Appendix B

Programmatic Agreement
Among
The Federal Transit Administration (FTA),
The Pennsylvania Historical and Museum Commission (PA SHPO),
The New Jersey State Historic Preservation Office (NJ SHPO)
And The New Jersey Transit Corporation (NJ TRANSIT)
Regarding the Implementation of
The New Jersey – Pennsylvania Lackawanna Cut-Off
Passenger Rail Service Restoration Project
PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL TRANSIT ADMINISTRATION (FTA),
THE PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION (PA SHPO),
THE NEW JERSEY STATE HISTORIC PRESERVATION OFFICE (NJ SHPO)
AND THE NEW JERSEY TRANSIT CORPORATION (NJ TRANSIT)
REGARDING THE IMPLEMENTATION OF
THE NEW JERSEY– PENNSYLVANIA LACKAWANNA CUT-OFF
PASSENGER RAIL SERVICE RESTORATION PROJECT

WHEREAS, NJ TRANSIT is proposing to construct the New Jersey-Pennsylvania Lackawanna Cut-Off Passenger Rail Service Restoration Project (the Project), a project that will improve commuter rail service between the states of New Jersey (NJ) and Pennsylvania (PA); and

WHEREAS, the Project consists of the restoration of railroad passenger service on 88 miles of the former Delaware, Lackawanna & Western (DL&W) Railroad (28 miles in NJ and 60 miles in PA) and the construction of two stations in NJ, six stations in PA, and a maintenance facility in NJ; and

WHEREAS, NJ TRANSIT, in consultation with NJ SHPO and PA SHPO and based upon projected construction and rehabilitation activities, does not envision the demolition or removal of any structures and anticipates that all rehabilitation work on historic structures will conform to the Secretary of the Interior’s standards, preserving the historic fabric and integrity of such resources and thus ensuring that the project will not result in an adverse effect (as further stipulated subsequently in this agreement); and

WHEREAS, NJ TRANSIT has identified independent utility for the implementation of a Minimal Operable Segment (MOS) of the Project from Port Morris, NJ to Andover, NJ (a distance of 7.3 miles) and intends to advance it first; and

WHEREAS, the MOS service will operate by extending some of NJ TRANSIT’s Morris & Essex or Montclair Boonton Line trains, and the MOS will involve provision of one new station in New Jersey in Andover Township; and

WHEREAS, FTA proposes to provide grant funds to NJ TRANSIT to implement a program of restoration, rehabilitation, repair and new construction on the historic DL&W Railroad Lackawanna Cut-Off in New Jersey and the historic DL&W Railroad in Pennsylvania as part of the Project; and

WHEREAS, funding is proposed at this time for the MOS only, and implementation of the project beyond the MOS is dependent on the future availability of funding; and

WHEREAS, FTA has determined that this Programmatic Agreement (Agreement) is appropriate for, and necessary to, implementing the entire Project and facilitating the advancement of the Environmental Assessment (EA) required for the documentation of the anticipated environmental impacts of this Project under the National Environmental Policy Act (NEPA); and
WHEREAS, the Area of Potential Effect (APE) is defined to include the 88 miles of railroad right-of-way, the proposed station sites, yard facilities, and other areas of construction activity, and historic properties that are both within line-of-sight of areas of construction activities and close enough to undergo changes in their character or use as a result of the Project (see Attachment 1 for APE boundary maps at station and other specific sites); and

WHEREAS, historic properties are defined as precontact and historic archaeological sites, buildings, structures, districts, objects, landscapes, and traditional cultural properties included in or eligible for listing in the National Register of Historic Places; and

WHEREAS, the entire railroad corridor that comprises the Project, consisting of the Lackawanna Cut-Off in New Jersey and the DL&W Railroad route from Scranton to Slateford Junction, Pennsylvania, has been found to be eligible for listing in the National Register of Historic Places; and

WHEREAS, the Project will utilize the existing rail corridor right-of-way for the reintroduction of railroad passenger service; and

WHEREAS, areas where new ground disturbance will occur from construction of stations, their associated parking lots, and maintenance facilities are also considered part of the APE; and

WHEREAS, although not explicitly noted as contributing elements to these historic resources in the opinions of eligibility, subsurface archaeological features associated with the railroad alignment may be eligible as contributing resources to portions of the alignment which are, or may in the future be determined eligible for listing in the National Register of Historic Places; and

WHEREAS, since the original landform within the railroad right-of-way has already been disturbed by construction of the railroad, and reuse of the right-of-way should not involve any ground disturbance in areas not previously modified, no previously undocumented archaeological sites, outside of features related to the railroad itself, should be present within the right-of-way portion of the APE; and

WHEREAS, FTA has completed the identification of historic architectural resources within the APE as delineated in the *Historic Architectural Resources Background Study, Volumes I and II*, prepared by Lynn Drobbin & Associates in May 2006; and

WHEREAS, FTA has initiated identification of archaeological properties within the APE as delineated in *Phase IA Archaeological Assessments* of the station and maintenance sites (separate reports prepared for NJ and PA) by Historical Perspectives, Inc. in September 2004; and

WHEREAS, FTA has determined, and the NJ SHPO and PA SHPO have concurred, that the Project will have no adverse effect, subject to the conditions listed in this Agreement, on the following historic architectural resource components of historic properties included in, or eligible for inclusion in, the National Register of Historic Places: in PA: Steamtown National Historic Site, Dansbury Depot, DL&W Railroad Route from Scranton to Slateford Junction, DL&W Railroad Bridge #60, DL&W Bridge #60 Interlocking Tower, Tobyhanna Station, Tobyhanna Interlocking Tower, East Stroudsburg Interlocking Tower, East Stroudsburg Water Station, Ridgeway Street Pony Truss Bridge, DL&W Railroad Viaduct over the Delaware River; and in NJ: DL&W Railroad Viaduct over the Delaware River; Old Main DL&W Railroad Historic District (including multiple contributing resources), Port Morris Yard, Port Morris Yard Boiler House, Port Morris Interlocking Tower, DL&W Railroad

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Lackawanna Cut-Off Historic District (including multiple contributing resources), Coursen Fill, Pequest Fill, Roseville Tunnel, Paulins Kill Viaduct, Hope Road Bridge, Blairstown Railroad Station and Freight House, Greendell Interlocking Tower, Greendell Station, and the Greendell General Store; and

WHEREAS, the Johnsonburg Station was omitted from the historic resources survey and will not be used for any Project purpose and was recently demolished for safety concerns and agreement was reached between NJ TRANSIT and the NJ SHPO that the site will be evaluated and/or documented in a manner to be determined through further consultation; and

WHEREAS, NJ TRANSIT has participated in the consultation and has been invited to concur in this Agreement; and

WHEREAS, this Project is based on recommendations contained in the Section 106 Effects Assessment for the New Jersey–Pennsylvania Lackawanna Cut-Off Passenger Rail Service Restoration Project (Effects Assessment), December 2006; and

WHEREAS, the PA SHPO and the NJ SHPO have reviewed and commented on the recommendations contained in the Effects Assessment in correspondence dated respectively February 6, 2007 and April 30, 2007; and;

WHEREAS, this Agreement includes the scope of intended treatment and preservation philosophy to guide future work; and

WHEREAS NJ TRANSIT employs a Historic Preservation Specialist (HPS) meeting the Secretary of the Interior’s Professional Qualifications Standards for Architectural History (36 CFR Section 61, Appendix A);

NOW, THEREFORE, the FTA, PA SHPO, NJ SHPO and NJ TRANSIT agree that the Project shall be implemented in accordance with the following stipulations to satisfy the FTA’s Section 106 review requirements for all undertakings and aspects of the project that concern historic properties.

STIPULATIONS

FTA and NJ TRANSIT, in consultation with the PA SHPO and NJ SHPO (hereafter the SHPOs), shall ensure that the following measures are carried out:

I. HISTORIC PROPERTIES

A. EFFECTS CONSULTATION

1. Prior to the initiation of construction, NJ TRANSIT will conduct Phase IB archaeological field testing at all Project station, maintenance and parking sites except the Analomink station site. On those properties where the level of disturbance presently is unknown (the Scranton and East Stroudsburg station sites and the Scranton maintenance site), review of soil borings, if available in the future, might eliminate the need for a Phase IB testing program.
2. Based on the investigation described in Section I.A.a. of this Agreement and any subsequent overall design modifications, NJ TRANSIT shall apply as mutually agreed, the Criteria of Adverse Effect to these properties and consult with the SHPOs and other consulting parties in accordance with 36 CFR Section 800.5. In the case of “no adverse effect,” NJ TRANSIT shall specify the conditions and procedures that ensure “no adverse effect,” and develop an implementation plan for construction. After the SHPOs concur with the implementation plan, NJ TRANSIT shall ensure that the plan is implemented. In the case of "adverse effect," NJ TRANSIT shall document conditions and procedures that minimize or mitigate the "adverse effects." After the SHPOs concur with the mitigation plan, NJ TRANSIT shall ensure that the mitigation plan is implemented.

B. DESIGN

NJ TRANSIT will make every effort to ensure that the design of system infrastructure is compatible with affected historic properties and conforms to the guidance contained in the Secretary of the Interior’s Standards for the Treatment of Historic Properties (Standards). For those components of the system that may affect historic resources, NJ TRANSIT will develop design documents in consultation with the PA SHPO or the NJ SHPO, as appropriate. Within their respective jurisdictions, SHPO review of design documents (plans and specifications) will occur at the 30%, 60% and 90% design review phases and shall be limited to determining whether proposed designs are compatible with affected historic properties and in conformance with the Standards. Design documents shall include an explanation of how the proposed design conforms to the Standards. The SHPOs shall respond within 30 calendar days of receipt of documentation to any design submitted pursuant to this Agreement. Design and preservation issues identified by the SHPOs during the 60% design review will be resolved in consultation between the SHPOs and NJ TRANSIT prior to the submission of 90% design level documents.

The following efforts will be made to reduce the effect on historic properties as defined in 36 CFR Section 800.16(1):

1. All work to be conducted for the Project will be reviewed and approved by the PA and NJ SHPOs.

2. The Project will avoid the demolition or removal of historic properties. The Project will, to the greatest extent possible, stabilize, rehabilitate, and/or reuse historic buildings and bridges.

3. All existing historic structures that will be rehabilitated as part of the Project will be rehabilitated in accordance with the Standards.

4. The rehabilitation or stabilization of existing historic structures as part of the Project will be reviewed and approved by the SHPOs. The following historic structures will be rehabilitated and reused by the Project:
   a. Blairstown Railroad Station
   b. Greendell Station

5. The following historic structures will be stabilized and weatherproofed by the Project; if feasible, a reuse of these structures will be sought.
   a. Blairstown Freight House
   b. Greendell Interlocking Tower
   c. Port Morris Interlocking Tower
6. NJ TRANSIT and the NJ SHPO shall consult on the appropriate disposition of the Johnsonburg Station Site.

7. All new construction that is scheduled to be built as part of the Project will be constructed in accordance with the Standards for compatible new construction.

8. All new construction on the former Lackawanna Cut-Off will be compatible in design and materials, colors and features to adjacent historic resources and to the significance, integrity and the character defining features of the Lackawanna Cut-Off Historic District.

9. The SHPOs shall review and approve the compatibility of design, materials, association, workmanship, massing, color, texture, scale, and other visual qualities and, within 30 calendar days of receipt of documentation, provide comments and/or concurrence.

10. NJ TRANSIT shall consult with the SHPOs to determine for which new design features the SHPOs would like to see more specific information on the features’ exterior appearance. For those features for which the SHPOs request more information, NJ TRANSIT shall submit for the SHPOs’ review and approval either color photographs, catalog documentation, or material samples.

11. The Project will provide for the sensitive rehabilitation of existing overhead and undergrade concrete bridges. All bridge rehabilitation projects will be undertaken in accordance with the Standards. All new concrete and concrete repairs will match the existing historic concrete. Masonry analyses will be conducted to ensure that new concrete will match the historic concrete in configuration and detail, finish, color, texture and profile.

12. All rehabilitation work proposed for the Roseville Tunnel will be conducted in accordance with the Standards. All plans and specifications for the Roseville Tunnel improvements will be reviewed and approved by the NJ SHPO. A masonry analysis will be conducted to ensure that the new concrete will be compatible with the existing historic stone of the tunnel. The exterior rock faces of the tunnel portals will remain intact and not be altered.

13. The Project will use architecturally detailed concrete and glazed ceramic roof tiles for stations, platforms, and station canopies.

14. All new construction that is scheduled to be built as part of the Project will be reviewed and approved by the SHPOs.

15. All parking areas that are to be constructed as part of the Project will have historically compatible landscape buffers and historic style lighting. Light shielding will be implemented where necessary.

16. The proposed work to be conducted for the Project in the Port Morris Rail Yard will have historically compatible landscape buffers and low profile lighting if and where required, due to adjacent historic resources, as well as where compatible with safety and operational requirements.

17. All design drawings prepared as part of the Project will be reviewed and approved by the SHPOs within 30 calendar days of receipt of documentation as noted above.

18. NJ TRANSIT shall submit all changes to project plans, including new project components, construction, alterations, or removals, and shop or contractor drawings, as appropriate, to the SHPOs for review and comment as to the effects to historic properties. Any proposed change that has the potential to affect a historic property, whether or not previously considered, shall be reviewed and approved by the SHPOs prior to the initiation of construction activity that may
affect the historic property. If the change to project plans alters effects to historic properties from those described in this Agreement, NJ TRANSIT and the SHPOs shall consult to address: 1) the effects of the proposed plan or design modification; 2) the actions needed to avoid, minimize, or mitigate adverse effects; and 3) a mitigation plan, if necessary.

II. CONSTRUCTION

1. A construction monitoring and staging plan for the Project will be prepared by NJ TRANSIT and reviewed and approved by the PA SHPO and NJ SHPO.

2. As construction plans are finalized, any areas where new ground disturbance will occur, such as for bridge construction or reconstruction, temporary construction staging areas and lay-down areas, and areas that will be substantially cut and/or filled within the existing rights-of-way should be subjected to appropriate archaeological analysis.

3. To maintain the integrity of the rail line and other historic resources along the project corridor, protective measures will be included in the construction specifications to monitor noise, dust and vibration. The proposed Project will be planned, designed, scheduled and staged to minimize disruption to adjacent historic resources.

III. INFRASTRUCTURE ACTIVITIES

1. NJ TRANSIT shall ensure that, for all construction activity required for the implementation of the Project, including but not limited to sewer and utility relocation, storm water management and drainage facility construction, and roadway improvements, appropriate reviews shall be conducted in accordance with Section 106 of the National Historic Preservation Act and the New Jersey Register of Historic Places Act. NJ TRANSIT shall ensure that prior to the initiation of any construction activity, NJ TRANSIT, or its designee, has completed Section 106 consultation in accordance with Sections 800.3 and 800.6a, and consultation under the New Jersey Register of Historic Places Act, that any mitigation is developed in conjunction with the SHPOs, and that, if a mitigation plan is developed, the plan is implemented.

IV. PUBLIC PARTICIPATION

1. This Agreement will be available for public review and comment as Section 8.0 of the EA.

2. During the design of the Project, NJ TRANSIT will hold a public information meeting and will invite the general public and other individuals and organizations who are likely to have knowledge of, or concerns with, historic properties in the APE, and who NJ TRANSIT identifies in consultation with the SHPOs. The purpose of the meeting will be to ensure that the design is compatible with the historic resources. Results of this information meeting will be summarized and any resultant actions will be mutually agreed upon, by the consulting parties, within 30 calendar days of receipt of documentation.
V. ARCHAEOLOGICAL RESOURCES

1. NJ TRANSIT shall ensure that all archaeological work is conducted in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44742), as well as the standards of the Pennsylvania Bureau for Historic Preservation (PA SHPO) (1991) and the New Jersey State Historic Preservation Office (NJ SHPO) (1996, 2000).

2. If design and/or construction plans change or new Project features or associated construction projects are planned as part of or expanded into areas where archaeological site potential has not been considered, then NJ TRANSIT shall conduct Phase IA Archaeological Assessments and subsequent Phase IB Archaeological field testing as warranted to make an adequate effort to identify Archaeological Historic Properties (AHPs) in those areas of new and/or additional project construction.

3. NJ TRANSIT shall, in consultation with the SHPOs, ensure that the adequacy of efforts to identify AHPs, the professional qualifications of archaeological personnel, and the standards for all submitted reports are in accordance with the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44742), as well as the standards of the PA SHPO (1991) and the NJ SHPO (1996, 2000).

4. Where potential AHPs are identified, a NJ TRANSIT qualified professional will evaluate eligibility for listing in the National Register of Historic Places, using the Secretary of Interior's Standards and Guidelines for Evaluation (48 FR 44723-26, and National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation).

5. NJ TRANSIT shall make an assessment of the effects of planned ground disturbing construction activities on AHPs and shall request the SHPOs’ comments on the assessment.

6. NJ TRANSIT shall request the SHPOs’ comments on NJ TRANSIT's plans for treating AHPs that will be adversely affected by construction activities. If an adverse effect cannot be avoided, NJ TRANSIT shall develop a data recovery plan to be reviewed and approved by the SHPOs. The plan shall be consistent with the Secretary of Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37), the Council's Treatment of Archaeological Properties, and the standards of the PASHPO (1991) and the NJ SHPO (1996, 2000), as appropriate. The plan shall specify the exact location of data recovery; the identification of any property that will be destroyed or altered without data recovery; the research questions to be addressed by the data recovery, with an explanation of their relevance and importance; the methodology of analysis, management and dissemination of the data, including a schedule; the disposition and curation standards for recovered materials and records; the procedure for including the interested public; proposed methods for disseminating results of the work to the interested public; and a proposed schedule for submission of progress reports to the SHPOs. NJ TRANSIT shall ensure that the data recovery plan is implemented. If NJ TRANSIT and the SHPOs cannot agree on how to resolve an adverse effect, NJ TRANSIT shall resolve the disagreement in accordance with 36 CFR Section 800.6(b).

7. Discovery of human skeletal remains and associated grave goods shall be addressed, and may require consultation, under the separate regulations contained in the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (43 CFR Part 10, as amended).

8. All unanticipated discoveries shall be treated in accordance with the procedures outlined in 36 CFR 800.11 in consultation with all parties of this Agreement.
9. NJ TRANSIT shall ensure that artifacts recovered from archaeological investigations conducted under this Agreement will be curated according to PA and NJ State Guidelines. The Pennsylvania Historical and Museum Commission and the New Jersey State Museum shall be given the right of first refusal for all collections recovered under the agreement.

10. NJ TRANSIT shall reimburse institutions curating these collections for their initial costs.

VI. PROPERTY ACQUISITION AND MANAGEMENT

1. NJ TRANSIT shall identify the street address and delineate on a tax parcel map the block(s) and lots(s) numbers of all historic properties that are acquired or utilized for the Project. Historic properties are defined in accordance with 36 CFR Section 800.16(1). NJ TRANSIT shall maintain historic properties in accordance with the Standards, or will assign this responsibility to other capable and willing parties, and shall establish for all acquired or utilized historic properties the restrictions or conditions that will ensure the preservation of significant historic features. NJ TRANSIT shall establish the resulting identification and delineation, along with the description of restrictions or conditions ensuring preservation of significant historic features. This information shall be submitted to the SHPOs for review and approval.

VII. PROCEDURES

A. PROJECT MODIFICATIONS

NJ TRANSIT is responsible for informing the FTA and the SHPOs of any changes to the Project, as described in the EA, that would alter effects to historic properties from those addressed under this Agreement, so that they may consider the need for amendment to this Agreement. NJ TRANSIT, at FTA’s direction, will provide the SHPOs and all consulting parties copies of any reports developed pursuant to this Agreement. NJ TRANSIT will also provide these reports to interested parties upon request.

B. DISPUTE RESOLUTION

Should the SHPOs object, within 30 days of receipt of applicable documentation, to any action proposed pursuant to this Agreement, FTA and NJ TRANSIT shall consult with the objecting party(ies) to resolve the objection. If FTA determines that the objection cannot be resolved, FTA shall forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (ACHP). Within 30 days after receipt of all pertinent documentation, the ACHP will either:

1. Provide FTA with recommendations, which FTA will take into account in reaching a final decision regarding the dispute; or

2. Notify FTA that it will comment pursuant to 36 CFR Section 800.7(c), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by FTA in accordance with 36 CFR Section 800.7(c)(4) with reference to
the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; FTA’s responsibility to carry out all actions under this Agreement that are not the subject of the dispute will remain unchanged.

C. MONITORING

The SHPOs may monitor activities carried out pursuant to this Agreement. The FTA and NJ TRANSIT will cooperate with the PA SHPO and NJ SHPO in carrying out their monitoring and review responsibilities.

D. AMENDMENTS

Any signatory to this Agreement may request that it be amended whereupon the signatories will consult in accordance with 36 CFR Section 800.14(b) to consider such amendment. Any resulting amendments shall be developed and executed among the signatories in the same manner as the original Agreement. Any amendment of this Agreement will go into effect only upon written agreement of all signatories.

E. TERMINATION OF AGREEMENT

If any signatory determines that the terms of the Agreement cannot be carried out or are not being carried out, then the signatory may consult to seek amendment in accordance with Section D of this Agreement. If the Agreement is not amended, any signatory may terminate it by providing 30 days notice to the other parties. In the event of termination, NJ TRANSIT will comply with 36 CFR Sections 800.3 through 800.7 with regard to individual undertakings covered by this Agreement.

F. DURATION

1. This Agreement remains in effect for ten (10) years following execution. If within ten (10) years the Project is not completed or stipulations are not met, the signatories shall consult to determine if the Agreement shall be amended, extended, or terminated.

2. Execution of this Agreement and implementation of its terms evidence that FTA has afforded the ACHP a reasonable opportunity to comment on the Project and that FTA has taken into account the effects of the Project on historic properties.
Execution of this Agreement and implementation of its terms evidence that FTA has afforded the PA and NJ SHPOs an opportunity to comment on the New Jersey Pennsylvania Lackawanna Cut-Off Passenger Rail Restoration Project, and its effects on historic properties, and that FTA has taken into account the effects of the undertaking on historic properties.

FEDERAL TRANSIT ADMINISTRATION

By: Brigid Hytos-Cherin, Region II Administrator

Date: 9/18/08

PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

By: Sean B. Muller
Jeanne H. Cutler, Deputy State Historic Preservation Officer

Date: 7/29/08

NEW JERSEY STATE HISTORIC PRESERVATION OFFICE

By: Terry Karschner, Acting Deputy State Historic Preservation Officer

Date: 7/25/08

CONCUR:
NEW JERSEY TRANSIT

By: Richard R. Sarles, Executive Director

Date: 7/24/08

APPROVED AS TO FORM ONLY:

Anne Milgram
Attorney General of New Jersey

By: Deputy Attorney General

Date: 7/22/08
Programmatic Agreement

Attachment 1

Delineation of Boundaries of Areas of Potential Effects
FIGURE 34: PAULINS KILL VIADUCT - AREA OF POTENTIAL EFFECT

SCALE: 1" = 525'