

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

February 16, 2024

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 10:00 AM.

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

Co-Chair Glen noted that the Commission was continuing to solicit virtual comments, and that a form for soliciting these comments was posted on the Gateway 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. Report on Minutes of the December 11, 2023 Meeting

Acting Secretary Caulfield reported that copies of the Minutes of the meeting of December 11, 2023 were delivered in electronic form by Acting Secretary Caulfield to the Governors of New York and New Jersey on December 14, 2023 and that the time for action by the Governors of New York and New Jersey expired at midnight on December 29, 2023, at which time the actions recorded in the Minutes went into full force and effect.

III. Gateway Program Update

The Commission's Chief Executive Officer, Kris Kolluri, provided updates on the Gateway Development Commission, and progress with the Hudson Tunnel Project, including progress of construction with respect to the HYCC-3 and Tonnelle Avenue contracts, the contract award for the Hudson River Ground Stabilization ("HRGS") project, and updates on the Palisades Tunnel, Manhattan Tunnel and Delivery Partner procurements. Jim Morrison, Chief Technical Officer, participated in the presentation with respect to the technical aspects of the HRGS. Anthony Gardner, Senior Director of Procurement, also participated in the presentation to provide updates on the procurements for the

Delivery Partner, Palisades Tunnel and Manhattan Tunnel. Patrick McCoy, Acting Chief Financial Officer, presented an update on the Financial Plan for the HTP that was submitted on January 31, 2024.

Following the presentation, Co-Chair Glen thanked Mr. Kolluri and the rest of the Gateway staff for the update, and asked if there were any questions or comments from the Board. Co-Chair Glen asked about the timing of the potential authorization of the second phase of HRGS, and Mr. Kolluri noted that today’s authorization was related to the contract award and to proceed with Phase One of HRGS. Mr. Kolluri noted that authorization for the second phase of HRGS would be timed to the Full Funding Grant Agreement and this would be expected to be presented to the Board later this year.

IV. Public Comments

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

There were two (2) written comments received by 5:00 PM on Thursday, February 15, 2024:

Commenter	Topic
Samira Ayati, Ivy Engineering Group PLLC	None
Isabel Molina, NJ League of Conservation Voters	Gateway Development Project

Co-Chair Glen noted that all written comments received on February 15, 2024 before the meeting were distributed to the Board, posted on the Gateway Program website, and would be filed in the Commission’s records after the meeting. Gateway did not receive any additional written comments on the day of the Board Meeting.

The following individuals provided in-person public comments during the December 11, 2023 Board Meeting:

Commenter	Topic
Joseph Fiordaliso, ACEC NJ	Support for HRGS Board Resolutions
Sophie Cappello, Regional Plan Association/Build Gateway Now Coalition	Support for Hudson Tunnel Project
Chad Purkey, Association for a Better New York (ABNY)	Support for Hudson Tunnel Project

V. Action Items

#0224-01: Establishing the Gateway Development Commission’s Annual Board Meeting Schedule for calendar year 2024

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

#0224-02: Authorization of award of contract GDC24-004-HTP, performance of expert professional design-build services for the Hudson River Ground Stabilization Project

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

#0224-03: Approval of Market Case Estimate for the Hudson River Ground Stabilization Project

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

#0224-04: Delegation of authority to Chief Executive Officer in connection with employee benefit plans

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 Co-Chair Grewal-Virk seconded the motion. The roll call vote is referenced in the attached Resolution.

#0224-05: Approval of past costs pursuant to capital funding agreement with National Railroad Passenger Corporation and authorization of amendment to capital funding agreement

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

#0224-06: Hudson Tunnel Project - authorization of Second Amendment of the Project Development Agreement

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

VI. Executive Session

Co-Chair Glen stated that the Board would enter Executive Session to discuss contract negotiations, personnel matters, and matters in which the release of information could impair a right to receive funds from the United States. Co-Chair Glen noted that the Board would reconvene the public meeting for the purpose of adjourning the meeting and no further business would be conducted. Co-Chair Glen motioned to enter into Executive Session, Co-Chair Grewal-Virk seconded the motion, and the motion was unanimously adopted at approximately 10:40 AM.

VII. Reconvening of Public Meeting

The public meeting was reconvened by Co-Chair Glen at approximately 12:00 PM. Acting Secretary Caulfield confirmed that there was a quorum of Commissioners present.

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 Co-Chair Glen and seconded by Co-Chair Grewal Virk, the meeting was adjourned at approximately 12:05 PM.

Respectfully submitted,

/s/ Edmund Caulfield
Edmund Caulfield, Acting Secretary

#0224-01: ESTABLISHING THE GATEWAY DEVELOPMENT COMMISSION'S ANNUAL BOARD MEETING SCHEDULE FOR CALENDAR YEAR 2024

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

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

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

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

In accordance with Section IV of the Commission's Open Meetings Policy, the Commission desires to adopt the annual Board meeting schedule for calendar year 2024, as further detailed in 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, in accordance with Section IV(B)(1) of the Commission's Open Meetings Policy, the Commission hereby adopts the annual Board meeting schedule for calendar year 2024, as attached hereto as Exhibit A

EXHIBIT A SCHEDULE OF BOARD MEETINGS AND LOCATIONS

New Jersey	New York
<p>Unless otherwise indicated in public notices to be issued in accordance with the GDC Act, the regular meetings of the Gateway Development Commission’s Board of Commissioners will be held in-person at the NJ Transit Board Room at 1 Penn Plaza East, 9th Floor, Newark, New Jersey, and live streamed via www.gatewayprogram.org on the following dates:</p> <p>February 28, 2024 June 27, 2024 November 13, 2024 December 12, 2024</p>	<p>Unless otherwise indicated in public notices to be issued in accordance with the GDC Act, the regular meetings of the Gateway Development Commission’s Board of Commissioners will be held in-person at the Port Authority Board Room at 4 World Trade Center, 23rd Floor, New York, New York, and live streamed via www.gatewayprogram.org on the following dates:</p> <p>February 16, 2024 April 16, 2024 July 16, 2024 September 24, 2024</p>

**#0224-02: AUTHORIZATION OF AWARD OF CONTRACT GDC24-004-HTP,
PERFORMANCE OF EXPERT PROFESSIONAL DESIGN-BUILD SERVICES FOR
THE HUDSON RIVER GROUND STABILIZATION PROJECT**

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 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, New Jersey, New York, the National Railroad Passenger Corporation ("**Amtrak**"), and GDC (collectively, 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 HTP has been organized into certain work packages, which may be updated or changed from time-to-time. The Hudson River Ground Stabilization project (the "**HRGS Project**") is a critical early work package of the HTP, to be performed primarily pursuant to a design-build contract for ground stabilization of the river bed in the Hudson River, that includes the construction of a test section cofferdam, production containment system, and certain improvements within the cofferdam for future connection to the Manhattan tunnel. The HRGS Project will be located under the Hudson River entirely on the New York side.

The HRGS Project is divided into two phases. Phase One of the Project will be performed from March 2024 to September 2024 and includes surveying, design and construction of the test cofferdam. Phase Two will be performed from October 2024 to April 2027 and includes the design and construction of remaining work related to the HRGS Project.

Staff propose to advance Phase One at this time through the issuance of a limited notice to proceed to the selected design-build contractor and the performance of related professional services, and return to the Board, as may be required, to authorize Phase Two. Since funding will be needed prior to the availability of federal grant funding, Phase One of the HRGS Project will be funded from monies to be received by GDC under the Amtrak Capital Funding Agreement, which was previously approved by the GDC Board of Commissioners on December 11, 2023 via Resolution #1223-03, in addition to other funding the GDC Board of Commissioners has previously authorized, including through the GDC Fiscal Year 2024 Annual Operating and Capital Budget.

In May of 2023, a Request for Qualifications was issued by GDC soliciting Statements of Qualifications (SOQ) from entities interested in designing and constructing the HRGS Project. SOQs were submitted by Weeks Marine, Inc., Walsh-Traylor Bros. and Cashman-Trevi Icos Joint Venture. On October 12, 2023, GDC issued a federally compliant Request for Proposals to the short-listed firms to provide design and construction services. Proposals were received from two (2) responsive and responsible firms: Weeks-Marine, Inc. and Cashman Trevi Icos Joint Venture. The proposals were reviewed by an Evaluation Panel consisting of technical experts and representatives of GDC, the State of New York, NJ TRANSIT, the Port Authority of New York and New Jersey, and Amtrak. The Evaluation Panel selected Weeks-Marine, Inc. through a competitive evaluation of technical and price proposals (together, with the Contract Documents issued as part of the RFP process, referred to as “**Contract GDC24-004-HTP**”).

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 enter into Contract GDC24-004-HTP with Weeks Marine, Inc., at the Contract Price of \$284,000,000 and further authorizing an additional amount equal to five percent (5%) of the Contract Price for contingencies.

RESOLVED, that the GDC Chief Executive Officer is authorized to issue a limited notice to proceed for Phase One of Contract GDC24-004-HTP, for an amount not to exceed \$100,000,000, subject to the availability of funds, and take any and all other actions consistent with this resolution, and to make, execute, and deliver in the name and on behalf of GDC, Contract GDC24-004-HTP, and to take all other steps necessary to comply with the terms and conditions of Contract GDC24-004-HTP.

RESOLVED, that the GDC Chief Executive Officer is authorized, within the total authorized amount for Phase One of Contract GDC24-004-HTP, in accordance with the terms of this Resolution, to take all procurement actions necessary to effectuate the Phase One work that is the subject of Contract GDC24-004-HTP, and take any other actions that may be required to effectuate and enforce the terms of Contract GDC24-004-HTP.

#0224-03: APPROVAL OF MARKET CASE ESTIMATE FOR THE HUDSON RIVER GROUND STABILIZATION PROJECT

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

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

On February 3, 2023, New Jersey, New York, the National Railroad Passenger Corporation ("**Amtrak**"), and the Gateway Development Commission ("**GDC**") (collectively, 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 HTP has been organized into certain work packages, which may be updated or changed from time-to-time. The Hudson River Ground Stabilization Project (the "**HRGS Project**") is a critical early component of the HTP and involves the ground stabilization and design build of a test section cofferdam, production containment system and ground improvement within the cofferdam. The HRGS Project will be located under the Hudson River on the New York side and represents the early action work leading to the new Hudson River tunnel.

Subject to the approval of the GDC Board of Commissioners, GDC staff have calculated the Market Case Estimate for the HRGS Project based on bid pricing in accordance with the terms of the PDA. The Market Case Estimate is \$337,513,505 and includes all final negotiated costs and contingencies related to the construction and delivery of the HRGS Project. Phase One of the Project will be performed from March 2024 to September 2024

and includes surveying, design and construction of the test cofferdam. Phase Two will be performed from October 2024 to April 2027 and includes the design and construction of remaining work related to the HRGS Project.

Since funding will be needed prior to the availability of federal grant funding, Phase One of the HRGS Project will be funded from monies to be received by GDC under the Amtrak Capital Funding Agreement, which was previously approved by the GDC Board of Commissioners on December 11, 2023 via Resolution #1223-03, in addition to other funding the GDC Board of Commissioners has previously authorized, including through the GDC Fiscal Year 2024 Annual Operating and Capital Budget. Phase Two of the HRGS Project is to be funded from monies anticipated to be received by GDC through the Full Funding Grant Agreement together with local contributions through Railroad Rehabilitation and Improvement Financing (“RRIF”) loan agreements, which funding agreements are anticipated to be entered into with the Federal Transit Administration and the Build America Bureau respectively.

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 approves the attached Market Case Estimate for the HRGS Project.

EXHIBIT A

MARKET CASE ESTIMATE

Hudson River Ground Stabilization Project

(“HRGS Project”)

Market Case Estimate for HRGS Project	Estimate (\$M)
Professional Services and Design Build Agreement	\$323,313,505
Contingency for Design-Build Agreement	\$14,200,000
HRGS Project Market Case Estimate	\$337,513,505

0224-04: DELEGATION OF AUTHORITY TO CHIEF EXECUTIVE OFFICER IN CONNECTION WITH EMPLOYEE BENEFIT PLANS

On May 16, 2022, the Gateway Development Commission (“**GDC**” or “**Commission**”) Board of Commissioners approved a Resolution that authorized the service of Kris Kolluri as the Chief Executive Officer (“**CEO**”) of GDC, and further authorized the Co-Chairs and Vice Chair of GDC to negotiate the terms of service with Mr. Kolluri and report back to the full Board once those terms were finalized. At the July 19, 2022 GDC Board Meeting, the Co-Chairs and Vice Chair reported in public that they had finalized terms of service with Mr. Kolluri.

On September 13, 2022, the GDC Board of Commissioners approved a Resolution delegating to the office of the CEO the responsibility and authority to act with respect to any and all matters referenced therein.

The GDC Act (the “**GDC Act**”) holds that the officers of GDC shall include a CEO among other officers. See N.J.S.A. 32:36-4(b); 2019 N.Y. Laws Ch. 108, Section 2(3)(g)

Section 3.01 of the Bylaws of the Commission adopted on March 5, 2021 (and amended on July 12, 2021) include the CEO as an initial officer of the Commission. Specifically, the Bylaws provide that the CEO has the following duties:

The Chief Executive Officer shall manage the operations of the Commission in accordance with the Commission’s policies as established by the Board and these Bylaws. The Chief Executive Officer may prepare proposals for presentation to the Board that carry out approved policies and may propose policies to the Board for adoption. The Chief Executive Officer is authorized to determine and prescribe the duties of new and existing positions and the qualifications for appointments to such positions and make and terminate appointments to the Commission staff and shall hold staff responsible and accountable for making financial, management and operational decisions in accordance with the policies established by the Board. To assist in the performance of his or her duties, the Chief Executive Officer is authorized to retain outside advisors in accordance with policies established by the Board.

Section 3.06 of the Bylaws provides that “the 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.”

It is the intention of the Board that in order to enable the efficient and timely effectuation of the Gateway Program, in particular the Hudson Tunnel Project, it is necessary to delegate to the CEO the authority to take categories of actions in addition to those delegated to the CEO in the Bylaws.

The Board authorized the GDC’s Final Annual Operating and Capital Budget for Fiscal Year 2024 on December 11, 2023 via Resolution #1223-01, and this adopted budget allocated funds

to support the various benefit plans that will be afforded to GDC Employees during Fiscal Year 2024.

Further, it is the intention of the Board that employees of the GDC be provided with a range of employee benefits in order to attract and retain qualified individuals to ensure the efficient and timely effectuation of the Hudson Tunnel Project consistent with the annual budgets approved by the Board.

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 until the termination of this delegation by subsequent resolution of the Board, the Board additionally delegates to the office of the CEO the responsibility and authority to act with respect to any and all matters below. These shall be in addition to any other responsibility or authority conferred by the Bylaws or any resolution heretofore or hereafter adopted by the Board:

1. Authorize, approve, create, amend, manage, administer, and terminate employee benefit plans and programs upon such terms as the CEO may deem proper, including, but not limited to, retirement programs under Sections 401(a) and 457(b) or other sections of the Internal Revenue Code (the "**Code**"), and/or plans established under Section 125 or other sections of the Code, which may or may not include flexible spending accounts, health savings accounts, pre-tax premium plans, or health reimbursement accounts, and any other retirement or welfare plan or program that the CEO deems advisable for employees of GDC consistent with each annual budget approved by the Board (collectively, "**Employee Benefit Plans**") and to enter into or execute any such agreements or other documents on behalf of GDC in connection with Employee Benefit Programs.
2. Delegate, in writing, the authority to authorize, approve, create, amend, manage, and/or terminate any aspect of Employee Benefit Plans to other officers or employees of the Commission provided that the CEO provides notice in writing to the Co-Chairs and Vice Chair of the Board of such delegation.
3. On behalf of GDC, the CEO and/or CEO's designee may enter into and execute any agreements and other documents on behalf of GDC in connection with Employee Benefit Plans in their discretion, including but not limited to, administrative service agreements, recordkeeping agreements, and investment election and/or management agreements.
4. Authority to settle all claims by or against GDC arising out of Employment Benefit Plans where the total payment or amount of the claim is not in excess of \$500,000. Claims by GDC shall include claims against the Employee Benefit Plans and/or their fiduciaries and/or employees performing services on behalf of the Employee Benefit Plan. Claims against GDC shall include claims against individuals for which GDC would be responsible under Article VII of GDC's Bylaws ("**Defense and Indemnification of Individuals**") provided, however, that in the case of claims against individuals for which GDC would be

responsible under said Article VII which are covered by insurance purchased by or on behalf of such individuals, GDC shall pay such claims only to the extent that they are in excess of the amount for which insurance carriers are responsible.

5. Report to the Board on a regular basis all significant actions the CEO or CEO's designee has taken under this delegation of authority (including, but not limited to, initiation or settlement of any claims arising out of Employee Benefit Plans, establishment and execution of any Employee Benefit Plan to be sponsored by GDC, or termination of any Employee Benefit Plan sponsored by GDC).

#0224-05: APPROVAL OF PAST COSTS PURSUANT TO CAPITAL FUNDING AGREEMENT WITH NATIONAL RAILROAD PASSENGER CORPORATION AND AUTHORIZATION OF AMENDMENT TO CAPITAL FUNDING AGREEMENT

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

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

Accordingly, on February 3, 2023, New Jersey, New York, the National Railroad Passenger Corporation ("**Amtrak**"), and GDC (collectively, 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**").

Pursuant to the PDA, and in accordance with the authority provided by the GDC Board of Commissioners in Resolution #1223-03, GDC entered into the Capital Funding Agreement between National Railroad Passenger Corporation and Gateway Development Commission (the "**Amtrak Capital Funding Agreement**") to facilitate Amtrak's commitment to fund a portion of the delivery of the HTP. In accordance with the Amtrak Capital Funding Agreement, attached hereto as **Exhibit A** are joint recommendations executed by Amtrak, New York, and New Jersey, regarding approval of Amtrak Past Costs (as that term is defined in the Capital Funding Agreement) incurred on or before September 30, 2023.

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 \$509,957,721 in Amtrak pasts costs are hereby approved, which shall be credited towards Amtrak's overall contribution to the HTP pursuant to the Amtrak Capital Funding Agreement by that amount.

RESOLVED, that the GDC Chief Executive Officer is authorized to take any and all actions consistent with this resolution, including to negotiate, authorize, and approve any amendments that may be required to the Amtrak Capital Funding Agreement and to enter into or execute the same on behalf of GDC, and to take all other steps necessary to comply with the terms and conditions of this Resolution.


Exhibit A

Joint Recommendation on Amtrak Past Costs Incurred Prior to October 21, 2022

Pursuant to Section 3(a)(i) of the Capital Funding Agreement, dated as of January 16, 2024, between National Railroad Passenger Corporation (“Amtrak”) and Gateway Development Commission (“GDC”) (the “Capital Funding Agreement”), the State of New Jersey (“New Jersey”) and the State of New York (“New York”) hereby submit this joint recommendation to the GDC Board of Commissioners (the “GDC Board”) regarding approval of Amtrak Past Costs, as that term is defined in the Capital Funding Agreement, incurred prior to October 21, 2022. This recommendation has been prepared in consultation with Amtrak.

New Jersey and New York have reviewed the expenditures report of verified and eligible Amtrak Past Costs provided by Amtrak on December 1, 2023, along with supporting records and data, and jointly recommend that, pursuant to the Capital Funding Agreement, the GDC Board approve \$460,512,222 in Amtrak Past Costs incurred prior to October 21, 2022.

STATE OF NEW JERSEY

By: 

Diane Gutierrez-Scaccetti
Chief of Staff

STATE OF NEW YORK

By: _____
[Insert Name]
[Insert Title]

Dated: January 26, 2024

Joint Recommendation on Amtrak Past Costs Incurred Prior to October 21, 2022

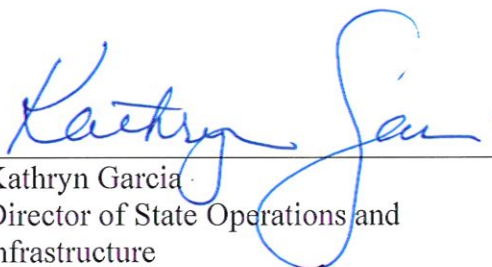
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New Jersey and New York have reviewed the expenditures report of verified and eligible Amtrak Past Costs provided by Amtrak on December 1, 2023, along with supporting records and data, and jointly recommend that, pursuant to the Capital Funding Agreement, the GDC Board approve \$460,512,222 in Amtrak Past Costs incurred prior to October 21, 2022.

STATE OF NEW JERSEY

By: _____

STATE OF NEW YORK

By:  _____
Kathryn Garcia
Director of State Operations and
Infrastructure


Dated: January 29, 2024

**Joint Recommendation on Amtrak Past Costs Incurred
Between October 21, 2022 and September 30, 2023**

Pursuant to Section 3(a)(ii) of the Capital Funding Agreement, dated as of January 16, 2024, between National Railroad Passenger Corporation (“Amtrak”) and Gateway Development Commission (“GDC”) (the “Capital Funding Agreement”), the State of New Jersey (“New Jersey”), the State of New York (“New York”), and Amtrak hereby submit this joint recommendation to the GDC Board of Commissioners (the “GDC Board”) regarding approval of Amtrak Past Costs, as that term is defined in the Capital Funding Agreement, incurred between October 21, 2022 and September 30, 2023.

New Jersey, New York, and Amtrak have reviewed the GDC Chief Executive Officer’s recommendation for approval of verified and eligible Amtrak Past Costs provided on December 29, 2023, and jointly recommend that, pursuant to the Capital Funding Agreement, the GDC Board approve \$49,445,499 in Amtrak Past Costs incurred between October 21, 2022 and September 30, 2023.

STATE OF NEW JERSEY

By: 

Diane Gutierrez-Scaccetti
Chief of Staff

STATE OF NEW YORK

By: _____
[Insert Name]
[Insert Title]

**NATIONAL RAILROAD PASSENGER
CORPORATION**

By: _____
[Insert Name]
[Insert Title]

Dated: January 26, 2024

**Joint Recommendation on Amtrak Past Costs Incurred
Between October 21, 2022 and September 30, 2023**

Pursuant to Section 3(a)(ii) of the Capital Funding Agreement, dated as of January 16, 2024, between National Railroad Passenger Corporation (“Amtrak”) and Gateway Development Commission (“GDC”) (the “Capital Funding Agreement”), the State of New Jersey (“New Jersey”), the State of New York (“New York”), and Amtrak hereby submit this joint recommendation to the GDC Board of Commissioners (the “GDC Board”) regarding approval of Amtrak Past Costs, as that term is defined in the Capital Funding Agreement, incurred between October 21, 2022 and September 30, 2023.

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STATE OF NEW JERSEY

By: _____

STATE OF NEW YORK

By:  _____
Kathryn Garcia
Director of State Operations and
Infrastructure

**NATIONAL RAILROAD PASSENGER
CORPORATION**

By: _____

Dated: January 30, 2024

**Joint Recommendation on Amtrak Past Costs Incurred
Between October 21, 2022 and September 30, 2023**

Pursuant to Section 3(a)(ii) of the Capital Funding Agreement, dated as of January 16, 2024, between National Railroad Passenger Corporation (“Amtrak”) and Gateway Development Commission (“GDC”) (the “Capital Funding Agreement”), the State of New Jersey (“New Jersey”), the State of New York (“New York”), and Amtrak hereby submit this joint recommendation to the GDC Board of Commissioners (the “GDC Board”) regarding approval of Amtrak Past Costs, as that term is defined in the Capital Funding Agreement, incurred between October 21, 2022 and September 30, 2023.

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STATE OF NEW JERSEY

By: _____
[Insert Name]
[Insert Title]

STATE OF NEW YORK

By: _____
[Insert Name]
[Insert Title]

**NATIONAL RAILROAD PASSENGER
CORPORATION**



By: _____
Tracie A. Winbigler
Executive Vice President,
Business Transformation & CFO

Dated: January 30, 2024

#0224-06: HUDSON TUNNEL PROJECT — AUTHORIZATION OF SECOND AMENDMENT OF THE PROJECT DEVELOPMENT AGREEMENT

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

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

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

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

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

Authorization to amend the PDA was approved by the GDC Board on May 2, 2023 via Resolution #0523-04, and Amendment No. 1 to the PDA was fully executed by the Parties effective May 24, 2023.

Pursuant to Section 19.07(c) of the PDA, the GDC Board may vote to amend the PDA after consultation by the GDC CEO with the Senior Project Coordination Committee (“SPCC”). The GDC CEO consulted with the SPCC on February 8, 2024 regarding amending the PDA to include two new sub-sections. A copy of **PDA Amendment No. 2** is attached hereto as **Exhibit A**.

Section 14.01(d)(ii) is amended to provide that, after dissolution of GDC: (i) proposed “incidental use” requests must also be submitted to the Federal Rail Administration (“FRA”) (in addition to Federal Transit Administration (“FTA”)), if required; and (ii) profits from incidental uses (after reimbursement of related costs) be restricted to fund operation, maintenance and capital renewal of the North River Tunnel, Hudson River Tunnel, East River Tunnels and Penn Station New York, and such use of profits be applied to reduce in equal amounts the aggregate monthly operating charges or baseline capital charges assessed to each of the Metropolitan Transportation Authority, NJ TRANSIT, and Amtrak with respect to such assets in accordance with the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy.

Section 14.01(d)(iii) is added and provides for the following: (i) the establishment of a process for Amtrak to seek approval from GDC, or if dissolved, from New York and New Jersey, and FTA and/or FRA if required, for the development, sale, or other disposition of Block 675, Lot 1 in Manhattan (the “Georgetown Property”) for any purpose not directly related to the HTP (a “675 Transaction”); (ii) after applicable approval and subject to any FTA and/or FRA conditions, the distribution of any proceeds derived (after accounting for the reimbursement of costs to secure and support the 675 Transaction) in equal amounts to New York, New Jersey, and Amtrak for any use permitted by law, or otherwise applied as the parties may agree; and (iii) at the request of any such party, the recording of an instrument to provide record notice of the rights of the parties under the PDA with respect to the Georgetown Property.

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 approves PDA Amendment No. 2 as set forth in **Exhibit A**.

EXHIBIT A
PDA AMENDMENT NO. 2

EXECUTION VERSION

Subject to the Approval of the GDC Board of Commissioners

**AMENDMENT NO. 2 TO PROJECT DEVELOPMENT AGREEMENT FOR HUDSON
TUNNEL PROJECT**

This Amendment No. 2 to the Project Development Agreement for Hudson Tunnel Project (“**PDA**”), dated as of [●], 2024 (the “**Amendment**”), is made among Gateway Development Commission (“**GDC**”), the State of New Jersey (“**New Jersey**”), the State of New York (“**New York**”), and National Railroad Passenger Corporation (“**Amtrak**”). GDC, New Jersey, New York, and Amtrak are collectively referred to herein as “**Parties**” or in the singular each as “**Party**” as the context requires.

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

WHEREAS, the Parties entered into Amendment No. 1 to the PDA (“**PDA Amendment No. 1**”), which was effective as of May 24, 2023; and

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

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

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

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

2. *Amendment to the PDA.* As of the Effective Date (defined below), Section 14.01(d) of the PDA is hereby amended by deleting Section 14.01(d)(ii) and replacing it with the following new Section 14.01(d)(ii) and inserting a new Section 14.01(d)(iii):

“(ii) After dissolution of GDC, Amtrak shall submit any requests for approval of an Incidental Use to the FTA and/or FRA as may be required by FTA and/or FRA. If the FTA and/or FRA, as applicable, approve the Incidental Use, then, subject to any applicable FTA and/or FRA requirements and conditions regarding the use of proceeds from HTP assets, Amtrak shall install or otherwise proceed with such Incidental Use, and any profits derived therefrom, after accounting for the reimbursement of costs to secure and support such Incidental Use, shall be restricted to use for operation and maintenance and capital renewal of the North River Tunnel, Hudson River Tunnel, East River Tunnels and Penn Station New York, and such use of profits shall be applied to reduce in equal amounts the aggregate Monthly Operating Charges assessed to each of the Metropolitan Transportation Authority, NJ TRANSIT, and Amtrak with respect to such assets in

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Subject to the Approval of the GDC Board of Commissioners

accordance with the then-effective Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy (the “**NECC Policy**”) or successor policy; provided that if such profits exceed the aggregate Monthly Operating Charges assessed to any such operator with respect to such assets, then the balance shall be applied to reduce in equal amounts the aggregate Baseline Capital Charges assessed to each such operator with respect to such assets. For the purpose of this subsection (ii), the terms “Monthly Operating Charges” and “Baseline Capital Charges” shall have the meanings assigned thereto in the NECC Policy.

(iii) Except for any purpose directly related to the construction, operation or maintenance of the HTP (“**Excluded Uses**”), if at any time Amtrak seeks to develop, pursue a joint development, sell or dispose of any portion of, sell or transfer any development rights or air rights, lease, license or permit another grant of use, mortgage, lien or otherwise encumber, use for any income-producing purpose, or use for any purpose not directly related to construction, operation, or maintenance of the HTP, or effect any similar transaction with any third party, in each case with respect to Manhattan Block 675, Lot 1 (each, a “**675 Transaction**”), Amtrak must first obtain the approval of GDC. If GDC has been dissolved at the time Amtrak is pursuing such 675 Transaction, then Amtrak must first obtain the approval of New York and New Jersey. If such 675 Transaction is approved by GDC, or New York and New Jersey in the event of GDC’s dissolution, Amtrak shall, if required pursuant to relevant law, submit a request for approval of the 675 Transaction to the FTA and/or FRA. If the FTA and/or FRA approve such 675 Transaction, then, subject to FTA and/or FRA requirements and conditions regarding the use of proceeds from property acquired in connection with a federally-supported project, Amtrak shall enter into such 675 Transaction, and any proceeds derived therefrom, after accounting for the reimbursement of costs reasonably approved in writing by GDC, or New York and New Jersey in the event of dissolution of GDC, to secure and support such 675 Transaction, shall be distributed in equal amounts to New York, New Jersey, and Amtrak for any use permitted by relevant law, or otherwise applied as may be agreed by New York, New Jersey and Amtrak. At the request of New York, New Jersey or Amtrak, the Parties shall cooperate to record a memorandum of PDA or other instrument providing record notice of the existence of the rights set forth in this Section 14.01(d)(iii). For avoidance of doubt, Amtrak’s granting a required mortgage to FRA pursuant to Section 19.05(b), any commuter easement required by Section 7.02(e), and any Incidental Uses under Section 14.01(d)(i), shall each be deemed Excluded Uses and not 675 Transactions.”

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Subject to the Approval of the GDC Board of Commissioners

3. *Amendment to the PDA.* As of the Effective Date, Section 19.13 of the PDA is hereby amended by inserting at the end of such Section the following new Section 19.13(h):

“Section 14.01 (Post-Construction Ownership and Responsibilities).”

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