

REIMBURSEMENT AGREEMENT
(LAWRENCE, KANSAS RAILROAD STATION)

This Reimbursement Agreement (“Agreement”) is entered into as of this ____ day of _____, 2017 by and between the City of Lawrence, a Kansas municipal corporation (“City”), and National Railroad Passenger Corporation, a corporation organized under 49 USC § 24101 *et. seq.* and the laws of the District of Columbia (“Amtrak”). City and Amtrak hereinafter may be referred to collectively as the “Parties” or in the singular as “Party”, as the context requires.

WHEREAS, in its provision of intercity passenger rail service, Amtrak serves the Lawrence, Kansas community with a station stop adjacent to the railroad station building located at 413 East 7th Street, Lawrence, Kansas (the “Station”); and

WHEREAS, the City recently purchased the Station; and

WHEREAS, pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et. seq.* (the “ADA”) and the United States Department of Transportation regulations found at 49 CFR Part 37 (the “DOT Regulations”), intercity rail stations, including passenger platforms, designated waiting areas, ticketing areas, parking facilities/pathways and restrooms, are required to be made accessible to persons with disabilities; and

WHEREAS, Amtrak agreed to fund certain of the construction costs (“ADA Costs”) for improvements to the Station (“Station Improvements”) to comply with the ADA and the DOT Regulations pursuant to a letter dated July 12, 2011 to Diane Stoddard, Lawrence Assistant City Manager; and

WHEREAS, the Parties desire to cooperate in making certain improvements as described herein in order to make the Station accessible to persons with disabilities.

NOW, THEREFORE, in consideration of the recitals set forth above, the mutual promises and covenants of the Parties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DESIGN.

- (a) The City has designed and will construct the Station Improvements to comply with the ADA requirements, including the DOT Regulations.
- (b) The Station Improvements shall be constructed in accordance with the final drawings, plans and specifications prepared for the benefit of the City, and approved by Amtrak, which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the construction of the

Station Improvements, the list of which ("Plans") is set forth on Exhibit "A" attached hereto and made a part hereof.

- (c) The Plans are the same as the filed plans referred to in the building permits for the Station Improvements and have been approved by all required governmental authorities.
- (d) Any change to the Plans, to the extent said changes impact compliance with the ADA or the DOT Regulations, must be approved by Amtrak, which approval shall not be unreasonably withheld.
- (e) No review, correction or approval of the Plans by Amtrak shall relieve the City and/or its officers, employees, agents, servants, contractors, subcontractors, consultants, subconsultants, design professionals, engineering professionals, or any other person acting for or by permission of the City (collectively, "City Parties") from the entire responsibility for errors or omissions in such Plans or for the adequacy thereof. No person or entity including, but not limited to, the City Parties, shall have the right to assert a claim against Amtrak on a third party beneficiary theory as a result of Amtrak's inspection of the Plans. **Amtrak assumes no responsibility for and makes no representations or warranties, express or implied, as to the adequacy of the Plans.**

2. COSTS.

- (a) The cost estimates for the Station Improvements related to the ADA and DOT Regulations work ("Cost Estimates") are attached hereto as Exhibit "B".
- (b) The ADA Costs will not be invoiced to Amtrak until the following conditions ("Voucher Conditions") have been satisfied:
 - i. The City has certified to Amtrak, pursuant to the form attached hereto as Exhibit "C", that construction of the Station Improvements has been completed in accordance with the Plans ("Station Improvements Work"). Said certification shall further explicitly certify that the Station Improvements comply with all applicable requirements of the ADA and DOT Regulations, and that, except as explicitly set forth in the lease agreement between the City and Amtrak, the City is responsible for all subsequent costs for operations and maintenance of the Station, as well as ongoing compliance with respect to the ADA and DOT Regulations;
 - ii. A permanent certificate of occupancy has been issued for the Station, subsequent to the completion of the Station Improvements Work, and a copy of same has been provided to Amtrak. Amtrak will accept a temporary certificate in the alternative, if Amtrak has determined, based upon submissions made to it by the City, that the remaining work to be completed is unrelated to work required for ADA and

DOT Regulations compliance, and provided the City has certified to the foregoing to Amtrak's satisfaction; and

- iii. Amtrak's inspector shall have certified to Amtrak in writing that the physical construction of the Station Improvements has been completed in accordance with the Plans (as the same may have been amended and supplemented from time to time with the written approval of Amtrak and any governmental authorities having jurisdiction), that the Station is ready for occupancy for the purposes for which designed and that, to the best of the inspector's knowledge, the Station is in compliance with the ADA and DOT Regulations.
- (c) Although Amtrak may inspect the Plans, project costs, estimates and budgets, the cost breakdown, the course of construction, and other matters pertaining to the construction of the Station Improvements, such inspections are solely for the protection of Amtrak hereunder and the City hereby confirms that Amtrak is not making and will not make any representations and warranties as to any matters pertaining to the Station Improvements (including without limiting the generality of the foregoing, the adequacy of the Plans, the compliance of the Station Improvements with the ADA and DOT Regulations or the proper performance of the work by the general contractor). No person or entity including, but not limited to, the City Parties, shall have the right to assert a claim against Amtrak on a third party beneficiary theory as a result of Amtrak's inspection of construction of the Station Improvements.
- (d) The voucher for the ADA Costs ("Voucher") shall be delivered to Amtrak after satisfaction of the Voucher Conditions. The Voucher shall specify the work and materials for which costs were incurred. The Voucher shall be issued only upon completion of the Station Improvements Work. The Voucher shall constitute a representation with respect to the work and materials for which payment is requested, that they have been physically incorporated into the construction, that the value is as estimated, and that the work and materials conform to the Plans and to all applicable statutes, laws or ordinances, administrative rules, regulations and requirements. The Voucher shall be subject to the approval of Amtrak, but the approval of such Voucher by Amtrak shall not constitute an acceptance of the work or materials, nor be binding upon Amtrak, except to the extent that the facts actually are as so represented when so approved, nor shall such approval give rise to, any liability or responsibility of Amtrak relating to: (i) the quality of the work, the guaranty of the work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans.
- (e) Upon approval of the Voucher by Amtrak, Amtrak (if it has not already done so) shall make available an advance in the amount called for by the Voucher. In the event, based upon Amtrak's inspection, the value of the work done is less than the Voucher amount, Amtrak shall have no obligation to disburse

more than the value of the work done. For purposes of this Agreement, the costs for which the City seeks reimbursement must have been (i) actually incurred, documented and submitted by City to Amtrak within ninety (90) calendar days following final completion of construction of the Station Improvements, and (ii) incurred by the City, its contractors and/or subcontractors while acting in furtherance of the City's obligation to construct the Station Improvements to comply with the ADA and DOT Regulations.

- (f) Notwithstanding anything to the contrary hereinabove, in no event shall Amtrak be obligated to advance for the completion of any part of the Station Improvements Work more than the amount of the Cost Estimates for such work line item (as set forth in Exhibit "B") nor shall Amtrak be obligated to advance any funds pursuant hereto if the City is in default of any other agreement with Amtrak, including, but not limited to, the lease for the Station.

3. INSPECTION.

The City shall permit Amtrak, its representatives and agents, including any construction inspector, to enter upon the Station, inspect the Station Improvements Work and all materials to be used in the construction thereof and examine all detailed plans and shop drawings which are or may be kept at the site. Further, the City shall cooperate and cause its general contractor and major subcontractors to cooperate with Amtrak's representatives and agents to enable them to perform their functions hereunder.

Amtrak, its representatives and agents, intend to perform quality-control activities required to verify that the Work complies with Amtrak's and other legal requirements, whether specified or not, at Hold Points, and intend to conduct a final inspection prior to payment. "Hold Points" are defined as critical inspection points that will cause other work to be covered or become inaccessible for future inspections. In addition, Work associated with concrete work on ADA compliant items (sidewalks, ramps, landings, floors, platforms, etc.) shall be considered Hold Points. Hold Points shall be deemed to occur, at a minimum, prior to any concrete pour when forms and rebar are in place, after any concrete pour when the concrete has cured, before any walls are closed. The City shall indicate all Hold Points on a baseline schedule, with a three week look ahead, such schedule to be shared with Amtrak and updated weekly. The City shall provide at least seventy two (72) hour notice to Amtrak, its representatives and agents, before any Hold Point. In the event that a field inspector representing Amtrak is unable to be on site for a Hold Point inspection, the City shall provide photographs of the work including any necessary instrument of measure, e.g. a level or tape measure, for Amtrak to review remotely.

4. AUDIT RIGHTS.

Amtrak, its Office of Inspector General, the Federal Railroad Administration and their respective agents, designees and accountants shall have the right at any time or from time to time for up to five (5) years after this Agreement is terminated and final payments of all sums due hereunder are made, and after advance notice to the City, to make any examination, inspection or audit of the City's books and records which relate in any way to this Agreement, or to any payments of any sums of money due or paid pursuant to this Agreement. If it is determined that any charges paid by Amtrak have, in error, been underpaid or overpaid, then: (i) the Party that has been underpaid shall be reimbursed the amount of such underpayment by the other Party; or (ii) the Party that has been overpaid shall refund the amount of such overpayment to the other Party.

Nothing in this Agreement shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

5. NOTICES.

Notices given to a Party under this Agreement shall be given by hand, by certified mail, or by overnight delivery service, postage prepaid in an envelope addressed as follows:

To Amtrak:

National Railroad Passenger Corporation
60 Massachusetts Avenue, NE
Washington, DC 20002
Attn: _____

To City:

The City of Lawrence
6 East 6th Street
Lawrence, KS 66044
Attn: City Manager

6. GOVERNING LAW, JURISDICTION AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia. All adjudication relating to this Agreement shall be in Federal Courts.

7. SUCCESSORS AND ASSIGNS.

This Agreement may not be assigned by either Party without the other Party's prior written consent. The obligations in this Agreement shall inure to and bind the successors and permitted assigns of each Party hereto.

8. REPRESENTATIONS.

City represents to Amtrak that: (i) this Agreement has been duly authorized, executed and delivered by City and constitutes a legal, valid and binding obligation of City; (ii) no authorization, consent, approval, or other action by any governmental authority or third party is necessary or advisable in connection with the execution and delivery of this Agreement; and (iii) it owns the Station and has the authorization to undertake the Station Improvements Work.

Amtrak represents that the individual who signs this Agreement on behalf of Amtrak has the capacity and legal authority to execute this Agreement for Amtrak and to bind Amtrak to the obligations imposed on it by this Agreement.

9. NO THIRD PARTY BENEFICIARIES.

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.

10. INDEMNITY.

The City agrees to indemnify Amtrak and its directors, officers, employees and agents from, and hold each of them harmless against, (a) any and all losses arising out of or by reason of any investigation or litigation or other proceedings (including any threatened investigation or litigation or other proceedings) relating to any actual or proposed use by the City of the proceeds herefrom, including, without limitation, the fees and disbursements of counsel incurred in connection with any such investigation, litigation or other proceedings and (b) any and all claims, actions, suits, proceedings, costs, expenses, losses, damages and liabilities of any kind, including in tort, penalties and interest, arising out of or by reason of any matter relating, directly or indirectly, to this Agreement and the Station Improvements Work (but excluding any such losses, liabilities, claims, damages or expenses incurred solely by reason of the gross negligence or willful misconduct of Amtrak). The obligations of the City under this Section shall survive the termination of the remainder of this Agreement.

11. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter, including, but not limited to Amtrak's July 12, 2011 letter to Diane Stoddard, Assistant City Manager. This Agreement cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of either Party, but only by an agreement in writing signed by the Party against whom enforcement of any alteration, modification, amendment, waiver, extension, change, discharge or termination is sought.

12. TERMINATION OF AGREEMENT.

This Agreement shall terminate upon the earlier of: (a) Amtrak's payment to the City of the ADA Costs; or (b) December 31, 2018.

13. NO PARTNERSHIP OR JOINT VENTURE.

Nothing here shall be construed as creating a partnership or joint venture between Amtrak and the City.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the effective date set forth above.

CITY OF LAWRENCE

**NATIONAL RAILROAD PASSENGER
CORPORATION**

By: _____

By: _____

Title: _____

Title: _____

Witness:

Witness:

By: _____

By: _____

Title: _____

Title: _____

Index of Drawings applicable to the ADA related improvements for the Amtrak station stop located in Lawrence, KS.

Number	Drawing #	Description	Revision #	Date of Revision
1	COVER SHEET	COVER SHEET	Rev #1	Dec 9, 2016
2	1.A.0	DEMOLITION PLAN - WEST PORTION	Rev #1	Dec 9, 2016
3	1.A.1	DEMOLITION PLAN - EAST PORTION	Rev #1	Dec 9, 2016
4	1.A.2	DEMOLITION PLAN - BATHROOMS 7 & 8	Rev #1	Dec 9, 2016
5	1.A.3	FLOOR PLAN OVERVIEW	Rev #1	Dec 9, 2016
6	1.A.4	BLDG INTERFACE W/ SITE - WEST PORTION	Rev #1	Dec 9, 2016
7	1.A.5	BLDG INTERFACE W/ SITE - EAST PORTION	Rev #1	Dec 9, 2016
8	1.A.6	FLOOR PLAN - TICKET OFFICE, BATHROOMS	Rev #1	Dec 9, 2016
9	1.A.7	FLOOR PLAN - TICKET OFFICE, BATH ROOMS	Rev #1	Dec 9, 2016
10	1.A.8	FLOOR PLAN - VESTIBULES 2 & 3	Rev #1	Dec 9, 2016
11	1.A.9	FLOOR PLAN-FREIGHT OFFICE, VESTIBULE 14	Rev #1	Dec 9, 2016
12	2.A.0	ELEVATION DETAIL	Rev #1	Dec 9, 2016
13	2.A.1	ELEVATION DETAIL	Rev #1	Dec 9, 2016
14	3.A.0	INTERIOR ELEVATIONS - BATHROOM 7	Rev #1	Dec 9, 2016
15	3.A.1	INTERIOR ELEVATIONS - BATHROOM 8	Rev #1	Dec 9, 2016
16	3.A.2	INTERIOR ELEVATIONS & FOUNTAIN DETAIL	Rev #1	Dec 9, 2016
17	3.A.3	INTERIOR ELEVATIONS & DOOR 12D DETAIL	Rev #1	Dec 9, 2016
18	3.A.4	SIGNAGE DETAILS	Rev #1	Dec 9, 2016
19	3.A.5	SIGNAGE DETAILS	Rev #1	Dec 9, 2016
20	4.A.0	REFLECTED CEILING PLAN - BATHROOMS	Rev #1	Dec 9, 2016
21	5.A.0	STRUCTURAL CLAY TILE WALL SECTIONS	Rev #1	Dec 9, 2016
22	5.A.1	SECTION, JAMB, HEAD & CONC. DETAILS	Rev #1	Dec 9, 2016
23	5.A.2	JAMB, HEAD, WALL SUPPORT, PANIC DETAILS	Rev #1	Dec 9, 2016
24	7.A.0	DOOR SCHEDULE	Rev #1	Dec 9, 2016
25	C.1.1	EXISTING CONDITIONS	Rev #1	Dec 9, 2016
26	C.2.2	SITE DEMOLITION PLAN	Rev #1	Dec 9, 2016
27	C.2.3	SITE DEMOLITION PLAN	Rev #1	Dec 9, 2016
28	C.3.2	SITE LAYOUT PLAN	Rev #1	Dec 9, 2016
29	C.3.3	SITE LAYOUT PLAN	Rev #1	Dec 9, 2016
30	C.3.4	SITE LAYOUT PLAN	Rev #1	Dec 9, 2016
31	C.3.5	SITE LAYOUT PLAN	Rev #1	Dec 9, 2016
32	C.4.2	GRADING PLAN	Rev #1	Dec 9, 2016
33	C.4.3	GRADING PLAN	Rev #1	Dec 9, 2016
34	C.4.4	GRADING PLAN	Rev #1	Dec 9, 2016
35	C.8.1	SITE DETAILS	Rev #1	Dec 9, 2016
36	C.8.2	SITE DETAILS	Rev #1	Dec 9, 2016
37	C.8.4	HANDRAIL ELEVATIONS & DETAILS	Rev #1	Dec 9, 2016
38	C.8.5	CONCRETE STEP DETAILS	Rev #1	Dec 9, 2016
39	C.9.1	STANDARD DETAILS FOR CONCRETE CURB AND GUTTER	Rev #1	Dec 9, 2016
40	C.9.2	STANDARD DETAILS FOR CONCRETE SIDEWALKS	Rev #1	Dec 9, 2016

City Certification

This Certification is made this ____ day of _____, _____. For the purposes hereof, all capitalized terms shall have the meaning ascribed to such terms pursuant to the Reimbursement Agreement by and between the City of Lawrence ("City") and National Railroad Passenger Corporation ("Amtrak") dated _____, 2017.

The City hereby certifies to Amtrak that:

1. The Station Improvements have been completed in accordance with the Plans;
2. The Station Improvements comply with all applicable ADA and DOT Regulations;
3. Except as explicitly set forth in the Lease Agreement dated _____, 2017 by and between the City and Amtrak, the City is responsible for all subsequent costs for operation and maintenance of the Station, as well as ongoing compliance with respect to the ADA and DOT Regulations;
4. The City voucher is attached hereto as Exhibit "A". The work and materials for which payment is requested has been physically incorporated into the Station, the value is as estimated and the work and materials conform to the Plans and all applicable statutes, laws or ordinances, administrative rules, regulations and requirements.

IN WITNESS WHEREOF, the City executes this certification as of the day and year first above written.

City of Lawrence

By: _____

Name:

Title: