

**FIRST AMENDED AND RESTATED  
PROGRAMMATIC AGREEMENT**

Among

The Federal Railroad Administration,  
The Port Authority of New York & New Jersey,  
The Empire State Development Corporation,  
The Moynihan Station Development Corporation,  
The New York State Historic Preservation Office,  
R/V Moynihan Station Developer, LLC, and  
The Advisory Council on Historic Preservation,

Regarding

The Moynihan Station Development Project

In New York City, New York

**WHEREAS**, the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”) purchased the James A. Farley Building (the “Farley Building”) and the Western Annex (together, the “Farley Complex”), located at 421 Eighth Avenue between West 31st and West 33rd Streets in Manhattan, from the United States Postal Service (“USPS”) on March 30, 2007, for the purpose of redeveloping the Farley Complex into a major new transportation facility (to be named “Moynihan Station”) that would also include commercial development; and

**WHEREAS**, Moynihan Station would consist of: (i) a world class train station with direct access to the tracks and platforms beneath the Farley Building; (ii) certain below-grade improvements to tracks, platforms, corridors and related transportation infrastructure; (iii) transit-oriented retail to serve inter-city travelers, commuters and the general public; and (iv) various alterations to the exterior of the Farley Complex to provide access and services to Moynihan Station; and

**WHEREAS**, a portion of the cost of Moynihan Station would be funded through financial assistance provided by the Federal Railroad Administration (“FRA”), an operating administration within the U.S. Department of Transportation; and

**WHEREAS**, Moynihan Station is one component of a larger project (the “Moynihan Station Development Project”) proposed by ESDC and its subsidiary the Moynihan Station Development Corporation (“MSDC”), which would involve, in addition to Moynihan Station: (i) the potential development of approximately 750,000 square feet of hotel, retail and other commercial space (the “Commercial Space”) in the Farley Complex; (ii) utilization of development rights associated with the Farley Complex to construct an approximately 1.1 million square foot residential or mixed-use building at a site across Eighth Avenue from the Farley Complex; and (iii) certain improvements to up to 265,000 square feet of space within the Farley Complex to accommodate USPS retail and administrative operations (the “USPS Space”); and

**WHEREAS**, the Farley Complex is listed on the State and National Registers of Historic Places and is a designated New York City Landmark; and

**WHEREAS**, a Memorandum of Agreement (“USPS MOA”) was executed in 2006 among the USPS, ESDC, and New York State Office of Parks, Recreation and Historic Preservation acting

in its capacity as the New York State Historic Preservation Office (“SHPO”), and acknowledged by the Advisory Council on Historic Preservation (“ACHP”), to satisfy the responsibilities of the USPS under Section 106 of the National Historic Preservation Act, codified at 16 U.S.C. § 470f (“Section 106”), and its implementing regulations, codified at 36 CFR Part 800 (“Section 106 Regulations”), with respect to the transfer of title to the Farley Complex from USPS to ESDC; and

**WHEREAS**, the USPS MOA acknowledges that USPS will: (i) continue to carry out its Section 106 consultation obligations with respect to undertakings affecting those portions of the Farley Complex that USPS leases from ESDC, including the USPS lobby and side rotundas; and (ii) document the mural “Post Office in the Country” by Fredrico LeBrun prior to redevelopment of the Western Annex; and

**WHEREAS**, FRA, ESDC, MSDC, SHPO, and R/V Moynihan Station Developer, LLC (the “Developer”) the conditionally designated preferred developer for the construction of the Moynihan Station Development Project, entered into a Programmatic Agreement in August 2006 (the “2006 Programmatic Agreement”) pursuant to Section 106 and the Section 106 Regulations; and

**WHEREAS**, the 2006 Programmatic Agreement satisfied FRA’s responsibilities under Section 106 and the Section 106 Regulations with respect to the provision of FRA funding for the design and construction of Moynihan Station, which constitutes an “undertaking” as defined in the Section 106 Regulations (36 CFR § 800.16(y)) and will have an effect on the Farley Complex; and

**WHEREAS**, the 2006 Programmatic Agreement also satisfied ESDC's and MSDC's responsibility under the New York Parks, Recreation and Historic Preservation Law, which is codified at Article 14 of the New York State Historic Preservation Act of 1980 ("SHPA"), and its implementing regulations codified at Title 9 of the New York Code of Rules and Regulations ("NYCRR") Part 428 (the "State Historic Preservation Regulations"), to consult with SHPO regarding the effects from the Moynihan Station Development Project (inclusive of the construction of Moynihan Station, the development of commercial space in the Farley Complex, and the utilization of development rights associated with the Farley Complex at a site across Eighth Avenue); and

**WHEREAS**, in 2006 USPS and FRA prepared an Environmental Assessment (the "2006 EA") as lead and cooperating agencies, respectively, regarding the Moynihan Station Development Project, as then proposed, pursuant to the National Environmental Policy Act ("NEPA"); and

**WHEREAS**, ESDC issued a Draft Environmental Impact Statement ("DEIS") in April 2006 and a Final Environmental Impact Statement ("FEIS") in August 2006 with respect to the Moynihan Station Development Project, as then proposed, in accordance with the New York State Environmental Quality Review Act ("SEQRA"), codified at Article 8 of the New York Environmental Conservation Law, and its implementing regulations codified at 6 NYCRR Part 617 (the "SEQRA Regulations"); and

**WHEREAS**, in 2006 ESDC provided SHPO with a copy of the DEIS and FEIS, along with information concerning the conceptual design for the Moynihan Station Development Project, as then proposed, and FRA, ESDC and MSDC consulted with SHPO to fulfill agency requirements under Section 106 and SHPA, respectively; and

**WHEREAS**, SHPO attended presentations of the conceptual design for the Moynihan Station Development Project on March 23, 2006 and June 1, 2006 and indicated in a letter dated July 28, 2006 (the "2006 SHPO Letter") that no Adverse Effects were expected from the conceptual design of the Moynihan Station Development Project, as then proposed, provided the final design were to be developed in consultation with SHPO through a consultative framework set forth in the 2006 Programmatic Agreement; and

**WHEREAS**, the Moynihan Station Development Project, as currently proposed, differs from the project studied in the DEIS, FEIS and 2006 EA and addressed in the 2006 SHPO Letter and 2006 Programmatic Agreement, in that certain modifications would be implemented, including, but not limited to, changes to the train station skylight and modifications to the Intermodal Hall (collectively, the "Proposed Modifications"); and

**WHEREAS**, the Moynihan Station Development Project with the Proposed Modifications would be implemented in two phases for purposes of design, financing and construction; and

**WHEREAS**, Phase 1 would include, but not be limited to, the creation of an expanded West End Concourse ("WEC") and new vertical access points leading from the WEC to street level, two new above-grade entrances through the Eighth Avenue façade of the Farley Building providing direct access to the WEC and various other below-grade transportation improvements; and

**WHEREAS**, Phase 2 would include, but not be limited to, the construction of a sky-lit train hall, an intermodal hall, and transportation-oriented retail and other commercial development and additional office space for USPS operations within the Farley Building, as well as the repair, preservation and protection of the Farley Complex's external historic features; and

**WHEREAS**, ESDC/MSDC may wish to introduce interim program elements that could result in minimal alterations in and around the Farley Complex, in order to accommodate interim uses of the Farley Complex during the period that the Moynihan Station Development Project is under construction, and the parties wish to establish a process for the review of those alterations with the potential to affect historic features of the Farley Complex (the “Interim Use Alterations”) to assure that they will not result in adverse effects to the historic character of the Farley Complex; and

**WHEREAS**, SHPO attended presentations of the preliminary conceptual design for the Moynihan Station Development Project, with the Proposed Modifications, on May 29, 2009 and August 6, 2009; has reviewed the conceptual design for the Moynihan Station Development Project, including the Proposed Modifications; and has indicated in a letter dated January 5, 2010 that no Adverse Effects are expected from the conceptual design of the Moynihan Station Development Project, as modified, with respect to or on historic resources, provided that the final design continues to be developed in consultation with SHPO; and

**WHEREAS**, FRA, ESDC, MSDC and the Port Authority of New York & New Jersey (“PANY/NJ”) have prepared an environmental assessment (the “2010 EA”), regarding the Moynihan Station Development Project, including the Proposed Modifications, that analyzes the environmental and historic preservation impacts associated with the updated project; and

**WHEREAS**, in 2000 the PANY/NJ agreed to lease space in Moynihan Station to provide enhanced airport access for passengers using John F. Kennedy and Newark International Airports and enhanced services for Port Authority Trans-Hudson Corporation (“PATH”) commuters for a term of 35 years; and

**WHEREAS**, PANY/NJ is participating with ESDC and MSDC in the planning and implementation of the Moynihan Station Development Project and in connection therewith may acquire title to the Farley Complex from ESDC; and

**WHEREAS**, FRA, PANY/NJ, ESDC, MSDC, and SHPO have examined the Proposed Modifications to the Moynihan Station Development Project in light of new information and changed circumstances and expect that such modifications would not give rise to any Adverse Effects with respect to or on historic resources provided that the final design is developed in consultation with SHPO; and

**WHEREAS**, this First Amended and Restated Programmatic Agreement (referred to herein as the “Programmatic Agreement”) will fully supersede and replace the 2006 Programmatic Agreement; and

**WHEREAS**, consistent with the Section 106 Regulations (36 C.F.R. § 800.14(b)), FRA notified ACHP about the Moynihan Station Development Project and the development of this Programmatic Agreement, and ACHP elected to participate in this Agreement; and

**WHEREAS**, FRA, SHPO and ACHP are signatories, and PANY/NJ, ESDC, MSDC and the Developer are invited signatories, to this Programmatic Agreement; and

**WHEREAS**, FRA, SHPO, ACHP, PANY/NJ, ESDC, MSDC, and the Developer (the “Parties”) desire to enter into this Programmatic Agreement to address the Proposed Modifications and to add ACHP and PANY/NJ as Parties; and

**WHEREAS**, the Parties further desire to enter into this Programmatic Agreement to: (i) satisfy FRA’s Section 106 responsibilities related to the construction of Moynihan Station; and (ii)

satisfy ESDC's and MSDC's responsibilities under SHPA and the State Historic Preservation Regulations, as and to the extent such State requirements are applicable to the Moynihan Station Development Project, including the construction of Moynihan Station, the USPS Space, the Commercial Space, and the utilization of development rights associated with the Farley Complex at a site across Eighth Avenue; and

**WHEREAS**, the Parties have agreed to enter into this Programmatic Agreement in accordance with Section 800.14 of the Section 106 Regulations to establish a process for evaluating the effects on the Farley Complex and adjacent properties listed or eligible for listing on the State and National Registers of Historic Places ("Historic Properties") caused by: (i) Moynihan Station; and (ii) other components of the Moynihan Station Development Project, and to ensure the long-term preservation of the Farley Complex's historic significance; and

**WHEREAS**, it is expected that an application for Federal Historic Preservation Tax Incentives will be pursued for the Moynihan Station Development Project and that SHPO and the National Park Service ("NPS") will be consulted as part of that application process to ensure that the Project will achieve the appropriate preservation standards and will follow the *Secretary of the Interior's Standards for the Treatment of Historic Properties*; and

**WHEREAS**, the New York City Landmarks Preservation Commission ("LPC"), an agency of the City of New York, has been consulted in the Section 106 review process in accordance with the Section 106 Regulations (36 CFR § 800.2(c)(3)); and

**WHEREAS**, the undertaking at issue in this Programmatic Agreement has been subject to an extensive public involvement process through the environmental and historic review processes

and additional public outreach will be undertaken as Project development continues, as appropriate; and

**NOW, THEREFORE,** the Parties agree that the implementation of the Project shall take into account effects on historic properties and shall be administered in accordance with the following stipulations to avoid, mitigate, and minimize Adverse Effects.

### **STIPULATIONS**

FRA, PANY/NJ, ESDC, MSDC, and the Developer, as appropriate, shall ensure, in coordination with SHPO, that the following measures are implemented as part of the subsequent final design and construction of the project. At the request of FRA, ESDC/MSDC will take the lead in implementing each stipulation unless otherwise noted in the stipulation.

#### **I. ADMINISTRATION**

In completing the necessary provisions of this Agreement, ESDC/MSDC shall employ or contract with the appropriate qualified professionals meeting the *Secretary of the Interior's Professional Qualifications Standards* at 36 CFR Part 61 (Professional Qualifications).

#### **II. FINAL REVIEW OF MOYNIHAN STATION**

1. Based upon a review of the conceptual design for the Moynihan Station, SHPO has advised FRA and the other Parties to this Agreement that it expects no Adverse Effects to result to the Farley Complex from the development of Moynihan Station, so long as the final design for that component of the Moynihan Station Development Project is substantially consistent with the conceptual design. Design plans for Moynihan Station will be developed in consultation with SHPO. In particular, ESDC/MSDC will submit

the preliminary and pre-final design plans for Moynihan Station to SHPO for review, and SHPO will review such plans to assure that they substantially conform to the conceptual design. SHPO will respond within 30 calendar days or earlier to the design plans at each stage of completion as described above. If SHPO makes substantive comments during the preliminary and pre-final design review, SHPO may request the opportunity to review the final design plans.

2. SHPO's design review of Moynihan Station will focus, among other things, on: the new Eighth Avenue entrances and canopies; the train station hall and skylight; station-related retail spaces; interior connections between the station and USPS lobbies; the entry hall skylight; the entrances to the entry hall located on West 31st and 33rd Street, including the new stairs on West 31st Street; treatment of the remaining original section of the Farley Building's west façade (that will become the east wall of the entry hall) and the corresponding new west wall of the entry hall; treatment of the arched openings and canopies; treatment of the moats; and treatment of other elements determined by SHPO to contribute to the historic character of the Farley Complex. Notwithstanding the preceding list of items, the Parties acknowledge that SHPO may, in its discretion, review and comment on any other aspect of the Project design in fulfilling its responsibilities under Section 106.
3. The preliminary and pre-final design plans will be made available to the Consulting Parties at the time such preliminary and pre-final design plans are submitted to SHPO, along with instructions regarding how the Consulting Parties may submit comments on such plans. The Consulting Parties shall have 21 calendar days to comment on the plans.

4. In the event that Adverse Effects on the Farley Complex are identified from Moynihan Station, ESDC/MSDC (and any successor in title to ESDC) shall consult with SHPO and the other Parties to negotiate mitigation measures that are responsive to the identified adverse effects.

### **III. DESIGN REVIEW FOR OTHER COMPONENTS OF THE MOYNIHAN STATION DEVELOPMENT PROJECT**

1. ESDC/MSDC shall comply with State environmental and historic preservation laws in the redevelopment of the Farley Complex, including SHPA, the State Historic Preservation Regulations, SEQRA and the SEQRA Regulations, as and to the extent such State requirements are applicable to the Moynihan Station Development Project, including construction of Moynihan Station, the USPS Space, the Commercial Space, and the utilization of development rights associated with the Farley Complex at a site across Eighth Avenue.
2. Final design of the USPS Space and Commercial Space and any remaining exterior work to the Farley Complex will be developed in consultation with SHPO, as set forth below. ESDC/MSDC will submit the preliminary and pre-final design plans for those components of the redevelopment of the Farley Complex to SHPO for review pursuant to the State Historic Preservation Regulations to ensure that the design of the USPS Space and the commercial development components will be compatible with the historic character of the Farley Complex. Consultation and design review with SHPO will focus, among other things, on the:
  - A. Postmaster's office – located on the third floor of the Farley Building;

- B. Loading docks - the reconfigured loading docks on West 31st Street;
  - C. Commercial Space - the 32nd Street pedestrian corridor through the Western Annex and the new entrance through the Ninth Avenue arches; retail and hotel entrances on Ninth Avenue and West 31st and West 33rd Streets in the location of existing entrances and windows; removal of the northwest moat; a new mechanical bulkhead on the building roof; and the new retail and hotel spaces within the Farley Complex;
  - D. Exterior restoration program - the restoration program for the Farley Complex's exterior facades which will be developed and implemented in consultation with SHPO, and will follow the *Secretary of the Interior's Standards for the Treatment of Historic Properties*;
  - E. Signage – for Moynihan Station and non-station commercial uses; and
  - F. Treatment of other elements determined by SHPO to contribute to the historic character of the Farley Complex.
3. Notwithstanding the list of items in III.2. above, the Parties acknowledge that SHPO may, in its discretion, review and comment on any other aspect of the Project design in fulfilling its responsibilities under Section 106 or under Article 14 of the SHPA and the State Historic Preservation Regulations.
4. In the event that Adverse Effects on the Farley Complex are identified from the components of the Moynihan Station Development Project other than Moynihan Station, ESDC/MSDC