

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

**MINUTES**

**Thursday, September 21, 2023**

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**MINUTES of the Meeting of The Port Authority of New York and New Jersey held Thursday, September 21, 2023 at 150 Greenwich Street, New York, New York and via videoconference.**

**PRESENT:**

**NEW JERSEY**

Hon. Kevin J. O'Toole, Chairman  
 Hon. J. Christian Bollwage  
 Hon. George Helmy  
 Hon. Joseph Kelley  
 Hon. Kevin P. McCabe\*  
 Hon. Michelle E. Richardson\*

**NEW YORK**

Hon. Jeffrey H. Lynford, Vice Chairman  
 Hon. Steven M. Cohen  
 Hon. Leecia R. Eve\*  
 Hon. Winston C. Fisher  
 Hon. Gary LaBarbera  
 Hon. Rossana Rosado\*

Richard Cotton, Executive Director  
 Amy H. Fisher, Acting General Counsel  
 James E. McCoy, Secretary

James K. Allen Jr., Chief Communications Officer  
 M. Rizwan Baig, Chief Engineer  
 Christopher Beacham, Chief of Staff, Office of the Chief Financial Officer\*  
 Michael Bozza, Deputy Director, Port  
 Meredith L. Brooks, Principal Board Management Support Specialist, Office of the Secretary  
 Michael Brown, Deputy Superintendent of Police  
 Evan Butt, Police Officer  
 Ana Carvajalino, Director, Financial Planning\*  
 Alexandria Cassidy, Senior Environmental Programs Specialist, Office of Sustainability  
 Edward Cetnar, Director of Public Safety, Superintendent of Police  
 David W. Compton, Manager, Marketing  
 Janet D. Cox, Chief of Staff and Special Counselor to the Executive Director\*  
 Jennifer S. Davis, Chief, Intergovernmental Affairs\*  
 Clarelle DeGraffe, Director, Rail Transit  
 Christopher Diamond, Director, Office of Sustainability  
 Alfred P. Doblin, Director, Strategic Communications, Chief Communications Office  
 Gregory W. Ehrie, Chief Security Officer  
 Benjamin Feldman, Deputy Chief Communications Officer  
 Robert E. Galvin, Chief Technology Officer  
 Shannon E. Gates, Principal Board Management Support Specialist, Office of the Secretary  
 John Gay, Inspector General  
 Erik H. George, Director, Management & Budget\*  
 Mary Lee Hannell, Chief, Human Capital  
 Michael Harpster, Director, Security Operations

James Heitmann, Chief Operating Officer  
 Kirsten Hernandez, Special Assistant to the Executive Director\*  
 Natasha G. Jean Philipp-Cumberbatch, Manager, Corporate Transparency, Office of the Secretary  
 Timothy Jozefcyk, Police Officer  
 Amanda M. Kwan, Deputy Director, Media Relations  
 Cristina M. Lado, Director, Government and Community Affairs, New Jersey  
 Annessa H. Lau, Director, Operations Services  
 William Laventhal, Program Director, Executive Office  
 Elizabeth M. McCarthy, Chief Financial Officer\*  
 Matthew F. Murray, Senior Advisor to the Chairman  
 Clare O'Brien, Senior Engineer, Engineering  
 Jessica Ortiz, Deputy Inspector General and Director of Investigations  
 Hersh K. Parekh, Director, Government and Community Affairs, New York  
 Thomas Pietrykoski, Director, Corporate Communications  
 Alan L. Reiss, Director, World Trade Center Construction\*  
 Jessica Russ, General Manager, Board Unit, Office of the Secretary\*  
 Peter D. Simon, Chief of Staff to the Chairman  
 Dennis Stabile, Deputy Director, Tunnels, Bridges & Terminals  
 Debra M. Torres, Chief Ethics and Compliance Officer\*  
 Derek H. Utter, Chief Development Officer  
 Lenis Valens, Public Information Officer  
 Lillian D. Valenti, Chief Procurement Officer  
 Lei Pei Wang, Director, Project Management  
 Liz White, Executive Policy Analyst, Aviation Department

Guests:

Thomas Holl, Senior Counsel, Authorities Unit, Office of the Governor of New Jersey  
 Daniel J. Horwitz, former Port Authority Commissioner  
 David Ullman, Assistant Secretary for Transportation, Office of the Governor of New York\*

Public Commenters:

Matthew Buchys (Written Statement)  
 Christopher Greif  
 Debra Greif  
 Omar Vera  
 Neile Weissman  
 Jacquelyn Wells

Topics:

George Washington Bridge & PATH  
 Accessibility  
 Accessibility  
 OMNY  
 George Washington Bridge Path  
 CWA Labor Negotiations

The public meeting was called to order by Chairman O’Toole at 12:24 p.m. and ended at 1:54 p.m. The Board also met in executive session prior to the public session. Commissioner Cohen was not present for the executive session portion of the meeting.

### **Report on Prior Meeting’s Minutes**

Copies of the Minutes of the special meeting of August 21, 2023 were delivered in electronic form to the Governors of New York and New Jersey on August 21, 2023. The Minutes of the special meeting of August 21, 2023 were approved by the Governor of New Jersey on August 21, 2023 and by the Governor of New York on August 22, 2023.

### **Chairman’s Report**

The Chairman advised that as part of the Port Authority’s public speakers’ program, one written statement was received and provided to the Commissioners and other relevant staff prior to today’s Board Meeting. The written statement will also be filed with the transcripts of today’s meetings on the Port Authority’s website.

### **Moments of Silence and Remembrance**

In observance of the 22<sup>nd</sup> anniversary of the September 11, 2001 terrorist attacks on The World Trade Center, the Chairman requested a moment of silence in memory of the 84 Port Authority employees lost on that day, and the first responders and recovery workers who were lost due to illnesses relating to their work at the World Trade Center site, as well as for those who perished as a result of the bombing of The World Trade Center on February 26, 1993.

The Chairman called for a moment of silence in observance of the recent passing of Charles Fausti, a 45-year employee of the Tunnels, Bridges and Terminals Department, and Maria Flores a 20-year employee of the Aviation Department.

## **TRIBUTE TO DANIEL J. HORWITZ**

The following resolution was unanimously adopted to express the appreciation of the members of the Board of Commissioners of The Port Authority of New York and New Jersey to Commissioner Daniel J. Horwitz in light of his recent departure from the Board.

**WHEREAS**, from his appointment by New York Governor Andrew M. Cuomo in July 2017, Daniel J. Horwitz has given tirelessly of his time, talent, and expertise to further the mission and goals of the Port Authority. Commissioner Horwitz served with distinction as a member of the Board of Commissioners and has been committed to the agency's core mission of building and maintaining transportation infrastructure for the region; and

**WHEREAS**, Commissioner Horwitz served as the Chair and Vice-Chair of the Governance and Ethics Committee, the Vice-Chair of the Audit Committee and as a member of the Committee on Finance, providing important leadership in ensuring that the Board continued to fulfill its oversight responsibilities in ensuring fiscal responsibility, transparency, and commitment to the highest standards of ethics; and

**WHEREAS**, throughout his service on the Board, Commissioner Horwitz was an unwavering supporter of the agency's staff and consistently recognized their contributions.

**NOW, therefore, be it**

**RESOLVED**, that the Commissioners of The Port Authority of New York and New Jersey, do hereby express to the Honorable Daniel J. Horwitz, their sincere appreciation for his leadership and service to the agency and the region it serves; and it is further

**RESOLVED**, that the Board of Commissioners hereby directs that this resolution be suitably engraved and presented to the Honorable Daniel J. Horwitz as a token of the high esteem in which he is held by the Board and staff alike.

## **PORT OF NEW YORK AND NEW JERSEY – CLEAN VESSEL INCENTIVE PROGRAM – PROGRAM AUTHORIZATION**

It was recommended that the Board authorize: (1) the continued funding of the Port Authority's Ocean-going Vessel Clean Vessel Incentive (CVI) Program, for a five-year period, at a total cost to the Port Authority of approximately \$8 million; and (2) the Executive Director to extend the existing Interconnection Security Agreement with the United States Coast Guard (Coast Guard) for a five-year period, through December 31, 2028, to provide vessel tracking data to support the CVI Program, at no cost to the Port Authority.

In November 2008, the Board adopted a Statement of Principles for Improving Air Quality at the Port of New York and New Jersey (Statement of Principles) that reaffirmed its support of the Port Authority's continuing sustainability initiatives to reduce Port-related emissions of particulate matter, nitrogen oxides, sulfur dioxides, and greenhouse gases. The Statement of Principles also stated that the Port Authority would take the lead to develop a Clean Air Strategy for the Port of New York and New Jersey (Port) to reduce Port-related diesel and greenhouse gas emissions by achieving reductions in advance of potential or future applicable regulations. The Clean Air Strategy for the Port, which was completed in October 2009 and updated in December 2014, identified a range of emission reduction actions organized by the sources of maritime emissions, including ocean-going vessels (OGV) (the largest source of air pollution emissions from port-related operations), cargo-handling equipment, rail, trucks, and harbor vessels.

At its meetings of August 1, 2012, through November 19, 2015, the Board authorized the CVI Program in support of the Clean Air Strategy through December 31, 2018.

At its meeting of October 25, 2018, the Board formally committed the Port Authority to achieving the objectives set forth in the Paris Climate Agreement and authorized the Executive Director to implement various initiatives, including the continuation of the CVI Program, to effectuate that commitment. Accordingly, the CVI Program was extended for a five-year term, through December 31, 2023, at a cost not to exceed \$8 million.

Under the CVI Program, the Port Authority provides a financial incentive to enrolled operators of OGVs that achieve a high CVI Score, which is based on the World Ports Sustainability Program's Environmental Ship Index (ESI) score and participation in Vessel Speed Reduction (VSR), a component that requires vessels to slow-steam at 10 knots or less from 20 nautical miles outside of the Territorial Sea Line. The ESI score measures an ocean-going vessel's environmental performance and provides a comprehensive method to assist in identifying cleaner ships. The ESI is a voluntary tool for ports, which currently includes a formula-based evaluation of vessels' nitrogen oxide (NO<sub>x</sub>) and sulfur oxide (SO<sub>x</sub>) emissions. The calculation also rewards vessels equipped to use available onshore power, and those which demonstrate fuel efficiency improvements over time, thereby reducing carbon dioxide (CO<sub>2</sub>) and particulate matter (PM) emissions.

Through the VSR component of the CVI Program, the Port Authority encourages OGVs to reduce speed when entering the harbor, thereby reducing criteria air pollutants and CO<sub>2</sub> emissions.

Additional incentives are offered to vessels equipped with a Tier III engine (i.e., enrolled vessels that have an Engine International Air Pollution Prevention certification demonstrating that all engines meet or are cleaner than International Maritime Organization Tier III requirements) and vessels operating on alternative fuel, which is defined as a fuel or power source which provides energy supply to ocean-going transport and contributes to its decarbonization.

Total emission reductions realized as a result of the CVI Program, and its predecessor the Low Sulfur Fuel Program, through December 2023 are projected to be over 5,700 tons of nitrogen oxides, 168,000 tons of carbon dioxide, 175 tons of particulate matter, and 1,000 tons of sulfur oxides. The CVI Program has been highlighted in the U.S. Environmental Protection Agency's Ocean-Going Vessel Best Practices to Improve Air Quality as a real-world example of a successful VSR Program.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Eve, Fisher, Helmy, Kelley, LaBarbera, Lynford, McCabe, O'Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Ocean-going Vessel Clean Vessel Incentive (CVI) Program to encourage the operators of ocean-going vessels that call at Port Authority marine terminal facilities to make voluntary engine, fuel and technology enhancements that reduce emissions beyond the regulatory environmental standards set by the International Maritime Organization, at a total cost to the Port Authority of approximately \$8 million, be and it hereby is extended for an additional five-year period, through December 31, 2028; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to extend the term of the Interconnection Security Agreement with the United States Coast Guard for a five-year period, through December 31, 2028, to provide vessel tracking data to support the CVI Program, at no cost to the Port Authority; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take any and all action to effectuate the foregoing, including the execution of agreements, contracts and other documents to facilitate such action, together with amendments and supplements thereof, including amendments and supplements to existing agreements, and to take action in accordance with the terms of such agreements, contracts and other documents, as may be necessary in connection therewith; and it is further

**RESOLVED**, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or her authorized representative.

## **WORLD TRADE CENTER – DEVELOPMENT OF SOUTHERN SITE (“SITE 5”) – APPROVAL OF REVISED LEASE TRANSACTION**

Pursuant to the Lower Manhattan Development Corporation (“LMDC”) General Project Plan for the redevelopment of the World Trade Center, the southern site (formerly 130-140 Liberty Street; hereinafter “Site 5”) had been planned for redevelopment as a 1.345-million-square-foot office building. Although Site 5 is now held by LMDC, in accordance with the federal grants used to reconstruct the World Trade Center, LMDC and the Port Authority had agreed that Site 5 would eventually be conveyed to the Port Authority to compensate it for permanently dedicating property at the World Trade Center campus for cultural, rather than commercial, purposes. In 2019, the Port Authority, New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESD”) and its subsidiary, LMDC (the “Project Sponsors”) agreed to request from the public, proposals for the development of Site 5 (“RFP”), and to allow responders to propose for both residential and commercial projects for consideration.

In February 2021, the Board approved the recommendation of staff developed together with ESD and LMDC following the RFP, to lease Site 5 for a multi-use building (“Building”), including affordable and market-rate multi-family rental apartments, commercial office space, community facility space, shared residential amenity space and retail space. The Board also approved exclusive negotiation of a lease (“Lease”) with 5 WTC LLC, a developer group now composed of Silverstein Properties, Inc., Brookfield Properties, Omni New York LLC and Dabar Development Partners (“Developer”), as the highest rated proposer. A condition of the project was that the Building would include a component of permanently affordable residential units, enabled through a payment-in-lieu-of-taxes (PILOT) arrangement agreed to by the City of New York (“City”). As negotiated, the economic value of the PILOT to the Developer would allow 30% of the Building’s residential units to be affordable (based on rental subsidies to tenants making less than, on average, the area median income (“AMI”).

In May 2023, the Board considered and approved the terms of the Lease as negotiated by the Sponsors and the Developer. To effectuate the transaction, LMDC would convey title to Site 5 to ESD and ESD would act as the Site 5 lessor in light of its significant residential component. The Port Authority would retain its economic interest in Site 5 and therefore would receive the rent payments described below. The operating arrangement among the Sponsors has been memorialized in a Lease Administration and Revenue Agreement (“Administrative Agreement”). Under the Administrative Agreement, the Port Authority is entitled to consent to certain major decisions under the Lease to the extent they might affect payment of rent under the Lease.

The Lease provides for a term of 99 years. Upon the Turnover Date (defined below), Developer will pay nominal ground rent annually until the earlier to occur of issuance of a certificate of occupancy for the Building or five years from the Turnover Date. Thereafter, the Developer would pay rent equal to 21% of the Building’s cash flow before debt service (i.e., Building operating income less operating expenses), with an annual minimum rental payment of \$12.5 million, escalating at 2% per annum through the term.

Although the terms of the Lease have been fully negotiated between the Sponsors and the Developer, before committing to construct the Building the Developer required an additional period of up to 27 months from receipt of all transaction approvals (expected in October 2023;

hereinafter the “Trigger Date”) to finalize design of the Building, choose a contractor and arrange for financing. The parties have agreed to enter into an interim agreement (“Interim Agreement”) pursuant to which the Lease will be placed in escrow pending Developer’s completion of design and project financing, after which Site 5 will be turned over to the Developer to commence construction (the date for turnover is hereinafter referred to as the “Turnover Date”). In the event the Turnover Date has not occurred within 21 months from the Trigger Date, the Developer is entitled to extend the Turnover Date for a maximum of six additional months. If the Turnover Date has not occurred on time (whether or not extended), the Developer will lose its good faith deposit as well as certain funds deposited to cover Sponsor expenses.

In response to community requests, the State of New York (“State”) has now identified \$65 million from State and local sources (“Additional Funds”) to provide as an additional subsidy to Developer in return for a commitment to increase the Affordable Component to one-third of the residential units (and to set aside 20% of such affordable units for persons who resided or worked in lower Manhattan on September 11, 2001, including World Trade Center responders), using a revised AMI calculation. As part of the effort described above, the Port Authority has agreed to provide a one-time credit of \$12.5 million (projected to be a year’s post-completion rent) to the Developer (the “Rent Credit”) in order to enable the Building project to move forward at this time, without further delay. In the event the Additional Funds are not formally committed for the transaction on or before April 15, 2024, the original Affordable Component would remain an obligation of the Developer under the Lease, and the Rent Credit would not be provided to the Developer.

Following termination of the Lease, title to the real property and improvements will revert to the Port Authority. In the event the rental income under the Lease exceeds a certain threshold on a present value basis, additional rental income will be shared with LMDC or the City, as its successor.

Early in the development of the World Trade Center campus, the Port Authority entered into a leasehold for Site 5 with its special purpose subsidiary. In connection with the transaction, this lease will be terminated and have no further force and effect.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Eve, Fisher, Helmy, Kelley, LaBarbera, Lynford, McCabe, O’Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority and its related entities that own interests with respect to the World Trade Center site, to enter into the Interim Agreement and the Administrative Agreement (as those terms are defined in the report to the Board), including a commitment to make effective a lease appended to the Interim Agreement for the development, construction, financing and operation of an approximately 1.345-million-square-foot multi-use building, which will include residential rental units as well as office, community, and retail space, to be located at the 130-140 Liberty Street parcels (Site 5) at the World Trade Center, and any other documents, certificates, agreements or other evidences of the transaction as he believes are necessary or desirable to effectuate the purposes described in the report to the Board, in each case,

with any amendments or supplements thereto as are consistent herewith and may be necessary or desirable in the future, all substantially in accordance with the terms outlined to the Board; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to terminate that certain agreement entered into in 2006 in contemplation of the development of Site 5 between the Port Authority and a subsidiary and following such termination, the terminated lease would have no further force or effect; and it is further

**RESOLVED**, that, in addition to the authorization to the Executive Director herein, the following officials will also be authorized to enter into all documents necessary to effectuate the foregoing transaction, in lieu and instead of the Executive Director: (i) the Chief Development Officer and (ii) the Director of Real Estate; and it is further

**RESOLVED**, that the form of all contracts, agreements and documents in connection with the foregoing shall be subject to the approval of the General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by the General Counsel or her authorized representative.

**AGREEMENT WITH GATEWAY DEVELOPMENT COMMISSION FOR PORT AUTHORITY CONSTRUCTION SERVICES FOR THE NEW HUDSON RIVER TUNNEL CORE AND SHELL PROJECT**

It was recommended that the Board authorize the Executive Director to enter into an agreement with Gateway Development Commission (“GDC”), the agency established to develop and construct the Gateway infrastructure projects, including a new trans-Hudson passenger rail tunnel (“New Tunnel Project”). The agreement, referred to as a “support or executing partner agreement” (“SEP”) would provide for the Port Authority to: (i) provide contractual advisory construction management services, project management support services, project administration services and field support services for the tunneling and heavy civil contracts to build the core and shell of the New Tunnel Project (“Core and Shell”), with eventual handover to others for rail and utility fit-out; and (ii) review compliance of the Core and Shell with building codes specified by GDC and its stakeholders, after review and certification by GDC’s (or its contractor’s) engineer of record (collectively, the “Services”). GDC would be responsible for procuring and holding all construction and other contracts for the New Tunnel Project.

The Port Authority will be compensated for its services on a time and materials basis, and will be indemnified by GDC for costs associated with its activities, other than acts of intentional wrongdoing (for which it will indemnify GDC). It is intended that the Port Authority will augment its Port Authority personnel providing the Services through staff extensions as necessary, but will obtain such staff extensions from GDC’s third-party delivery partner.

The SEP was approved by the GDC Board of Commissioners on September 11, 2023 after review by the States of New York and New Jersey, the Federal Transit Administration, the Federal Railroad Administration and the National Railroad Passenger Corporation (Amtrak), each of which is anticipated to provide funding for the New Tunnel Project.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Eve, Fisher, Helmy, Kelley, LaBarbera, Lynford, McCabe, O’Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that the Port Authority be and it hereby is authorized to provide contractual advisory construction support and code compliance services to Gateway Development Commission (“GDC”) in connection with the tunneling and heavy civil contracts to build the core and shell of a new trans-Hudson passenger rail tunnel being constructed by GDC, pursuant to the provision of the Supporting or Executing Partner Agreement (“SEP”) between GDC and the Port Authority (attached to this resolution); and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into the attached SEP and to take any and all action to effectuate the foregoing, including the execution of agreements, contracts or other documents (in addition to the SEP) to facilitate such action, together with amendments and supplements thereto and to take action in accordance with the terms of such agreements, contracts and other documents, as may be necessary or desirable in connection therewith; and it is further

**RESOLVED**, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by the General Counsel or her authorized representative.

EXECUTION VERSION  
Subject to the Approval of the GDC and Port Authority Boards of Commissioners

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**SUPPORTING OR EXECUTING PARTNER  
AGREEMENT**

**for**

**CONSTRUCTION SERVICES FOR THE TUNNELING AND HEAVY CIVIL  
WORK FOR THE NEW HUDSON RIVER TUNNEL**

By and between

GATEWAY DEVELOPMENT COMMISSION

and

THE PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY

Dated as of [●], 2023

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## SUPPORTING OR EXECUTING PARTNER AGREEMENT

This Supporting or Executing Partner Agreement (this “**Agreement**”), dated as of [●], 2023 (the “**Effective Date**”), is made by and between:

**GATEWAY DEVELOPMENT COMMISSION**, a public authority and a government sponsored authority by the State of New Jersey and the State of New York (“**GDC**”);

and

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**, a body corporate and politic, created by compact between the States of New York and New Jersey with the consent of Congress (the “**Port Authority**”).

GDC and Port Authority are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires. The Agreement is intended by GDC to constitute a “Supporting or Executing Partner Agreement” under the PDA defined below and GDC considers the Port Authority to be a “SEP” thereunder.

### WHEREAS:

A. To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor (the “**NEC**”), the State of New Jersey (“**New Jersey**”) and the State of New York (“**New York**”) created GDC through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Sess. Laws ch. 108 (McKinney) and N.J.S.A. 32:36-1, et seq.) (collectively, the “**GDC Act**”);

B. The National Railroad Passenger Corporation (“**Amtrak**”) owns and maintains various segments of the NEC rail line that extends between Washington, D.C. and Boston, MA, maintains the segment of the NEC between Washington, D.C. and New York City, and operates intercity passenger rail service over the NEC;

C. Intercity and commuter passenger rail service and infrastructure are vital to the economies of New Jersey and New York;

D. Due to the passage of time and damage caused by natural disasters, existing intercity passenger rail and commuter rail infrastructure, including the existing rail tunnel between New York and New Jersey, are at risk of system failures that could result in prolonged service disruptions that would severely damage the economies of New Jersey, New York, and many other participants in the national economy;

E. New Jersey, New York, Amtrak, and GDC share a common concern to preserve the functionality and strengthen the resiliency of the intercity and commuter passenger rail infrastructure between New Jersey and New York, including passenger rail infrastructure owned, controlled, or utilized by Amtrak, and further, recognize the urgent need to undertake projects necessary to rehabilitate intercity and commuter passenger rail infrastructure under the Hudson River, maintain current levels of intercity and commuter rail service between New York and New Jersey, and provide additional reliability, safety, and security as well as create redundant passenger rail capacity under the Hudson River;

F. Accordingly, on or about February 3, 2023, New Jersey, New York, Amtrak, and GDC (the “**PDA Parties**”) entered into the Project Development Agreement for Hudson Tunnel Project (the “**Project Development Agreement**” or “**PDA**”) in order to establish their respective roles and responsibilities with respect to the funding, financing, right-of-way acquisition, procurement, delivery, and operation of the Hudson Tunnel Project (“**HTP**”);

G. Although not a party to the PDA, the Port Authority expects to render certain financial support to GDC, which support is not the subject of this Agreement and will be separately addressed in documentation required for federal Railroad Rehabilitation and Improvement Financing received by GDC;

H. As further described in the PDA, the delivery of certain work packages of the HTP (the “**HTP Packages**”) may be implemented pursuant to agreements between GDC and certain “Supporting or Executing Partners” as defined in Section 3.02(a) of the PDA (hereinafter “**SEPs**”), which SEPs may include the Port Authority;

I. As part of the HTP, a new two-tube tunnel is to be constructed under the Hudson River (the “**Hudson River Tunnel**”), in order to subsequently facilitate repair of the existing North River Tunnel, and to permanently increase the number of NEC rail tracks under the Hudson River from two (2) to four (4);

J. The PDA requires the PDA Parties (which do not include the Port Authority) to ensure that the HTP meets overall performance goals of: (a) supporting the existing level of service as of the Effective Date of 24 trains per hour (“**TPH**”) during the North River Tunnel rehabilitation, (b) supporting a doubling of peak hour capacity to 48 TPH or more following completion of other infrastructure improvements such as those contemplated in the Gateway Program (as defined in the GDC Act), and (c) supporting the provision of direct NJ TRANSIT service from all NJ TRANSIT rail lines, except for the Atlantic City Rail Line, including compatibility with existing NJ TRANSIT rail equipment and known future capital investments in rolling stock (e.g., multi-level multiple unit rolling stock), and fixed infrastructure (e.g., Gateway loop tracks and associated rail configurations), to the extent that such requirements are not inconsistent with the Final Environmental Impact Statement and Record of Decision from FRA and FTA;

K. By resolution dated [●], 2023, the GDC Board of Commissioners (the “**GDC Board**”) has authorized GDC to enter into a SEP Agreement with Port Authority to provide contractual advisory construction management services, project management support services, project administration services, and field support services (“**CM Services**”), technical assistance and advisory services (“**Advisory Services**”), and certain code compliance and enforcement functions (“**Code Actions**”; together with the CM Services and the Advisory Services, the “**Services**”) associated with the tunneling and heavy civil contracts to build the core and shell of the new Hudson River Tunnel and ground stabilization and improvement work in the Hudson River in accordance with the Final Environmental Impact Statement and Record of Decision (the “**Work**”), which shall be organized into multiple HTP Packages;

L. The Work is currently organized into four related HTP Packages: the Palisades Tunnel, the Manhattan Tunnel, the Hudson River Ground Stabilization, and the Hudson River Tunnel; and

M. GDC and Port Authority now desire to enter into this Agreement in order to establish their roles and responsibilities with respect to the delivery of the Work.

**NOW, THEREFORE**, in consideration of the covenants and conditions herein contained, the Parties hereby agree with each other as follows:

## **ARTICLE I.**

### **DEFINITIONS AND RULES OF INTERPRETATION**

Section 1.01 *Definitions*. Defined terms in this Agreement and in the Appendix hereto, which may be identified by the capitalization of the first letter of each principal word thereof, have the meanings assigned to them in Exhibit A.

Section 1.02 *Rules of Interpretation*.

- (a) In this Agreement, except to the extent that the context otherwise requires:
  - (i) words and phrases not otherwise defined in this Agreement (A) that have well-known technical, insurance, or construction industry meanings shall be construed pursuant to such recognized meanings, and (B) of an accounting or financial nature shall be construed pursuant to generally accepted accounting principles in the United States, in each case considering the context in which such words and phrases are used;
  - (ii) references to any document or agreement, including this Agreement, shall be deemed to include references to such document or agreement as amended, supplemented, or replaced from time to time in accordance with its terms and (where applicable) subject to compliance with the requirements set forth herein and therein;
  - (iii) references to an entity shall include its successors and permitted assigns;
  - (iv) references to time and dates shall be deemed to refer to Eastern Time;
  - (v) reference to any applicable law shall be deemed to include reference to such law as amended or supplemented from time to time;
  - (vi) unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole;
  - (vii) the use herein of the words “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter;
  - (viii) the term “promptly” shall mean as soon as reasonably practicable under the facts and circumstances at the time; and
  - (ix) headings are for convenience only and shall not affect the interpretation of this Agreement.

- (b) The relevant terms of this Agreement shall not be construed against the Party that prepared them, and the Parties waive any law with contrary effect that would otherwise be applicable in connection with the construction and interpretation of this Agreement.

## ARTICLE II.

### DEFINITIONS AND RULES OF INTERPRETATION

Section 2.01 *GDC*. GDC shall be responsible for achieving completion of the Hudson River Tunnel, including the following:

- (a) ultimate responsibility for the delivery of the Work, and more broadly the HTP;
- (b) Oversight (as defined in Section 2.02 of the Services provided by Port Authority);
- (c) securing all necessary funding for the Work, and, more broadly, the HTP;
- (d) chairing the Senior Project Coordinating Committee and Technical Standards Committee;
- (e) identifying with specificity the federal, state, and local codes (“**Applicable Codes**”) to be utilized by the Port Authority in its Code Actions under Article X;
- (f) enforcing and adjudicating code- and standard-related disputes and deviations from the Applicable Code, with the assistance of the Port Authority as provided for under this Agreement;
- (g) development of the Design Standards and Specifications for the Work;
- (h) procurement of all HTP Contractors related to the Work, including any procurement for which the Port Authority is providing assistance in accordance with Section 4.05;
- (i) maintenance of the Executive Project Schedule for the HTP in accordance with Section 5.01 of the PDA;
- (j) maintenance of the overall HTP project budget (“**Project Budget**”) in accordance with Article IX of the PDA;
- (k) project reporting regarding the Work and the HTP necessary to satisfy all applicable federal funding and financing requirements applicable to the HTP;
- (l) in its capacity as HTP project sponsor and NEPA sponsor, ultimate responsibility for all NEPA compliance activities, including mitigation commitments, related to the Work;
- (m) acquisition of permits and third party agreements required for the delivery of the Work;
- (n) procurement of project insurance;
- (o) engagement with labor constituencies and ensuring compliance of HTP Contractors with applicable labor laws;
- (p) overall management of the HTP Risk Register;
- (q) management of HTP document access and control; and
- (r) resolution of HTP Contractor disputes.

As discussed in this Agreement, GDC may request that Port Authority provide technical assistance and advisory services in connection with tasks (e) through (r) above under GDC's direction; however, GDC shall remain ultimately responsible for the Work and each of the matters for which it is assigned responsibility above.

Section 2.02 *Port Authority*. Port Authority shall perform the Services to assist GDC in performing the Work. GDC shall comply with all requirements of the PDA in order to permit the Port Authority to perform its obligations in this Agreement. Subject to the requirements in Article VII, Services shall include, but not be limited to, the following responsibilities and activities associated with the Work:

- (a) Perform CM Services for day-to-day support to GDC in the oversight of construction activities for, and workmanship of, the elements of the Work;
- (b) assist with procurements for the Work and the Delivery Partner, as discussed in Article IV hereof;
- (c) assist with development, monitoring, and coordination of the budget (the "**Work Budget**") and schedule (the "**Work Schedule**") for the Work, as discussed in Article VII hereof (including each of the multiple separate contracts comprising the Work);
- (d) support GDC with monitoring NEPA compliance for the Work, as discussed in Section 8.01 hereof;
- (e) assist GDC with planning requirements for the Work, as further discussed in Section 9.03 (*Risk Register Management*), Section 9.05 (*Project Management Plan*), Section 9.06 (*Force Account*), and Section 9.07 (*Development of Rail Activation/Systems Integration Plan*);
- (f) utilize the methodology provided by GDC for the management and control of documentation associated with the Work, as discussed in Section 9.08 hereof;
- (g) support GDC as requested in coordination with third parties, including NJ TRANSIT and Amtrak to the extent necessary for system integration with other aspects of HTP, including with respect to design and specifications as further discussed in Article VI hereof (which shall not constitute Code Actions), and on activities necessary to interconnect with the other HTP Packages on both termini of the elements of the Work, as further discussed in Section 3.01 and Section 9.07 hereof, in all cases at the direction of GDC;
- (h) as to CM Services, recommend to GDC the certification of milestone completion items when appropriate, to allow prompt payment of the HTP Contractors by GDC upon completion of discrete objectives in accordance with the provisions of the HTP Contract Documents and all applicable federal funding requirements, and in accordance with Section 9.01 and Section 9.04 hereof;
- (i) coordinate its Code Actions with activities of the HTP Contractor's architect/engineer of record in connection with project inspections and certifications as further discussed in Article XII hereof;
- (j) facilitate coordination between the HTP Contractor and GDC for obtaining a certificate of substantial compliance with Applicable Codes or final completion and/or certificate of

partial compliance with Applicable Codes (such certificates hereinafter referred to as “**Certificates of Compliance**”) of the elements of the Work as further discussed in Section 10.01 hereof, and arranging handover of the elements of the Work upon its completion, as further discussed in Article XII hereof;

- (k) conduct scheduled periodic meetings with, and delivery of regular reports to GDC (with copies to the SPCC as and when requested by GDC), Amtrak, NJ TRANSIT, and the HTP Contractors, as appropriate (and as directed by GDC), to report on the progress of the Services and the elements of the Work and provide a forum for discussion of any concerns of such parties, as further discussed in Section 3.06 hereof;
- (l) as to Code Actions, review plans and design documents and construction documentation, as requested by GDC at the completion of 60 percent and 100 percent design level milestones as determined by GDC (to the extent the Port Authority determines such plans and design documents and construction documentation are in compliance with Applicable Codes, such plans and design documents and construction documentation are hereinafter referred to as the “**Compliant Plans**”);
- (m) as to Code Actions, audit portions of the Work upon milestone completion (following certification by the engineer of record for that portion of Work) to ascertain whether that portion of Work complies with Applicable Codes or, if not found to be in compliance, to notify GDC as to the manner in which the Work fails to comply with the Applicable Codes;
- (n) at the request of an HTP Contractor or GDC, upon such entity’s certification that the Work (or a portion thereof) has been completed and if the Port Authority determines it to be in accordance with Applicable Codes and consistent with the Compliant Plans, to issue a Certificate of Compliance to that effect, as further discussed in Article X hereof;
- (o) assist the GDC in interface coordination between packages as may be necessary, including through advice given in the context of participation on the Senior Project Coordinating Committee and Technical Standards Committee;
- (p) provide other technical assistance and advisory services that are mutually agreed upon between the Parties as may from time to time be required to support GDC in the Work; and
- (q) coordinate and cooperate with any designer or engineer whose work has been procured with respect to the Work as designated by GDC (the “**HTP Designer**”) at the direction of GDC, in the HTP Designer’s roles in connection with the Work.

In its performance of the Services, Port Authority will report to GDC and take day-to-day direction from GDC (“**Oversight**”). GDC may at any time, in its sole and absolute discretion, overrule a Port Authority decision or determination relating to the Work, or rescind any delegation of authority to Port Authority under this Agreement; *provided* however, that overruling a determination of the Port Authority regarding Applicable Codes under sections (l), (m) or (n) above or in Article X will constitute a deviation from the Applicable Code and GDC shall have full responsibility for permitting such deviation from the Applicable Code pursuant to the PDA. All such decisions regarding deviations from the Applicable Code shall be documented and approved by GDC in accordance with the PDA.

Section 2.03 *Detailed Division of Responsibilities.* To the extent not specifically stated in this Agreement, and prior to the adoption of any Market Case Estimate, the Parties will develop a detailed and specific scope of services delineating the interaction between overall programmatic functions performed by the GDC and project level functions as assigned to the Port Authority in Section 2.02 hereof and to clarify the roles and responsibilities of the Parties and other stakeholders and to avoid functional overlap. To perform these functions, as documented in this Agreement, GDC and the Port Authority may each rely on the DP (as defined herein) as required. GDC will work with the Port Authority to ensure that task orders developed by GDC for program-level functions, and task orders developed by Port Authority for project-specific functions are consistent in their approach and adequately match the specific scope of services contemplated to be assigned to the Port Authority, with staffing plans and budgets revised from time to time accordingly.

### ARTICLE III.

#### INTERFACE COORDINATION

Section 3.01 *Interface Coordination.* The Parties acknowledge that HTP is a multi-package, complex engineering and construction project which requires significant interface between packages for successful delivery and completion. Port Authority, in its performance of Services, will participate in, and coordinate closely with, GDC's other SEPs through the Senior Project Coordinating Committee and the Technical Standards Committee, and otherwise assist GDC in supporting interface coordination between the Work and other HTP Packages. The Port Authority and GDC agree that the Port Authority will not provide any of the Services in connection with any other HTP Package except as specifically required herein or otherwise agreed to between the Parties in writing.

Section 3.02 *Senior Project Coordinating Committee.*

- (a) *SPCC Membership.* Port Authority will participate in the Senior Project Coordinating Committee ("SPCC") established under the PDA to coordinate parties engaged in the Work and other stakeholders with respect to the HTP Packages as directed by GDC to assist GDC in effectuating the Work; provided that the Port Authority's participation will be limited to matters related to completion of the Work and any interface coordination with the HTP related to the Work. If requested to do so by GDC, the Port Authority will provide such information as the SPCC may reasonably request regarding the status of Code Actions.
- (b) *The Port Authority SPCC Representative.* Within thirty (30) days of the Effective Date, Port Authority shall designate one (1) executive level representative to the SPCC (the "**Port Authority SPCC Representative**"). The Port Authority SPCC Representative (or designated Alternative Representative) shall attend all meetings of the SPCC and participate, as Port Authority deems appropriate, in the deliberations of the SPCC as described in subsection (a).

Section 3.03 *Technical Standards Committee.*

- (a) *Membership.* Port Authority agrees to participate in the Technical Standards Committee ("TSC") established under the PDA to facilitate the resolution of technical issues among the parties engaged in the Work and other stakeholders with respect to the HTP Packages as directed by GDC to assist GDC in effectuating the Work; provided that the Port Authority's participation will be limited to matters related to completion of the Work and

shall not include making determinations as to Applicable Codes or deviations therefrom (although, in rendering CM Services or Advisory Services, the Port Authority may assist GDC in the consideration of such matters by the TSC).

- (b) *Port Authority TSC Representative.* Within thirty (30) days of the Effective Date, Port Authority shall designate one (1) representative to the TSC and one (1) non-voting alternate representative who shall have the full powers of the TSC representative in the event the representative is unavailable (together the “**Port Authority TSC Representative**”). The Port Authority TSC Representative shall attend all meetings of the TSC and participate, as Port Authority deems appropriate, in the deliberations of the TSC as described in subsection (a).

Section 3.04 *Delivery Partner.* To the extent Port Authority requires additional staff or services to augment its staff, the Port Authority shall utilize the GDC’s delivery partner or GDC’s otherwise designated program management (“**DP**”) consultant to, at Port Authority’s direction, staff its performance of the Services, as Port Authority deems appropriate, and to assist the Port Authority in interface coordination between the Work and other packages of the project and to provide other services using a platform that is common and consistent among the GDC and all SEPs, as further discussed in Section 4.04 herein. All costs and expenses of the DP will be paid by GDC under its arrangements with the DP and the Port Authority will have no obligation for such costs and expenses. Subject to the requirements of Section 4.04 herein, staffing plans for the DP’s support of the Port Authority’s performance of the Work shall be submitted in advance by DP for review and approval by Port Authority and GDC, and the DP staff so provided shall perform tasks directed by the Port Authority in furtherance of the Services. The Parties acknowledge that the services performed by the DP staff under this Section 3.04 will be functionally separate from work on the HTP performed for GDC (and under its direction) by the DP (including work awarded to the DP).

Section 3.05 *Port Authority Integrity Obligations.* The GDC Inspector General will have chief responsibility for providing objective oversight to promote the economy, efficiency, effectiveness, and integrity of the Services and the Work, including performance by the DP staff. The Port Authority Inspector General will be authorized to review the integrity of the performance of the Work by the Port Authority employees and any contractors engaged directly by Port Authority in accordance with Section 4.05. The Port Authority will coordinate its oversight of Port Authority related to the Work with the GDC Inspector General in accordance with the GDC Act and GDC Bylaws. For the avoidance of doubt, the Port Authority Inspector General will not have oversight over the Work Contractors.

Section 3.06 *Meetings.* Port Authority agrees to comply with reasonable requests from GDC to attend GDC Board meetings, advisory board meetings, committee meetings, conferences, or other meetings as reasonable and necessary to support the Work, as well as the interface between the Work and other HTP Packages.

## ARTICLE IV.

### PROCUREMENT

Section 4.01 *Contracts for the Work.* GDC will be responsible for procurement of all third-party services related to the Work or that are otherwise necessary to facilitate the Work, including those

of construction contractors, design-build contractors, engineers, and consultants, as applicable (each a “**Work Contractor**”, and collectively the “**Work Contractors**”).

Section 4.02 *Procurement Documents.*

- (a) The Port Authority shall advise GDC in the substantive preparation of Procurement Documents that are reasonably likely to result in bids or proposals which will further the Work. The Port Authority agrees to promptly provide its comments within the reasonable time period as set forth by GDC or the HTP Contracts, as applicable. The purpose of the Port Authority review is to effectuate the Work, including any interface coordination of the Work with the HTP, and no other functional review of the Procurement Documents is required (i.e., by Port Authority legal counsel or engineering department).
- (b) GDC shall respond to and address any comments to its draft Procurement Documents provided by Port Authority as it believes appropriate; provided that GDC shall have final approval authority over the terms and conditions of GDC’s Procurement Documents, including, for the avoidance of doubt, any forms of agreement incorporated therein.

Section 4.03 *Evaluation.*

- (a) The Port Authority will be invited to, and shall participate as Port Authority deems appropriate, the evaluation of respondents to procurements for the Work. The Port Authority will name an evaluation panel participant having requisite expertise related to the procurement for the Work. Port Authority acknowledges and agrees that all evaluation panel participants will be required to comply with any required or customary rules and procedures governing the confidentiality and the integrity of the bid process with respect to procurement of the Work Contractors, and such personnel may be required, as a condition of participation, to execute non-disclosure agreements and other documents as GDC may reasonably require reflecting the same.
- (b) Procurement materials relevant to the proposal evaluation shall be timely shared by GDC with applicable evaluators, subject to the confidentiality requirements discussed in Section 4.03(a) and Section 11.03 herein, through a platform determined by GDC.

Section 4.04 *Delivery Partner.*

- (a) The Port Authority will be invited to, and shall participate as Port Authority deems appropriate, on the evaluation panel in connection with GDC’s procurement of the DP, which shall be conducted in accordance with the requirements for HTP procurements set forth in Section 6.02 of the PDA, which include providing additional services to GDC for the delivery of the HTP to augment the resources provided by the PDA Parties responsible for the delivery of each applicable work package for the HTP.
- (b) Prior to GDC’s award of the contract for the DP, Port Authority will consult with GDC on foreseeable use of the DP in connection with the Port Authority’s performance of the Services (without limiting the Port Authority’s ability to request DP resources in the future if the Services so require).
- (c) In the event the Port Authority desires to utilize DP resources in performing Services, it will first obtain approval from GDC on the scope and cost of such resources; provided, however, to the extent GDC does not approve such utilization, the Port Authority’s Services

will be deemed revised to reflect the fact that such resources are not available. In the event GDC approves the use of DP resources to Port Authority, those DP resources shall be under the sole direction of Port Authority (and not the DP) for the term approved by GDC. Staffing plans for the DP's support of the Port Authority's performance of the Work shall be submitted for review and approval by Port Authority.

- (d) After the DP contract has been awarded and executed, Port Authority may develop additional draft task orders or modifications to existing task orders related to the Work, which draft task orders or modifications to existing task orders shall be subject to GDC's review and approval. Once GDC approves the draft task order or task order modification, Port Authority will negotiate the task order or modification with the DP and recommend approval and execution by GDC.

Section 4.05 *Contract Awards*. GDC shall award and enter into all contracts for the Work (the "**Work Contracts**"). Upon selection of the applicable Work Contractors, GDC shall execute all applicable contract documents (collectively, the "**Work Contract Documents**") and the Port Authority will not procure or enter into any contracts for the Work without GDC's prior written approval in accordance with GDC's obligations under the PDA.

## ARTICLE V.

### THIRD PARTY AGREEMENTS; RIGHTS-OF-WAY

Section 5.01 *Third Party Agreements*. The Port Authority will not enter into any third party agreements, including right-of-way and real property agreements or utility agreements, for the Work without GDC's prior written approval in accordance with GDC's obligations under the PDA.

Section 5.02 *Right-of-Way and Real Property Interest Acquisition*.

- (a) *Acquisition*. GDC shall be responsible for ensuring that all necessary surface and subsurface property required for the investigation of conditions for construction, and operations, construction, and maintenance of the Hudson River Tunnel are acquired and available to the Port Authority in order to perform the Services.
- (b) *Port Authority Access to Third Party Parcels*. If, in connection with its performance of the Services, Port Authority desires to enter upon parcels owned or controlled by a third-party with whom GDC has an access agreement in place (each an "**Access Agreement**"), Port Authority must comply with requirements of the Access Agreement and execute a "Temporary Permit to Enter Upon Property" or "Temporary Access Permit" ("**PTE**") to access the property. Port Authority has reviewed the forms of PTEs attached hereto as Exhibit B, and the access rights necessary for Port Authority's performance of the Services, and has determined them to be acceptable. The Port Authority will not be required to incur costs and expenses in connection with obtaining such rights of way or other property interests described in this Section.

Section 5.03 *Utilities*. Port Authority will, without incurring costs or expenses, assist GDC in coordinating with utility companies, regulators, and others having access to the properties where the Work is situated to coordinate the Work.

**ARTICLE VI.**  
**DESIGN AND CONSTRUCTION**

Section 6.01 *Design.*

(a) *Design Standards and Specifications for the Work.*

- (i) GDC will develop the Applicable Codes and all other specifications and standards it deems desirable in connection with the Work Contracts (“**Design Standards and Specifications for the Work**”) in accordance with its obligations in the PDA and will provide the same to the Port Authority as they are developed. If requested by GDC, the Port Authority will assist GDC to enable the Design Standards and Specifications for the Work to be developed in such a manner that the Work can be constructed in an efficient, safe, and cost-effective manner (with determinations as to Applicable Codes remaining the sole responsibility of GDC).
- (ii) GDC has the responsibility to ensure that certain submittals specified in the PDA are shared for review with the PDA Parties and others as specified in the PDA, and are appropriately adjudicated and the Port Authority is not responsible to ensuring that Design Standards and Specifications for the Work are developed under the PDA; however, the Port Authority will assist the GDC in performance of GDC’s obligations from time to time, as requested by GDC.
- (iii) Through CM Services, Port Authority will assist GDC’s efforts to ensure that the Work meets the minimum standards set forth in the Design Standards and Specifications for the Work and will also assist GDC’s efforts to ensure that there are no deviations from the Design Standards and Specifications for the Work, but all Port Authority determinations relating to Applicable Codes shall be made solely in accordance with Article X. Any deviation from the Design Standards and Specifications for the Work requires the written approval of GDC, as may be memorialized by the GDC CEO, the TSC, or the GDC Board of Commissioners, as specified in the PDA. The GDC CEO will be responsible for interpreting the requirements of the PDA, and Port Authority will defer to that interpretation, *provided* that determinations related to Applicable Codes which deviate from the Port Authority’s determination will be determined to be a deviation of the relevant Applicable Codes and GDC shall have full responsibility for making any such deviation decision. Port Authority agrees to assist the GDC in implementing the determinations of the GDC CEO, the TSC, or the GDC Board of Commissioners (but such assistance will not affect its Code Actions, which shall be performed independently from the CM Services). Notwithstanding the foregoing, to the extent the TSC’s approval of a Design Standards and Specifications for the Work document allows for flexibility in decision-making, (*e.g.*, use of the term “up to” or no specified term), Port Authority is authorized (through CM Services) to make determinations for this class of deviations from the Design Standards and Specifications for the Work, which are immaterial and addressable in the field, provided that Port Authority issues prompt notice of the determination to the GDC CEO or his or her designee, subject to the Submittal review requirements contemplated in the PDA, to the extent a Submittal is required; *provided* that such

determinations shall not constitute a decision on compliance with Applicable Codes, which will only be made in accordance with Article X.

- (iv) In performing the Services, Port Authority will endeavor to identify areas that support GDC's goal of reducing time and cost to construct, ensuring a safe work environment, and adhering to the highest quality standards, and will share those findings and recommendations with GDC from time-to-time, as may be appropriate. In addition, Port Authority will assist GDC in evaluating alternative technical concepts or other value engineering concepts presented.

Section 6.02 *Coordination with Executive Project Scheduling.* GDC shall control and maintain the Executive Project Schedule for the HTP. Port Authority, on behalf of and in consultation with GDC, will develop and maintain the project schedule for the Work (the "**Work Schedule**"), subject to GDC oversight. Both the form of the Work Schedule and the inputs to same are subject to approval by GDC. The Port Authority will provide GDC with at least monthly updates on the Work Schedule to enable GDC to oversee coordination with the Executive Project Schedule.

Section 6.03. *Labor Relations.* GDC shall be responsible for engaging with labor constituencies and ensuring compliance with applicable labor laws, in accordance with Section 4.01(a) of the PDA. Port Authority agrees to support GDC with enforcing project labor requirements that are included in the Design Standards and Specifications for the Work or Work Contract Documents where and as applicable.

Section 6.04. *Insurance.* GDC will be responsible for procuring project insurance based on GDC's established criteria for the HTP insurance program (the "**HTP Insurance Program**"). If GDC cannot insure Port Authority employees, Port Authority will pay for its own insurance. To the extent that Port Authority needs to procure separate insurance in connection with the Services, Port Authority's expenditures will be considered an incremental cost that will be billed to GDC under this Agreement. The procurement of insurance pursuant to this Section 6.04 will be made in accordance with the provisions of Article IV.

## **ARTICLE VII.**

### **COMPENSATION AND BUDGET**

Section 7.01 *Market Case Estimate.* Section 11.04(a) of the PDA requires that GDC establish a Market Case Estimate for each HTP Package. Because the Work includes multiple HTP Packages, GDC and Port Authority acknowledge that the Market Case Estimate for each HTP Package that composes the Work cannot be determined until all procurements related to the delivery of the applicable HTP Package for the Work is finalized and all final negotiated costs and contingencies are determined. The Port Authority will provide assistance to GDC in its development of each Market Case Estimate for the Work, including but not limited to, providing GDC with non-binding forecast information, based on the facts and assumptions made at the time of delivery, on the Port Authority's staffing plan and budget for the Services as necessary to complete the overall Market Case Estimate. Barring unforeseen circumstances, Port Authority shall endeavor that the Services provided are within the Market Case Estimate; provided that if the Parties determine that the Services cannot be provided within the Market Case Estimate, the Parties may agree either that GDC request an amendment to the Market Case Estimate providing for necessary budget to accommodate the Services or agree that the Services will be deemed reduced concomitantly. GDC

staff will present the Market Case Estimates, and any subsequent amendments thereto, to the GDC Board for approval. Upon GDC Board approval, Port Authority will agree to use its reasonable efforts to provide construction management services to GDC and enable GDC to oversee the Work in accordance with the Market Case Estimates.

*Section 7.02 Port Authority Staffing Plan and Budget.*

- (a) Port Authority will develop a staffing plan and organizational chart to provide the Services and support the Work. With regard to project lead, deputy lead, and other senior leadership positions for the Work (the “**Senior Roles**”), Port Authority will recommend candidates for the Senior Roles who will be subject to GDC’s approval, which will not be unreasonably withheld. Any replacement personnel for Senior Roles will also be recommended by Port Authority and subject to approval by GDC, which approval will not be unreasonably withheld.
- (b) Ninety (90) days prior to the start of each federal fiscal year, Port Authority will transmit to GDC for approval a staffing plan and budget identifying: (i) the individuals that will provide support under this Agreement; (ii) each individual’s title and hourly rate; (iii) anticipated out-of-pocket costs to be incurred by Port Authority as required for performance under this Agreement; and (iv) anticipated hours and total costs for the year (the “**Port Authority Staffing Plan and Budget**”). The Port Authority Staffing Plan and Budget will be subject to GDC review and approval by the GDC CEO or his or her designee, and, upon such approval, all costs under the Port Authority Staffing Plan and Budget will be not to exceed costs unless otherwise approved by the GDC CEO or his or her designee; provided, however, that if approval is not granted, the Services will be deemed reduced concomitantly and the Port Authority will not be obligated to provide Services without being fully compensated therefor.
- (c) Throughout each federal fiscal year, Port Authority will promptly disclose to GDC any anticipated deviations from the Port Authority Staffing Plan and Budget as soon as they are reasonably anticipated or identified including, but not limited to, salary adjustments that result in modified hourly rate, or changes in personnel which, however, shall be reported to GDC at least once annually to coincide with agency-wide salary planning practices.
- (d) For the first federal fiscal year commencing October 1, 2023, and until the detailed scope of services contemplated in Section 2.03 is developed (to the extent required), Port Authority will provide a quarterly Port Authority Staffing Plan and Budget.

*Section 7.03 Compensation.*

- (a) GDC will compensate Port Authority for the Services, which compensation will include:
  - (i) Direct costs incurred by Port Authority as required for performance under this Agreement, inclusive of but not limited to office space required for performance of the Work (including Port Authority’s adjunct office space for Major Capital Projects), provided that any costs for expenses not expressly included in the Port Authority Staffing Plan and Budget must be pre-approved in writing by GDC in order for Port Authority to receive reimbursement for such costs. For the avoidance of doubt, the Port Authority must obtain GDC’s express written approval to enter into any purchase

or lease agreement for office space related to the Services in accordance with Section 4.05 hereof;

- (ii) The reasonable time-based costs under the Port Authority Staffing Plan and Budget, as it is from time to time amended (subject to supporting documentation); and
  - (iii) An allocation for Port Authority's overhead, including general and administrative costs, engineering general costs and allocated employer-provided fringe benefits, in conformity with the federally "approved indirect cost rates."
- (b) Port Authority will invoice GDC for the Services on a quarterly basis in a format approved by GDC, and GDC shall pay such invoices within ninety (90) days.
  - (c) Port Authority will provide GDC with supporting records and data necessary for GDC to secure reimbursement from federal and other funding sources of any payments made to Port Authority for providing the Services.

#### Section 7.04 *Budgeting.*

- (a) GDC shall develop and maintain the Project Budget for the HTP in accordance with Section 9.1 of the PDA.
- (b) As part of the Services, Port Authority shall assist GDC in GDC's efforts to develop and maintain GDC's budget for the Work (the "**Work Budget**") in accordance with and in conformity with the applicable Market Case Estimates once approved by GDC. Both the form of the budget and the inputs are subject to approval by GDC. Port Authority will provide GDC with at least monthly updates on the Work Budget to enable GDC to work to maintain the Project Budget.
- (c) Port Authority shall maintain the Work Budget within the FTA's Standard Cost Categories ("**SCC**"). Once established, any modifications to SCC line items shall be subject to GDC's prior written approval. Port Authority will be authorized, within the parameters of the Market Case Estimates, to use supplemental SCC line items, and to reallocate funds (other than contingency funds) between line items.
- (d) Port Authority will notify GDC regarding any anticipated material deviations from the Work Budget as soon as they are reasonably anticipated or identified.

#### Section 7.05 *Change orders.*

- (a) Acting as a service provider to GDC, Port Authority will act as GDC's representative in interfacing with all Work Contractors engaged on the Work. In such role, Port Authority will assist in evaluating, negotiating, and recommending for GDC's review and decision any change orders, post-award contract changes, post-award field items, equitable adjustments, and claims (collectively "**Change Orders**") for the Work. All Change Orders will require GDC approval as GDC will be the contracting party on all Work Contracts.
- (b) Notwithstanding the foregoing, GDC will execute a Change Order recommended by Port Authority without further review after Port Authority has evaluated, negotiated, and recommended the Change Order where the following conditions are met: (i) the proposed Change Order does not exceed \$500,000 and, along with any other approved Change Orders for the specific construction package, would not create a Cost Impact greater than

one (1) percent of the contract value as expressed in the Market Case Estimate in the aggregate for that calendar year; (ii) the Change Order would not alter the character of the Work (for purposes of illustration, changes to the character of the Work would include but not be limited to (A) modifications to the accepted Design Standards and Specifications for the Work, (B) deviations that require further environmental evaluation or reevaluation of the HTP, and (C) changes that impact existing or planned rights of way or operations); (iii) the Change Order would not have a schedule impact on the Work of sixty (60) days or more; and (iv) the Change Order would not require an amendment to the Market Case Estimate. Any proposed change order that does not meet the foregoing criteria will be subject to review and approval by GDC.

Section 7.06 *Cost and Schedule Impacts*. Upon occurrence of any event or circumstance that results in a Cost Impact, Port Authority shall immediately notify GDC in writing of the Cost Impact, and such notice shall include advice on steps that could be taken to overcome or mitigate the increased cost. After providing the initial notification to GDC, Port Authority shall provide written updates on the Cost Impact to GDC every thirty (30) days. As soon as Port Authority actually becomes aware of the cost of the Cost Impact it will provide GDC with a written summary of the known or estimated Cost Impact, which shall include a full accounting of the Cost Impact, including any schedule impacts and the efforts taken to overcome or mitigate the cost and schedule impacts.

## ARTICLE VIII.

### ENVIRONMENTAL COMPLIANCE; PERMITTING

#### Section 8.01 *NEPA*.

- (a) GDC, in its capacity as HTP project sponsor and NEPA sponsor, shall be responsible for all NEPA compliance activities related to the Work in accordance with Section 8.01 of the PDA, which includes: ensuring conformance of the HTP, including all required mitigations, with NEPA Approvals, and shall seek technical or other amendments to the NEPA Approvals, in each case as required to support delivery of the HTP. For the purposes of this Agreement, “**NEPA Approvals**” shall mean the final approval(s) issued under NEPA pertaining to the HTP, including the Final Environmental Impact Statement and Record of Decision (the “**ROD**”) from FRA and FTA, and all approved supplements and reevaluations pertaining to the HTP, all NEPA documents, including technical memoranda required to be submitted to FRA and FTA under NEPA, and compliance with the National Historic Preservation Act Section 106 Programmatic Agreement and all related environmental compliance documents. Any proposed material deviations from the NEPA Approvals must be reviewed and approved by GDC.
- (b) GDC shall require the applicable Work Contractors, and any other contractors performing work on its behalf, to comply with all NEPA requirements and mitigations set forth in the Work Contract Documents, including all applicable federal, state, and local laws, regulations, and requirements, including NEPA, the Coastal Zone Management Act, 49 U.S.C. § 303, and the National Historic Preservation Act, as may be further described in the ROD.

- (c) Port Authority will support GDC with monitoring NEPA compliance for the Work, including compliance by Work Contractors. Port Authority will comply with NEPA requirements and enforce such requirements with Contractors.
- (d) Port Authority will immediately inform GDC of any changes or proposed changes regarding NEPA compliance for GDC's review and approval.

Section 8.02 *Permits.*

- (a) GDC has developed a comprehensive list of permits, licenses, and approvals required for the delivery of the Work (the "**Work Permits**"), as well as the party responsible for obtaining, paying for (including all applicable filing fees), and maintaining the Work Permits. Port Authority will assist GDC by tracking the progress of all Work Permit applications through a permit tracking and management tool. GDC intends to develop a tool for tracking permits across the HTP, and will make such tool available to Port Authority. The status of pending Work Permit applications shall be reviewed with the SPCC by GDC, assisted by the Port Authority, if requested.
- (b) All Work Contract Documents between GDC and its construction contractors shall require, to the extent applicable to such Work Contractor's scope of work, that such Work Contractor comply with all applicable Work Permits. The Port Authority shall monitor and track such compliance on behalf of GDC pursuant to the terms of the applicable Work Contract Documents to assist GDC in taking action to assure that its contractors remain in compliance.
- (c) Port Authority agrees to engage in advance consultation with GDC in connection with any Work Permits required for the Work that have requirements that would be reasonably anticipated to impact future HTP Packages, and otherwise regularly update GDC through the SPCC in connection with all permits being sought. For the avoidance of doubt, Port Authority shall notify GDC of any permit application of which the Port Authority becomes aware that it believes will materially impact GDC's ability to proceed with any other HTP Package but will not be responsible for obtaining those permits.
- (d) Action by the Port Authority under this Section 8.02 shall not constitute Code Action.

**ARTICLE IX.**

**PROJECT REPORTING AND CONTROLS**

Section 9.01 *Reporting.*

- (a) GDC is responsible for the preparation of the reports necessary to satisfy all federal funding and financing requirements applicable to the HTP, including the Work. Port Authority agrees to provide all information regarding the Work in the format prescribed by GDC that is required for any such reports, including any inputs related to the Work that are required for GDC to develop, compile, and submit such reports.
- (b) Port Authority shall regularly provide information and updates to GDC on the progress of the Work in accordance with terms of this Agreement and shall promptly respond to all GDC requests for such information in the format prescribed by GDC.

Section 9.02 *Audit and Record Retention.* Port Authority shall maintain books and records related to the Services in accordance with the GDC Record Retention Policy, and shall permit the authorized representatives of GDC, the USDOT, FRA, FTA, the inspector generals of GDC and Amtrak, the Comptroller General of the United States or its designee, and all relevant federal and state governmental agencies to inspect and audit Port Authority's data, books, records, and documents relating to its obligations under this Agreement. Port Authority shall preserve and retain all books and records related to the Services for a period of time equal to the longer of (a) the longest period of time required for retention of the books and records under applicable law, or (b) the resolution of any litigation or disputes related to the Work of which the Port Authority has been notified in accordance with Section 18.02.

Section 9.03 *Risk Register Management.* Pursuant to Section 10.01(d) of the PDA, GDC will manage the risk register for the HTP, including the Work. Port Authority will support GDC by attending risk register management meetings and reviewing the risk register in order to identify and assess risks associated with the Work.

Section 9.04 *Federally Required Project Plans.* GDC shall draft and submit all plans required to be submitted to FTA, FRA, or any other applicable federal agency providing funding or financing for the HTP. Port Authority shall regularly provide information and updates to GDC on the progress of the Work in accordance with terms of this Agreement to facilitate GDC's drafting and submission of such plans.

Section 9.05 *Project Management Plan.* GDC shall develop the project management plan ("PMP") in consultation with the other PDA Parties as coordinated through the SPCC. The PMP shall set forth reporting, scheduling, and production obligations applicable to the PDA Parties, including with respect to HTP budgeting as described, and the maintenance of records and development of reports. The Services to be provided by Port Authority hereunder shall be made part of the PMP by GDC. The PMP will not expand the scope of the CM Services authorized in this agreement without the explicit consent of the Port Authority. In addition, in the event of any conflict between this Agreement and the PMP, this Agreement shall govern.

Section 9.06 *Force Account.* In accordance with Section 5.02(b) of the PDA, for each federal fiscal year, GDC shall develop an annual force account resources plan prior to the start of federal fiscal year in coordination with the parties that are providing force account or requesting force account work (the "**Force Account Resources Plan**") in accordance with the applicable Work Contracts. Port Authority shall cooperate with GDC in the development of the Force Account Resources Plan and the utilization of NJ TRANSIT and Amtrak force account resources, as applicable.

Section 9.07 *Development of a Rail Activation Plan/Systems Integration Plan.* Amtrak shall develop, in coordination with GDC and any users and operators of the HTP (e.g., NJ TRANSIT), a meaningful draft of the rail activation and systems integration plan, including without limitation a training plan for personnel, (the "**Rail Activation Plan**") and any other plans necessary to commence rail service, including a dynamic testing plan that shall account for the fleets of users and operators of the HTP (e.g., NJ TRANSIT). GDC will require that the Rail Activation Plan inform the development of each HTP Package as needed. GDC anticipates that the Rail Activation Plan shall be finalized no later than twelve (12) months prior to the operation of the new Hudson River Tunnel. At the direction of GDC, Port Authority shall assist GDC in preparation of the Rail Activation Plan as it relates to the Work.

Section 9.08 *Document Access and Control.*

- (a) GDC shall have responsibility for document access and control, pursuant to Section 10.01(b) of the PDA. GDC is in the process of developing a protocol for the management and control of HTP documentation in order to provide a consistent approach for all HTP Packages.
- (b) Without limiting the foregoing, pursuant to the protocol that will be established by GDC, GDC will specify to Port Authority the methodology for the management and control of documentation associated with the Work. The Port Authority will comply with GDC's document control methodology and will timely provide GDC with any document required to be provided thereunder; provided that to the extent it deviates from the Port Authority's own protocols for document management, the Port Authority Staffing Plan and Budget shall be adjusted accordingly.

**ARTICLE X.**

**CODE COMPLIANCE AND ENFORCEMENT**

Section 10.01 *Code Compliance.* As to Code Actions, the Port Authority will perform audit and enforcement duties under the Applicable Codes for the Work in the manner prescribed for code enforcement officials and construction officials set forth under the uniform building codes of the New York (19 NYCRR Chapter XXXII) and New Jersey (N.J.A.C. 5:23) (and if in conflict, as directed by GDC in accordance with one such code). To the extent the Work (or portion thereof) is completed in accordance with Applicable Codes and Compliant Plans to the satisfaction of the Port Authority, it shall issue a Certificate of Compliance for the Work (or relevant portion thereof). The Port Authority's Code Actions shall be limited to:

- (a) The PANYNJ Code Actions Services will not be performed for the Hudson River Ground Stabilization project.
- (b) Review of (i) plans and design documentation prepared by GDC or its contractors when GDC notifies Port Authority and requests such a review as determined by GDC (e.g., at the 60 percent and 100 percent design levels), and (ii) certain engineering design and construction submittal packages prepared by GDC or its contractors for compliance with Applicable Codes within no less than ten days, to maintain project schedule. Within the specified period, Port Authority's Engineering Department shall respond to GDC that the submitted plans, design documentation, engineering design, and construction submittal packages comply with Applicable Codes, specifying additional information required to make the determination, or determining that the plans, design documentation, engineering design, and construction submittal packages do not comply with Applicable Codes and specifying the reasons therefor.
- (c) Audit of the elements of the Work for compliance with Applicable Codes and conformity to Compliant Plans.
- (d) When GDC or the HTP Contractor provides the Engineer of Record's certification as to compliance with Applicable Codes and conformity with Compliant Plans for the Work (or a portion thereof), and upon the Port Authority's satisfaction that the Work complies with the Applicable Codes and conforms to the Compliant Plans, issue, as applicable, a

Certificate of Substantial Compliance (so long as the structure may be safely utilized) and of Final Compliance (when the Applicable Codes are fully complied with in accordance with their terms).

- (e) All disputes related to Applicable Codes will be referred to GDC for determination in accordance with the PDA requirements. If adjudication of a dispute results in the granting of a deviation from the Applicable Code, the deviation from the Applicable Code shall be documented and approved by GDC and thereafter, in its Code Actions, the Port Authority will give effect to such deviation from the Applicable Code.

## ARTICLE XI.

### PUBLIC DISCLOSURE AND CONFIDENTIALITY

Section 11.01 *Public Disclosure Laws*. GDC and Port Authority are subject to specific public records laws and policies. Each Party shall give the other Party reasonable notice if it receives a public disclosure request for GDC documents or documents related to the Services, the Work, or this Agreement as promptly as possible to permit the other Party to object to production of any material before a court of competent jurisdiction in advance of its production. GDC and Port Authority acknowledge that infrastructure security, proprietary commercial data, certain procurement documentation, and other related project documents may necessitate confidentiality agreements between the Parties and their personnel in order to access such materials.

Section 11.02 *Data Protection*. GDC and Port Authority are subject to specific data protection laws and policies. GDC and Port Authority shall cooperate to ensure that GDC and Port Authority meet their obligations under such applicable data protection laws and policies.

Section 11.03 *Confidential Information*. Each Party will protect all confidential, proprietary, or sensitive information related to the Work (the “**GDC Confidential Information**”) from disclosure unless authorized to disclose in writing by the other Party, and will not use such information for any purpose other than the Work. Each Party shall promptly return to the other Party any Confidential Information upon the other Party’s request. Nothing herein shall require a Party to act in contravention of applicable laws or policies.

## ARTICLE XII.

### TRANSFER

Section 12.01 *Testing Generally*. GDC and Port Authority agree that, in accordance with Section 14.02(c) of the PDA, GDC and Port Authority shall coordinate, and the PDA Parties shall be permitted to witness any testing of the Work with the applicable Work Contractor(s), the results of which shall be subject to the approval of Amtrak and, to the extent applicable, NJ TRANSIT.

Section 12.02 *Final Testing*. GDC and Port Authority agree that, in accordance with Section 14.02(d) of the PDA, Amtrak shall perform any final testing of the Work in coordination with GDC, NJ TRANSIT, and any known users and operators of the HTP according to (i) the schedule specified by GDC and NJ TRANSIT, and (ii) the Force Account Resources Plan for the applicable year.

Section 12.03 *Required Record Deliverables Provided to Amtrak*. GDC and Port Authority agree that, in accordance with Section 14.02(j) of the PDA, GDC and Port Authority shall enforce the

requirements set forth in the applicable Work Contract Documents with respect to the Work Contractor's satisfaction of the provision of record deliverables, including final as-built plans, to Amtrak in the form necessary to support Amtrak's operations in accordance with the Work Contract Documents, subject to review by Amtrak.

Section 12.04 *Contract Closeout*. The Port Authority will assist GDC in closing out all HTP Contracts related to the Work (which Services will not be Code Actions).

### ARTICLE XIII.

#### PROTECTION AGAINST UNPLANNED COSTS AND EXPENSES

Section 13.01 *Duty of the Port Authority* It is the understanding of the Parties that the Port Authority is acting hereunder at GDC's direction and for its benefit during the Term of this Agreement and is not obligated to perform hereunder on behalf of any other party. The Port Authority will use reasonable efforts in good faith to complete the tasks set forth herein as and when requested by GDC. To the extent that the Port Authority completes its obligations hereunder in a manner that does not involve intentional wrongdoing ("**Standard of Care**"), then GDC agrees that any costs, expenses, losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees (collectively "**Unplanned Costs**") claimed, incurred or imposed upon the Port Authority or any of its representatives (including its commissioners, employees, agents, successors and permitted assigns) shall be paid by GDC on behalf of, or promptly reimbursed to, the Port Authority, including any Unplanned Costs arising from (i) failure by GDC to obtain the right to use any intellectual property of any other party in connection with the Work or (ii) environmental matters arising out of the Work. Any amounts paid to the Port Authority under this Section 13.01 shall be in addition to compensation and other payments due pursuant to the terms of this Agreement, including Article VII. If the GDC asserts that the Port Authority breached the Standard of Care, no acts or omissions of the Port Authority shall be deemed to have breached the Standard of Care until a final decision to that effect by an Arbitration Panel as set forth in Section 14.01 or 14.03, as applicable.

Section 13.02 *Indemnification of GDC*. To the extent the Port Authority causes Unplanned Costs to be incurred by GDC as a result of Port Authority's acts or omissions which breach the Standard of Care (determined as set forth in Section 13.01), including claims of other parties asserted against GDC, the Port Authority shall indemnify, hold harmless, and defend GDC and its commissioners, employees, agents, successors, and permitted assigns, the States of New York and New Jersey, and Amtrak (as other parties asserting claims through GDC) (collectively, "**GDC Indemnified Parties**"), against any and all Unplanned Costs to the extent incurred by a GDC Indemnified Party.

### ARTICLE XIV.

#### DISPUTE RESOLUTION

Section 14.01 *Dispute Resolution Procedures*. Port Authority and GDC hereby agree that the dispute resolution procedures set forth in Article XV of the PDA shall govern disputes which directly affect field construction activities ("**Construction Disputes**"). (For avoidance of doubt, the Port Authority CM Services and Advisory Services are primarily consultative in nature and may be overridden by GDC and thus will not create "disputes" related to this article.)

Section 14.02 *Code Actions*. With respect to Code Actions, disputes will be referred to GDC for possible final determination in accordance with Section 10.01(e).

Section 14.03 *Business Disputes*. All disputes regarding the business relationship between the Port Authority and GDC (where the Port Authority and GDC are adverse to each other) hereunder (each, a “**Business Dispute**”) shall be resolved as follows:

- (a) *Notice of Dispute*. If a Business Dispute arises between the Parties, a Party shall promptly, and in any event, no later than 90 days from the date upon which such Party knew of the Business Dispute, provide written notice of the Business Dispute to the other Party. A Party’s failure to submit such notice of a Business Dispute within 90 days from the date upon which such Party knew of the Business Dispute shall be deemed a waiver of such Party of any claims related to such Business Dispute.
- (b) *Discussion*. Upon providing notice of a Business Dispute under Section 14.03(a), the Business Dispute shall be referred for discussion to the Port Authority Executive Director and the GDC CEO. If the Business Dispute cannot be resolved by the Port Authority Executive Director and the GDC CEO within ninety (90) days of notice, such Business Dispute shall be determined to be at an impasse and either Party may exercise their rights regarding a Business Dispute as set forth in subsection (b).
- (c) If the Business Dispute remains unresolved, and if either Party desires further resolution of the Business Dispute, it shall so notify the other Party and thereafter the Parties will engage in **expedited** binding arbitration for final resolution of such Business Dispute (“**Arbitration**”). The Arbitration will be conducted under a substantial evidence standard by three independent arbitrators (the “**Arbitration Panel**”) to be administered by an entity that is not controlled by GDC or the Port Authority after approval by the Parties (and the Parties agree to consent to either JAMS or the American Arbitration Association (the “**AAA**”) as such non-controlled entity). In the event that no entity is selected by the Parties, binding final arbitration shall be administered by the AAA pursuant to its Construction Industry Arbitration Rules. The Parties agree to share equally all arbitrator fees and costs and arbitration expenses. The Port Authority shall appoint an arbitrator. GDC shall appoint as its arbitrator for the resolution of Business Disputes pursuant to this Section 14.03 the “Chair of the Arbitration Tribunal” who was selected by the arbitrators of disputes under the PDA and appointed pursuant to Section 15.03 of the PDA (and the Port Authority shall have no obligation to confirm the status of GDC’s arbitrator). The Party-appointed arbitrators shall select a third independent arbitrator. Such seated arbitrators shall choose a Chair of the Arbitration Panel from among them by majority vote. After the Chair is appointed, the Arbitration Panel shall develop arbitration procedures in consultation with the Parties and in all events, the Arbitration Panel shall be required to render a decision on whether the Standard of Care has been met before considering other aspects of the Business Dispute.
- (d) Pending final resolution of a Business Dispute, the Parties shall proceed diligently with the performance of their respective undisputed obligations hereunder in order to avoid delays in the Work.
- (e) The Parties shall, and shall require their respective representatives and the arbitrators, to maintain the confidential nature of the arbitration proceeding and the award, including the

hearing, except as may be required by law (including open records access rules) or as may be necessary to prepare for or conduct the arbitration hearing on the merits, or as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement.

## ARTICLE XV.

### DEFAULTS AND REMEDIES

Section 15.01 *Events of Default*. A Party shall be in default of this Agreement (a “**Default**”), if a Party fails to timely observe or perform, or cause to be observed or performed, or breaches or causes to be breached, any material obligation, term, or condition required to be observed or performed by such Party under this Agreement.

Section 15.02 *Process and Remedies*. The process for resolving a Default, and determining the remedies for such Default, shall be as set forth in Article XIV.

## ARTICLE XVI.

### TERM AND TERMINATION

Section 16.01 *Term*. Unless terminated early in accordance with Section 16.02 hereof, and subject to the survival of certain provisions pursuant to Section 18.13 hereof, this Agreement shall expire upon rendering of a final certificate of completion for the Work and closeout of any contracts associated with the Work.

Section 16.02 *Termination*.

- (a) *Cause*. This Agreement may be terminated before the expiration date of the Term on written notice by either Party if the other Party materially breaches any provision of this Agreement and the breach is not cured by the breaching Party within thirty (30) days after the breaching Party's receipt of written notice of such breach or such longer period as may be agreed to complete this cure if such breach is susceptible to cure and the breaching Party is proceeding diligently to do so (the “**Cure Period**”). The non-breaching Party may extend the Cure Period in its sole discretion.
- (b) *Payment Notwithstanding Termination*. Notwithstanding termination by GDC hereunder, GDC shall make payment to the Port Authority for all costs and expenses incurred through the date of termination.

## ARTICLE XVII.

### REPRESENTATIONS AND WARRANTIES

Section 17.01 *Representations and Warranties of both Parties*.

- (a) Each Party hereby represents and warrants to the other Party that, as of the date hereof:
  - (i) it has full power and authority to enter into, deliver, and perform this Agreement upon the terms and conditions as set forth herein;
  - (ii) this Agreement has been duly authorized by such Party and does not require any additional action to be effective; and

(iii) each person signing on such Party's behalf is authorized to do so.

(b) Each Party acknowledges and agrees that it enters into this Agreement in reliance on the representations and warranties set forth in this Article XVI.

Section 17.02 *Port Authority to Comply*. Unless otherwise agreed to by the Parties, Port Authority agrees to abide by applicable GDC policies and procedures in carrying out its obligations under this Agreement.

**ARTICLE XVIII.**

**MISCELLANEOUS**

Section 18.01 *Compliance with Laws*.

(a) In performing its obligations under this Agreement, each Party shall, and shall require any contractors performing work on its behalf to, comply with all federal, state and local laws, regulations and requirements applicable to it when performing such obligation, and the Parties shall cooperate in all respects in a manner designed to ensure that each Party meets its respective obligations under this Section 18.01(a).

(b) Each Party shall be responsible for administration and management activities of the federal grant and funding agreements and as otherwise required by federal law (including, for the avoidance of doubt, all applicable federal standards and requirements). Each Party shall cooperate fully and promptly with each other to ensure that each Party is able to comply with all of its respective administration and management responsibilities in respect of such federal grant and funding agreements and under federal law, including providing each other with all reports and data necessary to comply with such responsibilities and incorporating corresponding compliance obligations in agreements it may have with contractors, consultants, and assignees.

Section 18.02 *Notices*. Except as otherwise required by applicable law, including with respect to service of process, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made, given, furnished to, or filed with one Party by the other Party shall be in writing and shall be delivered email (with confirmation of transmission), by hand, by certified mail, return receipt requested, or by overnight delivery service, to such Party in an envelope addressed as follows:

(a) If to GDC:

Gateway Development Commission  
2 Penn Plaza East, 11th Floor  
Newark, New Jersey 07105  
Attn: Chief Executive Officer

with a copy to:

Gateway Development Commission  
2 Penn Plaza East, 11th Floor  
Newark, New Jersey 07105  
Attn: General Counsel

(b) If to Port Authority:

Port Authority of NY & NJ  
4 World Trade Center  
150 Greenwich Street, 23rd Floor  
New York, New York 10007  
Attn: Executive Director

with a copy to:

Port Authority of NY & NJ  
4 World Trade Center  
150 Greenwich Street, 23rd Floor  
New York, New York 10007  
Attn: General Counsel

Section 18.03 *Severability*. If any term or provision of this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such other term or provision. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 18.04 *Entire Agreement*. This Agreement, as well as its attachments and exhibits, and any valid amendments constitute the entire agreement among the Parties regarding its subject matter, and no other oral or written understandings, representations, inducements, consideration, promises, or interpretations are part of this Agreement.

Section 18.05 *Benefits of Agreement; Assignments*.

- (a) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- (b) No Party shall assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party.

Section 18.06 *Cumulative Remedies; No Waiver*.

- (a) The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.
- (b) No Party has agreed to waive any defense, right, immunity, or other protection under applicable law, including any statutory provision, by entering into this Agreement, except to the extent provided for in statutes enacted by the States of New York and New Jersey.

Section 18.07 *Amendments; Waivers*.

- (a) No modifications, amendments or waivers of, or consents to departures from, this Agreement will be valid unless in a writing signed by all Parties to this Agreement.

- (b) Any waiver or consent granted by a Party shall only apply to the instance and for the specific purpose for which it has been given. No waiver by any Party of any requirement or condition, in whole or part, shall operate as a waiver of any other requirement or condition, and no consent shall prevent a Party from subsequently exercising its rights pursuant to this Agreement without being bound by the manner in which it previously exercised (or refrained from exercising) such rights. Furthermore, failure to enforce a provision shall not be construed to constitute waiver of the enforceability or applicability of the provision or any other provision of this Agreement.

Section 18.08 *No Partnership.*

- (a) The Parties shall each independently comply with and perform their respective obligations under this Agreement, and nothing contained in this Agreement (including the use of the term “SEP”) shall be deemed to create any association, agency, partnership, joint venture, other form of joint enterprise or fiduciary relationship among the Parties or to provide any Party with the right, power, or authority, whether express or implied, to act or create any obligation on behalf of any other Party.
- (b) In furtherance of the foregoing, it is understood and agreed that no Party has the power to contract on behalf of, or to authorize the expenditure of any monies by, the other Party.

Section 18.09 *No Third-Party Beneficiaries.* This Agreement does not create any rights in, or inure to the benefit of, any third-party except to the extent set forth herein.

Section 18.10 *Counterparts and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one and the same agreement. The counterparts of this Agreement may be executed and delivered by PDF, facsimile, or other electronic signature by email transmission by the Parties. The receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original has been received. No Party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement.

Section 18.11 *Personal Liability.* No director, commissioner, officer, member, agent, or employee of any Party shall be charged personally by any Party with any liability or held liable to it under this Agreement for acts or omissions within the scope of his, her or their duties.

Section 18.12 *Time is of the Essence.* Each Party recognizes that time is of the essence with respect to the performance of each Party's obligations under this Agreement. Each Party shall use its reasonable best efforts to perform such Party's obligations set forth in this Agreement in accordance with the Executive Project Schedule.

Section 18.13 *Survival.* The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Article I (*Definitions and Rules of Interpretation*) and Exhibit A (*Definitions*),
- (b) Section 9.02 (*Audit*),
- (c) Article XI (*Public Disclosure and Confidentiality*),

- (d) Article XIII (*Indemnification*),
- (e) Article XIV (*Dispute Resolution*),
- (f) Article XV (*Defaults and Remedies*),
- (g) Article XVII (*Representations and Warranties*), and
- (h) Article XVIII (*Miscellaneous*).

[*Signature Pages Follow.*]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

**THE PORT AUTHORITY OF NEW YORK  
AND NEW JERSEY**

By: \_\_\_\_\_  
Richard Cotton  
Executive Director

**GATEWAY DEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Kris Kolluri  
Chief Executive Officer

**EXHIBIT A**  
**DEFINITIONS**

- “**AAA**” shall have the meaning set forth in Section 14.03(c).
- “**Access Agreement**” shall have the mean set forth in Section 5.02(b).
- “**Advisory Services**” shall have the meaning set forth in Recital K of this Agreement.
- “**Amtrak**” shall have the meaning set forth in Recital B of this Agreement.
- “**Applicable Codes**” shall have the meaning set forth in Section 2.01(e).
- “**Arbitration**” shall have the meaning set forth in Section 14.03(c).
- “**Arbitration Panel**” shall have the meaning set forth in Section 14.03(c).
- “**Agreement**” shall have the meaning set forth in the preamble to this Agreement.
- “**AREMA**” shall mean the American Railway Engineering and Maintenance-of-Way Association.
- “**Business Dispute**” shall have the meaning set forth in Section 14.03.
- “**Change Orders**” shall have the meaning set forth in Section 7.05.
- “**CM Services**” shall have the meaning set forth in Recital K of this Agreement.
- “**Code Actions**” shall have the meaning set forth in Recital K of this Agreement.
- “**Compliant Plans**” shall have the meaning set forth in Section 2.02(l).
- “**Construction Disputes**” shall have the meaning set forth in Section 14.01.
- “**Cost Impact**” shall mean the amount by which the delivery of an HTP Package exceeds the cost set forth in the applicable Market Case Estimate (as that Market Case Estimate may, from time to time, be amended as described in this Agreement).
- “**Cure Period**” shall have the meaning set forth in Section 16.02(a).
- “**Default**” shall have the meaning set forth in Section 15.01.
- “**DP**” shall have the meaning set forth in Section 3.04.
- “**Design Standards and Specifications**” means the design standards and specifications approved for the HTP as contemplated in the PDA, which design standards and specifications shall be (i) developed in conformance with Amtrak’s engineering standards for design and construction, (ii) leverage best available information including industry standards such as AREMA standards and FRA standards, (iii) to the extent practicable, meet or exceed local building and fire codes, and (iv) have been approved by the TSC. No other standards shall be considered.
- “**Design Standards and Specifications for the Work**” means the Design Standards and Specifications approved by the TSC for the Work, referenced in Section 6.01(a)(i).
- “**Effective Date**” shall have the meaning set forth in the preamble to this Agreement.

“**Executive Project Schedule**” shall mean the schedule setting forth the anticipated timetable for the implementation of the HTP, including those key dates described in Section 5.01(b) of the PDA.

“**Force Account Resources Plan**” shall have the meaning set forth in Section 9.06.

“**FRA**” shall mean the Federal Railroad Administration.

“**FTA**” shall mean the Federal Transit Administration.

“**GDC**” shall have the meaning set forth in the preamble to this Agreement.

“**GDC Act**” shall have the meaning set forth in Recital A to this Agreement.

“**GDC Board**” shall have the meaning set forth in Recital K to this Agreement.

“**GDC CEO**” shall mean the Chief Executive Officer of Gateway Development Commission.

“**GDC Confidential Information**” shall have the meaning set forth in Section 11.03.

“**GDC Indemnified Parties**” shall have the meaning set forth in Section 13.02.

“**HTP**” shall have the meaning set forth in Recital F to this Agreement.

“**HTP Contractor**” shall have the meaning set forth in the PDA.

“**HTP Designer**” shall have the meaning set forth in Section 2.02(q).

“**HTP Insurance Program**” shall have the meaning set forth in Section 6.04.

“**HTP Packages**” shall have the meaning set forth in Recital H to this Agreement.

“**Hudson River Tunnel**” shall have the meaning set forth in Recital I to this Agreement.

“**Market Case Estimate**” shall have the meaning set forth in Section 7.01.

“**NEC**” shall have the meaning set forth in Recital A to this Agreement.

“**NEPA**” shall mean the National Environmental Policy Act of 1969.

“**NEPA Approvals**” shall have the meaning set forth in Section 8.01(a).

“**New Jersey**” shall have the meaning set forth in Recital A to this Agreement.

“**New York**” shall have the meaning set forth in Recital A to this Agreement.

“**Oversight**” shall have the meaning set for in Section 2.02.

“**Party**” shall have the meaning set forth in the preamble to this Agreement.

“**Parties**” shall have the meaning set forth in the preamble to this Agreement.

“**PDA Parties**” shall have the meaning set forth in Recital F to this Agreement.

“**PMP**” shall have the meaning set forth in Section 9.05.

“**Port Authority**” shall have the meaning set forth in the preamble to this Agreement.

“**Port Authority SPCC Representative**” shall have the meaning set forth in Section 3.02(b).

“**Port Authority Staffing Plan and Budget**” shall have the meaning set forth in Section 7.02(b).

“**Port Authority TSC Representative**” shall have the meaning set forth in Section 3.03(b).

“**Procurement Documents**” means GDC’s primary procurement documents related to the Work, including any requests for qualifications, requests for proposals, invitations for bids, evaluation criteria, and terms and conditions of the applicable contracts to be awarded for the Work.

“**Project Budget**” shall have the meaning set forth in Section 2.01(j).

“**Project Development Agreement**” or “**PDA**” shall have the meaning set forth in Recital F to this Agreement.

“**PTE**” shall have the meaning set forth in Section 5.02(b).

“**Rail Activation Plan**” shall have the meaning set forth in Section 9.07.

“**ROD**” shall have the meaning set forth in Section 8.01(a).

“**SCC**” shall have the meaning set forth in Section 7.04(c).

“**SEP**” or “**Supporting or Executing Partner**” shall have the meaning set forth in Recital H to this Agreement.

“**Senior Roles**” shall have the meaning set forth in Section 7.02(a).

“**Services**” shall have the meaning set forth in Recital K to this Agreement.

“**SPCC**” shall have the meaning set forth in Section 3.02(a).

“**Standard of Care**” shall have the meaning set forth in Section 13.01.

“**TPH**” shall have the meaning set forth in Recital J of this Agreement.

“**TSC**” shall have the meaning set forth in Section 3.03(a).

“**Unplanned Costs**” shall have the meaning set forth in Section 13.01.

“**Work**” shall have the meaning set forth in in Recital K to this Agreement.

“**Work Budget**” shall have the meaning set forth in Section 2.02(c).

“**Work Contracts**” shall have the meaning set forth in Section 4.05.

“**Work Contract Documents**” shall have the meaning set forth in Section 4.05.

“**Work Contractor**” and “**Work Contractors**” shall have the meanings set forth in Section 4.01.

“**Work Schedule**” shall have the meaning set forth in Section 2.02(c).

“**Work Permits**” shall have the meaning set forth in Section 8.02(a).

**EXHIBIT B**  
**PTE FORMS**

PTEs will be substantially similar to the following but revised to reflect the specific locations and geographic features of the area for which entrance is granted.

**NJ TRANSIT TEMPORARY ACCESS PERMIT NO. \_\_\_\_\_**

**RE: CONSTRUCTION OF BRIDGE CARRYING TONNELLE AVENUE OVER  
RAILROAD TRACKS FOR HUDSON TUNNEL PROJECT MATERIALS AND  
RELATED WORK**

**Effective Date: \_\_\_\_\_**

New Jersey Transit ("NJ TRANSIT"), a public instrumentality of the State of New Jersey, headquartered at One Penn Plaza East, Raymond Boulevard, Newark, NJ 07105, hereby grants this Temporary Access Permit ("Permit") to the \_\_\_\_\_, Contractor of Gateway Development Commission ("Permittee") for access to 1801-2001 Tonnelle Avenue, 2100 Tonnelle Avenue, and 2126 Tonnelle Avenue, North Bergen, Hudson County, New Jersey, ("NJ TRANSIT Property"), as to the performance of construction of the bridge carrying U.S. Routes 1 and 9 (Tonnelle Avenue) and related work. The activities permitted to be conducted by Permittee shall be referred to as Permittee's work ("Work"). Permittee is a contractor of Gateway Development Commission ("GDC"), under contract with GDC to perform the Work. This Permit is not intended to grant Permittee access to the NJ TRANSIT Property beyond what is set forth in the access agreement between NJ TRANSIT and GDC ("Agreement").

This Permit is effective as of the date of execution of the Agreement and extends for a period of three (3) years ("Term").

The Permittee is restricted to the scope of access in the Agreement only and may not use other property owned by NJ TRANSIT. NJ TRANSIT is under no obligation to issue a Permit to Permittee in the future. Moreover, this Permit shall not prevent NJ TRANSIT from allowing other parties to enter the NJ TRANSIT Property during the course of Permittee's Work. This Permit shall not be deemed or be construed to transfer any interest in the NJ TRANSIT Property to Permittee, or any future right to enter or to use the NJ TRANSIT Property after the Term.

This Permit is also subject to the following additional restrictions, conditions, and covenants:

1. **Governing Law:** The provisions of this Permit and all rights and obligations herein shall be construed in accordance with the laws of the State of New Jersey and any applicable federal laws. Jurisdiction of any dispute arising out of this Permit shall be limited to the Superior Court of New Jersey.
2. **Fees and Expenses:** Prior to the Work, Permittee shall pay NJ TRANSIT One Thousand Five Hundred Dollars (\$1,500.00), as a general access fee during the Term.
3. **End of Term:** No Work shall be done beyond the Term of this Permit, unless the Term is extended at the written consent of NJ TRANSIT. Permittee must notify NJ

TRANSIT of the intent to extend before the end of the Term; otherwise, Permittee will have to apply for a new Permit.

4. **Pre-Notice as to Start of Work:** It is expressly understood that forty-eight (48) hours' notice is to be given prior to the commencement of Work. Permittee shall contact John Geitner, NJ TRANSIT's Senior Director of Environment, Energy, and Sustainability, at 973-491-7017 (office) in order to coordinate the Work or access to the NJ TRANSIT Property thereof. NJ TRANSIT will provide Permittee with written notice when entry may occur.
5. **Storage of Equipment and Vehicles On Site:** The Permittee agrees that it will, at its own sole cost and expense, use only that portion of the NJ TRANSIT Property designated for lay down and storage of construction materials. Upon completion of the Work, Permittee will remove all equipment, materials, and vehicles from the site and leave the site in as good or better condition as before the Work commenced. During the Term, Permittee will be responsible to maintain its equipment, materials, and vehicles in a safe and workmanlike manner, to the satisfaction of NJ TRANSIT. In the event of emergency, Permittee shall take immediate corrective action and shall notify John Geitner, NJ TRANSIT's Senior Director of Environment, Energy, and Sustainability, at 973-491-7017. Permittee will not perform any excavation on the NJ TRANSIT Property.
6. **Environmental Conditions:** Permittee acknowledges that the subject property has low levels of historic fill contamination. Permittee will abide by the Environmental Conditions set forth in the Agreement. In addition to the Environmental Conditions set forth therein, Permittee agrees to conduct all activities under this Permit in accordance with applicable Deed Notices, Federal and State laws, rules and regulations, including, but not limited to, those which are designed to prevent or control the discharge of substances into the land, water, or air, and those designed to protect individual health and safety.
7. **NJ TRANSIT's Right to be On Site During Work:** NJ TRANSIT reserves the right to be on site during the time Work is being conducted by Permittee, and NJ TRANSIT representatives may direct cessation of the Work, or any part thereof within its discretion, and in particular where the Work causes or may cause disturbance of the soil or current cap, such that it exposes contaminants or spreads mud or soil beyond confines of the NJ TRANSIT Property.
8. **Damages:** Permittee shall make full restitution to NJ TRANSIT for all damage to NJ TRANSIT's Property that may occur during the period of the Permit caused directly or indirectly by Permittee or its contractors of any tier. Permittee shall be

strictly and completely responsible for the remediation of any hazardous substances that spill, or are caused to be released, onto the NJ TRANSIT Property as a result of the direct or indirect actions of the Permittee. NJ TRANSIT's Property will be restored to the same condition as prior to Permittee's entry onto the NJ TRANSIT Property.

9. Excavation and Grading: Permittee agrees to abide by the safety protocol for excavation and grading activities set forth in Section 4(f) of the Agreement. NJ TRANSIT reserves the right to cause GDC and Permittee to cease work on the Project where there is an imminent danger to the traveling public and/or the workers on the NJ TRANSIT Property that has not been corrected by a contractor of any tier within one business day.
10. Removal of Concrete Beams and Storage Compartments: Permittee acknowledges that there are existing pre-stressed concrete beams and storage compartments on the NJ TRANSIT Property that need to be removed before excavation occurs. Permittee agrees that it will remove the concrete beams and compartments in accordance with the Terms in Section 3(c) of the Agreement.
11. Indemnification: Permittee shall and shall cause its contractors of any tier, agents, and representatives to indemnify, defend, keep, and save harmless the State of New Jersey, NJ TRANSIT, their successors, assigns, contractors, agents, employees, servants or officials, and each and every one of them or any designee of NJ TRANSIT against all claims, losses or liabilities, just or unjust, made against NJ TRANSIT on account of injury, death, property damage, losses of any kind whatsoever, damages, suits, actions, liabilities, judgments, proceedings or costs arising from the Permittee's violation of any Deed Notices, laws, rules or regulations, claims for infringement of patent, trademark or copyright, cost and expenses which may in any way accrue against NJ TRANSIT in consequence of granting this Permit, and whether or not it shall be alleged or determined that the cause thereof was the negligent acts or omissions of NJ TRANSIT and whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs accrued. The Permittee shall appear, defend and pay, at its own expense, all costs, including counsel fees, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against NJ TRANSIT in any such action, the Permittee shall, at its own expense, satisfy and discharge the same. Proof of indemnification by all contractors of any tier performing any Work within the NJ TRANSIT Property shall be demonstrated for each such contractor of any tier by executing a copy of this Permit prior to entry.
12. Insurance: Permittee shall carry for the entire period of occupancy permitted herein, insurance coverage in the kinds and minimum amounts specified in the

Agreement dated \_\_\_\_\_ attached hereto and made a part hereof as if set forth at length.

13. Title and Suitability: Nothing in this Permit shall act as or be deemed to act as any warranty, guaranty or representation of the quality of NJ TRANSIT's title for any particular NJ TRANSIT property, used or enjoyed in any manner by Permittee under any rights created in this Permit. Permittee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the NJ TRANSIT Property, and all leases, easements, permits, and licenses or other interests previously granted to others therein.
14. Non-Assignable: It is expressly understood that this Permit is not transferable and therefore shall not be assigned or otherwise transferred by the Permittee to anyone else.
15. No Reliance by Reason of Issuance of this Permit: This Permit or issuance thereof shall not constitute an agreement, representation or guarantee by NJ TRANSIT to issue any future permits or to allow its property to be used in the future by Permittee for any purpose or for any reason. Issuance of this Permit to conduct the Work shall not constitute reliance by Permittee of any express or implied promise as to future use of the NJ TRANSIT Property for any reason. Costs of the Work shall be totally borne by Permittee. No promises, warranties, or guarantees as to future use of survey of subject or adjacent property is made or implied.
16. Permit Revocable: Violation of any of these covenants and/or conditions by the Permittee may be cause for summary revocation of this Permit by NJ TRANSIT. Furthermore, NJ TRANSIT, within its reasonable discretion, reserves the right to revoke this Permit, for any reason, including all privileges and permission granted pursuant to it upon three (3) calendar days' written notification to Permittee. Restoration of the NJ TRANSIT Property to its former condition, all at the sole expense of the Permittee, will be required upon revocation of this Permit to the extent permitted herein.
17. Use of Property: The use of the NJ TRANSIT Property shall abide by the terms of the Agreement dated \_\_\_\_ attached hereto and made a part hereof.

[Intentionally left blank]

**WITNESS:**

**NEW JERSEY TRANSIT CORPORATION**

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Name:  
Title:

Date:

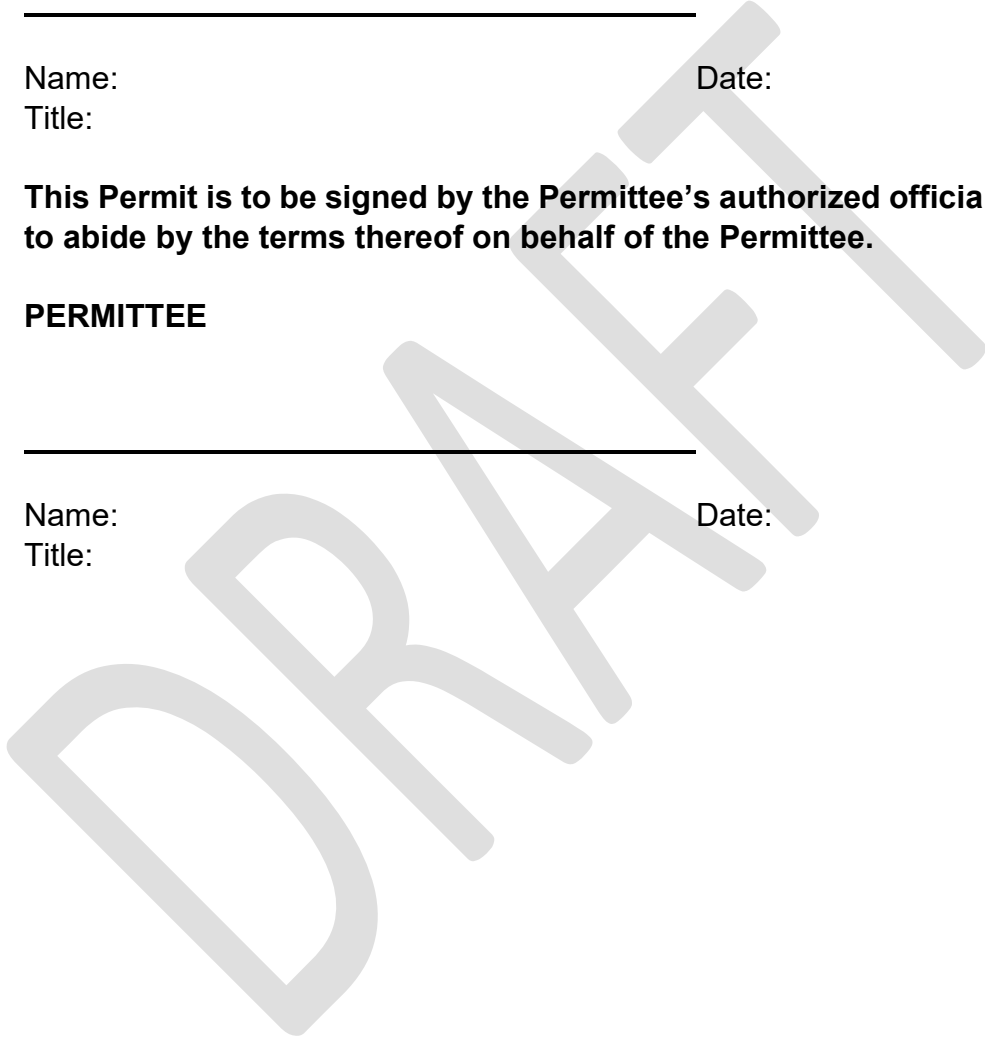
**This Permit is to be signed by the Permittee's authorized officials who agree to abide by the terms thereof on behalf of the Permittee.**

**PERMITTEE**

---

Name:  
Title:

Date:



**Temporary Access Permit No. \_\_\_\_\_**

The New Jersey Transit Corporation, an instrumentality of the State of New Jersey with offices located at One Penn Plaza East, Newark, New Jersey 07105 ("NJ Transit"), grants permission to \_\_\_\_\_, with an office located at \_\_\_\_\_, Telephone number \_\_\_\_\_, hereinafter referred to as the "Permittee," to enter upon NJ Transit Property identified as the Hudson Bergen Light Rail Transit System ("HBLR") at the locations identified on Exhibit A, attached hereto and identified herein as the "Property," for the purposes of performing the Work (hereinafter defined) set forth in the Permittee's proposal attached as Exhibit B, attached hereto, and no other purpose, subject to the following terms and conditions:

1. The Permittee is fully responsible for adherence to the terms and conditions of this Temporary Access Permit ("Permit"). In no event will NJ Transit be responsible for any costs or expenses related to this Permit.
2. This Permit allows only the use of the Property by the Permittee, their authorized representatives(s), or contractors, and no others, commencing upon the date of execution of this Permit by NJ Transit. The Permittee shall provide NJ Transit with a list of their authorized agents and contractors to NJ Transit prior to entry upon the Property.
3. Use of the Property is restricted to those areas as identified in Exhibit A. Under no circumstances shall this Permit be construed as granting to the Permittee any right, title, or interest of any kind in any property of NJ Transit.
4. The Permittee, subject to the provisions contained herein, may enter upon and use the Property only when protected by a flagman or flagmen supplied by NJ Transit or 21<sup>st</sup> Century Rail Group (the "Contract Operator") unless specifically otherwise authorized in writing by NJ Transit. Normal hours of work are from 9:00 AM to 3:30 PM Monday through Friday, excluding holidays. The purpose of the flagman is to protect the HBLR from the actions of the contractor. The flagman is not intended to safeguard the Permittee's crew. All Permittee's field personnel and its agents shall be trained in accordance with the HBLR Safety training program prior to entering the Property.
5. All notices required by this Permit shall be sent in writing to the following:

Mr. Gregory G. Woods  
Chief  
Light Rail Operations  
NJ Transit Corp., One Penn Plaza East,  
Newark NJ 07105-2246  
(973) 491-7840

Mr. Jamaal McClintock

President & CEO  
Twenty-First Century Rail Corporation (Contract Operator)  
20 Caven Point Avenue, Jersey City New Jersey, 07305-4604  
(201) 209-2553

In addition, the Permittee shall provide written notification a minimum of fourteen (14) days prior to initiating any Work (hereinafter defined) to aforementioned individuals to schedule flagmen, safety training, and all related support services.

6. The Permittee hereby acknowledges that the Property is generally restricted as to excavation and that any proposed excavation shall require the prior submission to NJ Transit and its Contract Operator of a plan describing proposed materials management, including control of groundwater and surface flows, transportation, and testing of material to be removed from the site, including the disposal site and a health and safety plan covering worker exposure. These plan elements shall be approved by NJ Transit and NJDEP, if deemed necessary by NJ Transit, prior to start of the Work (hereinafter defined) and access to the Property. The Permittee shall comply with all requirements of any Deed Notices affecting the Property.
7. NJ Transit, through the Contract Operator, shall have complete approval rights over the activities of the Permittee associated with the use hereby permitted, including the actions of personnel of the Permittee regarding HBLR activities and system safety. NJ Transit's approval of such activities, however, shall not reduce or eliminate the Permittee's liability under this Permit for any negligent or intentional acts or omissions.
8. All activities shall be performed without interference to HBLR construction or operations. NJ Transit reserves the right to approve all means and methods to be employed in the work described in Exhibit B (the "Work").
9. The Work will conform to the applicable requirements of the "Specifications For Pipeline Occupancy of New Jersey Transit" and the "General Requirements for Working Within Right-of-Way," both of which the Permittee hereby acknowledges having received. NJ Transit may withhold its approval to proceed with the Work if at any time or times the Work will in any manner endanger persons or property, and may condition its approval on the Permittee's agreement to take such precautions and measures as NJ Transit may deem advisable in its sole discretion. Any review of the Permittee's plans and specifications, comments thereon, or monitoring of the Work shall not constitute nor shall be construed as a representation or warranty on the part of NJ Transit or its Contract Operator as to the adequacy or propriety of such plans and specifications or the means or methods of the Work.
10. **In case of an emergency, the Permittee must contact the Contract Operator at 201-209-2555, and at any other number of which Contract Operator advises the Permittee to use. The Permittee also must contact NJ Transit's emergency police desk at (800) 242-0236 or (973) 378-6565.**
11. The Permittee must contact NJ-1-Call at (800) 272-1000 to identify buried third-party

Temporary Access Permit No. \_\_\_\_\_

facilities prior to performing any excavation work within NJ TRANSIT's right-of-way. If Permittee fails to timely provide such notification to NJ-1-Call, the Permit will immediately be canceled.

12. All workers must maintain a distance of no less than eighteen (18) feet from the track, and any tools, vehicles, or equipment being utilized must not extend closer than eighteen (18) feet from the track.
13. All equipment and materials to be used upon the property of NJ TRANSIT shall be kept at all times at least fifteen (15) feet from all signal, communication, and overhead catenary systems unless protected by a representative of the Contract Operator.
14. Upon the approach of a light rail transit car, rail maintenance equipment, or any train adjacent to the site of the Work, the Permittee's workers shall cease work, face the moving equipment, and stand clear of the tracks.
15. No workers are permitted to cross the tracks at any area other than temporary or permanent crossings without authorization from the Contract Operator or its designee.
16. No tools or working materials are permitted to be stored on the Property or on the right-of-way. No equipment shall be transported across the track or tracks without the special permission of the Contract Operator, obtained in writing, and without the use of appropriate support.
17. The Permittee shall be solely responsible for damage to any above- or below-grade utilities or operating systems belonging either to NJ Transit or third-party utilities, and shall hold harmless, defend, and indemnify NJ Transit and the Contract Operator for any breaches of this covenant.
18. If the Work requires any aerial lifting or work over NJ Transit or other rail tracks, such Work will be performed in accordance with NJ Transit's General Requirements for Working Within Right-of-Way, a copy of which the Permittee hereby acknowledges having received.
19. Subject to the provisions of Section 23, NJ Transit shall request that the Contract Operator provide adequate support staff to support the Work and to protect HBLR operations, at the cost of the Permittee.
  - (a) The Permittee shall be responsible for all actual costs incurred and expenses associated with the Work ("Project Expenses"). The Permittee shall reimburse NJ Transit for all actual labor costs and direct expenses in connection with providing flagging protection, construction inspection, project management, and any necessary force account support for the continued maintenance and operation of HBLR and any specific work required or requested by the Permittee, whether provided by the Contract Operator or NJ Transit. Any material usage will be billed at the actual cost incurred of

material plus the current applicable overhead percentages for storage, handling, transportation, purchasing, and other related material management expenses. All hours incurred will be billed including, but not limited to, contractual overtime and travel time.

- (b) NJ Transit and the Contract Operator will prepare Standard Daily Participation Reports to be verified by the Permittee's field personnel that will identify all daily direct labor, equipment, and vehicles necessary to support the Work.
  - (c) The Permittee shall remit payment to NJ Transit within thirty (30) days after receipt of an invoice. The Permittee shall pay NJ Transit a late charge of three (3%) percent of the total unpaid invoice amount for every month the invoice is owed and outstanding until the invoice is paid in full. Any reasonably disputed cost item(s) in any invoice shall be deducted from the amount to be paid to NJ Transit provided the disputed items are documented in writing and submitted to the pursuant to the Notice requirements contained in Section 5. Upon resolution, all disputed amounts remaining due will be paid within thirty (30) days.
20. The Permittee has deposited with NJ Transit the sum of \_\_\_\_\_ (\$\_\_\_\_\_ ) in order to reimburse NJ Transit for its Project Expenses and any other costs that may be due pursuant to this Permit. NJ Transit will hold these funds in a prepaid account ("Prepaid Account"). The funds in the Prepaid Account may be drawn upon by NJ Transit to reimburse NJ Transit for its Project Expenses and any other costs that may be due pursuant to this Permit. The Permittee shall authorize payment to NJ Transit from the Prepaid Account within thirty (30) days after receipt of an invoice from NJ Transit. Any reasonably disputed cost item(s) in any invoice may be deducted by the Permittee from the amount to be paid NJ Transit provided the disputed items are sufficiently documented in writing and submitted pursuant to the Notice requirements in Section 5. Upon resolution of such dispute, all disputed amounts remaining due will be deducted from the Prepaid Account. The Permittee shall maintain a minimum of \$\_\_\_\_\_ in the Prepaid Account until no further payments are owed to NJ Transit and no payments are in dispute. NJ Transit may advise the Permittee when additional funds are required to replenish the account. NJ Transit may immediately terminate the Permit if the Permittee fails to provide such additional funds to NJ Transit within five (5) business days after notification from NJ Transit. In the event any funds remain in the Prepaid Account after completion of the Work, the Permittee will provide notice to NJ Transit of its demand for release of the funds. If and when no further payments are owed to NJ Transit or if no payments are in dispute, NJ Transit will release the remaining balance in the Prepaid Account to the Permittee.
21. Before leaving the Property identified in Exhibit A, the Permittee shall restore the Property at its sole cost and expense to the same condition it was in prior to start of the Work, and such restoration work shall be approved by Contract Operator or NJ

Transit. If the Permittee fails to commence or complete said restoration work, NJ Transit or the Contract Operator may undertake such restoration work and the Permittee hereby agrees to reimburse NJ Transit for all costs and expenses in connection therewith.

22. In granting this Permit, NJ Transit or the Contract Operator will assume no obligation whatsoever in connection with the use, Work and or occupancy of the Property by the Permittee and is not obligated to make any repairs to the Property or furnish workers, equipment or materials in connection with the use, Work and/or occupancy by the Permittee.
23. Availability of support staff is subject to operational requirements of the Contract Operator and NJ Transit. NJ Transit or the Contract Operator makes no guarantee of the availability of support staff in the issuance of the Permit. Neither NJ Transit nor the Contract Operator will be responsible for any delays or damages due to the unavailability of support staff for the Work described in Exhibit B.
24. Indemnification
  - (a) To the fullest extent permitted by Law, the Permittee, and any of its Contractors, shall indemnify, defend, keep and save harmless the State of New Jersey, NJ Transit, its Contract Operator, and other railroad(s) operating on the affected property, their successors, assigns, contractors, agents, employees, servants or officials, and each and every one of them or any other designee of NJ Transit, (the "Indemnified Parties") from and against any and all claims, just or unjust, made against NJ Transit or the Indemnified Parties on account of injuries, deaths, losses of any kind whatsoever, damages, suits, liabilities, judgments, claims for infringement of patent, trademark or copyright, cost and expenses which may in anywise accrue against the NJ Transit or Indemnified Parties in consequence of the granting of a Permit or which may in anywise result therefrom, and whether or not it shall be alleged or determined that the cause thereof was the negligent acts or omissions of the NJ Transit or the Indemnified Parties and the Permittee shall appear, defend and pay, as its own expense, all costs, including counsel fees, arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the NJ Transit or the Indemnified Parties in any such action, the Permittee shall, at its own expense, satisfy and discharge the same.
  - (b) The light rail operations at or near the site of the Work involve some risk, and the Permittee, as part of the consideration for a Permit, and with full knowledge and appreciation of such risk, shall release and waive any right to ask for or demand any special, direct, incidental, indirect, punitive, reliance or consequential damages, whether foreseeable or not, for or on account of any loss or injury to any property of the Permittee and its employees, including property in the care, custody, and control of the Permittee, and to the Facilities and contents thereof that are over, under, upon, or in the property

of NJ Transit or the Contract Operator, including loss of, or interference with, service or use thereof, or loss of profits or revenue, cost of capital, cost of replacement services, claims of customers or third parties, whether or not it shall be alleged or determined that the cause thereof was breach of contract, breach of warranty, negligent acts or omissions of the Indemnified Parties or the Permittee, their successors, assigns, contractors, agents, employees, servants and officials or of other persons.

25. In addition to other insurance carried by the Permittee, the Permittee shall carry, and cause to have carried during the Work, through and for the entire period of occupancy permitted herein, insurance coverage of the following kinds and minimum amounts:

(a) Permittee's Comprehensive General Liability Insurance

The Permittee, and its Contractors, shall purchase and maintain a comprehensive general liability policy of insurance. This policy shall protect the Permittee, NJ Transit and the Indemnified Parties, against liability which arises in consequence of granting this Permit, including access thereto over NJ Transit's adjacent property and/or which arises from any of the claims indicated in Indemnification Section 24(a) and (b) against which the Permittee is required to indemnify NJ Transit. The policy is to be written by a good and solvent insurance company authorized to do business in New Jersey with an A.M. BEST Insurance Rating of "A-" or better or by companies acceptable to NJ Transit. This policy shall name NJ Transit, the State of New Jersey, and the Indemnified Parties as an additional insured by policy endorsement. The liability policy(ies) and insurance shall include a cross-liability coverage providing severability of interests so that coverage will respond as if separate policies were in force for each insured. The coverage limits of the policy shall be not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage. NJ Transit reserves the right to require reasonable increases in the coverage limits from time to time. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds.

(b) Automobile Liability Insurance

Minimum of two million dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage liability. This policy shall name NJ Transit and the Indemnified Parties as an additional insured.

(c) Contractors' and/or Subcontractors' Comprehensive General Liability Insurance

The Permittee shall furnish evidence by virtue of a standard certificate of insurance that, with respect to any work or activities performed by its

Temporary Access Permit No. \_\_\_\_\_

contractors and/or subcontractors hereunder, they carry in their own behalf Comprehensive General Liability Insurance in the amount of \$5,000,000 per occurrence for damages arising out of bodily injuries or death and/or Property Damage. Coverage provided under this liability policy shall be on an occurrence basis and shall include, but not be limited to, premises operations liability, personal injury liability, property damage liability, contractual liability, independent contractors' liability and products liability. There shall be no coverage exceptions for property containing or adjacent to railroad facilities. This policy shall name NJ Transit, the State of New Jersey, and the Indemnified Parties as an additional insured. The liability policy(ies) and insurance shall include a cross-liability coverage providing severability of interests so that coverage will respond as if separate policies were in force for each insured. Should the Permittee be self-insured, it is required to supply annually a letter certifying that it is self-insured and is complying with all laws and regulations required for self-insurance.

(d) Contractor's Pollution Liability Insurance

The Permittee, or its Contractors shall procure contractor's pollution liability insurance covering the obligations assumed under the Permit and covering claims arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense that arise from the operation of contractor or its subcontractor. Coverage under this policy shall have limits of liability with a minimum of \$2,000,000 per occurrence. This policy shall name NJ Transit and the Indemnified Parties as additional insured.

(e) Professional Liability insurance with a limit of not less than five million dollars (\$5,000,000) per claim where the Work involves or includes Contractor providing or performing design, architectural, engineering, consulting, or any professional services. If Contractor's services include software development, systems development, or outsourced systems, the insurance shall include coverage for liability arising from intellectual property infringement, information technology, and software development services. If the Professional Liability insurance is claims-made, the coverage shall remain in place for the greater of: (i) three (3) years from the expiration of this Contract as amended; or (ii) three (3) years from the date Company accepts the Work.

(f) Railroad Protective Public Liability Insurance

If work is to be performed within 50 feet of the HBLR right-of-way, in addition to the above the Permittee shall furnish evidence in the form of one signed copy and one certified copy of the Railroad Protective Public Liability Insurance Policy that, with respect to the operations it, its contractors, or any

of its subcontractors perform, it has provided Railroad Protective Public Liability Insurance (AAR- AASHO form) in the name of NJ Transit, Twenty First Century Rail Corp., providing for a limit of not less than \$2,000,000 single limit bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence. (Reference: "Standard Provisions for General Liability Policies" as contained in U.S. Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, Attachment I, as amended).

(i) The address of NJ Transit Corp. shall appear as Director of Risk Management and Insurance, One Penn Plaza East, Newark, New Jersey 07105-2246. The insurance hereinbefore specified shall be carried until all work required to be performed under the terms of the contract is satisfactorily completed and formally accepted.

(g) Workers' Compensation and Employer's Liability Insurance

The Permittee shall provide to NJ Transit a certificate of insurance showing that the coverage the Permittee, its contractors and its subcontractors carry for Workers' Compensation is within the statutory limits of the State of New Jersey. In case any class of employees performing the Work under this Permit is not protected under the Workers' Compensation Statute, the Permittee shall provide and shall cause each contractor and subcontractor to provide employer's liability insurance for the protection of each of its employees as are not otherwise protected. Limits of Employer Liability are as follows:

Employer's Liability	\$1,000,000 each accident
	\$1,000,000 each employee disease
	\$1,000,000 policy limit – disease

(h) (i) All insurance required by the Permit shall be provided at the sole cost of the Permittee and shall be in full force and effect until all work is completed to the satisfaction of NJ Transit. Proof of insurance must be provided prior to entering upon the property, with a copy of the general accord statement being supplied to NJ Transit's Manager Right-of-Way Engineering or his representative.

(ii) All insurance policies or certificates shall contain the following cancellation notice:

"This policy is not subject to cancellation or change until thirty (30) days after NJ Transit has received written notice thereof

as evidenced by return receipt of a registered letter addressed to the Director, Risk Management and Insurance, 7<sup>th</sup> Floor, NJ Transit Corp., One Penn Plaza East, Newark, New Jersey, 07105-2246.”

- (iii) All hazards to be covered shall include the so-called "XCU" coverage for explosion, collapse, and damage where work is to be done over or under NJ Transit owned railroad property.
- (i) The foregoing insurance coverage is not intended to, nor does it limit the liability of the Permittee to hold the Indemnified Parties harmless as set forth in Section 24 above.
- (j) All policies shall be primary and non-contributory, and any insurance or self-insurance maintained by NJ Transit shall not contribute to any loss. Further, the insurances shall contain a waiver of subrogation in the benefit of NJ Transit.
- (k) All insurance certificates must bear this NJ Transit Permit number and the original certificate shall be provided to NJ Transit. Copies of these certificates shall be attached to this permit as Exhibit C and shall be provided prior to the execution of the permit. Each certificate shall bear this Permit Number. An originally-signed version of the executed TAPs with all exhibits, including the COIs, will be sent by NJ Transit to the Contract Operator.
26. Neither NJ Transit or its Contract Operator shall be liable to the Permittee for loss, damage or liability of any kind or nature whatsoever sustained by the Permittee, its successors, and assigns by reason of any failure to fulfill their obligations herein in the event of: any strike or walkout on the part of its employees or on the part of any other person or persons: any embargo or requirement of any federal, state, municipal, or other governmental authority; or of any other event of any kind beyond the control of NJ Transit or its Contract Operator that in any way affects the ability of NJ Transit or its Contract Operator to perform its obligations herein. The Permittee shall not engage in any labor practices that result in labor disharmony between NJ Transit or its Contract Operator and any of their labor forces.
27. The Permittee, at its sole cost and expense, shall obtain such licenses, permits or authority from Federal, State, Municipal or other government bodies or agencies as may be necessary and shall pay any and all fees, assessments and all federal, state and municipal taxes or other charges imposed or levied upon the operations described herein and shall save NJ Transit harmless from any and all fines, penalties taxes fees or other liabilities arising in connection with any and all activities conducted by the Permittee on NJ Transit Property.
28. The accepted Permit shall be accompanied by a check in the amount of \$500.00 as compensation for preparation of this Permit. Upon receipt of the funds, and all other required documents necessary to approve the permit, the executed Permit will be

returned to the Permittee and a copy sent to the Contract Operator. As detailed in Section 19 the Permittee shall reimburse NJ Transit for any additional labor, equipment and material costs incurred either by NJ Transit or the Contract Operator resulting from the issuance of this Permit. The Permittee will make payment within thirty (30) days of receipt of invoicing.

29. Should the Permittee cancel or not appear as permitted herein, no refund shall be made of the fees paid by the Permittee, and the Permittee shall also reimburse all expenses incurred by NJ Transit or its Contract Operator in connection with issuing this Permit.
30. This Permit may be terminated or suspended by NJ Transit if the Permit conditions are not met or if in the sole opinion of NJ Transit, the actions or inactions of the Permittee affect system safety or operations or both. NJ Transit shall have the sole discretion to immediately terminate or suspend this Permit without advance notice to the Permittee. If the actions or inactions of the Permittee are such that they do not immediately affect the system safety or both, NJ Transit shall notify the Permittee in writing that the Permittee's actions or inactions constitute a breach of the Permit. In such an event, the Permittee shall immediately cure such a breach or if it does not do so within five days of notice NJ Transit shall have the right to terminate the Permit without further notice. In the alternative, NJ Transit may elect to correct the breach of the Permit and charge the Permittee all costs (both direct and indirect) attributable to such action on the part of NJ Transit. Any unauthorized activities by the Permittee on the Property not specifically allowed herein may be considered grounds for termination of this Permit.
31. This Permit may be modified by an amendment executed by both the Permittee and NJ Transit.
32. Environmental Provisions
  - (a) The Permittee shall provide NJ Transit with copies of laboratory results for all environmental testing conducted on the Property. The Permittee shall also provide NJ Transit with copies of all environmental reports and correspondence with regulatory authorities regarding any environmental issues on the Property. The Permittee shall be responsible for all notification and filing requirements of any governmental agency having jurisdiction over the Property.
  - (b) The Permittee shall conduct all activities under this Permit in accordance with all applicable Deed Notices, Federal, State and local laws, rules and regulations, including, but not limited to, those which are designed to prevent or control the discharge of substances into the land, water or air; those designed to protect individual health and safety.
  - (c) The Permittee will indemnify, hold harmless and defend NJ Transit and the Indemnified Parties from and against any and all suits, actions, proceedings

costs, fines, penalties and claims arising from the Permittee's violation of any such Deed Notices, laws, rules or regulations whenever such suits, actions, claims, or proceedings shall be commenced, or whenever such costs are accrued. The Permittee shall take necessary precautions to prevent the discharge of hazardous substances, including but not limited to, asbestos and petroleum products onto the Property or into the environment including the air. The indemnification obligations herein shall survive the completion or termination of this Permit.

- (d) The Permittee shall be responsible for the remediation of any hazardous substances that spill, or caused to be released, onto the Property as the result of the Permittee's actions.
  - (e) The Permittee shall submit a deposit of \$1,000 for each permanent monitoring well that the Permittee proposes to install on the Property. Upon notification by NJDEP that a monitoring well is no longer required, the Permittee shall close said monitoring well within thirty (30) days of such notification, at which point the deposit will be returned. If the Permittee fails to close the monitoring well within the specified period, the deposit will be forfeited and NJ Transit will close the monitoring well.
  - (f) All waste materials, including drill cuttings, soil borings, well development and purge water, used personal protective and disposable sampling equipment, and decontamination wastes shall be the property of the Permittee, who shall be the generator of record. Such wastes shall be removed from the Property at the close of work each day.
  - (g) Failure to comply with environmental requirements shall be considered grounds for default and NJ Transit may terminate or suspend this Permit in accordance with Section 30. In addition, NJ Transit reserves the right to notify regulatory authorities if it believes that any laws or regulations have been violated by the Permittee.
33. The Permittee shall comply with the Hi-Voltage Proximity Act of the State of New Jersey. The Permittee acknowledges that such compliance may require special workmanship, bonding, grounding, blocking and guarding procedures and hereby assumes all responsibility for all costs in connection therewith.
34. No director, Commissioner, officer, agent or employee of the Permittee and NJ Transit shall be charged personally with any liability or held liable under any term or provision of this Permit or because of its execution or attempted execution because of any breach hereof.
35. This Permit shall be construed in accordance with the laws of the State of New Jersey. This Permit constitutes the entire agreement between the parties on the subject matter and may not be changed, modified, discharged or extended except

**Temporary Access Permit No. \_\_\_\_\_**

by an instrument executed by both parties.

36. Unless stipulated elsewhere herein, this Permit shall terminate upon the earlier occurrence of one (1) year from the date of execution or upon the completion of the Work required in Exhibit B. The Permittee shall notify NJ Transit when the Work is completed by submitting the "Work Completion Form" attached hereto as Exhibit D. The Permittee's obligations pursuant to Sections 17, 21, 24, 25, 26, 27, 32 and 33 shall survive termination of this Permit.
37. In the event that the "Permittee" actually consists of more than one individual or entity, the liability of such individuals or entities shall be joint and several under this Permit.
38. NJ Transit reserves the right to approve all contractors and subcontractors involved in the Work, provided, however, that NJ Transit's approval of a particular contractor or subcontractor shall not impair or reduce the Permittee's liability hereunder.
39. This permit is being signed and delivered by a legally authorized representative of the Permittee as its duly authorized and voluntary act.
40. This temporary access Permit and its terms and conditions are agreed to as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(SIGNATURE PAGE TO FOLLOW)

**NJ Transit Corporation**

By: \_\_\_\_\_

Name: **Gregory G. Woods**

Title: **Chief  
Light Rail Operations**

I, \_\_\_\_\_, a representative of the Permittee, hereby certifies that I have the full power and authority to enter into, deliver, and bind the Permittee to the duties and responsibilities of this Permit upon the terms and conditions as set forth herein.

Permittee: \_\_\_\_\_  
(Signed)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DRAFT

**Exhibit A**

**Property included within the Permit**

**Exhibit B**

**Permittee's Scope of Work and Plans**

The attached document, consisting of \_\_\_ page, details the proposed Work, which will be performed at the location(s) detailed in Exhibit A:

DRAFT

**Exhibit C**

**Certificates of Insurance**

The certificates of insurance applicable to this Permit are attached hereto.

DRAFT

**Exhibit D**

**Notification of Work Completion**

Chief  
Light Rail & Contract Services  
NJ Transit Corp.  
One Penn Plaza East  
Newark, NJ 07105-2246

Re: Temporary Access Permit No. \_\_\_\_\_

Please be advised that as of \_\_\_\_\_ all Work to be performed under the Temporary Access Permit has been completed.

Permittee: \_\_\_\_\_

By: \_\_\_\_\_ [Legally Authorized Representative]

NATIONAL RAILROAD PASSENGER CORPORATION  
TEMPORARY PERMIT TO ENTER UPON PROPERTY  
C.E.-17 (REVISED 9/01/21)

Transmittal Date: September 8, 2023  
File: \_\_\_\_  
Internal Order: \_\_\_\_  
WBS Element: \_\_\_\_  
Reference: \_\_\_\_

1. TEMPORARY PERMISSION. Temporary permission is hereby granted to:

\_\_\_\_\_

(hereinafter called "Permittee") to enter property owned and/or controlled by National Railroad Passenger Corporation (hereinafter called "Railroad") for the purpose of \_\_ , under the terms and conditions set forth below.

- o Permittee is required to pay the \$1,500.00 Temporary Permit preparation fee.
- o If Railroad approves the use of its Blanket Railroad Protective Liability Insurance (RRPLI) Program, Permittee shall include the \$\_\_.00 RRPLI premium.
- o Permittee is required to pay in advance Railroad’s Force Account costs as detailed in the attached Force Account Estimate.
- o Railroad shall be paid a management fee equal to ten percent of the total estimated cost. This nonrefundable fee will be assessed in the first invoice.
- o The work described herein may not commence until Railroad has provided written approval of the project plans.

2. LOCATION AND ACCESS. (Give map reference, description or both – include city and state)

MP \_\_ , \_\_ , \_\_

(hereinafter called "Property").

3. INDEMNIFICATION. Permittee hereby releases and agrees to defend, indemnify and hold harmless Railroad, as well as its officers, directors, employees, agents, successors, assigns and subsidiaries (collectively the “Indemnified Parties”), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses and liabilities, penalties, fines, demands, claims, causes of action, suits, and costs (including cost of defense and attorneys’ fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of either or both of the following:

- A. injury, death, or disease of any person, and/or
- B. damage (including environmental contamination and loss of use) to or loss of any property, including property of Railroad

arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Railroad and/or Permittee (as well as Permittee’s employees, agents, contractors, subcontractors, or any other person acting for or by permission of Permittee) in connection with this Temporary Permit. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or any contractor or subcontractor and shall survive the termination or expiration of this Temporary Permit for any reason.

As used in this section, the term “Railroad” also includes all commuter agencies and other railroads with rights to operate over Railroad property, and their respective officers, directors, employees, agents, successors, assigns and subsidiaries.

[4. COMPENSATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the Temporary Permit preparation fee outlined in section 1 as compensation for the preparation of this Temporary Permit. This fee is to be paid upon Permittee's execution of this Temporary Permit.]

[4. CONSIDERATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, as compensation for the preparation of this Temporary Permit.]

5. STARTING OF USE OF PROPERTY. Permittee shall notify Railroad's Deputy Chief Engineer-Construction, or his/her designee, in writing, at least fifteen (15) working days before it desires to enter upon the Property. No entry upon the Property will be permitted until this Temporary Permit has been fully executed and specific written permission to enter upon the Property has been received by Permittee via electronic mail from Railroad's Engineering – I&C Department.

6. PERMITTEE ACTIVITIES. All activities performed by or on behalf of Permittee shall be performed so as not to interfere with Railroad's operations or facilities. In no event shall personnel, equipment or material cross a track(s) without special advance permission from Railroad's Deputy Chief Engineer-Construction or his/her designee. If, in the opinion of Railroad's Deputy Chief Engineer-Construction or his/her designee, conditions warrant at any time, Railroad will provide flagging and/or other protection services at the sole cost and expense of Permittee.

7. CLEARANCES. All equipment and material of Permittee shall be kept away from the tracks by the distances set forth in Attachment A hereof, unless specifically otherwise authorized in writing by Railroad's Deputy Chief Engineer-Construction or his/her designee. Permittee shall conduct all operations so that no part of any equipment or material can foul: an operating track; transmission, communication or signal line; or any other structure or facility of Railroad.

8. RESTORATION OF PROPERTY. Upon completion of its work, Permittee shall, at the option of Railroad, leave the Property in a condition satisfactory to Railroad or restore the Property to its original condition. This may include the restoration of any fences removed or damaged by Permittee.

9. TERM OF TEMPORARY PERMIT. The term shall commence on the date Railroad executes this Temporary Permit ("Execution Date"). Railroad will not execute this Temporary Permit until Railroad has received: payment of any fees/costs identified in section 1 hereof, payment of the fee set forth in section 4 hereof, and satisfactory evidence of the insurance required pursuant to section 11 hereof. The term shall extend until the end of the period Railroad determines is necessary for Permittee to accomplish the purpose set forth in section 1 hereof; provided, however, Railroad reserves the right to revoke this Temporary Permit at any time for any reason, and in no event shall this Temporary Permit extend beyond the Expiration Date. Under no circumstances shall this Temporary Permit be construed as granting to Permittee any right, title or interest of any kind in any property of Railroad.

10. SAFETY AND PROTECTION. All work on, over, under, within or adjacent to the Property shall be performed in accordance with the document entitled "SPECIFICATIONS REGARDING SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY," a copy of which is attached hereto as Attachment A and incorporated herein. Failure to comply with Railroad's safety requirements and Attachment A shall, at Railroad's option, result in immediate termination of this Temporary Permit, denial of future Temporary Permit requests by Permittee, and forfeiture of all funds paid to Railroad.

11. INSURANCE. Before Permittee commences any work on, over, under, within or adjacent to the Property, Permittee and its contractors (unless Permittee opts to provide the required coverage for them), shall furnish to Railroad's Senior Manager Engineering, evidence of the insurance coverages specified in the document entitled "INSURANCE REQUIREMENTS - NATIONAL RAILROAD PASSENGER CORPORATION," a copy of which is attached hereto as Attachment B and incorporated herein.

12. SAFETY TRAINING CLASS. No person may enter upon Railroad property or within twenty-five (25) feet of the centerline of any track or energized wire until he/she has successfully completed Railroad's contractor orientation computer-based safety training class, as noted in section 12 of Attachment A.

13. COMPLIANCE BY CONTRACTORS. Permittee shall take all steps necessary to ensure that its contractors and subcontractors comply with the terms and conditions of this Temporary Permit.

14. REIMBURSEMENT OF COSTS; PAYMENTS. Railroad shall not be responsible for any costs incurred by Permittee in relation to any matter whatsoever. Permittee is required to reimburse Railroad for all costs incurred by Railroad in relation to this Temporary Permit. Without limiting the foregoing, Permittee is required to reimburse Railroad for all costs incurred by Railroad in performing flagging and other protective services and in reviewing any plans, drawings or other submissions.

*Railroad's costs, expenses and labor charges will be billed to Permittee at Railroad's then-current standard force account rates. Permittee understands that Railroad employees working under expired collective bargaining agreements may receive future, retroactive hourly wage increases for their work performed in support of Permittee's activities under this Temporary Permit. Upon payment to the applicable employees of retroactive hourly wage increases (and regardless of whether such payment is made during or after the term of this Temporary Permit), Railroad will invoice Permittee for, and Permittee will pay, the retroactive hourly wage increases, including the applicable overhead additives and benefit costs associated with the support services performed by Railroad.*

Except as specified in section 4 hereof, all payments due from Permittee to Railroad under this Temporary Permit shall be due and payable within thirty (30) days from the date of invoice. Permittee shall have no right to set off against any payment due under this Temporary Permit any sums which Permittee may believe are due to it from Railroad for any reason whatsoever. In the event that Permittee shall fail to pay, when due, any amount payable by it under this Temporary Permit, Permittee shall also pay to Railroad, together with such overdue payment, interest on the overdue amount at a rate of one and one-half percent (1.5%) per month or the highest rate allowed by law, if less than the foregoing, calculated from the date the payment was due until paid. Railroad also has the right to suspend its support services, without penalty, until Permittee has paid all past due amounts with accrued interest. All payments due from Permittee to Railroad hereunder shall be: (a) made by check drawn from currently available funds; (b) made payable to National Railroad Passenger Corporation; and (c) delivered to the address indicated on the invoice. (However, the permit fee referenced in section 4 hereof and the Railroad Protective Liability premium referenced in Attachment B, if applicable, shall be delivered to Railroad at the address set forth in section 4 hereof.) All payment obligations of Permittee under this Temporary Permit shall survive the termination or expiration of this Temporary Permit for any reason.

15. ENVIRONMENTAL AND GEOTECHNICAL TESTS AND STUDIES. Permittee shall not perform any environmental or geotechnical tests or studies (e.g., air, soil or water sampling) unless specifically identified and authorized in section 1 hereof. If any such tests or studies are performed, Permittee shall promptly furnish to Railroad, at no cost, a copy of the results including any reports or analyses obtained or compiled. Except as may be required by applicable law or as authorized by Railroad in writing, Permittee shall not disclose the results of any such tests or studies to anyone other than Railroad or Permittee's client. Failure to comply with the provisions of this clause shall, at Railroad's option, result in immediate termination of this Temporary Permit, forfeiture of all compensation paid Railroad therefor, and pursuance of any other remedies (at law or in equity) that may be available to Railroad. The obligations of Permittee under this section shall survive the termination or expiration of this Temporary Permit for any reason.

16. SEVERABILITY. If any provision of this Temporary Permit is found to be unlawful, invalid or unenforceable, that provision shall be deemed deleted without prejudice to the lawfulness, validity and enforceability of the remainder of the Temporary Permit.

17. GOVERNING LAW. This Temporary Permit shall be governed by and construed under the laws of the District of Columbia and pursuant to 49 USC 28103(b) which precludes and preempts any other federal or state laws. All legal proceedings in connection with any dispute arising under or relating to this Temporary Permit shall be brought in the United States District Court for the District of Columbia.

\*AGREED TO AND ACCEPTED BY PERMITTEE:

\_\_\_\_\_

By: \_\_\_\_\_  
(signature)

Title: \_\_\_\_\_  
Must be an Owner/Partner or duly authorized representative

Date: \_\_\_\_\_

\* By signing this Temporary Permit, Permittee certifies that this document has not been altered in any manner from the original version as submitted by Railroad.

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
VP Engineering Services

Date: \_\_\_\_\_  
Execution Date

Expiration Date: (For Amtrak Use Only)

1 year from Execution Date

Project Completion

Other:

**ATTACHMENT A**  
**Temporary Permit to Enter Upon Property**  
**SPECIFICATIONS REGARDING SAFETY**  
**AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY (Revised 9/21/18)**

National Railroad Passenger Corporation

In the following Specifications, “Temporary Permit” means Railroad’s “Temporary Permit to Enter Upon Property”; "Railroad" means National Railroad Passenger Corporation; “Chief Engineer" means Railroad's Chief Engineer or his/her duly authorized representative; “Permittee” means the party so identified in the Temporary Permit; and “Contractor” means the entity retained by the Permittee or the entity with whom Railroad has contracted in a Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase Agreement, Force Account Agreement, License Agreement or other such agreement, as applicable. Reference to “Permittee/Contractor” includes both the Permittee and the Contractor.

- (1) Pre-Entry Meeting: Before entry of Permittee/Contractor onto Railroad's property, a pre-entry meeting shall be held at which time Permittee/Contractor shall submit, for written approval of the Chief Engineer, plans, computations, a site-specific safety work plan and site-specific work plans that include a detailed description of proposed methods for accomplishing the work and protecting railroad traffic in accordance with Amtrak Engineering Practices EP 3014. Any such written approval shall not relieve Permittee/Contractor of its complete responsibility for the adequacy and safety of its operations.
- (2) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety, security and continuity, and Permittee/Contractor shall conduct its operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad’s property. Permittee/Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of such rules, regulations, or requirements shall be grounds for the termination of the Temporary Permit and/or the immediate suspension of Permittee/Contractor work, and the re-training of all personnel, at Permittee’s/Contractor’s expense.
- (3) Maintenance of Safe Conditions: If tracks or other property of Railroad are endangered during the work, Permittee/Contractor shall immediately notify Railroad and take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee/Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad’s trains, tracks, right-of-way or other property caused by the operations of Permittee/Contractor, shall be paid by Permittee/Contractor. Any work (or equipment being staged onsite during the work) performed at or near a railroad crossing must not obstruct the view of flashing light units or gates to oncoming traffic.
- (4) Protection in General: Permittee/Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of railroad traffic. Any inspectors, track foremen, track watchmen, flagmen, signalmen, electric traction linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee/Contractor. The cost of same shall be paid directly to Railroad by Permittee/Contractor. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee/Contractor from its complete responsibility for the adequacy and safety of its operations.
- (5) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad’s requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity thereof must be strictly observed. No employees or equipment

will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee/Contractor must supply an adequate length of grounding cable (4/0 copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

(6) Fouling of Track or Wire: No work will be permitted within twenty-five (25) feet of the centerline of a track or energized wire or that has the potential of getting within twenty-five (25) feet of such track or wire without the approval of the Chief Engineer. Permittee/Contractor shall conduct its work so that no part of any equipment or material shall foul an active track or overhead wire without the written permission of the Chief Engineer. When Permittee/Contractor desires to foul an active track or overhead wire, it must provide the Chief Engineer with its site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of the railroad. Any equipment shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within such distance in (a) above and shall require the presence of the proper Railroad protection personnel.

If acceptable to the Chief Engineer, a safety barrier (approved temporary fence or barricade) may be installed at fifteen (15) feet from centerline of track or overhead wire to afford Permittee/Contractor with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the Chief Engineer.

(7) Track Outages: Permittee/Contractor shall verify the time and schedule of track outages from Railroad before scheduling any of its work on, over, under, within, or adjacent to Railroad's right-of-way. Railroad does not guarantee the availability of any track outage at any particular time. Permittee/Contractor shall schedule all work to be performed in such a manner as not to interfere with Railroad operations. Permittee/Contractor shall use all necessary care and precaution to avoid accidents, delay or interference with Railroad's trains or other property.

(8) Demolition: During any demolition, Permittee/Contractor must provide horizontal and vertical shields, designed by a professional engineer registered in the state in which the work takes place. These shields shall be designed in accordance with Railroad's specifications and approved by Railroad, so as to prevent any debris from falling onto Railroad's right-of-way or other property. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge. Ballasted track structure must be kept free of all construction and demolition debris.

(9) Equipment Condition and Location: All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class condition so as to prevent failures that might cause delay to trains or damage to Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer. Under no circumstances shall any equipment be placed or put into operation within twenty-five (25) feet from the centerline of an outside track, except as approved by Railroad in accordance with Permittee's/Contractor's site-specific safety work plan. To ensure compliance with this requirement, Permittee/Contractor must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer. Permittee/Contractor will be issued warning stickers which must be placed in the operating cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.

If work to be performed on Railroad property involves heavy trucks, equipment, or machinery along the right-of-way, duct lines and pull boxes shall be inspected by on-site Railroad personnel and the equipment operator to ensure they can withstand the weight.

(10) Storage of Materials and Equipment: No material or equipment shall be stored on Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that Railroad will not be liable for loss of or damage to such materials or equipment from any cause.

If permission is granted for the storage of compressed gas cylinders on Railroad property, they shall be stored a minimum of twenty-five (25) feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when Permittee/Contractor is not on the project site.

(11) Condition of Railroad's Property: Permittee/Contractor shall keep Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Permittee/Contractor shall remove from Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of Permittee/Contractor and shall leave Railroad's property in a condition satisfactory to the Chief Engineer.

(12) Safety Training: All individuals, including representatives and employees of Permittee/Contractor, before entering onto Railroad's property and before coming within twenty-five (25) feet of the centerline of a track or overhead wire, must first complete Railroad's contractor orientation computer-based safety training class. The class is provided electronically at [www.amtrakcontractor.com](http://www.amtrakcontractor.com). Upon successful completion of the class and test, the individual taking the class will receive a temporary certificate without a photo that is valid for fourteen (14) days. The individual must upload a photo of himself/herself that will be embedded in the permanent ID card. The photo ID will be mailed to the individual's home address and must be worn/displayed while on Railroad property. Training is valid for one calendar year. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee/Contractor. Permittee/Contractor shall appoint a qualified person as its Safety Representative. The Safety Representative shall continuously ensure that all individuals comply with Railroad's safety requirements. All safety training records must be maintained with Permittee's/Contractor's site-specific work plan.

(13) No Charges to Railroad: It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for which Railroad is to be billed by Permittee/Contractor, unless Railroad makes a specific written request that such work be performed at Railroad's expense.

(14) Utilities: All underground utilities, cables, and facilities must be located and protected before any excavating, drilling of any kind, boring, ground penetrating activities, or construction activities take place. This includes, but is not limited to, Railroad and commercial utilities, cables, duct lines, and facilities. The "call before you dig" process must be followed. Railroad is not part of that process; therefore, Permittee/Contractor must contact Railroad's Engineering Department to have Railroad's underground utilities and assets located. If requested by Railroad, existing depths of any utilities being crossed must be verified through test pits performed by Permittee/Contractor as directed by and under the direct supervision of Railroad personnel. Hand digging may be required, as directed by Railroad's on-site support personnel. No activities may be performed in close proximity to Railroad duct bank or communication facilities unless monitored by on-site Railroad personnel. Railroad maintains the right to access its existing cables and conduits throughout construction and reserves the right to upgrade and install new cables and conduits in the affected area. Precautions must be taken by Permittee/Contractor to prevent any interruption to Railroad's operations.

**ATTACHMENT B  
INSURANCE REQUIREMENTS  
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)  
Revised as of September 1, 2021**

**DEFINITIONS**

In these Insurance Requirements, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation and, as appropriate, its subsidiary, Washington Terminal Company ("WTC"). "Contractor" shall mean the party identified as "Permittee" in the Temporary Permit to Enter Upon Property or the party with whom Amtrak has contracted in another agreement (e.g., Preliminary Engineering Agreement, Design and/or Construction Phase Agreement, Force Account Agreement, License Agreement), as well as its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter Upon Property or other such agreement, as applicable.

**INSURANCE**

Contractor shall procure and maintain, at its sole cost, the types of insurance specified below:

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of Contractor. Employer's Liability coverage shall have the following minimum limits of coverage:

\$1,000,000	Each Accident
\$1,000,000	Disease Policy Limit
\$1,000,000	Disease Each Employee

In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and an Outer Continental Lands Act Endorsement are required.

2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor with respect to all operations to be performed and all obligations assumed by Contractor under the terms of the Agreement. Products-completed operations, independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and with no exclusions for Explosion/Collapse/Underground (X-C-U). Coverage shall include bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

This policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$2,000,000	Annual Policy Aggregate
\$2,000,000	Products and Completed Operations

In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed.
- B. The policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing

- contractual liability coverage for railroads listed as additional insureds.
- C. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry.
- D. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

3. **Automobile Liability Insurance** covering the liability of Contractor arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall have the following minimum limits of coverage:

\$1,000,000	Each Occurrence, Combined Single Limit
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In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed.
- B. Coverage shall include bodily injury (including disease or death), personal injury and property damage (including loss of use) liability and cover damages resulted from loading and unloading activities.
- C. In the event Contractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to \$5 million each occurrence.

4. **Railroad Protective (RRP) Liability Insurance** covering the Operations performed by Contractor within fifty (50) feet vertically or horizontally of railroad tracks. The policy shall be written on a current ISO Occurrence Form (claims-made forms are unacceptable) in the name of National Railroad Passenger Corporation (and, as appropriate WTC) and all commuter agencies and railroads that operate over the property or tracks at issue). The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$6,000,000	Policy Aggregate

In addition, the following shall apply:

- A. The policy shall have coverage for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof.
- B. Policy Endorsement CG 28 31 - Pollution Exclusion Amendment is required to be endorsed onto the policy.
- C. "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

D. In the alternative, and upon Amtrak's approval, Contractor may elect to have Amtrak insure the Operations under its Blanket RRP Liability Insurance Program. The premium, which shall be determined by the rate schedule promulgated by the insurer in effect as of the effective date of the Agreement, shall be prepaid by Contractor. In the event Contractor and Amtrak agree to insure the Operations under Amtrak's RRP Program, **Contractor shall include the RRP**

premium outlined in section 1, and send its payment prior to commencement of Operations.

- 5. **All Risk Property Insurance** covering damage to or loss of all personal property of Contractor used during Operations including, but not limited to, tools, equipment, construction trailers and their contents and temporary scaffolding at the project site, whether owned, leased, rented or borrowed for the full replacement cost value. Such insurance policies shall include a waiver of subrogation and any other rights of recovery in favor of Amtrak.
- 6. **Contractor’s Pollution Liability Insurance** covering the liability of Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, which arise from the Operations of Contractor. The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds.
  - B. The coverage shall be maintained during the term of the Operations and for at least two (2) years following completion thereof.
7. **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor or its transporter, as well as the disposal site operator, shall maintain this insurance. The policy shall have the following minimum limits of coverage:

\$2,000,000	Each Occurrence
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. Contractor shall designate the disposal site and provide a certificate of insurance from the disposal facility to Amtrak.
  - B. The policy shall name National Railroad Passenger Corporation (and, as appropriate, WTC) and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds.
  - C. Any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by Contractor.
8. **Professional Liability Insurance** covering the liability of Contractor for any errors or omissions committed by Contractor providing professional design or engineering services in the performance of the Operations, regardless of the type of damages. The policy shall have the following minimum levels of coverage:

\$2,000,000	Per Claim
\$2,000,000	Annual Policy Aggregate

In addition, the following shall apply:

- A. The coverage shall be maintained during the Operations and for at least three (3) years following completion thereof.
- B. The policy shall have a retroactive date that coincides with or precedes any design work on the project.
- C. If Contractor is not performing professional design or engineering services, Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 "Incidental Professional Liability" to its CGL policy.

## **MISCELLANEOUS**

### 1. **General**

- A. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed.
- B. Contractor shall require all subcontractors to carry the insurance required herein or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to Amtrak so stipulates.
- C. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed.
- D. Unless noted otherwise herein, all insurance shall remain in force until all Operations are satisfactorily completed, all Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted.
- E. Contractor may provide for the insurance coverages with such deductible or retained amount as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole cost, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force.
- F. Contractor's failure to comply with the insurance requirements set forth in these Insurance Requirements shall constitute a violation of the Agreement.

2. **Waiver of Subrogation** As to all insurance policies required herein, Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak (and, as appropriate, WTC) and their agents, officers, directors, and employees. The waiver must be stated on the certificates of insurance.

3. **Punitive Damages** Unless prohibited by law, no liability insurance policies required herein shall contain an exclusion for punitive or exemplary damages.

4. **Claims-Made Insurance** If any liability insurance specified herein shall be provided on a claims-made basis then, in addition to coverage requirements above, the following shall apply:

- A. The retroactive date shall coincide with or precede Contractor's start of Operations (including subsequent policies purchased as renewals or replacements);
- B. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
- C. Contractor shall maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., CGL, Professional Liability, Pollution Legal Liability) for at least three (3) years following completion of Operations; and
- D. If insurance is terminated for any reason and not replaced with insurance meeting the requirements herein, Contractor shall purchase an extended reporting provision of at least four (4) years to report claims arising from Operations.

### 5. **Evidence of Insurance**

- A. Contractor shall submit to Amtrak the original RRP Liability Insurance Policy and certificates

- of insurance evidencing the other required insurance. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within thirty (30) days of Amtrak's written request.
- B. Contractor shall furnish evidence of insurance as specified herein at least fifteen (15) days prior to commencing Operations. The fifteen (15) day requirement may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Operations without providing satisfactory evidence of insurance as approved by Amtrak.
  - C. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies.
  - D. ALL INSURANCE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING.
  - E. Evidence of insurance coverage shall be sent to:

Senior Manager Engineering  
National Railroad Passenger Corporation  
30<sup>th</sup> Street Station, Mailbox 64  
2955 Market Street  
Philadelphia, PA 19104-2817

## **TETERBORO AIRPORT – REHABILITATION OF RUNWAY 1-19 – PROJECT AUTHORIZATION AND AWARD OF CONTRACT**

It was recommended that the Board authorize: (1) a project to rehabilitate Runway 1-19 at Teterboro Airport (TEB), at an estimated total project cost of \$41.8 million; and (2) the Executive Director to award Contract TEB-144.064, pursuant to a publicly advertised bid process, to perform the runway rehabilitation work, at an estimated amount of \$25.6 million, the cost of which is included in the total project cost.

TEB is a critical part of the Port Authority's regional airport system, serving general aviation activity in the New York/New Jersey metropolitan region. Runway 1-19 is one of two runways at TEB and handled 82,339 (49.3 percent) of 167,063 flight operations at TEB in 2022. Flight operations for the first half of 2023 exceeded 2019 volumes. Runway 1-19, one of two runways at TEB, is approximately 7,000 feet long and 150 feet wide, and handles approximately half of the flight operations at TEB. The runway was last rehabilitated in 2011. The most recent inspection of the runway determined that pavement rehabilitation is necessary to extend its useful life.

In December 2019, the Board authorized preliminary planning work and engineering services (Stage I Planning) for Runway 1-19, at an estimated total cost of \$1 million. The Stage I Planning work included an assessment of: (1) the minimum pavement mill and overlay depth required; (2) airfield lighting and signage requirements; and (3) measures to improve runway drainage. In December 2022, the Board authorized a \$1.96 million increase in the amount of planning for Stage II design, which provided for further planning and design work related to sustainability, storm resilience, and improvements to maintain compliance with Federal Aviation Administration (FAA) requirements, and a value engineering effort.

The project will include pavement mill and overlay, replacement of existing incandescent airfield lighting with light emitting diode (LED) lighting, replacement of regulators, signage, and electrical infrastructure, and drainage improvements, to ensure state of good repair and comply with the latest FAA specifications. The project will be submitted for consideration for future Federal Airport Improvement Program (AIP) and Airport Infrastructure Grant (AIG) funding, or other applicable federal grants for recovery of a portion of the total project cost. The total grant amount is contingent on the FAA evaluation of the accepted bid for contract award.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Eve, Fisher, Helmy, Kelley, LaBarbera, Lynford, McCabe, O'Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that a project to rehabilitate Runway 1-19 at TEB, at an estimated total project cost of \$41.8 million, be and is hereby authorized; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to award Contract TEB-144.064, pursuant to a publicly advertised bid process, to perform the runway rehabilitation work, at an estimated amount of \$25.6 million; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take action with respect to other construction contracts, contracts for professional, technical, and advisory services, and such other contracts and agreements as may be necessary to effectuate the foregoing project, pursuant to authority granted in the By-Laws or other resolution adopted by the Board; and it is further

**RESOLVED**, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or her authorized representative.

## **OUTERBRIDGE CROSSING WIDENING FEASIBILITY STUDY – PLANNING AUTHORIZATION**

It was recommended that the Board authorize: (1) planning work to determine the feasibility of widening the Outerbridge Crossing (OBX), at a total estimated planning cost of \$8.3 million; and (2) the Executive Director to enter into an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C. (HDR) to perform expert professional architectural and engineering services in support of the feasibility study, at an estimated cost of \$5.2 million, inclusive of contingency, the amount of which is included in the total planning cost. The balance of the total planning cost of \$3.1 million would cover staff costs and agency allocations, including financial expense.

The OBX, constructed in the late 1920s, carries New York-New Jersey Route 440 connecting Perth Amboy, New Jersey, with the New York City borough of Staten Island. The OBX is nearing its 100-year anniversary, and ultimately requires rebuilding to address traffic flow, congestion, and other issues.

In 2020, a study was completed for the rehabilitation of the OBX that also provided high-level recommendations for the future replacement of the bridge. In late 2021, the Port Authority committed to undertake a study to determine the feasibility of widening the OBX, with a report to be issued examining the cost of widening the bridge and the cost of related property acquisitions. The proposed feasibility study would examine and analyze the structural modifications, potential property acquisitions, and rough order of magnitude cost to widen the bridge to current federal standards and provide for a shared-use path.

The proposed agreement with HDR was procured via a publicly advertised Request for Proposals (RFP) process. HDR was the highest rated proposer in response to the RFP, and under the proposed agreement would provide expert professional architectural and engineering services to support the planning effort.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Bollwage, Cohen, Eve, Fisher, Helmy, Kelley, LaBarbera, Lynford, McCabe, O'Toole, Richardson and Rosado in favor. General Counsel confirmed that sufficient affirmative votes were cast for the action to be taken, a quorum of the Board being present.

**RESOLVED**, that planning work to determine the feasibility of widening the Outerbridge Crossing (OBX), at an estimated total planning cost of \$8.3 million, be and it hereby is authorized; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to enter into an agreement with Henningson, Durham & Richardson Architecture and Engineering, P.C., to perform expert professional architectural and engineering services in support of the OBX widening feasibility study, at an estimated cost of \$5.2 million, inclusive of contingency; and it is further

**RESOLVED**, that the Executive Director be and he hereby is authorized, for and on behalf of the Port Authority, to take action with respect to other contracts for

professional, technical and advisory services, and such other contracts and agreements as may be necessary or appropriate to effectuate the foregoing planning work, pursuant to authority granted in the By-Laws or other resolution adopted by the Board; and it is further

**RESOLVED**, that the form of all contracts, agreements and other documents in connection with the foregoing shall be subject to the approval of General Counsel or her authorized representative, and the terms of such contracts, agreements and other documents shall be subject to review by General Counsel or her authorized representative.

Whereupon, the meeting was adjourned.

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Secretary