



City Council

Finance Sub-Committee

36 Court Street
Springfield, MA 01103
<http://www.springfieldcityhall.com>

~ Agenda ~

Gladys Oyola-Lopez
413-787-6096

Monday, March 7, 2022

5:30 PM

Virtual Meeting (Zoom)

I. Call to Order

5:30 PM Meeting called to order on March 7, 2022 at Virtual Meeting (Zoom) , Virtual Meeting, N/A, NA.

II. Public Portion

III. Orders

1. Order (ID # 6641)

January Revenue Vs. Expenditure Report

ATTACHMENTS:

- January Revenue Vs. Expenditure Report-1 (PDF)

2. Order (ID # 6642)

Law Department Expense Report - January

ATTACHMENTS:

- January City Council Report - Law Dept (PDF)

3. Order (ID # 6644)

FY22 Shannon CSI Grant - In-Kind Match Required - \$1,201,514.08

ATTACHMENTS:

- Shannon FY22 Grant Request Setup Form (PDF)

4. Order (ID # 6643)

Police Department Donation - \$412

ATTACHMENTS:

- THUNDERBIRD DONATION (PDF)

5. Order (ID # 6638)

Order Approving a Contract Over 3 Years for Five-Year Copier Lease (ITD)

ATTACHMENTS:

- CAFO Cert - IT Five-Year Lease Xerox (PDF)

6. Order (ID # 6649)

Order Approving the CPC Recommendation to Fund the Historic Homes Rehabilitation Program

7. Order (ID # 6662)

Free Cash to 13-31 Elm Street Project - \$6,500,000

ATTACHMENTS:

- CAFO Cert - Free Cash - Court Square (PDF)

8. Order (ID # 6663)

Budget Transfer Across Departments - \$103,000

FINANCIAL IMPACT:

Budget Transfer Across Departments - \$103,000

ATTACHMENTS:

- CAFO Cert Transfer Parks 3.2.22 (DOCX)

9. Order (ID # 6664)

Budget Transfer Across Departments - \$243,000

FINANCIAL IMPACT:

Budget Transfer Across Departments - \$243,000

ATTACHMENTS:

- CAFO Cert Transfer Facilities 3.2.22 (PDF)

10. Order (ID # 6665)

Order Accepting \$3 Million from the National Passenger Railroad Corporation (AMTRAK) and Approving the Execution of a Memorandum of Understanding Agreement and a Real Estate License Agreement with National Passenger Railroad Corporation

CITY OF SPRINGFIELD

In the City Council March 7, 2022

WHEREAS, the National Passenger Railroad Corporation (“Amtrak”) owns and maintains certain railroad tracks and maintains the associated right-of-way which tracks cross State Street, a City-owned and maintained public roadway, at-grade, at Mile Post 61.22 (“State Street Crossing”); and

WHEREAS, the City and Amtrak have been working in cooperation to facilitate public safety and access improvements to Riverfront Park and the State Street Crossing; and

WHEREAS, the City and Amtrak desire to enter into a Memorandum of Understanding Agreement and Real Estate License Agreement relative to providing increased security and safety for the entrance to Riverfront Park, wherein Amtrak will provide the City with three million dollars (\$3,000,000.00) to conduct certain improvements to the northern underpass entrance, and wherein the Parties agree to terms of maintenance and emergency access to State Street Crossing; and

NOW THEREFORE, BE IT ORDERED, that the City Council of the City of Springfield with the approval of the Mayor hereby accepts three million dollars (\$3,000,000.00) from Amtrak for improvements to the northern entrance to Riverfront Park, and further approves the execution of a Memorandum of Understanding Agreement and Real Estate License Agreement with Amtrak, memorializing the terms of funding for the project, in substantially the same form as the attached documents.

DRAFT

**MASTER AGREEMENT
BETWEEN
THE NATIONAL RAILROAD PASSENGER CORPORATON,
AND
THE CITY OF SPRINGFIELD, MASSACHUSETTS
FOR THE IMPROVEMENT OF THE MAIN ENTRANCE TO RIVERFRONT PARK**

This Agreement, made this ____ day of _____, 2021, is between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 et seq. and the laws of the District of Columbia, having its principal place of business at 1 Massachusetts Avenue N.W., Washington, DC 20001 (“Amtrak”), and the City of Springfield, Massachusetts (“City”, or “Springfield”), an incorporated municipality and political subdivision of the

Commonwealth of Massachusetts (hereinafter collectively referred to as the “Parties”).

WHEREAS Amtrak owns and maintains certain railroad tracks and associated right-of-way located within the City; and

WHEREAS such tracks cross State Street, a City-owned and maintained public roadway at an at-grade crossing at mile post 61.22; and

WHEREAS, the Parties agree that due to the proximity of Riverfront Park to the State Street crossing, and due to the increasing amount of rail traffic on the Amtrak right of way, unfettered public access across the tracks at the existing State Street crossing must be curtailed in order to protect the public safety; and

WHEREAS, the Parties have identified that the existing undergrade crossing of the Amtrak right of way at mile post 61.28, approximately 300 feet north of State Street (“Main Entrance”) will be a more appropriate and safer pedestrian and vehicular entrance for Riverfront Park; and

WHEREAS, the Main Entrance is currently not compliant with the provisions of the American Disability Act; and

WHEREAS, the Parties agree that they will work together to design and construct the changes to the Main Entrance necessary to make it fully compliant with all applicable accessibility laws (the “Project”); and

WHEREAS, in order to safely integrate Amtrak’s operations with the Project, the City requests: Amtrak services, which may include but are not limited to design review, railroad protective services, and railroad construction services (the “Services”), as well as access to Amtrak property for the design, construction, installation, inspection and maintenance of the Project; and

WHEREAS, Amtrak is willing to provide such Services in accordance with the terms set forth herein in this Master Agreement; and

WHEREAS, the Services provided by Amtrak under this Agreement are ongoing and will be identified in each Project Initiation (PI) form, attached hereto as Exhibit A; and

WHEREAS, the Parties also seek to clarify the ownership rights and responsibilities at State Street crossing, they intend to execute new Real Property documents relating to that parcel simultaneously with this Agreement.

NOW THEREFORE for and in consideration of the premises and the mutual covenants herein contained, and with the intent to be legally bound hereby, the Parties agree as follows:

ARTICLE I PROJECT SERVICES

The Services will consist of several project-specific tasks to be completed during the term of this Agreement which will require assistance from Amtrak. For each Service, Amtrak and the City will complete and sign at least one PI form in which the scope and schedule will be defined for Services.

A. Design Phase Services**1. Amtrak Services:**

Amtrak shall provide the following preliminary engineering services for the City during the design phase of the Project as agreed to by the Parties under each Project and as specified in the applicable PI or Change Order (“CO”) form as described herein:

- a) Review the City’s plans, specifications and estimates;
- b) Perform site inspections;
- c) Attend meetings, including limited and advisory role in the selection of Consultant and Construction Contractor;
- d) Provide flagging and protection of railroad traffic as may be necessary;
- e) Prepare cost estimates for Amtrak’s services during the construction phase of the Project;
- f) Perform environmental reviews, if necessary; and
- g) Provide such additional services as may be agreed upon by the Parties.

These services are referred to collectively as the “PE Services.”

2. (a) Review of Documents:

The City shall submit all plans, specifications, and estimates, hereinafter referred to as “Documents” relating to the Project to Amtrak for review and approval, and shall submit all schedules for Amtrak review and comment. The City shall submit all Documents to Amtrak pursuant to the Submission of Documents process described herein. The City agrees that Amtrak shall have a minimum of thirty (30) working days to review any Documents. Subject to the provisions of Article II Section 2 herein, Amtrak agrees that it will to review all Documents within sixty (60) working days of its receipt of such Documents. If Amtrak fails to complete said review within sixty (60) days, the City may proceed at its own risk without Amtrak approval. The City agrees to incorporate all of Amtrak’s comments related to Amtrak right of way or Amtrak owed assets into the final design plans for the Project.

(b) Submission of Documents.

1. Amtrak review of the Project shall be initiated by the City’s submission of a completed PI to Amtrak for its review and approval. Each PI will include as applicable: a scope of work description of the Services requested by the City; all Documents, including: project schedule (setting forth the amount of time required for the projected design and construction phases of and completion of the Project); project-specific plans, specifications or other submittals; and any special terms or conditions as approved by the Parties.

2. The Parties agree that each Project shall be governed by the terms of this Agreement, and that the special terms or conditions of a PI, if any, may specifically modify or waive specific provisions of this Agreement. However, such modifications or waivers apply only to that specific PI. If there is a conflict between the provisions of this Agreement and the special terms or conditions of a PI, the special terms or conditions of the PI will be controlling for that PI only.

3. The City shall identify each PI with a unique number.

4. To be effective, the PI must be signed by the following individuals or by authorized representatives specifically designated in writing by the following: for the City, by its Director of Public Works, Director of Park Buildings and Recreation management, or City Engineer, and for Amtrak, by its Chief Engineer. No Services shall be performed until Amtrak's receipt of a fully executed PI. Should the PI also require FHWA or any other similar approvals, it shall be the sole responsibility of the City to procure such approvals prior to submission to Amtrak. A fully-executed PI shall constitute a notice to Amtrak to proceed with the Services and shall constitute a commitment on the part of the City to pay Amtrak for those Services in accordance with the provisions of the PI and this Agreement.
5. Modification to any term of a PI shall be made only upon the written submission to Amtrak and execution by both Parties of a Change Order ("CO") Form. A copy of the CO form to be utilized is attached hereto as Exhibit B.

3. Insurance:

- (a) Each of the City's Consultants or any of its sub consultants who perform design or engineering functions in support of the Project shall provide and maintain in force during the course of the Project, at no cost to Amtrak, professional liability insurance covering the liability for any and all errors or omissions committed by the Consultant or any of its sub consultants, or by agents or employees of the Consultant or any of its sub consultants, in the performance of the Project design, regardless of the type of damages. The coverage shall be maintained until such time as the design and construction is completed and for at least three years following completion of all operations to be performed. The City's Consultant or any of its sub consultants shall maintain a policy with limits of liability of not less than Two Million dollars (\$2,000,000) per claim and in the annual aggregate. Each policy may contain a deductible clause of a maximum of Two Hundred Fifty Thousand Dollars (\$250,000).
- (b) Each policy shall provide: (a) a policy retroactive date that coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements); (b) that if the insurance is terminated for any reason, the Consultant or any of its sub consultants and/or the City agree to purchase an extended reporting provision of at least three (3) years to report claims arising from work that is being performed; and (c) for reporting of circumstances or incidents that might give rise to future claims.
- (c) The City shall, and must require its Consultant or any of its sub consultants performing design or engineering functions to provide Amtrak with written proof of the insurance coverage required hereunder prior to the commencement of any work on the Project, as well as thirty (30) days notice of cancellation, renewal, replacement, or material change of insurance coverage.

4. Indemnification and Insurance During Design:

- (a) The City shall require its Consultant or any of its sub consultants who perform design or engineering functions in support of the Project, to defend, indemnify and hold harmless Amtrak (and any other affected railroad), from all liability caused by errors or omissions in their work or in the work of their Consultant or any of its sub consultants,

agents, or employees. 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 the City or its Consultant or any of its sub consultants, and shall survive the termination of this Agreement for any reason.

(a) Before Amtrak will review any Documents, the City must require its Consultants or any of its sub consultants performing design or engineering functions to: 1) execute a copy of the indemnity form attached hereto as Exhibit C, and return the form to Amtrak at the address listed in the Notices section of this Agreement, and 2) provide Amtrak with written proof of the insurance coverage contained in Section 3 herein.

(c) To the extent allowable by law, the City agrees to defend, indemnify and hold harmless Amtrak from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including cost of defense and attorneys' fees), resulting from personal injury, bodily injury, disease, or death to any persons or damage to any property, regardless of the cause thereof, which would not have been incurred but for the existence of the Project.

(d) The foregoing obligation shall not be limited by the existence of any insurance policy carried by the City or by any limitation on the amount or type of damages, compensation, or benefits payable by or for the City, and shall survive the termination of this Agreement.

(e) The City's contractors performing work on the Project shall procure and maintain during the term of this Agreement the insurance coverages in Exhibit D.

5. Design Costs:

Amtrak shall be solely responsible for paying all costs associated with its PE Services provided hereunder.

B. Construction Phase Services

1. City's Obligations:

(a) The City shall construct, or cause to be constructed, the Project (except for those elements of the Project that are included in the Support Services, as defined below) in accordance with the terms of this Agreement, the plans approved by Amtrak during the Design Phase of the Project, and applicable law. Except as provided otherwise herein, the City shall be responsible for the cost of all of the work arising out of or in connection with the Project.

(b) Any Project work performed on, over, under or within twenty five feet of Amtrak's right-of-way by the City or its contractors and subcontractors, shall comply with the provisions of Amtrak's then-current Temporary Permit To Enter Upon Property including all attachments included herein, which include but are not limited to: "Section 01141A - Safety and Protection of Railroad Traffic and Property"; Section 01142A - "Submission Documentation Required for Amtrak Review And Approval Of Plans For Bridge Erection, Demolition And Other Crane / Hoisting Operations Over Railroad Right-Of-Way"; Section 02261A - "Requirements For Temporary Sheet piling and Shoring To Support Amtrak Tracks"; "EP 3005-Pipeline Occupancy-Specification 02081A"; and "Track Monitoring", as the same may be amended, replaced or updated

from time to time by Amtrak as its part of its standard practice. The City will include the above Exhibits in the contract documents for the Project. Amtrak shall provide the City with the above documents in electronic format. The City, its contractors, and subcontractors shall comply with the then current specifications and requirements, at no cost to Amtrak. The City recognizes that Amtrak, as part of its standard practice, may from time to time modify said specifications and requirements.

(c) The City shall notify Amtrak upon substantial completion of the Project.

2. Amtrak Support Services:

(a) Subject to the limitations expressed elsewhere in this Agreement, Amtrak shall make available railroad protection personnel and other railroad employees required by Amtrak (or mutually agreed to by the Parties) to provide various services required as a result of the Project, including without limitation, protection services, engineering, inspection, signal and other services to ensure the safety of railroad operations and to protect contractor employees during the course of Project construction (collectively the “Support Services”). Notwithstanding any other provision of this Agreement, no work on the Project that may foul the tracks, or have the potential to foul the tracks, may be performed until all protection services required by Amtrak are in place.

(b) Upon Amtrak’s receipt of a notice from the City requesting Amtrak to proceed with the Support Services (the “Notice to Proceed”), as detailed in Article I.A.4 above), accompanied by a City purchase order and evidence reasonably satisfactory to Amtrak that all insurance certificates and policies required herein are in place, and provided that the City is not otherwise in default of any of its obligations hereunder beyond any applicable notice and cure period, Amtrak will cooperate with the City to provide the Support Services in accordance with the City’s schedule. However, the City acknowledges that only limited track outages are available, and these outages must be shared and/or rationed among all potential projects (including other Amtrak, City, state, municipal, commuter and third party projects) in the vicinity of the Project area. In addition, Amtrak may have manpower restrictions further limiting its ability to conform to the City’s schedule. These restrictions may preclude Amtrak from performing its work hereunder according to the City’s schedule, or may prevent the City from access to the Project site according to the City’s schedule. Amtrak shall use reasonably diligent efforts to accommodate the City’s schedule so as to permit the City to proceed as expeditiously as possible.

2. Indemnification and Insurance During Construction:

(a) The City shall provide Amtrak with the indemnities and insurance coverages detailed in the applicable real property agreements between the Parties.

C. Changes to the Project; Change in Services

(a) Either Party may initiate a change to the scope of work described in a PI. Such changes may include without limitation, the following: 1) changes in the specifications (including drawings and/or design details); 2) changes in the method or manner of performance of the

Services; 3) changes in the facilities, equipment, materials, services, or site(s); 4) changes in estimated cost; and 5) changes in estimated project schedule.

- (b) The Party initiating a change shall prepare a change order ("CO") on the form attached hereto as Exhibit B, documenting the proposed change, and shall provide the information relating to the estimated cost and scheduling impact, if any, of the change.
- (c) If Amtrak requests additional time as a result of a CO, it will submit to the City, within a reasonable time period after submission of the CO, a written notification that it is requesting additional time. Within 30 calendar days thereafter, Amtrak shall submit to the City an estimate setting forth the justification for the time extension.
- (d) No order, statement, or conduct of either Party shall be deemed to effect or entitle either Party to a change unless the Parties comply with the CO procedure set forth herein.
- (e) In the event of a City emergency (unrelated to Amtrak operations and safety issues) that arises as part of a project, Amtrak may agree to perform Services related to the project and required immediately by the City as a result of the emergency, without the necessity of having to execute a CO form in advance; provided that, Amtrak shall notify the City verbally of the emergency and the City, if it concurs with the additional work, shall do so in writing within 24 hours. A CO shall be issued by Amtrak within 14 calendar days of the onset of the emergency. The City shall have 14 calendar days to return the executed CO form to Amtrak. If a fully executed CO is not received by Amtrak within 14 calendar days, Amtrak may stop performing the emergency work, after giving the City 48 hours notice to comply.
- (f) Each CO shall be issued in sequential alphabetical order and shall cite as part of its designation the PI number to which the change is being made. For example, the first CO to PI-1 would be CO-1-A. If a second CO were to be issued against PI-1, it would be CO-1-B, and so on.
- (g) To be effective, the CO must be signed by the authorized representative of each Party as identified in the applicable PI. No work under the CO shall commence until both Parties have received a fully executed CO. The Parties agree to enter into good faith discussions to attempt to reach agreement. While in dispute, all Services that will be affected by the CO shall, at Amtrak's option, may be suspended.

ARTICLE II PROVISIONS APPLICABLE TO DESIGN AND CONSTRUCTION PHASES

1. Billing and Payment:

- (a) Amtrak will contribute up to three (3) million dollars towards the overall costs of the Project,. All Project costs in excess of three million dollars are the sole responsibility of the City.
- (b) As costs are incurred by the City, the City shall invoice Amtrak no more than once per month. Invoice documentation shall include a payroll cost report, which lists the hours, payroll amounts, dates and names of employees and contractors who worked on the Project ("City Costs"). The City shall also provide copies of material invoices, third party

service invoices, equipment invoices, and invoices for any other costs charged to the Project.

- (c) The City shall invoice Amtrak within sixty (60) calendar days of incurring costs under this Agreement. Amtrak shall pay all invoices within sixty (60) calendar days of receipt of said invoices. If Amtrak objects to any invoice or portion thereof, it shall make an adjusted payment and provide a written statement as to its objection. Within thirty (30) calendar days thereafter, the City will provide Amtrak with additional documentation as required to demonstrate the accuracy of the billing. The objection shall be considered resolved unless the Amtrak provides additional written exception within thirty (30) calendar days of receipt of such additional documentation.
- (d) The City may invoice Amtrak for up to three million dollars (\$3,000,00.00) in City Costs, as above. In the event that the Project is not complete at that point, the City will cease invoicing Amtrak for City Costs.
- (e) After payment by Amtrak to the City of a total of three (3) million dollars towards the Project, Amtrak shall have no further financial responsibility towards the Project.

2. Schedule:

- (a) Each PI will include a mutually agreed upon schedule for a specific Project(s). Amtrak will use reasonable efforts to provide personnel to support the schedules reflected in each PI.
- (b) Amtrak shall not be held liable for any damages resulting from the City or its contractors' inability to perform project work due to Amtrak operations.
- (c) The City shall cause contractor(s) performing project work under a PI to provide Amtrak, prior to commencement of each component of a project, with a proposed critical path method (CPM) construction schedule that provides reasonable notice of any requirements for track outages. Four weeks prior to any such track outage, the contractor will be required to attend the track outage meeting at which time, the scope of work, length of outage, and location of work will be reviewed. One week prior to such track outage, contractor will be required to attend the track outage meeting at which time the specifics of the requested outage will be finalized and confirmed by Amtrak. Track outages can be canceled or modified at any time, even during the actual outage. Contractors shall be advised in solicitation packages to consider in their proposals that project work is required to be performed simultaneously with ongoing daily railroad operations. Such operations include without limitation, the passage of trains, and the repair, construction, reconstruction and maintenance of the railroad right-of way and facilities. Contractor(s) should be advised that these conditions may cause delays and suspension of construction schedules.

3. Drawings and Plans; Compliance with Approved Plans; Construction Operations

- (a) All plans, drawings, and specifications relating to elements of the Project directly or indirectly impacting Amtrak property or operations will be reviewed and approved by Amtrak and will result in a final set of plans, drawings and specifications, including estimates of design and construction costs (“Approved Plans”). Any review of such Approved Plans by Amtrak shall be for the purpose of examining the general arrangement, design and details of the project for potential impact on Amtrak’s operations. No review, correction or approval of Approved Plans by Amtrak shall relieve the City and its design contractors from the entire responsibility for negligent errors or omissions in such Approved Plans or of the adequacy thereof.
- (b) Any material revision to the Approved Plans shall be resubmitted to Amtrak for approval. The City acknowledges that all approvals herein shall be subject to the City’s compliance with Amtrak’s safety, operations, security, environmental and engineering procedures. All Projects shall be in compliance with the Approved Plans.
- (c) Amtrak shall have the right to inspect the work performed by the City’s contractors on Amtrak property that may impact Amtrak operations at any time for quality and to determine, in general, if the work is being performed in a manner indicating that the Project, when completed, will be in conformance with the Approved Plans. The City’s failure to adhere to the Approved Plans may result in revocation of any Temporary Permit to Enter, as defined herein, issued for the Project, and/or such other action as Amtrak, in its sole discretion, deems appropriate.
- (d) No Amtrak inspection or approval relieves the City and its contractors from the sole obligation to comply with the Approved Plans and all applicable Laws (as defined herein).
- (e) The City shall supervise and direct the work of its contractors performed hereunder in compliance with all laws, regulations, codes, ordinances, rules or orders of any applicable governmental entity or public authority, as well as industry standards applicable to the performance of the work. The City shall secure and pay for all permits and fees, license, approvals and inspections necessary for the proper execution and completion of the Project, including without limitation any applicable construction or environmental permits.
- (f) Amtrak assumes no responsibility for the physical condition or safety of the work site or any improvements located thereon.

4. Compliance with Standards and Laws

If the City or its contractors are performing any work on or within twenty-five feet of the tracks or with the potential to foul the tracks, or that is otherwise on Amtrak's property, the City and its contractors shall perform all work hereunder in accordance with Amtrak's standards, including but not limited to, the following:

- (a) Engineering Practice 3014 (Maintenance and Protection of Amtrak Traffic during Contractor Operations);
- (b) Engineering Practice 3014-0114A (Safety and Protection of Amtrak Traffic and Property);
- (c) Engineering Practice 3014-01142A (Submission Documentation required for Amtrak Review and Approval of Plans for Bridge Erection, Demolition and other Crane Hoisting Operations Over Amtrak Right-of-Way);
- (d) Engineering Practice 3014-01520A (Requirements for Temporary Protection Shields for Demolition and Construction of Overhead Bridges and other Structures);
- (e) Engineering Practice 3014-02261A (Requirements for Temporary Sheet piling and Shoring to Support Amtrak Tracks);
- (g) Engineering Practice 3016 (Storm Water Drainage and Discharge from Adjacent Property onto Amtrak Right-of-Way).
- (h) Amtrak Engineering Specification No. 150 - Stormwater Management Policy
- (i) Amtrak Standard Track Plans - Minimum Roadway Clearances - Dwg. Nos. 70050.001.08 and 70050.002.08
- (j) Amtrak Engineering Practices 3005 - Pipeline Occupancy - Pipeline Occupancy Specifications 02081A - (rev. 2. 6/23/14) and Additional Requirements for Horizontal Directional Drilling (HDD)/Directional Boring - Specification 02082A
- (k) CE - 4 Specifications for Wire, Conduit and Cable Occupations of National Railroad Passenger Corporation Property
- (l) Amtrak Engineering Practices 3003 - Blasting Procedures

In addition, the City and its contractors shall perform all work hereunder in compliance with all applicable laws, regulations and requirements.

5. Labor Rights.

This Agreement shall not require Amtrak to contravene the provisions of any of its labor agreements. In the event of a conflict or inconsistency between this Agreement and any Amtrak labor agreement, the labor agreements shall control as to such provision.

6. Permit to Enter:

Amtrak shall authorize and consent to the entry by the City's employees upon Amtrak's right-of-way or other property for the purposes of the Project, however, such authorization and consent is contingent upon compliance by the City with all of Amtrak's operating and safety rules and regulations, including but not limited to those rules and regulations set forth in Amtrak's current "Temporary Permit to Enter Upon Property". Nothing herein shall be interpreted to allow the Consultant or Contractors, its agents or other third Parties engaged by the City permission to enter upon the property of Amtrak. Any such third party must execute Amtrak's then-current "Temporary Permit to Enter Upon Property" and abide by all

conditions therein to gain access to Amtrak's Property.

7. Environmental Matters:

(a) The City, including the City's Consultant or Contractor, shall not perform any environmental or geotechnical testing on Amtrak property for any reason without: i) notifying Amtrak of its desire to do so; ii) discussing the nature and extent of the proposed testing with Amtrak's Environmental Department; iii) presenting a proposed testing plan to Amtrak for Amtrak's review and approval; and iv) obtaining the express written permission of Amtrak to conduct the agreed-to testing. Amtrak shall have the right, but not the obligation, to be present at any and all such testing and to take split samples.

(b) Any Consultant or Contractor engaged by the City to perform environmental testing shall execute Amtrak's standard "Temporary Permit to Enter Upon Property" before performing any testing.

(c) At Amtrak's option, the City shall immediately provide Amtrak with a copy of the test results at no cost to Amtrak.

(d) Amtrak retains the right to alter, suspend, cancel or otherwise modify the City's work schedule pending the resolution of any of the above environmental issues. Amtrak shall not be held responsible for any claims related to any such changes in the City's schedules, including without limitation, claims related to damages resulting from any such delays or cancellations.

(e) The foregoing provisions shall survive termination of this Agreement.

8. Qualifications of Personnel:

The City and its Consultant or any of its sub consultants shall ensure that all agents or employees possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

9. Successors and Assigns:

Except as otherwise provided by this Agreement, this Agreement shall insure to the benefit of and be binding upon the successors and assigns of the Parties hereto, except that neither Party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

10. Force Majeure:

Should circumstances occur which are beyond the reasonable control of Amtrak or the City and without the fault or negligence of Amtrak or the City, (i.e., acts of God or war, strikes, fire, floods, epidemics, theft, vandalism, terrorism, or unusually severe weather), which delay the completion of the Project, the delayed party shall be excused from such delay and shall give to the other party written notice thereof. Within ten (10) calendar days of commencement of the delay, the delayed party shall provide to the other party an estimate of the anticipated impact of the delay on the completion of the Project, including its impact, if any, on the Project schedule. Within ten (10) calendar days after the termination of any such delay, the delayed party shall file written notice with the other party specifying the actual duration of the delay.

11. Records:

(a) Amtrak shall permit the City, or any of their duly authorized representatives to inspect and audit all data and records of Amtrak relative to Amtrak's performance under this Agreement, including the right to review and audit the accounts and records of Amtrak at reasonable times upon reasonable request as may be required to determine full compliance with all terms and conditions of this Agreement.

(b) To provide the City such access, Amtrak agrees that it shall preserve all of its records and accounts intact concerning the implementation of this Agreement for a period of three (3) years after final payment under this Agreement. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12. Reserved:**13. Notices:**

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 another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested, or by overnight delivery service, in an envelope addressed as follows:

If to the City:

City of Springfield
Department of Capital Asset Construction
36 Court Street, 3rd floor
Springfield, Massachusetts 01103
Attn: Director

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station, Mail Box 46
2955 Market Street
Philadelphia, PA 19104
Attn: Chief Engineer

14. Permits, Licenses and Approvals:

The City and/or its Consultant or Contractors shall secure and pay for all permits, licenses, easements, or approvals, which may be required in connection with the performance of its work hereunder.

15 Miscellaneous:

(a) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

(b) Nothing in this Agreement shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(c) If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.

(d) No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person with respect to performance of the City's or Amtrak's obligations under this Agreement.

(e) Nothing herein shall be interpreted to require Amtrak to accept any designs it deems unsatisfactory due to impacts on Amtrak property or operations, nor to require Amtrak to grant permission for construction of the Project or any portion thereof.

16. Termination:

The City shall have the right to terminate all or any part of the PE Services or Support Services, for any reason, upon written notice to Amtrak. Promptly upon receipt of such notice, Amtrak shall discontinue said Services, shall halt the placing of further third party contracts relating thereto, and, insofar as possible, shall cancel all outstanding third party contracts relating thereto. If Amtrak is unable to arrange for cancellation of any third party contract or if the proposed cancellation charge therefore is one which the City will not approve, then Amtrak agrees that it will follow the instruction of the City with respect to such contract.

17. Term of Agreement

The Term of this Agreement shall be from the date of execution until the date of completion of the Project, or five (5) years, whichever comes first. However, any PI that is executed prior to the termination of this Agreement shall remain in effect and governed by the terms of this Agreement until that PI is either terminated or the Project is completed.

18. Entire Agreement:

This Agreement constitutes the entire agreement between the Parties as to scope and subject matter. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement or any part hereof may not be changed, amended or modified, except by written agreement of the Parties.

ARTICLE III

CONDITIONS PRECEDENT; CROSS DEFAULTS

1. No PI executed under this Master Agreement calling for the construction of the Project shall have any force or effect unless and until the Parties execute separate documents (e.g., temporary and permanent easement) relating to the closure of State Street crossing. Such documents must contain the following elements:

- a. State Street crossing is to be closed to the general public, fenced and locked
 - b. Access to the crossing is for special events and for vehicular movements that cannot be accommodated at the Main Entrance due to clearance conditions.
 - c. Access is to be in accordance with the real estate License Agreement between the Parties ("License Agreement").
2. Any material breach of the terms of this Master Agreement by the City (such as non-payment, failure to maintain insurance or honor an indemnity) shall constitute a default hereunder and under the License Agreement, and Amtrak may terminate this Agreement and the License Agreement, curtail or cease to provide Services hereunder.

IN WITNESS WHEREOF, the Parties have set their hands hereto on this Master Agreement as of the date first set forth below.

City of Springfield

By: _____

Title:

Date: _____

**National Railroad Passenger
Corporation**

By:

Title:

Date: _____

EXHIBIT A

PROJECT INITIATION FORM

PROJECT INITIATION FORM (P.I.) State Street Crossing Master Agreement

1. Project Initiation Form Number: _____ Date: _____

2. Project Name: _____

3. Location: _____

4. Description: _____

5. Total Estimated Cost: \$ _____

6. Period of Work: From: _____ To: _____

7. Attachments: (Plans, Specs, Estimates, etc.) _____

8. Amtrak Work Element No: * _____

Project Representatives

9. For Springfield:

10. For Amtrak: *

Name

Name

Title

Title

Address

Address

City, State, Zip
Phone

Phone

City, State, Zip

Approval and Authorization

11. For Springfield

12. For Amtrak: *

Signature

Date

Signature

Date

Name

Name

Name

TitleTitle

Close Out Data

13. Completed on: _____

14. Final Cost: _____

* To be completed by Amtrak

EXHIBIT B
CHANGE ORDER FORM

CHANGE ORDER FORM (C.O.) State Street Crossing Master Agreement

1. P.I. No. _____ Change Order Form Number: _____ Date: _____

2. Project Name: _____

3. Location: _____

4. Description: _____

5. Prior Estimated Cost: \$ _____ C.O. Estimated Cost: \$ _____

5(a). New Total Estimated Cost: \$ _____

6. Period of Work: From: _____ To: _____

7. Attachments: (Plans, Specs, Estimates, etc.) _____

8. Amtrak Work Element No: * _____

Project Representatives

9. For Springfield:

10. For Amtrak: *

Name

Name

Title

Title

Address

Address

City, State, Zip
Phone

Phone

City, State, Zip

Approval and Authorization

11. For Springfield:

12. For Amtrak: *

Signature

Date

Signature

Date

Name _____ Name _____

Title _____ Title _____

Close Out Data

13. Completed on: _____ 14. Final Cost: _____

* To be completed by Amtrak

EXHIBIT C

CERTIFICATE BY *[insert name of consultant]* TO NATIONAL RAILROAD PASSENGER CORPORATION

This Certificate ("Certificate") effective this ____ day of _____, 2021, is made by *[insert name of entity]*, a *[insert type of entity (e.g., corporation/partnership/limited liability company) and state of incorporation or formation - for example, a Delaware limited liability company]* with its principal offices located at *[insert location]* ("Consultant") to National Railroad Passenger Corporation, a District of Columbia corporation with its principal offices located at 1 Massachusetts Avenue, N.W., Washington, DC, 20001("Amtrak").

WHEREAS, Amtrak owns, maintains and/or operates intercity passenger rail service over a certain railroad right-of-way between New Haven, CT and Springfield, MA, known as the Springfield Line); and

WHEREAS, the City of Springfield (hereinafter ["City"]) proposes to bring an existing underpass under the Springfield Line located in the vicinity of State Street, in the City , at railroad milepost 61.28 into compliance with all accessibility laws (the "Project"); and

WHEREAS, City has retained the services of Consultant to provide engineering and/or design services in support of the Project; and

WHEREAS, due to the location of the Project relative to Amtrak property and the potential impact of the Project on Amtrak's property and/or operations, the Project work may not proceed without Amtrak's prior review and approval of the plans, drawings and specifications that may impact Amtrak operations ("Plans"; and

WHEREAS, in order to advance the Project, Consultant desires Amtrak's review and approval of its Plans; and

WHEREAS, Consultant agrees that protection of Amtrak's property and operations is a paramount public safety concern.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the covenants and agreements contained herein, intending to be legally bound, Consultant hereby represents, acknowledges, and agrees as follows:

1. Recitals. The recitals set forth above in the WHEREAS clauses are incorporated into the terms of this Certificate as if fully set forth herein.

2. Consideration for Execution of this Certificate. In consideration, *inter alia*, for Amtrak reviewing the Plans which are needed for Consultant to perform its obligations under Consultant's agreement with City, Consultant hereby executes this Certificate.

3. Indemnification. Consultant hereby releases and agrees to defend, indemnify and hold harmless Amtrak and any other affected railroad, as well as their respective officers, directors, employees, agents, successors, assigns, and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, liabilities, claims, demands, fines, 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 negligent errors or omissions in Consultant's work and/or in the work of its officers, directors, employees, agents, subconsultants, successors, assigns, subsidiaries, and any other persons acting for or by permission of Consultant relating to the design and/or engineering services Consultant is providing for City in support of the Project. 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 Consultant or its subconsultants or agents, and shall survive the termination of the agreement between Amtrak and the City.

4. Insurance. Consultant agrees to procure and maintain in effect professional liability insurance covering the liability of Consultant for all negligent errors or omissions committed by Consultant, its officers, directors, employees, agents, subconsultants, successors, assigns, and subsidiaries, and any other persons acting for or by permission of Consultant in the performance of any design and/or engineering services in support of the Project. The insurance shall be maintained during the term of Consultant's agreement with City and for at least three years following completion of all services to be performed by Consultant in support of the Project. The insurance shall have limits of liability of not less than two million dollars (\$2,000,000) per claim.

Prior to Amtrak reviewing any Plans, Consultant shall provide to Amtrak an insurance certificate reflecting that Consultant has the insurance as stated above. At least one (1) time every year thereafter, Consultant shall provide to Amtrak an updated insurance certificate reflecting that Consultant has the insurance as stated above.

5. Review of Documents. Any review of Consultant's Plans by Amtrak shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Amtrak's property and operations. Amtrak assumes no responsibility for, and makes no representations or warranties, express or implied, as to the design, condition, workmanship and/or adequacy of the Plans.

6. Permit to Enter. Nothing herein is intended to grant Consultant the right to enter upon the right-of-way or other property of Amtrak. If entry onto, above, or below Amtrak's right-of-way or other property is required for purposes of this Project by Consultant, Consultant must execute the then-current version of Amtrak's "Temporary Permit to Enter Upon Property".

7. Governing Law. This Certificate shall be governed by and construed under the laws of the District of Columbia. All legal proceedings in connection with any dispute arising under or relating to this Certificate shall be brought in the United States District Court for the District of Columbia.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Certificate.

Consultant

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D**INSURANCE REQUIREMENTS**

The City's Contractors shall procure and maintain a policy or policies of the following insurance ("Required Insurance"), which shall be effective immediately and be renewed or replaced to remain in effect continuously for the duration of this Master Agreement. Insurance policies comprising the Required Insurance shall be submitted in advance to Amtrak for Amtrak's review and approval, which approval shall not be unreasonably withheld or delayed so long as the policy or policies contain the Required Insurance with all applicable enhancements and provisions. For purposes of this Section, the Required Insurance shall include:

I. General Liability/Railroad Liability Insurance.

General Liability or Railroad Liability insurance in a form acceptable to Amtrak covering Amtrak, the City, and the employees, officers, agents and representatives of any of them on a primary basis with the following limits and for the following risks and hazards:

a. Liability for bodily injury, death, or personal injury to any person including but not limited to the contractors, employees, passengers, and invitees of Amtrak, the City, the City, or any other person or entity and property damage (including loss of use of property) to any property whatsoever, arising out of or in any way connected with, or that would not have been incurred or would not have occurred but for this Master Agreement, a Temporary Permit to Enter, or the presence of the City, the City, or the employees, contractors, consultants, passengers or invitees of any of them, or any of the Bridges, Services or Projects.

b. The Required Insurance shall be specifically endorsed to acknowledge that it is primary insurance for Amtrak and Amtrak's employees, officers, agents, and representatives and to provide that any other insurance carried by Amtrak shall be excess and shall not be required to share or contribute in any manner with such insurance.

c. The Required Insurance shall be maintained continuously with a combined single limit for bodily injury and property damage liability of not less than twenty five million dollars (\$25,000,000) each occurrence, and with a self-insured retention of not more than two hundred fifty thousand dollars (\$250,000) for each occurrence.

d. The Required Insurance shall include, but not by way of limitation:

i. Contractual Liability coverage endorsed to confirm that this Agreement is an Insured Contract under the policy(ies) with no exclusion or restriction related to railroad operations or work within fifty (50) feet of a railroad;

ii. Cross Liability endorsement;

iii. Premises/Operations;

iv. Products/Completed Operations;

v. Independent Contractors;

vi. Sudden and Accidental Pollution (30/90);

vii. Punitive and Exemplary Damages shall not be excluded, or the policies may be silent regarding such damages;

viii. Certified and Non-certified Terrorism; and

ix. Deletion of any Explosion Collapse, and Underground (X-C-U-) exclusions.

e. Amtrak and the City shall be endorsed as additional named insureds on all policies comprising the Required Insurance.

f. Policies shall also be endorsed to provide that all other commuter agencies and railroads operating in the vicinity of the Project(s) shall be named as additional insureds.

g. Policies shall also be endorsed to provide for no denial or restriction of coverage by the insurer due to inadvertent errors or omissions in reporting by a named insured.

h. In the event that the policy limits for the Required Insurance are satisfied by combination of primary and excess policies in “layers,” all excess policies shall provide that they drop down in the event of reduction or exhaustion of underlying policy limits.

i. In the event that claims, losses or occurrences reduce or impair limits to less than \$180 million per occurrence due to the operation of an aggregate limit provision in the policy(ies), the City shall immediately notify Amtrak, and shall immediately reinstate or replace the insurance to the required limits. If an aggregate limit provision is included in any liability policy, it shall apply to no longer than an annual period and such aggregate limit shall be renewed annually whether or not any claims, losses or liabilities have been incurred.

j. the City shall provide Amtrak with copies of all policies comprising the Required Insurance, which shall be endorsed to provide at least thirty (30) days advance written notice to Amtrak of any cancellation, non-renewal, reduction, or material change in coverage.

k. If any of the Required Insurance (that is not required to be provided on an occurrence basis) is provided on a claims-made or occurrences-reported basis, then in addition to coverage requirements above, such policy shall provide that:

i. The retroactive date shall coincide with or precede the effective date of this Agreement or the effective (inception) date of the first such policy that was written on a claims-made or occurrences-reported basis. If any insurance that was previously written on a claims-made or occurrences-reported basis is subsequently written on an occurrence basis, the City shall procure “prior acts” coverage on the new occurrence policy(ies) with a retroactive date and with effect for all occurrences not known or reported under the preceding claims-made and occurrences reported policies.

ii. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims; and

iii. If claims-made or occurrences-reported insurance is terminated for any reason, the City shall purchase an extended reporting provision of at least two (2) years to report claims and occurrences arising from this Master Agreement, the Temporary Permit to Enter, Bridges, Services, Project(s) and related operations.

l. All liability policies shall be endorsed to indicate that coverage is primary for Amtrak liability arising out of or in any way connected with or which would not have occurred or would not have been incurred but for the Master Agreement, Temporary Permit to Enter, Bridges, Services, Project(s), or the presence of the City, or any trains, passengers, contractors, consultants, employees or invitees, including that arising from train operations of Amtrak, the City, and any other railroad operating over the tracks at issue.

m. In the event that City determines that any one or more components of the Required Insurance itemized above or otherwise required by this Agreement, is/are not available in the marketplace at any price, the City shall notify Amtrak, and Amtrak will waive the requirement for that particular component(s) so long as such components remain unavailable at any price.

II. Property Insurance.

the City agrees to bear the risk of loss of all bridges, equipment and other property used in connection with the Master Agreement, the Services, the Project(s) or other the City facilities or property. Accordingly, no property insurance will be required. If, however, the City, or any of their contractors or subcontractors carries such insurance, the City as applicable, shall ensure that Amtrak shall be named as an additional insured as respects Amtrak's interest in the property, and that the property insurer shall waive all rights of subrogation against Amtrak.

III. Automobile Insurance.

Automobile liability insurance covering all automobiles owned, leased, rented, or used by the City and their respective agents and employees, in connection with this Master Agreement, Temporary Permit to Enter, Bridges, Services, Project(s), or any operations or activities incidental to either. Such insurance shall provide auto liability insurance coverage with combined single limits of no less than one million dollars (\$2,000,000) per accident or occurrence for bodily injury and property damage liability.

III. Workers Compensation and Employers Liability Insurance.

the City will carry and will require their contractors and subcontractors to carry Workers Compensation insurance in accordance with the laws of the City of Springfield covering all applicable employees. Such insurance shall include Employers Liability coverage with limits of no less than one million dollars (\$1,000,000) each employee or accident. If the City or any of their contractors or subcontractors are considered a railroad(s) subject to the provisions of the Federal Employers Liability Act (FELA) rather than City Workers Compensation laws, the Employers Liability insurance shall be endorsed to provide coverage for FELA benefits and liabilities, and the required limits shall be increased to not less than fifty million dollars (\$50,000,000) per occurrence (alternately, FELA coverage may be provided under the Railroad Liability policy required herein. the City shall cause their contractors and subcontractors to waive all rights of subrogation against Amtrak.

IV. Construction Activities.

Prior to the commencement of any development, construction, reconstruction, maintenance or repair activities under this Master Agreement, the City will require their contractors and subcontractors to obtain the insurance coverage specified in the then current Temporary Permit to Enter, attached hereto and incorporated herein; or the City or their contractors may, at their option, provide the coverage for any or all contractors and subcontractors, providing that the evidence of insurance submitted by the City to Amtrak so states; provided, however, that the foregoing requirements shall not apply to routine maintenance, routine replacement or minor repairs performed by the City, or the City's contractors or subcontractors and for which Amtrak does not require flagging protection. It is agreed that insurance required pursuant to this Section shall be considered as Required Insurance.

V. Failure to Maintain Insurance.

Except as otherwise set forth in herein, in the event that the City, or the City's contractors or subcontractors fail to maintain the applicable Required Insurance with all applicable enhancements and provisions, Amtrak may curtail the exercise of the Master Agreement; and Amtrak shall not be responsible to the City, for any damages that the City incurs as a result of such failure.

DRAFT

**LICENSE AGREEMENT
BETWEEN
THE NATIONAL RAILROAD PASSENGER CORPORATON
AND THE CITY OF SPRINGFIELD, MASSACHUSETTS
REGARDING STATE STREET CROSSING**

This Agreement (“Agreement”) is made this ____ day of _____, 2021 (“Effective Date”), between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq.* and the laws of the District of Columbia, having its principal place of business at 1 Massachusetts Avenue N.W., Washington, DC 20001 (“Amtrak”) and the City of Springfield, Massachusetts, an incorporated municipality and political subdivision of the Commonwealth of Massachusetts (“City”) (Amtrak and the City shall hereinafter collectively be referred to as the “Parties” or individually as a “Party”).

WHEREAS, Amtrak owns and maintains certain railroad tracks and maintains the associated right-of-way which tracks cross State Street, a City-owned and maintained public roadway, at-grade, at Mile Post 61.22 (“State Street Crossing”), as shown on Exhibit A attached hereto and incorporated herein by this reference;

WEREAS, due to the proximity of a City-owned park (‘Riverfront Park’) to the State Street Crossing, the Parties desire to curtail public access across Amtrak’s tracks and the right-of-way at the State Street Crossing in order to promote public safety by restricting public access to the State Street Crossing by closing and locking the gates at the State Street Crossing (the “Access Gates”);

WHEREAS, simultaneously with the execution of this Agreement, the Parties entered into that certain Master Agreement (“Project Agreement”) regarding the relocation of public access and vehicular traffic currently located at the State Street Crossing, to an existing, City-owned, undergrade crossing of the right of way located at Mile Post 61.22, which will be a more appropriate and safer pedestrian and vehicular access to the main entrance for Riverfront Park (“Main Entrance”); and

WHEREAS, the Parties desire to clarify and address the ownership, usage, maintenance and ongoing property rights and obligations of the Parties with respect to the State Street Crossing and the Main Entrance, and have agreed to enter into this Agreement to address such matters to supersede and replace any and all previous agreements, discussions and understandings with respect to the matters discussed herein.

NOW THEREFORE, based on the recitals set forth above and incorporated herein, for and in consideration of the premises and the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties hereby agree as follows:

3. State Street Crossing Closure. Amtrak and the City hereby agree that prior to the Effective Date, the State Street Crossing has been “temporarily” closed to the general public and shall become permanently closed to the general public when the Main Entrance is completed in accordance with the terms of the Project Agreement. Amtrak shall be responsible for maintaining the State Street Crossing closure with a lock on the Access Gates. The City shall have access to the State Street Crossing pursuant to the terms of this Agreement. Notwithstanding anything to the contrary within this Agreement, Amtrak shall not open or allow public access to the State Street Crossing without receiving the prior approval of the Director of the City of Springfield’s Department of Public Works, such approval shall not be unreasonably withheld, delayed or conditioned. Further, Amtrak shall have no right to use any City owned or controlled property for staging or storage of any construction materials and/or equipment at any time, without the prior consent of the City, which shall not be unreasonably withheld, delayed or conditioned.

4. Licenses.

(a) Scheduled Access License: Amtrak hereby grants to the City a non-revocable, non-exclusive license to access and cross the State Street Crossing (“License Area”) as shown on Exhibit A, with the City providing thirty (30) days’ prior written notice to Amtrak (“Scheduled Access License”), solely for the following permitted uses (“Permitted Uses”):

- i. the City's routine maintenance and repair of Riverfront Park and adjacent roadways owned by the City, such work to be done at the sole cost and expense of the City; and
 - ii. vehicular movements that cannot be accommodated at the Main Entrance due to clearance and/or access conditions or limitations.
- (b) Emergency Access License: Amtrak hereby grants to the City a non-revocable, non-exclusive, limited license for emergency to access and cross over the License Area ("Emergency Access License"), solely for emergency vehicles and/or responders to access and cross over the License Area in the event of an emergency at Riverfront Park or on adjacent roadways owned by the City ("Emergency Access"). Emergency Access to the License Area is limited solely for use by the City as described herein, and the City hereby agrees that Emergency Access to the License Area may not be used by the public or for any other pedestrian access. In order to obtain Emergency Access to the License Area, the City must call the Amtrak Police Department National Communications Center ("Amtrak Police") at 1-800-331-0008, and request Amtrak Police to unlock the Access Gates. Amtrak Police shall use its best efforts to immediately send an officer to unlock the Access Gates and to immediately notify Amtrak Operations of the Emergency Access request. In the event of a true life-threatening and/or catastrophic emergency resulting in the need for immediate Emergency Access and the City cannot wait for an Amtrak response or Amtrak's response pursuant to this section is not timely, the City must first call the number on the Blue ENS sign located at the State Street Crossing as required by 49 CFR Part 234, which as of the Effective Date is: 1-800-243-1255 refer to Crossing State Street MP 61.22 DOT #973101X, and upon completing such call, the City shall be permitted to take any and all necessary actions in order to gain such immediate Emergency Access. In such event, the City shall be liable to, and shall indemnify Amtrak for, any damages, claims, causes of action, suits, or expenses caused as a result of such actions of the City. Under no circumstances may the City proceed with Emergency Access to the License Area without notifying Amtrak in accordance with the procedure specified above. The City and Amtrak shall also provide each other with 24 hour/7 day email and telephone contact information and shall update that contact information as necessary.
- (c) Special Events Access License: If the City conducts, coordinates with a business or entity, or is requested by a business or entity, to conduct a special event, such as an art show, musical performance or fair at the Riverfront Park, which requires the use of the License Area to access or service Riverfront Park (each, a "Special Event"), the City shall either obtain or require such business or entity to obtain, Amtrak's thirty (30) day prior written approval, by submitting an Amtrak Special Event Access Request Form, the current form of which is attached hereto as Exhibit B and incorporated herein by this reference ("Special Events Access Form"), such approval shall not be unreasonably withheld. The approved and fully-executed Special Events Access Form shall constitute a Special Events Access License. Amtrak shall provide Support Services for any Special Event and shall be compensated at its regular rates for providing Support Services, such as Amtrak Police, for any such Special Events. The Scheduled Access License, the Emergency Access License and the Special Events Access License shall collectively be referred to herein as the "Licenses".
- (d) Acceptance of License Area: The City and Amtrak hereby accept the License Area "AS-IS" "WHERE-IS" with no improvements, modifications or changes to be performed by either party, except as described in the Project Agreement. Amtrak makes no representations or warranties as to the zoning, occupancy, condition, utility, fitness, or use of the License Area for the Licenses.

- (e) Rules and Regulations: The Permitted Uses and Emergency Access are subject to Amtrak's rules and regulations for the License Area, and the City shall fully and promptly comply with Amtrak's rules and regulations, requests, directions and instructions of Amtrak, and ensure that all persons acting on behalf of or through the City comply with such rules, regulations, requests, directions and instructions.
- (f) Repair of License Area: The City shall make no improvements or modifications in or to the License Area. The City is responsible for all costs and expenses associated with the repair of any and all damage and/or destruction directly or indirectly caused by the City, the City's employees, invitees, or contractors and vendors, or their contractors or subcontractors (collectively, "Contractors"), use of and access to the License Area. The rights granted to the City are subordinate to Amtrak's obligations relating to, and use of, the License Area, and to all other third parties who are also permitted to use the License Area. At all times, the City shall exercise the rights granted herein in such a manner as to avoid interference with or disruption of the operations of Amtrak and such other third parties. In no event shall the exercise of this License interfere with Amtrak rail operations.
- (g) Amtrak Support Services: All Permitted Uses and Emergency Access must be scheduled and coordinated in advance with Amtrak as provided herein. Subject to the limitations expressed elsewhere in this Agreement, Amtrak shall make available railroad protection personnel and other railroad employees required by Amtrak to provide various services required as a result of such Permitted Uses and Emergency Access, including without limitation, signal and other services to ensure the safety of railroad operations and to protect Contractor employees during the course of such access (collectively the "Support Services"). Upon Amtrak's receipt of a notice from the City requesting Amtrak to proceed with the Support Services (the "Notice") and evidence reasonably satisfactory to Amtrak that all insurance required herein are in place, and provided that the City is not otherwise in default of any of its obligations hereunder beyond any applicable notice and cure period, Amtrak will cooperate with the City to provide the Support Services in accordance with the City's schedule. However, the City acknowledges that only limited track outages are available, and these outages must be shared and/or rationed among all potential projects (including other Amtrak, City, state, municipal, commuter and third-party projects). In addition, Amtrak may have manpower restrictions further limiting its ability to conform to the City's schedule. These restrictions may preclude Amtrak from performing its work hereunder according to the City's schedule or may prevent the City from access according to the City's schedule. Amtrak shall use reasonably diligent efforts to accommodate the City's schedule so as to permit the City to proceed as expeditiously as possible. Amtrak shall not, however be held liable for any delays to the City's schedule. The City shall compensate Amtrak at Amtrak's then-current rates for providing any such Support Services. Amtrak's rate schedule as of the Effective Date is attached hereto as Exhibit C and incorporated herein by this reference.
- (h) City Supervision: The City shall supervise and direct the work of its employees and Contractors in compliance with all applicable laws, regulations, codes, ordinances, rules or orders, as well as industry standards applicable to the Permitted Uses and Emergency Access. The City shall secure and pay for all permits and fees, license, approvals and inspections necessary for the proper execution and completion of Permitted Uses and Emergency Access, including without limitation any applicable construction or environmental permits.

5. **Term.** This Agreement shall commence on the Effective Date, and subject to the terms of this Agreement, shall continue until terminated by either party giving notice to the other at least one hundred and twenty (120) days prior to the effective termination date stated in such notice (the “Term”).
6. **Insurance.**
- (a) **City Insurance:** During the Term, the City shall procure and maintain, at no cost to Amtrak, the following types of insurance issued by insurance companies licensed to do business in the jurisdiction in which the License Area is located:
- i. Commercial General Liability insurance, including (but not limited to) insurance covering any assumed or contractual liability under this Agreement, with respect to liability arising out of the ownership, use, occupancy or maintenance of the License Area and all areas appurtenant thereto, to afford protection with respect to personal injury, death or property damage of not less than Three Million Dollars (\$3,000,000) per occurrence combined single limit/Five Million Dollars (\$5,000,000) general aggregate; and
 - ii. Commercial Property insurance written on a “causes of loss special” or “all-risk” basis with limits equal to the full replacement value of all of Licensee's personal property in the License Area (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Licensee under the provisions of this Agreement) and all leasehold improvements installed in the License Area by or on behalf of Licensee; and
 - iii. Worker's Compensation Insurance with statutory limits and with Employer's Liability coverage in the amount of \$1,000,000 per accident; bodily injury by accident; \$1,000,000 per employee - bodily injury by disease; and \$1,000,000 policy limit and bodily injury by disease; and
 - iv. Commercial Automobile Liability insurance covering liability arising out of the use of all motor vehicles operating on Amtrak's Property which are used and operated in connection with the Licensee's obligations or uses under this Agreement, subject to a limit of liability of not less than \$2,000,000 per occurrence. Such insurance shall cover any occurrences due to the exercise of the License by any employee or contractor of Licensee; and
 - v. Business Interruption Insurance which includes provisions for business expenses including payment of License Fee; and
 - vi. Such other coverages as Amtrak may reasonably request throughout the Term.

Notwithstanding the above, Amtrak hereby acknowledges that the City is self-insured and agrees that the City may use its programs of insurance and self-insurance to meet any and all of the insurance obligations in this Agreement.

- (b) **Contractor Insurance:** Prior to accessing the License Area for a Permitted Use or Emergency Access or Special Event, the City shall cause its Contractors to procure and maintain, at no cost to Amtrak, during the period of any Permitted Use or Emergency Access or Special Event, the insurance coverage specified in Exhibit D attached hereto and incorporated

herein by this reference. The Contractor shall furnish Amtrak with a certificate of insurance giving evidence of the required coverage prior to accessing the License Area

- (c) Requirements: All insurance required hereunder shall name Amtrak and/or its respective designee(s), as additional insureds or as loss payee, as applicable. All policies shall be primary and non-contributory and shall also contain a provision by which the insurer agrees that such policy shall not be canceled, materially changed or not renewed without at least thirty (30) days' advance notice to Amtrak, by certified mail, return receipt requested, or to such other party or address as may be designated by Amtrak or its designees. Each policy of insurance required hereunder shall be written on an "occurrence" not a "claims made" policy. If requested during the Term, the City shall immediately provide Amtrak with evidence that all insurance is in full force and effect. The City shall provide updated insurance documentation prior to each anniversary of the Effective Date throughout the Term. The City shall furnish Amtrak with either a certificate of insurance or letter of self-insurance giving evidence of the required coverage prior to the Effective Date and upon renewal of the required insurance thereafter.
- (d) Failure to Maintain Insurance. Except as otherwise set forth in herein, in the event that the City or the Contractors fail to maintain the insurance coverages required in this Agreement with all applicable enhancements and provisions, Amtrak may curtail the exercise of the Agreement, and Amtrak shall not be responsible to the City for any damages that the City incurs as a result of such failure.

7. Indemnification:

- (a) Indemnity: To the extent allowable by law, the City shall, and shall cause its Contractors to, indemnify, hold harmless, protect and defend Amtrak, and its officers, directors, employees, agents, servants, licensees, subsidiaries and contractors ("Indemnified Parties"), against and from all losses, damages, liabilities, suits, claims, demands, actions, causes of actions, or expenses (including without limitation, attorneys' fees), judgments, interests and costs, (collectively "Losses and Damages") that shall arise in any manner, directly or indirectly, arising from, or incidental to, or in connection with: (a) damage to, or loss of any property, including but not limited to any appurtenant walkways, curbs or gutters, of Amtrak, any Indemnified Parties, the City, the agents, servants, licensees, contractors, invitees or employees of the above, or any other person; (b) injury to or death of persons, including without limitation, agents, servants, contractors, licensees, invitees or employees of Amtrak, any Indemnified Parties or the City, or any other person; (c) the access to the License Area, the exercise of the Licenses granted herein or the use or occupancy of the License Area by any person or entity, including any appurtenant walkways, curbs or gutters; (d) the installation, construction, placement, attachment, presence, use, misuse, maintenance, repair, alteration, renewal, relocation, failure or removal of any improvements adjacent to the License Area; and (e) a violation or alleged violation of, or compliance or noncompliance with, any Environmental Law relating in any way to the License Area and the property owned by Amtrak adjacent to the License Area, including any disposal, discharge, or release of any wastes, pollutants, or hazardous substances from or in connection with the License Area and the property owned by Amtrak adjacent to the License Area; (f) the City's failure to comply with any one or more of its obligations under this Agreement, (g) any misrepresentation by the City; or (h) the proximity of the License Area to any Amtrak operations or operations by any other railroad using the License Area; whether such Losses and Damages be suffered or sustained by Amtrak or an Indemnified Party directly or by any other person or entity, including the City who may seek to hold

Amtrak or any Indemnified Party liable therefor. If Amtrak or any Indemnified Parties are required to make expenditures or incurs obligations for the payment of money in connection with civil proceedings arising from this Section, including but not limited to attorneys' fees for instituting, prosecuting or defending any such action or proceedings, such sums paid, obligations incurred, and any costs associated therewith, , shall be deemed to be additional consideration due hereunder and shall be paid by the City to Amtrak within thirty (30) days of Amtrak rendering a bill or statement to the City. The indemnification obligations contained in this paragraph shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of any damages, compensation or benefits payable by or for the City. Notwithstanding the foregoing, the City shall not be liable for and shall not indemnify Amtrak for any damages, claims, causes of action, suits, or expenses caused as a result of the negligence of Amtrak.

- (b) Release: Amtrak and the Indemnified Parties shall not be liable for, and the City and its Contractors hereby releases and relieves Amtrak and the Indemnified Parties, irrespective of their negligence or fault, from all liability in connection with any and all loss of life, personal injury, damage to or loss of property, or loss or interruption of business occurring to the City, its agents, servants, employees, invitees, licensees, visitors, or any other person, firm, corporation or entity, that would not have occurred but for the proximity of the License Area to the railroad right-of-way, or railroad operations, including, without limitation, any Losses and Damages, whether or not the City or any other party may have acted negligently. Amtrak shall not be liable to the City, a Contractor or to any insurance company (by way of subrogation or otherwise) insuring the City or a Contractor for any loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of Amtrak or the Indemnified Parties. Notwithstanding the foregoing, in the event that such waiver of subrogation is not available to the City unless through the payment of an additional premium therefore, the City shall pay the additional premium necessary to obtain such waiver.
- (c) Waiver: Amtrak and the Indemnified Parties shall not be held liable for any quantifiable damages in an amount in excess of Ten Thousand Dollars and No/100 (\$10,000.00) resulting from: (i) Amtrak's delay in performing the Support Services required for a Permitted Use or a Special Event as contemplated under this Agreement; (ii) Amtrak's delay or inability to provide the requested work forces required for a Permitted Use or a Special Event as contemplated under this Agreement; or (iii) the City's or Contractor's inability to perform project work required for a Permitted Use or a Special Event as contemplated under this Agreement due to Amtrak operations. Amtrak assumes no responsibility for the physical condition or safety of the License Area, any work site, or any improvements located thereon.
- (d) The provisions of this Section 5 shall survive the termination of this Agreement.

8. Compliance with Laws and Regulations.

- (a) Laws: The City and its Contractors shall comply with all applicable laws, statutes, rules, regulations and ordinances of all governmental authorities having jurisdiction over the City, Contractors and their operations hereunder and in the License Area, including all applicable Environmental Laws and the American with Disabilities Act, as amended, and shall obtain and maintain throughout the Term, all required licenses and permits necessary for the Permitted Uses and Emergency Access and activities in the License Area. If the City and/or

its Contractors are performing any work on or within twenty-five (25) feet of the License Area, the rail tracks or with the potential to foul the tracks, or that is otherwise on Amtrak's property, the City and its Contractors shall perform all work hereunder in accordance with Amtrak's standards.

- (b) Permits: The City and/or its Contractors shall secure and pay for all permits, licenses, easements, or approvals, which may be required in connection with the performance of its work hereunder and usage of the License Area.

9. **Hazardous Substances**. The City shall not use or allow the License Area to be used for the "Release", storage, use, treatment, disposal or other handling of any Hazardous Substance. The term "Release" shall have the same meaning as is ascribed to it in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended, ("CERCLA"). The term "Hazardous Substance" means (i) any substance defined as a "hazardous substance" under CERCLA, (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (iii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any of the Environmental Laws. Licensee shall not use or allow the License Area to be used for the storage of any Hazardous Substances. For the purposes of this Agreement, the term "Environmental Laws" shall mean collectively, all federal and state and local environmental safety or health laws and ordinances and rules or common law, including but not limited to, CERCLA, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1081 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6091 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §1251 - 1387), as any of the foregoing may hereafter be amended; any rule or regulation pursuant to thereto, and any other present or future Legal Requirement, law, ordinance, rule, regulation, permit or condition, order or directive addressing environmental, health or safety issues, of or by the federal government, or any state or other political subdivision thereof, or any agency, court or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.
10. **Default**. In the event that the City shall fail to pay any amount required to be paid hereunder when due or fail to perform or comply with any obligation under this Agreement (each, a "Default") and any such Default continues for more than five (5) days after notice from Amtrak of such Default ("Default Notice"), then Amtrak may terminate this Agreement immediately upon notice to the City and pursue any and all other remedies available at law or in equity. In addition, a default under the Project Agreement shall constitute a default under this Agreement. Notwithstanding the foregoing, the City shall have a right to cure a Default within ninety (90) days after receipt of a Default Notice, during which time the City shall not be deemed in Default of this Agreement or the Project Agreement.
11. **Force Majeure**. Should circumstances occur which are beyond the reasonable control of Amtrak or the City and without the fault or negligence of Amtrak or the City, (i.e., acts of God or war, strikes, fire, floods, pandemics, declared national emergencies, epidemics, theft, vandalism, terrorism, or unusually severe weather), which delay the completion of work relating to a Permitted Use or Emergency Access or Special Event, the delayed party shall be excused from such delay and shall give to the other party

written notice thereof. Within ten (10) calendar days of commencement of the delay, the delayed party shall provide to the other party an estimate of the anticipated impact of the delay on the completion of the work, including its impact, if any, on the schedule. Within ten (10) calendar days after the termination of any such delay, the delayed party shall file written notice with the other party specifying the actual duration of the delay.

- 12. Notices.** 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 another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the City:

City of Springfield
Department of Capital Asset Construction
36 Court Street, 3rd floor
Springfield, Massachusetts 01103
Attn: Director

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station
2955 Market Street
Philadelphia, PA 19104
Attn: Director, Real Estate

- 13. Miscellaneous.**

- (a) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.
- (b) Nothing in this Agreement shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.
- (c) If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.
- (d) No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person with respect to performance of the City's or Amtrak's obligations under this Agreement.
- (e) The Licenses and related rights granted to the City in this Agreement are personal privileges to the City only and do not intend to grant or confer any right, privilege or benefit to any

other person or entity. The City's rights hereunder may not be assigned, transferred, sublicensed, mortgaged or hypothecated.

- (f) The City shall not discriminate in the conduct and operation of its business in the License Area against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

14. Successors and Assigns. Except as otherwise provided by this Agreement, this Agreement shall insure to the benefit of and be binding upon the permitted successors and assigns of the Parties hereto, except that neither Party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

15. Entire Agreement. This Agreement including without limitation, all exhibits, constitutes the entire agreement between the Parties as to scope and subject matter. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement or any part hereof may not be changed, amended or modified, except in writing signed by the Parties.

16. Governing Law. This Agreement shall be construed according to the laws of the District of Columbia, without giving effect to choice of law or conflicts of law principles and adjudicated exclusively in federal courts.

17. Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute 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. Receiving Parties 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.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be duly executed as of the Effective Date.

City of Springfield

By: _____
Name:
Title:

National Railroad Passenger Corporation

By: _____
Christopher Hartsfield
AVP Properties

CITY OF SPRINGFIELD
In the City Council March 7, 2022

WHEREAS, the National Passenger Railroad Corporation (“Amtrak”) owns and maintains certain railroad tracks and maintains the associated right-of-way which tracks cross State Street, a City-owned and maintained public roadway, at-grade, at Mile Post 61.22 (“State Street Crossing”); and

WHEREAS, the City and Amtrak have been working in cooperation to facilitate public safety and access improvements to Riverfront Park and the State Street Crossing; and

WHEREAS, the City and Amtrak desire to enter into a Memorandum of Understanding Agreement and Real Estate License Agreement relative to providing increased security and safety for the entrance to Riverfront Park, wherein Amtrak will provide the City with three million dollars (\$3,000,000.00) to conduct certain improvements to the northern underpass entrance, and wherein the Parties agree to terms of maintenance and emergency access to State Street Crossing; and

NOW THEREFORE, BE IT ORDERED, that the City Council of the City of Springfield with the approval of the Mayor hereby accepts three million dollars (\$3,000,000.00) from Amtrak for improvements to the northern entrance to Riverfront Park, and further approves the execution of a Memorandum of Understanding Agreement and Real Estate License Agreement with Amtrak, memorializing the terms of funding for the project, in substantially the same form as the attached documents.

DRAFT

**MASTER AGREEMENT
BETWEEN**

**THE NATIONAL RAILROAD PASSENGER CORPORATON,
AND
THE CITY OF SPRINGFIELD, MASSACHUSETTS
FOR THE IMPROVEMENT OF THE MAIN ENTRANCE TO RIVERFRONT PARK**

This Agreement, made this ____ day of _____, 2021, is between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 et seq. and the laws of the District of Columbia, having its principal place of business at 1 Massachusetts Avenue N.W., Washington, DC 20001 (“Amtrak”), and the City of Springfield, Massachusetts (“City”, or “Springfield”), an incorporated municipality and political subdivision of the Commonwealth of Massachusetts (hereinafter collectively referred to as the “Parties”).

WHEREAS Amtrak owns and maintains certain railroad tracks and associated right-of-way located within the City; and

WHEREAS such tracks cross State Street, a City-owned and maintained public roadway at an at-grade crossing at mile post 61.22; and

WHEREAS, the Parties agree that due to the proximity of Riverfront Park to the State Street crossing, and due to the increasing amount of rail traffic on the Amtrak right of way, unfettered public access across the tracks at the existing State Street crossing must be curtailed in order to protect the public safety; and

WHEREAS, the Parties have identified that the existing undergrade crossing of the Amtrak right of way at mile post 61.28, approximately 300 feet north of State Street (“Main Entrance”) will be a more appropriate and safer pedestrian and vehicular entrance for Riverfront Park; and

WHEREAS, the Main Entrance is currently not compliant with the provisions of the American Disability Act; and

WHEREAS, the Parties agree that they will work together to design and construct the changes to the Main Entrance necessary to make it fully compliant with all applicable accessibility laws (the “Project”); and

WHEREAS, in order to safely integrate Amtrak’s operations with the Project, the City requests: Amtrak services, which may include but are not limited to design review, railroad protective services, and railroad construction services (the “Services”), as well as access to Amtrak property for the design, construction, installation, inspection and maintenance of the Project; and

WHEREAS, Amtrak is willing to provide such Services in accordance with the terms set forth herein in this Master Agreement; and

WHEREAS, the Services provided by Amtrak under this Agreement are ongoing and will be identified in each Project Initiation (PI) form, attached hereto as Exhibit A; and

WHEREAS, the Parties also seek to clarify the ownership rights and responsibilities at State Street crossing, they intend to execute new Real Property documents relating to that parcel simultaneously with this Agreement.

NOW THEREFORE for and in consideration of the premises and the mutual covenants

herein contained, and with the intent to be legally bound hereby, the Parties agree as follows:

ARTICLE I PROJECT SERVICES

The Services will consist of several project-specific tasks to be completed during the term of this Agreement which will require assistance from Amtrak. For each Service, Amtrak and the City will complete and sign at least one PI form in which the scope and schedule will be defined for Services.

A. Design Phase Services

1. Amtrak Services:

Amtrak shall provide the following preliminary engineering services for the City during the design phase of the Project as agreed to by the Parties under each Project and as specified in the applicable PI or Change Order ("CO") form as described herein:

- a) Review the City's plans, specifications and estimates;
- b) Perform site inspections;
- c) Attend meetings, including limited and advisory role in the selection of Consultant and Construction Contractor;
- d) Provide flagging and protection of railroad traffic as may be necessary;
- e) Prepare cost estimates for Amtrak's services during the construction phase of the Project;
- f) Perform environmental reviews, if necessary; and
- g) Provide such additional services as may be agreed upon by the Parties.

These services are referred to collectively as the "PE Services."

2. (a) Review of Documents:

The City shall submit all plans, specifications, and estimates, hereinafter referred to as "Documents" relating to the Project to Amtrak for review and approval, and shall submit all schedules for Amtrak review and comment. The City shall submit all Documents to Amtrak pursuant to the Submission of Documents process described herein. The City agrees that Amtrak shall have a minimum of thirty (30) working days to review any Documents. Subject to the provisions of Article II Section 2 herein, Amtrak agrees that it will to review all Documents within sixty (60) working days of its receipt of such Documents. If Amtrak fails to complete said review within sixty (60) days, the City may proceed at its own risk without Amtrak approval. The City agrees to incorporate all of Amtrak's comments related to Amtrak right of way or Amtrak owed assets into the final design plans for the Project.

(b) Submission of Documents.

1. Amtrak review of the Project shall be initiated by the City's submission of a completed PI to Amtrak for its review and approval. Each PI will include as applicable: a scope of work description of the Services requested by the City; all Documents, including: project schedule (setting forth the amount of time required for the projected design and construction phases of and completion of the Project); project-specific plans, specifications or other submittals; and any special

terms or conditions as approved by the Parties.

2. The Parties agree that each Project shall be governed by the terms of this Agreement, and that the special terms or conditions of a PI, if any, may specifically modify or waive specific provisions of this Agreement. However, such modifications or waivers apply only to that specific PI. If there is a conflict between the provisions of this Agreement and the special terms or conditions of a PI, the special terms or conditions of the PI will be controlling for that PI only.
3. The City shall identify each PI with a unique number.
4. To be effective, the PI must be signed by the following individuals or by authorized representatives specifically designated in writing by the following: for the City, by its Director of Public Works, Director of Park Buildings and Recreation management, or City Engineer, and for Amtrak, by its Chief Engineer. No Services shall be performed until Amtrak's receipt of a fully executed PI. Should the PI also require FHWA or any other similar approvals, it shall be the sole responsibility of the City to procure such approvals prior to submission to Amtrak. A fully-executed PI shall constitute a notice to Amtrak to proceed with the Services and shall constitute a commitment on the part of the City to pay Amtrak for those Services in accordance with the provisions of the PI and this Agreement.
5. Modification to any term of a PI shall be made only upon the written submission to Amtrak and execution by both Parties of a Change Order ("CO") Form. A copy of the CO form to be utilized is attached hereto as Exhibit B.

3. Insurance:

- (a) Each of the City's Consultants or any of its sub consultants who perform design or engineering functions in support of the Project shall provide and maintain in force during the course of the Project, at no cost to Amtrak, professional liability insurance covering the liability for any and all errors or omissions committed by the Consultant or any of its sub consultants, or by agents or employees of the Consultant or any of its sub consultants, in the performance of the Project design, regardless of the type of damages. The coverage shall be maintained until such time as the design and construction is completed and for at least three years following completion of all operations to be performed. The City's Consultant or any of its sub consultants shall maintain a policy with limits of liability of not less than Two Million dollars (\$2,000,000) per claim and in the annual aggregate. Each policy may contain a deductible clause of a maximum of Two Hundred Fifty Thousand Dollars (\$250,000).
- (b) Each policy shall provide: (a) a policy retroactive date that coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements); (b) that if the insurance is terminated for any reason, the Consultant or any of its sub consultants and/or the City agree to purchase an extended reporting provision of at least three (3) years to report claims arising from work that is being performed; and (c) for reporting of circumstances or incidents that might give rise to future claims.
- (c) The City shall, and must require its Consultant or any of its sub consultants

performing design or engineering functions to provide Amtrak with written proof of the insurance coverage required hereunder prior to the commencement of any work on the Project, as well as thirty (30) days notice of cancellation, renewal, replacement, or material change of insurance coverage.

4. Indemnification and Insurance During Design:

(a) The City shall require its Consultant or any of its sub consultants who perform design or engineering functions in support of the Project, to defend, indemnify and hold harmless Amtrak (and any other affected railroad), from all liability caused by errors or omissions in their work or in the work of their Consultant or any of its sub consultants, agents, or employees. 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 the City or its Consultant or any of its sub consultants, and shall survive the termination of this Agreement for any reason.

(a) Before Amtrak will review any Documents, the City must require its Consultants or any of its sub consultants performing design or engineering functions to: 1) execute a copy of the indemnity form attached hereto as Exhibit C, and return the form to Amtrak at the address listed in the Notices section of this Agreement, and 2) provide Amtrak with written proof of the insurance coverage contained in Section 3 herein.

(c) To the extent allowable by law, the City agrees to defend, indemnify and hold harmless Amtrak from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including cost of defense and attorneys' fees), resulting from personal injury, bodily injury, disease, or death to any persons or damage to any property, regardless of the cause thereof, which would not have been incurred but for the existence of the Project.

(d) The foregoing obligation shall not be limited by the existence of any insurance policy carried by the City or by any limitation on the amount or type of damages, compensation, or benefits payable by or for the City, and shall survive the termination of this Agreement.

(e) The City's contractors performing work on the Project shall procure and maintain during the term of this Agreement the insurance coverages in Exhibit D.

5. Design Costs:

Amtrak shall be solely responsible for paying all costs associated with its PE Services provided hereunder.

B. Construction Phase Services

1. City's Obligations:

(a) The City shall construct, or cause to be constructed, the Project (except for those elements of the Project that are included in the Support Services, as defined below) in accordance with the terms of this Agreement, the plans approved by Amtrak during the Design Phase of the Project, and applicable law. Except as provided otherwise herein, the City shall be responsible for the cost of all of the work arising out of or in connection with the Project.

(b) Any Project work performed on, over, under or within twenty five feet of Amtrak's right-of-way by the City or its contractors and subcontractors, shall comply with the provisions of Amtrak's then-current Temporary Permit To Enter Upon Property including all attachments included herein, which include but are not limited to: "Section 01141A - Safety and Protection of Railroad Traffic and Property"; Section 01142A - "Submission Documentation Required for Amtrak Review And Approval Of Plans For Bridge Erection, Demolition And Other Crane / Hoisting Operations Over Railroad Right-Of-Way"; Section 02261A - "Requirements For Temporary Sheet piling and Shoring To Support Amtrak Tracks"; "EP 3005-Pipeline Occupancy-Specification 02081A"; and "Track Monitoring", as the same may be amended, replaced or updated from time to time by Amtrak as its part of its standard practice. The City will include the above Exhibits in the contract documents for the Project. Amtrak shall provide the City with the above documents in electronic format. The City, its contractors, and subcontractors shall comply with the then current specifications and requirements, at no cost to Amtrak. The City recognizes that Amtrak, as part of its standard practice, may from time to time modify said specifications and requirements.

(c) The City shall notify Amtrak upon substantial completion of the Project.

2. Amtrak Support Services:

(a) Subject to the limitations expressed elsewhere in this Agreement, Amtrak shall make available railroad protection personnel and other railroad employees required by Amtrak (or mutually agreed to by the Parties) to provide various services required as a result of the Project, including without limitation, protection services, engineering, inspection, signal and other services to ensure the safety of railroad operations and to protect contractor employees during the course of Project construction (collectively the "Support Services"). Notwithstanding any other provision of this Agreement, no work on the Project that may foul the tracks, or have the potential to foul the tracks, may be performed until all protection services required by Amtrak are in place.

(b) Upon Amtrak's receipt of a notice from the City requesting Amtrak to proceed with the Support Services (the "Notice to Proceed"), as detailed in Article I.A.4 above), accompanied by a City purchase order and evidence reasonably satisfactory to Amtrak that all insurance certificates and policies required herein are in place, and provided that the City is not otherwise in default of any of its obligations hereunder beyond any applicable notice and cure period, Amtrak will cooperate with the City to provide the Support Services in accordance with the City's schedule. However, the City acknowledges that only limited track outages are available, and these outages must be shared and/or rationed among all potential projects (including other Amtrak, City, state, municipal, commuter and third party projects) in the vicinity of the Project area. In addition, Amtrak may have manpower restrictions further limiting its ability to conform to the City's schedule. These restrictions may preclude Amtrak from performing its work hereunder according to the City's schedule, or may prevent the City from access to the Project site according to the City's schedule. Amtrak shall use reasonably diligent efforts to accommodate the City's schedule so as to permit the City to proceed as expeditiously as possible.

2. Indemnification and Insurance During Construction:

- (a) The City shall provide Amtrak with the indemnities and insurance coverages detailed in the applicable real property agreements between the Parties.

C. Changes to the Project; Change in Services

- (a) Either Party may initiate a change to the scope of work described in a PI. Such changes may include without limitation, the following: 1) changes in the specifications (including drawings and/or design details); 2) changes in the method or manner of performance of the Services; 3) changes in the facilities, equipment, materials, services, or site(s); 4) changes in estimated cost; and 5) changes in estimated project schedule.
- (b) The Party initiating a change shall prepare a change order ("CO") on the form attached hereto as Exhibit B, documenting the proposed change, and shall provide the information relating to the estimated cost and scheduling impact, if any, of the change.
- (c) If Amtrak requests additional time as a result of a CO, it will submit to the City, within a reasonable time period after submission of the CO, a written notification that it is requesting additional time. Within 30 calendar days thereafter, Amtrak shall submit to the City an estimate setting forth the justification for the time extension.
- (d) No order, statement, or conduct of either Party shall be deemed to effect or entitle either Party to a change unless the Parties comply with the CO procedure set forth herein.
- (e) In the event of a City emergency (unrelated to Amtrak operations and safety issues) that arises as part of a project, Amtrak may agree to perform Services related to the project and required immediately by the City as a result of the emergency, without the necessity of having to execute a CO form in advance; provided that, Amtrak shall notify the City verbally of the emergency and the City, if it concurs with the additional work, shall do so in writing within 24 hours. A CO shall be issued by Amtrak within 14 calendar days of the onset of the emergency. The City shall have 14 calendar days to return the executed CO form to Amtrak. If a fully executed CO is not received by Amtrak within 14 calendar days, Amtrak may stop performing the emergency work, after giving the City 48 hours notice to comply.
- (f) Each CO shall be issued in sequential alphabetical order and shall cite as part of its designation the PI number to which the change is being made. For example, the first CO to PI-1 would be CO-1-A. If a second CO were to be issued against PI-1, it would be CO-1-B, and so on.
- (g) To be effective, the CO must be signed by the authorized representative of each Party as identified in the applicable PI. No work under the CO shall commence until both Parties have received a fully executed CO. The Parties agree to enter into good faith discussions to attempt to reach agreement. While in dispute, all Services that will be affected by the CO shall, at Amtrak's option, may be suspended.

ARTICLE II PROVISIONS APPLICABLE TO DESIGN AND CONSTRUCTION PHASES

1. Billing and Payment:

- (a) Amtrak will contribute up to three (3) million dollars towards the overall costs of the Project,. All Project costs in excess of three million dollars are the sole responsibility of the City.
- (b) As costs are incurred by the City, the City shall invoice Amtrak no more than once per month. Invoice documentation shall include a payroll cost report, which lists the hours, payroll amounts, dates and names of employees and contractors who worked on the Project ("City Costs"). The City shall also provide copies of material invoices, third party service invoices, equipment invoices, and invoices for any other costs charged to the Project.
- (c) The City shall invoice Amtrak within sixty (60) calendar days of incurring costs under this Agreement. Amtrak shall pay all invoices within sixty (60) calendar days of receipt of said invoices. If Amtrak objects to any invoice or portion thereof, it shall make an adjusted payment and provide a written statement as to its objection. Within thirty (30) calendar days thereafter, the City will provide Amtrak with additional documentation as required to demonstrate the accuracy of the billing. The objection shall be considered resolved unless the Amtrak provides additional written exception within thirty (30) calendar days of receipt of such additional documentation.
- (d) The City may invoice Amtrak for up to three million dollars (\$3,000,00.00) in City Costs, as above. In the event that the Project is not complete at that point, the City will cease invoicing Amtrak for City Costs.
- (e) After payment by Amtrak to the City of a total of three (3) million dollars towards the Project, Amtrak shall have no further financial responsibility towards the Project.

2. Schedule:

- (a) Each PI will include a mutually agreed upon schedule for a specific Project(s). Amtrak will use reasonable efforts to provide personnel to support the schedules reflected in each PI.
- (b) Amtrak shall not be held liable for any damages resulting from the City or its contractors' inability to perform project work due to Amtrak operations.
- (c) The City shall cause contractor(s) performing project work under a PI to provide Amtrak, prior to commencement of each component of a project, with a proposed critical path method (CPM) construction schedule that provides reasonable notice of any requirements for track outages. Four weeks prior to any such track outage, the contractor will be required to attend the track outage meeting at which time, the scope of work, length of outage, and location of work will be reviewed. One week prior to such track outage, contractor will be required to attend the track outage meeting at which time the specifics of the requested outage will be finalized and confirmed by Amtrak. Track outages can be canceled or modified at any time, even during the actual outage. Contractors shall be advised in solicitation packages to

consider in their proposals that project work is required to be performed simultaneously with ongoing daily railroad operations. Such operations include without limitation, the passage of trains, and the repair, construction, reconstruction and maintenance of the railroad right-of way and facilities. Contractor(s) should be advised that these conditions may cause delays and suspension of construction schedules.

3. Drawings and Plans; Compliance with Approved Plans; Construction Operations

- (a) All plans, drawings, and specifications relating to elements of the Project directly or indirectly impacting Amtrak property or operations will be reviewed and approved by Amtrak and will result in a final set of plans, drawings and specifications, including estimates of design and construction costs ("Approved Plans"). Any review of such Approved Plans by Amtrak shall be for the purpose of examining the general arrangement, design and details of the project for potential impact on Amtrak's operations. No review, correction or approval of Approved Plans by Amtrak shall relieve the City and its design contractors from the entire responsibility for negligent errors or omissions in such Approved Plans or of the adequacy thereof.
- (b) Any material revision to the Approved Plans shall be resubmitted to Amtrak for approval. The City acknowledges that all approvals herein shall be subject to the City's compliance with Amtrak's safety, operations, security, environmental and engineering procedures. All Projects shall be in compliance with the Approved Plans.
- (c) Amtrak shall have the right to inspect the work performed by the City's contractors on Amtrak property that may impact Amtrak operations at any time for quality and to determine, in general, if the work is being performed in a manner indicating that the Project, when completed, will be in conformance with the Approved Plans. The City's failure to adhere to the Approved Plans may result in revocation of any Temporary Permit to Enter, as defined herein, issued for the Project, and/or such other action as Amtrak, in its sole discretion, deems appropriate.
- (d) No Amtrak inspection or approval relieves the City and its contractors from the sole obligation to comply with the Approved Plans and all applicable Laws (as defined herein).
- (e) The City shall supervise and direct the work of its contractors performed hereunder in compliance with all laws, regulations, codes, ordinances, rules or orders of any applicable governmental entity or public authority, as well as industry standards applicable to the performance of the work. The City shall secure and pay for all permits and fees, license, approvals and inspections necessary for the proper execution and completion of the Project, including without limitation any applicable construction or environmental permits.
- (f) Amtrak assumes no responsibility for the physical condition or safety of the work site or any improvements located thereon.

4. Compliance with Standards and Laws

If the City or its contractors are performing any work on or within twenty-five feet of the tracks or with the potential to foul the tracks, or that is otherwise on Amtrak's property, the City and its contractors shall perform all work hereunder in accordance with Amtrak's standards, including but not limited to, the following:

- (a) Engineering Practice 3014 (Maintenance and Protection of Amtrak Traffic during Contractor Operations);
- (b) Engineering Practice 3014-0114A (Safety and Protection of Amtrak Traffic and Property);
- (c) Engineering Practice 3014-01142A (Submission Documentation required for Amtrak Review and Approval of Plans for Bridge Erection, Demolition and other Crane Hoisting Operations Over Amtrak Right-of-Way);
- (d) Engineering Practice 3014-01520A (Requirements for Temporary Protection Shields for Demolition and Construction of Overhead Bridges and other Structures);
- (e) Engineering Practice 3014-02261A (Requirements for Temporary Sheeting and Shoring to Support Amtrak Tracks);
- (g) Engineering Practice 3016 (Storm Water Drainage and Discharge from Adjacent Property onto Amtrak Right-of-Way).
- (h) Amtrak Engineering Specification No. 150 - Stormwater Management Policy
- (i) Amtrak Standard Track Plans - Minimum Roadway Clearances - Dwg. Nos. 70050.001.08 and 70050.002.08
- (j) Amtrak Engineering Practices 3005 - Pipeline Occupancy - Pipeline Occupancy Specifications 02081A - (rev. 2. 6/23/14) and Additional Requirements for Horizontal Directional Drilling (HDD)/Directional Boring - Specification 02082A
- (k) CE - 4 Specifications for Wire, Conduit and Cable Occupations of National Railroad Passenger Corporation Property
- (l) Amtrak Engineering Practices 3003 - Blasting Procedures

In addition, the City and its contractors shall perform all work hereunder in compliance with all applicable laws, regulations and requirements.

5. Labor Rights.

This Agreement shall not require Amtrak to contravene the provisions of any of its labor agreements. In the event of a conflict or inconsistency between this Agreement and any Amtrak labor agreement, the labor agreements shall control as to such provision.

6. Permit to Enter:

Amtrak shall authorize and consent to the entry by the City's employees upon Amtrak's right-of-way or other property for the purposes of the Project, however, such authorization and consent is contingent upon compliance by the City with all of Amtrak's operating and safety rules and regulations, including but not limited to those rules and regulations set forth in Amtrak's current "Temporary Permit to Enter Upon Property". Nothing herein shall be interpreted to allow the Consultant or Contractors, its agents or other third Parties engaged by the City permission to enter upon the property of Amtrak. Any such third party must execute Amtrak's then-current "Temporary Permit to Enter Upon Property" and abide by all conditions therein to gain access to Amtrak's Property.

7. Environmental Matters:

(a) The City, including the City's Consultant or Contractor, shall not perform any environmental or geotechnical testing on Amtrak property for any reason without: i) notifying Amtrak of its desire to do so; ii) discussing the nature and extent of the proposed testing with Amtrak's Environmental Department; iii) presenting a proposed testing plan to Amtrak for Amtrak's review and approval; and iv) obtaining the express written permission of Amtrak to conduct the agreed-to testing. Amtrak shall have the right, but not the obligation, to be present at any and all such testing and to take split samples.

(b) Any Consultant or Contractor engaged by the City to perform environmental testing shall execute Amtrak's standard "Temporary Permit to Enter Upon Property" before performing any testing.

(c) At Amtrak's option, the City shall immediately provide Amtrak with a copy of the test results at no cost to Amtrak.

(d) Amtrak retains the right to alter, suspend, cancel or otherwise modify the City's work schedule pending the resolution of any of the above environmental issues. Amtrak shall not be held responsible for any claims related to any such changes in the City's schedules, including without limitation, claims related to damages resulting from any such delays or cancellations.

(e) The foregoing provisions shall survive termination of this Agreement.

8. Qualifications of Personnel:

The City and its Consultant or any of its sub consultants shall ensure that all agents or employees possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

9. Successors and Assigns:

Except as otherwise provided by this Agreement, this Agreement shall insure to the benefit of and be binding upon the successors and assigns of the Parties hereto, except that neither Party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

10. Force Majeure:

Should circumstances occur which are beyond the reasonable control of Amtrak or the City and without the fault or negligence of Amtrak or the City, (i.e., acts of God or war,

strikes, fire, floods, epidemics, theft, vandalism, terrorism, or unusually severe weather), which delay the completion of the Project, the delayed party shall be excused from such delay and shall give to the other party written notice thereof. Within ten (10) calendar days of commencement of the delay, the delayed party shall provide to the other party an estimate of the anticipated impact of the delay on the completion of the Project, including its impact, if any, on the Project schedule. Within ten (10) calendar days after the termination of any such delay, the delayed party shall file written notice with the other party specifying the actual duration of the delay.

11. Records:

(a) Amtrak shall permit the City, or any of their duly authorized representatives to inspect and audit all data and records of Amtrak relative to Amtrak's performance under this Agreement, including the right to review and audit the accounts and records of Amtrak at reasonable times upon reasonable request as may be required to determine full compliance with all terms and conditions of this Agreement.

(b) To provide the City such access, Amtrak agrees that it shall preserve all of its records and accounts intact concerning the implementation of this Agreement for a period of three (3) years after final payment under this Agreement. If any litigation, claim or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

12. Reserved:

13. Notices:

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 another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested, or by overnight delivery service, in an envelope addressed as follows:

If to the City:

City of Springfield
Department of Capital Asset Construction
36 Court Street, 3rd floor
Springfield, Massachusetts 01103
Attn: Director

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station, Mail Box 46
2955 Market Street
Philadelphia, PA 19104
Attn: Chief Engineer

14. Permits, Licenses and Approvals:

The City and/or its Consultant or Contractors shall secure and pay for all permits, licenses, easements, or approvals, which may be required in connection with the

performance of its work hereunder.

15 Miscellaneous:

- (a) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.
- (b) Nothing in this Agreement shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.
- (c) If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.
- (d) No recourse shall be had by either party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person with respect to performance of the City's or Amtrak's obligations under this Agreement.
- (e) Nothing herein shall be interpreted to require Amtrak to accept any designs it deems unsatisfactory due to impacts on Amtrak property or operations, nor to require Amtrak to grant permission for construction of the Project or any portion thereof.

16. Termination:

The City shall have the right to terminate all or any part of the PE Services or Support Services, for any reason, upon written notice to Amtrak. Promptly upon receipt of such notice, Amtrak shall discontinue said Services, shall halt the placing of further third party contracts relating thereto, and, insofar as possible, shall cancel all outstanding third party contracts relating thereto. If Amtrak is unable to arrange for cancellation of any third party contract or if the proposed cancellation charge therefore is one which the City will not approve, then Amtrak agrees that it will follow the instruction of the City with respect to such contract.

17. Term of Agreement

The Term of this Agreement shall be from the date of execution until the date of completion of the Project, or five (5) years, whichever comes first. However, any PI that is executed prior to the termination of this Agreement shall remain in effect and governed by the terms of this Agreement until that PI is either terminated or the Project is completed.

18. Entire Agreement:

This Agreement constitutes the entire agreement between the Parties as to scope and subject matter. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement or any part hereof may not be changed, amended or modified, except by written agreement of the Parties.

ARTICLE III**CONDITIONS PRECEDENT; CROSS DEFAULTS**

1. No PI executed under this Master Agreement calling for the construction of the Project shall have any force or effect unless and until the Parties execute separate documents (e.g., temporary and permanent easement) relating to the closure of State Street crossing. Such documents must contain the following elements:
 - a. State Street crossing is to be closed to the general public, fenced and locked
 - b. Access to the crossing is for special events and for vehicular movements that cannot be accommodated at the Main Entrance due to clearance conditions.
 - c. Access is to be in accordance with the real estate License Agreement between the Parties ("License Agreement").
2. Any material breach of the terms of this Master Agreement by the City (such as non-payment, failure to maintain insurance or honor an indemnity) shall constitute a default hereunder and under the License Agreement, and Amtrak may terminate this Agreement and the License Agreement, curtail or cease to provide Services hereunder.

IN WITNESS WHEREOF, the Parties have set their hands hereto on this Master Agreement as of the date first set forth below.

City of Springfield

By: _____

Title:

Date: _____

**National Railroad Passenger
Corporation**

By:

Title:

Date: _____

EXHIBIT A

PROJECT INITIATION FORM

PROJECT INITIATION FORM (P.I.) State Street Crossing Master Agreement

1. Project Initiation Form Number: _____ Date: _____

2. Project Name: _____

3. Location: _____

4. Description: _____

5. Total Estimated Cost: \$ _____

6. Period of Work: From: _____ To: _____

7. Attachments: (Plans, Specs, Estimates, etc.) _____

8. Amtrak Work Element No: * _____

Project Representatives

9. For Springfield:

10. For Amtrak: *

Name

Name

Title

Title

Address

Address

City, State, Zip
Phone

Phone

City, State, Zip

Approval and Authorization

11. For Springfield

12. For Amtrak: *

Signature

Date

Signature

Date

Name

Name

Name

TitleTitle

Close Out Data

13. Completed on: _____

14. Final Cost: _____

* To be completed by Amtrak

EXHIBIT B
CHANGE ORDER FORM

CHANGE ORDER FORM (C.O.) State Street Crossing Master Agreement

1. P.I. No. _____ Change Order Form Number: _____ Date: _____

2. Project Name: _____

3. Location: _____

4. Description: _____

5. Prior Estimated Cost: \$ _____ C.O. Estimated Cost: \$ _____

5(a). New Total Estimated Cost: \$ _____

6. Period of Work: From: _____ To: _____

7. Attachments: (Plans, Specs, Estimates, etc.) _____

8. Amtrak Work Element No: * _____

Project Representatives

9. For Springfield:

10. For Amtrak: *

Name

Name

Title

Title

Address

Address

City, State, Zip
Phone

Phone

City, State, Zip

Approval and Authorization

11. For Springfield:

12. For Amtrak: *

Signature

Date

Signature

Date

Name _____ Name _____

Title _____ Title _____

Close Out Data

13. Completed on: _____ 14. Final Cost: _____

* To be completed by Amtrak

EXHIBIT C

CERTIFICATE BY *[insert name of consultant]* TO NATIONAL RAILROAD PASSENGER CORPORATION

This Certificate ("Certificate") effective this ____ day of _____, 2021, is made by *[insert name of entity]*, a *[insert type of entity (e.g., corporation/partnership/limited liability company) and state of incorporation or formation - for example, a Delaware limited liability company]* with its principal offices located at *[insert location]* ("Consultant") to National Railroad Passenger Corporation, a District of Columbia corporation with its principal offices located at 1 Massachusetts Avenue, N.W., Washington, DC, 20001("Amtrak").

WHEREAS, Amtrak owns, maintains and/or operates intercity passenger rail service over a certain railroad right-of-way between New Haven, CT and Springfield, MA, known as the Springfield Line); and

WHEREAS, the City of Springfield (hereinafter ["City"]) proposes to bring an existing underpass under the Springfield Line located in the vicinity of State Street, in the City , at railroad milepost 61.28 into compliance with all accessibility laws (the "Project"); and

WHEREAS, City has retained the services of Consultant to provide engineering and/or design services in support of the Project; and

WHEREAS, due to the location of the Project relative to Amtrak property and the potential impact of the Project on Amtrak's property and/or operations, the Project work may not proceed without Amtrak's prior review and approval of the plans, drawings and specifications that may impact Amtrak operations ("Plans"; and

WHEREAS, in order to advance the Project, Consultant desires Amtrak's review and approval of its Plans; and

WHEREAS, Consultant agrees that protection of Amtrak's property and operations is a paramount public safety concern.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the covenants and agreements contained herein, intending to be legally bound, Consultant hereby represents, acknowledges, and agrees as follows:

1. Recitals. The recitals set forth above in the WHEREAS clauses are incorporated into the terms of this Certificate as if fully set forth herein.

2. Consideration for Execution of this Certificate. In consideration, *inter alia*, for Amtrak reviewing the Plans which are needed for Consultant to perform its obligations under Consultant's agreement with City, Consultant hereby executes this Certificate.

3. Indemnification. Consultant hereby releases and agrees to defend, indemnify and hold harmless Amtrak and any other affected railroad, as well as their respective officers, directors, employees, agents, successors, assigns, and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, liabilities, claims, demands, fines, 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 negligent errors or omissions in Consultant's work and/or in the work of its officers, directors, employees, agents, subconsultants, successors, assigns, subsidiaries, and any other persons acting for or by permission of Consultant relating to the design and/or engineering services Consultant is providing for City in support of the Project. 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 Consultant or its subconsultants or agents, and shall survive the termination of the agreement between Amtrak and the City.

4. Insurance. Consultant agrees to procure and maintain in effect professional liability insurance covering the liability of Consultant for all negligent errors or omissions committed by Consultant, its officers, directors, employees, agents, subconsultants, successors, assigns, and subsidiaries, and any other persons acting for or by permission of Consultant in the performance of any design and/or engineering services in support of the Project. The insurance shall be maintained during the term of Consultant's agreement with City and for at least three years following completion of all services to be performed by Consultant in support of the Project. The insurance shall have limits of liability of not less than two million dollars (\$2,000,000) per claim.

Prior to Amtrak reviewing any Plans, Consultant shall provide to Amtrak an insurance certificate reflecting that Consultant has the insurance as stated above. At least one (1) time every year thereafter, Consultant shall provide to Amtrak an updated insurance certificate reflecting that Consultant has the insurance as stated above.

5. Review of Documents. Any review of Consultant's Plans by Amtrak shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Amtrak's property and operations. Amtrak assumes no responsibility for, and makes no representations or warranties, express or implied, as to the design, condition, workmanship and/or adequacy of the Plans.

6. Permit to Enter. Nothing herein is intended to grant Consultant the right to enter upon the right-of-way or other property of Amtrak. If entry onto, above, or below Amtrak's right-of-way or other property is required for purposes of this Project by Consultant, Consultant must execute the then-current version of Amtrak's "Temporary Permit to Enter Upon Property".

7. Governing Law. This Certificate shall be governed by and construed under the laws of the District of Columbia. All legal proceedings in connection with any dispute arising under or relating to this Certificate shall be brought in the United States District Court for the District of Columbia.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Certificate.

Consultant

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT D**INSURANCE REQUIREMENTS**

The City's Contractors shall procure and maintain a policy or policies of the following insurance ("Required Insurance"), which shall be effective immediately and be renewed or replaced to remain in effect continuously for the duration of this Master Agreement. Insurance policies comprising the Required Insurance shall be submitted in advance to Amtrak for Amtrak's review and approval, which approval shall not be unreasonably withheld or delayed so long as the policy or policies contain the Required Insurance with all applicable enhancements and provisions. For purposes of this Section, the Required Insurance shall include:

I. General Liability/Railroad Liability Insurance.

General Liability or Railroad Liability insurance in a form acceptable to Amtrak covering Amtrak, the City, and the employees, officers, agents and representatives of any of them on a primary basis with the following limits and for the following risks and hazards:

a. Liability for bodily injury, death, or personal injury to any person including but not limited to the contractors, employees, passengers, and invitees of Amtrak, the City, the City, or any other person or entity and property damage (including loss of use of property) to any property whatsoever, arising out of or in any way connected with, or that would not have been incurred or would not have occurred but for this Master Agreement, a Temporary Permit to Enter, or the presence of the City, the City, or the employees, contractors, consultants, passengers or invitees of any of them, or any of the Bridges, Services or Projects.

b. The Required Insurance shall be specifically endorsed to acknowledge that it is primary insurance for Amtrak and Amtrak's employees, officers, agents, and representatives and to provide that any other insurance carried by Amtrak shall be excess and shall not be required to share or contribute in any manner with such insurance.

c. The Required Insurance shall be maintained continuously with a combined single limit for bodily injury and property damage liability of not less than twenty five million dollars (\$25,000,000) each occurrence, and with a self-insured retention of not more than two hundred fifty thousand dollars (\$250,000) for each occurrence.

d. The Required Insurance shall include, but not by way of limitation:

i. Contractual Liability coverage endorsed to confirm that this Agreement is an Insured Contract under the policy(ies) with no exclusion or restriction related to railroad operations or work within fifty (50) feet of a railroad;

ii. Cross Liability endorsement;

iii. Premises/Operations;

iv. Products/Completed Operations;

v. Independent Contractors;

vi. Sudden and Accidental Pollution (30/90);

vii. Punitive and Exemplary Damages shall not be excluded, or the policies may be silent regarding such damages;

viii. Certified and Non-certified Terrorism; and

ix. Deletion of any Explosion Collapse, and Underground (X-C-U-) exclusions.

e. Amtrak and the City shall be endorsed as additional named insureds on all policies comprising the Required Insurance.

f. Policies shall also be endorsed to provide that all other commuter agencies and railroads operating in the vicinity of the Project(s) shall be named as additional insureds.

g. Policies shall also be endorsed to provide for no denial or restriction of coverage by the insurer due to inadvertent errors or omissions in reporting by a named insured.

h. In the event that the policy limits for the Required Insurance are satisfied by combination of primary and excess policies in “layers,” all excess policies shall provide that they drop down in the event of reduction or exhaustion of underlying policy limits.

i. In the event that claims, losses or occurrences reduce or impair limits to less than \$180 million per occurrence due to the operation of an aggregate limit provision in the policy(ies), the City shall immediately notify Amtrak, and shall immediately reinstate or replace the insurance to the required limits. If an aggregate limit provision is included in any liability policy, it shall apply to no longer than an annual period and such aggregate limit shall be renewed annually whether or not any claims, losses or liabilities have been incurred.

j. the City shall provide Amtrak with copies of all policies comprising the Required Insurance, which shall be endorsed to provide at least thirty (30) days advance written notice to Amtrak of any cancellation, non-renewal, reduction, or material change in coverage.

k. If any of the Required Insurance (that is not required to be provided on an occurrence basis) is provided on a claims-made or occurrences-reported basis, then in addition to coverage requirements above, such policy shall provide that:

i. The retroactive date shall coincide with or precede the effective date of this Agreement or the effective (inception) date of the first such policy that was written on a claims-made or occurrences-reported basis. If any insurance that was previously written on a claims-made or occurrences-reported basis is subsequently written on an occurrence basis, the City shall procure “prior acts” coverage on the new occurrence policy(ies) with a retroactive date and with effect for all occurrences not known or reported under the preceding claims-made and occurrences reported policies.

ii. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims; and

iii. If claims-made or occurrences-reported insurance is terminated for any reason, the City shall purchase an extended reporting provision of at least two (2) years to report claims and occurrences arising from this Master Agreement, the Temporary Permit to Enter, Bridges, Services, Project(s) and related operations.

l. All liability policies shall be endorsed to indicate that coverage is primary for Amtrak liability arising out of or in any way connected with or which would not have occurred or would not have been incurred but for the Master Agreement, Temporary Permit to Enter, Bridges, Services, Project(s), or the presence of the City, or any trains, passengers, contractors, consultants, employees or invitees, including that arising from train operations of Amtrak, the City, and any other railroad operating over the tracks at issue.

m. In the event that City determines that any one or more components of the Required Insurance itemized above or otherwise required by this Agreement, is/are not available in the marketplace at any price, the City shall notify Amtrak, and Amtrak will waive the requirement for that particular component(s) so long as such components remain unavailable at any price.

II. Property Insurance.

the City agrees to bear the risk of loss of all bridges, equipment and other property used in connection with the Master Agreement, the Services, the Project(s) or other the City facilities or property. Accordingly, no property insurance will be required. If, however, the City, or any of their contractors or subcontractors carries such insurance, the City as applicable, shall ensure that Amtrak shall be named as an additional insured as respects Amtrak's interest in the property, and that the property insurer shall waive all rights of subrogation against Amtrak.

III. Automobile Insurance.

Automobile liability insurance covering all automobiles owned, leased, rented, or used by the City and their respective agents and employees, in connection with this Master Agreement, Temporary Permit to Enter, Bridges, Services, Project(s), or any operations or activities incidental to either. Such insurance shall provide auto liability insurance coverage with combined single limits of no less than one million dollars (\$2,000,000) per accident or occurrence for bodily injury and property damage liability.

III. Workers Compensation and Employers Liability Insurance.

the City will carry and will require their contractors and subcontractors to carry Workers Compensation insurance in accordance with the laws of the City of Springfield covering all applicable employees. Such insurance shall include Employers Liability coverage with limits of no less than one million dollars (\$1,000,000) each employee or accident. If the City or any of their contractors or subcontractors are considered a railroad(s) subject to the provisions of the Federal Employers Liability Act (FELA) rather than City Workers Compensation laws, the Employers Liability insurance shall be endorsed to provide coverage for FELA benefits and liabilities, and the required limits shall be increased to not less than fifty million dollars (\$50,000,000) per occurrence (alternately, FELA coverage may be provided under the Railroad Liability policy required herein. the City shall cause their contractors and subcontractors to waive all rights of subrogation against Amtrak.

IV. Construction Activities.

Prior to the commencement of any development, construction, reconstruction, maintenance or repair activities under this Master Agreement, the City will require their contractors and subcontractors to obtain the insurance coverage specified in the then current Temporary Permit to Enter, attached hereto and incorporated herein; or the City or their contractors may, at their option, provide the coverage for any or all contractors and subcontractors, providing that the evidence of insurance submitted by the City to Amtrak so states; provided, however, that the foregoing requirements shall not apply to routine maintenance, routine replacement or minor repairs performed by the City, or the City's contractors or subcontractors and for which Amtrak does not require flagging protection. It is agreed that insurance required pursuant to this Section shall be considered as Required Insurance.

V. Failure to Maintain Insurance.

Except as otherwise set forth in herein, in the event that the City, or the City's contractors or subcontractors fail to maintain the applicable Required Insurance with all applicable enhancements and provisions, Amtrak may curtail the exercise of the Master Agreement; and Amtrak shall not be responsible to the City, for any damages that the City incurs as a result of such failure.

DRAFT

**LICENSE AGREEMENT
BETWEEN
THE NATIONAL RAILROAD PASSENGER CORPORATON
AND THE CITY OF SPRINGFIELD, MASSACHUSETTS
REGARDING STATE STREET CROSSING**

This Agreement (“Agreement”) is made this ____ day of _____, 2021 (“Effective Date”), between the National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq.* and the laws of the District of Columbia, having its principal place of business at 1 Massachusetts Avenue N.W., Washington, DC 20001 (“Amtrak”) and the City of Springfield, Massachusetts, an incorporated municipality and political subdivision of the Commonwealth of Massachusetts (“City”) (Amtrak and the City shall hereinafter collectively be referred to as the “Parties” or individually as a “Party”).

WHEREAS, Amtrak owns and maintains certain railroad tracks and maintains the associated right-of-way which tracks cross State Street, a City-owned and maintained public roadway, at-grade, at Mile Post 61.22 (“State Street Crossing”), as shown on Exhibit A attached hereto and incorporated herein by this reference;

WEREAS, due to the proximity of a City-owned park (‘Riverfront Park’) to the State Street Crossing, the Parties desire to curtail public access across Amtrak’s tracks and the right-of-way at the State Street Crossing in order to promote public safety by restricting public access to the State Street Crossing by closing and locking the gates at the State Street Crossing (the “Access Gates”);

WHEREAS, simultaneously with the execution of this Agreement, the Parties entered into that certain Master Agreement (“Project Agreement”) regarding the relocation of public access and vehicular traffic currently located at the State Street Crossing, to an existing, City-owned, undergrade crossing of the right of way located at Mile Post 61.22, which will be a more appropriate and safer pedestrian and vehicular access to the main entrance for Riverfront Park (“Main Entrance”); and

WHEREAS, the Parties desire to clarify and address the ownership, usage, maintenance and ongoing property rights and obligations of the Parties with respect to the State Street Crossing and the Main Entrance, and have agreed to enter into this Agreement to address such matters to supersede and replace any and all previous agreements, discussions and understandings with respect to the matters discussed herein.

NOW THEREFORE, based on the recitals set forth above and incorporated herein, for and in consideration of the premises and the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, and with the intent to be legally bound hereby, the Parties hereby agree as follows:

3. State Street Crossing Closure. Amtrak and the City hereby agree that prior to the Effective Date, the State Street Crossing has been “temporarily” closed to the general public and shall become permanently closed to the general public when the Main Entrance is completed in accordance with the terms of the Project Agreement. Amtrak shall be responsible for maintaining the State Street Crossing closure with a lock on the Access Gates. The City shall have access to the State Street Crossing pursuant to the terms of this Agreement. Notwithstanding anything to the contrary within this Agreement, Amtrak shall not open or allow public access to the State Street Crossing without receiving the prior approval of the Director of the City of Springfield’s Department of Public Works, such approval shall not be unreasonably withheld, delayed or conditioned. Further, Amtrak shall have no right to use any City owned or controlled property for staging or storage of any construction materials and/or equipment at any time, without the prior consent of the City, which shall not be unreasonably withheld, delayed or conditioned.

4. Licenses.

(a) Scheduled Access License: Amtrak hereby grants to the City a non-revocable, non-exclusive license to access and cross the State Street Crossing (“License Area”) as shown on Exhibit A, with the City providing thirty (30) days’ prior written notice to Amtrak (“Scheduled Access License”), solely for the following permitted uses (“Permitted Uses”):

- i. the City's routine maintenance and repair of Riverfront Park and adjacent roadways owned by the City, such work to be done at the sole cost and expense of the City; and
 - ii. vehicular movements that cannot be accommodated at the Main Entrance due to clearance and/or access conditions or limitations.
- (b) Emergency Access License: Amtrak hereby grants to the City a non-revocable, non-exclusive, limited license for emergency to access and cross over the License Area ("Emergency Access License"), solely for emergency vehicles and/or responders to access and cross over the License Area in the event of an emergency at Riverfront Park or on adjacent roadways owned by the City ("Emergency Access"). Emergency Access to the License Area is limited solely for use by the City as described herein, and the City hereby agrees that Emergency Access to the License Area may not be used by the public or for any other pedestrian access. In order to obtain Emergency Access to the License Area, the City must call the Amtrak Police Department National Communications Center ("Amtrak Police") at 1-800-331-0008, and request Amtrak Police to unlock the Access Gates. Amtrak Police shall use its best efforts to immediately send an officer to unlock the Access Gates and to immediately notify Amtrak Operations of the Emergency Access request. In the event of a true life-threatening and/or catastrophic emergency resulting in the need for immediate Emergency Access and the City cannot wait for an Amtrak response or Amtrak's response pursuant to this section is not timely, the City must first call the number on the Blue ENS sign located at the State Street Crossing as required by 49 CFR Part 234, which as of the Effective Date is: 1-800-243-1255 refer to Crossing State Street MP 61.22 DOT #973101X, and upon completing such call, the City shall be permitted to take any and all necessary actions in order to gain such immediate Emergency Access. In such event, the City shall be liable to, and shall indemnify Amtrak for, any damages, claims, causes of action, suits, or expenses caused as a result of such actions of the City. Under no circumstances may the City proceed with Emergency Access to the License Area without notifying Amtrak in accordance with the procedure specified above. The City and Amtrak shall also provide each other with 24 hour/7 day email and telephone contact information and shall update that contact information as necessary.
- (c) Special Events Access License: If the City conducts, coordinates with a business or entity, or is requested by a business or entity, to conduct a special event, such as an art show, musical performance or fair at the Riverfront Park, which requires the use of the License Area to access or service Riverfront Park (each, a "Special Event"), the City shall either obtain or require such business or entity to obtain, Amtrak's thirty (30) day prior written approval, by submitting an Amtrak Special Event Access Request Form, the current form of which is attached hereto as Exhibit B and incorporated herein by this reference ("Special Events Access Form"), such approval shall not be unreasonably withheld. The approved and fully-executed Special Events Access Form shall constitute a Special Events Access License. Amtrak shall provide Support Services for any Special Event and shall be compensated at its regular rates for providing Support Services, such as Amtrak Police, for any such Special Events. The Scheduled Access License, the Emergency Access License and the Special Events Access License shall collectively be referred to herein as the "Licenses".
- (d) Acceptance of License Area: The City and Amtrak hereby accept the License Area "AS-IS" "WHERE-IS" with no improvements, modifications or changes to be performed by either party, except as described in the Project Agreement. Amtrak makes no representations or warranties as to the zoning, occupancy, condition, utility, fitness, or use of the License Area for the Licenses.

- (e) Rules and Regulations: The Permitted Uses and Emergency Access are subject to Amtrak's rules and regulations for the License Area, and the City shall fully and promptly comply with Amtrak's rules and regulations, requests, directions and instructions of Amtrak, and ensure that all persons acting on behalf of or through the City comply with such rules, regulations, requests, directions and instructions.
- (f) Repair of License Area: The City shall make no improvements or modifications in or to the License Area. The City is responsible for all costs and expenses associated with the repair of any and all damage and/or destruction directly or indirectly caused by the City, the City's employees, invitees, or contractors and vendors, or their contractors or subcontractors (collectively, "Contractors"), use of and access to the License Area. The rights granted to the City are subordinate to Amtrak's obligations relating to, and use of, the License Area, and to all other third parties who are also permitted to use the License Area. At all times, the City shall exercise the rights granted herein in such a manner as to avoid interference with or disruption of the operations of Amtrak and such other third parties. In no event shall the exercise of this License interfere with Amtrak rail operations.
- (g) Amtrak Support Services: All Permitted Uses and Emergency Access must be scheduled and coordinated in advance with Amtrak as provided herein. Subject to the limitations expressed elsewhere in this Agreement, Amtrak shall make available railroad protection personnel and other railroad employees required by Amtrak to provide various services required as a result of such Permitted Uses and Emergency Access, including without limitation, signal and other services to ensure the safety of railroad operations and to protect Contractor employees during the course of such access (collectively the "Support Services"). Upon Amtrak's receipt of a notice from the City requesting Amtrak to proceed with the Support Services (the "Notice") and evidence reasonably satisfactory to Amtrak that all insurance required herein are in place, and provided that the City is not otherwise in default of any of its obligations hereunder beyond any applicable notice and cure period, Amtrak will cooperate with the City to provide the Support Services in accordance with the City's schedule. However, the City acknowledges that only limited track outages are available, and these outages must be shared and/or rationed among all potential projects (including other Amtrak, City, state, municipal, commuter and third-party projects). In addition, Amtrak may have manpower restrictions further limiting its ability to conform to the City's schedule. These restrictions may preclude Amtrak from performing its work hereunder according to the City's schedule or may prevent the City from access according to the City's schedule. Amtrak shall use reasonably diligent efforts to accommodate the City's schedule so as to permit the City to proceed as expeditiously as possible. Amtrak shall not, however be held liable for any delays to the City's schedule. The City shall compensate Amtrak at Amtrak's then-current rates for providing any such Support Services. Amtrak's rate schedule as of the Effective Date is attached hereto as Exhibit C and incorporated herein by this reference.
- (h) City Supervision: The City shall supervise and direct the work of its employees and Contractors in compliance with all applicable laws, regulations, codes, ordinances, rules or orders, as well as industry standards applicable to the Permitted Uses and Emergency Access. The City shall secure and pay for all permits and fees, license, approvals and inspections necessary for the proper execution and completion of Permitted Uses and Emergency Access, including without limitation any applicable construction or environmental permits.

5. **Term.** This Agreement shall commence on the Effective Date, and subject to the terms of this Agreement, shall continue until terminated by either party giving notice to the other at least one hundred and twenty (120) days prior to the effective termination date stated in such notice (the “Term”).
6. **Insurance.**
- (a) **City Insurance:** During the Term, the City shall procure and maintain, at no cost to Amtrak, the following types of insurance issued by insurance companies licensed to do business in the jurisdiction in which the License Area is located:
- i. Commercial General Liability insurance, including (but not limited to) insurance covering any assumed or contractual liability under this Agreement, with respect to liability arising out of the ownership, use, occupancy or maintenance of the License Area and all areas appurtenant thereto, to afford protection with respect to personal injury, death or property damage of not less than Three Million Dollars (\$3,000,000) per occurrence combined single limit/Five Million Dollars (\$5,000,000) general aggregate; and
 - ii. Commercial Property insurance written on a “causes of loss special” or “all-risk” basis with limits equal to the full replacement value of all of Licensee's personal property in the License Area (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Licensee under the provisions of this Agreement) and all leasehold improvements installed in the License Area by or on behalf of Licensee; and
 - iii. Worker's Compensation Insurance with statutory limits and with Employer's Liability coverage in the amount of \$1,000,000 per accident; bodily injury by accident; \$1,000,000 per employee - bodily injury by disease; and \$1,000,000 policy limit and bodily injury by disease; and
 - iv. Commercial Automobile Liability insurance covering liability arising out of the use of all motor vehicles operating on Amtrak's Property which are used and operated in connection with the Licensee's obligations or uses under this Agreement, subject to a limit of liability of not less than \$2,000,000 per occurrence. Such insurance shall cover any occurrences due to the exercise of the License by any employee or contractor of Licensee; and
 - v. Business Interruption Insurance which includes provisions for business expenses including payment of License Fee; and
 - vi. Such other coverages as Amtrak may reasonably request throughout the Term.

Notwithstanding the above, Amtrak hereby acknowledges that the City is self-insured and agrees that the City may use its programs of insurance and self-insurance to meet any and all of the insurance obligations in this Agreement.

- (b) **Contractor Insurance:** Prior to accessing the License Area for a Permitted Use or Emergency Access or Special Event, the City shall cause its Contractors to procure and maintain, at no cost to Amtrak, during the period of any Permitted Use or Emergency Access or Special Event, the insurance coverage specified in Exhibit D attached hereto and incorporated

herein by this reference. The Contractor shall furnish Amtrak with a certificate of insurance giving evidence of the required coverage prior to accessing the License Area

- (c) Requirements: All insurance required hereunder shall name Amtrak and/or its respective designee(s), as additional insureds or as loss payee, as applicable. All policies shall be primary and non-contributory and shall also contain a provision by which the insurer agrees that such policy shall not be canceled, materially changed or not renewed without at least thirty (30) days' advance notice to Amtrak, by certified mail, return receipt requested, or to such other party or address as may be designated by Amtrak or its designees. Each policy of insurance required hereunder shall be written on an "occurrence" not a "claims made" policy. If requested during the Term, the City shall immediately provide Amtrak with evidence that all insurance is in full force and effect. The City shall provide updated insurance documentation prior to each anniversary of the Effective Date throughout the Term. The City shall furnish Amtrak with either a certificate of insurance or letter of self-insurance giving evidence of the required coverage prior to the Effective Date and upon renewal of the required insurance thereafter.
- (d) Failure to Maintain Insurance. Except as otherwise set forth in herein, in the event that the City or the Contractors fail to maintain the insurance coverages required in this Agreement with all applicable enhancements and provisions, Amtrak may curtail the exercise of the Agreement, and Amtrak shall not be responsible to the City for any damages that the City incurs as a result of such failure.

7. Indemnification:

- (a) Indemnity: To the extent allowable by law, the City shall, and shall cause its Contractors to, indemnify, hold harmless, protect and defend Amtrak, and its officers, directors, employees, agents, servants, licensees, subsidiaries and contractors ("Indemnified Parties"), against and from all losses, damages, liabilities, suits, claims, demands, actions, causes of actions, or expenses (including without limitation, attorneys' fees), judgments, interests and costs, (collectively "Losses and Damages") that shall arise in any manner, directly or indirectly, arising from, or incidental to, or in connection with: (a) damage to, or loss of any property, including but not limited to any appurtenant walkways, curbs or gutters, of Amtrak, any Indemnified Parties, the City, the agents, servants, licensees, contractors, invitees or employees of the above, or any other person; (b) injury to or death of persons, including without limitation, agents, servants, contractors, licensees, invitees or employees of Amtrak, any Indemnified Parties or the City, or any other person; (c) the access to the License Area, the exercise of the Licenses granted herein or the use or occupancy of the License Area by any person or entity, including any appurtenant walkways, curbs or gutters; (d) the installation, construction, placement, attachment, presence, use, misuse, maintenance, repair, alteration, renewal, relocation, failure or removal of any improvements adjacent to the License Area; and (e) a violation or alleged violation of, or compliance or noncompliance with, any Environmental Law relating in any way to the License Area and the property owned by Amtrak adjacent to the License Area, including any disposal, discharge, or release of any wastes, pollutants, or hazardous substances from or in connection with the License Area and the property owned by Amtrak adjacent to the License Area; (f) the City's failure to comply with any one or more of its obligations under this Agreement, (g) any misrepresentation by the City; or (h) the proximity of the License Area to any Amtrak operations or operations by any other railroad using the License Area; whether such Losses and Damages be suffered or sustained by Amtrak or an Indemnified Party directly or by any other person or entity, including the City who may seek to hold

Amtrak or any Indemnified Party liable therefor. If Amtrak or any Indemnified Parties are required to make expenditures or incurs obligations for the payment of money in connection with civil proceedings arising from this Section, including but not limited to attorneys' fees for instituting, prosecuting or defending any such action or proceedings, such sums paid, obligations incurred, and any costs associated therewith, , shall be deemed to be additional consideration due hereunder and shall be paid by the City to Amtrak within thirty (30) days of Amtrak rendering a bill or statement to the City. The indemnification obligations contained in this paragraph shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of any damages, compensation or benefits payable by or for the City. Notwithstanding the foregoing, the City shall not be liable for and shall not indemnify Amtrak for any damages, claims, causes of action, suits, or expenses caused as a result of the negligence of Amtrak.

- (b) Release: Amtrak and the Indemnified Parties shall not be liable for, and the City and its Contractors hereby releases and relieves Amtrak and the Indemnified Parties, irrespective of their negligence or fault, from all liability in connection with any and all loss of life, personal injury, damage to or loss of property, or loss or interruption of business occurring to the City, its agents, servants, employees, invitees, licensees, visitors, or any other person, firm, corporation or entity, that would not have occurred but for the proximity of the License Area to the railroad right-of-way, or railroad operations, including, without limitation, any Losses and Damages, whether or not the City or any other party may have acted negligently. Amtrak shall not be liable to the City, a Contractor or to any insurance company (by way of subrogation or otherwise) insuring the City or a Contractor for any loss or damage to any building, structure or other tangible property, or any resulting loss of income, or losses under worker's compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of Amtrak or the Indemnified Parties. Notwithstanding the foregoing, in the event that such waiver of subrogation is not available to the City unless through the payment of an additional premium therefore, the City shall pay the additional premium necessary to obtain such waiver.
- (c) Waiver: Amtrak and the Indemnified Parties shall not be held liable for any quantifiable damages in an amount in excess of Ten Thousand Dollars and No/100 (\$10,000.00) resulting from: (i) Amtrak's delay in performing the Support Services required for a Permitted Use or a Special Event as contemplated under this Agreement; (ii) Amtrak's delay or inability to provide the requested work forces required for a Permitted Use or a Special Event as contemplated under this Agreement; or (iii) the City's or Contractor's inability to perform project work required for a Permitted Use or a Special Event as contemplated under this Agreement due to Amtrak operations. Amtrak assumes no responsibility for the physical condition or safety of the License Area, any work site, or any improvements located thereon.
- (d) The provisions of this Section 5 shall survive the termination of this Agreement.

8. Compliance with Laws and Regulations.

- (a) Laws: The City and its Contractors shall comply with all applicable laws, statutes, rules, regulations and ordinances of all governmental authorities having jurisdiction over the City, Contractors and their operations hereunder and in the License Area, including all applicable Environmental Laws and the American with Disabilities Act, as amended, and shall obtain and maintain throughout the Term, all required licenses and permits necessary for the Permitted Uses and Emergency Access and activities in the License Area. If the City and/or

its Contractors are performing any work on or within twenty-five (25) feet of the License Area, the rail tracks or with the potential to foul the tracks, or that is otherwise on Amtrak's property, the City and its Contractors shall perform all work hereunder in accordance with Amtrak's standards.

- (b) Permits: The City and/or its Contractors shall secure and pay for all permits, licenses, easements, or approvals, which may be required in connection with the performance of its work hereunder and usage of the License Area.

9. **Hazardous Substances**. The City shall not use or allow the License Area to be used for the "Release", storage, use, treatment, disposal or other handling of any Hazardous Substance. The term "Release" shall have the same meaning as is ascribed to it in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., as amended, ("CERCLA"). The term "Hazardous Substance" means (i) any substance defined as a "hazardous substance" under CERCLA, (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (iii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any of the Environmental Laws. Licensee shall not use or allow the License Area to be used for the storage of any Hazardous Substances. For the purposes of this Agreement, the term "Environmental Laws" shall mean collectively, all federal and state and local environmental safety or health laws and ordinances and rules or common law, including but not limited to, CERCLA, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §1081 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6091 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §1251 - 1387), as any of the foregoing may hereafter be amended; any rule or regulation pursuant to thereto, and any other present or future Legal Requirement, law, ordinance, rule, regulation, permit or condition, order or directive addressing environmental, health or safety issues, of or by the federal government, or any state or other political subdivision thereof, or any agency, court or body of the federal government or any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.
10. **Default**. In the event that the City shall fail to pay any amount required to be paid hereunder when due or fail to perform or comply with any obligation under this Agreement (each, a "Default") and any such Default continues for more than five (5) days after notice from Amtrak of such Default ("Default Notice"), then Amtrak may terminate this Agreement immediately upon notice to the City and pursue any and all other remedies available at law or in equity. In addition, a default under the Project Agreement shall constitute a default under this Agreement. Notwithstanding the foregoing, the City shall have a right to cure a Default within ninety (90) days after receipt of a Default Notice, during which time the City shall not be deemed in Default of this Agreement or the Project Agreement.
11. **Force Majeure**. Should circumstances occur which are beyond the reasonable control of Amtrak or the City and without the fault or negligence of Amtrak or the City, (i.e., acts of God or war, strikes, fire, floods, pandemics, declared national emergencies, epidemics, theft, vandalism, terrorism, or unusually severe weather), which delay the completion of work relating to a Permitted Use or Emergency Access or Special Event, the delayed party shall be excused from such delay and shall give to the other party

written notice thereof. Within ten (10) calendar days of commencement of the delay, the delayed party shall provide to the other party an estimate of the anticipated impact of the delay on the completion of the work, including its impact, if any, on the schedule. Within ten (10) calendar days after the termination of any such delay, the delayed party shall file written notice with the other party specifying the actual duration of the delay.

- 12. Notices.** 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 another party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested, or by a nationally recognized overnight delivery service, addressed as follows:

If to the City:

City of Springfield
Department of Capital Asset Construction
36 Court Street, 3rd floor
Springfield, Massachusetts 01103
Attn: Director

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station
2955 Market Street
Philadelphia, PA 19104
Attn: Director, Real Estate

- 13. Miscellaneous.**

- (a) No failure on the part of either party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.
- (b) Nothing in this Agreement shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.
- (c) If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.
- (d) No recourse shall be had by either Party for any claim against any officer, director, stockholder, employee or agent of the other party alleging personal liability on the part of such person with respect to performance of the City's or Amtrak's obligations under this Agreement.
- (e) The Licenses and related rights granted to the City in this Agreement are personal privileges to the City only and do not intend to grant or confer any right, privilege or benefit to any

other person or entity. The City's rights hereunder may not be assigned, transferred, sublicensed, mortgaged or hypothecated.

- (f) The City shall not discriminate in the conduct and operation of its business in the License Area against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

14. Successors and Assigns. Except as otherwise provided by this Agreement, this Agreement shall insure to the benefit of and be binding upon the permitted successors and assigns of the Parties hereto, except that neither Party shall assign or transfer this Agreement or any of its rights hereunder to any person, firm, or corporation without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

15. Entire Agreement. This Agreement including without limitation, all exhibits, constitutes the entire agreement between the Parties as to scope and subject matter. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement or any part hereof may not be changed, amended or modified, except in writing signed by the Parties.

16. Governing Law. This Agreement shall be construed according to the laws of the District of Columbia, without giving effect to choice of law or conflicts of law principles and adjudicated exclusively in federal courts.

17. Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and both of which shall constitute 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. Receiving Parties 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.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be duly executed as of the Effective Date.

City of Springfield

By: _____
Name:
Title:

National Railroad Passenger Corporation

By: _____
Christopher Hartsfield
AVP Properties