

PORT AUTHORITY OF NEW YORK & NEW JERSEY
BUS TERMINAL REPLACEMENT PROJECT

Appendix 6D

Draft Programmatic Agreement

**PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
PORT AUTHORITY BUS TERMINAL REPLACEMENT PROJECT
IN NEW YORK COUNTY, NEW YORK**

DRAFT

WHEREAS, the Port Authority of New York and New Jersey (“PANYNJ”) proposes to undertake the Port Authority Bus Replacement Project, the purpose of which is to replace the existing Port Authority Bus Terminal (“PABT”) at West 41st Street and Eighth Avenue in Manhattan, New York with a new Main Terminal, Storage and Staging Facility, and associated ramp infrastructure (the “Replacement Facility”); the proposal includes private development to assist in funding its construction and the conversion of decks over Dyer Avenue to publicly accessible open space after completion of the new Main Terminal. These elements are collectively referred to as the Bus Terminal Replacement Project (hereafter referred to as the “Project,” or “undertaking”) (**Exhibit A – Project Location hereto**); and

WHEREAS, the PABT is owned and operated by PANYNJ; and

WHEREAS, the PABT is an aging structure with increasingly problematic functional and physical obsolescence of assets and facilities with systems that require expensive recurrent maintenance and extensive short-term fixes. The PABT also has significant operational constraints and inefficiencies that prevent accommodating existing and future bus size, weight, and technology, and which prevent meeting existing and forecasted increases in bus ridership demand; and

WHEREAS, PANYNJ intends to seek Federal funding for the Project from the Federal Transit Administration (“FTA”); and

WHEREAS, the FTA, serving as lead Federal agency, and PANYNJ, the Project Sponsor and joint lead agency, are preparing an Environmental Impact Statement (“EIS”) to evaluate the Project in accordance with the National Environmental Policy Act (“NEPA”) of 1969 (42 United States Code (U.S.C.) § 4321 et seq.), Council on Environmental Quality’s (CEQ) NEPA-implementing regulations (40 Code of Federal Regulations (CFR) §§ 1500-1508), and the FTA’s Environmental Impact and Related Procedures (23 CFR §771); and

WHEREAS, FTA is the Federal agency responsible for compliance with Section 106 of the National Historic Preservation Act (“NHPA,” codified at 54 U.S.C. § 306108, and herein “Section 106”); and

WHEREAS, FTA, along with the New York State Historic Preservation Officer (“NYSHPO”), as the result of the Section 106 consultation process, have determined that it is appropriate to enter into this Programmatic Agreement (“PA”) as signatories pursuant to 36 CFR § 800.6(a)(1) and to 36 CFR § 800.14(b) of the Section 106 regulations at 36 CFR Part 800 – Protection of Historic Properties; and

WHEREAS, FTA determined it is appropriate for PANYNJ to enter into this PA as an invited signatory pursuant to 36 CFR § 800.6(a)(2), and PANYNJ has participated in consultation and accepted to participate in the Section 106 process as an invited signatory; and

WHEREAS, the Project is located within the identified area of interest of four federally recognized Indian tribes, and FTA has consulted with the Delaware Nation, the Delaware Tribe of Indians, the Shinnecock Nation, and the Stockbridge-Munsee Community Band of Mohican Indians (hereinafter the “Consulting Tribes”) on a government-to-government basis in accordance with 36 CFR § 800.2(c)(ii), and invited them to sign this Agreement as Concurring Parties **[TO COME]**; and

WHEREAS, the Stockbridge-Munsee Band Community Band of Mohican Indians in correspondence dated November 10, 2021, noted that they defer to the NYSHPO on the Section 106 process and requested that the Project adhere to their Inadvertent Discovery Policy; and

WHEREAS, the Delaware Nation stated in a letter dated April 6, 2022, that they accept the invitation to consult, that the location of the Project should have no adverse effect on any known cultural or religious sites of interest to the Delaware Nation, declined the invitation to be invited signatory or concurring party to the PA, and requested that if during construction an archaeological site or artifacts be inadvertently encountered work should be immediately halted and their office notified within twenty-four (24) hours; and

WHEREAS, in keeping with 36 CFR § 800.2(c)(3) and (5), FTA identified representatives of local governments, individuals and organizations with a demonstrated interest in the undertaking and invited these parties to participate as Consulting Parties in the Section 106 consultation for the Project; and

WHEREAS, seven parties formally accepted Consulting Party status: NYSHPO, the National Park Service (“NPS”), the New York City Landmarks Preservation Commission (“NYCLPC”), the Historic Districts Council, the Municipal Art Society of New York, the New York Landmarks Conservancy, and Manhattan Community Board 4. The Section 106 Consulting Parties for the Project are presented in **Exhibit B – Consulting Parties** annexed hereto; and

WHEREAS, FTA has provided the Consulting Parties and the public appropriate opportunities to review and comment on Section 106 documents and findings to date; and

WHEREAS, FTA in consultation with NYSHPO, defined the Project’s Area of Potential Effect (“APE”), as defined by 36 CFR § 800.16(d), which is the area where potential effects on historic properties resulting from the Project may occur (**Exhibit C – Area of Potential Effects** annexed hereto). NYSHPO agreed with the definition of the APE for the Project in correspondence dated October 7, 2021; and

WHEREAS, FTA prepared the Section 106 Assessment of Effects for Historic Properties (“Effects Assessment”), dated March 23, 2022, to identify historic properties in the APE and to assess the Project’s potential effects on those historic properties according to the Criteria of Adverse Effect (36 CFR § 800.5); FTA prepared an addendum to the March 23, 2022 Assessment of Effects (Addendum), dated August 17, 2023, to review and assess modifications made to the Project subsequent to the March 23, 2022 Effects Assessment; and

WHEREAS, as documented in the EIS, Effects Assessment, and Addendum, FTA in consultation with NYSHPO has identified one archaeologically sensitive area in the APE. This is the location of a former 19th-century Presbyterian church cemetery on Block 1050, Lot 13, which retains the potential to contain human remains in the form of intact burials or disarticulated skeletal elements dating to the 19th century. Where construction activities for the Project would occur in the same location as the identified sensitivity, this could result in potential adverse effects to archaeological resources in the form of historic period human remains or associated funerary objects, if such resources are present; and

WHEREAS, in the event that human remains are confirmed to be present within the APE, the Project will adhere to certain provisions of the New York State Unmarked Burial Site Protection Act (NY EXEC §171), effective as of August 1, 2023, and would require consultation with the New York State Archaeologist and others as required by law; and

WHEREAS, as documented in the Effects Assessment, and Addendum, FTA in consultation with NYSHPO identified thirteen (13) historic properties in the Project’s APE that include properties listed in or eligible for listing in the National Register of Historic Places (“NRHP”), as depicted in the table and map presented in **Exhibit D – Historic Properties in the APE** hereto; and

WHEREAS, construction of the Project’s new ramp structure west of Tenth Avenue would require alterations to the Lincoln Tunnel north tube entrance portal lighting fixtures; decking over below-grade roadways (the “Dyer Deck-Overs”) may require alterations to portions of the brick walls along the Dyer Avenue portion of the roadways that lead to the Lincoln Tunnel center tube and south tube entrance portals, and require the removal or alteration of portions of the Lincoln Tunnel north tube entrance portal brick walls;¹ and

WHEREAS, Project-generated shadows would be cast on sun-sensitive stained glass windows at the Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, and the Metro Baptist Church, a contributing property within the Paddy’s Market Historic District, adversely affecting character-defining features of these historic properties; and

WHEREAS, the Main Terminal would be built adjacent to the McGraw-Hill Building, blocking views of up to seven additional floors of windows on the east façade of the McGraw-Hill Building, and the height of the Main Terminal would not be consistent with the base height of the McGraw-Hill Building as it would exceed the height of the first setback of the McGraw-Hill Building by over 30 feet, potentially eliminating the visibility of the second setback in certain street-level views, and thereby adversely affecting character-defining features of the historic property; and

WHEREAS, Project-generated shadows would be cast on the south and east façades of the McGraw-Hill Building, a sun-sensitive resource with windows that were designed to maximize the amount of natural light and ventilation, during times when the windows would have provided sunlight into the McGraw-Hill Building, thereby adversely affecting a character-defining feature of the historic property; and

WHEREAS, as documented in the Effects Assessment and Addendum, FTA made a finding dated March 31, 2023 that the Project will have adverse effects on the following five (5) historic properties in the APE: the Lincoln Tunnel entrance portals,² the McGraw-Hill Building, the Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, and the Paddy’s Market Historic District. NYSHPO concurred with this finding of adverse effects in correspondence dated April 21, 2022, and **[TO COME]**, 2023; and

WHEREAS, in accordance with 36 CFR 800.10(a), PANYNJ in coordination with FTA, NYSHPO and NPS, have planned and designed the Project to minimize effects to the greatest extent practicable on the McGraw-Hill Building, a National Historic Landmark (“NHL”); and

¹ References in this PA to the Lincoln Tunnel entrance portals, or just portals, are to the lighting structures or brick walls as described in this WHEREAS clause, and not to the portals in their entirety.

² The October 18, 2012, Resource Evaluation for the Lincoln Tunnel notes that “[c]ontributing features of the Lincoln Tunnel include the entrance portals, the tubes, and the above-ground ventilation structures.” No modifications or effects are proposed to the tubes or above-ground ventilation structures of the Lincoln Tunnel.

WHEREAS, FTA is providing the public an opportunity to review and provide comments on the Draft PA during the NEPA process pursuant to 36 CFR § 800.2(d)(2). A copy of this Draft PA is included in the Draft EIS (“DEIS”), and a copy of the final PA will be included in and distributed with the Final Environmental Impact Statement (“FEIS”); and

WHEREAS, FTA provided the Draft PA to the Consulting Tribes and the Consulting Parties for review and comment concurrent with the public comment period on the DEIS; and

WHEREAS, in accordance with 36 CFR § 800.6(a)(1), FTA notified the Advisory Council on Historic Preservation (“ACHP”) of its adverse effect determination and intention to enter into a PA and ACHP in a letter dated November 18, 2022, has elected not to participate in the consultation;

NOW, THEREFORE, FTA and NYSHPO (each a “Signatory” and together “Signatories”), agree that the Project will be implemented in accordance with the following stipulations in order to take into account the effects of the Project on historic properties.

STIPULATIONS

FTA, in coordination with PANYNJ, will ensure that the following measures are carried out:

I. PROFESSIONAL QUALIFICATION STANDARDS

As appropriate, work carried out pursuant to this PA will be performed by or under the direct supervision of a qualified professional in the disciplines of Archaeology, Architectural History, or Historic Architecture who meets the relevant Secretary of the Interior's Professional Standards (48 FR 44738-44739).

II. TREATMENT MEASURES FOR ARCHAEOLOGICAL RESOURCES

Project-related ground disturbance associated with construction of the Project in the vicinity of Block 1050, Lot 13 may affect an archaeologically sensitive area, a former 19th-century Presbyterian church cemetery located on Block 1050, Lot 13 (the "archaeologically sensitive area"). Despite extensive development on the site in the 19th and 20th centuries, and the apparent movement of remains in the Cemetery to New Jersey in the 19th century, the site nonetheless retains the potential to contain human remains in the form of intact burials or disarticulated skeletal elements dating to the 19th century. FTA, in coordination with PANYNJ, will ensure that the following measures are undertaken to determine the presence or absence of human remains and any associated funerary objects in the archaeologically sensitive area and, if necessary, to avoid, minimize, and mitigate adverse effects of the Project on archaeological resources:

A. Archaeological Testing Plan/Archaeological Monitoring Plan

1. FTA in coordination with PANYNJ, will consult with NYSHPO to develop an Archaeological Work Plan, as appropriate, to outline the scope of work for additional analysis (e.g., testing in advance of construction or monitoring during construction) required to determine presence or absence of human remains or associated funerary objects in the archaeologically sensitive area. The Work Plan will be prepared prior to any Project excavation, construction, and demolition activities. Review of the plan will be in accordance with Stipulation VI.
2. The decision of whether to test in advance of construction or to monitor during construction will be made by FTA through consultation among PANYNJ and NYSHPO based on the benefits of each approach, anticipated construction methods, logistical site access, and scheduling factors, and will be documented in the final Archaeological Work Plan.
3. The Archaeological Work Plan will set forth the research design and goals of any archaeological investigation; the specific field and analytical methods and protocols that will be followed; the chain of command and notifications that will be followed during implementation of the plan; stop-work and site protection requirements to be followed in the event of a discovery of human remains; and relevant health and safety measures.

4. The Archaeological Work Plan will outline all procedures and protocols that will be followed if human remains are encountered during the archaeological investigation pursuant to all relevant city, state, and Federal laws. These procedures will include protocols for notifying local law enforcement, notifying the New York State Archaeologist, obtaining relevant permits for disinterring or relocating remains, and hiring a funeral director as required.
5. As part of the preparation of the Archaeological Work Plan, a good-faith effort will be made to identify and contact the descendant community, which could, if willing, represent and serve as the present-day advocate for any human remains that may be present within the area of archaeological sensitivity.

B. Identification and Evaluation of Archaeological Resources

1. PANYNJ will conduct testing in advance of construction or monitor during construction in accordance with the final FTA approved Archaeological Work Plan to determine the presence or absence of human remains or associated funerary objects in the archaeologically sensitive area.³
2. If the field activities and analyses described in Stipulation II.B.1 result in the discovery of human remains or associated funerary objects, PANYNJ, in consultation with FTA, NYSHPO, the New York State Archaeologist, will prepare an interim report, including text and graphics sufficient to support the documentation/description of the discovery. The Archaeological Work Plan will set forth the chain of command and notifications that will be followed during implementation of the plan; stop-work and site protection requirements to be followed in the event of a discovery of human remains; and relevant health and safety measures. This report will be prepared as part of the consideration of avoidance or mitigation options.
3. If, based on the recommendations made in Stipulation II.B.2 and in consultation among FTA, NYSHPO, the New York State Archaeologist, following the document review process set forth in Stipulation VII, human remains (including intact graves or disarticulated skeletal elements) are confirmed to be within the area of archaeological sensitivity, PANYNJ will complete additional fieldwork as necessary to mitigate to the extent practicable and document any unavoidable adverse effects of the Project.

³ The archaeologically sensitive area (Block 1050, Lot 13) was formerly the location of a 19th century Presbyterian cemetery. This area was included in the Phase 1A Archeological Documentary Study of the No. 7 Line Extensions/ Hudson Yards Rezoning in 2004. The study determined that the former cemetery would have been disturbed as a result of redevelopment of the site in the 19th and 20th centuries. Subsequent analysis confirmed that the remains from the cemetery were relocated to a cemetery in New Jersey in 1856. However, given the possibility that not all remains were disinterred, the 2004 study determined that the site remained sensitive for human remains.

C. Mitigation/Data Recovery

1. If human remains or associated funerary objects are identified in the archaeologically sensitive area, PANYNJ, in consultation with FTA, NYSHPO, and the New York State Archaeologist, if necessary will develop a Data Recovery Plan to identify methods to mitigate any adverse effects of the Project on such resources to the extent practicable. If the agreed-upon mitigation will include completion of a Phase III Data Recovery, PANYNJ, in consultation with FTA, NYSHPO, and the New York State Archaeologist, will develop and implement a Data Recovery Plan prior to initiation of any Project excavation and construction activities in the archeologically sensitive area that could affect human remains in the form of intact graves or disarticulated skeletal elements.
2. The Data Recovery Plan will set forth the research design and scope of the archaeological effort; the specific field and analytical methods and protocols that will be followed; the chain of command and notifications that will be followed during implementation of the plan; relevant health and safety measures; and a schedule for the completion of all field and laboratory work, public outreach initiatives, and the submission of draft and final reports.
3. PANYNJ, in consultation with FTA, NYSHPO, and the New York State Archaeologist, will ensure that the provisions of the final Data Recovery Plan are implemented.

D. Curation and Reporting

1. PANYNJ will curate records and artifacts resulting from the archeological investigations in accordance with 36 CFR Part 79. The New York Archaeological Council (“NYAC”) *Standards for the Curation of Archaeological Collections* (issued in 1994 and adopted by NYSHPO in 1995) will also be followed. A good faith effort will be made to find a suitable repository(ies) that will accept non-osteological/non-funerary collections from a NRHP-eligible site or as necessary, and to locate a reinterment location for any recovered human remains or funerary objects in consultation with the identified descendant community.⁴ PANYNJ, in coordination with FTA, will offer non-osteological/non-funerary materials that are not from land owned by the City of New York to the New York State Museum for permanent curation. In the event that any non-osteological/non-funerary and NHRP-eligible artifacts are recovered from land owned by the City of New York, PANYNJ, in coordination with FTA, will offer the materials to the New York City Archaeological Repository: The Nan A. Rothschild Research Center (“NYCLPC Repository”), which is maintained by NYCLPC. If the New York State Museum and/or the NYCLPC Repository do not accept the materials, if feasible, PANYNJ, in consultation with NYSHPO, will identify a local repository for permanent storage of the materials, and will execute an appropriate agreement. If within a two-year period no repository can be

⁴ Osteology is the scientific study of bones.

identified that is willing and capable of providing suitable storage for non-osteological/non-funerary materials, the PANYNJ may discard the materials.

2. Upon the completion of field responsibilities and analyses, PANYNJ, in consultation with FTA and NYSHPO, and, if human remains are found, with the New York State Archaeologist, will prepare technical reports describing the methods and results of the performed field activities and analyses and recommendations for additional analyses, if warranted. The reports will include tables, photographs, and illustrations as necessary to support the conclusions and consultation with FTA, NYSHPO and the New York State Archeologist.
3. FTA through coordination with PANYNJ, will ensure that all final archaeology reports are consistent with the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York* (issued in 1994 and adopted by NYSHPO in 1995).

III. TREATMENT OF HUMAN REMAINS

- A. If human remains are encountered during archaeological investigations or construction, the PANYNJ will require the contractor to immediately halt subsurface disturbance in that portion of the Project area and immediately secure and protect the human remains and any associated funerary objects in place in such a way that minimizes further exposure or damage to the remains from the elements, looting, or vandalism. A perimeter with a radius of at least 50 feet around human remains will also be established where there will be no excavation, operation of heavy machinery, or stockpiling.
- B. The PANYNJ will immediately notify the local police department/Office of the Chief Medical Examiner (OCME) to determine if the discovery is subject to a criminal investigation by law enforcement and notify the Signatories within twenty-four (24) hours of the initial discovery.
- C. If a criminal investigation is not appropriate, the PANYNJ will apply and implement all relevant laws, procedures, policies, and guidelines concerning the treatment and repatriation of burial sites, human remains, and funerary objects.
- D. In the event the human remains encountered could be of Native American origin, whether associated with the precontact or historic periods, the FTA in coordination with PANYNJ will immediately notify the New York State Archaeologist, the Signatories and Concurring Parties, and Consulting Tribes to determine the treatment plan for the Native American human remains and any associated funerary objects.
- E. If the remains are not of Native American origin, the PANYNJ will, as appropriate, develop a research design and a treatment plan for the appropriate treatment of the remains and any associated artifacts, consistent with procedures

and guidelines contained in this PA and in consultation with the New York State Archaeologist.

- F. The PANYNJ will ensure the Project contractor will not proceed with work in the affected area until FTA, in consultation with NYSHPO, the New York State Archaeologist, and Consulting Tribes, as appropriate, determines that the development and implementation of an appropriate research design/treatment plan or other recommended mitigation measures are completed. However, work in all other Project areas may continue.

IV. TREATMENT MEASURES FOR HISTORIC PROPERTIES

FTA, in coordination with PANYNJ, will ensure that the following measures are undertaken to avoid, minimize, and mitigate to the extent practicable the adverse effects to historic properties:

A. Recordation

1. PANYNJ will prepare a Historic American Engineering Record (HAER)-Level II recordation for the affected portions of the Lincoln Tunnel entrance portals, including the north tube entrance portal and the brick walls along the Dyer Avenue portion of the roadways that lead to the Lincoln Tunnel center tube and south tube to the extent altered by the Project. HAER guidelines provided by the National Park Service will be followed and can be found at the following link: <https://www.nps.gov/hdp/standards/haerguidelines.htm>.
 - a. The recordation will include large format black and white photography, and a narrative that describes the physical characteristics and history of the Lincoln Tunnel entrance portals.
 - b. As part of the recordation, and in consultation with NYSHPO, PANYNJ will make an effort to obtain from its own and other accessible archival sources printed, graphic, and photographic information regarding the Lincoln Tunnel entrance portals. PANYNJ will evaluate the compiled information and (as deemed appropriate during consultation) incorporate such archival sources as part of the recordation document.
2. PANYNJ will prepare an Historic American Buildings Survey (HABS) photographic recordation of the exterior of the McGraw-Hill Building per National Park Service guidelines that can be found at the following link: <https://www.nps.gov/hdp/standards/habsguidelines.htm>. The recordation will consist of large format black and white photography.
3. PANYNJ will provide the recordation to FTA and NYSHPO for concurrent review and comment at least 90 days prior to the initiation of Project demolition or construction activity at the Lincoln Tunnel and the Main Terminal. The reviewing agencies will provide comments and concurrence in accordance with Stipulation VII.

4. The PANYNJ will provide archival copies of the final recordation documents to FTA and NYSHPO, and up to two (2) additional repositories to be identified in consultation with NYSHPO.

B. Measures Related to Project-generated Incremental Shadows

FTA, in coordination with PANYNJ, will ensure that the following measures are undertaken to address, to the extent practicable, adverse effects resulting from Project-incremental shadows being cast on the following four (4) historic architectural properties: the Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, the Metro Baptist Church (a contributing property within the Paddy's Market Historic District), and the McGraw-Hill Building.

1. PANYNJ will consult the property owners of the Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, and the Metro Baptist Church regarding the Project incremental shadows on the stained-glass windows.
2. In consultation with the property owners of the Holy Cross Roman Catholic Church Complex, the St. Raphael Roman Catholic Church and Rectory, and the Metro Baptist Church, PANYNJ will develop measures to offset the impacts to the extent practicable and commit to executing any such measures as mutually agreed upon among PANYNJ and the property owners. Measures to be explored include cleaning of the interior/exterior of the affected windows or of any protective covering if present; replacement of any protective covering if present with a more translucent material; installation of artificial lighting, which would simulate the effect of direct sunlight on the stained-glass windows of the historic properties; or other mutually agreed-to measures developed through the consultation. PANYNJ will document the outcome of the consultation and implementation of any measures through annual reporting in accordance with Stipulation X.
3. Potential mitigation strategies to reduce the adverse effects to the windows on the south and east façades of the McGraw-Hill Building would consist of design techniques (e.g., material selection) which would be evaluated during the design of the commercial towers to minimize loss of sunlight to the extent practicable. The commercial towers, to be built as part of the Project, would cast incremental shadows on a portion of the McGraw-Hill Building. If adverse effects cannot be minimized or mitigated through design, consultation on potential alternate mitigation may be considered. PANYNJ will consult with the property owner(s) regarding Project-generated incremental shadows on the McGraw-Hill Building and will document the outcome of consultation. If adverse effects cannot be resolved the consultation may be terminated and any comments made by the ACHP shall be taken into account in reaching and documenting the Lead Agency decision.

C. Interpretive Display

PANYNJ will develop a permanent interpretive display with the goal of documenting the history and significance of the Lincoln Tunnel entrance portals and making the information available to the public.

1. FTA in coordination with PANYNJ, and in consultation with NYSHPO and Concurring Parties (and Consulting Parties electing to concur), will prepare a plan for the development and preparation of educational and interpretive materials (the “Interpretive Display Plan”). The Interpretive Display Plan will describe the format, content, and implementation schedule of the educational and interpretive materials.
2. The interpretive display may consist of the following two (2) components:
 - a) Permanent interpretive signage to be installed in a location(s) within the Replacement Facility or at future open space that would be created as part of the Project by the decking over of below-grade roadways after the completion of the Main Terminal, consisting of Dyer Avenue on the blocks bounded by Ninth Avenue and Tenth Avenue and West 37th Street and West 39th Street, to facilitate construction-period bus operations. The location(s) and nature and content of the signage will be identified in the Interpretive Display Plan.
 - b) Incorporation of salvaged elements of the Lincoln Tunnel north tube entrance portal lighting towers into the interpretive display. The actual salvage or reinstallation of any elements would be subject to the feasibility of removal and reuse, as well as costs. The items that are proposed for salvage and incorporation into the public Interpretive Display will be identified in the Interpretive Display Plan.
3. FTA and PANYNJ will distribute the draft Interpretive Display Plan to Concurring Parties for review and comment and to NYSHPO for review and approval in accordance with Stipulation VII.
4. FTA and PANYNJ will ensure that the provisions of the final Interpretive Display Plan are implemented, including the timely removal of salvaged items, proper storage of salvaged items until incorporation into the interpretive display, and installation of the interpretive display.

D. Construction Protection Plan

Project construction, which includes excavation work in roadbeds to create utility service connections, is anticipated to occur within 90 feet of the following eight (8) historic properties: (1) the McGraw-Hill Building, (2) the church and rectory of the Holy Cross Roman Catholic Church Complex, (3) the St. Raphael Roman Catholic Church and Rectory, (4) the northern five tenements (531-539 Ninth Avenue) of the row of tenements at 523-539 Ninth Avenue, (5) the tenement at 408 West 39th Street, (6) the Underhill Building, (7) the Hook and Ladder Company No. 21/Engine Co. 34 Firehouse, and (8) properties within the Paddy’s Market Historic District. To address potential Project-related construction impacts to these historic architectural properties,

PANYNJ, in consultation with FTA, NYSHPO, and NYCLPC, will develop and implement a Construction Protection Plan (CPP).

1. The CPP will be developed at least 120 days prior to any Project-related demolition, excavation, and construction activities.
2. The CPP will set forth the specific measures to be used, and specifications that will be applied, to protect the aforementioned historic properties during the Project construction period, including demolition, excavation and construction activities.
3. The CPP will comply with the procedures set forth in the New York City Department of Buildings (DOB)'s *Technical Policy and Procedure Notice* (TPPN) #10/88, issued on June 6, 1988, and follow the guidelines set forth in section 523 of the *CEQR Technical Manual*, including conforming to *NYCLPC Guidelines for Construction Adjacent to a Historic Landmark* and *Protection Programs for Landmark Buildings*. The CPP will also conform to guidance contained in NPS's Preservation Tech Notes No. 3, "Temporary Protection: Protecting a Historic Structure during Adjacent Construction" (July 2001).
4. The CPP will include measures for the control and / or management of construction related fugitive dust, erosion, noise, and vibration.
5. FTA in coordination with PANYNJ, will distribute the draft CPP to Concurring Parties for review and comment and to NYSHPO and NYCLPC for review and approval in accordance with Stipulation VII.
6. FTA in coordination with PANYNJ, will ensure that the provisions of the final CPP approved by NYSHPO and NYCLPC are implemented under the direction of a licensed professional engineer.

E. Design Review

Project design plans have not yet been advanced to fully determine effects to certain historic properties in the APE. Based on conceptual designs FTA and NYSHPO agree the project would result in an adverse effect to the McGraw-Hill Building and portions of the Lincoln Tunnel portals. These include effects to the McGraw-Hill Building with respect to the construction of the Main Terminal and commercial tower proposed on the west side of Eighth Avenue above the PABT; to the Lincoln Tunnel north tube entrance portal lighting fixtures and brick walls with respect to the construction of the Project's ramp structure on the east side of Eleventh Avenue between West 39th and West 40th Streets; and to the brick walls along the Dyer Avenue portion of the roadways that lead to the Lincoln Tunnel center tube and south tube with respect to the Dyer Deck-Overs. Design review will occur as detailed below to minimize adverse effects to these historic properties.

1. FTA in coordination with PANYNJ, will consult with NYSHPO, NYCLPC, and NPS on the design of the proposed Main Terminal and commercial towers to make reasonable, prudent, and practicable efforts to minimize or mitigate effects on the McGraw-Hill Building's historic features.

FTA in coordination with PANYNJ, will submit design plans relevant to Project elements that could affect the Lincoln Tunnel entrance portals to NYSHPO for review and comment.

2. Design consultation will occur at a minimum at the preliminary (30% level of Project design) and pre-final (60% and 90%) design phases. As appropriate, final design plans and drawings will identify archaeologically sensitive areas and NRHP-eligible or listed buildings.

V. UNANTICIPATED DISCOVERIES PLAN

The FTA in coordination with PANYNJ, will develop an Unanticipated Discoveries Plan (“UDP”) not otherwise covered under treatment for human remains or measures for historic properties, to be included in construction and bidding documents for use by the Project contractor in the event of unanticipated discoveries or if known historic properties are affected in an unanticipated manner. The UDP will incorporate procedures for interacting with the media, a chain of contact, stop-work requirements, and other appropriate provisions. The FTA in coordination with PANYNJ, will submit the draft UDP to the Signatories and Concurring Parties and Consulting Tribes for review and comment. The UDP will include the following components:

- A. In the event any previously unidentified historic architectural or archeological resource is discovered, the PANYNJ will require the contractor to halt all work in and secure the area of the discovery. For any discovered archeological resources, the PANYNJ will also halt work in surrounding areas where additional subsurface remains can reasonably be expected to be present. This includes establishing a perimeter with a radius of at least 50 feet around a discovery where there will be no excavation, operation of heavy machinery, or stockpiling. Work in all other Project areas may continue.
- B. The FTA in coordination with PANYNJ, will notify the Signatories and Concurring Parties and Consulting Tribes, as appropriate, within 24 hours of the discovery. As appropriate, FTA will also identify and invite other Consulting Parties to consult regarding unanticipated discoveries.
- C. The PANYNJ, in consultation with FTA, Signatories, Concurring Parties, and other Consulting Parties if appropriate, will investigate the discovery site and evaluate the resource(s) according to the professional standards and guidelines contained in Stipulation I. The PANYNJ will prepare and submit a written document containing a proposed determination of NRHP eligibility of the resource, an assessment of Project effects on historic properties, if appropriate, and any recommended treatment measures to FTA for review and comment. Upon FTA’s approval, the PANYNJ will submit the determination of NRHP eligibility, effects assessment, and recommended treatment measures document, if appropriate, to NYSHPO, Signatories, and Concurring Parties, and Consulting Tribes, as appropriate, for review and comment. If the potential resource is of Indigenous origin, FTA will provide Consulting Tribes within five (5) working days for their review with a request for comment. The Signatories, Concurring Parties, and other Consulting Parties if applicable, and Consulting Tribes, if participating, will respond with any comments within five (5) working days of receipt.

- D. In the event there is an unanticipated effect to a known historic architectural resource or archaeologically sensitive area, the PANYNJ will notify FTA, Signatories, Concurring Parties, and Consulting Tribes, as appropriate, within 48 hours of the event by providing written documentation describing the event and the potential effect to the historic property. The PANYNJ will propose treatment measures to FTA for review. Upon FTA's approval, and in coordination with FTA, the PANYNJ will submit the recommended treatment measures document to NYSHPO, Signatories, Concurring Parties, and other Consulting Parties if applicable, and Consulting Tribes, as appropriate, for review and comment. The NYSHPO, Signatories, Concurring Parties, and other Consulting Parties if applicable, and Consulting Tribes, if participating, will respond with any comments within five (5) working days of receipt.
- E. If it is necessary to develop treatment measures, the PANYNJ, in coordination with FTA and NYSHPO, will carry out the final approach and treatment measures after approval by FTA.
- F. The PANYNJ will ensure ground disturbing activities within the affected area do not proceed until FTA, in consultation with the Signatories and Concurring Parties and Consulting Tribes, as appropriate, determines that either 1) the located resource is not NRHP-eligible or 2) the agreed upon treatment measures for historic properties have been implemented.

VI. EMERGENCY SITUATIONS

- A. Should a natural disaster or an emergency situation occur that is an imminent threat to public health or safety, or creates a hazardous condition and has the potential to affect historic properties, PANYNJ will contact the appropriate local law enforcement, as needed, as soon as possible and notify FTA, NYSHPO, Consulting Tribes and Concurring Parties within twenty-four (24) hours of the condition that created the emergency, the immediate action taken in response to the emergency, the effects of the response to historic properties, and, where appropriate, further plans to address the emergency. This will include any further proposals to avoid, minimize, or mitigate potential adverse effects to historic properties. Procedures to follow in the event of a natural disaster or emergency situation will be in accordance with 36 CFR § 800.12(b).
- B. The Signatories, Concurring Parties and Consulting Tribes will have seven (7) days to review and comment on the plan(s) for further action. If FTA, NYSHPO, Consulting Tribes, Signatories and Concurring Parties do not object to the plan within the review period, PANYNJ will implement the proposed plan(s).
- C. Where practicable, PANYNJ will ensure that emergency response activities allow for future preservation or restoration of historic properties, take into account the Secretary of the Interior's Standards for the Treatment of Historic Properties, and include on-site monitoring by the appropriate qualified professional as contained in Stipulation I.
- D. Immediate rescue and salvage operations conducted to preserve life or property are exempt from these and all other provisions of this PA.

VII. DOCUMENT REVIEW

- A. Unless otherwise stated elsewhere in this PA, Signatories, Concurring Parties, and Consulting Tribes where appropriate, will provide comments on the documents they review within forty-five (45) calendar days of receipt to PANYNJ or FTA, as applicable, and as set forth in this stipulation. All comments will be provided via United States mail, overnight delivery, or electronic mail communication.
- B. FTA in coordination with PANYNJ, will ensure any written comments received within the review timeframe per Stipulation VII.A are taken into consideration.
- C. If the Signatories, Concurring Parties, and Consulting Tribes do not submit written comments to PANYNJ or FTA within forty-five (45) calendar days of receipt of any document, it is understood the non-responding parties have no comments on the submittal.
- D. If the Signatories, Concurring Parties, and Consulting Tribes object to or recommend extensive revisions to submissions, PANYNJ and FTA will work expeditiously to respond to the recommendations and resolve disputes.
- E. If PANYNJ and FTA cannot resolve a dispute, and if further consultation is deemed unproductive by any party, the parties will adhere to the dispute resolution procedures detailed under Stipulation IX below.

VIII. CHANGES TO PROJECT

In the event of any changes to the Project scope that could potentially result in additional adverse effects to historic properties, the following measures will be followed:

- A. PANYNJ will submit to FTA written documentation, including Project plan sheets or sketches, showing the Project changes and a brief explanation of why the change(s) is needed.
- B. FTA, in consultation with PANYNJ, NYSHPO, Consulting Tribes, and Concurring Parties will revise the Project APE as needed.
- C. FTA and PANYNJ, in consultation with NYSHPO, Consulting Tribes, and Concurring Parties, will carry out additional investigation to identify historic properties that may be affected by the changes to the Project scope and document the results of such investigation in one or more document(s) that make written recommendations to FTA regarding the Project's effects on any newly identified historic properties and measures to avoid, minimize, and mitigate effects on these properties.
- D. FTA will make a determination of eligibility and a finding of effect on historic properties resulting from Project changes in accordance with the criteria of adverse effects (36 CFR § 800.5), and will provide NYSHPO, Consulting Tribes and Concurring Parties with its determinations and findings and provide an opportunity for review and comment in accordance with Stipulation VII.

- E. If FTA, in consultation with NYSHPO, Consulting Tribes, and Concurring Parties determines that a historic property will be adversely affected by the Project, then FTA, in coordination with PANYNJ, will consult with NYSHPO, Consulting Tribes, and Concurring Parties on strategies to avoid, minimize, or mitigate the adverse effect. PANYNJ will memorialize the approach and treatment measures to resolve adverse effects in document(s) that will be submitted to FTA, NYSHPO, Consulting Tribes, and Concurring Parties for review and comment in accordance with Stipulation VII.
- F. PANYNJ will ensure that the identified treatment measures as approved by FTA are implemented.

IX. DISPUTE RESOLUTION

Should any Signatory to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, FTA shall consult with such party to resolve the objection. If FTA determines that such objection cannot be resolved, FTA will take one of the following courses of action:

- A. FTA will consult with the other Signatories, Concurring Parties, and Consulting Tribes, as appropriate, within thirty (30) calendar days to resolve the objection.
- B. If FTA determines that such objection cannot be resolved, FTA will forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP within fifteen (15) calendar days of the determination and request that the ACHP provide FTA with its advice on the resolution of the objection within thirty (30) calendar days of receiving the documentation. Concurrently, FTA will also provide the Signatories, Concurring Parties, and Consulting Tribes with the same documentation for review and comment in accordance with Stipulation VII.
- C. After the thirty (30) calendar day period, FTA may issue written response to the objection that takes into account any advice or comments regarding the dispute from the ACHP, Signatories, and Concurring Parties and provide the ACHP, Signatories, Concurring Parties, and Consulting Tribes with a copy of such written response. FTA will then proceed according to its decision.
- D. Should disputes arise under exigent circumstances (e.g., concerns over construction suspensions or delays), all parties agree to expedite their respective document review and dispute resolution obligations within seven (7) calendar days.
- E. FTA's and Signatories' responsibilities to carry out all actions under this PA that are not subject to the dispute shall remain unchanged.

X. REPORTING AND OVERSIGHT

- A. PANYNJ will ensure that all final reports, deliverables, and documentation resulting from this PA are provided to FTA, NYSHPO (or the New York State Archaeologist in the event that human remains are encountered), Concurring Parties, and Consulting Tribes, as appropriate.

- B. Commencing one (1) year from the date this PA is executed and every year thereafter until the Project is completed or cancelled, PANYNJ will prepare and submit an annual report for the preceding 12-month period, within 60 days of each one-year anniversary, to FTA and NYSHPO providing information concerning the implementation of this PA that includes milestone accomplishments, resolution of any problems encountered in implementation, and status of any outstanding commitments.

XI. DURATION, AMENDMENT AND TERMINATION

This PA will expire ten (10) years from the date of execution from the date of the last Signatory signs the Agreement unless terminated earlier due to failure to comply with the terms of the Agreement or by a party pursuant to Stipulation XI.

The Signatories may collectively agree to extend this Agreement to cover additional calendar years or portions thereof, through an amendment per Stipulation IX, provided that the original Agreement has not expired.

- A. Any Signatory to this Agreement may request it be amended or modified, whereupon the Signatories, FTA, SHPO, and the ACHP will consult in accordance with 36 CFR § 800.14(b) to consider such amendments or modifications.
- B. Any Signatory to this PA may terminate it by providing thirty (30) days' notice to the other Signatories, provided that the Signatories will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other Signatories. In the event of termination, and prior to work continuing on the undertaking, FTA must either (a) execute a new PA pursuant to 36 CFR § 800.6(c) or § 800.14(b), or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. FTA shall notify the signatories as to the course of action it will pursue.
- C. Any resulting amendments or modifications shall be developed and executed between the Signatories in the same manner as the original Agreement.

XII. COUNTERPARTS; FACSIMILE OR PDF SIGNATURES

This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement. A facsimile or pdf copy of this Agreement and any signatures thereon will be considered for all purposes as an original.

XIII. CONTACT INFORMATION

For purposes of notices and consulting pursuant to this PA, contact information for each of the Signatories is provided below. If necessary, contact information may be updated by written notice to the Signatories and does not require an amendment to this PA.

FEDERAL TRANSIT ADMINISTRATION

[CONTACT INFORMATION TO COME]

NEW YORK STATE HISTORIC PRESERVATION OFFICER

[CONTACT INFORMATION TO COME]

PORT AUTHORITY OF NEW YORK & NEW JERSEY

[CONTACT INFORMATION TO COME]

EXECUTION OF THIS PA by the Signatories and its subsequent filing with the ACHP by FTA demonstrates that FTA has taken into account the effect of the Project on historic properties and afforded the ACHP an opportunity to comment.

**APPROVAL AND SIGNATURE PAGE FOR
PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
PORT AUTHORITY BUS TERMINAL REPLACEMENT PROJECT
IN NEW YORK COUNTY, NEW YORK**

SIGNATORY

FEDERAL TRANSIT ADMINISTRATION

By: _____ Date: _____

NAME
TITLE

**APPROVAL AND SIGNATURE PAGE FOR
PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
PORT AUTHORITY BUS TERMINAL REPLACEMENT PROJECT
IN NEW YORK COUNTY, NEW YORK**

SIGNATORY

NEW YORK STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

NAME
TITLE

**APPROVAL AND SIGNATURE PAGE FOR
PROGRAMMATIC AGREEMENT
BETWEEN
THE FEDERAL TRANSIT ADMINISTRATION
AND
THE NEW YORK STATE HISTORIC PRESERVATION OFFICER
REGARDING THE
PORT AUTHORITY BUS TERMINAL REPLACEMENT PROJECT
IN NEW YORK COUNTY, NEW YORK**

INVITED SIGNATORY

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____ Date: _____

NAME
TITLE

**APPROVAL AND SIGNATURE PAGE FOR
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IN NEW YORK COUNTY, NEW YORK**

CONCURRING PARTY

TBD [EACH CONCURRING PARTY WILL HAVE A SEPARATE SIGNATURE PAGE]

By: _____ Date: _____

[CONCURRING PARTY]

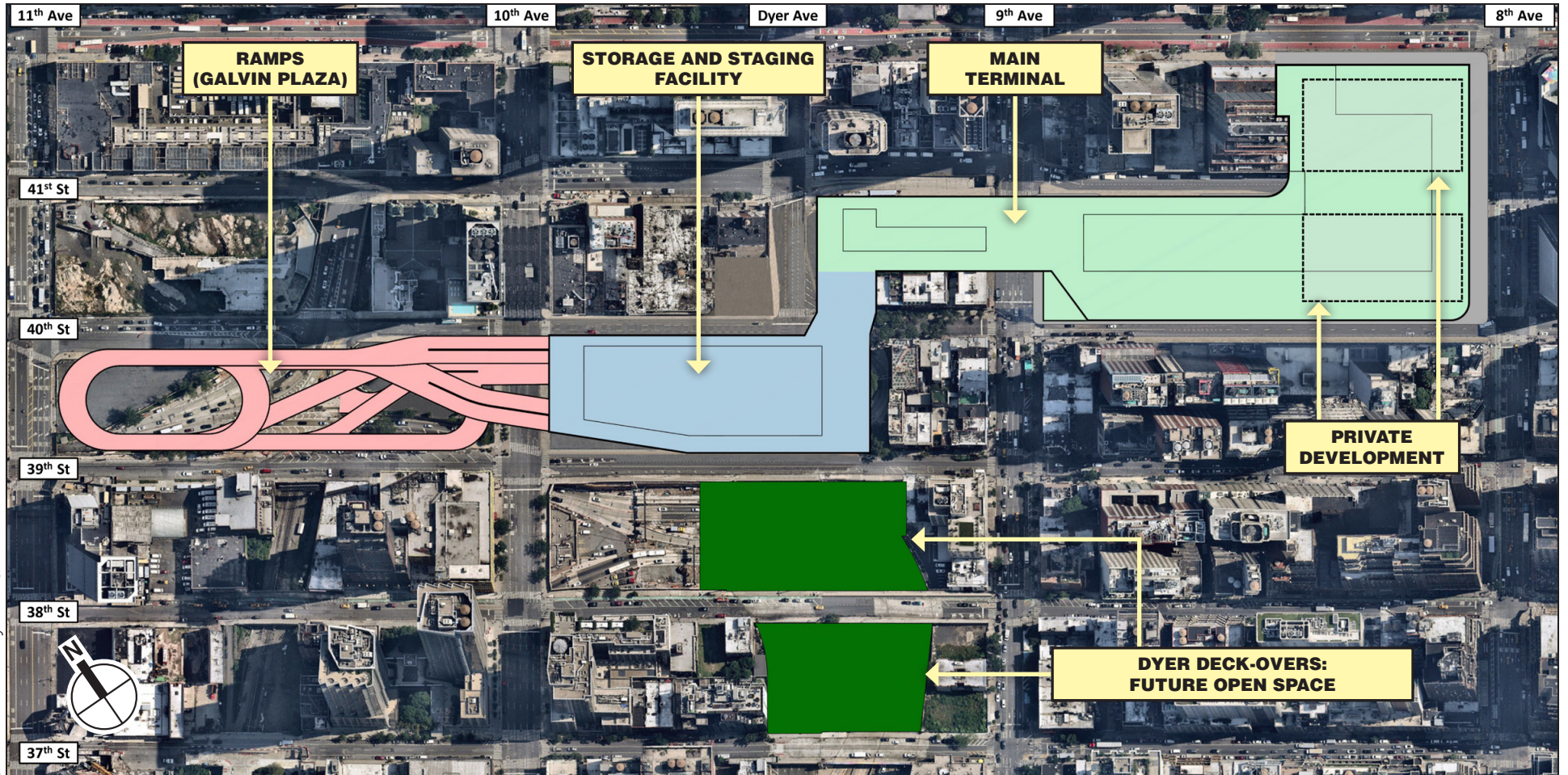
ATTACHMENTS

EXHIBIT A: PROJECT LOCATION

EXHIBIT B: CONSULTING PARTIES

EXHIBIT C: AREA OF POTENTIAL EFFECTS

EXHIBIT D: HISTORIC PROPERTIES IN THE APE



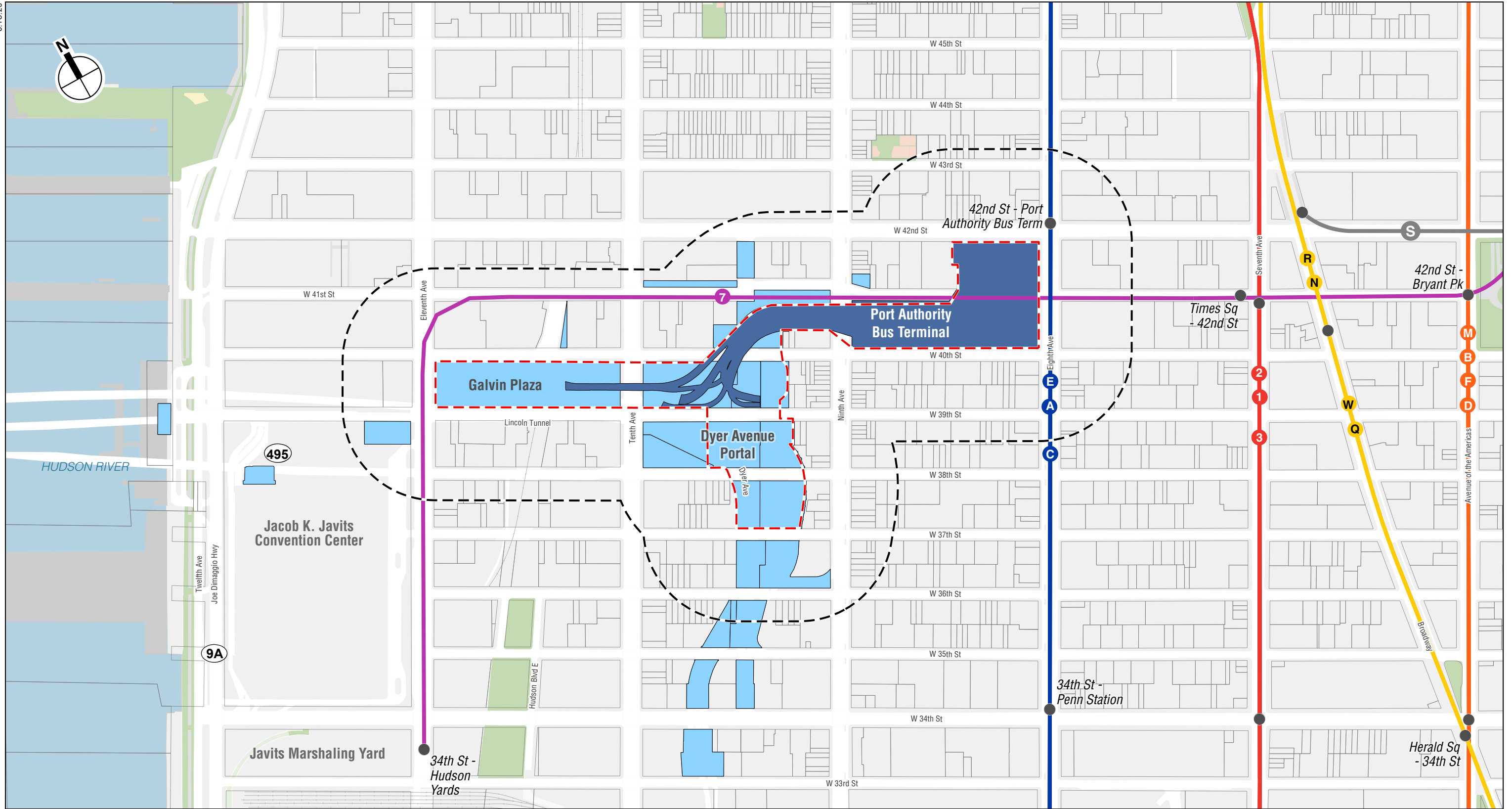
Source: Port Authority of NY & NJ

Exhibit B

Table 1 **List of Consulting Parties**

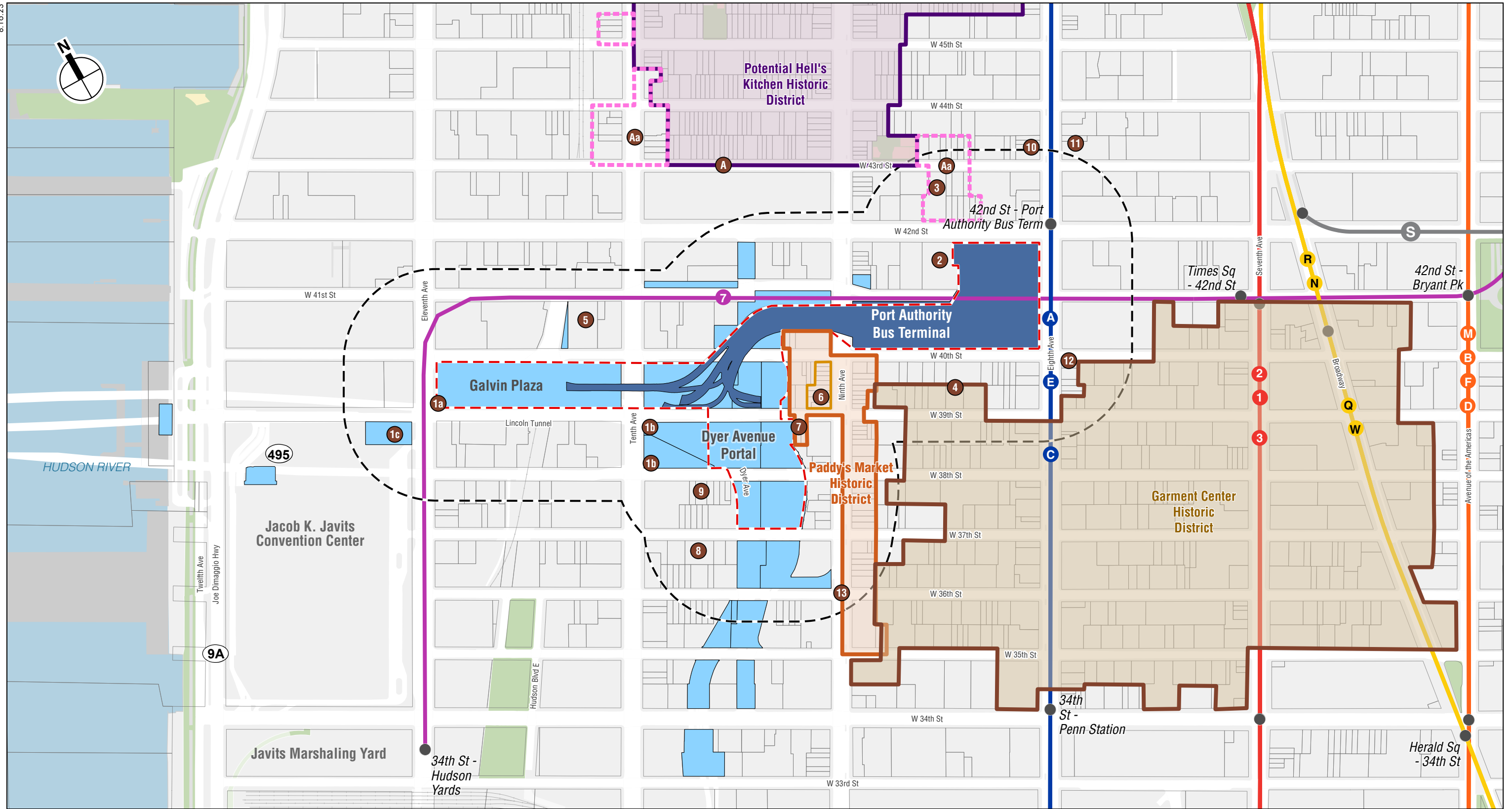
| Consulting Parties |
|--|
| U.S. Department of Interior, Office of Environmental Policy and Compliance |
| Advisory Council of Historic Preservation* |
| National Park Service* |
| NYSHPO* |
| NYC Landmarks Preservation Commission* |
| Manhattan Community Board 4* |
| Delaware Nation* |
| Delaware Tribe of Indians |
| Shinnecock Nation |
| Stockbridge-Munsee Community Band of Mohican Indians* |
| Unkechaug Indian Nation |
| Municipal Art Society of NY* |
| Historic Districts Council* |
| New York Landmarks Conservancy* |

Notes: Those indicated with an asterisk (*) formally accepted Consulting Party status.



- Project Area
- Area of Potential Effects (400-foot perimeter)
- PABT Facility
- Owned by Port Authority
- Subway Stations

0 1,000 FEET



- Project Area
- Area of Potential Effects (400-foot perimeter)
- PABT Facility
- Owned by Port Authority
- Subway Stations
- 1 Historic Resources
- 4 Garment Center Historic District
- 13 Paddy's Market Historic District

- Potential Architectural Resources**
- A Potential Hell's Kitchen Historic District
 - Aa Proposed Hell's Kitchen Historic District possible additions

