

(and any successor in title to ESDC) shall consult with SHPO to negotiate mitigation measures that are responsive to the identified adverse effects.

IV. INTERIM USE ALTERATIONS

ESDC/MSDC will submit architectural drawings for any Interim Use Alterations to SHPO for review, and SHPO will examine such plans to assure that such alterations would not result in adverse effects to the historic character of the Farley Complex. SHPO will provide comments to ESDC/MSDC with respect to the architectural drawings within 30 calendar days of its receipt of such drawings. ESDC/MSDC and PANY/NJ will consult with SHPO to seek to resolve any substantive issues regarding effects to the historic character of the Farley Complex raised in comments provided by SHPO pursuant to this paragraph. In the event those parties are unable to come to a resolution of such issues, they will engage in further consultations with FRA, and, to the extent FRA deems appropriate, ACHP.

V. CONSTRUCTION PROTECTION PLAN

Prior to construction, ESDC/MSDC and any successor in title (for Phase I) and/or the Developer, under ESDC/MSDC's direction (for Phase 2), will develop and implement a construction protection plan to avoid adverse construction effects on the Farley Complex and on two potentially vulnerable historic buildings within 90 feet of the construction activities. The adjacent historic buildings that will be covered by the construction protection plan are the former J.C. Penney Company building at 331 West 33rd Street and the former William F. Sloan Memorial YMCA at 351 West 33rd Street.

The construction protection plan will include provisions that the construction manager will follow to evaluate potential adverse effects on the Farley Complex and adjacent historic

buildings. These provisions will include protective measures such as monitoring during construction to detect vibration or other physical impact. ESDC/MSDC will provide the preliminary construction protection plan to SHPO for review no less than 30 days prior to any construction or deconstruction activities. SHPO will respond within 10 calendar days after receipt of the preliminary construction protection plan and should SHPO fail to respond, the plan will be deemed approved.

VI. UNANTICIPATED DISCOVERIES OF HISTORIC FEATURES

If during the course of construction of the Project, FRA, ESDC, MSDC, PANY/NJ or the Developer determines that construction of the Project will affect or has affected a previously unknown historic feature, construction will be suspended in the immediate vicinity of the affected feature and reasonable measures shall be taken with respect to the Project, to avoid harm to the feature until all Parties have been notified of the discovery and SHPO has been consulted in order for ESDC/MSDC to develop a mitigation plan with respect to such previously unknown historic feature. SHPO shall have 7 calendar days to review and comment on the mitigation plan and any comments submitted by SHPO shall be considered by ESDC/MSDC in finalizing the mitigation plan. Should SHPO fail to respond within the 7 calendar day period, SHPO shall be deemed to concur with the mitigation plan.

VII. CONVEYANCE OF TITLE

In the event ESDC conveys title of the Farley Complex to the PANY/NJ or any other entity, it shall require, by means of a covenant, deed restriction, or other appropriately documented commitment, that any future redevelopment of the Farley Complex be undertaken in consultation with SHPO in accordance with this Programmatic Agreement. The requirement to consult with

SHPO regarding any future redevelopment shall be by virtue of this Programmatic Agreement and the covenant, deed restriction, or other appropriately documented commitment as required herein, and not by operation of any federal, state or local statute or regulation, unless the future owner would otherwise have to comply with such statute or regulation.

VIII. DISPUTE RESOLUTION

1. Except as provided in VIII. 2 below, in the event any of the Parties to this Agreement objects to any plans or reports presented for the Project pursuant to this Programmatic Agreement within 30 days of its receipt, or within such other time frame specified in this Agreement, ESDC/MSDC will consult further with the objecting signatory party to seek resolution. If ESDC/MSDC is unable to reach resolution with respect to the objection, it will notify FRA, which in turn will consult with the objecting party to reach resolution with respect to the objection. If FRA determines that the objection cannot be resolved, FRA will invite ACHP to review all Project documentation relevant to the dispute, including FRA's proposed resolution to any objection. ACHP will provide its comments to FRA within 30 calendar days of receipt of the documentation. FRA will take these comments into account in reaching a final decision concerning the dispute. Any ACHP recommendation or comment will pertain only to the subject of the dispute. The responsibility of the signatory parties to implement all actions pursuant to this Agreement that are not subject to the dispute will remain unchanged.
2. Should SHPO object in writing within 30 calendar days to any plans or documents submitted by ESDC/MSDC to SHPO pursuant to Section III of this Agreement, the

objection will be addressed in accordance with Article 14 of the SHPA and the State Historic Preservation Regulations.

IX. PUBLIC INVOLVEMENT

ESDC/MSDC have implemented public participation activities through the environmental review process in accordance with applicable regulations. The project was advertised, a public scoping meeting was held on February 16, 2006, and a public hearing on the DEIS was held on May 31, 2006. The public had an opportunity to comment on the project at the public meetings and during the public comment periods on the draft scope of work and the DEIS. In addition, the public had an opportunity to comment on the project in 2010 via the processes employed in the review of the 2010 EA and the ESDC General Project Plan. ESDC/MSDC will continue to maintain ongoing communications with the public through such means as information posted on the Project website and ongoing consultation with the local community boards, a community advisory committee, local elected officials, and relevant public agencies.

X. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in this Agreement, should any objection to any such measure or its manner of implementation be raised by a member of the public, ESDC/MSDC shall take the objection into account, notify SHPO and FRA of the objection, and consult as needed with the objecting party, FRA, SHPO, or ACHP to seek resolution of the objection.

XI. RECORD KEEPING

ESDC/MSDC shall maintain records of all activities undertaken pursuant to this Agreement that shall become part of the Environmental Review Record for the project, including:

1. Copies of all executed contracts related to the selection of professionals to perform the work stipulated in the provisions of this Agreement, which clearly documents adherence to the Professional Qualifications.
2. All records of correspondence and finding letters from SHPO to ESDC/MSDC.
3. All records of correspondence from NPS to ESDC/MSDC, PANY/NJ and/or the Developer.
4. Such records that are necessary indicating mitigation measures implemented in accordance with the provisions of this Agreement.
5. All final correspondence relating to consultations ESDC/MSDC and PANY/NJ has with SHPO, NPS, and/or ACHP following execution of this Agreement.
6. All of the above records shall be maintained for a minimum of three years after completion of the project and shall be made available to FRA, the general public, and additional parties with a demonstrated interest in the undertaking upon request during this time frame. Contract documents may be redacted to omit billing rates or other confidential business information.

XII. TERM OF AGREEMENT

This Agreement shall become effective upon execution by the Parties and shall remain in force until December 31, 2025, unless the Moynihan Station Development Project has been completed

prior to that date and notice of such completion has been conveyed to all Parties or the Parties otherwise agree, in accordance with Section XIII or XIV of this Agreement.

XIII. AMENDMENTS

Any one of the Parties to this Agreement may request that it be amended or modified, whereupon the Parties will consult in accordance with the Section 106 Regulations (36 CFR Part 800.13) to consider such revisions. Any resulting amendments or addenda shall be developed and executed among the Parties in the same manner as this Programmatic Agreement.

XIV. MODIFICATIONS TO THE UNDERTAKING

In the event that material changes are proposed by ESDC/MSDC to the scope of the project described in this Agreement, ESDC/MSDC shall engage in further consultations with SHPO, ACHP and FRA as required to satisfy the appropriate Historic Preservation requirements.

XV. COORDINATION WITH OTHER FEDERAL REVIEWS

In the event that additional federal funding or approvals are sought for the Moynihan Station Development Project and the Project remains unchanged, such funding or approving agency may comply with Section 106 by agreeing in writing to the terms of this Programmatic Agreement and notifying and consulting with SHPO. Any necessary modifications will be considered in accordance with Section XIV.

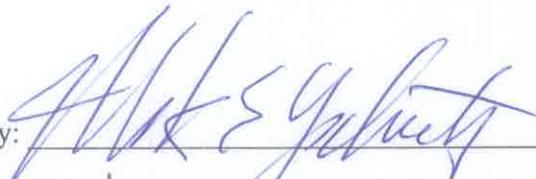
XVI. TERMINATION

If any one of the Parties to this Agreement determines that the terms of this Agreement cannot be or are not being carried out, the Parties shall consult to seek amendment of this Agreement. If the Agreement is not amended, any signatory may terminate its participation in the Agreement

by providing 30 days notice to the other Parties, provided that the Parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. Notwithstanding any termination, ESDC/MSDC will complete the historic review process for the proposed redevelopment of the Farley Complex pursuant to the appropriate Historic Preservation requirements. If this Agreement is terminated, prior to work continuing on the undertaking FRA must either (a) execute a new Agreement pursuant to 36 CFR § 800.6 or (b) request and consider the formal comments of the ACHP under 36 CFR § 800.7. FRA shall notify the signatories as to the course of action it will pursue.

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

FEDERAL RAILROAD ADMINISTRATION

By:  _____

Name: Mark E. Yachmetz

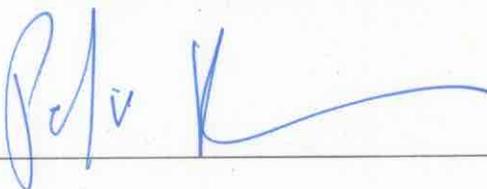
Title: Associate Administrator for Railroad
Policy + Development

JUL 13 2010

Date: _____

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

EMPIRE STATE DEVELOPMENT CORPORATION

By:  _____

Name: Peter Davidson

Title: Executive Director

Date: 7/12/10 _____

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

MOYNIHAN STATION DEVELOPMENT CORPORATION

By: 

Name: Robin Stout

Title: President

Date: 7/9/10

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

NEW YORK STATE HISTORIC PRESERVATION OFFICE

By: Ruth L. Pierpont

Name: Ruth L. Pierpont

Title: DBHPO

Date: July 9, 2010

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: Andrew S. Lynn

Name: ANDREW S. LYNN

Title: Director of Planning and Regional Development

Date: 7/12/10

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: *John W. Swalen*

Name:

Title:

Date: *7/14/10*

Execution of this Agreement by FRA, ESDC, MSDC, SHPO, PANY/NJ, ACHP, and the Developer, and implementation of its terms by ESDC, MSDC and PANY/NJ, evidences that FRA and ESDC have taken into account the effects of the Moynihan Station Development Project on historic properties.

R/V MOYNIHAN STATION DEVELOPER, LLC

By:  _____

Name: **AUTHORIZED SIGNATORY**

Title: **JEFF. T. BLAU**

Date: **7/15/10** _____