

Gateway Development Commission
Meeting of The Board
Held via Teleconference

October 16, 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

AMTRAK

Anthony R. Coscia, Vice Chair

I. Call to Order

The public meeting was called to order by Co-Chair Glen at approximately 2:00 PM.

Co-Chair Glen advised that due to scheduling availability of the Commissioners and the need to advance key Commission business in a timely fashion, today's meeting was being held virtually via teleconference with audio of the meeting being live-streamed from the Gateway Program website.

Co-Chair Glen 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 all Commissioners were present, with the exception of Commissioner Dominguez, and there was a quorum.

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 Glen stated that the Board would enter Executive Session to discuss contract negotiations and matters in which the release of information could impair a right to receive funds from the United States. Co-Chair Glen noted that the Board would reconvene the public meeting at around 2:30 p.m. for an update on the Gateway Program. Co-Chair Grewal-Virk motioned to enter into Executive Session, Commissioner Barbas seconded the motion, and the motion was unanimously adopted at approximately 2:03 PM.

III. Reconvening of Public Meeting

The public meeting was reconvened by Co-Chair Glen at approximately 2:31 PM. Acting Secretary Caulfield confirmed that, with the exception of Commissioner Dominguez, all Commissioners were present and there was a quorum.

IV. Report on Minutes of the September 11, 2023 Meeting

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of September 11, 2023 were delivered in electronic form by Acting Secretary Caulfield to the Governors of New York and New Jersey on September 13, 2023 and that the time for action by the Governors of New York and New Jersey expired at midnight on September 28, 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, Deputy Chief Program Officer, Megan Strickland, and Chief Program Officer, Eric Daleo, provided updates on the Gateway Development Commission, and progress with the Hudson Tunnel Project.

Following the presentation, Co-Chair Glen thanked Mr. Kolluri and the rest of the GDC staff for the update, and asked if there were any questions or comments from the Board. None of the Commissioners had any questions or comments.

VI. Public Comments

Co-Chair Glen announced that the Commission had solicited virtual comments from the public in advance of, and during, today’s meeting. Co-Chair Glen indicated that a form for soliciting these comments was posted to the Gateway Program website and was available throughout today’s meeting.

There were two (2) written comments received by 5:00 PM on Sunday, October 15, 2023:

Commenter	Topic
Gerald Keenan, New Jersey Alliance for Action	In support of the Commission and recent developments relating to the Gateway Project.
Sophie Cappello, Regional Plan Association / Build Gateway Now Coalition	HTP support

Acting Secretary Caulfield noted that all written comments received on October 16th before and 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 received written comments from the following additional individual:

Commenter	Topic
Maddie DeCerbo, The Real Estate Board of New York (REBNY)	Support letter

VII. Action Items

#1023-01: Authorization to Execute the Supporting or Executing Partner Agreement with National Railroad Passenger Corporation

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

#1023-02: Authorization to Execute the Supporting or Executing Partner Agreement with New Jersey Transit Corporation

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.

#1023-03: Authorization to Adopt the Title VI and Nondiscrimination Program Plan

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

VIII. Adjournment

Co-Chair Glen noted that there was no further business to conduct, and Co-Chair Glen then requested a motion to adjourn the meeting. Upon the motion being duly made by Commissioner Barbas and seconded by Co-Chair Grewal-Virk, the meeting was adjourned at approximately 2:45 PM.

Respectfully submitted,

/s/ Edmund Caulfield
Edmund Caulfield, Acting Secretary

#1023-01: AUTHORIZATION TO EXECUTE THE SUPPORTING OR EXECUTING PARTNER AGREEMENT WITH NATIONAL RAILROAD PASSENGER CORPORATION

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 individual 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**”).

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 certain services that Amtrak will provide in support of the fit-out work for the HTP (Package 2) (the “**Amtrak SEP Agreement**”), an execution version of which is attached hereto as **Exhibit A**.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Barbas, Bauer, Coscia, 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 Amtrak SEP Agreement, and to take all other steps necessary to comply with the terms and conditions, provide day-to-day direction of the contemplated services, initiate all aspects of its dispute resolution procedures, and take any other action necessary to effectuate the Amtrak SEP Agreement.

Adopted - 10/16/23

EXHIBIT A
AMTRAK SEP AGREEMENT

**SUPPORTING OR EXECUTING PARTNER
AGREEMENT**

for

**FIT-OUT WORK FOR THE
HUDSON TUNNEL PROJECT (PACKAGE 2)**

By and between

GATEWAY DEVELOPMENT COMMISSION

And

NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)

Dated as of [●], 2023

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 the State of New Jersey and (“**New Jersey**”) and the State of New York (“**New York**”), and throughout the Northeast Corridor (the “**NEC**”), 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 New Jersey, New York, and many other participants in the national economy;

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

F. Accordingly, on or about February 3, 2023, New Jersey, New York, Amtrak, and GDC (the “**PDA Parties**”) entered into the Project Development Agreement (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 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);

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

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

J. By resolution dated October [●], 2023, the GDC Board of Commissioners (the “**GDC Board**”) has authorized GDC to enter into a SEP Agreement with Amtrak to provide construction management, project management support, field support, and other technical assistance and advisory services (as further defined herein) (the “**Services**”) related to the design, construction, and delivery of the fit-out work for the new tunnel elements of the HTP, including (i) the internal concrete for the ventilation shafts; (ii) the concrete for the track bed, benches, and ventilation duct walls in the tunnels; (iii) fan plant building structures and fit-outs; (iv) traction power, communications, and signal systems; (v) track work along the entire alignment; and (vi) other scope as approved by GDC’s Chief Executive Officer or his or her designee (“**GDC CEO**”) to support the fit out of the HTP (collectively, the “**Work**” or “**Package 2**”);

K. This Agreement addresses GDC and Amtrak’s rights and responsibilities with respect to Package 2, and does not address any other obligations the Parties may have with respect to other HTP Packages under the PDA; and

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

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

ARTICLE I.

DEFINITIONS AND RULES OF INTERPRETATION

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

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.

ROLES AND RESPONSIBILITIES

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

- (a) ultimate responsibility for the delivery of the Work, and more broadly the HTP;
- (b) Oversight (as defined in Section 2.03) of the Services provided by Amtrak;
- (c) securing all necessary funding for the Work and, more broadly, the HTP;
- (d) chairing the Senior Project Coordinating Committee (“SPCC”) and Technical Standards Committee (“TSC”);
- (e) development of the Design Standards and Specifications;
- (f) procurement of all HTP Contractors related to the Work unless expressly delegated to Amtrak, including any procurement for which Amtrak is providing assistance in accordance with Section 4.02;
- (g) maintenance of the Executive Project Schedule for the HTP in accordance with Section 5.01 of the PDA;
- (h) maintenance of the overall HTP project budget (“**Project Budget**”) in accordance with Article IX of the PDA;
- (i) project reporting regarding the Work and the HTP necessary to satisfy all applicable federal funding and financing requirements applicable to the HTP;
- (j) in its capacity as HTP project sponsor and NEPA sponsor, ultimate responsibility for all NEPA compliance activities, including mitigation commitments, related to the Work;
- (k) acquisition of Package 2 Permits (as defined herein) and third-party agreements required for the delivery of the Work;
- (l) procurement of insurance for the Work and the HTP;
- (m) engagement with labor constituencies and ensuring compliance of HTP Contractors with applicable labor laws;
- (n) overall management of the HTP risk register;

- (o) management of HTP document access and control;
- (p) resolution of HTP Contractor disputes; and
- (q) ensure Procurement Documents (as defined in Section 4.02 herein) are in compliance with all known applicable federal laws, regulations, and grant requirements.

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

Section 2.02 *Amtrak*. Amtrak shall perform the Services to support the delivery of Package 2 pursuant to Section 4.01(c)(ii) of the PDA (*GDC Role for HTP Packages*) as specified herein. Services shall include, but not be limited to, the following responsibilities and activities associated with the Work:

- (a) Assist GDC with the development of procurement strategies and Procurement Documents (as defined in Section 4.02 herein) for the Work, as discussed in Article IV hereof;
- (b) develop, monitor, and coordinate the budget (the "**Package 2 Budget**") and schedule (the "**Package 2 Schedule**") for the Work, as discussed in Articles VI and VII hereof (including each of the multiple separate contracts comprising the Work);
- (c) assist GDC with planning requirements for the Work, as further discussed in Section 9.02 (*Risk Register Management*), Section 9.04 (*Project Management Plan*), and Section 9.05 (*Force Account*) hereof;
- (d) support GDC with monitoring NEPA compliance for the Work, as discussed in Section 8.01 hereof;
- (e) utilize the methodology provided by the GDC CEO for the management and control of documentation associated with the Work, as discussed in Section 9.06 hereof;
- (f) assist GDC with the management and coordination of third parties, including NJ TRANSIT, as more fully set forth herein, to the extent necessary for system integration with other aspects of HTP, including with respect to design and specifications as further discussed in Article VI hereof, and on activities necessary to interconnect with the other HTP Packages on both termini of the elements of the Work, as further discussed in Section 3.01 hereof, in all cases at the direction of the GDC CEO;
- (g) act as construction manager and provide day-to-day oversight of construction activities for, and workmanship of, the elements of the Work;
- (h) recommend to GDC the certification of milestone completion items related to the Work when appropriate, to allow timely payment of the HTP Contractors by the GDC CEO upon completion of discrete objectives in accordance with the provisions of the HTP Contract Documents and all applicable federal funding requirements, and in accordance with Section 9.01 and Section 9.03 hereof;
- (i) conduct scheduled periodic meetings and deliver regular reports to GDC related to the Work, with the SPCC, NJ TRANSIT, and the HTP Contractors, as appropriate (and as

directed by the GDC CEO), to report on the progress of the Services and the elements of the Work and provide a forum for discussion of any concerns of such parties, as further discussed in Article III hereof;

- (j) provide code compliance services under Section 12.03 of the PDA for Package 2;
- (k) assist GDC in preparing an annual Force Account Resources Plan in conformance with Section 9.05 of this Agreement;
- (l) assist GDC in interface coordination between packages as may be necessary, including through advice given in the context of participation on the SPCC and TSC;
- (m) provide other technical assistance, advisory services, and dedicated staffing that are mutually agreed upon between the Parties as may from time to time be required to support GDC in the Work; and
- (n) coordinate and cooperate with any specified designer or engineer for the Work as designated by GDC (the “**HTP Designer**”) at the direction of the GDC CEO, including in the HTP Designer’s performance of construction phase services or design services during construction.

Section 2.03 *GDC Oversight*. In its performance of the Services, Amtrak will report to GDC and take day-to-day direction from the GDC CEO (“**Oversight**”). The GDC CEO may at any time, in its sole and absolute discretion, overrule an Amtrak decision or determination relating to the Work, or rescind any delegation of authority to Amtrak under this Agreement. For the avoidance of doubt, this Section is subject to the provisions of Section 7.06 and Article XII hereof.

Section 2.04 *Division of Responsibilities*. To the extent not specifically stated in this Agreement, and prior to the adoption of any Market Case Estimate, the Parties will develop a detailed scope of services delineating the roles and responsibilities of GDC, Amtrak, and the HTP Contractor(s) with respect to the Work in order to avoid functional overlap.

ARTICLE III.

INTERFACE COORDINATION

Section 3.01 *Interface Coordination*. The Parties acknowledge that the HTP is a multi-package, complex engineering and construction project which requires significant interface between packages for successful delivery and completion. GDC shall manage interfaces between and among the HTP Packages. Amtrak, in its performance of Services, will participate in, and coordinate closely with, GDC’s other SEPs through the SPCC and TSC, and otherwise assist GDC in supporting interface coordination between the Work and other HTP Packages.

Section 3.02 *Senior Project Coordinating Committee*. 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.

Section 3.03 *Technical Standards Committee*. The TSC shall have all rights and powers with regard to the technical issues related to the Work 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.

Section 3.04 *Delivery Partner*. To the extent Amtrak requires additional staff or services to augment its staff, Amtrak shall utilize GDC's delivery partner or GDC's otherwise designated program management consultant ("DP") to, at Amtrak's direction, staff its performance of the Services, as Amtrak deems appropriate, and to assist Amtrak in interface coordination between the Work and other packages of the project and to provide other services using a platform that is common and consistent among the GDC and all SEPs, as further discussed in Section 4.04 herein. Subject to the requirements of Section 4.04 herein, staffing plans for the DP's support of Amtrak's performance of the Work shall be submitted in advance by DP for review and approval by Amtrak and GDC's CEO, and the DP staff so provided shall perform tasks directed by Amtrak in furtherance of the Services. The Parties acknowledge that the services performed by the DP staff under this Section 3.04 will be functionally separate from work performed by the DP for GDC or any other SEP.

Section 3.05 *Meetings*. Amtrak agrees to comply with reasonable and timely requests from the GDC CEO to attend GDC Board meetings, advisory board meetings, committee meetings, conferences, or other meetings as reasonable and necessary to support the Work, as well as the interface between the Work and other HTP Packages.

ARTICLE IV.

PROCUREMENT

Section 4.01 *Contracts for the Work*.

- (a) GDC will be responsible for procurement of all third-party services related to the Work or that are otherwise necessary to facilitate the Work, including those of construction contractors, design-build contractors, engineers, and consultants, as applicable (each a "**Package 2 Contractor**", and collectively the "**Package 2 Contractors**") and Amtrak will be designated as an authorized representative for GDC in any construction services contracts for the Work; *provided* that such designation does not alter any rights or responsibilities of the Parties set forth elsewhere in this Agreement. Notwithstanding the foregoing, GDC hereby delegates to Amtrak the responsibility to negotiate and execute third-party Utility (as defined in subsection (d) below) agreements related to the Work pursuant to Section 5.01 herein, as identified in **Exhibit B** (as may be updated from time to time). The Parties agree that **Exhibit B** may only be updated on written agreement by the GDC CEO and Amtrak, with notice to the GDC Board.
- (b) Prior to the GDC Board's approval of a Market Case Estimate for the Work, Amtrak must include estimated costs associated with the above agreements in the Amtrak Staffing Plan and Budget (as defined in Section 7.02 herein). Amtrak must also provide GDC with invoices associated with these costs as they are received and approved.
- (c) Amtrak agrees to procure such agreements in compliance with all known applicable federal laws, regulations, and grant requirements.
- (d) All other third-party agreements, including agreements with any utility, freight railroads, and other third-parties (each, a "**Utility**") will be negotiated and executed by GDC unless otherwise delegated by GDC to Amtrak or another party.

Section 4.02 *Procurement Documents*. As part of GDC’s responsibility for procurement of all third-party services related to the Work, GDC shall coordinate the development of any primary documents, including any requests for qualifications, requests for proposals, invitations for bids, evaluation criteria, and terms and conditions of the applicable contracts to be awarded (collectively, “**Procurement Documents**”) with Amtrak such that Amtrak is appropriately integrated into the process for development of such Procurement Documents prior to advertisement for the applicable procurement. Amtrak will provide technical assistance and support to GDC in GDC’s development of the Procurement Documents. Such assistance is expected to comport with applicable federal procurement requirements and GDC’s own procurement rules (compliance with which shall be the obligation of GDC). Amtrak’s assistance (including logistical support) will be based upon agreed schedules.

- (a) GDC shall distribute drafts of its Procurement Documents to Amtrak for review and comment in advance of publication of such Procurement Documents. Amtrak shall provide comments, if any, no later than ten (10) business days from the date of delivery of such draft Procurement Documents, unless the Parties agree to a different deadline. Amtrak’s failure to provide comments to GDC within ten (10) business days (or other timeframe agreed upon) shall be deemed Amtrak’s approval of the draft Procurement Documents.
- (b) GDC shall respond to and address any comments to its draft Procurement Documents provided by Amtrak; provided, that the terms and conditions of GDC’s Procurement Documents, including, for the avoidance of doubt, any forms of agreement incorporated therein, shall be ultimately determined by the GDC CEO.
- (c) Amtrak will administer the construction services contract for the Work, and will review and recommend payment of invoices by the GDC CEO, and negotiate contract modifications, as necessary, for review, approval, and execution by the GDC CEO.

Section 4.03 *Evaluation*. Amtrak agrees to participate in the evaluation of respondents to procurements for the Work. Amtrak will name an evaluation panel participant having requisite expertise related to the procurement for the Work. Amtrak acknowledges and agrees that all evaluation panel participants will be required to comply with any required or customary rules and procedures governing the confidentiality and the integrity of the bid process with respect to procurement of the Package 2 Contractors, and such personnel may be required, as a condition of participation, to execute non-disclosure agreements and other documents as the GDC CEO may reasonably require reflecting the same.

Section 4.04 *Delivery Partner*.

- (a) Amtrak agrees to participate on the evaluation panel in connection with GDC’s procurement of the DP.
- (b) Prior to GDC’s award of the contract for the DP, Amtrak will consult with GDC on foreseeable use of the DP in connection with Amtrak’s performance of the Services (without limiting Amtrak’s ability to request DP resources in the future if the Services so require).
- (c) In the event Amtrak desires to utilize DP resources in performing Services, prior to the adoption of the Market Case Estimate for the Work, Amtrak must first obtain approval

from the GDC CEO on the scope and cost of such resources. Once the Market Case Estimate has been adopted, Amtrak need only seek the GDC CEO's approval of the scope of the DP's services in order to avoid duplication of efforts; *provided* that the anticipated costs of the DP are included as a line item in the Market Case Estimate pursuant to Section 7.02(d) herein. The GDC CEO's approval of the costs of the DP resources required to support the Services is not required provided that such costs do not exceed the amounts set forth in the approved Market Case Estimate.

- (d) In the event the GDC CEO approves the use of DP resources to Amtrak, those DP resources shall be under the sole direction of Amtrak (and not the DP) for the term approved by the GDC CEO. Staffing plans for the DP's support of Amtrak's performance of the Work shall be submitted for review and approval by Amtrak.
- (e) After the DP contract has been awarded and executed, Amtrak may develop additional draft task orders or modifications to existing task orders related to the Work, which draft task orders or modifications to existing task orders shall be subject to review and approval of the GDC CEO. Once the GDC CEO approves the draft task order or task order modification, Amtrak will negotiate the task order or modification with the DP and recommend approval and execution by the GDC CEO.
- (f) To avoid duplication of services, GDC and Amtrak will coordinate the scope of services performed by the DP.

Section 4.05 *Contract Awards.*

- (a) GDC shall award and enter into all contracts for the Work (the "**Package 2 Contracts**"). Upon selection of the applicable Package 2 Contractors, GDC shall execute all applicable contract documents (collectively, the "**Package 2 Contract Documents**") and Amtrak will not procure or enter into any contracts for the Work without the GDC CEO's prior written approval and delegation of authority under Section 6.01(b) of the PDA, with the exception of those contracts referenced in Section 4.05(b) and **Exhibit C** herein. The GDC acknowledges that NEC signals and other specialized systems may require specific expertise that will be considered by the GDC CEO in reviewing any such request.
- (b) Attached hereto as **Exhibit C** is a list of contracts that have been entered into by Amtrak for the Work as of the Effective Date. Amtrak hereby represents that the contracts set forth in **Exhibit C** are in compliance with all known applicable federal laws, regulations, and requirements. Through the execution of this SEP agreement, the GDC CEO approves the use of the contracts listed in **Exhibit C** for the Work subject to any required approvals of the Amtrak Staffing Plan and Budget.

ARTICLE V.

THIRD PARTY AGREEMENTS; RIGHTS-OF-WAY

Section 5.01 *Third Party Utility Agreements.* The Parties acknowledge and agree that GDC may enter into third-party agreements with respect to delivery of the HTP as GDC determines appropriate, including, for example, agreements with Utilities. Pursuant to Section 7.01(a) of the PDA, GDC hereby delegates to Amtrak responsibility for managing the negotiation and execution of the third-party agreements with Utilities related to the Work as identified in **Exhibit B** attached

hereto; *provided* that any such agreements and amendments thereto are subject to the GDC CEO's review and approval. Amtrak will not enter into any other third-party agreements for the Work without the GDC CEO's prior written approval in accordance with GDC's obligations under the PDA.

Section 5.02 *Third-Party Coordination*. Amtrak will have primary responsibility for coordinating activities with Utilities involved with the Work.

Section 5.03 *Amtrak Access to Third Party Parcels*. If, in connection with its performance of the Services, Amtrak desires to enter upon parcels owned or controlled by a third-party with whom GDC has an access agreement in place (each an "**Access Agreement**"), Amtrak must comply with requirements of the Access Agreement and execute a "Temporary Permit to Enter Upon Property" or "Temporary Access Permit" ("**PTE**") to access the property. Amtrak has reviewed the forms of PTEs attached hereto as **Exhibit D**, and the access rights necessary for Amtrak's performance of the Services, and has determined them to be acceptable.

Section 5.04 *Right-of-Way and Real Property Interest Acquisition*. Nothing in this Agreement shall alter Amtrak's rights and obligations under Section 7.02(a) of the PDA to acquire all surface and subsurface property required for the operations, construction, and maintenance of the HTP that is located in New York, as set forth in the RAMP (as defined in the PDA).

ARTICLE VI.

DESIGN AND CONSTRUCTION

Section 6.01 *Design*.

(a) *Package 2 Design Standards and Specifications*.

- (i) GDC will develop the Design Standards and Specifications for the Work (the "**Package 2 Design Standards and Specifications**") in accordance with its obligations in the PDA. Amtrak agrees to assist GDC with developing the Package 2 Design Standards and Specifications.
- (ii) GDC has the responsibility to ensure that certain Submittals specified in the PDA are shared for review with the PDA Parties and others as specified in the PDA, and are appropriately adjudicated. Amtrak may review and comment on all Submittals related to the Work in accordance with Section 12.02(c) of the PDA.
- (iii) Amtrak will assist GDC's efforts to ensure that the Work meets the minimum standards set forth in the Package 2 Design Standards and Specifications and will also assist GDC's efforts to ensure that there are no deviations from the Package 2 Design Standards and Specifications that are not authorized under Section 12.02(b) of the PDA. Notwithstanding the foregoing, to the extent the Package 2 Design Standards and Specifications allow for flexibility in decision-making, (*e.g.*, use of the term "up to" or no specified term), subject to Section 7.05 herein, Amtrak is authorized to make determinations for this class of deviations from the Package 2 Design Standards and Specifications, which are immaterial and addressable in the field, provided that Amtrak issues prompt notice of the determination to the GDC CEO, subject to the Submittal review requirements prescribed in the PDA, to the extent a Submittal is required.

- (iv) In performing the Services, Amtrak will endeavor to identify areas that support GDC's goal of reducing time and cost to construct, ensuring a safe work environment, and adhering to the highest quality standards, and will share those findings and recommendations with GDC from time-to-time, as may be appropriate. In addition, Amtrak will assist GDC in evaluating alternative technical concepts or other value engineering concepts presented.
- (v) This Agreement in no way modifies the provisions of Section 4.01(c)(iii) of the PDA, including the requirement that Amtrak transfer ownership of and any rights to use the Existing HTP Designs to GDC, and that any modifications to the design or design approach subject to Amtrak approval under such design contracts shall be subject to the approval of the GDC CEO.

Section 6.02 *Coordination with Executive Project Scheduling.* GDC shall control and maintain the Executive Project Schedule for the HTP in accordance with the terms of the PDA. Amtrak, on behalf of and in consultation with GDC, will develop and maintain the Package 2 Schedule, subject to GDC Oversight. Both the form of the Package 2 Schedule and the inputs to same are subject to approval by the GDC CEO. Amtrak will provide GDC with at least monthly updates on the Package 2 Schedule to enable GDC to maintain the Executive Project Schedule.

Section 6.03 *Labor Relations.* GDC shall be responsible for engaging with labor constituencies and ensuring compliance with applicable labor laws, in accordance with Section 4.01(b) of the PDA. Amtrak agrees to support GDC with enforcing project labor requirements that are included in the Package 2 Design Standards and Specifications and the Package 2 Contract Documents where and as applicable. Amtrak remains responsible for its own labor relations, pursuant to the Railway Labor Act in accordance with Section 4.01(b) of the PDA.

Section 6.04 *Insurance.* GDC will be responsible for procuring insurance for the Work based on GDC's established criteria for the HTP insurance program (the "**HTP Insurance Program**") as provided in the PDA. If GDC cannot insure Amtrak's employees, Amtrak will pay to insure its employees. To the extent that Amtrak needs to procure separate insurance in connection with the Services, Amtrak's expenditures will be considered an eligible cost that will be invoiced to GDC under Section 7.03 of this Agreement. The procurement of insurance pursuant to this Section 6.04 will be made in accordance with the provisions of Article IV.

Section 6.05. *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 related to Package 2. Amtrak shall serve as the authority having jurisdiction over code enforcement, will prudently exercise such role, and will not exercise its authority in a manner that violates any laws, and will comply with the timing of contractual response and submittal requirements as set forth in Section 6.01 and Section 12.02 of the PDA so as to avoid materially interfering with advancing other components of the HTP.

ARTICLE VII.

COMPENSATION AND BUDGET

Section 7.01 *Market Case Estimate.* Section 11.04(a) of the PDA requires that GDC establish a Market Case Estimate for each HTP Package. GDC and Amtrak acknowledge that the Market Case Estimate for the Work cannot be determined until all procurements related to the delivery of the

Work are finalized and all final negotiated costs and contingencies are determined. Amtrak will provide assistance to GDC in its development of the Market Case Estimate for the Work, including but not limited to, providing GDC with forecast information, based on the facts and assumptions made at the time of delivery, on Amtrak's Staffing Plan and Budget (as defined herein) for the Services as necessary to complete the overall Market Case Estimate. GDC staff will present the Market Case Estimate, and any subsequent amendments thereto, to the GDC Board for approval.

Section 7.02 *Amtrak Staffing Plan and Budget.*

- (a) Amtrak will develop a staffing plan and organizational chart to provide the Services and support the Work. For the avoidance of doubt, the force account requirements will not be included in the staffing plan and, instead, will be provided as part of the annual Force Account Resources Plan (as defined in Section 5.02(b) of the PDA and Section 9.05 hereof) submission. Amtrak will identify the project lead manager of the Work (the "**Project Lead**") and accountable executive (collectively, the "**Senior Roles**"). The Project Lead will be subject to the GDC CEO's approval, which will not be unreasonably withheld. Amtrak will promptly inform GDC of any change in the employment status of the Senior Roles. Any replacement personnel for the Project Lead will also be recommended by Amtrak and subject to approval by the GDC CEO, which approval will not be unreasonably withheld.
- (b) Until the Market Case Estimate for the Work is adopted, ninety (90) days prior to the start of each federal fiscal year, Amtrak will transmit to GDC for approval a staffing plan and budget identifying: (i) the individuals that will provide support under this Agreement; (ii) each individual's title and hourly rate; (iii) anticipated hours and total costs for the year; and (iv) the other costs to be incurred in providing the Services, in accordance with Section 7.03 hereof (the "**Amtrak Staffing Plan and Budget**"). The Amtrak Staffing Plan and Budget will be subject to the review and approval of the GDC CEO, and, upon such approval, all costs under Amtrak Staffing Plan and Budget will be not-to-exceed costs unless otherwise approved by the GDC CEO. If costs are forecast to exceed the approved Amtrak Staffing Plan and Budget, Amtrak will notify GDC for determination of appropriate action.
- (c) Once the Market Case Estimate for the Work is adopted, Amtrak will continue to provide GDC with an Amtrak Staffing Plan and Budget ninety (90) days prior to the start of each federal fiscal year; *provided* that, subject to the requirements of Section 7.02(d) herein, approval of the Amtrak Staffing Plan and Budget by the GDC CEO shall not be required so long as such costs included in the Amtrak Staffing Plan and Budget do not exceed the amounts set forth in the approved Market Case Estimate.
- (d) The Market Case Estimate for the Work shall include a line item with estimated costs for the Amtrak Services and DP support of the Amtrak Services. Amtrak will include in its Staffing Plan and Budget each year how much of the Market Case Estimate line item it and its DP resources will have consumed on a percentage basis through the end of the upcoming federal Fiscal Year the Staffing Plan and Budget covers. If the proposed Amtrak Staffing Plan and Budget will result in the costs exceeding the amount in the Market Case Estimate line item, the GDC CEO will be required to review and approve the Amtrak Staffing Plan and Budget.

- (e) Throughout each federal fiscal year, Amtrak will promptly disclose to GDC any anticipated deviations from the Amtrak Staffing Plan and Budget as soon as they are reasonably anticipated or identified.
- (f) Amtrak shall transmit for approval the Amtrak Staffing Plan and Budget for the remainder of federal Fiscal Year 2024 no later than thirty (30) days after the Effective Date.

Section 7.03 *Compensation.*

- (a) GDC will compensate Amtrak for the Services, which compensation will include:
 - (i) Direct out-of-pocket costs incurred by Amtrak as required for performance under this Agreement, including post-Effective Date costs of the HTP Designer or other Amtrak consultants or professionals, Utilities involved with the Work, and Package 2 Permits (as defined in Section 8.02); *provided* that any costs for expenses not expressly included in Amtrak Staffing Plan and Budget must be pre-approved in writing by the GDC CEO in order for Amtrak to receive reimbursement for such costs. For the avoidance of doubt, Amtrak must obtain the GDC CEO's express written approval in accordance with Section 4.05 hereof to enter into any procurement or utilize any existing consultants or other professionals to perform the Services;
 - (ii) The reasonable time-based costs under Amtrak Staffing Plan and Budget, as it is from time to time amended (subject to reasonable supporting documentation), including associated other direct costs;
 - (iii) Manufacture of equipment such as signal houses, and use of standing contracts for construction materials; *provided* that these activities are approved by the GDC Board in advance;
 - (iv) Any costs incurred by Amtrak in connection with obtaining access to rights of way or other property interests pursuant to Section 5.03 of this Agreement;
 - (v) Commissioning and systems integration (with other packages);
 - (vi) Amtrak's fully allocated overhead rates for the costs of services rendered. Amtrak's overhead rates are computed in accordance with Amtrak's accounting policies and procedures. These rates are updated annually by Amtrak and will be provided to GDC. The rates in effect at the time of performance of the work shall be the applicable overhead rates; and
 - (vii) Other direct support authorized by the GDC CEO in order to facilitate Oversight of the Work, subject to approval by Amtrak to the extent required.
- (b) Amtrak will invoice GDC for the Services on a quarterly basis in a format approved by GDC, and the GDC CEO shall, pursuant to a separate funding agreement, pay such invoices.
- (c) Amtrak will provide GDC with reasonable supporting records and data necessary for GDC to secure reimbursement from federal and other funding sources of any payments made to Amtrak for providing the Services.

Section 7.04 *Budgeting.*

- (a) GDC shall develop and maintain the Project Budget for the HTP in accordance with Section 9.01(a) of the PDA.
- (b) Amtrak shall develop and maintain the Package 2 Budget in accordance with and in conformity with the applicable Market Case Estimate once approved by GDC. Both the form of the Package 2 Budget and the inputs are subject to approval by GDC's CEO. Amtrak will provide GDC with at least monthly updates on the Package 2 Budget to enable GDC to work to maintain the Project Budget.
- (c) Amtrak shall maintain the Package 2 Budget within the FTA's Standard Cost Categories ("SCC"). Once established, any modifications to SCC line items shall be subject to the GDC CEO's prior written approval. Amtrak will be authorized, within the parameters of the Market Case Estimate, to use supplemental SCC line items, and to reallocate funds (other than contingency funds) between line items.
- (d) Amtrak will notify GDC regarding any anticipated material deviations from the Package 2 Budget as soon as they are reasonably anticipated or identified.

Section 7.05 *Change orders.*

- (a) Amtrak will act as GDC's representative in interfacing with all Package 2 Contractors engaged on the Work. In such role, Amtrak will assist in evaluating, negotiating, and recommending for the GDC CEO's review and decision any change orders, post-award contract changes, post-award field items, equitable adjustments, and claims (collectively "**Change Orders**") for the Work. All Change Orders will require the GDC CEO's approval, as GDC is expected to be the contracting party on all Package 2 Contracts.
- (b) Notwithstanding the foregoing, the GDC CEO will execute a Change Order recommended by Amtrak without further review after Amtrak has evaluated, negotiated, and recommended the Change Order where the following conditions are met: (i) the proposed Change Order does not exceed \$500,000 and, along with any other approved Change Orders for the Work, would not create a Cost Impact greater than one (1) percent of the contract value in the aggregate for that calendar year; (ii) the Change Order would not alter the character of the Work (for purposes of illustration, changes to the character of the Work would include but not be limited to (A) modifications to the accepted Package 2 Design Standards and Specifications for the Work, (B) deviations that require further environmental evaluation or reevaluation of the HTP, and (C) changes that impact existing or planned rights of way or operations); (iii) the Change Order would not have a schedule impact on the Work of sixty (60) days or more; and (iv) the Change Order would not require an amendment to the Market Case Estimate. Any proposed Change Order that does not meet the foregoing criteria will be subject to review and approval by the GDC CEO.

Section 7.06 *Cost and Schedule Impacts.* All Cost Impacts incurred in connection with the Work will be governed by Article XI of the PDA. Pursuant to Section 4.01(c)(ii) and Section 11.04(b) of the PDA, Amtrak shall be responsible for all Cost Impacts attributable to Package 2 from the date of execution of this Agreement, except as otherwise provided for in Section 11.04(b) of the PDA.

ARTICLE VIII.

ENVIRONMENTAL COMPLIANCE; PERMITTING

Section 8.01 *NEPA*.

- (a) GDC, in its capacity as HTP project sponsor and NEPA sponsor, shall be responsible for all NEPA compliance activities related to the Work in accordance with Section 8.01 of the PDA, which includes: ensuring conformance of the HTP, including all required mitigations, with NEPA Approvals, and shall seek technical or other amendments to the NEPA Approvals, in each case as required to support delivery of the HTP. For the purposes of this Agreement, “**NEPA Approvals**” shall mean the final approval(s) issued under NEPA pertaining to the HTP, including the Final Environmental Impact Statement and Record of Decision (the “**ROD**”) from FRA and FTA, and all approved supplements and reevaluations pertaining to the HTP, all NEPA documents, including technical memoranda required to be submitted to FRA and FTA under NEPA, and compliance with the National Historic Preservation Act Section 106 Programmatic Agreement and all related environmental compliance documents. Any proposed material deviations from the NEPA Approvals must be reviewed and approved by the GDC CEO.
- (b) GDC shall require the applicable Package 2 Contractors, and any other contractors performing work on its behalf, to comply with all NEPA requirements and mitigations set forth in the Package 2 Contract Documents, including all applicable federal, state, and local laws, regulations, and requirements, including NEPA, the Coastal Zone Management Act, 49 U.S.C. § 303, and the National Historic Preservation Act, as may be further described in the ROD.
- (c) Amtrak will support GDC, at the GDC CEO’s direction, to achieve NEPA compliance for the HTP, including monitoring compliance by Package 2 Contractors. Amtrak will comply with NEPA requirements and enforce such requirements with Contractors.
- (d) Amtrak will promptly inform GDC of any changes or proposed changes regarding NEPA compliance for the GDC CEO’s review and approval.

Section 8.02 *Permits*.

- (a) GDC has developed a comprehensive list of permits, licenses, and approvals required for the delivery of the Work, as may be updated from time to time (the “**Package 2 Permits**”), as well as the party responsible for obtaining, paying for (including all applicable filing fees), and maintaining the Package 2 Permits. Amtrak agrees to obtain and maintain all Package 2 Permits delegated to it. Amtrak will assist GDC by tracking the progress of all Package 2 Permit applications through a permit tracking and management tool. GDC intends to develop a tool for tracking permits across the HTP, and will make such tool available to Amtrak.
- (b) All Package 2 Contract Documents between GDC and its construction contractors shall require, to the extent applicable to such Package 2 Contractor’s scope of work, that such Package 2 Contractor comply with all applicable Package 2 Permits. Amtrak shall monitor and track such compliance on behalf of GDC pursuant to the terms of the applicable

Package 2 Contract Documents to assist GDC in taking action to assure that its contractors remain in compliance.

- (c) Amtrak agrees to engage in advance consultation with GDC in connection with any Package 2 Permits required for the Work that have requirements that would be reasonably anticipated to impact other HTP Packages, and otherwise regularly update GDC through the SPCC in connection with all Package 2 Permits being sought.

ARTICLE IX.

PROJECT REPORTING AND CONTROLS

Section 9.01 *Reporting.*

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

Section 9.02 *Risk Register Management.* Pursuant to Section 10.01(d) of the PDA, GDC will manage the HTP risk register, including the Work. Amtrak will support GDC by attending HTP risk register management meetings and reviewing the HTP risk register in order to identify and assess risks associated with the Work. Amtrak will provide technical assistance with the HTP risk register management activities associated with the Work as reasonably requested by the GDC CEO.

Section 9.03 *Federally Required Project Plans.* GDC shall draft and submit all plans required to be submitted to FTA, FRA, or any other applicable federal agency providing funding or financing for the HTP. Amtrak shall regularly provide information and updates to GDC on the progress of the Work in accordance with terms of this Agreement to facilitate GDC's drafting and submission of such plans.

Section 9.04 *Project Management Plan.* GDC shall develop the project management plan ("PMP") in consultation with Amtrak and the other PDA Parties as coordinated through the SPCC. The PMP shall set forth reporting, scheduling, and production obligations applicable to the PDA Parties, including with respect to HTP budgeting as described, and the maintenance of records and development of reports. The Services to be provided by Amtrak hereunder shall be made part of the PMP by GDC. In the event of a conflict between this Agreement and the PMP, this Agreement shall govern.

Section 9.05 *Force Account.* In accordance with Section 5.02(b) of the PDA, for each federal fiscal year, GDC shall develop an annual force account resources plan prior to the start of federal fiscal year in coordination with the parties that are providing force account or requesting force

account work (the “**Force Account Resources Plan**”) in accordance with the applicable HTP Contracts. Amtrak shall cooperate with GDC in the development of the Force Account Resources Plan and the utilization of Amtrak force account resources, as applicable. Amtrak will provide force account resources for Package 2, which will be addressed separately in the Force Account Resources Plan. Amtrak will ensure that Package 2 Contractors cooperate in the timely preparation of the Force Account Resources Plan on an annual preparation schedule developed by GDC in consultation with Amtrak.

Section 9.06 *Document Access and Control.*

- (a) GDC shall have responsibility for document access and control, pursuant to Section 10.01(b) of the PDA. GDC is in the process of developing a protocol for the management and control of HTP documentation in order to provide a consistent approach for all HTP Packages.
- (b) Without limiting the foregoing, pursuant to the protocol that will be established by GDC, the GDC CEO will specify to Amtrak the methodology for the management and control of documentation associated with the Work. Amtrak will comply with GDC’s document control methodology and will timely provide GDC with any document required to be provided thereunder.

ARTICLE X.

PUBLIC DISCLOSURE AND CONFIDENTIALITY

Section 10.01 *Public Disclosure Laws.* As discussed in Section 10.02 of the PDA, GDC and Amtrak are subject to specific public records laws and policies. Each Party shall give the other Party reasonable notice if it receives a public disclosure request for documents related to the Services, the Work, or this Agreement as promptly as possible to permit the other Party to object to production of any material before a court of competent jurisdiction in advance of its production. GDC and Amtrak acknowledge that infrastructure security, proprietary commercial data, certain Procurement Documents, and other related project documents may necessitate confidentiality agreements between the Parties and their personnel in order to access such materials.

Section 10.02 *Confidential Information.* Subject to the public records laws and policies discussed in Section 10.01 hereof, each Party will protect all confidential, proprietary, or sensitive information related to the Work (the “**GDC Confidential Information**”) from disclosure unless authorized to disclose in writing by the other Party, and will not use such information for any purpose other than the Work. Each Party shall promptly return to the other Party any Confidential Information upon the other Party’s request. Nothing herein shall require a Party to act in contravention of applicable laws or policies.

ARTICLE XI.

TRANSFER

Section 11.01 *Testing Generally.* GDC and Amtrak agree that, in accordance with Section 14.02(c) of the PDA, GDC and Amtrak shall coordinate, and the PDA Parties shall be permitted to witness any testing of the Work with the applicable Package 2 Contractor(s), the results of which shall be subject to the approval of Amtrak and NJ TRANSIT.

Section 11.02 *Final Testing*. GDC and Amtrak agree that, in accordance with Section 14.02(d) of the PDA, Amtrak shall perform any final testing of the Work in coordination with GDC, NJ TRANSIT, and any known users and operators of the HTP according to (i) the schedule specified by GDC and Amtrak, and (ii) the Force Account Resources Plan for the applicable year.

Section 11.03 *Required Record Deliverables Provided to Amtrak*. GDC and Amtrak agree that, in accordance with Section 14.02(j) of the PDA, GDC and Amtrak shall enforce the requirements set forth in the applicable Package 2 Contract Documents with respect to the Package 2 Contractor's satisfaction of the provision of record deliverables, including final as-built plans, to Amtrak in the form necessary to support Amtrak's operations in accordance with the Package 2 Contract Documents, subject to review by Amtrak.

Section 11.04 *Contract Closeout*. Amtrak will assist GDC in closing out all Package 2 Contracts related to the Work.

Section 11.05 *Spare Parts, Training, and O&M Manuals Provided to Amtrak*. In accordance with Section 14.02(i) of the PDA, GDC and Amtrak shall enforce the requirements set forth in the applicable Package 2 Contract Documents with respect to the Package 2 Contractor's satisfaction of the provision of required spare parts, training, and delivery of final as-built plans and any required operations and maintenance manuals to Amtrak.

Section 11.06 *Warranties Assigned to Amtrak*. In accordance with Section 14.02(k) of the PDA, the Package 2 Contract Documents shall require that all warranties remaining at completion of Package 2 be assigned to Amtrak. GDC and Amtrak shall enforce the requirements related to the Package 2 Contractor's assignment of such warranties to Amtrak as set forth in the applicable Package 2 Contract Documents.

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 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, subject to the notice and cure provisions set forth in Article XVI of the PDA.

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 Article XV and Article XVI of the PDA.

ARTICLE XIV.

TERM AND TERMINATION

Section 14.01 *Term*. Unless terminated early in accordance with Section 14.02 hereof, and subject to the survival of certain provisions pursuant to Section 16.14 hereof, this Agreement shall expire upon the final acceptance of the construction of the improvements of the Work and the close out of all Package 2 Contracts.

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 GDC Board.

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 it enters into this Agreement in reliance on the representations and warranties set forth in this Article XV.

Section 15.02 *Amtrak to Comply*. Unless otherwise agreed to by the Parties, Amtrak agrees to abide by applicable GDC policies and procedures to the extent permissible in carrying out its obligations under this Agreement.

ARTICLE XVI.

MISCELLANEOUS

Section 16.01 *Compliance with Laws*.

- (a) In performing its obligations under this Agreement, each Party shall, and shall require any contractors performing work on its behalf to, comply with all federal, state and local laws, regulations and requirements applicable to it when performing such obligation, and the Parties shall cooperate in all respects in a manner designed to ensure that each Party meets its respective obligations under this Section 16.01(a).
- (b) Each Party shall be responsible for administration and management activities of the federal grant and funding agreements and as otherwise required by federal law (including, for the avoidance of doubt, all applicable federal standards and requirements). Each Party shall cooperate fully and promptly with each other to ensure that each Party is able to comply with all of its respective administration and management responsibilities in respect of such federal grant and funding agreements and under federal law, including

providing each other with all reports and data necessary to comply with such responsibilities and incorporating corresponding compliance obligations in agreements it may have with contractors, consultants, and assignees. The Parties agree to negotiate in good faith any amendment to this Agreement that may be necessary to reflect the requirements of such federal grant and funding agreements, including, without limitation the terms of any Federal-State Partnership Grant that may be awarded by the FRA after the Effective Date of this Agreement.

Section 16.02 *Conflict with the PDA*. In the event of any conflict between the terms of this Agreement and the PDA (as may be amended in accordance with Section 19.07 of the PDA), the terms of the PDA shall control. To the extent any matter is addressed in this Agreement that is more specifically addressed in the PDA, the terms of the PDA shall apply as if incorporated into this Agreement.

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 be delivered by email (with confirmation of transmission), by hand, by certified mail, return receipt requested, or by overnight delivery service, to such Party in an envelope addressed as follows:

(a) If to GDC:

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

with a copy to:

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

(b) If to 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, along with their 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 *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 16.07 *Cumulative Remedies; No Waiver*.

- (a) The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law or equity.
- (b) No Party has agreed to waive any defense, right, immunity, or other protection under applicable law by entering into this Agreement.

Section 16.08 *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 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 16.09 *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 any Party with the right, power, or authority, whether express or implied, to act or create any obligation on behalf of any other Party.

- (b) In furtherance of the foregoing, it is understood and agreed that no Party has the power to contract on behalf of, or to authorize the expenditure of any monies by, the other Party.

Section 16.10 *No Third-Party Beneficiaries*. This Agreement does not create any rights in, or inure to the benefit of, any third party.

Section 16.11 *Counterparts and Electronic Signatures*. This Agreement may be executed in any number of counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one and the same agreement. The counterparts of this Agreement may be executed and delivered by PDF, facsimile, or other electronic signature by email transmission by the Parties. The receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original has been received. No Party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement.

Section 16.12 *Personal Liability*. No director, commissioner, officer, member, agent, or employee of any Party shall be charged personally by any Party with any liability or held liable to it under this Agreement for acts or omissions within the scope of his, her or their duties.

Section 16.13 *Time is of the Essence*. Each Party recognizes that time is of the essence with respect to the performance of each Party's obligations under this Agreement. Each Party shall use its reasonable best efforts to perform such Party's obligations set forth in this Agreement in accordance with the Executive Project Schedule.

Section 16.14 *Survival*. The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Article I (*Definitions and Rules of Interpretation*) and Exhibit A (*Definitions*),
- (b) Article VII (*Compensation and Budget*),
- (c) Article X (*Public Disclosure and Confidentiality*),
- (d) Article XII (*Dispute Resolution*),
- (e) Article XIII (*Defaults and Remedies*),
- (f) Article XV (*Representations and Warranties*), and
- (g) Article XVI (*Miscellaneous*).

[Signature Page Follows.]

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

**NATIONAL RAILROAD PASSENGER
CORPORATION**

By: _____
Laura Mason
Executive Vice President, Capital Delivery

GATEWAY DEVELOPMENT COMMISSION

By: _____
Kris Kolluri
Chief Executive Officer

EXHIBIT A
DEFINITIONS

- “**Access Agreement**” shall have the mean set forth in Section 5.03.
- “**Agreement**” shall have the meaning set forth in the preamble to this Agreement.
- “**Amtrak**” shall have the meaning set forth in the preamble to this Agreement.
- “**Amtrak Staffing Plan and Budget**” shall have the meaning set forth in Section 7.02(b).
- “**Change Orders**” shall have the meaning set forth in Section 7.05.
- “**Cost Impacts**” shall have the meaning set forth in Section 11.04(b) of the PDA.
- “**Default**” shall have the meaning set forth in Section 13.01.
- “**DP**” shall have the meaning set forth in Section 3.04.
- “**Design Standards and Specifications**” shall have the meaning set forth in Appendix A to the PDA.
- “**Effective Date**” shall have the meaning set forth in the preamble to this Agreement.
- “**Executive Project Schedule**” shall mean the schedule setting forth the anticipated timetable for the implementation of the HTP, including those key dates described in Section 5.01(b) of the PDA.
- “**Existing HTP Designs**” shall have the meaning set forth in Section 4.01(c)(iii) of the PDA.
- “**Force Account Resources Plan**” shall have the meaning set forth in Section 9.05.
- “**FRA**” shall mean the Federal Railroad Administration.
- “**FTA**” shall mean the Federal Transit Administration.
- “**GDC**” shall have the meaning set forth in the preamble to this Agreement.
- “**GDC Act**” shall have the meaning set forth in Recital A to this Agreement.
- “**GDC Board**” shall have the meaning set forth in Recital J to this Agreement.
- “**GDC CEO**” shall have the meaning set forth in Recital J to this Agreement.
- “**GDC Confidential Information**” shall have the meaning set forth in Section 10.02.
- “**HTP**” shall have the meaning set forth in Recital F to this Agreement.
- “**HTP Contractor**” shall have the meaning set forth in Section 4.01(c)(i) of the PDA.
- “**HTP Designer**” shall have the meaning set forth in Section 2.02(n).
- “**HTP Insurance Program**” shall have the meaning set forth in Section 6.04.
- “**HTP Packages**” shall have the meaning set forth in Recital I to this Agreement.
- “**Hudson River Tunnel**” shall have the meaning set forth in Recital G to this Agreement.

“**Market Case Estimate**” shall have the meaning described in Section 7.01 and set forth in Section 11.04(a) of the PDA.

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

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

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

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

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

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

“**Oversight**” shall have the meaning set for in Section 2.03.

“**Package 2**” shall have the meaning set forth in Recital J to this Agreement.

“**Package 2 Budget**” shall have the meaning set forth in Section 2.02(b).

“**Package 2 Contract Documents**” shall have the meaning set forth in Section 4.05(a).

“**Package 2 Contractor**” and “**Package 2 Contractors**” shall have the meanings set forth in Section 4.01(a).

“**Package 2 Contracts**” shall have the meaning set forth in Section 4.05(a).

“**Package 2 Design Standards and Specifications**” means the Design Standards and Specifications approved by the TSC for the Work, referenced in Section 6.01(a)(i).

“**Package 2 Permits**” shall have the meaning set forth in Section 8.02(a).

“**Package 2 Schedule**” shall have the meaning set forth in Section 2.02(b).

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

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

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

“**PMP**” shall have the meaning set forth in Section 9.04.

“**Procurement Documents**” shall have the meaning set forth in Section 4.02.

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

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

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

“**PTE**” shall have the meaning set forth in Section 5.03.

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

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

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

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

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

“**SPCC**” shall have the meaning set forth in Section 2.01(d).

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

“**TSC**” shall have the meaning set forth in Section 2.01(d).

“**Utility**” shall have the meaning set forth in Section 4.01(d).

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

EXHIBIT B
THIRD-PARTY UTILITY AGREEMENTS

- Public Service Electric & Gas Co. (PSE&G) – Electric: Hoboken Fan Plant Site
- Veolia North America, United States: Hoboken Fan Plant Site
- North Hudson Sewerage Authority (NHSA): Hoboken Fan Plant Site
- Con Edison: 12th Avenue Fan Plant Site
- Con Edison: 10th Avenue
- NYCDEP: 10th Avenue
- Verizon (NY)/Empire City Subway (subsidiary of Verizon): 10th Avenue
- NYCDEP: 12th Avenue Fan Plant Site
- FDNY: 12th Avenue Fan Plant Site

EXHIBIT C

THIRD-PARTY AGREEMENTS

- The Gateway Trans-Hudson Partnership (GTHP) Contract No. 9500001023

EXHIBIT D
PTE FORMS

PTEs will be substantially similar to the following but revised to reflect the specific locations and geographic features of the area for which entrance is granted, including, potentially a determination that a PTE is not required.

The provisions of this Temporary Permit to Enter Upon Property are applicable only to Amtrak as a construction management services provider to the Gateway Development Commission for the Services contemplated in the Supporting or Executing Partner Agreement for Package 2 and does not alter or amend existing practice or agreements between Amtrak and NJ TRANSIT, and shall not be precedential.

NJ TRANSIT TEMPORARY ACCESS PERMIT NO. _____

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

Effective Date: _____

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

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

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

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

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

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

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

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

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

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

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

[Intentionally left blank]

WITNESS:

NEW JERSEY TRANSIT CORPORATION

Name:
Title:

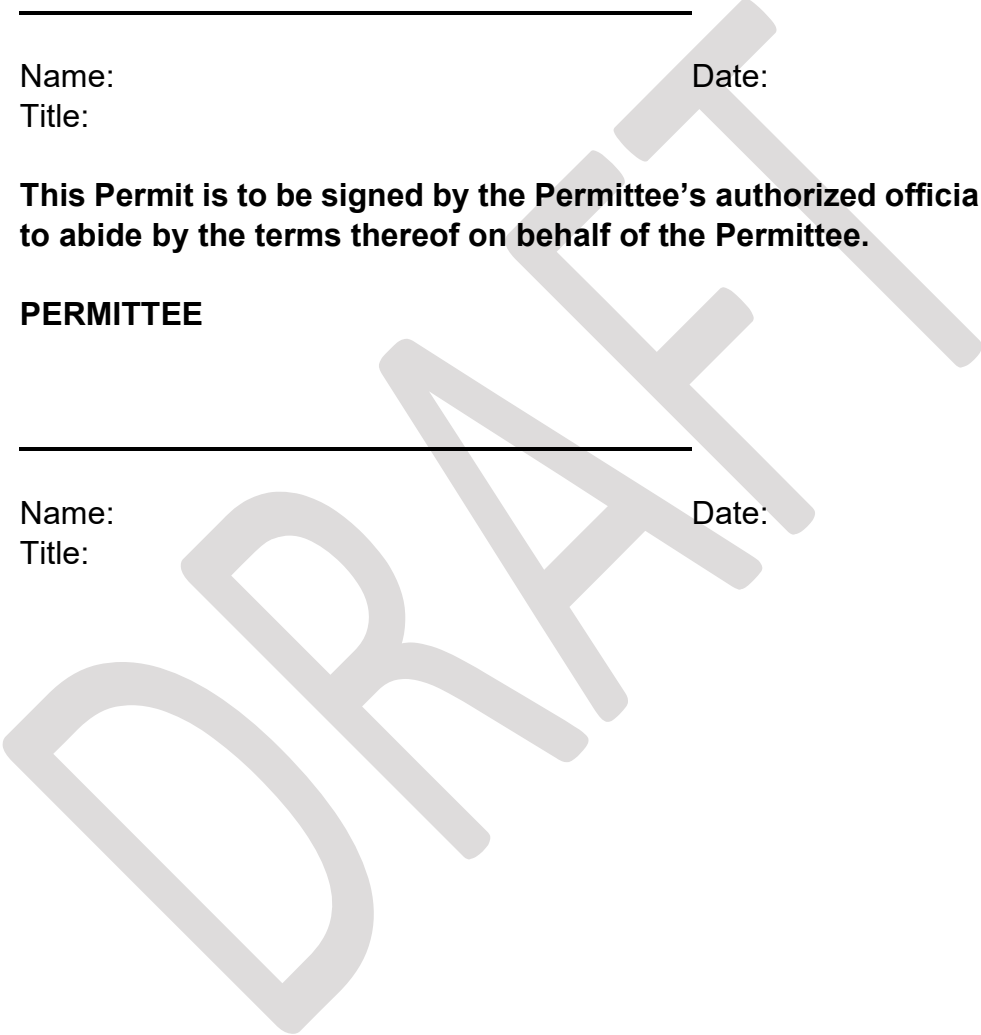
Date:

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

PERMITTEE

Name:
Title:

Date:



Temporary Access Permit No. _____

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

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

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

The provisions of this Temporary Permit to Enter Upon Property are applicable only to Amtrak as a construction management services provider to the Gateway Development Commission for the Services contemplated in the Supporting or Executing Partner Agreement for Package 2 and does not alter or amend existing practice or agreements between Amtrak and NJ TRANSIT, and shall not be precedential.

Mr. Jamaal McClintock

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

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

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

Temporary Access Permit No. _____

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

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

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

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

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

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

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

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

(a) Permittee's Comprehensive General Liability Insurance

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

(b) Automobile Liability Insurance

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

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

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

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

(d) Contractor's Pollution Liability Insurance

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

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

(f) Railroad Protective Public Liability Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by an instrument executed by both parties.

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

(SIGNATURE PAGE TO FOLLOW)

NJ Transit Corporation

By: _____

Name: **Gregory G. Woods**

Title: **Chief
Light Rail Operations**

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

Permittee: _____
(Signed)

Name: _____

Title: _____

DRAFT

Exhibit A

Property included within the Permit

Exhibit B

Permittee's Scope of Work and Plans

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

DRAFT

Exhibit C

Certificates of Insurance

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

DRAFT

Exhibit D

Notification of Work Completion

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

Re: Temporary Access Permit No. _____

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

Permittee: _____

By: _____ [Legally Authorized Representative]

#1023-02: AUTHORIZATION TO EXECUTE THE SUPPORTING OR EXECUTING PARTNER AGREEMENT WITH NEW JERSEY TRANSIT CORPORATION

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 individual 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**”).

Pursuant to the terms of the PDA, GDC and the New Jersey Transit Corporation (“**NJ TRANSIT**”) have negotiated a SEP Agreement in order to establish their roles and responsibilities with respect to certain services that NJ TRANSIT will provide in support of the delivery of the New Jersey surface alignment for the HTP (Package 3) (the “**NJ TRANSIT SEP Agreement**”), an execution version of which is attached hereto as **Exhibit A**.

Pursuant to the foregoing report, the following resolution was adopted, with Commissioners Barbas, Bauer, Coscia, 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 NJ TRANSIT SEP Agreement, and to take all other steps necessary to comply with the terms and conditions, provide day-to-day direction of the contemplated services, initiate all aspects of its dispute resolution procedures, and take any other action necessary to effectuate the NJ TRANSIT SEP Agreement.

EXHIBIT A
NJ TRANSIT SEP AGREEMENT

**SUPPORTING OR EXECUTING PARTNER AGREEMENT
for
NEW JERSEY SURFACE ALIGNMENT (PACKAGE 3)
FOR THE HUDSON TUNNEL PROJECT**

By and between
GATEWAY DEVELOPMENT COMMISSION
and
NEW JERSEY TRANSIT CORPORATION

Dated as of [●], 2023

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

NEW JERSEY TRANSIT CORPORATION, a public instrumentality of the State of New Jersey (“**NJ TRANSIT**”).

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

C. NJ TRANSIT is authorized to operate commuter passenger rail service in New Jersey and between points in New Jersey and points in other states pursuant to the New Jersey Public Transportation Act of 1979, as amended, and is a user and operator of the NEC;

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

E. 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;

F. 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;

G. Accordingly, on or about February 3, 2023, New Jersey, New York, Amtrak, and GDC (the “**PDA Parties**”) entered into the Project Development Agreement (the “**Project Development Agreement**” or “**PDA**”) for 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;

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

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

K. The work package that is the subject of this Agreement involves the design, construction, and delivery of a new surface alignment in New Jersey extending from County Road in Secaucus to the new tunnel portal in North Bergen, and includes retaining walls, embankments, and viaducts to support the track bed, and other scope as approved by GDC’s Chief Executive Officer or his or her designee (“**GDC CEO**”) to support the surface alignment, including system integration with other aspects of the HTP as discussed in Section 2.02(f) herein (“**Package 3**” or the “**Work**”);

L. By resolution dated October [●], 2023, the GDC Board of Commissioners (the “**GDC Board**”) has authorized GDC to enter into this Agreement with NJ TRANSIT to provide certain construction management, project management support, field support, and other technical assistance and advisory services as more fully described herein (the “**NJ TRANSIT Services**”) associated with the delivery of the Work;

M. By resolution dated October [●], 2023, NJ TRANSIT’s Board of Directors has authorized NJ TRANSIT to enter into this Agreement with GDC;

N. This Agreement addresses GDC and NJ TRANSIT’s rights and responsibilities with respect to Package 3, and does not address any other obligations the Parties may have with respect to other HTP Packages; and

O. GDC and NJ TRANSIT now desire to enter into this Agreement in order to establish their roles and responsibilities with respect to the delivery of the Work.

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

ARTICLE I.

DEFINITIONS AND RULES OF INTERPRETATION

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

Section 1.02 *Rules of Interpretation*.

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

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

Section 1.03 *Additional Terms*. Certain provisions from the PDA have been tailored to apply to NJ TRANSIT under this Agreement and are referenced in this Agreement and included in Appendix A, which is attached hereto and incorporated herein by reference. These provisions are a part of this Agreement to the same extent as if fully set forth herein.

ARTICLE II.

ROLES AND RESPONSIBILITIES

Section 2.01 *GDC*. GDC shall be responsible for achieving completion of the HTP, including the following (“**GDC Services**”):

- (a) ultimate responsibility for the delivery of the Work, and more broadly the HTP;
- (b) Oversight (as defined in Section 2.03 herein) of the NJ TRANSIT Services;
- (c) securing all necessary funding for the Work, and, more broadly, the HTP;
- (d) securing the necessary approvals and contracts with freight railroads;
- (e) chairing the Senior Project Coordinating Committee (“**SPCC**”) and Technical Standards Committee (“**TSC**”);
- (f) development of the Design Standards and Specifications;
- (g) procurement of all construction contractors, design-build contractors, engineers, and consultants, as applicable (each, an “**HTP Contractor**” and collectively, the “**HTP Contractors**”) related to the Work, unless expressly delegated to NJ TRANSIT, including any procurement for which NJ TRANSIT is providing assistance in accordance with Section 4.02;
- (h) maintenance of the Executive Project Schedule for the HTP;
- (i) maintenance of the overall HTP project budget (“**Project Budget**”);
- (j) project reporting regarding the Work and the HTP necessary to satisfy all applicable federal funding and financing requirements applicable to the HTP;
- (k) in its capacity as HTP project sponsor and NEPA sponsor, ultimate responsibility for all NEPA compliance activities, including mitigation commitments, related to the Work;
- (l) acquisition of Package 3 Permits (as defined herein) and third-party agreements required for the delivery of the Work;
- (m) procurement of insurance for the Work and the HTP;
- (n) engagement with labor constituencies and ensuring compliance of HTP Contractors with applicable labor laws;
- (o) overall management of the HTP risk register;

- (p) management of HTP document access and control;
- (q) resolution of HTP Contractor disputes; and
- (r) ensure Procurement Documents (as defined in Section 4.02 herein) are in compliance with all known applicable federal laws, regulations, and grant requirements.

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

Section 2.02 *NJ TRANSIT*. NJ TRANSIT shall perform the NJ TRANSIT Services to support the delivery of Package 3. The NJ TRANSIT Services shall include, but not be limited to, the following responsibilities and activities associated with the Work:

- (a) assist GDC with the development of procurement strategies and Procurement Documents (as defined in Section 4.02 herein) for the Work, as discussed in Article IV hereof;
- (b) develop, monitor, and coordinate the budget (the "**Package 3 Budget**") and schedule (the "**Package 3 Schedule**") for the Work, as discussed in Article VII hereof (including each of the multiple separate contracts comprising the Work);
- (c) assist GDC with planning requirements for the Work, as further discussed in Section 9.022 (*Risk Register Management*), Section 9.044 (*Project Management Plan*), and Section 9.05 (*Force Account*) hereof;
- (d) support GDC with monitoring NEPA compliance for the Work, as discussed in Section 8.01 hereof;
- (e) utilize the methodology provided by the GDC CEO for the management and control of documentation associated with the Work, as discussed in Section 9.06 hereof;
- (f) assist GDC with the management and coordination of third parties as more fully set forth herein, including Amtrak, to the extent necessary for system integration with other aspects of the HTP, including with respect to design and specifications as further discussed in Article VI hereof, and on activities necessary to interconnect with the other HTP Packages on both termini of the elements of the Work, as further discussed in Section 3.01 hereof, in all cases at the direction of the GDC CEO;
- (g) act as construction manager and provide day-to-day oversight of construction activities for, and workmanship of, the elements of the Work;
- (h) recommend to GDC the certification of milestone completion items related to the Work when appropriate, to allow timely payment of the HTP Contractors by the GDC CEO upon completion of discrete objectives in accordance with the provisions of the HTP Contract Documents and all applicable federal funding requirements, and in accordance with Section 9.01 and Section 9.03 hereof;
- (i) conduct scheduled periodic meetings and deliver regular reports to GDC related to the Work, with the SPCC, Amtrak, and the HTP Contractors, as appropriate (and as directed by the GDC CEO), to report on the progress of the NJ TRANSIT Services and the elements

of the Work and provide a forum for discussion of any concerns of such parties, as further discussed in Article III hereof;

- (j) cooperate with Amtrak as GDC's designated code enforcement authority in the performance of the code enforcement authority's code action responsibilities;
- (k) assist GDC in preparing an annual Force Account Resources Plan in conformance with Section 9.05 of this Agreement, including coordination with Amtrak to get necessary track outages for Package 3 Contractor to perform its portion of work;
- (l) assist GDC in interface coordination between packages as may be necessary, including through advice given in the context of participation on the SPCC and TSC;
- (m) provide other technical assistance, advisory services, and dedicated staffing that are mutually agreed upon between the Parties as may from time to time be required to support GDC in the Work;
- (n) to acquire all surface and subsurface property required for the operations, construction, and maintenance of the Work;
- (o) coordinate and cooperate with any specified designer or engineer for the Work as designated by GDC (the "**HTP Designer**") at the direction of the GDC CEO, including in the HTP Designer's performance of construction phase services or design services during construction; and
- (p) if requested to do so by the GDC CEO in writing, accept assignment of GDC's obligations under a Full Funding Grant Agreement with the FTA (the "**FFGA**") to include the HTP in NJ TRANSIT's FTA-compliant Transit Asset Management Plan.

Section 2.03 *GDC Oversight*. In its performance of the NJ TRANSIT Services, NJ TRANSIT will report to GDC and take day-to-day direction from the GDC CEO ("**Oversight**"). The GDC CEO may at any time, in his sole and absolute discretion, overrule a NJ TRANSIT decision or determination relating to the Work, or rescind any delegation of authority to NJ TRANSIT under this Agreement. For the avoidance of doubt, this Section is subject to the provisions of Section 7.06 and Article XII hereof.

Section 2.04 *Division of Responsibilities*. To the extent not specifically stated in this Agreement, and prior to the adoption of any Market Case Estimate, the Parties will develop a detailed scope of services delineating the roles and responsibilities of GDC, NJ TRANSIT, and the HTP Contractor(s) with respect to the Work in order to avoid functional overlap.

ARTICLE III.

INTERFACE COORDINATION

Section 3.01 *Interface Coordination*. The Parties acknowledge that HTP is a multi-package, complex engineering and construction project which requires significant interface between packages for successful delivery and completion. GDC shall manage interfaces between and among the HTP Packages. NJ TRANSIT, in its performance of the NJ TRANSIT Services, will participate in, and coordinate closely with, GDC's other SEPs through the SPCC and the TSC, and otherwise assist GDC in supporting interface coordination between the Work and other HTP Packages.

Section 3.02 *Senior Project Coordinating Committee.* NJ TRANSIT will participate in the SPCC, established under the PDA, to coordinate the parties engaged in the Work and other stakeholders with respect to the HTP Packages as directed by the GDC CEO to assist GDC in effectuating the Work. NJ TRANSIT is a member of SPCC and will participate in meetings of the SPCC.

Section 3.03 *Technical Standards Committee.* NJ TRANSIT agrees to attend meetings of the TSC established under the PDA to facilitate the resolution of technical issues among the parties engaged in the Work and other stakeholders with respect to the HTP Packages as directed by the GDC CEO to assist GDC in effectuating the Work.

Section 3.04 *Delivery Partner.* To the extent NJ TRANSIT requires additional staff or services to augment its staff, NJ TRANSIT shall utilize the GDC's delivery partner or GDC's otherwise designated program management consultant (“**DP**”) to, at NJ TRANSIT's direction, staff its performance of the NJ TRANSIT Services, as NJ TRANSIT reasonably deems appropriate, and to assist NJ TRANSIT in interface coordination between the Work and other packages of the project and to provide other services using a platform that is common and consistent among the GDC and all SEPs, as further discussed in Section 4.04 herein. Subject to the requirements of Section 4.04 herein, staffing plans for the DP's support of NJ TRANSIT's performance of the NJ TRANSIT Services shall be submitted for review and approval by NJ TRANSIT and GDC's CEO, and the DP staff so provided shall perform tasks directed by NJ TRANSIT in furtherance of the NJ TRANSIT Services. The Parties acknowledge that the services performed by the DP staff under this Section 3.04 will be functionally separate from work performed by the DP for GDC or any other SEP.

Section 3.05 *Meetings.* NJ TRANSIT agrees to comply with reasonable and timely requests from the GDC CEO to attend GDC Board meetings, advisory board meetings, committee meetings, conferences, or other meetings as reasonable and necessary to support the Work, as well as the interface between the Work and other HTP Packages.

ARTICLE IV.

PROCUREMENT

Section 4.01 *Contracts for the Work.* GDC will be responsible for procurement of all third-party services related to the Work or that are otherwise necessary to facilitate the Work, including those of construction contractors, design-build contractors, engineers, and consultants, as applicable (each a “**Package 3 Contractor**,” and collectively the “**Package 3 Contractors**”) and NJ TRANSIT will be designated as an authorized representative for GDC in any construction services contracts for the Work; *provided* that such designation does not alter any rights or responsibilities of the Parties set forth elsewhere in this Agreement. All other third-party agreements, including agreements with any utility, freight railroads, and other third parties (each, a “**Utility**”) will be negotiated and executed by GDC unless otherwise delegated by GDC to NJ TRANSIT or another party.

Section 4.02 *Procurement Documents.* As part of GDC's responsibility for procurement of all third-party services related to the Work, GDC shall coordinate the development of any primary documents, including any requests for qualifications, requests for proposals, invitations for bids,

evaluation criteria, and terms and conditions of the applicable contracts to be awarded (collectively, “**Procurement Documents**”) with NJ TRANSIT such that NJ TRANSIT is appropriately integrated into the process for development of such Procurement Documents prior to advertisement for the applicable procurement. As part of the NJ TRANSIT Services, NJ TRANSIT will provide technical assistance and support to GDC in GDC’s development of the Procurement Documents. Such assistance is expected to comport with applicable federal procurement requirements and GDC’s own procurement rules (compliance with which shall be the obligation of GDC). NJ TRANSIT’s assistance (including logistical support) will be based upon agreed schedules.

- (a) GDC shall distribute drafts of its Procurement Documents to NJ TRANSIT for review and comment in advance of publication of such Procurement Documents. NJ TRANSIT shall provide comments, if any, no later than ten (10) business days from the date of delivery of such draft Procurement Documents, unless the Parties agree to a different deadline. NJ TRANSIT’s failure to provide comments to GDC within ten (10) business days (or other timeframe agreed upon) shall be deemed NJ TRANSIT’s approval of the draft Procurement Documents.
- (b) GDC shall respond to and address any comments to its draft Procurement Documents provided by NJ TRANSIT; provided, that the terms and conditions of GDC’s Procurement Documents, including, for the avoidance of doubt, any forms of agreement incorporated therein, shall be ultimately determined by the GDC CEO.
- (c) NJ TRANSIT will administer the construction services contract for the Work, and will review and recommend payment of invoices by the GDC CEO, and negotiate contract modifications, as necessary, for review, approval, and execution by the GDC CEO.

Section 4.03 *Evaluation.* NJ TRANSIT agrees to participate in the evaluation of respondents to procurements for the Work. NJ TRANSIT will name an evaluation panel participant having requisite expertise related to the procurement for the Work. NJ TRANSIT acknowledges and agrees that all NJ TRANSIT’s evaluation panel participants will be required to comply with customary confidentiality obligations to ensure the integrity of the bid process similar in form and substance to those previously approved by NJ TRANSIT General Counsel’s office.

Section 4.04 *Delivery Partner.*

- (a) NJ TRANSIT agrees to participate on the evaluation panel in connection with GDC’s procurement of the DP.
- (b) Prior to GDC’s award of the contract for the DP, NJ TRANSIT will consult with GDC on foreseeable use of the DP in connection with NJ TRANSIT’s performance of the NJ TRANSIT Services (without limiting NJ TRANSIT’s ability to request DP resources in the future if the NJ TRANSIT Services so require).
- (c) In the event NJ TRANSIT desires to utilize DP resources in performing the NJ TRANSIT Services, prior to the adoption of the Market Case Estimate for the Work, NJ TRANSIT must first obtain approval from the GDC CEO on the scope and cost of such resources. Once the Market Case Estimate for the Work has been adopted, NJ TRANSIT need only seek the GDC CEO’s approval of the scope of the DP’s services in order to avoid

duplication of efforts; *provided* that the anticipated costs of the DP are included as a line item in the Market Case Estimate pursuant to Section 7.02(d) herein. The GDC CEO's approval of the costs of the DP resources required to support the NJ TRANSIT Services is not required provided that such costs do not exceed the amounts set forth in the approved Market Case Estimate for the Work.

- (d) In the event the GDC CEO approves the use of DP resources to NJ TRANSIT, those DP resources shall be under the sole direction of NJ TRANSIT (and not the DP) for the term approved by the GDC CEO. Staffing plans for the DP's support of NJ TRANSIT's performance of the Work shall be submitted for review and approval by NJ TRANSIT.
- (e) After the DP contract has been awarded and executed, NJ TRANSIT may develop additional draft task orders or modifications to existing task orders related to the Work, which draft task orders or modifications to existing task orders shall be subject to the review and approval of the GDC CEO. Once GDC's CEO approves the draft task order or task order modification, NJ TRANSIT will negotiate the task order or modification with the DP and recommend approval and execution by the GDC CEO.
- (f) To avoid duplication of services, GDC and NJ TRANSIT will coordinate the scope of services performed by the DP.

Section 4.05 *Contract Awards*. GDC shall award and enter into all contracts for the Work (the "**Package 3 Contracts**"). Upon selection of the applicable Package 3 Contractors, GDC shall execute all applicable contract documents (collectively, the "**Package 3 Contract Documents**") and NJ TRANSIT will not procure or enter into any contracts for the Work without the GDC CEO's prior written approval and delegation of authority. The GDC acknowledges that NEC signals and other specialized systems may require specific expertise that will be considered by the GDC CEO in reviewing any such request.

ARTICLE V.

THIRD PARTY AGREEMENTS; RIGHTS-OF-WAY

Section 5.01 *Third Party Agreements*. The Parties acknowledge and agree that GDC may enter into third party agreements with respect to delivery of the HTP as GDC determines appropriate, including, for example, agreements with Utilities. NJ TRANSIT will not enter into any third party agreements for the Work without the prior written approval of the GDC CEO in accordance with GDC's obligations under the PDA.

Section 5.02 *Third Party Coordination*. NJ TRANSIT shall have primary responsibility for coordinating activities with the Utilities involved with the Work.

Section 5.03 *NJ TRANSIT Access to Third-Party Parcels*. If, in connection with performance of the NJ TRANSIT Services, NJ TRANSIT desires to enter upon parcels owned or controlled by a third party with whom GDC has an access agreement in place (each, an "**Access Agreement**"), NJ TRANSIT must comply with the requirements of the Access Agreement and execute a "Temporary Permit to Enter Upon Property" or "Temporary Access Permit" ("**PTE**") to access the property. NJ TRANSIT has reviewed the forms of PTEs attached hereto as **Exhibit B**, and the access rights necessary for NJ TRANSIT's performance of the NJ TRANSIT Services, and has determined them

to be acceptable. NJ TRANSIT will not be required to incur costs in connection with obtaining such rights of way or other property interests described in this Section 5.01.

Section 5.04 *Right-of-Way and Real Property Interest Acquisition.* NJ TRANSIT's rights and obligations to acquire all surface and subsurface property required for the operations, construction, and maintenance of the HTP that is located in New Jersey, are set forth in Appendix A and incorporated herein by reference, subject to the availability of funds.

ARTICLE VI.

DESIGN AND CONSTRUCTION

Section 6.01 *Design.*

(a) *Package 3 Design Standards and Specifications.*

- (i) GDC will develop the Design Standards and Specifications for the Work (the "**Package 3 Design Standards and Specifications**") in accordance with its obligations in the PDA. NJ TRANSIT agrees to assist GDC with developing the Package 3 Design Standards and Specifications.
- (ii) GDC has the responsibility to ensure that certain Submittals (as defined in Appendix A) are shared for review with the PDA Parties and others as specified in the PDA, and are appropriately adjudicated. NJ TRANSIT may review and comment on all Submittals related to the Work as set forth in Appendix A and incorporated herein by reference.
- (iii) NJ TRANSIT will assist GDC's efforts to ensure that the Work meets the minimum standards set forth in the Package 3 Design Standards and Specifications and will also assist GDC's efforts to ensure that there are no deviations from the Package 3 Design Standards and Specifications that are not authorized under Section 12.02(b) of the PDA. Notwithstanding the foregoing, to the extent the Package 3 Design Standards and Specifications allow for flexibility in decision-making, (e.g., use of the term "up to" or no specified term), subject to Section 7.05 herein, NJ TRANSIT is authorized to make determinations for this class of deviations from the Package 3 Design Standards and Specifications, which are immaterial and addressable in the field, provided that NJ TRANSIT issues prompt notice of the determination to the GDC CEO, subject to the Submittal review requirements as set forth herein, to the extent a Submittal (as defined herein) is required.
- (iv) In performing the NJ TRANSIT Services, NJ TRANSIT will endeavor to identify areas that support GDC's goal of reducing time and cost to construct, ensuring a safe work environment, and adhering to the highest quality standards, and will share those findings and recommendations with GDC from time-to-time, as may be appropriate. In addition, NJ TRANSIT will assist GDC in evaluating alternative technical concepts or other value engineering concepts presented.

Section 6.02 *Coordination with Executive Project Scheduling.* GDC shall control and maintain the Executive Project Schedule for the HTP. NJ TRANSIT, on behalf of and in consultation with GDC, will develop and maintain the Package 3 Schedule subject to GDC Oversight. Both the form of the Package 3 Schedule and the inputs to same are subject to approval by the GDC CEO. NJ

TRANSIT will provide GDC with at least monthly updates on the Package 3 Schedule to enable GDC to maintain the Executive Project Schedule.

Section 6.03 *Labor Relations*. GDC shall be responsible for engaging with labor constituencies and ensuring compliance with applicable labor laws. NJ TRANSIT agrees to support GDC with enforcing project labor requirements that are included in the Package 3 Design Standards and Specifications and the Package 3 Contract Documents where and as applicable.

Section 6.04 *Insurance*. GDC will be responsible for procuring insurance for the Work based on GDC's established criteria for the HTP insurance program (the "**HTP Insurance Program**") as provided in the PDA. If GDC cannot insure NJ TRANSIT employees, NJ TRANSIT will pay to insure its employees. To the extent that NJ TRANSIT needs to procure separate insurance in connection with the NJ TRANSIT Services, NJ TRANSIT's expenditures will be considered an eligible cost that will be invoiced to GDC under Section 7.03 of this Agreement. The procurement of insurance pursuant to this Section 6.04 will be made in accordance with the provisions of Article IV.

Section 6.05 *Code Compliance*. NJ TRANSIT shall cooperate with Amtrak as GDC's designated code enforcement authority in the performance of the code enforcement authority's code action responsibilities.

ARTICLE VII.

COMPENSATION AND BUDGET

Section 7.01 *Market Case Estimate*. GDC and NJ TRANSIT acknowledge that the Market Case Estimate for the Work cannot be determined until all procurements related to the delivery of the Work are finalized and all final negotiated costs and contingencies are determined. NJ TRANSIT will provide assistance to GDC in its development of the Market Case Estimate for the Work, including but not limited to, providing GDC with forecast information, based on the facts and assumptions made at the time of delivery, on NJ TRANSIT's Staffing Plan and Budget (as defined herein) for the NJ TRANSIT Services as necessary to complete the overall Market Case Estimate. GDC staff will present the Market Case Estimate, and any subsequent amendments thereto, to the GDC Board for approval.

Section 7.02 *NJ TRANSIT Staffing Plan and Budget*.

- (a) NJ TRANSIT will develop a staffing plan and organizational chart to provide the NJ TRANSIT Services and support the Work. For the avoidance of doubt, the force account requirements will not be included in the staffing plan and, instead, will be provided as part of the annual Force Account Resources Plan (as defined in Section 9.05 hereof) submission. NJ TRANSIT will identify the project lead manager of the Work (the "**Project Lead**") and accountable executive (collectively, the "**Senior Roles**"). The Project Lead will be subject to GDC CEO's approval, which will not be unreasonably withheld. NJ TRANSIT will promptly inform GDC of any change in the employment status of the Senior Roles. Any replacement personnel for Senior Roles will also be recommended by NJ TRANSIT and subject to approval by the GDC CEO, which approval will not be unreasonably withheld.

- (b) Until the Market Case Estimate for the Work is adopted, ninety (90) days prior to the start of each federal fiscal year NJ TRANSIT will transmit to GDC for approval a staffing plan and budget identifying: (i) the individuals that will provide support under this Agreement; (ii) each individual's title and hourly rate; and (iii) anticipated hours and total costs for the year (the "**NJ TRANSIT Staffing Plan and Budget**"). The NJ TRANSIT Staffing Plan and Budget will be subject to the review and approval of the GDC CEO, and upon such approval, all costs under the NJ TRANSIT Staffing Plan and Budget will be not-to-exceed costs unless otherwise approved by the GDC CEO. If costs are forecast to exceed the approved NJ TRANSIT Staffing Plan and Budget, NJ TRANSIT will notify GDC for determination of appropriate action.
- (c) Once the Market Case Estimate for the Work is adopted, NJ TRANSIT will continue to provide GDC with the NJ TRANSIT Staffing Plan and Budget ninety (90) days prior to the start of each federal fiscal year; *provided* that, subject to the requirements of Section 7.02(d) herein, approval of the NJ TRANSIT Staffing Plan and Budget by the GDC CEO shall not be required so long as such costs included in the NJ TRANSIT Staffing Plan and Budget do not exceed the amounts set forth in the approved Market Case Estimate.
- (d) The Market Case Estimate for the Work shall include a line item with estimated costs for the NJ TRANSIT Services and DP support of the NJ TRANSIT Services. NJ TRANSIT will include in its Staffing Plan and Budget each year how much of the Market Case Estimate line item it and its DP resources will have consumed on a percentage basis through the end of the upcoming federal Fiscal Year the Staffing Plan and Budget covers. If the proposed NJ TRANSIT Staffing Plan and Budget will result in the costs exceeding the amount in the Market Case Estimate line item, the GDC CEO will be required to review and approve the NJ TRANSIT Staffing Plan and Budget.
- (e) Throughout each federal fiscal year, NJ TRANSIT will promptly disclose to GDC any anticipated deviations from the NJ TRANSIT Staffing Plan and Budget as soon as they are reasonably anticipated or identified.
- (f) NJ TRANSIT shall transmit to GDC for approval the NJ TRANSIT Staffing Plan and Budget for the remainder of federal Fiscal Year 2024 no later than thirty (30) days after the Effective Date.

Section 7.03 *Compensation.*

- (a) GDC will compensate NJ TRANSIT for the NJ TRANSIT Services, which compensation will include:
 - (i) Direct out-of-pocket costs incurred by NJ TRANSIT as required for performance under this Agreement including post-Effective Date costs of NJ TRANSIT consultants or other professionals in each case requiring the approval of GDC pursuant to Section 4.05, Utilities involved with the Work, and Package 3 Permits (as defined in Section 8.02(a)); *provided* that any costs for expenses not expressly included in the NJ TRANSIT Staffing Plan and Budget must be pre-approved in writing by the GDC CEO in order for NJ TRANSIT to receive reimbursement for such costs. For the avoidance of doubt, NJ TRANSIT must obtain the GDC CEO's express written approval to enter

into any procurement related to the NJ TRANSIT Services in accordance with Section 4.05 hereof;

- (ii) The reasonable time-based costs under the NJ TRANSIT Staffing Plan and Budget, including associated other direct costs as it is from time to time amended (subject to reasonable supporting documentation);
 - (iii) *[Intentionally Omitted.]*
 - (iv) *[Intentionally Omitted.]*
 - (v) An allocation for NJ TRANSIT overhead, including general and administrative costs, engineering general costs, and allocated employer-provided fringe benefits, in conformity with the federally “approved indirect cost rate”;
 - (vi) Other direct support authorized by the GDC CEO in order to facilitate Oversight of the Work, subject to approval by NJ TRANSIT to the extent required.
- (b) NJ TRANSIT will invoice GDC for the NJ TRANSIT Services on a quarterly basis in a format approved by GDC, and the GDC CEO shall, within ninety (90) days of receipt, pay such invoices.
 - (c) NJ TRANSIT will provide GDC with reasonable supporting records and data necessary for GDC to secure reimbursement from federal and other funding sources of any payments made to NJ TRANSIT for providing the NJ TRANSIT Services.

Section 7.04 *Budgeting.*

- (a) GDC shall develop and maintain the Project Budget for the HTP.
- (b) NJ TRANSIT shall develop and maintain the Package 3 Budget in accordance with and in conformity with the Market Case Estimate for the Work once approved by GDC. Both the form of the Package 3 Budget and the inputs are subject to approval by GDC’s CEO. NJ TRANSIT will provide GDC with at least monthly updates on the Package 3 Budget to enable GDC to work to maintain the Project Budget.
- (c) NJ TRANSIT shall maintain the Package 3 Budget within the FTA’s Standard Cost Categories (“SCC”). Once established, any modifications to SCC line items shall be subject to the GDC CEO’s prior written approval. NJ TRANSIT will be authorized, within the parameters of the Market Case Estimate for the Work, to use supplemental SCC line items, and to reallocate funds (other than contingency funds) between line items.
- (d) NJ TRANSIT will notify GDC regarding any anticipated material deviations from the Package 3 Budget as soon as they are reasonably anticipated or identified.

Section 7.05 *Change orders.*

- (a) NJ TRANSIT will act as GDC’s representative in interfacing with all Package 3 Contractors engaged on the Work. In such role, NJ TRANSIT will assist in evaluating, negotiating, and recommending for the GDC CEO’s review and decision any change orders, post-award contract changes, post-award field items, equitable adjustments, and claims (collectively “**Change Orders**”) for the Work. All Change Orders will require the

GDC CEO's approval, as GDC is expected to be the contracting party on all Package 3 Contracts.

- (b) Notwithstanding the foregoing, the GDC CEO will execute a Change Order recommended by NJ TRANSIT without further review after NJ TRANSIT has evaluated, negotiated, and recommended the Change Order where the following conditions are met: (i) the proposed Change Order does not exceed \$500,000 and, along with any other approved Change Orders for the Work, would not create a Cost Impact (as defined herein) greater than one (1) percent of the contract value in the aggregate for that calendar year; (ii) the Change Order would not alter the character of the Work (for purposes of illustration, changes to the character of the Work would include but not be limited to (A) modifications to the accepted Package 3 Design Standards and Specifications, (B) deviations that require further environmental evaluation or reevaluation of the HTP, and (C) changes that impact existing or planned rights of way or operations); (iii) the Change Order would not have a schedule impact on the Work of sixty (60) days or more; and (iv) the Change Order would not require an amendment to the Market Case Estimate. Any proposed Change Order that does not meet the foregoing criteria will be subject to review and approval by the GDC CEO.

Section 7.06 *Cost and Schedule Impacts*. Following approval, NJ TRANSIT shall be bound by the approved Market Case Estimate, subject to the Cost Impact provisions and related payment obligations, which are set forth in Appendix A and incorporated herein by reference. The GDC CEO shall promptly advise NJ TRANSIT, with notice to the GDC Board, of any Cost Impact Event decision pursuant to Appendix A, Section 3.01(b).

ARTICLE VIII.

ENVIRONMENTAL COMPLIANCE; PERMITTING

Section 8.01 *NEPA*.

- (a) GDC, in its capacity as HTP project sponsor and NEPA sponsor, shall be responsible for all NEPA compliance activities related to Package 3, which includes: ensuring conformance of the HTP, including all required mitigations, with NEPA Approvals, and shall seek technical or other amendments to the NEPA Approvals, in each case as required to support delivery of the HTP. For the purposes of this Agreement, "**NEPA Approvals**" shall mean the final approval(s) issued under NEPA pertaining to the HTP, including the Final Environmental Impact Statement and Record of Decision (the "**ROD**") from FRA and FTA, and all approved supplements and reevaluations pertaining to the HTP, all NEPA documents, including technical memoranda required to be submitted to FRA and FTA under NEPA, and compliance with the National Historic Preservation Act Section 106 Programmatic Agreement and all related environmental compliance documents. Any proposed material deviations from the NEPA Approvals must be reviewed and approved by the GDC CEO.
- (b) GDC shall require the applicable Package 3 Contractors, and any other contractors performing work on its behalf, to comply with all NEPA requirements and mitigations set forth in the Package 3 Contract Documents, including all applicable federal, state, and local laws, regulations, and requirements, including NEPA, the Coastal Zone Management Act,

49 U.S.C. § 303, and the National Historic Preservation Act, as may be further described in the ROD.

- (c) NJ TRANSIT will support GDC, at the GDC CEO's direction, to achieve NEPA compliance for the Work, including monitoring compliance by Package 3 Contractors. NJ TRANSIT will comply with NEPA requirements and enforce such requirements with Contractors.
- (d) NJ TRANSIT will promptly inform GDC of any changes or proposed changes regarding NEPA compliance for the GDC CEO's review and approval.

Section 8.02 *Permits.*

- (a) GDC has developed a comprehensive list of permits, licenses, and approvals required for the delivery of Package 3, as may be updated from time to time (collectively, the "**Package 3 Permits**"), as well as the party responsible for obtaining, paying for (including all applicable filing fees), and maintaining the Package 3 Permits. NJ TRANSIT agrees to obtain and maintain all Package 3 Permits delegated to it. NJ TRANSIT will assist GDC by tracking the progress of all Package 3 Permit applications through a permit tracking and management tool. GDC intends to develop a tool for tracking permits across the HTP, and will make such tool available to NJ TRANSIT.
- (b) All Package 3 Contract Documents between GDC and its construction contractors shall require, to the extent applicable to such Package 3 Contractor's scope of work, that such Package 3 Contractor comply with all applicable Package 3 Permits. NJ TRANSIT shall monitor and track such compliance on behalf of GDC pursuant to the terms of the applicable Package 3 Contract Documents to assist GDC in taking action to assure that its contractors remain in compliance.
- (c) NJ TRANSIT agrees to engage in advance consultation with GDC in connection with any Package 3 Permits required for the Work that have requirements that would be reasonably anticipated to impact other HTP Packages, and otherwise regularly update GDC through the SPCC in connection with all Package 3 Permits being sought.

ARTICLE IX.

PROJECT REPORTING, CONTROLS, AND AUDIT

Section 9.01 *Reporting.*

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

Section 9.02 *Risk Register Management.* GDC will manage the HTP risk register, which will include Package 3. NJ TRANSIT will support GDC by attending HTP risk register management meetings and reviewing the HTP risk register in order to identify and assess risks associated with the Work. NJ TRANSIT will provide technical assistance with the HTP risk register management activities associated with the Work as reasonably requested by the GDC CEO.

Section 9.03 *Federally Required Project Plans.* GDC shall draft and submit all plans required to be submitted to FTA, FRA, or any other applicable federal agency providing funding or financing for the HTP. NJ TRANSIT shall regularly provide information and updates to GDC on the progress of the Work in accordance with terms of this Agreement to facilitate GDC's drafting and submission of such plans.

Section 9.04 *Project Management Plan.* GDC shall develop the project management plan ("PMP") in consultation with NJ TRANSIT, the PDA Parties, and the other SEPs as coordinated through the SPCC. The PMP shall set forth reporting, scheduling, and production obligations applicable to the PDA Parties, including with respect to HTP budgeting as described, and the maintenance of records and development of reports. The NJ TRANSIT Services shall be made part of the PMP by GDC. In the event of a conflict between this Agreement and the PMP, this Agreement shall govern.

Section 9.05 *Force Account.* For each federal fiscal year GDC shall develop an annual force account resources plan prior to the start of federal fiscal year in coordination with the parties that are providing force account or requesting force account work (the "**Force Account Resources Plan**") in accordance with the applicable HTP Contracts. NJ TRANSIT shall cooperate with GDC in the development of the Force Account Resources Plan and the utilization of NJ TRANSIT and Amtrak force account resources, as applicable. As of the Effective Date, there is no plan for the use of NJ TRANSIT's force account resources or labor for the Work. Any use of NJ TRANSIT's force account resources or labor for the Work shall be subject to review and approval by the GDC CEO, except in the event of a Construction Site Event. NJ TRANSIT will ensure that Package 3 Contractors cooperate in the timely preparation of the Force Account Resources Plan on an annual preparation schedule developed by GDC in consultation with NJ TRANSIT.

Section 9.06 *Document Access and Control.*

- (a) GDC shall have responsibility for document access and control. GDC is in the process of developing a protocol for the management and control of HTP documentation in order to provide a consistent approach for all HTP Packages.
- (b) Without limiting the foregoing, pursuant to the protocol that will be established by GDC, the GDC CEO will specify to NJ TRANSIT the methodology for the management and control of documentation associated with the Work. NJ TRANSIT will comply with GDC's document control methodology and will timely provide GDC with any document required to be provided thereunder.

Section 9.07 *Audit and Record Retention.* NJ TRANSIT shall comply with the audit procedures and record retention requirements, which are set forth in Appendix A and incorporated herein by reference.

ARTICLE X.

PUBLIC DISCLOSURE AND CONFIDENTIALITY

Section 10.01 *Public Disclosure Laws.* GDC and NJ TRANSIT are subject to specific public records laws and policies. Each Party shall give the other Party reasonable notice if it receives a public disclosure request for documents related to the NJ TRANSIT Services, the GDC Services, the Work, or this Agreement as promptly as possible to permit the other Party to object to production of any material before a court of competent jurisdiction in advance of its production. GDC and NJ TRANSIT acknowledge that infrastructure security, proprietary commercial data, certain Procurement Documents, and other related project documents may necessitate confidentiality agreements between the Parties and their personnel in order to access such materials.

Section 10.02 *Confidential Information.* Subject to the public records laws and policies discussed in Section 10.01 hereof, each Party will protect all confidential, proprietary, or sensitive information related to the Work (the “**GDC Confidential Information**”) from disclosure unless authorized to disclose in writing by the other Party and will not use such information for any purpose other than the Work. Each Party shall promptly return to the other Party any GDC Confidential Information upon the other Party’s request. Nothing herein shall require a Party to act in contravention of applicable laws or policies.

ARTICLE XI.

TRANSFER

Section 11.01 *Post-Construction Activities.* NJ TRANSIT’s role and responsibilities with respect to post-construction activities are set forth in Appendix A and incorporated herein.

ARTICLE XII.

DISPUTE RESOLUTION

Section 12.01 *Dispute Resolution Procedures.*

- (a) If any dispute arises between the Parties as to the interpretation of this Agreement, or other matters set forth herein, or any dispute arising between the PDA Parties and NJ TRANSIT, (each, a “**Dispute**”), a party to the Dispute shall promptly, and in any event, no later than 90 days from the date upon which such party knew or reasonably should have known, of the Dispute, provide written notice of the Dispute to the GDC CEO and the other parties. Such written notice shall describe the Dispute in reasonable detail. For the avoidance of doubt, for disputes under Article XII of the PDA, the process described in this Section 12.01 shall not commence until the completion of any applicable design review process contemplated in Article XII of the PDA. A party’s failure to submit such notice of Dispute within 90 days from the date upon which such party knew or reasonably should have known of the Dispute shall be deemed a waiver by such party of any claims related to such Dispute.
- (b) The parties shall coordinate through the SPCC or other informal means to attempt to resolve any Dispute. The parties agree to work in good faith to promptly resolve any Disputes in order to avoid delay to the Work.

- (c) If the parties are unable to resolve the Dispute within five business days, unless extended by mutual agreement, then any party to the Dispute may request that the Dispute be escalated. The GDC CEO or the GDC CEO's designee may request at any time that the disputing parties continue to negotiate in good faith to resolve the Dispute prior to escalation thereof.
- (d) If the parties fail to resolve a Dispute pursuant to informal resolution as described above, and a party has requested that such Dispute be escalated, the GDC CEO or the GDC CEO's designee shall make a formal determination in writing resolving such Dispute no later than 10 business days following the party's request for escalation pursuant to subsection (c) above.
- (e) If a party to the Dispute disagrees with the determination rendered by the GDC CEO or the GDC CEO's designee pursuant to subsection (d) above, such party may request that the Dispute be considered by the full GDC Board. If a party wishes to submit a Dispute to the GDC Board, then such party shall deliver written notice of such request no later than 10 business days following the issuance of the written determination by the GDC CEO or the GDC CEO's designee pursuant to subsection (d). The GDC Board may consider the Dispute within 60 days, and if the GDC Board fails to act within this period, then the Dispute will be subject to procedures referenced in Section 12.02.
- (f) Pending consideration by the GDC Board of such Dispute, and any further actions contemplated in Sections 12.02 and 12.03, the parties shall perform their respective obligations in accordance with the determination made by the GDC CEO or the GDC CEO's designee. Except to the extent that the GDC Board determines to overturn a decision rendered by the GDC CEO or the GDC CEO's designee pursuant to subsection (e), such decision shall be final, subject to Section 12.03.

Section 12.02 *Executive Level Consideration*. In the event the GDC Board declares an impasse or fails to act in the time specified as set forth in 12.01(e), the parties shall elevate the Dispute to the State Governors and Amtrak Chairperson (or their respective designees) who shall have 30 days unless extended by mutual agreement to resolve the Dispute prior to a party pursuing the Dispute resolution process in Section 12.03.

Section 12.03 *Arbitration*. If, following GDC Board review as contemplated in Section 12.01(e), the Board is at an impasse or a party disagrees with such final determination, the parties agree to engage in nonbinding mediation to be initiated immediately following Executive Level Consideration in Section 12.02 and completed within 60 days of initiation. If unresolved, the parties agree to engage in binding arbitration for final resolution of such Dispute ("**Arbitration**"). The Arbitration will be conducted under a substantial evidence standard by three independent arbitrators (the "**Arbitration Tribunal**"). The following shall be included in the Arbitration procedures.

- (a) The Arbitration Tribunal shall be comprised of the arbitrators designated by the PDA Parties pursuant to Section 15.03(a) of the PDA.
- (b) A party may initiate Arbitration by submitting a Request for Arbitration ("**RFA**") to the GDC Board and the other parties. The Arbitration shall be administered by the American Arbitration Association (the "**AAA**") pursuant to its Construction Industry Arbitration

Rules, who must agree to the arbitrator appointment process and other Arbitration procedures established by this Agreement and in the PDA. In no event may the arbitrators be permitted to award attorneys' fees or costs for any reason. The parties agree to share equally all arbitrator fees and costs and arbitration expenses, including AAA fees.

- (c) The PDA Party-appointed arbitrators shall choose a Chair of the Arbitration Tribunal (the "**Chair**") from among them by majority vote.
- (d) After the Chair is appointed, the arbitration panel shall develop arbitration procedures in consultation with the parties.

Section 12.04 *General Requirements.*

- (a) Pending final resolution of a Dispute, the parties shall proceed diligently with the performance of their respective undisputed obligations under this Agreement in order to avoid delay to the Work.
- (b) The parties shall, and shall require their respective representatives and the arbitrators to, maintain the confidential nature of the arbitration proceeding and the award, including the hearing, except as may be required by law or as may be necessary to prepare for or conduct the arbitration hearing on the merits, or as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement.

ARTICLE 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 *Opportunity to Cure.* Following notice by one Party that the other Party is in Default, the Party in Default shall have the opportunity to cure such Default within 30 calendar days, unless such cure period is extended by mutual agreement between the Parties.

Section 13.03 *Process and Remedies.* The process for resolving a Default, and determining the remedies for such Default, shall be as set forth in Article XII.

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 16.14 hereof, this Agreement shall expire upon final acceptance of the construction of the improvements of the Work and the close out of all Package 3 Contracts.

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 both Parties to this Agreement and consented to by the GDC Board.

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 the other Party enters into this Agreement in reliance on the representations and warranties set forth in this Article XV.

Section 15.02 *NJ TRANSIT to Comply.* Unless otherwise agreed to by the Parties, NJ TRANSIT agrees to abide by applicable GDC policies and procedures to the extent permissible in carrying out its obligations under this Agreement.

ARTICLE XVI.

MISCELLANEOUS

Section 16.01 *Compliance with Laws.*

- (a) In performing its obligations under this Agreement, each Party shall, and shall require any contractors performing work on its behalf to, comply with all federal, state and local laws, regulations and requirements applicable to it when performing such obligation, and the Parties shall cooperate in all respects in a manner designed to ensure that each Party meets its respective obligations under this Section 16.01(a).
- (b) Each Party shall be responsible for administration and management activities of the federal grant and funding agreements and as otherwise required by federal law (including, for the avoidance of doubt, all applicable federal standards and requirements). Each Party shall cooperate fully and promptly with each other to ensure that each Party is able to comply with all of its respective administration and management responsibilities in respect of such federal grant and funding agreements and under federal law, including providing each other with all reports and data necessary to comply with such responsibilities and incorporating corresponding compliance obligations in agreements it may have with contractors, consultants, and assignees. The Parties agree to negotiate in good faith any amendment to this Agreement that may be necessary to reflect the requirements of such federal grant and funding agreements, including, without limitation the terms of any Federal-State Partnership Grant that may be awarded by the FRA after the Effective Date of this Agreement.

Section 16.02 *Conflict with the PDA.* In the event of any conflict between the terms of Article I through Article XVI of this Agreement and Appendix A, the terms set forth in Appendix A shall control.

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 be delivered by email (with confirmation of transmission), by hand, by certified mail, return receipt requested, by electronic mail, or by overnight delivery service, to such Party in an envelope addressed as follows:

(a) If to GDC:

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

with a copy to:

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

(b) If to NJ TRANSIT:

New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07015
Attn: President & Chief Executive Officer

with a copy to:

New Jersey Transit Corporation
One Penn Plaza East
Newark, New Jersey 07015
Attn: General Counsel

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*. 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 *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 16.07 *Cumulative Remedies; No Waiver.*

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

Section 16.08 *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 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 16.09 *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 any Party with the right, power, or authority, whether express or implied, to act or create any obligation on behalf of any other Party.
- (b) In furtherance of the foregoing, it is understood and agreed that no Party has the power to contract on behalf of, or to authorize the expenditure of any monies by, the other Party.

Section 16.10 *No Third -Party Beneficiaries.* This Agreement does not create any rights in, or inure to the benefit of, any third party.

Section 16.11 *Counterparts and Electronic Signatures.* This Agreement may be executed in any number of counterparts, each of which shall constitute an original agreement, and all of which taken together shall be deemed one and the same agreement. The counterparts of this Agreement may be executed and delivered by PDF, facsimile, or other electronic signature by email transmission by the Parties. The receiving Party may rely on the receipt of such document so

executed and delivered electronically or by facsimile as if the original has been received. No Party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement.

Section 16.12 *Personal Liability*. No director, commissioner, officer, member, agent, or employee of any Party shall be charged personally by any Party with any liability or held liable to it under this Agreement for acts or omissions within the scope of his, her or their duties.

Section 16.13 *Time is of the Essence*. Each Party recognizes that time is of the essence with respect to the performance of each Party's obligations under this Agreement. Each Party shall use its reasonable best efforts to perform such Party's obligations set forth in this Agreement in accordance with the Executive Project Schedule.

Section 16.14 *Survival*. The following provisions of this Agreement shall survive the expiration or earlier termination of this Agreement:

- (a) Article I (*Definitions and Rules of Interpretation*) and Exhibit A (*Definitions*),
- (b) Article VII (*Compensation and Budget*),
- (c) Article X (*Public Disclosure and Confidentiality*),
- (d) Article XII (*Dispute Resolution*),
- (e) Section 13.01III (*Defaults and Remedies*),
- (f) Article XV (*Representations and Warranties*), and
- (g) Article XVI (*Miscellaneous*).

[*Signature Page Follows.*]

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

NEW JERSEY TRANSIT CORPORATION

By: _____
Kevin S. Corbett
President & Chief Executive Officer

GATEWAY DEVELOPMENT COMMISSION

By: _____
Kris Kolluri
Chief Executive Officer

EXHIBIT A
DEFINITIONS

“**AAA**” shall have the meaning set forth in Section 12.03(b).

“**Access Agreement**” shall have the meaning set forth in Section 5.03.

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

“**Amtrak**” shall have the meaning set forth in Recital B of this Agreement.

“**Arbitration**” shall have the meaning set forth in Section 12.03.

“**Arbitration Tribunal**” shall have the meaning set forth in Section 12.03.

“**AREMA**” shall mean the American Railway Engineering and Maintenance-of-Way Association.

“**Chair**” shall have the meaning set forth in Section 12.03(c).

“**Change Order**” shall have the meaning set forth in Section 7.05(a).

“**Construction Site Event**” shall mean an incident or condition occurring at or adjacent to a Work construction site that creates an imminent threat to life, safety, or property (including the Work) that requires NJ TRANSIT to deploy its own force account labor for the Work.

“**Cost Impacts**” shall have the meaning set forth in Appendix A.

“**Cost Impact Event**” shall have the meaning set forth in Appendix A.

“**Cost Impact Event Notice**” shall have the meaning set forth in Appendix A.

“**Cost Impact Notice**” shall have the meaning set forth in Appendix A.

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

“**Design Standards and Specifications**” means the design standards and specifications approved for the HTP as contemplated in the PDA, which design standards and specifications shall be (i) developed in conformance with Amtrak’s engineering standards for design and construction, (ii) leverage best available information including industry standards such as AREMA standards and FRA standards, (iii) to the extent practicable, meet or exceed local building and fire codes, and (iv) have been approved by the TSC. No other standards shall be considered.

“**Dispute**” shall have the meaning set forth in Section 12.01(a).

“**DP**” shall have the meaning set forth in Section 3.03.

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

“**Executive Project Schedule**” shall mean the schedule setting forth the anticipated timetable for the implementation of the HTP.

“**FFGA**” shall have the meaning set forth in Section 2.02(p).

“**Force Account Resources Plan**” shall have the meaning set forth in Section 9.05.

“**Force Majeure Events**” shall have the meaning set forth in Appendix A.

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

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

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

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

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

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

“**GDC Confidential Information**” shall have the meaning set forth in Section 10.02.

“**GDC Services**” shall have the meaning set forth in Section 2.01.

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

“**HTP Contractor**” and “**HTP Contractors**” shall have the meaning set forth in Section 2.01(g).

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

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

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

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

“**Market Case Estimate**” shall have the meaning described in Article VII.

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

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

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

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

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

“**NJ HTP ROW**” shall have the meaning set forth in Appendix A.

“**NJ TRANSIT**” shall have the meaning set forth in the Preamble to this Agreement.

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

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

“**Non-Shared Cost Impact Event**” shall have the meaning set forth in Appendix A.

“**Oversight**” shall have the meaning set for in Section 2.03.

“**Package 3**” shall have the meaning set forth in Recital K to this Agreement.

“**Package 3 Budget**” shall have the meaning set forth in Section 2.02(b).

“**Package 3 Contracts**” shall have the meaning set forth in Section 4.05.

“Package 3 Contract Documents” shall have the meaning set forth in Section 4.05.

“Package 3 Contractor” and **“Package 3 Contractors”** shall have the meanings set forth in Section 4.01.

“Package 3 Design Standards and Specifications” means the Design Standards and Specifications approved by the TSC for Package 3, referenced in Section 6.01(a)(i) hereof.

“Package 3 Schedule” shall have the meaning set forth in Section 2.02(b).

“Package 3 Permits” shall have the meaning set forth in Section 8.02(a).

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

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

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

“PMP” shall have the meaning set forth in Section 9.04.

“Procurement Documents” shall have the meaning set forth in Section 4.02.

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

“Project Lead” shall have the meaning set forth in Section 7.02(a).

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

“PTE” shall have the meaning set forth in Section 5.03.

“RAMP” shall have the meaning set forth in Appendix A.

“Remediation Activities” shall have the meaning set forth in Appendix A.

“RFA” shall have the meaning set forth in Section 12.03(b).

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

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

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

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

“Shared Cost Impact Event” shall have the meaning set forth in Appendix A.

“SPCC” shall have the meaning set forth in Section 2.01(e).

“Submittals” shall have the meaning set forth in Appendix A.

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

“TSC” shall have the meaning set forth in Section 2.01(e).

“Utility” shall have the meaning set forth in Section 4.01.

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

EXHIBIT B
AMTRAK PTE

PTEs will be substantially similar to the following but revised to reflect the specific locations and geographic features of the area for which entrance is granted, including, potentially a determination that a PTE is not required.

The provisions of this Temporary Permit to Enter Upon Property are applicable only to NJ TRANSIT as a construction management services provider to the Gateway Development Commission for the NJ TRANSIT Services contemplated in the Supporting or Executing Partner Agreement for Package 3 and does not alter or amend existing practice or agreements between NJ TRANSIT and Amtrak and shall not be precedential.

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

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

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

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

MP __, __, __

(hereinafter called "Property").

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

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

arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Railroad and/or Permittee (as well as Permittee's employees, agents, contractors, subcontractors, or any other person acting for or by permission of Permittee) in connection with this Temporary Permit. The foregoing obligation shall not be limited by the existence of any insurance policy

or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or any contractor or subcontractor and shall survive the termination or expiration of this Temporary Permit for any reason.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of Permittee under this section shall survive the termination or expiration of this Temporary Permit for any reason.

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

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

*AGREED TO AND ACCEPTED BY PERMITTEE:

By: _____
(signature)

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

Date: _____

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

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
VP Engineering Services

Date: _____
Execution Date

Expiration Date: (For Amtrak Use Only)

1 year from Execution Date

Project Completion

Other:

ATTACHMENT A
Temporary Permit to Enter Upon Property

SPECIFICATIONS REGARDING SAFETY
AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY (Revised 9/21/18)

National Railroad Passenger Corporation

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

(1) Pre-Entry Meeting: Before entry of Permittee/Contractor onto Railroad's property, a pre-entry meeting shall be held at which time Permittee/Contractor shall submit, for written approval of the Chief Engineer, plans, computations, a site-specific safety work plan and site-specific work plans that include a detailed description of proposed methods for accomplishing the work and protecting railroad traffic in accordance with Amtrak Engineering Practices EP 3014. Any such written approval shall not relieve Permittee/Contractor of its complete responsibility for the adequacy and safety of its operations.

(2) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety, security and continuity, and Permittee/Contractor shall conduct its operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad’s property. Permittee/Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of such rules, regulations, or requirements shall be grounds for the termination of the Temporary Permit and/or the immediate suspension of Permittee/Contractor work, and the re-training of all personnel, at Permittee’s/Contractor’s expense.

(3) Maintenance of Safe Conditions: If tracks or other property of Railroad are endangered during the work, Permittee/Contractor shall immediately notify Railroad and take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee/Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad’s trains, tracks, right-of-way or other property caused by the operations of Permittee/Contractor, shall be paid by Permittee/Contractor. Any work (or equipment being staged onsite during the work) performed at or near a railroad crossing must not obstruct the view of flashing light units or gates to oncoming traffic.

(4) Protection in General: Permittee/Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of railroad traffic. Any inspectors, track foremen, track watchmen, flagmen, signalmen, electric traction linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee/Contractor. The cost of same shall be paid directly to Railroad by Permittee/Contractor. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee/Contractor from its complete responsibility for the adequacy and safety of its operations.

(5) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad’s requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity thereof must be strictly observed. No employees or equipment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DEFINITIONS

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

INSURANCE

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

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

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

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

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

This policy shall have the following minimum limits of coverage:

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

In addition, the following shall apply:

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

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

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

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

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

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

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

In addition, the following shall apply:

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

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

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

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

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

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

In addition, the following shall apply:

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

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

In addition, the following shall apply:

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

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

In addition, the following shall apply:

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

MISCELLANEOUS

1. General

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

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

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

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

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

5. Evidence of Insurance

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

of insurance evidencing the other required insurance. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within thirty (30) days of Amtrak's written request.

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

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

APPENDIX A

Binding PDA Terms on NJ TRANSIT

NJ TRANSIT agrees to be bound by the following clauses of the PDA, as modified to reflect NJ TRANSIT as Party to this Agreement, which are hereby made a part of this Agreement.

ARTICLE I.

Section 1.01 *Right-of-Way and Real Property Interest Acquisition.*

- (a) NJ TRANSIT shall acquire all necessary surface and subsurface property required for the operations, construction, and maintenance of the HTP that are located in New Jersey, as set forth in the Real Estate Acquisition Management Plan (the “**RAMP**”) developed by GDC in consultation with the PDA Parties as coordinated through the SPCC. The necessary surface and subsurface property required for the operations, construction, and maintenance of the HTP in New Jersey shall be referred to as “**NJ HTP ROW.**”
 - (i) NJ TRANSIT shall acquire those NJ HTP ROW parcels allocated to it that are deemed “critical” by the FTA on or before the date of the submission of the application for the FFGA. As of the effective date of the PDA, the submission of the application for the FFGA was anticipated to occur in September 2023.¹ NJ TRANSIT shall acquire all non-critical NJ HTP ROW parcels allocated to it in accordance with the schedule set forth in the RAMP.
 - (ii) NJ TRANSIT shall comply with all applicable federal, state, and local laws, and all applicable USDOT rules and guidance documents in the acquisition of the NJ HTP ROW, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), and 49 C.F.R. Part 24.
 - (iii) NJ TRANSIT shall be responsible for any Package 3 Contractor delay claims under the applicable Package 3 Contract Documents arising out of NJ TRANSIT’s failure to acquire any applicable NJ HTP ROW parcel according to the schedule set forth in the RAMP, unless NJ TRANSIT is able to demonstrate both (i) that a reasonable standard of care was exercised by NJ TRANSIT and (ii) NJ TRANSIT endeavored to exercise available authority by the State of New Jersey to assist in the timely completion of the acquisition.
 - (iv) NJ TRANSIT shall be permitted to make reasonable and customary business decisions that impact the cost of the acquisition of the NJ HTP ROW that meet the Uniform Relocation Act. NJ TRANSIT’s acquisition costs under the RAMP shall be credited toward New Jersey’s required contributions for Package 3 pursuant to the agreements developed under Section 9.02 of the PDA. Notwithstanding anything to the contrary herein, any acquisition decisions that deviate from the requirements set forth in the RAMP, or otherwise involve restrictions that impact the use of the NJ HTP ROW parcel, including the availability of such parcel, the timing of required relocation of

¹ At the time the PDA was drafted, it was anticipated that the application for the FFGA would be submitted in September 2023. The schedule has since been updated, and GDC anticipates submitting the FFGA application in 2024.

existing property owners, or limitations on the use of such parcel, shall be made by NJ TRANSIT in consultation and coordination with GDC.

- (v) Ownership of the NJ HTP ROW and HTP improvements shall be structured to satisfy all federal funding and financing requirements while any such funding and/or financing remains current. Upon the earlier of: (i) the dissolution of GDC pursuant to the terms of the GDC Act, or (ii) the Operations Readiness Date (as defined in Section 14.02(f) of the PDA), ownership of the NJ HTP ROW and HTP improvements shall be transferred to Amtrak; *provided that* following such transfer, Amtrak shall provide NJ TRANSIT (or any other entity as may be required by USDOT) with a recorded easement for operation of commuter rail passenger transportation on the NJ HTP ROW and the HTP improvements, and in no case shall NJ TRANSIT (or any other entity as may be required by USDOT) be required to pay any consideration to Amtrak for retention of the easements.
- (vi) NJ TRANSIT agrees, in a manner consistent with Section 14.01(c) of the PDA, to enter into a deed, to be recorded, granting Amtrak a fee interest in NJ HTP ROW and reserving unto itself an easement for operation of commuter rail passenger transportation on the NJ HTP ROW and HTP improvements, in a form conforming to the Portal North Bridge Deed of Easement, as applicable, and is agreed to by the PDA Parties and agreed to by USDOT.
- (vii) Prior to commencement of construction of the Work, to the extent NJ TRANSIT is aware of any necessary pre-existing or historic contamination or condition requiring reporting or further investigation, testing, monitoring or remediation, as mandated by the U.S. Environmental Protection Agency or any applicable state or local agency (collectively, “**Remediation Activities**”), NJ TRANSIT shall begin to conduct such Remediation Activities as soon as reasonably practicable, subject to GDC approval and identification of funding, following acquisition of the NJ HTP ROW parcel requiring the performance of Remediation Activities. Subject to the requirements set forth in Article XI of the PDA, the approved costs incurred by NJ TRANSIT in connection with performing such Remediation Activities shall be credited toward New Jersey’s required contributions to Package 3.

ARTICLE II.

Section 2.01 *Submittals.*

- (a) GDC will be responsible for (i) processing and cataloging designs or other submittals from the Package 3 Contractors requiring review or approval (collectively, “**Submittals**”) through a central document control or sharing system for distribution to the Parties hereunder, (ii) clearly managing and coordinating submission of Submittal comments by the applicable Parties and SEPs (including by establishing applicable deadlines for submission of such Submittal comments within the timeframes delineated in the applicable Package 3 Contract Documents), tracking responses and comments from the Parties, and confirming lack of Submittals comments from the applicable Parties and SEPs, as applicable, (iii) timely consolidating and preparing Submittal comments, (iv) considering all comments to Submittals received from the applicable Parties and SEPs in good faith (subject to the process described in subsections (b)(i) and (b)(ii) below), (v) coordinating

design reviews with FRA and FTA, as required, and (vi) determining whether a Submittal comment will have an impact to cost or schedule or deviates from the Package 3 Design Standards and Specifications. NJ TRANSIT, as the SEP for Package 3, shall have contemporaneous access to all Submittals related to Package 3 through the central document control or sharing system managed by GDC, and shall have the right to comment upon any Submittal related to Package 3.

- (b) *Comments to Submittals.* NJ TRANSIT shall provide an adequate number of appropriate, dedicated, competent staff to support design reviews. If NJ TRANSIT fails to provide comments to a Submittal by applicable deadlines, NJ TRANSIT shall be deemed to have reviewed the Submittal without comment. Any Submittal comments made by NJ TRANSIT after the applicable deadline (including the introduction of additional or different comments during a second round of review of the same Submittal) shall be considered at the discretion of the GDC CEO. NJ TRANSIT may recommend that a Submittal be revised and resubmitted by the applicable Package 3 Contractor; provided, however, that GDC shall make the determination regarding whether to respond to a Submittal with an approval as noted or with a directive to the applicable Package 3 Contractor to revise and resubmit.
 - (i) *Comments that Do Not Involve a Conflict.* If a comment has an impact to cost or schedule, and the Submittal comments do not require a deviation from the Package 3 Design Standards and Specifications, GDC shall, in consultation with Amtrak and NJ TRANSIT, determine whether the comment should be accepted. If a comment has no impact to cost or schedule, and the Submittal comments do not require a deviation from the Package 3 Design Standards and Specifications, Amtrak shall determine whether the comment should be accepted, in consultation with the GDC and the commenting party. If a comment would cause Package 3 to deviate from the Package 3 Design Standards and Specifications, the TSC shall determine whether the comment should be accepted in accordance with Section 12.02(b) of the PDA.
 - (ii) *Comments that Involve a Conflict.* In the event of conflicting comments, GDC shall work with the TSC to resolve the conflicting comments and assess whether the resolution of the conflicting comments will cause any impact to cost or schedule. Where GDC determines that the resolution of the conflicting comments will have an impact to cost or schedule and the Submittal comments do not require a deviation from the Package 3 Design Standards and Specifications, GDC shall, in consultation with NJ TRANSIT and Amtrak, make a determination regarding resolution of such Submittal comments. Where the resolution of the conflicting comments will have no impact to cost or schedule and the conflicting comments do not require a deviation from the Package 3 Design Standards and Specifications, Amtrak will resolve the conflicting comment and make the final determination in good faith and in consultation with the party that submitted the comments. If a comment would cause Package 3 to deviate from the Package 3 Design Standards and Specifications, the TSC shall determine whether the comment should be accepted in accordance with Section 12.02(b) of the PDA.

ARTICLE III.

Section 3.01 *Cost and Schedule Impacts.* “**Cost Impacts**” shall mean and refer to the amount by which the delivery of the Work exceeds the cost as set forth in the Market Case Estimate. Except to the extent set forth in this Section 3.01, after the approval of the Market Case Estimate, NJ TRANSIT shall be responsible for all Cost Impacts attributable to the delivery of the Work.

(a) *Allocation of Cost Impacts.*

(i) *Shared Cost Impacts.* With respect to Cost Impacts that are directly incurred as a result of an event described below (each a “**Shared Cost Impact Event**”), subject to satisfaction of the requirements set forth in Section 3.01(b) herein, such Cost Impacts shall be funded one-third by Amtrak, one-third by New Jersey, and one-third by New York in accordance with Section 11.04(b)(i) of the PDA. The Shared Cost Impact Events are:

- 1) the occurrence of any of these events affecting the project site after the effective date of the PDA: war, civil war, invasion, violent act of foreign enemy, act of terrorism or armed conflict, acts of God, riots, civil unrest, natural catastrophes, an explosion, and force majeure events as further defined in the applicable Package 3 Contract Documents (collectively, “**Force Majeure Events**”); provided, however, that with respect to Force Majeure Events as defined in the applicable Package 3 Contract Documents that are claimed by the applicable Package 3 Contractor, such Force Majeure Events claim must be approved by GDC to the extent that the applicable Package 3 Contractor is not able to mitigate the impacts of such event using such measures as are reasonable under the circumstances;
- 2) any modification or change that NJ TRANSIT is required to make to the plans or to the Work due to government mandated revisions (i.e., change in laws), and undisclosed or unforeseeable site, safety, or security conditions, subject to review and approval by the TSC;
- 3) a failure by a Utility to perform work or provide services in accordance with the relevant third-party agreement or a failure of permitting or other third-party entity to issue timely approvals, in each case despite a reasonable standard of care being exercised by NJ TRANSIT and a demonstrated good faith effort by the relevant state Party to exercise all available resources to ensure timely completion, each as determined by GDC;
- 4) any event that satisfies all of the following: (A) for which, pursuant to the terms of the applicable Package 3 Contract Documents, a Package 3 Contractor is entitled to either (i) an increase in the applicable contract price, or (ii) an extension of the schedule for the Package 3 Contractor’s delivery of the Work; (B) that is claimed by a Package 3 Contractor and approved by GDC pursuant to the terms of the applicable Package 3 Contract Documents; and (C) that is determined by GDC not to be attributable to a Party’s material acts, errors or omissions, or failure to comply with such Party’s contractual obligations with a reasonable standard of care;
- 5) a Package 3 Contractor’s failure to perform in accordance with the applicable Package 3 Contract Documents, including, for example, Package 3 Contractor default and Package 3 Contractor-caused productivity or other delays, in each case

that are determined in a written determination issued by the GDC CEO (or the GDC CEO's designee) not to be attributable to NJ TRANSIT's material acts, errors or omissions, or failure to comply with NJ TRANSIT's contractual obligations with a reasonable standard of care;

- 6) a deviation from the Force Account Resources Plan that is due to an incident or condition that creates an imminent threat to life and safety that requires that resources be redirected from the Work, and a reasonable time associated with the restoration of service, if applicable;
 - 7) GDC's failure to comply with its obligations with a reasonable standard of care, or GDC's determination to override NJ TRANSIT's proposed strategy for addressing and mitigating the impacts of the Cost Impact Event;
 - 8) costs resulting from litigation related to the Work by a non-Party except to the extent such litigation is due to GDC's or NJ TRANSIT's material acts, errors or omissions, or failure to comply with GDC's or NJ TRANSIT's contractual obligations with a reasonable standard of care; and
 - 9) any other event that the GDC Board approves via vote after consultation with the PDA Parties regarding the event and the impact of the event.
- (ii) *Non-Shared Cost Impacts.* With respect to Cost Impacts that are incurred as a result of an event described below (each a "**Non-Shared Cost Impact Event**"), subject to satisfaction of the requirements set forth in Section 3.01(b) 3.01(b) (to the extent applicable), such Cost Impacts shall be funded as described in this Section 3.01(a)(ii):
- 1) except as set forth in Section 3.01(a)(i)(6) herein, if there is a deviation from the approved Force Account Resources Plan, the Party providing the force account will be responsible for resulting Cost Impacts;
 - 2) Cost Impacts applicable to the Work resulting from (A) any deviation from the Package 3 Design Standards and Specifications that is not approved by the TSC, or (B) any other deviation from the approved design (that does not deviate from the Package 3 Design Standards and Specifications) that is not approved by the GDC CEO or the GDC CEO's designee, shall be funded solely by NJ TRANSIT;
 - 3) Cost Impacts resulting from a change in law, regulation, procedure, or standards by New Jersey (or its municipalities or instrumentalities), that is not of general application, the terms of which change apply to the Work, NJ TRANSIT, or any key Package 3 Contractor shall be funded solely by New Jersey;
 - 4) Cost Impacts resulting from a change in law, regulation, procedure, or standards by New York (or its municipalities or instrumentalities), that is not of general application, the terms of which change apply to the Work, NJ TRANSIT, or any key Package 3 Contractor shall be funded solely by New York; and
 - 5) except as set forth in Section 3.01(a)(i)2), Cost Impacts from a requested change to the Package 3 Design Standards and Specifications subsequent to the date the contract documents are advertised by GDC, shall be funded solely by the requesting party.

- (iii) *Concurrent Delays.* Notwithstanding the above, if there are multiple, concurrent delays, GDC and NJ TRANSIT agree to work together to mitigate the total impact to the Work, without regard to fault. The residual Cost Impacts following mitigation will be shared in proportion to the responsibility for the events contributing to the Cost Impacts.
- (b) *Establishment of Cost Impacts.*
- (i) Upon the occurrence of any of the events described in Section 3.01(a)(i) or Section 3.01(a)(ii) (each event, a “**Cost Impact Event**”), NJ TRANSIT shall promptly, and in any event no later than 30 calendar days following NJ TRANSIT’s knowledge of the occurrence of the Cost Impact Event, notify GDC in writing thereof (such notice, a “**Cost Impact Event Notice**”). Such Cost Impact Event Notice shall describe the Cost Impact Event and (to the extent such information is available at the time), the efforts of NJ TRANSIT and the applicable Package 3 Contractors, if any, that have been (or are going to be) undertaken by such Party to overcome or mitigate the potential adverse effect on the cost for performance of the Work from such Cost Impact Event. After the issuance of a Cost Impact Event Notice, NJ TRANSIT shall provide updates in writing to GDC every 30 calendar days or as reasonably necessary to keep the PDA Parties informed of the impacts of the Cost Impact Event, including in such updates, to the extent such information is available, estimates of the Cost Impacts that will result from the applicable Cost Impact Event.
- (ii) When NJ TRANSIT is reasonably aware of the Cost Impact of any Cost Impact Event, it shall provide GDC in writing a summary of the known or estimated Cost Impacts that resulted from the Cost Impact Event (the “**Cost Impact Notice**”). In the Cost Impact Notice, NJ TRANSIT shall be responsible for (1) describing the Cost Impact Event and the known or estimated Cost Impacts of such event in detail, (2) providing a full accounting setting forth all known or estimated Cost Impacts resulting from the Cost Impact Event, including supporting materials, such as schedule impacts, and (3) describing the efforts of NJ TRANSIT and the applicable Package 3 Contractors, if any, that were undertaken by such party to overcome or mitigate the adverse effect on the cost for performance of the work from such Cost Impact Event.
- (iii) After NJ TRANSIT provides a Cost Impact Notice, the GDC CEO shall make its determination regarding whether the Cost Impact Event is a Shared Cost Impact Event, a Non-Shared Cost Impact Event, or whether more information is required, as set forth in the applicable funding agreements and subject to the dispute resolution procedures set forth in the PDA.
- (iv) Compliance with this Section 3.01(b) is a condition precedent to the application of the cost sharing described in Section 3.01(a)(i) or Section 3.01(a)(ii). Upon satisfaction by NJ TRANSIT of the terms and conditions of this Section 3.01(b), the Parties shall use good faith efforts to agree on the Cost Impacts attributable to the Cost Impact Event. If NJ TRANSIT disagrees with GDC’s determination with respect to the occurrence of a Cost Impact Event or the amount of Cost Impacts attributable to the Cost Impact Event, the Parties shall resolve the dispute utilizing the dispute resolution procedures in the Agreement.

- (c) *Loss of Funding Due to an Action of a Party.* If NJ TRANSIT causes the loss or repayment of federal funds to the Work attributable to its material acts, errors or omissions, or failure to comply with its contractual obligations with a reasonable standard of care, as determined in a written determination issued by the GDC CEO, NJ TRANSIT shall be solely responsible for the loss of funding due to its actions, unless it is able to restore such funding to support timely completion of the Work.

Section 3.02 *Funding a Non-Shared Cost Impact Event.*

- (a) If NJ TRANSIT is required to fund Cost Impacts due to a Non-Shared Cost Impact Event, NJ TRANSIT shall not be required to contribute to GDC the funding related to such Cost Impact Event until such funding is actually required to meet GDC's commitments and warranties related to maintaining sufficient contingency to complete the HTP under any applicable funding and financing agreement.
- (b) Subject to Section 3.02(a) herein, in the event NJ TRANSIT is required to fund a Non-Shared Cost Impact Event, GDC will issue NJ TRANSIT an invoice, which shall include reference to this Agreement, the amount of payment due, and attach a copy of the GDC CEO's determination under Section 3.01(b)(iii) herein.
- (c) NJ TRANSIT shall pay GDC the invoiced amount within ninety (90) days of receipt using unencumbered funds.

ARTICLE IV.

Section 4.01 *Audit and Record Retention.* NJ TRANSIT shall maintain data, books, records, and documents related to the NJ TRANSIT Services in accordance with the GDC Record Retention Policy, and shall permit the authorized representatives of GDC, New Jersey, New York, the USDOT, FRA, FTA, the inspector generals of GDC and Amtrak, the Comptroller General of the United States or its designee, and all relevant federal and state governmental agencies to inspect and audit NJ TRANSIT's data, books, records, and documents relating to its obligations under this Agreement. NJ TRANSIT shall preserve and retain all books and records related to the NJ TRANSIT Services for a period of time equal to the longer of (a) the longest period of time required for retention of the books and records under applicable law, or (b) the resolution of any litigation or disputes related to the Work.

ARTICLE V.

Section 5.01 *Testing Generally.* GDC and NJ TRANSIT shall coordinate, and the PDA Parties shall be permitted to witness, any testing of the Work with the applicable Package 3 Contractor(s), the results of which shall be subject to the approval of Amtrak and, to the extent applicable, NJ TRANSIT.

Section 5.02 *Final Testing.* GDC and NJ TRANSIT agree that Amtrak shall perform any final testing of Package 3 in coordination with GDC and NJ TRANSIT, and any known users and operators of the HTP, according to (a) the schedule specified by GDC and NJ TRANSIT, and (b) the Force Account Resources Plan for the applicable year.

Section 5.03 *Required Record Deliverables Provided to Amtrak.* NJ TRANSIT shall enforce the requirements set forth in the applicable Package 3 Contract Documents with respect to the Package 3 Contractor's satisfaction of the provision of record deliverables, including final as-built plans, to

Amtrak in the form necessary to support Amtrak's operations in accordance with the Package 3 Contract Documents, subject to review by Amtrak.

Section 5.04 *Contract Closeout*. NJ TRANSIT will assist GDC in closing out all Package 3 Contracts related to the Work.

Section 5.05 *Spare Parts, Training, and O&M Manuals Provided to Amtrak*. GDC and NJ TRANSIT shall enforce the requirements set forth in the applicable Package 3 Contract Documents with respect to the Package 3 Contractor's satisfaction of the provision of required spare parts, training, and delivery of final as-built plans and any required operations and maintenance manuals to Amtrak.

Section 5.06 *Warranties Assigned to Amtrak*. The Package 3 Contract Documents shall require that all warranties remaining at completion of Package 3 be assigned to Amtrak. GDC and NJ TRANSIT shall enforce the requirements related to the Package 3 Contractor's assignment of such warranties to Amtrak as set forth in the applicable Package 3 Contract Documents.

#1023-03: AUTHORIZATION TO ADOPT THE TITLE VI AND NONDISCRIMINATION PROGRAM PLAN

The Gateway Development Commission (“GDC”) is a public authority and a government sponsored authority by the States of New York and New Jersey that is empowered to facilitate critical passenger rail improvement projects known as the Gateway Program.

Title VI of the 1964 Civil Rights Act and subsequent federal and state legislation direct the fair treatment and meaningful involvement of all people — regardless of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin — in programs and activities receiving federal funds, including transportation funds.

Title VI of the Civil Rights Act of 1964 and Executive Order 12898 on Environmental Justice are integral to the process of planning and implementing the Gateway Program.

The United States Department of Transportation (“USDOT”) requires governmental entities receiving federal funds to develop a Title VI Program that address how such entity integrates nondiscrimination practices into its planning, decision-making and implementation activities.

Through the Federal Transit Administration’s (“FTA”) Title VI Circular C4702.1B, USDOT provided additional guidance for the Title VI Programs of governmental entities.

GDC is committed to compliance with Title VI of the 1964 Civil Rights Act, the Civil Rights Restoration Act of 1987, Executive Order 12898 on Environmental Justice and all related federal and state nondiscrimination statutes, rules, regulations and executive orders.

In anticipation of applying for and receiving one or more grants for federal transportation funding, GDC has prepared a Title VI and Nondiscrimination Program Plan, attached hereto as **Exhibit A**, in order to be in compliance with all relevant federal requirements.

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.”

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

RESOLVED, that the GDC Board of Commissioners hereby adopts the attached Title VI and Nondiscrimination Program Plan.

RESOLVED, that the GDC Board of Commissioners authorizes the GDC Chief Executive Officer and other applicable GDC staff to take any and all actions consistent with this Resolution and to take all other steps necessary to implement and comply with the provisions of the Title VI and Nondiscrimination Program Plan.

EXHIBIT A

TITLE VI AND NONDISCRIMINATION PROGRAM PLAN

TITLE VI/NONDISCRIMINATION PROGRAM PLAN

Gateway Development Commission

For
Federal Transit Administration
Office of Civil Rights

October 16, 2023

Version 2.0

Privileged & Confidential/Advisory, Consultative & Deliberative/Proprietary Commercial
and Financial Information

Revision Record

Version	Issue Date	Notes
1.0	September 5, 2023	Initial Draft
2.0	October 16, 2023	Revised to Address Comments Received from FTA

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ACRONYMS

Abbreviation	Definition
ADA	Americans with Disabilities Act
CEO	Chief Operating Officer
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EJ	Environmental Justice
FEIS	Final Environmental Impact Statement
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GDC	Gateway Development Commission
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LOF	Letter of Finding
NEPA	National Environmental Policy Act
NJ TRANSIT	New Jersey Transit Corporation
PANYNJ	Port Authority of New York and New Jersey
PPP	Public Participation Plan
ROD	Record of Decision
USDOT	United States Department of Transportation

1 INTRODUCTION

The Gateway Development Commission (“GDC”) has prepared this Title VI/Nondiscrimination Program Plan in compliance with Title 49 CFR Section 21.9(b) and with the Federal Transit Administration (“FTA”) Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” issued October 1, 2012. This Title VI/Nondiscrimination Program Plan is being submitted to FTA to meet the requirements set forth by Title VI of the Civil Rights Act of 1964.

The Plan was developed through coordination and collaboration with members of the Gateway Development Commission to ensure all activities as part of the Hudson Tunnel Project (“HTP”) include accessible and fair public participation methods to all persons in the geographic areas impacted by the HTP. Further, this Plan provides policies and procedures to submit Title VI discrimination complaints via the Title VI complaint form included in the Plan.

1.1 About the Gateway Development Commission

The GDC is a public authority and government-sponsored authority created by the Gateway Development Commission Act (2019 NY Laws, ch.108) and (N.J.S.A. 32:36-1, et seq.) (referred to hereafter as the “GDC Act”) to facilitate the passenger rail transportation project (Gateway Program) between Penn Station, Newark, New Jersey, and Penn Station, New York, New York.

GDC was formed via parallel legislation in New York (“NY”) and New Jersey (“NJ”) in July 2019 to oversee and deliver the Gateway Program. GDC works closely with stakeholders, including the United States Department of Transportation (“USDOT”), Federal Transit Administration (“FTA”) Amtrak, NJ TRANSIT, and the Port Authority of New York and New Jersey (“PANYNJ”), to advance this critical Program.

The Gateway Program’s first phase includes the construction of a new tunnel under the Hudson River, the rehabilitation of the existing tunnel, the completion of a concrete casing on the West Side of Manhattan to preserve right-of-way for the future tunnel to Penn Station, and the replacement of the Portal Bridge.

The GDC Board of Commissioners consists of seven voting members with enumerated powers as specified in the GDC Act, including but not limited to overseeing the finance, design, construction, and implementation of the Gateway Program.

1.2 Hudson Tunnel Project Overview

The purpose of the HTP is to preserve the current functionality of Amtrak’s Northeast Corridor (“NEC”) service and NJ TRANSIT’s commuter passenger rail service between New Jersey and Penn Station New York (“PSNY”) by repairing the deteriorating North River Tunnel; and to strengthen the NEC’s resiliency to support reliable service by providing redundant capability under the Hudson River for Amtrak and NJ TRANSIT NEC trains between New Jersey and PSNY.

The HTP includes the development, design, and construction of a new two-tube tunnel connecting New York and New Jersey and certain ancillary facilities, the construction of the final segment of the concrete casing under western Hudson Yards in Manhattan, New York, the rehabilitation of the existing North River Tunnels, and certain projects necessary to connect such projects to the contiguous Amtrak NEC facilities. At the completion of the HTP, the NEC would have four tracks (two in the new Hudson River Tunnel and two in the North River Tunnel) between New Jersey and New York under the Hudson River.

2 #1023-03: AUTHORIZATION TO ADOPT THE TITLE VI/NONDISCRIMINATION PROGRAM PLAN

The Gateway Development Commission (“GDC”) is a public authority and a government sponsored authority by the States of New York and New Jersey that is empowered to facilitate critical passenger rail improvement projects known as the Gateway Program.

Title VI of the 1964 Civil Rights Act and subsequent federal and state legislation direct the fair treatment and meaningful involvement of all people — regardless of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin — in programs and activities receiving federal funds, including transportation funds.

Title VI of the Civil Rights Act of 1964 and Executive Order 12898 on Environmental Justice are integral to the process of planning and implementing the Gateway Program.

The United States Department of Transportation (“USDOT”) requires governmental entities receiving federal funds to develop a Title VI Program that address how such entity integrates nondiscrimination practices into its planning, decision-making and implementation activities.

Through the Federal Transit Administration’s (“FTA”) Title VI Circular C4702.1B, USDOT provided additional guidance for the Title VI Programs of governmental entities.

GDC is committed to compliance with Title VI of the 1964 Civil Rights Act, the Civil Rights Restoration Act of 1987, Executive Order 12898 on Environmental Justice (“EJ”) and all related federal and state nondiscrimination statutes, rules, regulations and executive orders.

In anticipation of applying for and receiving one or more grants for federal transportation funding, GDC has prepared a Title VI and Nondiscrimination Program Plan, attached hereto as **Exhibit A**, in order to be in compliance with all relevant federal requirements.

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.”

Pursuant to the foregoing report, the following resolutions were adopted, with Commissioners [INSERT NAMES HERE] voting in favor, and Commissioners [INSERT NAMES HERE] voting against:

RESOLVED, that the GDC Board of Commissioners hereby adopts the attached Title VI and Nondiscrimination Program Plan.

RESOLVED, that the GDC Board of Commissioners authorizes the GDC Chief Executive Officer and other applicable GDC staff to take any and all actions consistent with this Resolution and to take all other steps necessary to implement and comply with the provisions of the Title VI and Nondiscrimination Program Plan.

EXHIBIT A

TITLE VI/NONDISCRIMINATION PROGRAM PLAN

3 NONDISCRIMINATION POLICY STATEMENT

The GDC is committed to compliance with Title VI of the Civil Rights Act of 1964; as amended, 42 U.S.C. 2000d-2000d7; the Civil Rights Restoration Act of 1987; Section 303 of the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act (“ADA”); Section 504 of the Rehabilitation Act of 1973; Executive Order 12898 on Environmental Justice; Executive Order 13166 on Limited English Proficiency (“LEP”), and all other related nondiscrimination statutes, rules, regulations, and executive orders cited in its Title VI/Nondiscrimination Program.

GDC assures that no person or group(s) of persons shall, on the grounds of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in connection with the activities undertaken by GDC, whether the activities are federally funded or not.

It is also the policy of GDC to ensure that its plans, programs, procedures, policies, and activities do not have disproportionate adverse effects based on race, color, religion, sex, sexual orientation, gender identity, disability, age, or national origin. In addition, GDC will provide meaningful access to its information for persons with limited English proficiency.

Regarding the distribution of federal-aid funds to eligible subrecipients, if any, GDC will include Title VI/nondiscrimination language in all written agreements and will monitor those agreements for compliance. GDC is responsible for initiating and monitoring the organization’s Title VI/Nondiscrimination Program, for preparing related reports, and for other requirements and responsibilities under Title 23 Code of Federal Regulations (CFR) Part 200 and Title 49 CFR Part 21.

GDC will post the Title VI/Nondiscrimination Policy Statement which appears above on its website and in its written materials. The statement will be translated per GDC’s adopted Language Access Operating Procedures. This statement will be made available to subrecipients, consultants, vendors or other parties under direct contract with GDC. GDC will physically post this Policy Statement in the lobby/reception area of its offices, at locations where GDC Board or other public meetings are held, and at GDC construction sites.

To obtain a complaint form, or otherwise make an inquiry concerning a Title VI/nondiscrimination complaint, please see information at www.gatewayprogram.org/ or contact Tracey Mitchell at (929) 696-2596 or via email at, CivilRights@gatewayprogram.org.

Where space and/or costs are issues, GDC may use the abbreviated version of the notice as follows:

ABBREVIATED TITLE VI/NONDISCRIMINATION NOTICE TO THE PUBLIC

The GDC fully complies with Title VI of the Civil Rights Act of 1964 and other related nondiscrimination statutes, rules, regulations, and executive orders identified in the GDC Title VI/Nondiscrimination Program. GDC assures that no person or group(s) of persons shall, on the grounds of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in connection with the activities undertaken by GDC. For more information, or to obtain a Title VI/Nondiscrimination Complaint Form, see www.gatewayprogram.org/ or contact Tracey Mitchell, at (929) 696-2596 or via email at, CivilRights@gatewayprogram.org.

DECLARACIÓN DE POLÍTICA DE NO DISCRIMINACIÓN

La Comisión de Desarrollo de Gateway ("GDC") está comprometida con el cumplimiento del Título VI de la Ley de Derechos Civiles de 1964; según enmendada, 42 U.S.C. 2000d-2000d7; la Ley de Restauración de los Derechos Civiles de 1987; Sección 303 de la Ley de Discriminación por Edad de 1975, según enmendada; Título II de la Ley de Estadounidenses con Discapacidades ("ADA"); Sección 504 de la Ley de Rehabilitación de 1973; Orden Ejecutiva 12898 sobre Justicia Ambiental; Orden Ejecutiva 13166 sobre Dominio Limitado del Inglés ("LEP"), y todos los demás estatutos, reglas, reglamentos y órdenes ejecutivos relacionados con la no-discriminación citados en su Título VI/Programa de No-Discriminación.

La GDC garantiza que ninguna persona o grupo(s) de personas, por motivos de raza, color, religión, sexo, orientación sexual, identidad de género, discapacidad, edad u origen nacional, será excluida de la participación, se le negarán los beneficios o será objeto de discriminación en relación con las actividades realizadas por la GDC, ya sea que las actividades estén financiadas por el gobierno federal o no.

También es política de la GDC garantizar que sus planes, programas, procedimientos, políticas y actividades no tengan efectos adversos desproporcionados basados en la raza, el color, la religión, el sexo, la orientación sexual, la identidad de género, la discapacidad, la edad o el origen nacional. Además, la GDC proporcionará un acceso significativo a su información para las personas con dominio limitado del inglés.

Con respecto a la distribución de fondos de ayuda federal a los subreceptores elegibles, si los hubiera, GDC incluirá el lenguaje del Título VI/No Discriminación en todos los acuerdos escritos y supervisará el cumplimiento de esos acuerdos. La GDC es responsable de iniciar y monitorear el Título VI/Programa de No Discriminación de la organización, de preparar informes relacionados y de otros requisitos y responsabilidades bajo el Título 23 del Código de Regulaciones Federales (CFR) Parte 200 y el Título 49 CFR Parte 21.

La GDC publicará el Título VI / Declaración de Política de No Discriminación que aparece arriba en su página web y en sus materiales escritos. La declaración será traducida de acuerdo con los Procedimientos Operativos de Acceso Lingüístico adoptados por la GDC. Esta declaración se pondrá a disposición de los subreceptores, consultores, proveedores u otras partes bajo contrato directo con la GDC. La GDC publicará físicamente esta Declaración de Política en el vestíbulo/área de recepción de sus oficinas, en los lugares donde se lleven a cabo reuniones de la Junta Directiva de la GDC u otras reuniones públicas, y en los sitios de construcción de la GDC.

Para obtener un formulario de queja o realizar una consulta sobre una queja del Título VI o de no-discriminación, consulte la información en www.gatewayprogram.org/ o comuníquese con Tracey Mitchell al (929) 696-2596 o por correo electrónico a CivilRights@gatewayprogram.org.

Cuando se trate de problemas de espacio y/o costos, la GDC puede usar la versión abreviada del aviso de la siguiente manera:

TÍTULO VI/AVISO DE NO-DISCRIMINACIÓN AL PÚBLICO

La GDC cumple plenamente con el Título VI de la Ley de Derechos Civiles de 1964 y otros estatutos, normas, reglamentos y órdenes ejecutivas relacionados contra la discriminación identificados en el Título VI/Programa de No Discriminación de la GDC. La GDC garantiza que ninguna persona o grupo(s) de personas, por motivos de raza, color, religión, sexo, orientación sexual, identidad de género, discapacidad, edad u origen nacional, será excluida de la participación, se le negarán los beneficios o será objeto de discriminación en relación con las actividades realizadas por la GDC. Para obtener más información, o para obtener un Formulario de Queja del Título VI/No Discriminación, consulte www.gatewayprogram.org/ o comuníquese con Tracey Mitchell, al (929) 696-2596 o por correo electrónico a CivilRights@gatewayprogram.org.

4 GDC DIRECTOR OF CIVIL RIGHTS

GDC has designated its Director of Civil Rights as responsible in all regards for its implementation of this Title VI/Nondiscrimination Program. As required by the FTA, the Director has direct and independent access to the GDC Chief Operating Officer (“CEO”) and reports via a dotted line to the CEO. The responsibilities of the Director include the following:

- Ensuring all organizational activities comply with the Title VI/Nondiscrimination Program while monitoring the implementation of the program and addressing any related compliance issues.
- Ensuring the collection and analysis of relevant data related to the Title VI/Nondiscrimination Program, including statistical data (i.e., race, color, religion, sex, sexual orientation, gender identity, disability, age, or national origin) for use in compliance planning and monitoring by GDC, its partners and the public.
- Ensuring and monitoring the dissemination of Title VI/Nondiscrimination Program information to GDC staff and other interested parties.
- Ensuring the inclusion of the Title VI/Nondiscrimination Policy Statement and necessary assurances in contracts and organizational materials, and that the Title VI/Nondiscrimination Program policies, provisions, and related requirements are provided, as applicable, to consultants, vendors or other parties under direct contract with GDC.
- Providing appropriate Title VI/Nondiscrimination Program training for GDC members and staff.
- Identifying, investigating, and addressing discrimination and complaints of discrimination.
- Preparing an annual report which evaluates the effectiveness of GDC’s Title VI/Nondiscrimination Program and related effort, documents related accomplishments over the past year and establishes goals for the forthcoming year.
- Monitoring federal and state laws, rules, regulations, guidelines, and other resource information pertaining to GDC’s Title VI/Nondiscrimination Program.

5 GDC'S TITLE VI AND RELATED NONDISCRIMINATION COMPLAINT PROCEDURES

This Title VI/Nondiscrimination Complaint Procedure is the process by which GDC receives and investigates complaints of discrimination while ensuring due process for complainants and respondents. The procedure does not preclude GDC from attempting to informally resolve complaints where possible.

The Title VI/Nondiscrimination Complaint Procedure applies to all external complaints of discrimination received by GDC, filed under Title VI of the Civil Rights Act of 1964 (including related Disadvantaged Business Enterprise ("DBE") and Equal Employment Opportunity ("EEO") provisions); Section 303 of the Age Discrimination Act of 1975, as amended; Title II of the ADA; as well as other related laws, regulations, executive orders and directives as specified in this Title VI/Nondiscrimination Program which prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin.

Any person who believes they have been discriminated against on the basis of race, creed, color, national origin, sex, marital status, disability, age, sexual orientation or income level by the GDC may file a Title VI/Nondiscrimination complaint by completing and submitting the agency's Title VI Complaint Form to GDC's Director of Civil Rights. Generally, GDC investigates complaints received no more than one-hundred, eighty (180) days after the alleged incident.

GDC shall provide appropriate assistance to complainants and potential complainants, including those persons with disabilities and those who are limited in their ability to communicate in English or who have limited literacy skills. Such assistance shall be given to those who specifically request help and to those who appear to need assistance based on their interaction with GDC staff or the GDC website. Assistance shall be rendered in a manner appropriate to the individual, including (for example) with the help of translation services or by taking the complainants' statement verbally.

GDC will process complaints that are complete. Once the complaint is received, GDC will review it to determine if our office has jurisdiction. The complainant will receive an acknowledgement letter informing the complainant whether the complaint is covered under GDC's Title VI/Nondiscrimination Program and whether the complaint will be investigated by our office (and if not, the reason why). GDC has thirty (30) days to investigate the complaint. If more information is needed to resolve the case, GDC may contact the complainant. The complainant has fifteen (15) business days from the date of the letter to send requested information to the investigator assigned to the case. If the investigator is not contacted by the complainant or does not receive the additional information in that timeframe, GDC can administratively close the case. A case also can be administratively closed if the complainant no longer wishes to pursue their case. After the investigator reviews the complaint, one of two letters will be issued to the complainant: a closure letter or a letter of finding ("LOF"). A closure letter summarizes the allegations and states that there was not a violation of the Title VI and Nondiscrimination Policy and that the case will be closed. An LOF summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary action, additional

training of the staff member, or other action will occur. If the complainant wishes to appeal the decision to GDC's Chief Executive Officer, they have thirty (30) days after the date of the closure letter or the LOF to do so.

A person may also file a complaint directly with the U.S. Department of Transportation by contacting the Department at:

U.S. Department of Transportation, Federal Transit Administration's Office of Civil Rights: Complaint Team, East Building 5th Floor—TCR, 1200 New Jersey Ave. SE, Washington, DC 20590, or

Civil Rights Officer U.S. Department of Transportation Federal Transit Administration, Region II One Bowling Green, Room 429 New York, NY 10004 Email: FTACivilRightsCommunications@dot.gov Phone: (212) 668-2170 Fax: (212) 668-2136

TÍTULO VI DE LA GDC Y PROCEDIMIENTOS DE QUEJAS POR NO DISCRIMINACIÓN RELACIONADOS

Este Procedimiento de Quejas de No Discriminación del Título VI es el proceso mediante el cual la GDC recibe e investiga las quejas de discriminación, al tiempo que garantiza el debido proceso para los demandantes y los demandados. El procedimiento no impide que la GDC intente resolver informalmente las quejas cuando sea posible.

El Título VI/Procedimiento de Quejas contra la Discriminación se aplica a todas las quejas externas de discriminación recibidas por la GDC, presentadas bajo el Título VI de la Ley de Derechos Civiles de 1964 (incluidas las disposiciones relacionadas con las Empresas Comerciales en Desventaja ("DBE") y la Igualdad de Oportunidades en el Empleo ("EEO")); Sección 303 de la Ley de Discriminación por Edad de 1975, según enmendada; Título II de la ADA; así como otras leyes, reglamentos, órdenes ejecutivas y directivas relacionadas como se especifica en este Título VI / Programa de No Discriminación que prohíben la discriminación por motivos de raza, color, religión, sexo, orientación sexual, identidad de género, discapacidad, edad u origen nacional.

Cualquier persona que crea que ha sido discriminada por motivos de raza, credo, color, origen nacional, sexo, estado civil, discapacidad, edad, orientación sexual o nivel de ingresos por parte de la GDC puede presentar una queja del Título VI/No Discriminación completando y enviando el Formulario de Queja del Título VI de la agencia al Director de Derechos Civiles de la GDC. Por lo general, la GDC investiga las quejas recibidas no más de ciento ochenta (180) días después del presunto incidente.

La GDC proporcionará asistencia adecuada a los denunciantes y posibles denunciantes, incluidas aquellas personas con discapacidades y aquellas que tienen una capacidad limitada para comunicarse en inglés o que tienen habilidades limitadas de alfabetización. Dicha asistencia se brindará a aquellos que soliciten ayuda específicamente y a aquellos que parezcan necesitar asistencia en función de su interacción con el personal de la GDC o el sitio web de la GDC. La asistencia se prestará de manera apropiada para la persona, incluso (por ejemplo) con la ayuda de servicios de traducción o tomando la declaración de los demandantes verbalmente.

La GDC procesará las quejas que estén completas. Una vez que se reciba la queja, la GDC la revisará para determinar si nuestra oficina tiene jurisdicción. El demandante recibirá una carta de acuse de recibo informándole si la queja está cubierta por el Título VI/Programa de No Discriminación de la GDC y si la queja será investigada por nuestra oficina (y si no, la razón). La GDC tiene treinta (30) días para investigar la queja. Si se necesita más información para resolver el caso, la GDC puede ponerse en contacto con el denunciante. El denunciante tiene quince (15) días hábiles a partir de la fecha de la carta para enviar la información solicitada al investigador asignado al caso. Si el denunciante no se comunica con el investigador o el investigador no recibe la información adicional en ese plazo, la GDC puede cerrar administrativamente el caso. Un caso también puede cerrarse administrativamente si el demandante ya no desea continuar con su caso. Después de que el investigador revise la queja, se emitirá una de dos cartas al denunciante: una carta de cierre o una carta de hallazgo ("LOF"). Una carta de cierre resume las acusaciones y afirma que no hubo una violación del Título VI y la Política de

No Discriminación y que el caso se cerrará. Un LOF resume las alegaciones y las entrevistas con respecto al presunto incidente, y explica si se tomará alguna medida disciplinaria, capacitación adicional del miembro del personal u otra acción. Si el demandante desea apelar la decisión ante el Director Ejecutivo de la GDC, tiene treinta (30) días después de la fecha de la carta de cierre o la LOF para hacerlo.

Una persona también puede presentar una queja directamente ante el Departamento de Transporte de los EE.UU. comunicándose con el Departamento al:

Departamento de Transporte de EE.UU., Oficina de Derechos Civiles de la Administración Federal de Tránsito: Equipo de Quejas, Edificio Este 5º Piso—TCR, 1200 New Jersey Ave. SE, Washington, DC 20590, o

Oficial de Derechos Civiles, Departamento de Transporte de EE.UU. Administración Federal de Tránsito, Región II One Bowling Green, Sala 429 Nueva York, NY 10004
Correo electrónico: FTACivilRightsCommunications@dot.gov Teléfono: (212) 668-2170
Fax: (212) 668-2136

6 GDC TITLE VI/NONDISCRIMINATION COMPLAINT FORM

Section I

Name:

Address:

Telephone (Home):

Telephone (Work):

Telephone (Cell):

Electronic Mail Address:

Accessible Format Requirements? Large Print Audio Tape TDD Other

Section II

Are you filing this complaint on your own behalf? Yes* No

*If you answered "yes" to this question, go to Section III. If not, please supply the name and relationship of the person for whom you are complaining:

Please explain why you have filed for a third party:

Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party. Yes No

Section III

I believe the discrimination I experienced was based on (check all that apply): Race Color Religion Sex, Sexual Orientation Disability, Age, or National Origin

Date(s) of Alleged Discrimination (Month, Day, Year), including earliest such date(s) and the most recent date(s): _____. Explain as clearly as possible what happened and why you believe you were discriminated against. Describe all persons who were involved. Include the name and contact information of the person(s) who discriminated against you (if known) as well as names and contact information of any witnesses. Please indicate whether the alleged discrimination relates to employment-related issues or not. If more space is needed, please use the back of this form.

Section IV

Have you (or the person allegedly discriminated against) previously filed a Title VI complaint with this agency? Yes No

Section V

Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court? Yes No If yes, check all that apply: Federal Agency: Federal Court State Agency State Court Local Agency

Please provide information about a contact person at the agency/court where the complaint was filed.

Name: Title: Agency: Address: Telephone:

Section VI

If you have an attorney representing you concerning the matters raised in this complaint, please provide the following:

Name/Firm:

Address:

Telephone Number:

Electronic Mail Address:

Section VII

Title VI and other applicable laws prohibit intimidating or retaliating against anyone because they have taken action or participated in an action to secure the rights afforded by such laws, including but not limited to the filing of a complaint pursuant to such laws. If you believe you have been retaliated against (separate from the discrimination alleged in Section III, please explain the circumstances below:

Section VIII

Please list below any persons (witnesses, fellow employees, supervisors or others), if known, whom we may contact for additional information to support or clarify your complaint:

Name	Address	Telephone No.	Email
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Section IX:

What remedy are you seeking for the alleged discrimination?

You may attach any written materials or other information that you think is relevant to your complaint.

Signature and date required below

_____ Signature Date

Please submit this form in person at the address below, or mail this form to: Gateway Development Commission, contact Tracey Mitchell at (929) 696-2596 or via email at, CivilRights@gatewayprogram.org.

Individuals may also file a complaint directly with:
U.S. Department of Transportation
Federal Transit Administration
Office of Civil Rights Complaint Team
East Building, 5th Floor—TCR
1200 New Jersey Ave. SE
Washington, DC 20590

3. TÍTULO VI/FORMULARIO DE DENUNCIA RELACIONADAS A LA NO DISCRIMINACIÓN DE LA GDC

Sección I

Nombre:

Dirección:

Teléfono (Casa):

Teléfono (Trabajo):

Teléfono (Celular):

Dirección de Correo Electrónico:

¿Requisitos de formato accesible? Cinta de Audio Letra Grande TDD Otros

Sección II

¿Está presentando esta queja en su propio nombre? Sí* No

*Si respondió "sí" a esta pregunta, vaya a la Sección III. De lo contrario, proporcione el nombre y la relación de la persona por la que se queja:

Por favor, explique por qué ha presentado la solicitud para un tercero:

Por favor, confirme que ha obtenido el permiso de la parte agraviada si presenta la solicitud en nombre de un tercero. Sí No

Sección III

Creo que la discriminación que experimenté se basó en (marque todo lo que corresponda): Raza Color Religión Sexo, Orientación sexual Discapacidad, Edad u Origen nacional

Fecha(s) de la presunta discriminación (mes, día, año), incluyendo la(s) fecha(s) más temprana(s) y la(s) fecha(s) más reciente(s): _____. Explique lo más claramente posible lo que sucedió y por qué cree que fue discriminado. Describa a todas las personas que estuvieron involucradas. Incluya el nombre y la información de contacto de la(s) persona(s) que lo discriminó (si se conoce), así como los nombres y la información de contacto de los testigos. Sírvanse indicar si la presunta discriminación se relaciona o no con cuestiones relacionadas con el empleo. Si necesita más espacio, utilice el reverso de este formulario.

Sección IV

¿Ha presentado usted (o la persona presuntamente discriminada) una queja del Título VI ante esta agencia? Sí No

Sección V

¿Ha presentado usted esta queja ante alguna otra agencia federal, estatal o local, o ante algún tribunal federal o estatal? Sí No En caso afirmativo, marque todo lo que corresponda: Agencia Federal: Tribunal Federal Agencia Estatal Tribunal Estatal Agencia Local

Sírvase proporcionar información sobre una persona de contacto en la agencia/tribunal donde se presentó la queja.

Nombre: Título: Agencia: Dirección: Teléfono:

Sección VI

Si tiene un abogado que lo represente con respecto a los asuntos planteados en esta queja, proporcione lo siguiente:

Nombre/Firma:

Dirección:

Número de teléfono:

Dirección de correo electrónico:

Sección VII

El Título VI y otras leyes aplicables prohíben intimidar o tomar represalias contra cualquier persona porque haya tomado medidas o participado en una acción para garantizar los derechos otorgados por dichas leyes, incluida, entre otras, la presentación de una queja de conformidad con dichas leyes. Si cree que ha sido objeto de represalias (aparte de la discriminación alegada en la Sección III), por favor explique las circunstancias a continuación:

Sección VIII

Por favor enumere a continuación a las personas (testigos, compañeros de trabajo, supervisores u otros), si se conocen, con las que podemos comunicarnos para obtener información adicional para respaldar o aclarar su queja:

Nombre	Dirección	Nº de teléfono	Correo electrónico
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Section IX:

Qué remedio busca para la presunta discriminación?

Puede adjuntar cualquier material escrito u otra información que considere relevante para su queja.

Firma y fecha requeridas a continuación

_____ Fecha de firma

Por favor, presente este formulario en persona a la dirección que aparece a continuación o envíelo por correo a: Comisión de Desarrollo de Gateway (Gateway Development Commission), contacto: Tracey Mitchell al (929) 696-2596 o por correo electrónico: CivilRights@gatewayprogram.org.

Las personas pueden presentar sus quejas directamente al:

Departamento de Transporte de los EE.UU.
Administración Federal de Tránsito
Oficina de Derechos Civiles-Equipo de Quejas
Edificio Este, 5º Piso—TCR
1200 New Jersey Ave. SE
Washington, DC 2059

7 TITLE VI AND DISCRIMINATION RELATED COMPLAINTS (REQUIRED TABLE)

The FTA requires GDC to maintain a list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with GDC since the time of the last submission of GDC’s Title VI Plan (see Appendix E of FTA Circular 4702.1B). For FTA purposes, this list should include only those matters that pertain to allegations of discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, disability, age or national origin in transit related activities and programs that pertain to the GDC.

As of the date of the adoption of this Policy, GDC has received no Title VI or other discrimination-related complaints.

In the event that any such investigations, complaints or lawsuits are initiated, a list in the format of the following table must be utilized, and updated on a regular basis (at least monthly). The list will be maintained by the GDC Director of Civil Rights and will be used to track such matters. The Director will separately track those matters reportable to the FTA as well as other complaints of discrimination in violation of this Policy.

Date of Latest Update: October 16, 2023

Table 1: Title VI and Discrimination Related Complaints

	DATE RECEIVED	SUMMARY (including basis of complaint)	STATUS	ACTION(S) TAKEN
Investigations				
1.				
2.				
Lawsuits/Administrative Filings				
1.				
2.				
Complaints				
1.				
2.				

Note: per Federal requirements, documentation related to Title VI complaints must be retained for at least three (3) years and documentation concerning ADA-related complaints must be retained for at least one (1) year and summaries of ADA-related complaints must be retained for at least five (5) years; provided that if a longer retention period is required pursuant to GDC document retention guidelines, the longer period will apply.

8 GDC PUBLIC PARTICIPATION PLAN

GDC has developed a Public Participation Plan (“PPP”) to provide guidance on effective practices that ensure proactive public engagement. The PPP establishes goals and objectives, identifies affected communities, focused outreach, meaningful education, diverse communications, comprehensive engagement, meaningful participation, accessibility, reported outcomes, and recordkeeping. The full PPP is provided in Appendix A.

A summary of the public outreach events undertaken for the Hudson Tunnel Project including a summary of comments received is included in Appendix C.

9 GDC'S LANGUAGE ASSISTANCE PLAN/FOUR FACTOR ANALYSIS

GDC is required to maintain a Language Assistance Plan ("LAP") for providing language assistance to persons with Limited English Proficiency ("LEP"), based on the USDOT LEP Guidance. GDC has completed a Four Factor Analysis, the results of which GDC used to determine which language assistance services are appropriate, and to develop an assistance plan to identify the needs of the LEP population(s) it serves.

Additionally, GDC shall update its Four Factor Analysis as based upon new census data as it becomes available. The full LAP is provided in Appendix B.

10 TABLE DEPICTING MEMBERSHIP OF NON-ELECTED COMMITTEES AND COUNCILS

Title 49 CFR Section 21.5(b)(1)(vii) states that a recipient may not, on the grounds of race, color, or national origin, “deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.”

At the time of the adoption of this Policy, GDC does not select the membership of any non-elected committees and councils (and the GDC Board itself is appointed by persons or bodies separate from GDC). In the event that GDC establishes any such committee or council, GDC shall maintain a table depicting the membership of such non-elected committees and councils, broken down by race. Generally, GDC’s process for encouraging participation of minorities in such committees and councils is set forth in its PPP.

11 MONITORING OF SUBRECIPIENTS FOR COMPLIANCE WITH TITLE VI

Title 49 CFR Section 21.9(b) states that if “a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part.”

In accordance with 49 CFR 21.9(b), and to ensure that subrecipients are complying with the USDOT Title VI regulations, primary recipients must monitor their subrecipients for compliance with the regulations. Importantly, if a subrecipient is not in compliance with Title VI requirements, then the primary recipient is also not in compliance.

In order to ensure the primary and subrecipient are in compliance with Title VI requirements, the primary recipient shall undertake the following activities: (1) Document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed route vehicles it operates in peak service if a transit provider. (2) Collect Title VI Programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI Programs may be electronic at the option of the primary recipient. (3) At the request of FTA, in response to a complaint of discrimination, or as otherwise deemed necessary by the primary recipient, the primary recipient shall request that subrecipients who provide transportation services verify that their level and quality of FTA Circular 4702.1B Chap. III-11 service is provided on an equitable basis. Subrecipients that are fixed route transit providers are responsible for reporting as outlined in Chapter IV of this Circular.

At the time of the adoption of this Plan, GDC does not have any subrecipients of Federal financial assistance, and does not plan to engage any such subrecipients at this time. In the event that GDC were in the future to acquire any subrecipients, GDC understands its obligation to monitor these entities to subrecipients for Title VI compliance in accordance with the above-summarized requirements.

12 TITLE VI EQUITY ANALYSIS/CONSTRUCTION OF FACILITIES

Title 49 CFR Section 21.9(b)(3) states, “In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.” Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, “The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.”

For purposes of this requirement, “facilities” does not include bus shelters, as these are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the National Environmental Policy Act of 1969 (“NEPA”) process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc.

In order to comply with the regulations: a. The recipient shall complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site. b. When evaluating locations of facilities, recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result. Analysis should be done at the Census tract or block group where appropriate to ensure that proper perspective is given to localized impacts. c. If the recipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The recipient must show how both tests are met; it is important to understand that in order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less Chap. III-12 FTA C 4702.1B of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

Siting of GDC facilities was analyzed in the NEPA review of the Hudson Tunnel Project (“HTP”). The Federal Railroad Administration (“FRA”) was lead federal agency in this review, and the Final Environmental Impact Statement (“FEIS”)/Record of Decision (“ROD”) was issued jointly by FRA and the FTA in May 2021. The New Jersey Transit Corporation (“NJ TRANSIT”) and the Port Authority of New York and New Jersey (“PANYNJ”) were the joint lead agencies for the FEIS (GDC was not then part of the environmental review, only later taking over the role of project sponsor from PANYNJ).

Chapter 22 of the FEIS¹ addresses the equity analysis undertaken pursuant to the Executive Order 12898 on EJ and the above-cited Federal regulations. As stated in the Summary section of the FEIS, it was determined that the alignment of the Preferred Alternative in New Jersey would be located predominantly in areas within EJ communities. Even considering proposed mitigation measures, Project-related impacts, specifically the adverse effects associated with the construction of the Preferred Alternative primarily related to construction noise, would result in disproportionately high and adverse effects to EJ communities in New Jersey. In New York, while adverse construction impacts would occur in EJ communities, similar or greater adverse construction impacts would also occur in areas that are not EJ communities. Therefore, in New York, the Preferred Alternative would not result in disproportionately high and adverse effects on EJ communities.

Alternate alignments were studied; however, it was determined that “[f]or the HTP, there are no practicable alternatives that would avoid or reduce the disproportionately high and adverse effects.” Further, it was determined that “substantial need exists for the HTP.”²

Mitigation measures were identified³ and will be implemented by GDC in its construction of the project.

GDC recognizes and accepts its obligation to perform such equity analyses as required by the FTA. Siting of GDC facilities was analyzed in the Environmental Impact Statement (“EIS”) completed as part of the NEPA process. Any deviations from such siting decisions, or the identification of new required facilities not previously subject to a Title VI analysis, shall trigger the requirements as summarized above.

¹ Ch. 22 “Indirect and Cumulative Effects” Hudson Tunnel Project Final Environmental Impact Statement (FEIS), <https://hudsontunnelproject.com/feis.html>

² Hudson Tunnel Project Final Environmental Impact Statement (FEIS), Executive Summary, page 31, <https://hudsontunnelproject.com/feis.html>

³ Hudson Tunnel Project Final Environmental Impact Statement (FEIS), Executive Summary, pages S16 - S28, <https://hudsontunnelproject.com/feis.html>

APPENDIX A – PUBLIC PARTICIPATION PLAN (“PPP”)

APPENDIX A
PUBLIC PARTICIPATION PLAN
FOR TITLE VI/NONDISCRIMINATION PROGRAM PLAN

Gateway Development Commission

For
Federal Transit Administration
Office of Civil Rights

October 16, 2023

Version 2.0

Privileged & Confidential/Advisory, Consultative & Deliberative/Proprietary Commercial
and Financial Information

Revision Record

Version	Issue Date	Notes
1.0	September 5, 2023	Initial Draft
2.0	October 16, 2023	Revised to Address Comments Received from FTA

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ACRONYMS

Abbreviation	Definition
ADA	Americans with Disabilities Act
ARC	Access to the Region's Core
CIG	Capital Investment Grants
DEIS	Draft Environmental Impact Statement
EJ	Environmental Justice
ESB	Emergency Services Building
ERY	Eastern Rail Yard
FEIS	Final Environmental Impact Statement
FRA	Federal Railroad Administration
FTA	Federal Transit Authority
GDC	Gateway Development Commission
GDC ACT	Gateway Development Commission Act
GDP	Gross Domestic Product
HTP	Hudson Tunnel Project
HYCC	Hudson Yard Concrete Casing
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LIRR	Long Island Rail Road
NEC	Northeast Corridor
NEPA	National Environmental Policy Act
PANYNJ	Port Authority of New York and New Jersey
PDMS	Project Document Management System
PDP	Project Delivery Partner
PPP	Public Participation Plan
PSNY	Penn Station, New York ("PSNY"), New York
ROD	Record of Decision
SEP	Supporting or Executing Partners
WRY	Western Rail Yard

1 INTRODUCTION

1.1 Public Participation Plan

As part of Title VI federal requirements for recipients receiving federal funding, a Public Participation Plan (“PPP”) is required. A PPP includes information on outreach methods to engage minority and limited English proficiency populations (“LEP”). The PPP is a living document that will be continually evaluated and updated as necessary.

The purpose of this PPP is to guide the outreach methods for the Gateway Development Commission (“GDC”) to ensure all groups have the opportunity to participate in the planning process of the Hudson Tunnel Project (“HTP”). The plan includes proactive strategies, procedures, and desired outcomes to promote engaged public involvement throughout the course of the HTP.

1.2 History and Purpose of the Gateway Development Commission

In July 2019, the States of New York and New Jersey created the Gateway Development Commission (“GDC”) through the enactment of parallel legislation by each state and codified as the Gateway Development Commission Act (“GDC Act”). The GDC Act enables such commission to facilitate a passenger rail project between Penn Station, Newark, New Jersey and Penn Station, New York (“PSNY”), New York.¹

The GDC is a public authority and a government sponsored authority with a seven-member Board of Commissioners that is empowered to facilitate and coordinate activities and encourage the actions of others to effectuate the Gateway Program, in particular, Phase 1 of the Gateway Program.² As part of the Gateway Program, the major passenger rail project that GDC facilitates and oversees is the HTP.

1.3 Hudson Tunnel Project Identification & Summary

1.3.1 Project Identification

The purpose of the HTP is to preserve the current functionality of Amtrak’s Northeast Corridor (“NEC”) service and NJ TRANSIT’s commuter passenger rail service between New Jersey and PSNY by repairing the deteriorating North River Tunnel, and to strengthen the NEC’s resiliency to support reliable service by providing redundant capability under the Hudson River for Amtrak and NJ TRANSIT NEC trains between New Jersey and PSNY.

The HTP, for purposes of this Federal Transit Agency (“FTA”) Capital Investment Grants (“CIG”) New Starts Financial Plan, consists of the following specific elements:

¹ [NY State Assembly Bill 2019-A8126A \(nysenate.gov\)](https://www.nysenate.gov/legislation/bills/2019/A8126A)

² [About the Commission – Gateway Program](#)

1. **Hudson River Tunnel:** Two new surface tracks parallel to the south side of the NEC beginning at a realigned Allied Interlocking in Secaucus, New Jersey just east of NJ TRANSIT's Secaucus Junction Station, in conjunction with a new two-track Hudson River Tunnel, parallel to the North River Tunnel, beneath the Palisades (North Bergen and Union City) and the Hoboken waterfront area, and beneath the Hudson River to connect to the existing tracks in the A Yard west of PSNY.
2. **HYCC – Section 3 LIRR ESB Utility Relocation:** The relocation of the Long Island Rail Road (“LIRR”) Emergency Services Building (“ESB”) utilities out of the future path of the Hudson Yards Concrete Casing (“HYCC”) – Section 3, the third and final concrete casing section for rail right-of-way preservation beneath the extensive overbuild project that is planned to be constructed on a platform above the rail complex in Manhattan (immediately west of PSNY) known as “Hudson Yards.” The new Hudson River Tunnel would make use of the entire HYCC being constructed along the southern edge of the West Side Yard, which consists of the Eastern Rail Yard (“ERY”) and the Western Rail Yard (“WRY”), as divided by Eleventh Avenue. The HYCC-Section 3 is no longer included as part of the HTP New Starts Financial Plan since it is being funded through a Federal Railroad Administration (“FRA”) Mega grant, however, the LIRR ESB Utility Relocation continues to be included as part of the HTP. The HYCC-Section 3, including the LIRR ESB Utility Relocation, is separate and apart from the project presented in the Final Environmental Impact Statement (“FEIS”) prepared for the new Hudson River Tunnel and Rehabilitation of the existing North River Tunnel.
3. **North River Tunnel:** The rehabilitation of the existing North River Tunnel that opened in 1910.

1.3.2 Summary

Upon completion of the HTP, four tracks (two in the new Hudson River Tunnel and two in the North River Tunnel) will be available between New Jersey and New York under the Hudson River, which will allow for operational flexibility and redundancy for Amtrak and NJ TRANSIT rail operations to maintain current capacity levels.

The HTP is critical as it supports commuter rail (public transportation), intercity, regional, and local mobility and associated economic benefits regionally and nationally, provides a more cost-effective transit system due to lower operation and maintenance costs, reduces commuter and intercity rail delays caused by unanticipated events or routine maintenance, and increases on-time performance.

The HTP provides long-term resiliency, reliability, and redundancy to the regional and national rail network and, in doing so, will provide substantial social, economic, and environmental benefits, including:

- Expanding the regional labor market, boosting business productivity, and generating thousands of jobs across the country, with far reaching economic benefits (projected below):

- Over 72,000 direct, indirect, and induced jobs and \$19 billion in economic activity created over the Project's construction period³
- Over an average of \$80 million/month direct spending on materials and labor over the Project's construction period⁴
- Helping ensure economic resiliency of the NEC region, which is home to 17% of the U.S. population and a fifth of Fortune 500 company headquarters and generates one fifth of the national Gross Domestic Product⁵ ("GDP")
- Protecting the movement of people and goods to and from the largest regional economy in the U.S.
- Avoiding additional auto travel traffic, congestion, and car crashes, and
- Increasing infrastructure resilience to mitigate extreme weather event impacts.

1.4 Summary of National Environmental Policy Act ("NEPA") for the HTP

For projects subject to the National Environmental Policy Act of 1969 ("NEPA"), such as the new Hudson River Tunnel and Rehabilitation of the North River Tunnel, the lead agency is responsible for ensuring that the environmental review process is conducted properly and in accordance with all applicable environmental regulations.

A Draft Environmental Impact Statement ("DEIS") for the new Hudson River Tunnel and Rehabilitation of the North River Tunnel was published by FRA in July 2017. On May 28, 2021, a FEIS was issued for this element by FRA and adopted by FTA, and a Record of Decision ("ROD") for this element was jointly issued by FRA and FTA.

For the FEIS, the FRA was the lead Federal agency and NJ TRANSIT and the Port Authority of New York and New Jersey ("PANYNJ") were joint lead agencies. The legislation at 23 USC § 139 directs lead agencies to identify Cooperating and Participating Agencies in their NEPA actions and to maintain an open line of communication with them as a project progresses. A Cooperating Agency is any Federal agency, other than a lead agency, that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposed project or project alternative. Participating Agencies are those Federal, state, or local agencies or Federally recognized tribal governmental organizations with an interest in a project.

As the PANYNJ became a joint lead agency after the public review of the DEIS, its involvement in agency coordination activities did not begin until the development of the FEIS. Prior to PANYNJ becoming a joint lead agency, the PANYNJ served as a

³ Ch. 7 Socioeconomic Conditions," Hudson Tunnel Project Draft Environmental Impact Statement (DEIS), July 2017.

⁴ October 2022 Hudson Tunnel Project Financial Plan calculation of average monthly construction cost from July 2024 notice to proceed through the construction completion of the rehabilitation of the existing North River Tunnel in June 2038.

⁵ "Investing in the Northeast Corridor: Advancing the American Economy," Northeast Corridor Commission, 2016.

Participating Agency in the environmental review. FTA and U.S. Army Corps of Engineers served as Cooperating Agencies in the environmental review.

NJ TRANSIT was responsible for managing the environmental review process. NJ TRANSIT retained AKRF as the Preliminary Design Environmental Management Support Consultant to provide technical assistance related to environmental management, permitting and meeting NEPA requirements. The engineering consultant, GTHP, identified the required permits and provided the technical resources/analysis as needed to support AKRF as it performed the required NEPA reviews/analysis so that an environmental determination could be made.

On October 21, 2022, PANYNJ and the GDC formally notified FRA and FTA that GDC was assuming the role of NEPA Project Sponsor.

2 GOALS AND OBJECTIVES

2.1 Overview of Federal Requirements for Public Participation

Within the FTA Circular 4702.1B, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients", the FTA requires the recipient to establish a public participation plan or process (i.e., the document that explicitly describes the proactive strategies, procedures, and desired outcomes that underpin the recipient's public participation activities).⁶

Public participation is a vital aspect of completing a successful project. GDC welcomes the opportunity to reach and address concerns of communities impacted by the HTP. The FEIS developed in accordance with NEPA identified the impacts of the No Action Alternative and the Preferred Alternative on social, economic, and environmental conditions as well as measures to avoid, minimize, or mitigate impacts. The FRA and FTA identified commitments to provide mitigation for the Hudson Tunnel Project, which are listed in Attachment A of the ROD. As the Project Sponsor, the GDC is responsible for committing to the mitigation measures that would be implemented, as appropriate, during design, construction, and/or following construction.

2.2 Title VI

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs and activities receiving Federal financial assistance. Specifically, Title VI states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (42 U.S.C. Section 2000d).⁷

⁶ [FTA Circular 4702.1B \(dot.gov\)](#)

⁷ [Title VI of the Civil Rights Act of 1964 | FRA \(dot.gov\)](#)

2.3 Build Relationships and Reach Diverse Audiences

Throughout the project, GDC will continue to build relationships with the surrounding impacted communities as well as reach diverse audiences nearby to the project. As identified in Appendix B of GDC's Title VI program plan there are many diverse audiences in the surrounding communities.

2.4 Project Stakeholders

Identifying the range of stakeholder perspectives that should be involved in the project is a key aspect of ensuring that the needs of the surrounding communities are addressed as the HTP moves through its construction phases. During the FEIS process, FRA and NJ TRANSIT conducted a robust outreach effort that included a focused effort to compile a comprehensive mailing list of stakeholders, including elected officials, potentially interested organizations, and owners and residents of properties near the proposed construction staging areas, and to provide multiple forums for those stakeholders to provide input.⁸ The identified stakeholders may continue to be informed of project information during all aspects of the project.

The list of stakeholders comprised of organizations and individuals included on distribution lists from the Access to the Region's Core ("ARC") Project for areas that would also be affected by the HTP. These stakeholders include individuals who signed up for the Project mailing list, individuals who attended and provided address information at public scoping sessions (May 2016) and public information open houses (November 2016). Also, included are the addresses along the HTP alignment and near the proposed construction staging areas in Secaucus, North Bergen, Union City, Weehawken, Hoboken, and New York City.⁹ As this PPP is a living document, GDC will continue to evaluate the stakeholders involved in the HTP to ensure that new stakeholders are privy of information about the project.

Furthermore, GDC will continue to work with local government agencies and elected officials to reduce the impacts of the project on local communities.

2.5 Inform and Educate

Informing and educating the impacted communities is desired by GDC. GDC will provide the public with information to understand the HTP and inform the public of on-going activities in the project area. Project information will be posted through methods described later in the PPP. Most information will be provided both digitally and in print for access by the public.

⁸ [Environmental Justice \(hudsonproject.com\)](https://www.hudsonproject.com/EnvironmentalJustice)

⁹ [Environmental Justice \(hudsonproject.com\)](https://www.hudsonproject.com/EnvironmentalJustice)

2.6 Feedback and Input

GDC will provide opportunity for feedback and input during the HTP. Listed below in this PPP are opportunities in which the public can offer formal and informal comment as well as general inquiries about the Project.

2.7 Involving persons with limited English proficiency (“LEP”)

In Appendix B of the Title VI program plan, a Language Assistance Plan (“LAP”) has been developed for language assistance throughout the project for persons with limited English proficiency (“LEP”). Executive Order 13166, titled *Improving Access to Services for Persons with Limited English Proficiency*, states that differing treatment based upon a person’s inability to speak, read, write, or understand English is a type of national origin discrimination which is covered under Title VI. As defined by Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. The needs for language assistance during the project are determined by the Four Factor Analysis completed in the LAP. In the detailed LAP, it was determined that 20.84% of the impacted populations have LEP.

Throughout the LAP, methods to involve persons with LEP are provided, this includes translated project information materials and language assistance services at public meetings.

2.8 Environmental Justice and Community Engagement

GDC’s public engagement strategies aim to be flexible and robust to solicit meaningful input from Environmental Justice (“EJ”) populations. As identified in the FEIS Section 22.3, most of the New Jersey portions of the project area are home to EJ communities, with high proportions of minority and low-income residents. Additionally, some parts of the New York portion of the project area meet the threshold of environmental justice communities because of their high proportions of minority and low-income residents.¹⁰ Through this identification, community engagement strategies will be tailored to meet the needs of the more adversely affected communities and populations.

2.9 Language Assistance Services

Detailed further in the LAP in Appendix B of the Title VI program plan, GDC will meet the needs of the surrounding communities by providing project meeting materials translation Spanish which is the predominant language other than English that residents of the study area speak at home. Spanish translators may be provided at public meetings, open houses, and other events when determined to be necessary.

¹⁰ [Environmental Justice \(hudsonunnelproject.com\)](http://EnvironmentalJustice(hudsonunnelproject.com))

3 STAYING INFORMED

3.1 Public Meetings, Public Hearings, and Open Houses

3.1.1 Public Meetings

Public meetings are an essential tool to engage community members to solicit feedback during each step of the project. Public meetings are an effective method of public engagement if they are well planned and held at convenient and accessible locations and times. Considerations that GDC may employ to ensure public meetings are successful for the HTP include:

- Evaluating access to the public meeting locations by ensuring accessibility by transit and other modes.
- Organizing informal meetings with community groups and stakeholders prior to official public meetings to drive the success of public outreach and attendance of EJ populations.
- Employing visualization techniques to describe plans at meetings to ensure that members of the public with LEP understand project concepts.
- Providing ample, digital and print notice of the meeting location, time, accessibility, and additional attendance options (i.e., virtual via Zoom, Teams etc.)

GDC may host public information open houses throughout each phase of the HTP as needed to inform the public of project activities.

Public meeting rooms and the outreach centers will be Americans with Disabilities Act (“ADA”) accessible throughout the phases of the HTP.

3.1.2 Public Hearings

Public hearings offer opportunity for the public to provide formal comments on the project. The GDC Act and the GDC Bylaws provide that GDC may hold public hearings “in connection with the budgeting, planning and programming of the Commission”, and the Bylaws provide the process that the Commission must undertake to conduct those hearings. See GDC Bylaws, Sections 5.01 & 5.02.

- GDC is also subject to legislative hearings in accordance with the provisions of the GDC Act, which holds that the Commission, at the request of the Assembly or Senate of the New York state legislature or the General Assembly or Senate of the New Jersey state legislature, may appear before a committee of the requesting state legislative house, upon request by the presiding officer of that state legislative house, to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. The Assembly of the New York state legislature, the Senate of the New York state legislature, the General Assembly of the New Jersey state legislature, and the Senate of the New Jersey state legislature shall each be entitled to two such requests per calendar year.

3.2 Other Meeting Types

Several on-going meetings GDC holds or attends throughout the year include:

- GDC Board Meetings – these meetings include public presentations, resolutions, meeting minutes, notifications, public comment opportunities both in person and online, and an Annual Financial Report as required by the GDC Act. Public portions of meetings of the Board, to the extent practicable and within available funds, shall be live streamed on the Commission’s website or via a third-party platform accessible from a link on the Commission’s website, and posted on the Commission’s website within and for a reasonable time after the meeting. Official policies for GDC Board Meetings are on the Commission’s website.¹¹ Board meeting rooms will be ADA accessible.
- Town Meetings in impacted municipalities – these meetings are hosted by local towns and may include attendance by GDC representatives to provide updates, speeches, presentations, and public testimony on the HTP.
- GDC provides briefings for elected officials (NY, NJ) on construction impacts as the HTP progresses.

3.3 Construction Assistance

3.3.1 Local Project Office and Project Liaison

As part of the FEIS, GDC committed to develop and implement a comprehensive, active, and responsive local community outreach program during construction that will include a staffed local neighborhood outreach office close to each of the project staging areas (in North Bergen and Weehawken in New Jersey and Manhattan, New York). These local neighborhood outreach offices will have at least one staff member per location with additional staffing to increase with project activity. The local neighborhood outreach office will be staffed during business hours and will be assessed as the need and project activity continues. Each office will be at a stationary location throughout all phases of the HTP.

GDC will have a dedicated Project Liaison(s) who will coordinate with the community about construction activities, address concerns, and work with the community to accommodate special events where possible.

3.3.2 Emergency and Construction Complaint Hotline

A 24-hour hotline for emergencies and construction complaints will be provided by GDC. The hotline will be a combination of a staffed phone line and a voicemail box. Emergencies will be responded to promptly by a GDC representative or contractor of GDC. Construction complaints will be responded to in a reasonable amount of time by a GDC representative or contractor of GDC. All calls regarding emergencies and complaints will be logged and responded to as necessary.

¹¹ [Bylaws and Policies of the Gateway Development Commission – Gateway Program](#)

3.4 Digital and/or Printed Outreach Tools

GDC will provide a variety of digital and printed materials that will be made available through various methods including the project website, via email, at public events, the local project office, and other means as determined necessary. Printed materials provide those without internet access the ability to receive project information. These methods are further identified below. The materials will provide necessary information for education of the public regarding the project.

GDC intends to provide publicized notice of public meetings, hearings, and open houses via the project website (gatewayprogram.org) and email invitations. Additionally, on-going communication with stakeholder and public officials will be completed to share notice of events. Notice will be provided ahead of time for the event locations and dates. Through outreach to stakeholders and elected officials, GDC will encourage participation at public meetings by minority and low-income populations.

3.4.1 Website

GDC hosts the Gateway Program website listed below:

- <https://www.gatewayprogram.org/>

The Gateway Program website provides information to the public including press releases, news, resources, contractor information, jobs, project information materials from board meetings (agendas, resolutions, presentations, and public comments), GDC Annual Report, as required by GDC Act. GDC's will provide content that is ADA accessible throughout the project.

The project website will be maintained throughout each phase of the HTP. Additionally, project updates will regularly be posted on the website for the public to view.

3.4.2 Email

All project inquires can be sent to info@gatewayprogram.org throughout each phase of the HTP. This email address will be monitored, recorded, and responded to on a case-by-case basis in a reasonable amount of time by a GDC representative.

3.4.3 Media Outreach

GDC will provide announcements and press releases to media outlets on an as-needed basis. Providing project information to media outlets including local newspapers, radio, and television stations can assist in communication to EJ and LEP populations.

3.4.4 Fact Sheets

GDC has developed several fact sheets to provide important information about the HTP. As the project progresses, GDC will develop additional fact sheets to provide the public with concise information in multiple languages on an as-needed basis.

3.5 Types of Public Comment

3.5.1 Formal Comment

Formal comment periods are available during and after public hearings; GDC is not required to respond to any comment or inquiry during this time. All comments are logged and saved in the Project Document Management System (“PDMS”) in accordance with GDC’s Project Management Plan.

3.5.2 Informal Comment and Project Inquiries

Informal comments or project inquiries are accepted during the life of the HTP and can be sent to info@gatewayprogram.org. Other methods of informal comment include contacting GDC via the 24-hour hotline for emergencies and construction complaints, visiting a project office, interacting on social media, or through regular public information meetings.

3.5.3 Public Comment at Board Meetings

Comments will be accepted at all GDC board meetings. Pursuant to the GDC Open Meetings Policy, all members of the public in attendance at the meeting who have registered a desire to comment will be given the opportunity to comment in a format designated by the Secretary of the Commission. The Secretary of the Commission may establish procedures for comments at each meeting, including, as applicable, setting fixed time allotments for each comment; provided that, the aggregate fixed time allotment for all public comments at a meeting shall be thirty (30) minutes, or another reasonable time as determined by the Co-Chairpersons of the Board or chairperson(s) of such committee. The Commissioners are neither expected nor required to respond during the meeting’s comment period.¹²

3.6 Responding to Comment and Inquiries

3.6.1 Comment Database

All comments will be recorded and stored in GDC’s PDMS. Document control staff, employed directly by GDC, by the Project Delivery Partner (“PDP”), or by Supporting or Executing Partners (“SEPs”) will be tasked with handling all records associated with the HTP.

3.6.2 Response to Comments Received

Response to comments received will be provided on a case-by-case basis in a reasonable amount of time.

¹² <http://www.gatewayprogram.org/wp-content/uploads/2021/08/7-12-21-Amended-Open-Meetings-Policy.pdf>

3.7 Monitoring and Updating the Public Participation Plan

3.7.1 Evaluating Effectiveness of the PPP

GDC will evaluate the effectiveness of the PPP by monitoring and tracking public engagement. GDC may utilize methods such as using web analytics to track website and social media views or reviewing logged comments and inquiries. GDC may engage with communities or groups which have not participated in order to supplement missing engagement.

3.7.2 Updating the Plan

All content in the PPP is subject to review and can be updated as necessary for the HTP. As ways to improve engagement activities are discovered, the plan may be updated to accommodate additional information.

4 CONCLUSION

Public participation is of utmost importance during large transportation infrastructure projects to confirm that all community members have the opportunity to provide input into the project's development. This plan describes the methods that GDC will take to ensure the prescribed requirements in the Title VI regulations are met. As the HTP progresses through each phase of development, GDC may evaluate the plan and make updates as necessary to continue to provide ample opportunity for public engagement.

APPENDIX B – LANGUAGE ASSISTANCE PLAN (“LAP”)

APPENDIX B
LANGUAGE ASSISTANCE PLAN (“LAP”)
FOR TITLE VI/NONDISCRIMINATION PROGRAM PLAN

Gateway Development Commission

For
Federal Transit Administration
Office of Civil Rights

October 16, 2023

Version 2.0

Privileged & Confidential/Advisory, Consultative & Deliberative/Proprietary Commercial
and Financial Information

Revision Record

Version	Issue Date	Notes
1.0	September 5, 2023	Initial Draft
2.0	October 16, 2023	Revised to Address Comments Received from FTA

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ACRONYMS

<u>Abbreviation</u>	<u>Definition</u>
ACS	American Community Survey
EJ	Environmental Justice
FEIS	Final Environmental Impact Statement
FTA	Federal Transit Administration
GDC	Gateway Development Commission
HTP	Hudson Tunnel Project
LAP	Language Assistance Plan
LEP	Limited English Proficiency
NEC	Northeast Corridor
USDOT	United States Department of Transportation

1 OBJECTIVE

This Appendix summarizes the Language Assistance Plan (“LAP”) for Gateway Development Commission (“GDC”). It was prepared in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations, which states that no person shall be subjected to discrimination on the basis of race, color or national origin.

2 PART 1: INTRODUCTION

Executive Order 13166, titled Improving Access to Services for Persons with Limited English Proficiency (“LEP”), states that differing treatment based upon a person’s inability to speak, read, write or understands English is a type of national origin discrimination which is covered under Title VI. It directs each agency (e.g., Federal Transit Administration (“FTA”)) to publish guidance for its respective recipients clarifying their obligation to ensure that such discrimination does not take place. This order applies to all state and local agencies that receive federal funds and extends to its subrecipients.

GDC developed this LAP to help identify reasonable steps for providing language assistance to persons with LEP who wish to access services provided. As defined by Executive Order 13166, LEP persons are those who do not speak English as their primary language and have limited ability to read, speak, write or understand English. This plan outlines how to identify a person who may need language assistance, the ways in which assistance may be provided, staff training that may be required, and notification to LEP persons regarding the availability of assistance.

3 PART 2: FOUR-FACTOR ANALYSIS

3.1 Factor 1: The Number or Proportion of LEP Persons in the Area of Impact

GDC staff reviewed the American Community Survey (“ACS”) 5-Year Estimates (2017 – 2021) for the Study Area Block Groups defined in the Hudson Tunnel Project (“HTP”) Final Environmental Impact Statement (“FEIS”) (also known as the HTP area of impact, for the purposes of this LEP analysis)¹. GDC determined that there are 51,624 people in the area of impact above the age of 5. A total of 10,756 people, or 20.84% of the current total impact area population, have LEP; that is, they speak English less than “very well” (this includes those who speak English “well,” “not well,” and “not at all.”).

¹ Hudson Tunnel Project Final Environmental Impact Statement, Chapter 22: Environmental Justice, “22.2.2.1 Delineation of Study Area,” Pg. 22-3, May 2021.

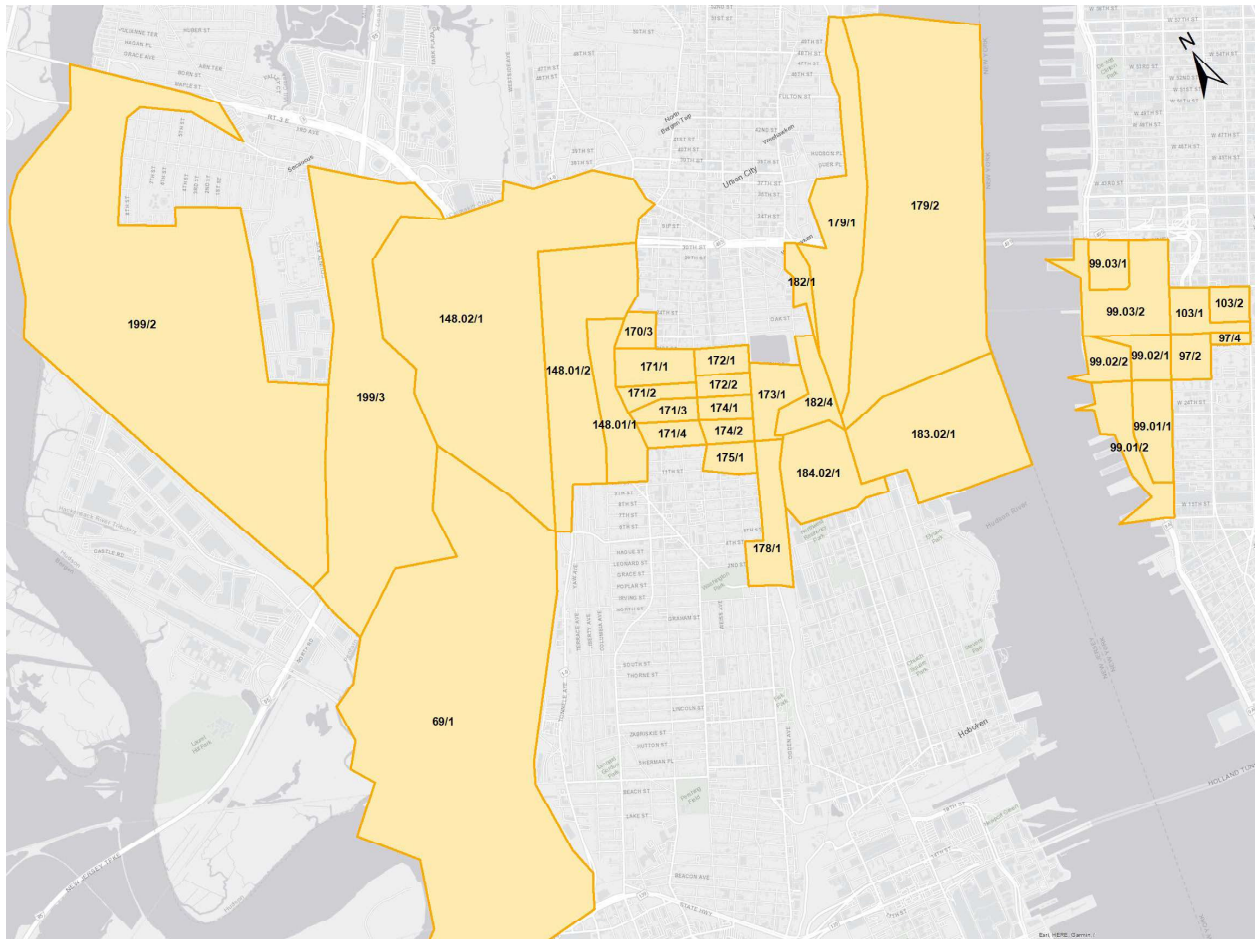


Figure 1: Block Groups in Study Area (2021)

The determination of whether to show an individual language or summarize it into an aggregated category depends chiefly on the size of the population in the United States speaking that language at home. In tabulations, smaller languages are aggregated with other languages in a way that meets a certain population threshold, but has some utility for translators or researchers. The simplest collapse recodes languages other than English into four major language groups: Spanish, Other Indo-European languages, Asian and Pacific Island languages, and other languages.

Table 1 shows LEP populations within these four language groups as a percent of the total population within all the block groups.

Table 1: Percent of LEP individuals in each language category as a percentage of total LEP population

	2017-2021 5-yr estimates	Speak English less than "very well," as a percent of total population
Total Population Over 5	51,624	100%
Total LEP Population (Number of people who have limited English proficiency)	10,756	20.84%
Speak only English TOTAL	22,919	
Speak Spanish TOTAL	19,211	
English: very well	10,803	
English: less than "very well"	8,408	16.29%
Speak other Indo-European languages TOTAL	5,347	
English: very well	4,258	
English: less than "very well"	1,089	2.11%
Speak Asian and Pacific Island languages TOTAL	3,552	
English: very well	2,504	
English: less than "very well"	1,048	2.03%
Speak other languages TOTAL	595	
English: very well	384	
English: less than "very well"	211	0.41%

Source: ACS 2017-2021 5-Year Estimates Detailed Tables, "Age By Language Spoken At Home By Ability To Speak English For The Population 5 Years And Over" (B16004)

Table 2 provides a more specific breakdown of languages spoken by the LEP population in the tracts around the project site. The highlighted categories show the LEP languages that hit either the 1,000-person mark, or 5% of the total population (either of which would qualify the language group as one for which vital documents must be translated, as discussed in Factor Four (4)).

Table 2: Total Population and Breakdown of LEP Individuals by Language Group (Tract-Level Analysis)

	2017-2021 5-yr estimates	Speak English less than "very well" (as a percent of total population)
Total Population over 5	68,271	
Total LEP Population (Number of people who have limited English proficiency)	15,398	22.55%
Spanish:	28,083	
Speak English less than "very well"	12,660	18.54%
French, Haitian, or Cajun:	868	
Speak English less than "very well"	46	0.07%
German, other West Germanic languages:	347	
Speak English less than "very well"	14	0.02%
Russian, Polish, other Slavic languages:	862	
Speak English less than "very well"	179	0.26%
Other Indo-European languages:	3644	
Speak English less than "very well"	952	1.39%
Korean:	409	
Speak English less than "very well"	220	0.32%
Chinese (incl. Mandarin, Cantonese):	2,341	
Speak English less than "very well"	702	1.03%
Vietnamese:	19	
Speak English less than "very well"	19	0.03%
Tagalog (incl. Filipino):	317	
Speak English less than "very well"	7	0.01%
Other Asian & Pacific Island languages:	779	
Speak English less than "very well"	228	0.33%
Arabic:	402	
Speak English less than "very well"	164	0.24%
Other and unspecified languages:	517	
Speak English less than "very well"	207	0.30%

Source: ACS 2017-2021 5-Year Estimates Detailed Tables, "Language Spoken At Home For The Population 5 Years And Over" (C16001)

The block group analysis in Table 1 found that, in addition to Spanish, two other language groups (“Asian and Pacific Island languages” and “Other Indo-European languages”) have LEP populations above 1,000, meaning they require vital document translation. These are broad categories and more specific language data is unavailable for the Study Area Block Groups, so based off this analysis alone, GDC was unable to determine what languages other than Spanish require translation of vital documents. However, as specific language data is collected at the Tract level, GDC conducted a Tract-level analysis to identify the languages within these groups. The Tract-level analysis, which is larger than the Study Area in both geography and population, found that there is no single language other than Spanish with an LEP population above 1,000, nor a language that has an LEP population of 5% or more of the total population.

3.2 Factor 2: Frequency of Contact with LEP Persons

The primary locations where the public may encounter GDC are as follows:

- Main Office and Telephone Line
- GDC Website (gatewayprogram.org)
 - The internet has become the dominant medium for people seeking general information about GDC. The gatewayprogram.org website includes language translation options.
- Public meetings
- Construction offices

To date, no written correspondence regarding LEP has been received. No internet inquiries or social media inquiries have been received.

3.3 Factor 3: Nature and Importance of the Program, Activity, or Service to LEP

GDC is responsible for delivering the HTP, which will improve reliability, resiliency, and redundancy for hundreds of thousands of daily NJ TRANSIT and Amtrak Northeast Corridor (“NEC”) passengers. Individuals in the project area, including LEP individuals, are likely to be impacted by construction activities, therefore, GDC will ensure reasonable accessibility to all programs, services, and activities consistent with USDOT guidance with a focus on individuals within the project area.

3.4 Factor 4: Resources Available and Costs Associated with Providing Language Services

GDC reviewed its available resources that could be used to provide LEP assistance and inventoried its documents to determine which are suitable for translation if the need arises. GDC reviewed 2017-2021 ACS data and identified the primary languages spoken in the area of impact. At a minimum, vital documents will be translated into Spanish.

3.4.1 Safe Harbor

A “safe harbor” means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations under Title VI. The failure to provide written translations under the circumstances outlined below does not mean there is noncompliance. Rather these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

According to USDOT LEP guidance, the following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

- (a) The DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or one-thousand (1,000), whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than fifty (50) persons in a language group that reaches the 5% trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

Based on analysis of 2017-2021 5-year ACS data, Spanish meets requirement (a) of the Safe Harbor Rule. Two other major language groups, Asian and Pacific Island languages and Other Indo-European languages, meet requirement (a) at the Block Group-level analysis. However, when looking at the Tract-level data to understand what languages within these major groups are represented, no individual language meets the Safe Harbor threshold.

4 PART 3: LIMITED ENGLISH PROFICIENCY PLAN

GDC examined the 2017 -2021 ACS data and identified primary languages spoken within its service area. Spanish is the most predominant language spoken in the service area by LEP persons. The following are examples of GDC initiatives to provide access to services and programs for LEP individuals in the GDC area of impact.

4.1 Translation of Vital Documents

Based on LEP guidance, a document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. GDC considers the following to be vital documents:

- Civil rights complaint forms
- Title VI Program documents
- Notices of availability of language assistance

4.2 Identifying LEP Individuals Who Need Language Assistance

- GDC will keep records of persons with whom GDC has come into contact with that required language assistance.
- GDC will proactively seek information from public and private agencies about their experience with people with Limited English Proficiency.

4.3 Language Assistance Measures

GDC's selection of the following procedures is based on scope of services that it will provide and the limited geography that potential construction impacts will include.

- Provide enhanced language translation capabilities on the GDC's website at gatewayprogram.org
- Provide information on gatewayprogram.org website on options for where to obtain community language assistance.
- Translate information on how to receive language assistance on public meeting and project communication documents (Spanish only).
- Notify the public that with advanced notice of seven calendar days, GDC may provide interpreter services at public meetings, including language translation and signage for the hearing impaired.
- GDC will utilize translation services and verbal interpretation.
- The Census Bureau "I-speak" Language Identification Card will be distributed to all employees that may potentially encounter LEP individuals.
- GDC's Title VI webpage will be published in Spanish.
- Publications of GDC's vital documents will be made available on GDC's website in Spanish, as well as other languages with two weeks' notice. GDC considers the vital documents to be the Title VI Program, Title VI complaint procedures, and information on language assistance.

4.4 LEP Complaint Procedures

Complaints of discrimination involving LEP, Title VI, and related statutes will be investigated using the Title VI complaint procedures and form described in the Title VI Plan.

4.5 Monitoring and Updating the LEP Plan

This plan is subject to revision based on the changes in demographics as reported by the U.S. Census and any future Environmental Justice ("EJ") analyses conducted by GDC. It is viewed as a work in progress and will be updated every three years, and reviewed

annually. GDC will also use self-reported information from public meeting sign-in sheets during LEP Plan updates. The LAP will be examined and updated based on the following:

- How the needs of LEP persons have been addressed
- Whether local language assistance programs have been effective and sufficient to meet the needs of LEP persons
- Whether GDC's financial resources are sufficient to fund language assistance resources
- Whether complaints have been received concerning GDC's failure to meet the needs of LEP individuals

4.6 GDC Staff Training

GDC staff will receive training on the requirements for providing meaningful access to services for LEP persons. GDC employees will be trained or made aware of the Title VI and LAP policies and complaint procedures through regular staff training. Key staff with the higher potential to interact with LEP persons will receive in-depth training on their roles and responsibilities related to LEP persons.

4.7 LEP Plan Access

A copy of the LAP document can be requested at GDC's central office during normal business hours and GDC will make the plan available on the website at gatewayprogram.org. Any person or agency may also request a copy by contacting: Tracey Mitchell at (929) 696-2596 or via email at CivilRights@gatewayprogram.org.

APPENDIX C – GDC PUBLIC OUTREACH AND COMMENTS RECEIVED

APPENDIX C
GDC PUBLIC OUTREACH AND COMMENTS
RECEIVED FOR TITLE VI/NONDISCRIMINATION
PROGRAM PLAN

Gateway Development Commission

For
Federal Transit Administration
Office of Civil Rights

October 16, 2023
Version 2.0

Revision Record

Version	Issue Date	Notes
1.0	October 04, 2023	Initial Draft
2.0	October 16, 2023	Revised to Address Comments Received from FTA

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ACRONYMS

Abbreviation	Definition
ADA	Americans with Disabilities Act
CEO	Chief Operating Officer
DBE	Disadvantaged Business Enterprise
EEO	Equal Employment Opportunity
EIS	Environmental Impact Statement
EJ	Environmental Justice
FEIS	Final Environmental Impact Statement
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
GDC	Gateway Development Commission
LAP	Language Assistance Plan
LEP	Limited English Proficiency
LOF	Letter of Finding
NEPA	National Environmental Policy Act
NJ TRANSIT	New Jersey Transit Corporation
PANYNJ	Port Authority of New York and New Jersey
PPP	Public Participation Plan
ROD	Record of Decision
USDOT	United States Department of Transportation

1 PUBLIC INVOLVEMENT (HUDSON TUNNEL PROJECT (“HTP”) FINAL ENVIRONMENTAL IMPACT STATEMENT (“FEIS”) CHAPTER 25)

Section 1 that follows, is an excerpt from HTP FEIS, [Chapter 25: Process, Agency Coordination, and Public Involvement](#).

During preparation of the DEIS and FEIS, FRA, NJ TRANSIT, and, as appropriate, the PANYNJ informed and solicited early and continued feedback from the public; encouraged open discussion of Project details and issues; and provided opportunities for comments and questions. In addition to providing a schedule of Project milestones on the Permitting Dashboard for Federal Infrastructure Projects (www.permits.performance.gov), FRA and NJ TRANSIT used the Project website, meeting flyers, and mail notices to publicize all public meetings, public hearings, and open houses. The flyers were in English and Spanish (due to the presence of large Spanish speaking communities in the vicinity of the Project area), and were mailed or emailed to the Project mailing list.

FRA and NJ TRANSIT also distributed flyers to libraries and community centers. In addition, meetings have been advertised in area newspapers (in English, with Spanish ads in corresponding local area papers) and on the Project website. FRA and NJ TRANSIT conducted a robust outreach effort that included a focused effort to compile a comprehensive mailing list of stakeholders, including elected officials, potentially interested organizations, and owners and residents of properties near the proposed construction staging areas, and to provide multiple forums for those stakeholders to provide input.

The list of stakeholders comprised organizations and individuals included on distribution lists from an earlier trans-Hudson rail project, the Access to the Region’s Core (ARC) Project, for areas that would also be affected by the Hudson Tunnel Project; individuals who signed up for the Project mailing list; individuals who attended and provided address information at public scoping sessions (May 2016) and public information open houses (November 2016) for the Project; and addresses along the Project alignment and near the proposed construction staging areas in Secaucus, North Bergen, Union City, Weehawken, Hoboken, and New York City. As the DEIS and FEIS were prepared, the Project mailing list was continually updated to incorporate individuals and organizations who commented or expressed interest in the Project.

Project outreach efforts included:

- A Project website (www.hudsonstunnelproject.com) with a library of Project documents for public review, additional information on the Project, and a means for providing comments and requesting further information.

- Fact sheets published at major Project milestones that were made available on the Project website and sent to the Project mailing list. These included Fact Sheet 1 (spring 2016), which provided a Project overview; Fact Sheet 2 (fall 2016) summarizing the scoping process and comments received, Fact Sheet 3 (fall 2016) presenting the Preferred Alternative, and Fact Sheet 4 (summer 2017) providing a Project update, information on construction methodologies, and information about the public comment period and public hearings. These were published in English and in Spanish (due to the presence of large Spanish-speaking communities in the vicinity of the Project area).
- Public meetings during the public scoping period, after announcement of the Preferred Alternative, and during the DEIS comment period. FRA and NJ TRANSIT used the Project website, meeting flyers, and email notices to the Project mailing list to publicize all public meetings, public hearings, and open houses. The flyers were in English and Spanish (due to the presence of large Spanish-speaking communities in the vicinity of the Project area), and were mailed or emailed to the Project mailing list. FRA and NJ TRANSIT also distributed flyers to libraries and community centers. Flyers and meeting notices were sent out at least two weeks in advance of meetings. In addition, meetings were advertised in area newspapers (in English, with Spanish ads in corresponding local area papers) and on the Project website.
- Targeted community meetings to provide additional outreach to specifically affected groups, including owners of property near the Project site and residents of neighborhoods close to the construction sites, including environmental justice communities in New Jersey

In addition, representatives of local communities in New Jersey requested that FRA and NJ TRANSIT coordinate directly with local government agencies and elected officials to reduce the impacts of the Project on their communities. They also requested that the local community be involved in developing mitigation for the Project's impacts. As a result, FRA and NJ TRANSIT met with representatives of the local communities and other stakeholders during development of the DEIS, during the public comment period for the DEIS, and after the comment period during development of the FEIS to clarify their concerns, review the impacts of the Preferred Alternative on those communities, and develop measures to reduce and avoid those impacts (see Table 1, below). After completion of the DEIS, to address concerns raised by local communities, FRA and NJ TRANSIT, working with the other Project Partners, evaluated alternative methods for constructing the Preferred Alternative and have incorporated modifications to the construction methods into the Project that will reduce the construction impacts to local residents associated with the Project. During coordination meetings, elected officials and members of the public proposed ideas for mitigation of Project impacts on their communities, and FRA and NJ TRANSIT considered these ideas when developing

mitigation proposed in the DEIS and the FEIS and incorporated many of them into the Project commitments that will be documented in the ROD.

Table 1: Public Involvement Meetings

Meeting	Date
Public Scoping meetings (in New York and New Jersey)	May 17, 2016: NY May 19, 2016: NJ
Public meetings on Preferred Alternative selection (in New York and New Jersey)	November 10, 2016 November 17, 2016
Project briefing with City of Hoboken Mayor and staff	January 10, 2017
Public meetings for owners of properties above tunnel alignment in New Jersey	March 7, 2017 March 9, 2017
Project briefing for Weehawken residents	July 27, 2017
DEIS public hearings (in New York and New Jersey)	August 1, 2017: NY August 3, 2017: NJ August 10, 2017: NJ
Project briefing with Township of Weehawken officials	August 29, 2017
Project briefing with Township of Weehawken officials	October 30, 2017
Project briefing with Township of North Bergen officials	November 8, 2017
Project Briefing with Township of Weehawken Mayor and staff	December 14, 2017
Project Briefing with Township of Weehawken Mayor and staff	January 11, 2018
Project briefing for Weehawken and Hoboken residents	January 18, 2018
Project briefing for North Bergen residents	January 30, 2018

2 COMMENTS RECEIVED

During the fall 2016 public meetings about the Preferred Alternative, approximately 30 written comments were received during and following the November 2016 (through January 2017) public open houses related to the Preferred Alternative, via comment sheets at the open houses, via the Project’s website (www.hudsonunnelproject.com), and via email to the FRA and NJ TRANSIT. The comments are summarized in Appendix 2 of the FEIS on the project website (www.hudsonunnelproject.com/feis.html)

As part of the EIS process there were 235 comments submitted regarding the DEIS and Draft Section 4(f) Evaluation of the Hudson Tunnel Project. These comments and response to comments are included in Chapter 28 of the FEIS on the project website (www.hudsonunnelproject.com/feis.html). This comment period was open from July 17, 2017, to August 21, 2017.

3 BOARD MEETINGS

GDC holds several Board Meetings which are open to the public throughout the year. Table 2 below presents the past Board Meeting dates with links to GDC’s website containing meeting materials, minutes, and public comments received.

Table 2: GDC Board Meeting Dates and Meeting Materials Links

Date	Time	Meeting Materials
September 11, 2023	12:00 P.M.	Agenda
		Overview Presentation
		Final Meeting Minutes
		Public Comments Received
		Archived Video Meeting
May 2, 2023	12:00 P.M.	Agenda
		Overview Presentation
		Final Meeting Minutes
		Archived Meeting Video
		Public Comments Received
December 12, 2022	1:00 P.M.	Meeting Agenda
		Overview Presentation
		Final Meeting Minutes

		Archived Meeting Video
		Public Comments Received
November 18, 2022	12:00 P.M.	Meeting Agenda
		Overview Presentation
		Final Meeting Minutes
		Proposed GDC Fiscal Year 2023 Operating and Capital Budgets
		Archived Meeting Video
		Public Comments Received
September 13, 2022	12:00 P.M.	Meeting Agenda
		Overview Presentation
		Final Meeting Minutes
		Archived Meeting Video
		Public Comments Received
July 19, 2022	12:00 P.M.	Meeting Agenda
		Overview Presentation
		Final Meeting Minutes
		Archived Meeting Video
May 16, 2022	12:00 P.M.	Meeting Agenda
		Overview Presentation
		Final Meeting Minutes
		Archived Meeting Video
		Public Comments Received
		Press Conference Audio
November 16, 2021	10:30 A.M.	Meeting Agenda
		Final Meeting Minutes
		Public Comments Received
		Overview Presentation

		Archived Meeting Video
		Press Conference Audio
July 12, 2021	3:00 P.M.	Meeting Agenda
		Final Meeting Minutes
		Public Comments Received
		Overview Presentation
		Archived Meeting Video #1 (Intro/Exec Session)
		Archived Meeting Video #2 (Public Session)
		Press Conference Audio
May 12, 2021	2:00 P.M.	Meeting Agenda
		Final Meeting Minutes
		Public Comments Received
		Overview Presentation
		Archived Meeting Video
		Press Conference Audio
March 5, 2021	1:00 P.M.	Meeting Agenda
		Final Meeting Minutes
		Public Comments Received
		Overview Presentation
		Archived Meeting Video
May 28, 2020*	1:00 P.M.	Agenda
		Public Comments
		2018 Financial Statements
		2019 Financial Statements
		Board Update Presentation
July 22, 2019*	11:00 A.M.	Agenda
		Meeting Video

		Board Update Presentation
		Resolution – Engineering Services Contract Amendment
		Resolution – Project Counsel
		Approved Meeting Minutes
April 2, 2019*	11:00 A.M.	Agenda
		Meeting Video
		Board Update Presentation
		Resolution – Designation of Officers & Delegation of Authority
		Resolution – Geotechnical Borings Program Phase II
		Approved Meeting Minutes
February 22, 2019*	11:00 A.M.	Agenda
		Meeting Video
		Board Update Presentation
		Approved Meeting Minutes
November 29, 2018*	11:00 A.M.	Agenda
		Approved Meeting Minutes
		Presentation: Program Update
		Presentation: Historical Context
		Meeting Video
September 28, 2018*	11:00 A.M.	Agenda
		Approved Meeting Minutes
		Board Update Presentation
		Board Resolution – Financial Advisor
		Board Resolution – Policies
		Conflicts of Interest and Code of Ethics

		Open Meetings and Transparency
		Open Records
		Trustee Reimbursement
		Workplace Violence
		Computer Use and Security
		Anti-Harassment
		Equal Employment Opportunity Policy Prohibiting Discrimination and Harassment
		Disability and Accommodation
		Meeting Video
July 10, 2018*	10:00 A.M.	Agenda
		Approved Meeting Minutes
		Presentation by the Interim Executive Director
		Board Resolution – Portal North Bridge Financial Plan
		NEW: Meeting Video
June 15, 2018*	10:00 A.M.	Agenda
		Presentation by the Interim Executive Director
		Board Resolution – RFP for Financial Advisor
		NEW: Meeting Video
		Meeting Minutes
May 18, 2018*	10:00 A.M.	Agenda
		Presentation by the Interim Executive Director
		Board Resolution – Endorsement of HYCC Utility Relocation
		Board Resolution – Election of Treasurer
		Board Resolution – Authorization of Funding Agreements
		Meeting Minutes

March 16, 2018*	10:00 A.M.	Agenda
		Presentation by the Interim Executive Director
		Meeting Minutes
March 14, 2018*	3:00 P.M.	Meeting Notice
		Agenda
		Meeting Minutes
January 18, 2018*	10:00 A.M.	Agenda
		Presentation by the Interim Executive Director
		Meeting Minutes
December 21, 2017*	11:00 A.M.	Agenda
		2017 GDC Milestones
		Presentation by the Interim Executive Director
		Meeting Minutes
November 14, 2017*	11:00 A.M.	Agenda
		Presentation by the Interim Executive Director
		Meeting Minutes
October 20, 2017*	10:00 A.M.	Meeting Notice
		Agenda
		Meeting Minutes
September 15, 2017*	1:00 P.M.	Agenda
		Meeting Minutes
		Presentation by the Interim Executive Director
		GDC comments on Federal Transit Administration's Notice of Proposed Rulemaking regarding Private Investment Project Procedures
September 7, 2017*	2:30 P.M.	Meeting Notice
		Agenda

		Meeting Minutes
August 10, 2017*	12:00 P.M.	Agenda
		Presentation by the Interim Executive Director
June 1, 2017*	1:00 P.M.	Agenda
		Meeting minutes
		Presentation by the Interim Executive Director
		Board Resolution – Outside Counsel
		Board Resolution – Hudson Tunnel Project Request for Information
		Board Resolution – Portal Bridge Financing
April 11, 2017*	12:00 P.M.	Agenda
		Meeting minutes
		Presentation by the Interim Executive Director
		Board Resolution – Executive Director Search Firm
		Board Resolution – GDC Operating Funds
January 12, 2017*	1:00 P.M.	Agenda
		Meeting minutes
		Presentation by the Interim Executive Director
		Board Resolution – Emerging Projects Agreement Authorization

*Denotes a meeting held by the Gateway Program Development Corporation, the predecessor to the Gateway Development Commission.

4 DBE OUTREACH EVENTS

Table 3 below presents the Disadvantaged Business Enterprise (“DBE”) outreach events GDC has hosted, or participated in.

Table 3: DBE Outreach Events with GDC Participation

Event Name	Date	Event Summary
Representative Payne Roundtable with Deputy Transportation Secretary Polly Trottenberg	February 18, 2022	GDC participated in discussions for improving minority and women-owned business participation in federal transportation projects.
Representative Payne Minority Business Participation Roundtable with Secretary Buttigieg	May 26, 2022	GDC participated in discussions on diversity in federal transportation contracting, and opportunities for minority-owned construction businesses in the construction of the new Hudson Tunnel Project of the Gateway Program.
Representative Payne Build America Roundtable	February 15, 2023	The event included panel with federal government representatives and GDC's partners and had over 250 participants, including 48 from Disadvantaged Business Enterprises (DBEs).
Contract Packaging & DBE Networking Forum	April 26, 2023	The event included a panel of GDC staff and consultants where the updated contract packaging strategy was presented. Over 280 participants, including 50 from DBEs, attended.
Federal Railroad Administration's COMTO Rail Forum	June 8, 2023	Virtual conference attended by minority businesses discussing current and upcoming contracting opportunities available via GDC as well as other rail entities.

29th Annual Competitive Edge Conference	July 18, 2023	GDC participated on a panel (Futuristic Innovations: Unveiling Energy/Transportation Infrastructure Opportunities)
Manhattan Tunnel Contract & DBE Networking Forum (GDC-Led Event)	July 25, 2023	Held at the Museum of Jewish Heritage. The Manhattan Tunnel project was presented, including DBE networking with Prime firms. Extensive Q&A session led by GDC.
Hudson County, AACNJ, Statewide Hispanic Chamber of Commerce of NJ	October 17, 2023	Hudson River Ground Stabilization (HRGS) and Delivery Partner (DP) short-listed firms and DBE briefing and networking event.

5 COMMUNITY MEETINGS

Table 4 below presents the community meetings GDC has participated in nearby to the Hudson Tunnel Project (“HTP”) area.

Table 4: Community Meeting with GDC Participation

Date	Community Meeting
December 7, 2022	Weehawken Hudson Tunnel Project Community Meeting
April 18, 2023	Union City Property Owners Community Meeting
May 10, 2023	N. Bergen Property Owners Community Meeting