

Chandus File

National Railroad Passenger Corporation, 400 North Capitol Street, N.W., Washington, D.C. 20001 Telephone (202) 383-3000

Amtrak®



May 10, 1988

*copy to JLD
Smith*D H L EXPRESS

Frank Schiano, Esquire
 Assistant Counsel
 City of New York
 Department of Environmental
 Protection
 Office of Legal Counsel
 2353 Municipal Building
 New York, New York 10007

RECEIVED
 D.E.P./BUREAU OF SEWERS

AUG 9 1988

DIVISION OF
 SEWER REGULATION
 AND CONTROL

Re: Proposed Amtrak Construction
 in the Vicinity of 11th Avenue
 and West 33rd Street, Borough
 of Manhattan

Dear Mr. Schiano:

Pursuant to your letter dated March 11, 1988, I am enclosing for your review a draft agreement between the City and Amtrak with respect to the proposed sewer construction at 11th Avenue and West 33rd Street. Because we are hoping to commence construction early this summer, we would appreciate any assistance that you can provide in moving this agreement toward execution. I say this in full recognition that it has been almost two months since the date of your last letter. Nevertheless, anything that you can do to move this along would be very much appreciated.

Sincerely,

Jared I. Roberts
 Jared I. Roberts
 Associate General Counsel

JIR/alm

Enclosure

cc: R. D. Johnson
 K. P. Felsburg

Magdis
 I have noted my comments, maybe
 you can write a whereas clause to hold me
 with my comment on page 1. 4
JL

AN EQUAL OPPORTUNITY EMPLOYER

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AGREEMENT REGARDING PROPOSED AMTRAK SEWER CONSTRUCTION IN THE VICINITY OF 11TH AVENUE AND WEST 33RD STREET, BOROUGH OF MANHATTAN

THIS AGREEMENT made as of the 15th day of May, 1988,
by and between National Railroad Passenger Corporation
("Amtrak"), a District of Columbia corporation, having an office
at 400 North Capitol Street, N.W., Washington, D.C. 20001, and
City of New York, Department of Environmental Protection
("DEP"), having an office at 2353 Municipal Building, New York,
New York 10007.

WHEREAS, Amtrak owns certain rail properties (the
"Line") which run from approximately West 33rd Street and 11th
Avenue in the Borough of Manhattan, City, County and State of
New York, north to Spuyten Duyvil in Bronx County, City and
State of New York; and

WHEREAS, Amtrak intends to rehabilitate the Line for
rail passenger service and to construct a rail tunnel so as to
connect the Line to Pennsylvania Station in the Borough of
Manhattan; and

WHEREAS, in connection with the construction of such
tunnel Amtrak intends to construct certain sewer lines and
related facilities in the vicinity of West 33rd Street and 11th
Avenue; and

WHEREAS, DEP has reviewed and approved Amtrak's plans
with respect to such construction of sewer lines and related
facilities; and

** Expanded
history was
to be done &
necessity
for work*

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WHEREAS, Amtrak and DEP intend hereby to set forth their agreement with respect to the payment for such construction and with respect to the continuing responsibilities of each following such construction.

NOW THEREFORE, for and in consideration of the respective agreements of the parties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, Amtrak and DEP agree as follows:

1. DEP Approval of Amtrak Plans. DEP has approved Amtrak's plans for the construction of a dual siphon sewer and related facilities (the "Sewer") under Amtrak's proposed rail tunnel (the "Tunnel") in the vicinity of 11th Avenue and West 33rd Street. Such approval was contained in a letter dated February 22, 1988, from Mr. Magdi Farag of DEP, a copy of which letter (without enclosures) is attached hereto as Exhibit A.

2. Amtrak to Pay For Sewer Construction. Amtrak shall bear all costs of constructing the Sewer, which work shall be performed as a part of, in and connection with, Amtrak's construction of the Tunnel. The Sewer shall not be put into use until DEP has certified in writing to Amtrak that construction of the Sewer has been satisfactorily completed.

3. Responsibilities After Sewer Construction. Upon certification by DEP that construction of the Sewer has been satisfactorily completed, the following shall pertain for so long as Amtrak owns and operates the Line:

- Need additional provisions as follows:*
- ① *Provision obligating Amtrak to bind any successor in interest to the RR property to the provisions of this agreement - particularly the access provisions of Section 3c*
 - ② *Amtrak agreement to indemnify & hold harmless the City from any damage, or claim in which it may be held liable arising out of the performance of Amtrak's contractors in performing the work called for in part 1 of the agreement.*

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a. All costs associated with the maintenance, repair, replacement or reconstruction of the Sewer, or installation of new equipment, shall be the sole responsibility of DEP, except as otherwise specifically set forth below.

b. In the event that Amtrak provides flagging or track monitoring in connection with any maintenance or repair of the Sewer, Amtrak shall bear the cost of such flagging or track monitoring. If the work being performed on the Sewer extends beyond maintenance or repair, such as replacement, reconstruction, or the installation of new equipment, DEP shall reimburse Amtrak for the cost of any flagging or track monitoring provided by Amtrak.

c. At least twenty (20) days in advance of performing any non-emergency work in, on, or around the Sewer, DEP shall submit its plans for review and written approval to Amtrak's Assistant Chief Engineer-Design and Construction, 2000 Market Street, Philadelphia, Pennsylvania 19103, or to such other representative as may be designated by Amtrak in writing. No such non-emergency work shall be performed by or on behalf of DEP without such prior written approval of Amtrak, which approval shall not be unreasonably withheld or delayed. DEP acknowledges that because of train schedules on the Line, it may be necessary to schedule non-emergency work at times that are set by Amtrak in order to minimize or eliminate interference with train operations.

d. In the event that DEP performs emergency work in, on, or around the Sewer it shall, as soon as possible, give

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telephone notice to the office of Amtrak's Assistant Chief Dispatcher at (212) 560-7465, 7466, 7467 or 7468 (or to such other telephone number as may be designated by Amtrak in writing), and shall thereafter, upon request of Amtrak, submit plans or other documents describing the work performed.

e. Amtrak shall provide vehicular access for DEP to the vicinity of the Sewer by way of a non-public maintenance road or otherwise. Amtrak may, at its option, provide DEP with a key to the gate leading to such maintenance road, keep such a key at Pennsylvania Station or other twenty-four (24) hour a day facility where it can be made readily available to DEP, or make other provision(s) that will assure access to DEP twenty-four (24) hours a day, seven (7) days a week.*

4. Applicable Law. Pursuant to the terms of 45 U.S.C. § 546(d), this Agreement shall be governed by the laws of the District of Columbia.

5. Amendment. This Agreement may be amended only by an instrument in writing signed by both parties.

6. Assignment. This Agreement may not be assigned by either party without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the scope and subject matter of this Agreement. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement.

Notwithstanding the above, Amtrak shall remain obligated to guarantee DEP access to the sewer at all times.

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8. Sole Benefit. This Agreement is intended solely for the benefit of the parties and is not intended to create any other beneficiaries.

9. Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby.

10. Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

11. No Property Interest. This Agreement shall not be construed as granting to DEP any right of possession, estate, title or interest whatsoever in the Line, the Tunnel, or any part of the Line or the Tunnel.

IN WITNESS WHEREOF, Amtrak and DEP have executed this Agreement as of the day and year first above written.

WITNESS

CITY OF NEW YORK,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

WITNESS

By: _____

Harvey W. Schultz
Commissioner
NATIONAL RAILROAD PASSENGER
CORPORATION

By: _____

R. D. Johnson
Assistant Chief Engineer-
Design and Construction

cc: DiMartino
Farag
D. Smith
~~Chandra Patel~~
Suspense
CP:lp

45661
4-6-88

Dispatched
APR 8 1988
Bureau of Heavy Construction
Mail Room

April 5, 1988

Mr. Barney LaGreca, P.E.,
Chief Engineer
Div. of Street Design
Bureau of Highway Operations
NYC Department of Transportation
40 Worth Street
New York, NY 10013

RE: Amtrak Leaks on Riverside Drive (West Side Connection), Borough of Manhattan

Dear Mr. LaGreca:

Transmitted herewith is a copy of a memorandum dated December 9, 1987 from Mr. Anthony Ragucci, Chief, Sewer Maintenance Section. Please note that item No. 3, recommends a Highway Capital Project.

Very truly yours,

MAGDI FARAG, P.E., CHIEF
Division of Sewer Regulations &
Control, Bureau of Sewers