop in accordance with 36 CFR Part 79, an Analysis and Curation of Material and Records Plan for any archaeological excavations. SHPO's and LPC's review and comment on such plans shall be governed by the process set forth in III.A-B. MTA NYCT shall be responsible for the implementation of such a plan, as appropriate. Annexed hereto as Exhibit L is a description of the components of the Analysis and Curation of Material and Records Plan, which will be developed during Final Design and Construction of the Project.
- d. During and/or following mitigation or data recovery efforts, MTA NYCT will make a reasonable and good faith effort to provide interpretative materials to the public. Such materials could take the form of a brochure, information kiosk, or web page to provide information on the data recovery program and any archaeological resources uncovered as a result of that program.

B. Identification of Additional Archaeologically Sensitive Areas and Assessment of Potential Project Effects

1. For any new project elements that would involve subsurface construction and for which the effects of such construction have not yet been analyzed as part of the EIS process, potential effects on archaeologically sensitive areas within the APEs (as adjusted in light of such new Project elements) will be assessed following the consultation requirements set forth in the Section 106 Regulations.
2. FTA and MTA NYCT will consult with SHPO and LPC in identifying archaeologically sensitive areas not previously identified and to assess potential project effects not previously assessed.
3. If any archaeologically sensitive areas are identified as a result of the research conducted as described in II.B.1 and II.B.2, MTA NYCT shall adhere to the steps described in II.A in conducting its activities within such areas.

C. Unanticipated Discoveries Plan

1. MTA NYCT shall follow the requirements set forth in the Unanticipated Discoveries Plan for non-human archaeological resources in the event that any unanticipated archaeological resources are encountered during construction of the Project. Unanticipated discoveries shall constitute finds in areas that were previously determined to be “cleared” for construction. Cleared areas are those locations within the APEs where the Cultural Resource Manager(s) would not be on-site, but on-call, during construction as defined in II “Definitions” of the Unanticipated Discoveries Plan. This plan, which was developed in consultation with FTA, SHPO and LPC, is annexed hereto as Exhibit J.
2. MTA NYCT shall follow the requirements set forth in the Unanticipated Discoveries Plan for human remains in the event that any unanticipated human remains not previously identified in the *Second Avenue Subway Phase 1A Archaeological Assessment* are encountered during construction of the Project. The Plan includes the protocols for the notification of appropriate parties and the proper treatment of human remains. This plan, which was developed in consultation with FTA, SHPO and LPC, is annexed hereto as Exhibit J.
3. SHPO’s and LPC’s review and comment on the Unanticipated Discoveries Plan shall be governed by the process set forth in III.A-B.
4. FTA, MTA NYCT, SHPO, and LPC 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 Discoveries Plan expeditiously in circumstances requiring its use.

D. Construction and Archaeology Phasing Plan

MTA NYCT will take all practical steps to initiate and complete archaeological field analysis and data recovery (depending on site access and testing feasibility) prior to construction activities in the vicinity of affected resources. MTA NYCT, in consultation with SHPO and LPC, will develop a plan to appropriately phase the archaeological field analysis and data recovery with construction activities. SHPO’s and LPC’s review and comment on such plans shall be governed by the process set forth in III.A-B. Annexed hereto as Exhibit M is a description of the components of the Construction and Archaeology Phasing Plan, which will be developed beginning with Preliminary Engineering of the Project.

E. Professional Standards

MTA NYCT shall ensure that all archaeological research, testing, analysis, and plans 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. MTA NYCT shall ensure that all final archaeological reports are consistent with the New York Archaeological Council’s *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* and to the Department of the Interior’s *Format Standards for Final Reports of Data Recovery Program*.

III. DOCUMENT REVIEW

- A. Under normal circumstances (ie. when exigent circumstance do not exist), SHPO and LPC shall provide comments on documents provided for their review as set forth below:

1. SHPO and LPC shall provide comments regarding amendments to any plans annexed to this Programmatic Agreement pursuant to II.A.1, II.A.2.a.i, II.C, as promptly as possible but not to exceed 30 calendar days of its receipt of such revisions.
 2. Unless otherwise stated within this Programmatic Agreement, SHPO and LPC shall provide comments regarding any future plans and/or amendments to such plans submitted pursuant to I.A, I.B, II.A.2.b, II.A.4.b, II.A.4.c, and II.D, or reports submitted pursuant to Exhibit H, as promptly as possible but not to exceed 30 calendar days of its receipt of such plans or reports.
 3. If SHPO and LPC do not submit comments in writing to FTA and MTA NYCT within 30 calendar days of receipt of any such submissions, it is understood that SHPO and LPC have concurred with the proposed plans.
 4. If SHPO and /or LPC objects within 30 calendar days of its receipt of any submissions, then FTA, MTA NYCT, SHPO and LPC shall consult expeditiously in an effort to resolve the objection.
 5. If FTA and MTA NYCT cannot resolve SHPO's and/or LPC's objection and if further consultation with SHPO and/or LPC is deemed unproductive by any party, then the parties shall adhere to the dispute resolution procedures detailed under V. below.
- B. FTA, MTA NYCT, SHPO, and LPC acknowledge that the timeframes set forth in III.A. above are the maximum time periods allowable under normal circumstances. In exigent circumstances (such as where construction activities have been suspended or delayed pending resolution of the matter) all parties agree to make every effort to expedite their respective document review and dispute resolution obligations.

IV. REPORTING AND OVERSIGHT

- A. Final Reports. MTA NYCT shall ensure that all final historic reports and all final archaeological resources reports resulting from this Programmatic Agreement shall be provided to SHPO, FTA, and LPC.
- B. Annual Reports. Commencing one year from the date this Agreement is fully executed and every year thereafter until the Project is completed or terminated by MTA NYCT, annual reports will be submitted by MTA NYCT to SHPO, FTA, and LPC, providing information concerning the implementation of this Agreement and the effect of the Project on Historic Properties.
- C. Annual Review of Programmatic Agreement. The signatories to this Programmatic Agreement, or their successors, will review the implementation of this Programmatic Agreement and determine whether revisions are needed at the time the annual reports are submitted.
- D. Revisions to the Programmatic Agreement. After review of the annual reports, if FTA, MTA NYCT, and SHPO, or their successors in interest all agree that revisions to this Programmatic Agreement are necessary, such revisions will be considered and implemented pursuant to a consultative process involving all the parties to this Programmatic Agreement.

V. DISPUTE RESOLUTION

- A. In the event SHPO and/or LPC objects to any plan or report proposed pursuant to this Programmatic Agreement within 30 calendar days of its receipt of such plan or report, FTA and MTA NYCT shall meet with SHPO and/or LPC to resolve the objection.
- B. Following such further consultation, FTA shall determine as promptly as possible whether such objection has been satisfactorily resolved. If FTA determines that the objection has not been satisfactorily resolved, within 15 calendar days of its determination in this regard FTA shall forward all documentation relevant to the dispute, including FTA's proposed resolution of the dispute, to ACHP.
- C. Except in exigent circumstances as provided in V.E., when there is a dispute ACHP will provide FTA with recommendations or comments within 30 calendar days after receipt of all pertinent documentation. FTA will take such recommendations or comments into account in reaching a final decision regarding the dispute.
- D. Except in exigent circumstances as provided in V.E, in the event ACHP fails to respond to FTA's request for recommendations or comments within 30 calendar days of receiving all pertinent documents, FTA may resolve the dispute.
- E. In the case of disputes arising under exigent circumstances, (such as where construction activities have been suspended or delayed pending resolution of the matter) all parties shall endeavor to resolve any dispute within seven calendar days. In particular, ACHP agrees to respond to FTA's request for recommendations or comments within five business days of its receipt thereof.

VI. OTHER

- A. SHPO and LPC may monitor activities carried out pursuant to this Programmatic Agreement, and will review such activities if so requested. MTA NYCT will cooperate with FTA, SHPO, and LPC in carrying out SHPO's and LPC's monitoring and reviewing responsibilities.
- B. Notwithstanding any other provision in this Agreement, any party may propose an amendment hereto whereupon the parties will consult to consider such amendments.
- C. For purposes of notices and consulting pursuant to this Agreement, the following addresses and contact information should be used for the following agencies:

MTA NYCT

Hollie Wells
Administrative Project Manager
MTA NYCT
Capital Program Management
2 Broadway, 6th floor
New York, NY 10004
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Fax: 646-252-4612

FTA

Irwin B. Kessman
Director, Office of Planning and Program Development
Federal Transit Administration

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Fax: 212-668-2136

SHPO

Robert D. Kuhn
Assistant Director
New York State Office of Parks, Recreation, and Historic Preservation
Historic Preservation Field Services Bureau
Pebbles Island
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Waterford, NY 12188-0189
Tel.: 518-237-8643, ext. 3255
Fax: 518-233-9049

ACHP

Laura Henley Dean
Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW Suite 803
Washington, D.C. 20004
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Fax: 202 606-8647

LPC

Amanda Sutphin
Director of Archaeology
New York City Landmarks Preservation Commission
1 Centre Street, 9N
New York, NY 10007
Tel.: 212-669-7823
Fax: 212-669-7818


- D. This agreement shall terminate upon completion of construction and the obligations set forth in this document governing construction, reporting, and curation or at such time as MTA NYCT notifies the other parties in writing that the project has been terminated.

**EXECUTION AND IMPLEMENTATION OF THIS PROGRAMMATIC AGREEMENT
EVIDENCES THAT FTA HAS SATISFIED ITS SECTION 106 RESPONSIBILITIES FOR ALL
INDIVIDUAL UNDERTAKINGS OF THE PROJECT.**

**APPROVAL AND SIGNATURE PAGE FOR
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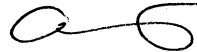
FEDERAL TRANSIT ADMINISTRATION

By: 

Date: 4/08/04

Letitia Thompson
 Regional Administrator, Region II

METROPOLITAN TRANSPORTATION AUTHORITY NEW YORK CITY TRANSIT

By: 

Date: 3/10/04

Cosema E. Crawford, P.E.
 Senior Vice President and Chief Engineer
 Capital Program Management

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: 

Date: 4/0/04

Bernadette Castro
 Commissioner

LIST OF EXHIBITS

EXHIBIT	TITLE
A	FEIS Table 9-1: Known Historic Resources Within the Second Avenue Subway APEs and Potential Project Effects
B	FEIS Figures 9-1 through 9-9
C	FEIS Table 10-1: Areas of Potential Archaeological Sensitivity and Potential Project Effects
D	FEIS Figures 10-1 through 10-6
E	Construction Protection Plans
F	Design Specifications for Contextual Effects
G	Soil Borings Program and Archaeological Resources Protocol
H	Site Prioritization and Additional Documentary Research Protocol
I	Field Testing Plan
J	Unanticipated Discoveries Plan for Archaeological Resources Including Human Remains
K	Data Recovery Plan
L	Analysis and Curation of Material and Records Plan
M	Construction and Archaeology Phasing Plan