

Gateway Development Commission  
Meeting of The Board  
Held In-Person and via Teleconference

May 2, 2023

MINUTES

The following Commissioners were present:

**NEW JERSEY**

Balpreet Grewal-Virk, Co-Chair  
Janine Bauer  
Amy Rosen

**NEW YORK**

Alicia Glen, Co-Chair  
Jamey Barbas  
Marie Therese Dominguez

**AMTRAK**

Anthony R. Coscia, Vice Chair

**I. Call to Order**

The public meeting was called to order by Co-Chair Grewal-Virk at approximately 12:10 PM.

Co-Chair Grewal-Virk advised that as part of the transition from virtual meetings, public comments were being solicited both in-person and virtually, and audio of the meeting was being live-streamed from the Gateway Program website.

Co-Chair Grewal-Virk noted that the Commission was continuing to solicit virtual comments, and that a form for soliciting these comments was posted on the Gateway Program website for those who wished to submit a comment for today's meeting.

Acting Secretary Caulfield conducted a roll call and confirmed that there was a quorum. Commissioners Barbas, Coscia, Dominguez, Glen and Rosen participated virtually via teleconference during the entirety of the meeting.

Acting Secretary Caulfield stated that adequate notice of today's regular public meeting of the Board of Commissioners of the Commission had been provided in accordance with the Commission's enabling legislation.

**II. Executive Session**

Co-Chair Grewal-Virk requested a motion to enter Executive Session to discuss contract negotiations, personnel matters and matters in which the release of information could impair a right to receive funds from the United States or other grantor. Co-Chair Grewal-Virk noted that the Board would reconvene the public meeting upon the conclusion of Executive Session for an update on the Gateway Program. Co-Chair Grewal-Virk motioned to enter into Executive Session, Commissioner Bauer seconded the motion, and the motion was unanimously adopted at approximately 12:13 PM.

**III. Reconvening of Public Meeting**

The public meeting was reconvened by Co-Chair Grewal-Virk at approximately 1:20 PM. Acting Secretary Caulfield confirmed that all Commissioners were present and there was a quorum, with Commissioners Barbas, Coscia, Dominguez, Glen and Rosen participating virtually.

**IV. Report on Minutes of the December 12, 2022 Meeting**

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of December 12, 2022 were delivered in electronic form by Acting Secretary Caulfield to the Governors of New York and New Jersey on December 20, 2022 and that the time for action by the Governors of New York and New Jersey expired at midnight on January 6, 2023, at which time the actions recorded in the Minutes went into full force and effect.

**V. Gateway Program Update**

The Commission’s Chief Executive Officer, Kris Kolluri, as well as Megan Strickland and Andrew Bazil, provided an update presentation on the Gateway Program.

Following the presentation, Co-Chair Grewal-Virk thanked Mr. Kolluri, Ms. Strickland and Mr. Bazil for their presentation and noted the intense work that has gone into the revised packaging strategy for the Hudson Tunnel Project.

**VI. Public Comments**

Co-Chair Grewal-Virk announced that the Commission had solicited in-person and virtual comments from the public in advance of, and during, today’s meeting. She indicated that a form for soliciting these comments was posted to the Gateway Program website and was available throughout today’s meeting. She also indicated that public attending in-person had opportunity to sign up in advance or when arriving today. There was one (1) written comment received by 5:00 PM on May 1, 2023.

<b>Commenter</b>	<b>Topic</b>
Madeleine DeCerbo, Real Estate Board of New York	No topic designated in comment form.

Co-Chair Grewal Virk noted that all written comments received during the meeting would be distributed to the Board, posted on the Gateway Program website, and filed in the Commission’s records after the meeting. GDC subsequently received written comments from Joseph Clift and Felicia Park-Rogers of Tri-State Transportation Campaign, who both also provided in-person public comments during the meeting.

The following individuals provided in-person public comments during the May 2, 2023 Board Meeting:

<b>Commenter</b>	<b>Topic</b>
Shelly Brindle, Mayor of Town of Westfield	No topic designated on speaker registration form
Felicia Park, Tri-State Transportation Campaign	Support for today’s resolutions
Bruce Hain, Individual	Existing tunnel and workaround
Daniel Ortega, Elec Local 825	No topic designated on speaker registration form
Christian Hartman, NJ Alliance for Action	Construction program start in NJ
George Lobman, Utility & Transportation Contractors Association	Break-up of contracts and appreciation of industry
Robert Lewandowski, NJ LECET	Benefits to region
Robert Campos, Laborers Local 472	Benefits to workers
Joseph Clift, Individual	Future NJT operation budget shortfalls imperil FTA HTP engineering approval letter
Sophie Cappello, Regional Plan Association (RPA)	Dividing up HTP contract packages; Build Gateway Now Coalition updates

**VII. Action Items**

**#0523-01: Establishing the Gateway Development Commission’s Annual Board Meeting Schedule for Calendar Year 2023**

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Commissioner Barbas seconded the motion. The roll call vote is referenced in the attached Resolution.

**#0523-02: Establishing the Gateway Development Commission’s Audit Committee, Governance and Operations Committee, and Project Delivery Committee**

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Commissioner Dominguez seconded the motion. The roll call vote is referenced in the attached Resolution.

**#0523-03: Approval of Market Case Estimate and Authorization to Execute the Supporting or Executing Partner Agreement and Funding Agreements for Hudson Yards Concrete Casing – Section 3**

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Commissioner Rosen seconded the motion. The roll call vote is referenced in the attached Resolution.

**#0523-04: Hudson Tunnel Project – Authorization to Amend the Project Development Agreement**

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Vice Chair Coscia seconded the motion. The roll call vote is referenced in the attached Resolution.

**#0523-05: Hudson Tunnel Project - Hudson River Ground Stabilization Project – Authorization of Stipend Program**

The Board acted on this referenced action item, enclosed herewith. Commissioners did not have any comments on this Resolution. Co-Chair Grewal-Virk made a motion, and Commissioner Bauer seconded the motion. The roll call vote is referenced in the attached Resolution.

**VIII. Adjournment**

Co-Chair Grewal-Virk noted that there was no further business to conduct, and Co-Chair Grewal-Virk then requested a motion to adjourn the meeting. Upon the motion being duly made by Co-Chair Grewal-Virk and seconded by Commissioner Bauer, the meeting was adjourned at approximately 2:15 PM.

Respectfully submitted,

/s/ Edmund Caulfield  
Edmund Caulfield, Acting Secretary

**#0523-01: ESTABLISHING THE GATEWAY DEVELOPMENT COMMISSION'S ANNUAL BOARD MEETING SCHEDULE FOR CALENDAR YEAR 2023**

The Gateway Development Commission (the “**Commission**”) is a public authority and government sponsored authority created through the enactment of parallel legislation by the States of New York and New Jersey codified as the Gateway Development Commission Act (2019 N.Y. Sess. Laws Ch. 108 and 2019 N.J. Sess. Law Serv. Ch. 195) (collectively, the “**GDC Act**”).

The Commission’s Open Meetings Policy, Bylaws, and the GDC Act provide procedures related to the timing, public notice, and location of meetings of the Commission’s Board of Commissioners (the “**Board**”) to allow for public participation and protocols that allow for meetings to be conducted in an efficient and effective manner.

In accordance with provisions of the GDC Act, Section 4.01 of the Commission’s Bylaws provides that “[t]he Board shall meet regularly as it may determine. The time and place for all Meetings shall be determined by Co-Chairpersons; provided that, to the maximum extent practicable, Meetings shall be held on an alternating basis in New Jersey and New York.”

Section IV of the Commission’s Open Meetings Policy requires that the Board “will establish a schedule of meetings and hold special meetings in accordance with the Commission’s Bylaws,” and that a schedule of meetings of the Board “will be included in a public calendar of meetings posted on the Commission’s website, updated as appropriate.”

In accordance with Section IV of the Commission’s Open Meetings Policy, the Commission desires to adopt the annual Board meeting schedule for calendar year 2023, as further detailed in **Exhibit A**.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Barbas, Bauer, Coscia, Dominguez, Glen, Grewal-Virk, and Rosen voting in favor:

**RESOLVED**, in accordance with Section IV(B)(1) of the Commission’s Open Meetings Policy, the Commission hereby adopts the annual Board meeting schedule for calendar year 2023, as attached hereto as **Exhibit A**.

**EXHIBIT A**

**SCHEDULE OF BOARD MEETINGS AND LOCATIONS**

<b>NEW JERSEY</b>	<b>NEW YORK</b>
<p>Unless otherwise indicated in public notices to be issued in accordance with the GDC Act, the regular meetings of the Gateway Development Commission’s Board of Commissioners will be held in-person at the NJ Transit Board Room at 1 Penn Plaza East, 9<sup>th</sup> Floor, Newark, New Jersey, and live streamed via <a href="http://www.gatewayprogram.org">www.gatewayprogram.org</a> on the following dates:</p> <p style="text-align: center;">May 2, 2023 September 11, 2023</p>	<p>Unless otherwise indicated in public notices to be issued in accordance with the GDC Act, the regular meetings of the Gateway Development Commission’s Board of Commissioners will be held in-person at the Port Authority Board Room at 4 World Trade Center, 23<sup>rd</sup> Floor, New York, New York, and live streamed via <a href="http://www.gatewayprogram.org">www.gatewayprogram.org</a> on the following dates:</p> <p style="text-align: center;">July 12, 2023 November 16, 2023</p>

**#0523-02: ESTABLISHING THE GATEWAY DEVELOPMENT COMMISSION'S AUDIT COMMITTEE, GOVERNANCE AND OPERATIONS COMMITTEE, AND PROJECT DELIVERY COMMITTEE**

The Gateway Development Commission (the “**GDC**”) is a public authority and government sponsored authority created through the enactment of parallel legislation by the States of New York and New Jersey codified as the Gateway Development Commission Act (2019 N.Y. Sess. Laws Ch. 108 and 2019 N.J. Sess. Law Serv. Ch. 195) (collectively, the “**GDC Act**”).

The GDC Act and the GDC Bylaws hold that the GDC Board of Commissioners “shall arrange for an independent firm of certified public accountants to perform an audit of the financial statements of the Commission each year...” 2019 N.Y. Laws, Ch. 108, Section 2(10)(b); N.J.S.A. 32:36-11(b).

Pursuant to Resolution #1122-02, entitled “Authorization for GDC to enter into Operational Funding Agreements and Retain an Independent Auditor”, which was approved by the GDC Board at the November 18, 2022 meeting, the GDC Board delegated authority to the GDC CEO to award and approve an agreement with an independent firm of certified public accountants, containing such terms as the GDC CEO and applicable staff deems necessary and advisable in order to effectuate the foregoing transaction.

In accordance with this Resolution, the Commission has recently entered into an engagement letter with Deloitte & Touche LLP (“Deloitte”). As part of this engagement, and in accordance with the GDC Act and Bylaws, Deloitte will serve as GDC’s independent auditor and be required to report to the GDC Board of Commissioners.

Section 6.01 of the GDC’s Bylaws provides, “[t]he Board may establish standing or ad hoc committees (each, a “**Committee**”) with such duties and powers as conferred by Board Resolution.”

The GDC has a need to establish an Audit Committee of the Board of Commissioners to ensure that GDC’s independent auditor is appropriately reporting to the Board of Commissioners regarding its work auditing the Commission’s financial statements each fiscal year.

Further, the GDC has a need to establish the following additional Committees of the Board of Commissioners: (i) a Governance and Operations Committee, to oversee issues regarding budget, travel, officer hiring, and other matters related to day-to-day governance and operations of the GDC; and (ii) a Project Delivery Committee, to oversee status of delivery contracts that are awarded by the GDC, as well as providing policy guidance regarding planned procurements on an as-needed basis.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Barbas, Bauer, Coscia, Dominguez, Glen, Grewal-Virk, and Rosen voting in favor:

**RESOLVED**, in accordance with Section 6.01 of the GDC's Bylaws, the GDC Board of Commissioners hereby establishes an Audit Committee, Governance and Operations Committee, and Project Delivery Committee.

**RESOLVED**, that each respective Committee will consist of three Commissioners.

**RESOLVED**, that the New York Co-Chair will appoint one Commissioner from New York and the New Jersey Co-Chair will appoint one Commissioner from New Jersey to each respective Committee.

**RESOLVED**, that the Vice Chair of the GDC Board of Commissioners will be a member of each respective Committee.

**#0523-03: APPROVAL OF MARKET CASE ESTIMATE AND AUTHORIZATION TO EXECUTE THE SUPPORTING OR EXECUTING PARTNER AGREEMENT AND FUNDING AGREEMENTS FOR HUDSON YARDS CONCRETE CASING – SECTION 3**

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

The GDC Act empowers the Commission to “enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them.” 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

Section 3.06 of the GDC Bylaws provides that “[t]he Board may delegate in whole or in part any power, authority, discretion or obligation to any Officer, in each case to the extent to which the Board deems appropriate.”

Accordingly, on February 3, 2023, the State of New Jersey, the State of New York, the National Railroad Passenger Corporation (“**Amtrak**”), and the GDC (the “**PDA Parties**”) entered into an Agreement (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**”).

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

In order to preserve the underground right-of-way for the Hudson River Tunnel to connect to New York Pennsylvania Station (“**Penn Station**”), Amtrak has, since 2012, led the design and construction of a concrete casing beneath the John D. Caemmerer West Side Storage Yard (“**WSY**”) on the west side of Manhattan (the “**Hudson Yards Concrete Casing**” or “**HYCC**”).

The WSY is the site of an existing rail yard owned by the Metropolitan Transportation Authority and used by the Long Island Rail Road Company (collectively, “**MTA**”).

In 2012, a private developer secured exclusive development rights from the MTA to construct a commercial and residential development above the WSY, known as Hudson Yards.

The construction of the Hudson Yards Concrete Casing is critical to the HTP, as Hudson Yards is the only clear alignment on the west side of Manhattan that would allow the Hudson River Tunnel to fully connect to Penn Station from the west, and if the private development proceeded without construction of the Hudson Yards Concrete Casing, the proposed alignment for the Hudson River Tunnel would become infeasible.



The Hudson Yards Concrete Casing has been divided into three (3) segments: HYCC-1, HYCC-2, and HYCC-3. Amtrak oversaw the construction of HYCC-1 and HYCC-2, both of which were completed years before GDC was established. Amtrak has completed final design of HYCC-3 and has secured necessary approvals under the National Environmental Policy Act to construct HYCC-3. The design contemplates extending the concrete casing on a diagonal alignment from 11th Avenue to 30th Street, where it will connect with the Hudson River Tunnel once constructed.

In 2023, Amtrak was notified it was selected for a \$292 million grant for HYCC-3 by the U.S. Department of Transportation (“**USDOT**”) under the National Infrastructure Project Assistance program, which also is known as the Mega Grant Program (“**Mega Grant**”).

Pursuant to the terms of the PDA, GDC and Amtrak have negotiated a SEP Agreement in order to establish their roles and responsibilities with respect to the funding, financing, procurement, construction, delivery, operation, and maintenance of HYCC-3 (the “**HYCC-3 SEP Agreement**”), an execution version of which is attached hereto as **Exhibit A**.

The HYCC-3 SEP Agreement establishes a project cost estimate based on bid pricing for HYCC-3 that has been calculated by Amtrak (the “**HYCC-3 Market Case Estimate**”), which is attached hereto as **Exhibit B**. The HYCC-3 Market Case Estimate is \$692.7 million, and includes all final negotiated costs and contingencies related to the construction and delivery of HYCC-3.

The HYCC-3 SEP Agreement and the HYCC-3 Market Case Estimate will also serve as the basis for funding agreements that GDC will enter into with the States of New York and New Jersey pursuant to the PDA, so that the local share funding that formed the basis of Amtrak’s Mega Grant application can be directed to Amtrak by GDC in support of HYCC-3 construction.

GDC and the State of New York have negotiated the State of New York Funding Agreement for Hudson Yards Concrete Casing – Section 3 (the “**NY Funding Agreement**”), an execution version of which is attached hereto as **Exhibit C**.

GDC and the State of New Jersey have negotiated the State of New Jersey Funding Agreement for Hudson Yards Concrete Casing – Section 3 (the “**NJ Funding Agreement**”), an execution version of which is attached hereto as **Exhibit D**.

Pursuant to the foregoing report, the following resolutions were adopted, with Commissioners Barbas, Bauer, Coscia, Dominguez, Glen, Grewal-Virk, and Rosen voting in favor:

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this resolution, and to make, execute, and deliver in the name and on behalf of GDC the attached copy of the HYCC-3 SEP Agreement, and to take all other steps necessary to comply with the terms and conditions of the HYCC-3 SEP Agreement.

**RESOLVED**, that the GDC Board of Commissioners hereby approves the attached HYCC-3 Market Case Estimate.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this resolution, and to make, execute, and deliver in the name and on behalf of GDC the attached copy of the NY Funding Agreement, and to take all other steps necessary to comply with the terms and conditions of the NY Funding Agreement.

**RESOLVED**, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this resolution, and to make, execute, and deliver in the name and on behalf of GDC the attached copy of the NJ Funding Agreement, and to take all other steps necessary to comply with the terms and conditions of the NJ Funding Agreement.

*Adopted - 5/2/23*

**EXHIBIT A**  
**HYCC-3 SEP AGREEMENT**

EXECUTION VERSION

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**SUPPORTING OR EXECUTING PARTNER AGREEMENT  
for  
HUDSON YARDS CONCRETE CASING – SECTION 3**

By and between

GATEWAY DEVELOPMENT COMMISSION

and

NATIONAL RAILROAD PASSENGER CORPORATION

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

**NATIONAL RAILROAD PASSENGER CORPORATION**, a corporation established by the United States and organized under the laws of the District of Columbia (“**Amtrak**”).

GDC and Amtrak are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires.

### 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. 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 a Project Development Agreement (the “**Project Development Agreement**” or “**PDA**”) for the Hudson Tunnel Project (“**HTP**”) 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 HTP;

- G. As further described in the PDA, the delivery of certain work packages of the HTP (“**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 includes Amtrak;
- H. 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);
- I. In order to preserve the underground right-of-way for the Hudson River Tunnel to connect to New York Pennsylvania Station (“**Penn Station**”), since 2012, Amtrak has led the design and construction of a concrete casing beneath the John D. Caemmerer West Side Storage Yard (“**WSY**”) on the west side of Manhattan (the “**Hudson Yards Concrete Casing**” or “**HYCC**”);
- J. The WSY is the site of a rail yard owned by the Metropolitan Transportation Authority and used by The Long Island Rail Road Company (collectively, “**MTA**”);
- K. In 2012, a private developer secured exclusive development rights from the MTA to construct a commercial and residential development above the WSY, known as Hudson Yards;
- L. The construction of the Hudson Yards Concrete Casing is critical to the HTP, as Hudson Yards is the only clear alignment on the west side of Manhattan that would allow the Hudson River Tunnel to fully connect to Penn Station from the west, and if the private development proceeded without construction of the Hudson Yards Concrete Casing, the proposed alignment for the Hudson River Tunnel would become infeasible;
- M. Amtrak has secured necessary approvals under the National Environmental Policy Act (“**NEPA**”) to construct HYCC in the form of a Finding of No Significant Impact from the Federal Railroad Administration (“**FRA**”) dated November 2014, a Categorical Exclusion from the Federal Transit Administration (“**FTA**”) dated November 2019, and a Record of Decision from the FRA dated November 2021 titled “Combined Final Environmental Impact Statement/Record of Decision and Final Section 4(f) Evaluation Addressing the Construction and Operation of the Western Rail Yard Infrastructure Project, New York, New York (collectively, the “**HYCC-3 NEPA Approvals**”);
- N. The Hudson Yards Concrete Casing has been divided into three (3) segments: HYCC-1, HYCC-2, and HYCC-3;
- O. Construction of HYCC-1, which consisted of an 800-foot section between 10<sup>th</sup> and 11<sup>th</sup> Avenues, began in August 2013 and was completed one (1) year later;
- P. HYCC-2 extended the concrete casing west another 105 feet under the 11<sup>th</sup> Avenue viaduct and construction was completed in 2016;
- Q. Both HYCC-1 and HYCC-2 were completed years before GDC was established pursuant to the GDC Act;
- R. Amtrak has completed final design of HYCC-3. The design contemplates extending the concrete casing on a diagonal alignment from 11<sup>th</sup> Avenue to 30<sup>th</sup> Street, where it will connect with the Hudson River Tunnel once constructed;

S. In December 2022, Amtrak was selected to receive a \$292 million grant for HYCC-3 by the U.S. Department of Transportation (“USDOT”) under the National Infrastructure Project Assistance program, which also is known as the Mega Grant Program (“**Mega Grant**”);

T. Amtrak will execute an agreement with the private developer (the “Developer”) to construct HYCC-3 pursuant to a Delivery and Construction Agreement (the “**DCA**”);

U. Amtrak shall be entering into a HYCC-3 Railroad Coordination Agreement with MTA with regard to construction of HYCC-3, (the “**RCA**”);

V. By resolution dated [●] [●], 2023, the GDC Board has authorized GDC to enter into (i) the NYFA (as defined below), (ii) the NJFA (as defined below), and (iii) this Agreement with Amtrak appointing Amtrak as the SEP responsible for HYCC-3 (the “**Work**”);

W. Amtrak and GDC shall enter into separate SEP Agreements where Amtrak may be responsible for supporting or executing other HTP Packages;

X. This Agreement will differ from other SEP Agreements that GDC may enter into for delivery of other HTP Packages because, prior to the PDA Parties entering into the PDA, Amtrak applied for and is directly receiving the Mega Grant as grant applicant, and otherwise advanced HYCC-3 in several ways, including but not limited to: (i) development of the complete design for HYCC-3; and (ii) the negotiation to completion or execution of several of the agreements required for the construction and delivery of HYCC-3, including but not limited to the DCA and the RCA. A complete list of the agreements Amtrak negotiated to completion or execution as of the Effective Date of this Agreement is set forth in **Exhibit A** attached hereto; and

Y. GDC and Amtrak now desire to enter into this Agreement in order to establish their roles and responsibilities with respect to the funding, financing, procurement, construction, delivery, operation, and maintenance of HYCC-3.

**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 used in this Agreement, which may be identified by the capitalization of the first letter of each principal word thereof, and not otherwise defined herein shall have the meaning assigned to them in the PDA.

Section 1.02 *Rules of Interpretation*. The terms of this Agreement shall be interpreted in accordance with the rules of interpretation set forth in Section 1.02 of the PDA.

## **ARTICLE II.**

### **FUNDING AND FINANCING OBLIGATIONS**

Section 2.01 *Market Case Estimate*. The parties hereby agree that the Market Case Estimate (as defined in Section 11.04 of the PDA) for HYCC-3 will be \$692,700,000.00 the details of which are set forth in the table attached hereto as **Exhibit B** (the “**HYCC-3 Market Case Estimate**”), which includes \$83,700,000 of contingency funds (the “**Contingency Funds**”). The HYCC-3

Market Case Estimate has been approved by the GDC Board pursuant to Section 11.04(a) of the PDA. Any amendments to the HYCC-3 Market Case Estimate also will require approval of the GDC Board.

Section 2.02 *Funding.*

- (a) *New York.* On or prior to the Effective Date, GDC entered into a funding agreement with New York for the New York Share (the “NYFA”). Pursuant to the NYFA, New York shall contribute the lesser of (i) ten percent (10.0%) of the total final project cost of HYCC-3, or (ii) \$69,270,000 (the “**New York Share**”). The New York Share will be payable in the manner set forth in the NYFA. GDC shall notify Amtrak within seven (7) days of the receipt of an installment payment of the New York Share. Amtrak shall, upon receipt of such installment payment notice, promptly provide instructions to GDC for the transfer of installment payment funds. GDC shall transfer the installment payment funds within seven (7) days of receipt of such transfer instructions from Amtrak.
- (b) *New Jersey.* On or prior to the Effective Date, GDC entered into a funding agreement with New Jersey for the New Jersey Share (the “NJFA”). Pursuant to the NJFA, New Jersey shall contribute the lesser of (i) ten percent (10.0%) of the total final project cost of HYCC-3, or (ii) \$69,270,000 (the “**New Jersey Share**”). The New Jersey Share will be payable in the manner set forth in the NJFA. GDC shall notify Amtrak within seven (7) days of the receipt of an installment payment of the New Jersey Share. Amtrak shall, upon receipt of such installment payment notice, promptly provide instructions to GDC for the transfer of installment payment funds. GDC shall transfer the installment payment funds within seven (7) days of receipt of such transfer instructions from Amtrak.
- (c) *Amtrak.*
  - (i) Amtrak has received notification that it was selected to receive \$292,171,053.00 from the Mega Grant toward the Work. Amtrak shall contribute the Mega Grant to the costs of the HYCC-3.
  - (ii) Amtrak shall fund any costs of the Work that exceed the New York Share, the New Jersey Share, and the Mega Grant, including any costs that exceed the HYCC-3 Market Case Estimate.
  - (iii) Amtrak shall receive credit toward its share of the HTP under the PDA for any financial contribution it makes toward funding the HYCC-3 Market Case Estimate (not including the application of the Mega Grant funds) and any Shared Cost Impact Events of HYCC-3.
- (d) Amtrak represents and warrants that it shall remain in compliance with all federal funding agreement requirements to which it is a party or a direct funding recipient. In the event of any issue with regard to federal funding requirements, including an issue that results in a deobligation of federal funds, Amtrak shall immediately inform the GDC CEO of such issue to pursue a resolution with the applicable federal agency. GDC and Amtrak shall work with the applicable federal agency to promptly resolve any issue regarding federal funding requirements; however, GDC’s involvement and assistance shall in no way modify the obligations of Amtrak under Section 11.04(d) of the PDA should Amtrak cause the loss or repayment of federal funds to the HTP, attributable to Amtrak’s material acts, errors, or



omissions, or failure to comply with Amtrak’s contractual obligations with a reasonable standard of care, as determined in a written determination issued by the GDC CEO (or the GDC CEO’s designee).

- (e) Amtrak shall not use Mega Grant funds, the New Jersey Share, or the New York Share for any purpose other than HYCC-3.

Section 2.03 *Cost Impacts.*

- (a) All Cost Impacts incurred in connection with the Work will be governed by Article XI of the PDA.
- (b) Cost Impacts arising from specific requirements of the Mega Grant that materially differ from the Federal Fiscal Year 2023 Northeast Corridor Cooperative Agreement to the National Railroad Passenger Corporation – statutory authority: Continuing Appropriations and Ukraine Supplemental Appropriations Act, 2023 H.R. 6833 / Public Law 117-180 (Sep. 30, 2022) (the “**FFY2023 NECCA**”), will be considered a “government mandated revision” Shared Cost Impact Event under Section 11.04(b)(i)(B) of the PDA, if any such Cost Impact Event satisfies the requirements set forth in such Section 11.04(b)(i)(B); provided, however, that Amtrak will be required to follow the process set forth in Section 11.04(c) of the PDA to determine the Cost Impacts of the Shared Cost Impact Event. The Market Case Estimate was developed based on contracts that meet the requirements of the FFY2023 NECCA.
- (c) Notwithstanding the foregoing, Amtrak waives the right to assert any claim under Section 11.04(b)(i)(H) of the PDA as of the Effective Date with respect to any actions or inactions of GDC occurring prior to the Effective Date.

**ARTICLE III.**

**ROLES AND RESPONSIBILITIES**

Section 3.01 *Project Description.* The Work includes the construction and delivery of HYCC-3. HYCC-3 will be approximately 550 feet long, between 50 and 65 feet wide and between 27 and 38 feet high. Its structure will consist of heavily reinforced concrete ranging from 3.5 to 10-feet thick to support future loading from the overbuild platform. A waterproofing membrane will cover its perimeter. No permanent operational rail components, such as tracks, lighting, ventilation, or electrical systems, will be constructed as part of the Work, although temporary lighting, ventilation and drainage will be provided to complete the Work. The Work shall not include any other HTP Packages, whether or not such Packages are undertaken by Amtrak.

Section 3.02 *GDC.* As set forth in this Agreement, GDC does hereby delegate to Amtrak certain obligations and responsibilities assigned to GDC under the PDA for HYCC-3 and Amtrak accepts such delegation. GDC shall be responsible for its remaining obligations and responsibilities under the PDA not delegated hereunder, and for those obligations and responsibilities set forth herein.

Section 3.03 *Amtrak.*

- (a) *Amtrak Role.* Amtrak is hereby authorized to take all actions reasonably necessary to deliver HYCC-3 as an HTP Package under the PDA, subject to the terms and conditions of the PDA and this Agreement. Accordingly, Amtrak shall be responsible for the

administration and oversight of the Work as set forth herein, and for its obligations and responsibilities as SEP as set forth in the PDA.

- (b) *Coordination with HTP Packages.* The SPCC shall have all rights and powers, as defined in the PDA for the Work, including but not limited to those rights and powers enumerated in Section 3.02 of the PDA. Amtrak is a member of SPCC per Section 3.02 of the PDA.

#### ARTICLE IV.

#### PROCUREMENT

##### Section 4.01 *Contracting and Third Party-Agreements.*

(a) *Delegation of GDC Powers.*

- (i) *HTP Contractors.* Pursuant to Section 12.04 of the PDA, GDC hereby delegates to Amtrak responsibility for managing the obligations and performance of the HTP Contractors and subcontractors engaged for HYCC-3 (the “**HYCC-3 Contractors**”), including but not limited to the DCA and the RCA, within the limits of the PDA and as otherwise specified in this Agreement. For the avoidance of doubt, because Amtrak is acting as SEP on behalf of GDC, the DCA and RCA are deemed HTP Contract Documents and Amtrak’s counterparties under such agreements are deemed HTP Contractors.
- (ii) *Third Party Agreements.* Pursuant to Section 7.01(a) of the PDA, GDC hereby delegates to Amtrak responsibility for managing the negotiation and execution of third party agreements with utilities and other parties (the “**Third Party Agreements**”) as Amtrak deems appropriate for the Work, subject to GDC approval as stipulated in Section 9.01(c) hereof. For the avoidance of doubt, because Amtrak will be acting as a SEP on behalf of GDC with regard to the Third Party Agreements, the Third Party Agreements will be deemed “HTP Contract Documents” as defined in the PDA and subject to the terms of Section 11.04(b) of the PDA.

(b) *HYCC-3 Contracts*

- (i) Attached hereto as **Exhibit A** is a list of (i) the contracts with HYCC-3 Contractors and Third Party Agreements that have been entered into by Amtrak for the Work as of the Effective Date, and (ii) procurement solicitations for the Work that have been issued prior to the Effective Date (collectively, the “**HYCC-3 Contracts**”). Amtrak hereby represents that the HYCC-3 Contracts are in compliance with all known applicable federal laws, regulations, and requirements, and were procured in a manner compliant with the anticipated requirements of the Mega Grant.
- (ii) GDC hereby recognizes the HYCC-3 Contracts as HTP Contract Documents and delegates to Amtrak the right to execute HTP Contract Documents constituting the HYCC-3 Contracts, subject to the following conditions:
- 1) the HYCC-3 Contracts remain in compliance with applicable federal laws, regulations, and requirements;
  - 2) GDC, New Jersey, and New York shall each be listed as a “Project Indemnitee” on Exhibit L to the DCA; and

- (iii) Subject to Section 4.01(c) hereof, Amtrak hereby agrees that it is not authorized to procure any other third-party services, or seek reimbursement for any third-party services, not identified on **Exhibit A** without the prior written approval of GDC.
- (c) *Procurements After the Effective Date.* Any procurements of HYCC-3 Contractor services or Third-Party Agreements announced after the Effective Date (the “**Future HYCC-3 Procurements**”) shall, at GDC’s option, either be (i) procured by GDC in accordance with the terms of Section 12.04(a)(i) of the PDA, or (ii) procured by Amtrak and subject to GDC approval pursuant to a delegation of authority from GDC in accordance with Section 12.04(a)(ii) of the PDA.

Section 4.02 *Prevailing Wage* . Amtrak will require the HYCC-3 Contractors and subcontractors to pay workers the rate of wage required pursuant to the requirements of the Mega Grant, which rate shall not be less than the prevailing wage applicable to public work projects under New York State labor law.

## **ARTICLE V.**

### **INSURANCE**

Section 5.01 As of the Effective Date, Amtrak has provided GDC with the Amtrak Controlled Insurance Program Insurance Manual revised as of December 2021 (the “**ACIP**”), which will be the insurance program for the Work. In the event of any modification of the ACIP after the Effective Date, GDC shall have the authority to review such modifications for compliance with the HTP Insurance Program then in effect.

Section 5.02 Amtrak shall cause GDC, New York, and New Jersey to be named as additional insureds on the ACIP and any applicable liability insurance policies or coverages applicable to the Work, with the exceptions of workers compensation, professional liability, and railroad protective liability insurance policies.

## **ARTICLE VI.**

### **BUDGET**

Section 6.01 *Budgeting.*

- (a) GDC shall develop and maintain the Project Budget in accordance with Section 9.01 of the PDA.
- (b) Amtrak shall develop and maintain the budget for HYCC-3 (the “**HYCC-3 Budget**”) utilizing the standard cost categories applicable to both FTA and FRA projects. If any requirements of the Mega Grant or other sources of federal funding for the Work conflict with such cost categorizations, Amtrak and GDC will jointly seek clarification and resolution from the USDOT.
- (c) In accordance with Section 9.01(b) of the PDA and subject to Section 6.02 hereof, Amtrak is authorized, within the parameters of the Market Case Estimate, to utilize Contingency Funds for Cost Impacts, to use supplemental standard cost category line items, and to reallocate funds between line items.

Section 6.02 *Change orders.*

- (a) After prompt notice of a request for a Change Order (as defined herein) to GDC, Amtrak shall be entitled to enter into Change Orders to support the Work without approval from GDC, so long as such Change Orders do not have any of the following attributes (together the “**Change Order Conditions**”):
  - (i) an aggregate cost impact that exceeds \$3.5 million in any calendar year;
  - (ii) the Change Order will not alter the character of the Work, including but not limited to:
    - 1) modifications to the HYCC-3 Standards and Specifications as defined in Section 9.01(c) hereof;
    - 2) deviations that require further environmental evaluation or reevaluation of the Work; or
    - 3) that impact planned rights-of-way or other operations;
  - (iii) has a net schedule impact on the Work of sixty (60) calendar days or more; or
  - (iv) the Change Order would result in a change to the Market Case Estimate.
- (b) Any Change Order subject to one or more Change Order Conditions shall not proceed without approval from GDC in accordance with Section 5.01(d) of the PDA and may be subject to allocation of Cost Impacts in accordance with Section 11.04(b) of the PDA.
- (c) For purposes of this Agreement, a “Change Order” is a negotiated contract amendment to the Work that changes any element of the scope of the Work, including but not limited to the HYCC-3 Final Design, as further defined herein, project scope, the project cost, and/or the project schedule.

**ARTICLE VII.**

**ENVIRONMENTAL COMPLIANCE; PERMITTING**

Section 7.01 *NEPA.*

- (a) Pursuant to Section 8.01(b) of the PDA, GDC hereby delegates to Amtrak as NEPA sponsor for HYCC-3 and holder of HYCC-3 NEPA Approvals, responsibility for all NEPA legal and regulatory compliance matters in connection with the Work. Amtrak shall be responsible for ensuring conformance of the Work with HYCC-3 NEPA Approvals, including all required mitigations, and shall seek technical or other amendments to the HYCC-3 NEPA Approvals, in each case as required to support delivery of HYCC-3.
- (b) Any proposed deviations from the HYCC-3 NEPA Approvals must be reviewed and approved by GDC prior to Amtrak making a formal request for any amendment or deviation from the lead federal agency for NEPA.
- (c) Amtrak shall promptly provide all NEPA compliance documents to GDC in accordance with Section 8.04 hereof.

Section 7.02 *Permits.*

- (a) Pursuant to Section 8.02(b) of the PDA, GDC hereby delegates to Amtrak the rights and obligations to obtain and maintain all permits, licenses, and approvals that are required in connection with the Work (collectively, “**HYCC-3 Permits**”). Amtrak shall prepare, file, renew, secure (including by the provision of all supporting documents necessary), expedite (as Amtrak deems appropriate), and pay for (including all applicable filing fees) all HYCC-3 Permits. Amtrak shall track the progress of all HYCC-3 Permit applications. Amtrak will provide regular reports to the SPCC on the status of all HYCC-3 Permit applications as part of its reporting requirements under this Agreement.
- (b) All HYCC-3 Contract Documents shall require, to the extent applicable to such HYCC-3 Contractor's scope of work, that such HYCC-3 Contractor comply with all applicable HYCC-3 Permits. Amtrak shall use reasonable efforts to enforce and maintain such compliance pursuant to the terms of the applicable HYCC-3 Contract Documents.
- (c) Amtrak will engage in advance consultation with GDC in connection with any permits having pre-conditions that would be reasonably anticipated to impact other HTP Packages.
- (d) Amtrak shall not pursue or obtain any permits that it believes will impact GDC’s ability to proceed with the other HTP Packages.

**ARTICLE VIII.**

**PROJECT REPORTING AND CONTROLS**

Section 8.01 *Coordination with Executive Project Scheduling.* GDC shall control and maintain the Executive Project Schedule in accordance with the terms of Sections 5.01(a) and (b) of the PDA. Amtrak shall maintain the schedule for the Work, and provide all required coordination, reports, and updates to GDC for coordination with the Executive Project Schedule as required by Section 5.01(c) of the PDA.

Section 8.02 *Reporting.*

- (a) GDC retains its responsibility under Section 10.01(a) of the PDA to prepare reports necessary to satisfy federal funding and financing requirements applicable to the HTP. Amtrak agrees to promptly provide information 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) Amtrak shall regularly provide information, reports, and updates to GDC on the progress of the Work in accordance with terms of Section 10.01(a) of the PDA, and shall promptly respond to all GDC requests for such information.
- (c) Notwithstanding the foregoing, as the applicant of the Mega Grant, Amtrak shall be responsible for satisfying all reporting and documentation requirements set forth in the Mega Grant requirements, including preparing reports to USDOT. GDC shall cooperate with Amtrak to provide information required for Amtrak to develop, compile, and submit such reports.

Section 8.03 *Risk Register Management.* Pursuant to Section 10.01(d) of the PDA, GDC hereby delegates to Amtrak responsibility for the management of the risk register for HYCC-3. Amtrak

shall update the HYCC-3 risk register at least monthly, and the SPCC may include the HYCC-3 risk register on its meeting agendas as it deems appropriate to review and discuss. GDC shall have all other rights and responsibilities associated with the HTP risk register and for oversight of the HYCC-3 risk register as enumerated in Section 10.01(d) of the PDA.

Section 8.04 *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. GDC hereby acknowledges that the Developer will provide a document management platform for HYCC-3 pursuant to the terms of the DCA, and Amtrak will provide to GDC the specifications of the Developer's document control system for review. Amtrak also will provide GDC with full access to that document management platform.
- (b) Without limiting the foregoing, pursuant to the protocol that will be established by GDC, GDC will specify to Amtrak the methodology for the management and control of documentation associated with HYCC-3. Amtrak will, upon request, cooperate and assist GDC with the exportation of documents from the Developer's document management platform into GDC's document management platform.

Section 8.05 *Delivery*

- (a) *HTP Contractors.* GDC hereby delegates to Amtrak responsibility for managing the obligations and performance of the HYCC-3 Contractors in accordance with Section 12.04(a) of the PDA.
- (b) *Invoicing.*
  - (i) Amtrak will provide GDC with its invoice payment and verification procedures for review. Amtrak represents and warrants that those procedures will comply with all applicable federal law, regulations, and requirements, and that Amtrak will adhere to those procedures throughout the Work.
  - (ii) GDC hereby delegates to Amtrak the right to review and approve the invoices of HYCC-3 Contractors in accordance with Section 12.04(b) of the PDA; provided, however, the delegation of invoices shall be in accordance with this Agreement. Amtrak shall provide GDC with regular reporting on HYCC-3 Contractor invoices in a form mutually agreed to by the Parties.

Section 8.06 *Force Account.*

- (a) As of the Effective Date, there is no plan for the use of Amtrak's force account labor for the Work. Any use of Amtrak's force account resources or labor for the Work shall be subject to review and approval by GDC, except in the event of a Construction Site Event (as defined herein). Because there is no plan for the use of Amtrak's force account labor for the Work, the requirements of Section 5.02(b) of the PDA do not apply, and Section 11.04(b)(ii)(A) of the PDA is not applicable, until such time as Amtrak submits proposed force account resources or labor for review and approval by GDC. The force account resources to be provided by LIRR in accordance with the RCA shall be services provided

by an HTP Contractor and required by the terms of an HTP Contract Document, in accordance with the terms of this Agreement and the PDA.

- (b) A “**Construction Site Event**” for purposes of this Agreement shall mean an incident or condition occurring at or adjacent to the HYCC-3 construction site that creates an imminent threat to life, safety or property (including the Work) that requires Amtrak to deploy its own force account labor for the Work.

## ARTICLE IX.

### DESIGN AND CONSTRUCTION

#### Section 9.01 *Design and Construction.*

- (a) The TSC shall have all rights and powers with regard to the technical issues related to HYCC-3 as defined in the PDA, including but not limited to those rights and powers enumerated in Sections 3.03 and 12.02 of the PDA. Amtrak is a member of the TSC pursuant to Section 3.03 of the PDA.
- (b) As of the Effective Date, Amtrak has completed the final design for the HYCC-3 (the “**Final HYCC-3 Design**”), as referenced in both the DCA and the RCA. Amtrak shall cooperate with GDC with respect to coordinating the design elements of other HTP Packages to ensure they properly interface with the Final HYCC-3 Design.
- (c) Amtrak will develop the Design Standards and Specifications documents for HYCC-3 (the “**HYCC-3 Standards and Specifications**”), which will be based upon the Final HYCC-3 Design. As soon as possible after the Effective Date, Amtrak shall provide the HYCC-3 Standards and Specifications to the TSC for its review pursuant to Section 3.03 of the PDA. Any future changes to the Final HYCC-3 Design which would constitute a material deviation from the HYCC-3 Standards and Specifications shall be subject to review and approval in accordance with Section 12.02(b) of the PDA.
- (d) Amtrak shall ensure that the Final HYCC-3 Design, the HYCC-3 Standards and Specifications, and the Work meet the performance requirements of Section 2.03 of the PDA.
- (e) Amtrak will cooperate with GDC with respect to coordinating the design elements of the other HTP Packages that will interface with HYCC-3, including but not limited to the design and construction of the tunnelling and heavy civil work for the Hudson River Tunnel.
- (f) Amtrak hereby consents to the applicable professional design engineers and other contractors (the “**HYCC-3 Design Team**”) sharing all work product constituting the Final HYCC-3 Design (the “**HYCC-3 Work Product**”) with GDC. Amtrak shall use reasonable efforts to have the HYCC-3 Design Team confer on GDC the same rights to use the HYCC-3 Work Product that Amtrak holds with regard to the Final HYCC-3 Design.
- (g) Review, comment, and approval of Submittals will be governed by Section 12.02 of the PDA. GDC hereby delegates all responsibility for Submittals to Amtrak as SEP pursuant to Section 12.02(c)(i)(A)-(E) of the PDA. GDC retains its authority to address comments to Submittals under Sections 12.02(c)(i)(vi), 12.02(d), and 12.02(e) of the PDA.

Section 9.02 *Code Compliance*. Code compliance shall be governed by Section 12.03 of the PDA. GDC hereby delegates to Amtrak responsibility for code compliance functions under Section 12.03 of the PDA. Amtrak shall serve as authority having jurisdiction over code enforcement, will prudently exercise such role, and will not exercise its authority in a manner that violates any laws, or so as to materially interfere with advancing other components of the HTP.

## **ARTICLE X.**

### **OPERATIONS AND MAINTENANCE**

Section 10.01 *Interface with HTP*. Amtrak shall operate and maintain HYCC-3 in good order and repair to facilitate the successful interface with the other HTP Packages and final commissioning of the HTP.

## **ARTICLE XI.**

### **INDEMNIFICATION**

Section 11.01 *Indemnification Under the DCA*. In accordance with Section 12.04(a)(i) of the PDA, Amtrak, as SEP, acknowledges its obligation to use reasonable efforts to enforce obligations and performance of the HTP Contractors pursuant to the terms of the applicable HTP Contract Documents. In furtherance of such obligation, Amtrak hereby agrees and confirms: (i) the terms of the DCA require that Developer indemnify and defend New Jersey, New York, GDC and their commissioners, officers, employees, agents, successors and permitted assigns the (“**Indemnified Parties**”) from and against third party claims alleging Developer’s negligence in construction of HYCC-3; (ii) Amtrak shall not approve any Construction Contract (as defined in the DCA) proposed to be entered into by Developer with any contractor for HYCC-3 which does not require that such contractor(s) and their subcontractors indemnify and defend the Indemnified Parties from and against claims arising in connection with the work performed by such parties and/or their negligent acts and omissions related to HYCC-3; and (iii) Amtrak shall not amend, modify, or waive any portion of Section 11.1(b) or Exhibit L of the DCA without the prior written approval of GDC. To the maximum extent permitted by law, Amtrak shall enforce each obligation of the Developer set forth in Section 11.1(b) for the benefit of the Indemnified Parties.

## **ARTICLE XII.**

### **DISPUTE RESOLUTION**

Section 12.01 *Dispute Resolution Procedures*. Any disputes that arise between the Parties as to the interpretation of this Agreement, or other matters set forth herein, shall be resolved in accordance with the dispute resolution procedures set forth in Article XV of the PDA.

## **ARTICLE XIII.**

### **DEFAULTS AND REMEDIES**

Section 13.01 *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 13.02 *Process and Remedies*. The process for resolving a Default, and determining the remedies for such Default, shall be the same as those set forth in Sections 15.02 and 16.03 of the PDA.

#### **ARTICLE XIV.**

##### **TERM AND TERMINATION**

Section 14.01 *Term*. Unless terminated early in accordance with Section 14.02 and subject to the survival of certain provisions pursuant to Section 16.07 hereof, this Agreement shall expire upon the satisfaction of all of the following: (i) final acceptance of the construction of the improvements of the HYCC-3 pursuant to Section 14.02 of the PDA, (ii) completion of the applicable HYCC-3 funding requirements set forth in Article II hereof, and (iii) closeout of USDOT Mega Grant pursuant to 2 C.F.R. § 200.344.

Section 14.02 *Termination*. This Agreement shall not be terminated prior to expiration in accordance with Section 14.01 hereof for any reason unless it is terminated in a writing signed by all Parties to this Agreement and consented to by the States of New York and New Jersey.

#### **ARTICLE XV.**

##### **REPRESENTATIONS AND WARRANTIES**

Section 15.01 *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 each Party enters into this Agreement in reliance on the representations and warranties set forth in this Article XV.

Section 15.02 *Representations of Amtrak*.

(a) Amtrak hereby represents and warrants to GDC that, as of the date hereof and, while this Agreement remains in effect, that Amtrak is and shall remain in compliance with all applicable laws and regulations associated with the Work.

#### **ARTICLE XVI.**

##### **MISCELLANEOUS**

Section 16.01 *Incorporation of PDA Terms*. Any terms of the PDA not expressly addressed in this Agreement shall remain in full force and effect, and both Parties agree to continue to be bound by such terms of the PDA.

Section 16.02 *Compliance with Laws*. Each Party shall be responsible for administration and management activities of its respective 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 16.03 *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 either be delivered by hand, by certified mail, return receipt requested, by overnight delivery service, or by electronic mail to such Party 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 Amtrak:

National Railroad Passenger Corporation  
1 Massachusetts Avenue, N.W.  
Washington, DC 20001  
Attn: Executive Vice President, Capital Delivery

with a copy to:

National Railroad Passenger Corporation  
1 Massachusetts Avenue, N.W.  
Washington, DC 20001  
Attn: General Counsel and Corporate Secretary

Section 16.04 *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 16.05 *Entire Agreement*. The PDA and 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 16.06 *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 16.07 *Survival*. The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Section 1.01 (Definitions);
- (b) Section 1.02 (Rules of Interpretation);
- (c) Article XI (Indemnification);
- (d) Article XII (Dispute Resolution);
- (e) Article XV (Representations and Warranties);
- (f) Article XVI (Miscellaneous);
- (g) any provision of this Agreement that expressly or by its content is intended to operate after termination or expiration of this Agreement and/or completion of construction of the Work; and
- (h) any provision of this Agreement and applicable definitions that are necessary for interpretation or application of the foregoing.

[*Signature Pages Follow.*]

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

**NATIONAL RAILROAD PASSENGER CORPORATION**

By: \_\_\_\_\_  
Laura Mason  
Executive Vice President, Capital Delivery

**GATEWAY DEVELOPMENT COMMISSION**

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

**EXHIBIT A**  
**HYCC-3 CONTRACTS**

Delivery and Construction Agreement between National Railroad Passenger Corporation, WRY Tenant LLC and Hudson Yards Construction II LLC (2023)

HYCC-3 Railroad Coordination Agreement by and among Metropolitan Transit Authority, The Long Island Rail Road Company, and National Railroad Passenger Corporation (2023)

Gateway Trans-Hudson Partnership Construction Phase Services Contract (“Modification 16” to Contract PO9510000273)

LiRo Construction Phase Services Contract (Contract ID #BPO1004335 / BPO627)

**EXHIBIT B**  
**HYCC-3 MARKET CASE ESTIMATE**

<b>HYCC-3 Market Case Estimate</b>	
<b>Uses</b>	<b>Estimate (\$M)</b>
Agreements, Project Management, and Amtrak Controlled Insurance Program (ACIP)	609.0
Contingency	83.7
<b><i>HYCC-3 Market Case Estimate*</i></b>	<b><i>692.7</i></b>
*Does not include expenditures related to HYCC-3 incurred prior to adoption of the Market Case Estimate.	

**EXHIBIT B**  
**HYCC-3 MARKET CASE ESTIMATE**

<b>HYCC-3 Market Case Estimate</b>	
<b>Uses</b>	<b>Estimate (\$M)</b>
Agreements, Project Management, and Amtrak Controlled Insurance Program (ACIP)	609.0
Contingency	83.7
<b><i>HYCC-3 Market Case Estimate*</i></b>	<b><i>692.7</i></b>
*Does not include expenditures related to HYCC-3 incurred prior to adoption of the Market Case Estimate.	

**EXHIBIT C**  
**NY FUNDING AGREEMENT**



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**STATE OF NEW YORK FUNDING AGREEMENT  
for  
HUDSON YARDS CONCRETE CASING – SECTION 3**

By and between

GATEWAY DEVELOPMENT COMMISSION

and

STATE OF NEW YORK

Dated as of [●] [●], 2023

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**STATE OF NEW YORK FUNDING AGREEMENT FOR HUDSON YARDS  
CONCRETE CASING - SECTION 3**

This State of New York Funding Agreement for Hudson Yards Concrete Casing – Section 3 (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 STATE OF NEW YORK** (“**New York**”).

GDC and New York are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires.

**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 States of New Jersey and 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. 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 the State of New Jersey (“**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 an Agreement (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. As further described in the PDA, the delivery of certain work packages of the HTP 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 include Amtrak (such agreements are referenced herein as “SEP Agreements”);

H. 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);

I. In order to preserve the underground right-of-way for the Hudson River Tunnel to connect to New York Pennsylvania Station (“**Penn Station**”), since 2012, Amtrak has led the design and construction of a concrete casing beneath John D. Caemmerer West Side Storage Yard (“**WSY**”) on the west side of Manhattan (the “**Hudson Yards Concrete Casing**” or “**HYCC**”);

J. The WSY is the site of a rail yard owned by the Metropolitan Transportation Authority and used by the Long Island Rail Road (collectively, “**MTA**”);

K. The construction of the Hudson Yards Concrete Casing is critical to the HTP, as Hudson Yards is the only clear alignment on the west side of Manhattan that would allow the Hudson River Tunnel to fully connect to Penn Station from the west, and if the private development proceeded without construction of the Hudson Yards Concrete Casing, the proposed alignment for the Hudson River Tunnel would become infeasible;

L. The Hudson Yards Concrete Casing has been divided into three (3) segments: HYCC-1, HYCC-2, and HYCC-3;

M. Both HYCC-1 and HYCC-2 were completed years before GDC was established pursuant to the GDC Act;

N. Amtrak has completed final design of HYCC-3, and the design contemplates extending the concrete casing on a diagonal alignment from 11<sup>th</sup> Avenue to 30<sup>th</sup> Street, where it will connect with the Hudson River Tunnel once constructed;

O. In December 2022, Amtrak was selected to receive a \$292 million grant for HYCC-3 by the U.S. Department of Transportation (“**USDOT**”) under the National Infrastructure Project Assistance program, which also is known as the Mega Grant Program (the “**Mega Grant**”);

P. As referenced in the HYCC-3 SEP Agreement, Amtrak has reached an agreement with a private developer to construct HYCC-3;

Q. Pursuant to the terms of the PDA, as well as the HYCC-3 SEP Agreement, Amtrak has represented that the Market Case Estimate for HYCC-3 will be \$692,700,000, which Market Case Estimate is subject to GDC Board approval and amendment pursuant to Section 11.04(a) of the PDA;

R. By resolution dated [●] [●], 2023, the GDC Board has approved the Market Case Estimate, and authorized GDC to enter into (i) this Agreement, (ii) a funding agreement with the State of New Jersey for Hudson Yards Concrete Casing – Section 3, and (iii) a SEP Agreement with Amtrak for HYCC-3 (“**HYCC-3 SEP Agreement**”);

S. In furtherance of the GDC Act, and consistent with the applicable terms in the PDA and the HYCC-3 SEP Agreement, New York, acting by and through its Director of the New York State Division of the Budget, is authorized and has agreed to enter into this Agreement with GDC to make payments to GDC at the times and in amounts sufficient to enable GDC to fund HYCC-3; and

T. GDC and New York now desire to enter into this Agreement in order to establish the process by which New York will contribute its share of funding for HYCC-3;

**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 used in this Agreement, which may be identified by the capitalization of the first letter of each principal word thereof, and not otherwise defined herein shall have the meaning assigned to them in the PDA.

Section 1.02 *Rules of Interpretation.* The terms of this Agreement shall be interpreted in accordance with the rules of interpretation set forth in Section 1.02 of the PDA.

## **ARTICLE II.**

### **FUNDING OBLIGATIONS**

Section 2.01 *Funding.* In accordance with the PDA, and to fund its share of HYCC-3, New York shall make cash payments to GDC, subject to appropriation of such amounts for such purpose to GDC, in the lesser of (i) ten percent (10.0%) of the total final project cost of HYCC-3, or (ii) \$69,270,000 which is ten percent (10.0%) of the Market Case Estimate as of the Effective Date (the “**New York Share**”).

(a) Pursuant to its funding commitment, New York will make payments of the New York Share as provided pursuant to budget appropriation on the dates and in the amounts set forth in the following schedule:

- (i) New York shall pay GDC \$34,635,000 on or around July 1, 2024, or as otherwise agreed to by New York and the GDC CEO; and
- (ii) New York shall pay GDC \$34,635,000 on or around July 1, 2025, or as otherwise agreed to by New York and the GDC CEO.

(b) If the costs of HYCC-3 are less than the Market Case Estimate after construction of HYCC-3 is complete, GDC will advise New York of the remaining unspent balance of the New York Share. New York shall have the option to either (i) direct that GDC remit such balance to an account specified by New York within forty-five (45) days after Mega Grant closeout pursuant

to 2 C.F.R. § 200.344, or (ii) direct that GDC apply the balance to cover New York's other obligations to GDC related to the HTP under the PDA. All requests by an authorized representative of New York to inspect and audit GDC records relating to HYCC-3 shall be permitted in accordance with Article X of the PDA.

(c) New York will receive regular updates on the HYCC-3 budget via its membership on the Senior Project Coordination Committee pursuant to Section 3.02(b) of the PDA, and also will be provided Quarterly Budget Updates as defined in Section 9.01(c) of the PDA, which will "include a report by category on any changes to the Project Budget from the previous quarter, describe new commitments, summarize expenditures on an executive level, and provide any additional budgetary information required as described in the PMP."

Section 2.02 *Nature of State's Obligation.*

(a) Except as herein provided in this Article II, the obligation of New York to make the payments set forth in Section 2.01 shall be absolute and unconditional, and such payments shall be payable without any rights of abatement, deduction, deferment, reduction, set-off, recoupment, or counterclaim New York might have against GDC or any assignee thereof or any other person, whether or not this Agreement shall have been terminated and whether or not GDC shall be in default of its obligations hereunder. Subject to the provisions of Articles IV and V hereof, New York, however, shall not be precluded from bringing any action it may otherwise have against GDC.

(b) Notwithstanding anything in this Agreement to the contrary, (i) the obligation of New York to make the payments set forth in Section 2.01 is subject to annual appropriation by the Legislature of the State of New York, and (ii) the obligation of New York to fund or to pay the amounts herein provided for shall not constitute a debt of the State within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of monies appropriated and available to New York and no liability shall be incurred by New York beyond monies appropriated and available to New York for the purpose.

Section 2.03 *Invoicing.* GDC will issue New York invoices for its funding requirements, as set forth in Section 2.01, and pursuant to New York State procurement guidelines. Such invoices shall include reference to this Agreement and the amount of payment due pursuant to Section 2.01. New York shall remit the funds to GDC within thirty (30) days of receipt of the invoice at GDC's vendor account in the New York Statewide Financial System. Invoices shall be sent to the following address:

New York State Department of Transportation  
50 Wolf Road  
Albany, NY 12232  
Dot.sm.mo.tbb@dot.ny.gov  
Attn: Director of Finance

With a copy to the following address:

State of New York  
Executive Department  
Division of the Budget  
State Capitol, Room 113  
Albany, New York 12224  
Attn: Director of the Budget

### **ARTICLE III.**

#### **SPECIAL COVENANTS**

Section 3.01 *Covenants of New York.*

(a) New York agrees to request appropriations during the term of this Agreement in an amount sufficient to satisfy the obligations set forth in Section 2.01.

Section 3.02 *Covenants of GDC.*

(a) GDC agrees to fully perform all of its obligations under the HYCC-3 SEP Agreement.

(b) GDC agrees to apply all payments made under this Agreement to HYCC-3, unless otherwise authorized by New York under Section 2.01(b).

### **ARTICLE IV.**

#### **EVENTS OF DEFAULT AND REMEDIES**

Section 4.01 *Default by New York.*

(a) If, for any reason other than a failure by the State Legislature to appropriate monies for such purpose, the New York shall fail to pay when due any of the New York Share in accordance with the terms of Article II, or shall fail to observe or perform any other covenant, condition, or agreement on its part to be observed or performed, GDC shall, if such default has not been cured after notice and reasonable opportunity to cure, have the right to institute any action in the nature of mandamus or take whatever action at law or in equity as may appear necessary or desirable to collect the New York Share then due or thereafter to become due or to enforce performance and observance of any obligation, agreement, or covenant of New York hereunder.

(b) The remedies conferred upon or reserved to GDC under Section 4.01(a) above in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include a termination of this Agreement, nor may they include any amendment, change, modification, or alteration of this Agreement that is prohibited by Section 7.08 hereof.

Section 4.02 *Default by GDC.*

(a) If GDC shall fail to observe or perform any covenant, condition, or agreement on its part to be observed or performed hereunder and such failure to observe or perform shall have

continued for 60 days after written notice specifying such failure and requesting that it be remedied has been given to GDC by New York, New York shall, if the default has not been cured, have the right to institute an action in the nature of mandamus or take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of GDC hereunder.

(b) The remedies conferred upon or reserved to New York under Section 4.02(a) above in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include a termination of this Agreement or of the obligations of New York to make the payments provided for hereunder, nor may they include any amendment, change, modification, or alteration of this Agreement that is prohibited by Section 7.08 hereof.

## **ARTICLE V.**

### **TERM AND TERMINATION**

Section 5.01 *Term.* Unless terminated early in accordance with Section 5.02, this Agreement shall expire upon the satisfaction of all funding obligations set forth in Section 2.01.

Section 5.02 *Termination.* This Agreement shall not be terminated prior to expiration in accordance with Section 5.01 for any reason unless it is terminated in a writing signed by each Party to this Agreement.

## **ARTICLE VI.**

### **REPRESENTATIONS AND WARRANTIES**

Section 6.01 *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 each other Party enters into this Agreement in reliance on the representations and warranties set forth in this Article VI.

Section 6.02 *Representations and Warranties of New York.*

(a) New York represents and warrants that, unless otherwise required by law including applicable appropriations, it will not impose any requirements or conditions outside of this Agreement to the use of the New York Share with regard to HYCC-3.

(b) New York represents and warrants that (i) the New York Share will be able to be used towards the HYCC-3 and any applicable federal requirements, and (ii) New York will

not impose any terms on the New York Share that conflict with federal requirements of the Mega Grant.

## ARTICLE VII.

### MISCELLANEOUS

Section 7.01 *PDA Terms*. Any terms of the PDA not expressly addressed in this Agreement shall remain in full force and effect, and both Parties agree to continue to be bound by such terms of the PDA. In the event of a conflict between the terms of this Agreement and the terms of the PDA, the terms of this Agreement shall control.

Section 7.02 *Compliance with Laws*. In performing its obligations under this Agreement, each Party shall 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 7.02.

Section 7.03 *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 by hand or by certified mail, return receipt requested, by overnight delivery service, or by electronic mail to such Party 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 New York:

Governor of New York  
NYS State Capitol Building  
Albany, New York 12224  
Attention: Counsel to the Governor



with copies to:

State of New York  
Executive Department  
Division of the Budget  
State Capitol, Room 113  
Albany, New York 12224  
Attn: Director of the Division of the Budget

Section 7.04 *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 7.05 *Entire Agreement*. The PDA and 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 7.06 *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 7.07 *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 promulgated by the State of New York.

Section 7.08 *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 each Party 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 either 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 7.09 *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 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 as if the original has been received.

Section 7.10 *No Partnership*.

- (a) The Parties shall each independently comply with and perform their respective obligations under this Agreement, and nothing contained in this Agreement 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 either 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 neither Party has the power to contract on behalf of, or to authorize the expenditure of any monies by, the other Party.

Section 7.11 *Personal Liability*. No director, commissioner, officer, member, agent, or employee of either Party shall be charged personally by the other 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 7.12 *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 terms hereof.

Section 7.13 *Survival*. The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Section 1.01 (*Definitions*);
- (b) Section 1.02 (*Rules of Interpretation*);
- (c) Section 3.02 (*Covenants of GDC*);
- (d) Article IV (*Events of Default and Remedies*);
- (e) Article VI (*Representations and Warranties*);
- (f) Article VII (*Miscellaneous*);
- (g) any provision of this Agreement that expressly or by its content is intended to operate after termination or expiration of this Agreement and/or completion of construction of HYCC-3; and
- (h) any provision of this Agreement and applicable definitions that are necessary for interpretation or application of the foregoing.

[Signature Page Follows.]

**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be signed and attested as of the date, year and month first mentioned above.

**STATE OF NEW YORK**

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]

**GATEWAY DEVELOPMENT COMMISSION**

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

*Adopted - 5/2/23*

**EXHIBIT D**  
**NJ FUNDING AGREEMENT**

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**STATE OF NEW JERSEY FUNDING AGREEMENT  
for  
HUDSON YARDS CONCRETE CASING – SECTION 3**

By and between

GATEWAY DEVELOPMENT COMMISSION

and

STATE OF NEW JERSEY

Dated as of [●] [●], 2023

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**STATE OF NEW JERSEY FUNDING AGREEMENT FOR HUDSON YARDS  
CONCRETE CASING - SECTION 3**

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**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

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GDC and New Jersey are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires.

**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 States of New Jersey and 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. 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 the New Jersey, the State of New York (“**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 an Agreement (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**”);

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J. The WSY is the site of a rail yard owned by the Metropolitan Transportation Authority and used by the Long Island Rail Road (collectively, “**MTA**”);

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R. By resolution dated [●] [●], 2023, the GDC Board has approved the Market Case Estimate, and authorized GDC to enter into (i) this Agreement, (ii) a funding agreement with the State of New York for Hudson Yards Concrete Casing – Section 3, and (iii) a SEP Agreement with Amtrak for HYCC-3 (“**HYCC-3 SEP Agreement**”);

S. In furtherance of the GDC Act, and consistent with the applicable terms in the PDA and the HYCC-3 SEP Agreement, New Jersey, acting by and through the Commissioner of the New Jersey Department of Transportation, is authorized and has agreed to enter into this Agreement with GDC to make payments to GDC at the times and in amounts sufficient to enable GDC to fund HYCC-3; and

T. GDC and New Jersey now desire to enter into this Agreement in order to establish the process by which New Jersey will contribute its share of funding for HYCC-3.

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(b) If the costs of HYCC-3 are less than the Market Case Estimate after construction of HYCC-3 is complete, GDC will advise New Jersey of the remaining unspent balance of the New Jersey Share. New Jersey shall have the option to either (i) direct that GDC remit such balance to an account specified by New Jersey within forty-five (45) days after Mega Grant



closeout pursuant to 2 C.F.R. § 200.344, or (ii) direct that GDC apply the balance to cover New Jersey's other obligations to GDC related to the HTP under the PDA. All requests by an authorized representative of New Jersey to inspect and audit GDC records relating to HYCC-3 shall be permitted in accordance with Article X of the PDA.

(c) New Jersey will receive regular updates on the HYCC-3 budget via its membership on the Senior Project Coordination Committee pursuant to Section 3.02(b) of the PDA, and also will be provided Quarterly Budget Updates as defined in Section 9.01(c) of the PDA, which will "include a report by category on any changes to the Project Budget from the previous quarter, describe new commitments, summarize expenditures on an executive level, and provide any additional budgetary information required as described in the PMP."

Section 2.02 *Nature of State's Obligation.*

(a) Except as herein provided in this Article II, the obligation of New Jersey to make the payments set forth in Section 2.01 shall be absolute and unconditional, and such payments shall be payable without any rights of abatement, deduction, deferment, reduction, set-off, recoupment, or counterclaim New Jersey might have against GDC or any assignee thereof or any other person, whether or not this Agreement shall have been terminated and whether or not GDC shall be in default of its obligations hereunder. Subject to the provisions of Articles IV and V hereof, New Jersey, however, shall not be precluded from bringing any action it may otherwise have against GDC.

(b) Notwithstanding anything in this Agreement to the contrary, (i) the obligation of New Jersey to make payments set forth in Section 2.01 is subject to annual appropriation by the Legislature of the State of New Jersey, and (ii) the obligation of New Jersey to fund or to pay the amounts herein provided for shall not constitute a debt of the State within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of monies appropriated and available to New Jersey and no liability shall be incurred by New Jersey beyond monies appropriated and available to New Jersey for the purpose.

Section 2.03 *Invoicing.* GDC will issue New Jersey invoices for its funding requirements, as set forth in Section 2.01, and pursuant to New Jersey procurement guidelines. Such invoices shall include reference to this Agreement and the amount of payment due pursuant to Section 2.01. New Jersey shall remit the funds to GDC within thirty (30) days of receipt of the invoice in accordance with instructions provided by GDC in the invoice. Invoices shall be sent to the following address.

State of New Jersey  
Department of the Treasury  
P.O. Box 002  
Trenton, NJ 08625-0002  
Attn: New Jersey State Treasurer

With a copy to the following address:

NJ Department of Transportation  
P.O. Box 600  
Trenton, NJ 08625-0600  
Attn: Commissioner, NJ Department of Transportation

**ARTICLE III.**  
**SPECIAL COVENANTS**

Section 3.01 *Covenants of New Jersey.*

(a) New Jersey agrees to request appropriations during the term of this Agreement in an amount sufficient to satisfy the obligations set forth in Section 2.01.

Section 3.02 *Covenants of GDC.*

(a) GDC agrees to fully perform all of its obligations under the HYCC-3 SEP Agreement.

(b) GDC agrees to apply all payments made under this Agreement to HYCC-3, unless otherwise authorized by New Jersey under Section 2.01(b).

**ARTICLE IV.**  
**EVENTS OF DEFAULT AND REMEDIES**

Section 4.01 *Default by New Jersey.*

- (a) If, for any reason other than a failure by the State Legislature to appropriate monies for such purpose, New Jersey shall fail to pay when due any of the New Jersey Share in accordance with the terms of Article II, or shall fail to observe or perform any other covenant, condition, or agreement on its part to be observed or performed, GDC shall, if such default has not been cured after notice and reasonable opportunity to cure, have the right to institute any action in the nature of mandamus or take whatever action at law or in equity as may appear necessary or desirable to collect the New Jersey Share then due or thereafter to become due or to enforce performance and observance of any obligation, agreement, or covenant of New Jersey hereunder.
- (b) The remedies conferred upon or reserved to GDC under Section 4.01(a) above in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include a termination of this Agreement, nor may they include any amendment, change, modification, or alteration of this Agreement that is prohibited by Section 7.08 hereof.

Section 4.02 *Default by GDC.*

- (a) If GDC shall fail to observe or perform any covenant, condition, or agreement on its part to be observed or performed hereunder and such failure to observe or perform shall have continued for 60 days after written notice specifying such failure and requesting that it be remedied has been given to GDC by New Jersey, New Jersey shall, if the default has not been cured, have the right to institute an action in the nature of mandamus or take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of GDC hereunder.

- (b) The remedies conferred upon or reserved to New Jersey under Section 4.02(a) above in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include a termination of this Agreement or of the obligations of New Jersey to make the payments provided for hereunder, nor may they include any amendment, change, modification, or alteration of this Agreement that is prohibited by Section 7.08 hereof.

## ARTICLE V.

### TERM AND TERMINATION

Section 5.01 *Term.* Unless terminated early in accordance with Section 5.02, this Agreement shall expire upon the satisfaction of all funding obligations set forth in Section 2.01.

Section 5.02 *Termination.* This Agreement shall not be terminated prior to expiration in accordance with Section 5.01 for any reason unless it is terminated in a writing signed by all Parties to this Agreement.

## ARTICLE VI.

### REPRESENTATIONS AND WARRANTIES

Section 6.01 *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 each other Party enters into this Agreement in reliance on the representations and warranties set forth in this Article VI.

Section 6.02 *Representations and Warranties of New Jersey.*

(a) New Jersey represents and warrants that, unless otherwise required by law including applicable appropriations, it will not impose any requirements or conditions outside of this Agreement, including but not limited to requirements or conditions that may be imposed by the Transportation Trust Fund Authority, to the use of the New Jersey Share with regard to HYCC-3.

(b) New Jersey represents and warrants that (i) the New Jersey Share will be able to be used towards the HYCC-3 and any applicable related federal requirements, and (ii) New Jersey will not impose any terms on the New Jersey Share that conflict with federal requirements of the Mega Grant.

**ARTICLE VII.**

**MISCELLANEOUS**

Section 7.01 *PDA Terms.* Any terms of the PDA not expressly addressed in this Agreement shall remain in full force and effect, and both Parties agree to continue to be bound by such terms of the PDA. In the event of a conflict between the terms of this Agreement and the terms of the PDA, the terms of this Agreement shall control.

Section 7.02 *Compliance with Laws.* In performing its obligations under this Agreement, each Party shall 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 7.02.

Section 7.03 *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 by hand or by certified mail, return receipt requested, by overnight delivery service, or by electronic mail to such Party 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 New Jersey:

State of New Jersey  
Department of the Treasury  
P.O. Box 002  
Trenton, NJ 08625-0002  
Attn: New Jersey State Treasurer

with a copy to:

New Jersey Department of Transportation  
P.O. Box 600  
Trenton, NJ 08625-0600  
Attn: Commissioner, NJ Department of Transportation

Section 7.04 *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 7.05 *Entire Agreement*. The PDA and 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 7.06 *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 7.07 *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 promulgated by the State of New Jersey.

Section 7.08 *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 each Party 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 either 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 7.09 *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, 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 as if the original has been received.

Section 7.10 *No Partnership.*

(a) The Parties shall each independently comply with and perform their respective obligations under this Agreement, and nothing contained in this Agreement 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 either 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 neither Party has the power to contract on behalf of, or to authorize the expenditure of any monies by, the other Party.

Section 7.11 *Personal Liability.* No director, commissioner, officer, member, agent, or employee of either Party shall be charged personally by the other 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 7.12 *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 terms hereof.

Section 7.13 *Survival.* The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Section 1.01 (*Definitions*);
- (b) Section 1.02 (*Rules of Interpretation*);
- (c) Section 3.02 (*Covenants of GDC*);
- (d) Article IV (*Events of Default and Remedies*);
- (e) Article VI (*Representations and Warranties*);
- (f) Article VII (*Miscellaneous*);
- (g) any provision of this Agreement that expressly or by its content is intended to operate after termination or expiration of this Agreement and/or completion of construction of HYCC-3; and
- (h) any provision of this Agreement and applicable definitions that are necessary for interpretation or application of the foregoing.

[Signatures on next page.]

**IN WITNESS WHEREOF**, the Parties hereto have caused this instrument to be signed and attested as of the date, year and month first mentioned above.

**STATE OF NEW JERSEY**

By: \_\_\_\_\_  
Diane Gutierrez-Scaccetti  
Commissioner, New Jersey Department  
of Transportation

**GATEWAY DEVELOPMENT COMMISSION**

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

**#0523-04: HUDSON TUNNEL PROJECT — AUTHORIZATION TO AMEND THE PROJECT DEVELOPMENT AGREEMENT**

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 the Gateway Development Commission ("**GDC**") through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the "**GDC Act**").

The GDC Act empowers the Commission to "enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them." 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

The HTP Project Development Agreement (the "**PDA**" or "**Agreement**") is a foundational agreement between the New Jersey, New York, the National Railroad Passenger Corporation ("**Amtrak**"), and GDC (hereinafter collectively referred to as the "**Parties**") in order to establish their respective roles and responsibilities with respect to the funding, financing, right-of-way acquisition, procurement, delivery, operation, and maintenance of the HTP. The purpose of the PDA is to ensure the HTP is delivered in the most transparent, responsible, and cost-effective manner, as possible.

Under the Agreement, GDC is responsible for delivery of the HTP and serves in the central role of project sponsor and coordinator. New Jersey, New York, and Amtrak have tasked GDC with securing all funding and/or loan agreements with the Federal government for the HTP in GDC's name.

The PDA was approved by the GDC Board of Commissioners ("**GDC Board**") on November 18, 2022 via Resolution #1122-01, and the PDA was fully executed by the Parties on February 3, 2023.

Pursuant to Section 19.07(c) of the PDA, the GDC Board may vote to amend the PDA after consultation by the GDC CEO with the Senior Project Coordination Committee ("**SPCC**"). The GDC CEO consulted with the SPCC on March 27, 2023 and April 26, 2023 regarding amending the PDA to: (i) amend the process for addressing proposed "material deviations" to Design Standards and Specifications, (ii) incorporate a process for consideration of alternative technical concepts, and (iii) expand procurement evaluation panels to include one representative from New York as a voting member, in accordance with the proposed Amendment No. 1 to Project Development Agreement for Hudson River Tunnel Project ("**PDA Amendment No. 1**") attached hereto as **Exhibit A**.

Pursuant to the foregoing report, the following resolutions were adopted, with Commissioners Barbas, Bauer, Coscia, Dominguez, Glen, Grewal-Virk, and Rosen voting in favor:

**RESOLVED**, that the GDC Board approves PDA Amendment No. 1 as set forth in **Exhibit A**.



**EXHIBIT A**  
**PDA AMENDMENT NO. 1**

## AMENDMENT NO. 1 TO PROJECT DEVELOPMENT AGREEMENT FOR HUDSON TUNNEL PROJECT

This Amendment No. 1 to the Project Development Agreement for Hudson Tunnel Project (“**PDA**”), dated as of [●], 2023 (the “**Amendment**”), is made among Gateway Development Commission (“**GDC**”), the State of New Jersey (“**New Jersey**”), the State of New York (“**New York**”), and National Railroad Passenger Corporation (“**Amtrak**”). GDC, New Jersey, New York, and Amtrak are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires.

WHEREAS, the Parties entered into the PDA, which was effective as of February 3, 2023; and

WHEREAS, the Parties hereto desire to amend the PDA on the terms and subject to the conditions set forth herein; and

WHEREAS, pursuant to Section 19.07(c) of the PDA, the GDC Board of Commissioners has voted to amend the PDA and this Amendment shall bind the Parties.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. *Definitions.* Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the PDA.

2. *Amendments to the PDA.* As of the Effective Date (defined below), the PDA is hereby amended or modified as follows:

(a) Section 6.02(a) of the PDA is hereby amended by inserting immediately following the words “(i) one representative having requisite expertise related to the procurement from each of GDC, the HTP operator or user (e.g., NJ TRANSIT)” the words “New York,”.

(b) Section 12.02(b) of the PDA is hereby amended by inserting at the end of such Section the following new Section 12.02(b)(i):

*Material Deviations.* Any Party or HTP Contractor may propose a “**Material Deviation**” under the terms of relevant HTP contract documents. The TSC shall conduct an analysis of and make a recommendation regarding the Material Deviation within ten (10) business days of the TSC’s receipt thereof, unless otherwise extended by the GDC CEO. The TSC shall provide a briefing on any proposed Material Deviations and present its analysis and recommendations to the GDC Board. For the avoidance of all doubt, in the event that the TSC cannot present a unanimous recommendation it shall present arguments for and against any Material Deviation when it briefs the GDC Board. All Material Deviations shall be either approved or disapproved by the GDC Board. A Material Deviation shall mean a deviation from

Design Standards and Specifications that if implemented: (A) has an aggregate cost impact (increase or decrease) that exceeds \$100 million, (B) would require further environmental evaluation or reevaluation of the Project, or (C) has a schedule impact of 60 calendar days or more (computed as the total of all schedule increases and savings created by a deviation).

(c) Article 12 of the PDA is hereby amended by inserting a new Section 12.05 as follows:

12.05 *Alternative Technical Concepts.*

(a) Any HTP Contractor may propose an alternative technical concept (“ATC”) under the terms of a relevant HTP procurement. The TSC shall conduct an analysis and make a recommendation regarding the ATC within ten (10) business days of the TSC’s receipt thereof, unless otherwise extended by the GDC CEO. The TSC shall provide a briefing on all proposed ATCs and present its analysis and recommendations during an executive session of the GDC Board. For the avoidance of all doubt, in the event that the TSC cannot present a unanimous recommendation it shall present arguments for and against any ATC when it briefs the GDC Board. Following the briefing, a determination on the ATC will be rendered by the TSC based on input and guidance provided by the GDC Board. All ATCs recommended for award at the conclusion of the procurement process shall be subject to the approval of the GDC Board at such time.

(b) All persons briefed with respect to an ATC during an ongoing procurement shall maintain the confidentiality of such information and shall execute a procurement confidentiality agreement as may be required.

(d) Appendix A- Definitions of the PDA is hereby amended by inserting the following new definitions in the appropriate alphabetical order:

“ATC” shall have the meaning set forth in Section 12.05(a) of the Agreement.

“**Material Deviation**” shall have the meaning set forth in Section 12.02(b)(i) of the Agreement.

3. *Date of Effectiveness; Limited Effect.* This Amendment will become effective as of the date first written above (the “**Effective Date**”). Except as expressly provided in this Amendment, all of the terms and provisions of the PDA are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the PDA or as a waiver of or consent to any further or future action on the part of any Party that would require the waiver or consent of the other Party. On and after the Effective Date, each reference in the PDA to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein,” or words of like import, will mean and be a reference to the PDA as amended by this Amendment.

**#0523-05: HUDSON TUNNEL PROJECT – HUDSON RIVER GROUND STABILIZATION PROJECT – AUTHORIZATION OF STIPEND PROGRAM**

The Hudson Tunnel Project will improve resiliency, reliability, and redundancy for the busiest section of the Northeast Corridor (“NEC”) – the busiest passenger rail line in the United States. The Hudson Tunnel Project (“HTP”), for funding and financing purposes, includes the construction of a new Hudson River Tunnel between New York and New Jersey, and the rehabilitation of the existing 112-year-old North River Tunnel under the Hudson River.

The Gateway Development Commission (the “Commission”) is a public and government sponsored authority established by bi-state legislation (the “GDC Act”) in July 2019. The Commission is serving as the NEPA Project Sponsor and federal grant recipient for the Hudson Tunnel Project.

The Commission submitted a request to enter engineering in October 2022 as part of the Federal Transit Administration (“FTA”) Capital Investment Grants (“CIG”) Program. Since that time the Commission has engaged in a risk assessment process with the FTA and is seeking to formally enter the engineering phase of the CIG Program.

On February 2, 2023, the Commission hosted a Market Sounding Forum to assess effective contract packaging strategies, and the Commission invited through an open process potential proposers to provide feedback on the potential project delivery of the HTP. Given this feedback, GDC has focused on certain early work projects, including the Hudson River Ground Stabilization project, which will enhance ground conditions of the river bottom on the New York side of the Hudson River in order to bore the new tunnel through the eastern portion of the Hudson River.

The Commission staff have determined that the development and institution of a stipend program in support of a two-step procurement process for the Hudson River Ground Stabilization project procurement is in the best interest of, and provides the best value to, the Commission. The Commission currently intends to offer a stipend or payment for work product to each unsuccessful proposer that submits a proposal that satisfies those conditions that will be specified in the procurement documents. The winning proposer will not receive a stipend or payment for work product.

This stipend program will encourage bidding teams to invest appropriate level of resources and technical development, to encourage innovation, and to prepare a price-certain responsive bid to the Hudson River Ground Stabilization project procurement.

These stipends or payments for work product will be made in consideration for the proposer’s transfer and assignment to the Commission of rights to the proposer’s intellectual property, ideas, techniques, concepts, and approaches contained in its proposal and/or other work product provided by the proposer during the RFP phase.

In order to enact such a stipend program, the Commission wishes to adopt the Resolutions set forth below.

Pursuant to the foregoing report, the following resolutions were adopted, with Commissioners Barbas, Bauer, Coscia, Dominguez, Glen, Grewal-Virk, and Rosen voting in favor:

**RESOLVED**, that the Chief Executive Officer of the Commission is hereby authorized to direct GDC staff to develop and institute a stipend program to support the Hudson River Ground Stabilization project procurement process, as detailed in the GDC Act and applicable Commission policies and procedures, at

a cost not to exceed \$2,500,000, which represents a not to exceed cost per bidder of \$625,000, subject to the availability of funds; and be it further

**RESOLVED**, that the CEO of the Commission is hereby authorized to direct Commission staff to review eligible submissions and administer and cause to pay stipends to eligible proposers.