

**DESIGN PHASE AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION AND
VILLAGE OF SCOTIA
FOR THE DESIGN OF THE SUNNYSIDE ROAD BRIDGE REPLACEMENT**

This Design Phase Agreement (“Agreement”) effective this ____ day of _____, 2023 (“Effective Date”), is made by and between National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq* and the laws of the District of Columbia (“Amtrak”) and the Village of Scotia, Schenectady County, New York, a municipality with its principal place of business located at 4 N. Ten Broeck Street, Scotia, New York 12302 (hereinafter referred to as the “Village”) (hereinafter collectively referred to as the “Parties” or in the singular as “Party,” as the context requires).

WHEREAS, pursuant to that certain Hudson Line Operating, Management and Land and Track Lease Agreement, dated as of September 23, 2011, between Amtrak and CSX Transportation, Inc. (“CSXT”), Amtrak leases, maintains and operates intercity passenger rail service over certain railroad right-of-way owned by CSXT which extends between Poughkeepsie, NY and Hoffmans, NY (known as the “Hudson Line”); and

WHEREAS, other railroads also use various segments of the Hudson Line to provide rail services; and

WHEREAS, the Village owns and has maintenance responsibilities for the Sunnyside Road Bridge, BIN #2257170 (“Bridge”), a highway bridge located in Schenectady County, NY, that crosses over the Hudson Line at Hudson Line milepost 160.98; and

WHEREAS, the Bridge had been closed to traffic due to structural issues and the Village desires to remove and replace the Bridge as described in Section 2 hereof (the “Project”); and

WHEREAS, the Village holds a permanent easement from CSXT to remove, reconstruct, and maintain the Bridge; and

Commented [RPL1]: Village to provide the Permanent Easement.

WHEREAS, the demolition and construction of Project will impact the Hudson Line, which may require additional easements on, under, over and across certain portions of the Hudson Line which shall be reflected in an easement agreement with CSXT; and

WHEREAS, due to the proximity of the Project to Amtrak’s property and railroad operations, the Village desires input and/or approval from Amtrak on the impact of the Project on such property and operations; and

WHEREAS, due to the proximity of the Project to Amtrak’s property, the Village must also obtain input and/or approval from CSXT on the potential impact of the Project on such property and the railroad operations thereon; and

WHEREAS, the Project will require the Village and its contractors to enter onto, over, under and/or adjacent to Amtrak’s property, will require various assistance from Amtrak, and may require alteration to Amtrak’s facilities; and

WHEREAS, all work arising out of or connected with the Project must be closely and safely integrated with Amtrak’s operations so as not to impede or interfere with said safe operations;

Amtrak Draft 06.12.23

and

WHEREAS, the Village has requested that Amtrak perform various services as set forth herein during the design phase of the Project; and

WHEREAS, Amtrak is willing to perform certain services as set forth herein; and

WHEREAS, the Village is responsible for funding the entire cost of the Project, including the cost of Amtrak's services to be provided in connection with the Project; and

WHEREAS, the Parties acknowledge that the protection of Amtrak's property, facilities and railroad operations is a paramount public safety concern, and that all work arising out of or connected with the Project must be closely coordinated with Amtrak to ensure safe railroad operations; and

WHEREAS, the Parties desire to set forth their rights and obligations during the design phase of the Project, and

WHEREAS, the Parties agree to carry out their responsibilities in connection with the Project in accordance with the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the promises and the mutual covenants herein contained, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Incorporation of Recitals.**

The above recitals are hereby incorporated into this Agreement as if set forth in their entirety.

2. **Description of the Project.**

(a) The Bridge links the Village of Scotia with the Town of Glenville, NY. However, it has been closed to vehicular traffic since October 2022.

(b) The Bridge was constructed in 1976 and is a five-span bridge over a single railroad track of the Hudson Line. Amtrak has plans to construct an additional track in this area. The Bridge is a multi-girder, steel structure with two-column concrete piers. The Village asserts that the Bridge exhibit signs of deterioration. Therefore, the Village intends to: (i) demolish the existing superstructure and substructure, (ii) replace the Bridge with reduced overall length to span over the existing track and an adjacent future track with required horizontal clearances to proposed abutments, (iii) modify the approach vertical profile to accommodate necessary vertical clearance over railroad tracks (23' -0" from top of rail to bottom of girder), and (iv) construct U-Walls at the east approach to minimize impacts at approaches.

(c) The Village has retained the services of a consultant to design the demolition and construction of the new bridge structure.

3. **Services to be Performed by Amtrak.**

(a) Provided that the Village performs all of its obligations under this Agreement, Amtrak shall perform (or retain contractors to perform) the following services, as deemed necessary by Amtrak: (i) review of Project plans, drawings, and specifications (“Documents”) for impact on Amtrak’s property, facilities and/or operations; (ii) inspection services; (iii) engineering services; (iv) services required for the protection of railroad traffic, such as flagging, controlled power outages and/or track outages; (v) preparation of estimates of Amtrak’s costs for services to be performed by Amtrak during the design phase of the Project; (vi) attendance at meetings; (vii) environmental reviews; and (viii) such additional related services as set forth herein or as may be agreed to by the Parties in writing. These services are hereinafter collectively referred to as the “Services.”

(b) Nothing herein shall be interpreted to require Amtrak to perform the Services without compensation.

4. **Cost Estimate.**

An estimate of Amtrak’s costs in support of the design phase of the Project (“Design Phase Estimate”) is attached hereto and incorporated herein as Exhibit A. The provision of an estimate does not, however, limit the Village’s obligation to reimburse Amtrak for all costs actually incurred by Amtrak in connection with the Project.

5. **Billable Costs.**

(a) The Village shall reimburse Amtrak for all costs incurred by Amtrak in connection with the Project. Such costs may include, but are not limited to, the following:

(i) Direct labor and management costs for all assigned Amtrak employees for actual hours worked while performing Services under this Agreement, including but not limited to: any adjustments, allowances and arbitrary hours (e.g., time paid for hours not worked) in accordance with the then-current existing labor agreements; travel costs; overnight accommodations (including boarding and lodging); travel time and mandatory rest time as the result of performing work hereunder; and Amtrak’s overhead rates, as set forth in the then-current version of Amtrak’s overhead rate schedule. A copy of the current version is attached hereto and incorporated herein as Exhibit B (“Overhead Schedule”).

(ii) Costs for all materials and supplies required for performance of the Services. Any materials and supplies issued from Amtrak’s inventory shall be charged at Amtrak’s inventory cost in effect at the time the material or supplies are issued, plus any actual shipping/transportation costs and shipping/ transportation cost additives. Any materials and supplies which are procured by Amtrak, but which are not issued from Amtrak’s inventory, shall be charged at Amtrak’s actual cost incurred. Material handling and General and Administrative (“G&A”) overhead rates as set forth in the Overhead Schedule shall be added to the cost of all materials and supplies.

(iii) Costs for all third party contract services and for any related additional insurance. Costs will be billed at actual cost incurred, plus the G&A overhead rates as set forth in the Overhead Schedule.

(iv) Costs for equipment, vehicles, work trains, wire trains, rolling stock and any other such items which are leased by Amtrak and required for performance of the Services shall be charged at the actual cost of the lease, plus the G&A overhead rates as set forth in the Overhead Schedule.

(v) For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items, reimbursement shall be at the rates published in "Amtrak Rental Rates for Railroad Equipment," as amended periodically, plus the G&A overhead rates as set forth in the Overhead Schedule. For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items not specifically itemized therein, reimbursement shall be based on a comparable market rate, plus the G&A overhead rates as set forth in the Overhead Schedule. Vehicles/equipment obtained through a General Services Administration ("GSA") schedule shall be construed as Amtrak-owned.

(vi) Mobilization and demobilization costs and the cost of training of Amtrak employees to the extent required for the Project. Amtrak shall be reimbursed for the actual costs, plus the applicable overhead rates as set forth in the Overhead Schedule.

(vii) Retroactive wage and benefit costs (i.e., adjustments made subsequent to performance of the Services) which shall be reimbursed based on the actual cost, plus all associated current overhead rates as set forth in the Overhead Schedule. The Village's obligation to reimburse Amtrak for such retroactive costs shall survive expiration or termination of this Agreement.

(viii) Other actual costs not included in any other provision of this Agreement, necessary to effectively perform Services hereunder shall be charged at actual costs, plus Amtrak's overhead rates as set forth in the Overhead Schedule.

(b) In addition to reimbursement of the costs described above, the Village shall pay Amtrak a management fee of fifteen percent (15%) applied to all billable costs and overhead rates.

(c) The overhead rates referred to herein are computed in accordance with Amtrak's accounting policies and procedures. These rates are updated periodically by Amtrak and will be made available to the Village, upon request. The applicable billable overhead rates shall be the rates in effect (i) at the time of performance of the Services with respect to Services performed by Amtrak forces, and (ii) as of the date Amtrak receives the invoice from its contractors with respect to Services performed by Amtrak contractors.

6. **Payments.**

(a) Prior to initiation of any Services for the design phase by Amtrak, the Village shall provide Amtrak with an advance deposit in the amount of the Design Phase Estimate. Such advance deposit shall be applied to Amtrak's costs as they are incurred as reflected in monthly statements and/or invoices provided by Amtrak. If, during the course of the design phase of the Project, Amtrak or the Village determines that the Design Phase Estimate needs to be increased, Amtrak shall provide a revised estimate. The Village shall remit to Amtrak, prior to Amtrak's continuation of Services, an additional amount representing the amount by which the estimate was increased. If and when the balance of the deposit has

been reduced to \$0, each subsequent statement and/or invoice shall be paid by the Village, as provided in subsection (d) below.

(b) Upon completion of the design phase of the Project (or completion of Amtrak's Services or cancellation of the Project, as the case may be), the Village will request that Amtrak close out the design phase of the Project by signing and submitting the Scope of Work Completion Report ("SOWCR") in the form of Exhibit C attached hereto and incorporated herein. This will initiate close-out of the design phase of the Project on Amtrak's side and Amtrak will submit final invoices for costs incurred by Amtrak. Within ninety (90) days of execution of the SOWCR, Amtrak will send the Village its final invoices (with the exception of invoices for retroactive wage and benefit costs as set forth in Section 5(a)(vii) hereof). Upon completion of the design phase, Amtrak shall return to the Village (upon its request) any portion of the advance deposit that has not been expended by Amtrak, provided that the Village has paid all prior invoices.

(c) As the Project progresses, Amtrak will issue monthly statements and/or invoices that shall include Amtrak's summary invoice page followed by the billing substantiation report. The billing substantiation report will include the labor cost report which lists the hours, payroll amounts, and dates and names of agreement-covered employees who provided services in support of the design phase of the Project. Amtrak shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, an Amtrak equipment utilization pricing statement and a statement of other costs and charges. Amtrak will not be required to provide an independent field verification voucher to substantiate costs.

(d) Payments of Amtrak invoices are due within thirty (30) days of receipt of invoice by the Village. Payments not made by the Village by the due date shall be subject to an interest charge of one and one-half percent (1.5%) per month. The Village shall pay all amounts stated in invoices in full without deduction, setoff or counterclaim. Nonpayment of invoices shall constitute a material breach of this Agreement and, in addition to any other right or remedy to which Amtrak may be entitled as a result of such breach, Amtrak may elect to cease any and all performance under this Agreement. The Village will be responsible for any and all costs incurred by Amtrak as a result of the Village's breach, including, without limitation, collection costs and attorneys' fees.

(e) If the Village objects to any charges identified on a monthly statement and/or invoice, it shall notify Amtrak of its objection in writing within thirty (30) days of receipt of said statement and/or invoice. Within thirty (30) days thereafter, Amtrak will provide the Village with additional documentation and/or explanation as required, to support the accuracy of the charges. The objection shall be considered resolved unless the Village provides additional written objection within thirty (30) days of receipt of such additional documentation and/or explanation from Amtrak. If Amtrak finds an adjustment is due, Amtrak will issue a credit memo in the amount of the adjustment. If, after reviewing the additional information provided by the Village, the billing dispute is still not resolved, either Party may pursue any right or remedy as specified in this Agreement.

7. **Schedule.**

(a) Amtrak and the Village agree to cooperate and to require their respective contractor(s) to cooperate so as to coordinate their schedules. However, the Village

acknowledges that Amtrak has workforce and other resource constraints and other work commitments and demands, that only limited track outages are available, and that these outages must be shared and/or rationed among all potential projects (including other Amtrak, state, municipal, commuter and third party projects). These restrictions may prevent Amtrak from performing the Services according to the Village's schedule and may prevent the Village from gaining access to Amtrak's property according to such schedule.

(b) The continuity and on-time performance of railroad operations during all phases of the Project are of primary importance. Except as explicitly stated in writing, Amtrak is not obligated to disrupt railroad operations in furtherance of this Project. All Village activities with the potential to disrupt railroad operations shall be subject to Amtrak review and approval.

(c) In no event shall Amtrak be liable for any costs or damages or other consequences attributable to Project delays of any sort.

(d) On an annual basis, by January 31st of each year (or later as advised by Amtrak), the Village is required to submit to Amtrak its proposed scope of work and associated Amtrak resource requirements (i.e., force account, track outages, and specialized equipment) for the upcoming fiscal year (10/1 – 9/30). The Village shall submit the required information to Amtrak in a form provided by Amtrak. For Example, in order to be considered for inclusion in Amtrak's FY25 capital construction program, the Village must provide its scope of work and resource requirements to Amtrak no later than January 31, 2024 (or later as advised by Amtrak). Submission received after this date will be considered lower priority for inclusion in the capital construction program. In general, Amtrak encourages the Village to submit their scopes of work and resources requirements to Amtrak as early as possible, including for fiscal years beyond the upcoming fiscal year, if known.

8. **Review of Documents.**

(a) The Village shall submit all Documents (as defined in Section 3(a)) relating to the Project to Amtrak for its review and approval. The Village agrees to incorporate into the construction plans for the Project all Amtrak comments pertaining to matters that impact (or have the potential to impact) Amtrak's operations, facilities and/or property. Amtrak shall have a minimum of thirty (30) business days to review any Documents presented for Amtrak's review.

(b) Any review of such Documents 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, facilities and/or property. No review, correction or approval of Documents by Amtrak shall relieve the Village and its officers, directors, employees, agents, Contractors (as defined in Section 11(a) hereof), design professionals or any other person acting for or by permission of the Village (collectively referred to hereafter as the "Village Parties") from the entire responsibility for errors or omissions in such Documents or for the adequacy thereof. **Amtrak assumes no responsibility for and makes no representations or warranties, express or implied, as to the design, workmanship or adequacy of the Documents or the Project.**

(c) Amtrak may notify the Federal Railroad Administration ("FRA") of its review of the Village's plans and designs for those elements involving passenger boarding, platform

work and/or network configuration changes, or for other purposes as determined appropriate by Amtrak.

9. **Permit to Enter.**

If entry on, over, under or adjacent to Amtrak's right-of-way or other property is required for purposes of this Project by the Village or its contractors or consultants, the Village agrees that the entity seeking entry must notify Amtrak at least thirty (30) business days in advance and must execute the then-current version of Amtrak's "Temporary Permit to Enter Upon Property" form prior to any such entry. A copy of the current version of such form is attached hereto and incorporated herein as Exhibit D. The Village shall ensure that its contractors and consultants execute such form.

10. **Safety and Security Requirements.**

(a) The Village shall require that any work that is being done on, over, under or adjacent to Amtrak's right-of-way by anyone other than Amtrak forces shall be carried out in accordance with the then-current version of Amtrak's "Specifications Regarding Safety and Protection of Railroad Traffic and Property," the current version of which is attached as Attachment A to the Temporary Permit to Enter Upon Property. Compliance with such specifications shall be at no cost to Amtrak.

(b) The Village and its Contractors (as defined in Section 11(a) hereof), at their sole cost, shall comply with all Amtrak security requirements while performing work in connection with this Project. Such requirements may include: conducting of background investigations on contractor personnel who meet certain criteria, participation in safety training, wearing of appropriate identification, and the barring from Amtrak property of personnel who have been convicted of certain disqualifying criminal offenses.

11. **Risk of Liability; Indemnification.**

(a) **Village's Obligations.** The Village hereby releases and shall defend, indemnify and hold harmless Amtrak and any other affected railroad (as other railroads utilize Amtrak property), as well as their respective officers, directors, employees, agents, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses and liabilities, penalties, fines, demands, claims, causes of action, suits, and costs (including cost of defense and attorneys' fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of either or both of the following:

- (i) injury, death, or disease to any person (excluding only employees of Amtrak to the extent Amtrak has coverage for such employees under the force account insurance maintained by Amtrak as described in Section 12(d) of this Agreement, and only to the limits of Ten Million Dollars (\$10,000,000)), and/or
- (ii) damage (including environmental contamination) to or loss of any property, including property of Amtrak

arising out of, or in any degree directly or indirectly caused by or resulting from activities of, or work performed by Amtrak and/or the Village Parties in connection with this Agreement. 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 Village or any of its contractors, subcontractors, consultants or subconsultants ("Contractors") and shall survive termination or expiration of this Agreement for any reason. The Village agrees that the liability obligations hereunder shall

be further governed by Section 28103(b) of Title 49 of the United States Code, and as such provision precludes and preempts any other federal or state law with regard to indemnity, the Village waives any rights to claim otherwise.

(b) Village's Contractors' Obligations. If any of the Village's Contractors' work is to be performed on, over, under or adjacent to Amtrak property, it will be necessary for such Contractors to execute Amtrak's "Temporary Permit to Enter Upon Property" form, as set forth in Section 9 of this Agreement. The permit contains the relevant indemnification obligations. The Village shall ensure that such Contractors execute the permit.

(c) Village's Design Contractors' Obligations. The Village agrees to have its Contractors who perform design or engineering functions in support of the Project execute a copy of the certificate attached hereto and incorporated herein as Exhibit E and return the certificate to Amtrak at the address listed in Section 17 hereof. (Contractors who perform design or engineering functions are referred to as "consultants" in Exhibit E.) This certificate contains the relevant indemnification obligations. Amtrak will not review the Documents until it has received an executed copy of such certificate. The additional indemnification obligations of the Village's Contractors who enter on, above, below or adjacent to Amtrak's property are set forth in the Temporary Permit to Enter Upon Property as provided in Sections 9 and 11(b) above.

12. **Insurance.**

(a) Village's Insurance. The Village shall procure and maintain in effect during the course of the design phase of the Project, at its sole cost and expense, the insurance coverage specified below. The Village shall submit to Amtrak certificates of insurance evidencing the required insurance prior to commencement of Operations. As used in this Section 12(a), "Operations" shall mean activities or work performed by or on behalf of the Village on, under, over or adjacent to Amtrak property. In addition, the Village agrees to provide certified copies of the insurance policies within thirty (30) days of Amtrak's written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Village and Village Contractors personnel and equipment have been removed from Amtrak's property, and any work has been formally accepted. The Village may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that the Village shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. The Village will provide the following insurance:

(i) **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of the Village. Employer's Liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident or illness shall be included. In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and Outer Continental Lands Act Endorsement are required.

(ii) **Commercial General Liability (“CGL”) Insurance** written on an occurrence form covering liability of the Village with respect to all Operations to be performed and all obligations assumed by the Village under the terms of this Agreement. Products-completed operations (for a period of six years after completion of Operations), independent contractors and contractual liability coverages are to be included, with the contractual exclusion related to construction/demolition activity within fifty (50) feet of the railroad deleted and no exclusions for Explosion/Collapse/Underground (X-C-U) applicable or added. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insureds may carry. Claims made policies are not acceptable.

Coverage under this policy shall have limits of liability of not less than Twenty Million Dollars (\$20,000,000) each occurrence and in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

Such coverage may be provided by a combination of a primary CGL policy and a “follow” form excess or umbrella liability policy. Any such excess or umbrella liability insurance policy shall provide substantially the same coverage as of the underlying CGL insurance (including the additional insureds as required above) and shall expressly provide that the excess or umbrella coverage will drop down over a reduced or exhausted aggregate limit of the underlying insurance. Any such excess or umbrella liability insurance policy shall be not less than a “follow form”, and coverage shall also be primary coverage to Amtrak (including primary insurance to Amtrak’s own commercial general liability and excess policies) and the Village’s umbrella insurer shall agree not to seek contribution from Amtrak’s insurance. Any such excess or umbrella liability insurance policy shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

The insurance required in this subsection (ii) may be provided using an Owner Controlled Insurance Program or Contractor Controlled Insurance Program.

(iii) **Automobile Liability Insurance** covering the liability of the Village arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under the Village’s CGL insurance. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. Coverage under this policy shall have limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

(iv) **Professional Liability Insurance** covering the liability of the Village for any and all negligent errors or omissions committed by the Village or its Contractors in their performance of services in support of the Project. The insurance shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof. The policy shall have a retroactive date that precedes any design work on the Project and shall have limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate. This insurance can be provided by using a combination of the professional liability insurance provided by the Village's Contractors performing design or engineering functions and Owners Protective Professional Liability insurance provided by the Village, but in no event will the total insurance provided be less than Two Million Dollars (\$2,000,000) per claim. In the alternative, the Village may cause its Contractors to procure and maintain this coverage.

(v) **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. The Village, its contractor or transporter, as well as the disposal site operator, shall maintain this insurance. The Village shall designate the disposal site and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate. In the alternative, the Village may cause its Contractors to procure and maintain this coverage.

Further, any additional insurance coverages, permits, licenses and other forms of documentation required by the United States Department of Transportation, the Environmental Protection Agency and/or related state and local laws, rules and regulations shall be obtained by the Village.

(vi) **Waiver of Subrogation.** As to all insurance policies required herein, the Village waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak and its agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.

(vii) **Punitive Damages.** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.

(viii) **Claims-Made Insurance.** If any liability insurance specified above shall be provided on a claims-made basis then, in addition to coverage requirements above, such policy shall provide that:

a. The retroactive date shall coincide with or precede the Village's start of Operations (including subsequent policies purchased as renewals or replacements);

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

c. The Village will maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Professional Liability, Pollution Legal Liability) for at least three (3) years following completion of the Operations; and

d. If insurance is terminated for any reason, the Village will purchase an extended reporting provision of at least six (6) years to report claims arising from Operations.

(ix) **Separation of Insured and Severability.** Each liability policy required hereunder shall contain separation of insured and severability of interests clauses so that coverage will respond as if separate policies were in force for each insured. An act or omission of one of the insureds shall not reduce or void coverage to the other insureds. No liability policy required hereunder shall contain a cross-liability exclusion which restricts or bars coverage for a claim brought by an additional named insured against a named insured or by a named insured against an additional named insured. The cross-liability exclusion contained in the pollution legal liability policies must allow for claims by Amtrak Indemnified Parties.

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

Senior Manager, Engineering (I&C)
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

Commented [RPL2]: Please note Amtrak is under a reorganization and will confirm prior to execution of document.

(b) Village's Contractors' Insurance. The Village shall ensure that all of its Contractors provide and maintain in effect during the course of the design phase of the Project, at no cost to Amtrak, insurance as specified in Attachment B of the Temporary Permit to Enter Upon Property or the Village may, at its option, provide the insurance coverage for any or all of the Village's Contractors, meeting the requirements of Attachment B, provided the evidence of insurance submitted by the Village to Amtrak so stipulates. The Village shall require all of the Village's Contractors to provide Amtrak with a certificate of insurance evidencing the insurance coverage required hereunder.

(c) Additional Insurance for Village's Contractors who Perform Design or Engineering Functions. The Village shall require its Contractors who perform design or engineering functions to provide and maintain in effect during the Project professional liability insurance as set forth in Exhibit E hereof. Such Contractors shall provide Amtrak

with a certificate of insurance evidencing the insurance coverage required hereunder. Amtrak will not progress the Services until it has received such certificates.

(d) Amtrak's Insurance. In the event that Amtrak performs any force account work hereunder, Amtrak shall maintain in effect, during the period of performance under this Agreement, force account insurance issued to Amtrak and covering liabilities for bodily injury, including death and property damage, imposed upon Amtrak with respect to the Services to be performed pursuant to this Agreement. The limits of liability shall not be less than Ten Million Dollars (\$10,000,000) per occurrence. The cost of this force account insurance is reflected in Exhibit A hereof. Amtrak reserves the right to self-insure for this coverage.

13. **Environmental and Geotechnical Matters.**

(a) Compliance with Laws. The Village (and its Contractors and agents) shall comply with all applicable federal, state, and local laws, regulations, ordinances, and orders concerning the environment and/or waste generation and disposal. At all times, they shall employ Best Management Practices ("BMPs") in connection with the performance of their work. As used herein, BMPs means effective, practical, structural and/or nonstructural methods which prevent and/or reduce the movement of sediment, nutrients, pesticides and other pollutants from the land to surface and/or ground water, and/or which otherwise protect air, soil and water quality from potential adverse effects.

(b) Soil Disturbance and Testing.

(i) Preconditions for Soil Disturbance and Testing. The Village (and its Contractors and agents) shall not disturb the soil or perform any environmental or geotechnical testing on any Amtrak owned or controlled property for any reason without (A) notifying Amtrak of its desire to do so; (B) discussing the nature and extent of the proposed soil disturbance or testing with the Amtrak Environmental department; (C) presenting a proposed testing and sample collection and analysis plan to Amtrak for its review and approval; (D) obtaining the express written permission of Amtrak to conduct the agreed-to soil disturbance or testing; and (E) indicating if any such test results would require either notification or submission to a federal, state or local regulatory agency. Amtrak shall have the right, but not the obligation, to be present at any and all such soil disturbance or testing activities and to take split samples.

(ii) Temporary Permit to Enter Required. Any Contractors retained by the Village to perform such soil disturbance or testing on Amtrak owned or controlled property shall execute the then-current version of Amtrak's Temporary Permit to Enter Upon Property before performing any such activities.

(iii) Test Results. The Village shall immediately provide Amtrak with a copy of the test results at no cost to Amtrak.

(iv) Responsibility for Environmental Activities. If the soil disturbance or the environmental or geotechnical tests performed in connection with the Project (whether performed during the design or construction phase of the Project) indicate contamination of Amtrak owned or controlled property (or property adjoining any such Amtrak property) at levels requiring reporting, further investigation, testing,

monitoring and/or remediation (“Environmental Activities”), the Village shall promptly inform Amtrak of such event and all such Environmental Activities shall be at the sole cost and expense of the Village, regardless of the extent thereof, and regardless of whether any action of the Village (or its Contractors or agents) caused or contributed to the contamination or condition.

(v) Village to Inform Amtrak. The Village shall promptly inform Amtrak of all communications with any governmental authority relating to any such Environmental Activities on Amtrak owned or controlled property, and Amtrak shall be invited to attend any relevant meetings. The Village shall provide Amtrak with all plans and/or submissions for any such Environmental Activities on any such Amtrak property and Amtrak shall have the right to approve such plans and/or submissions prior to their implementation. The Village shall promptly provide Amtrak with a copy of any hazardous waste manifests, and such hazardous waste manifests shall in no event identify Amtrak as the generator of such wastes. The Village (and its Contractors and agents) shall dispose of all waste and contamination using their own EPA generator number(s). Amtrak reserves the right to require the Village to provide to Amtrak a copy of the results of any further tests conducted by or for the Village on any such wastes. Amtrak also reserves the right to review and approve the disposal site for any such wastes related to the Village’s Environmental Activities.

(c) Waste, Contamination Conditions Created by Village, its Contractors or Agents.

(i) Disposal. In the event the Village, its Contractors or agents create any waste, contamination or adverse environmental conditions (either purposefully or accidentally) on Amtrak owned or controlled property in connection with the performance of activities pursuant to this Agreement, they shall promptly inform Amtrak of such incident. Further, they shall dispose of such waste, contamination and/or adverse environmental conditions, including hazardous wastes, at their sole cost and expense, all without limit and without regard to the negligence or fault of any third party. The Village or its Contractors or agents shall dispose of said waste, contamination and/or adverse environmental conditions using their own EPA generator number(s). In no event shall Amtrak be identified as the generator. The Village will promptly provide Amtrak with a copy of any hazardous waste manifests.

(ii) Village Costs. In the event that reporting, investigating, testing, monitoring, or remediation of such waste, contamination or conditions is necessary, the Village shall promptly inform Amtrak of such event and the costs and expense of same shall be borne solely by the Village.

(iii) Defense and Satisfaction of Liabilities. In addition, the cost and expense of defense and satisfaction of any liabilities due to personal injury of third parties or damage to property of third parties arising from waste, contamination or adverse environmental conditions resulting from the activities of the Village or its Contractors shall be borne solely by the Village and its Contractors.

(iv) Test Results. Amtrak reserves the right to require the Village to provide to Amtrak a copy of the results of any tests conducted by or for the Village on any

such wastes and, at Amtrak's request, to perform additional reasonable tests and/or examinations of any such wastes at the Village's expense, prior to disposal.

(d) Alteration, Suspension, Cancellation or Modification of Schedule. Amtrak retains the right to alter, suspend, cancel or otherwise modify the Village'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 Village's schedule, including without limitation, claims related to damages resulting from any such delays or cancellations.

(e) Noncompliance Notice. Amtrak may notify the Village of any known or suspected noncompliance with the foregoing provisions and the action to be taken. The Village shall, after receipt of such notice, promptly take corrective action in accordance with all applicable federal, Village and local requirements. If the Village fails or refuses to comply promptly, Amtrak may issue an order stopping all or part of the Project work until satisfactory corrective action has been taken. In addition, Amtrak may immediately undertake necessary corrective actions; the cost and expense of all such actions shall be borne by the Village. No claims by the Village for reimbursement related to costs and expenses charged to the Village for corrective actions undertaken by Amtrak, nor time lost due to any such orders, shall be made the subject of a claim for excess costs or damages by the Village.

(f) Survival of Environmental Obligations. The foregoing environmental obligations shall survive expiration or termination of this Agreement.

14. **Compliance with Laws and Standards; Permits, Licenses, Approvals.**

(a) The Village and its Contractors shall perform all work hereunder in compliance with all federal, state and local laws, regulations and requirements.

(b) The Village and its Contractors shall perform all work in accordance with Amtrak's standards as set forth in Exhibit F attached hereto and incorporated herein. These standards shall be incorporated into any specifications for the Project. Copies of Amtrak's standards either have been or will be provided to the Village.

(c) The Village shall secure and pay for all permits, fees, licenses, easements, approvals, or inspections which may be required in connection with the Project.

15. **Qualifications of Village and its Contractors.**

(a) The Village shall ensure that all employees and Contractors possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

(b) If the Village's activities include Electric Traction ("ET") and/or Communications and Signals ("C&S") design work, then Amtrak will provide a list of those contractors pre-qualified by Amtrak to perform ET and C&S design work affecting Amtrak property. The Village shall furnish for Amtrak's review resumes of individuals who will be performing these design functions. Amtrak reserves the right to reject resumes that do not meet Amtrak's qualification requirements.

16. **Non Performance of Construction Activities.**

Following completion of all design phase activities as described herein, the Village and Amtrak may, subject to their mutual agreement, enter into a construction phase agreement setting forth their roles and responsibilities during the construction phase of the Project. Neither the Village nor its Contractors shall perform any construction activities related to the Project affecting Amtrak's operations, facilities or property until: (a) a construction phase agreement has been fully executed; (b) Amtrak has approved the Documents in writing; (c) the advance deposit for the construction phase of the Project has been received by Amtrak; (d) Amtrak's forces are available to support the Project; (e) as required by Amtrak, a Temporary Permit to Enter Upon Property has been executed; (f) all required insurance certificates have been provided; (g) all real estate agreements (including, but not limited to, any licenses, permanent or temporary easements) required by Amtrak have been fully executed; (h) any operations and maintenance agreements required by Amtrak have been fully executed; (j) the Village has paid all previous invoices; and (i) Amtrak has given its written authorization to proceed with construction as it relates to and/or affects Amtrak's operations, facilities or property.

17. **Notices.**

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made, given or furnished to the other Party shall be in writing and shall be deemed to have been given when delivered in person, delivered by a nationally recognized commercial overnight delivery service (e.g., Federal Express), or on the third day after being mailed by first class registered or certified mail, postage prepaid to the Party at the address set forth below. Notices under this Agreement may not be given by e-mail or other electronic system.

If to Village:

Village of Scotia
4 N. Ten Broeck Street
Scotia, New York 12302
Attn: _____

If to Amtrak:

National Railroad Passenger Corporation
30th Street Station, Box 41
2955 Market Street
Philadelphia, PA 19104
Attn: Vice President, Engineering Services

with copy to:

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

18. **Dispute Resolution.**

In the event that good faith negotiation and agreement of both Parties does not resolve a claim or dispute, either Party may pursue any right or remedy available to it at law or in equity or may propose a method of alternative dispute resolution. Arbitration of a dispute may be agreed upon by the Parties; however, neither Party will be required to submit to arbitration.

Commented [RPL3]: Village to confirm.

19. **Labor Rights.**

This Agreement shall not require Amtrak to contravene the provisions of its labor agreements. In the event of a conflict or inconsistency between this Agreement and such labor agreements, the labor agreements shall control as to such provisions. Any delay in the progress of the Project relating to such conflict or inconsistency shall not create any liability for or additional cost to Amtrak.

20. **Village's Representations and Warranties.**

The Village represents and warrants that it has the authority to enter into this Agreement and that the execution and delivery of this Agreement by the Village and the performance by the Village of its obligations to be performed hereunder have been duly authorized by all necessary and appropriate corporate or other action. The foregoing representations and warranties shall survive expiration or termination of this Agreement.

21. **Entire Agreement.**

(a) 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.

(b) In the event of a conflict between any prior agreements or documents and the terms of this Agreement, the terms of this Agreement shall take precedence for purposes of the Project and the Services to be performed hereunder.

(c) The Village hereby represents and warrants to Amtrak that there are no Project funding related requirements, whether federal, state, or local, that apply to Amtrak. The Village shall indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 above), from and against any and all losses, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs (including cost of defense and attorneys' fees), which any of the Indemnified Parties may incur, be responsible for, or pay as a result of a breach of the foregoing representation and warranty. In addition, the Village shall be responsible for performing any Project funding related requirements that apply to Amtrak and are not expressly set forth in this Agreement, even if those requirements would be read into this Agreement by applicable law, regulation, rule of construction or by operation of law. The foregoing representations, warranties and obligations shall survive expiration or termination of this Agreement.

22. **Successors and Assigns.**

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

23. **Miscellaneous.**

(a) Subject to applicable statutes of limitation, 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 at law or in equity.

(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) The headings contained in this Agreement are for convenience only and shall not be interpreted to limit, control, or affect the meaning or construction of the provisions of this Agreement. This Agreement has been prepared and negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either Party.

(e) This Agreement, and all claims relating to or arising out of this Agreement, shall be governed by and construed under the laws of the District of Columbia, excluding that portion of District of Columbia law relating to the application of laws of another jurisdiction. Each Party agrees that all legal proceedings in connection with any dispute arising under or relating to this Agreement shall be brought in the United States District Court for the District of Columbia. The Village hereby accepts the jurisdiction of the United States District Court for the District of Columbia and agrees to accept service of process as if it were personally served within the District of Columbia.

(f) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original agreement, and all of which taken together will 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. The receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original has been received. No Party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

Amtrak Draft 06.12.23

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed and sealed by their authorized representatives, pursuant to due and legal action authorizing the same to be done, as of the Effective Date.

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____(seal)

Name: _____

Title: _____

VILLAGE OF SCOTIA

By: _____(seal)

Name: _____

Title: _____

Amtrak Draft 06.12.23

Exhibit A

Design Phase Cost Estimate

Amtrak Draft 06.12.23

Exhibit B

Overhead Rates CY2023

Amtrak Draft 06.12.23

Exhibit C

Scope of Work Completion Report (SOWCR) Form

Exhibit D

PTE Example

Amtrak Draft 06.12.23

Exhibit E

Consultant's Certificate

Amtrak Draft 06.12.23

Exhibit F

List of Amtrak Standards