

**DESIGN PHASE AGREEMENT**  
**BETWEEN**  
**NATIONAL RAILROAD PASSENGER CORPORATION AND**  
The City of Ann Arbor, Washtenaw County, MI  
For the Design of a Stormwater Culvert and Pedestrian Tunnel Under  
the MDOT Owned Michigan Line between MP 37.30 and 37.61 in  
(Allen Creek Railroad Berm Opening Project)

This Design Phase Agreement (“Agreement”) effective this \_\_\_\_ day of \_\_\_\_\_, 2017, (the “Effective Date”) is made by and between **National Railroad Passenger Corporation**, a corporation organized under Part C of Subtitle V of Title 49 United States Code, (formerly the Rail Passenger Service Act) and the laws of the District of Columbia, with its principal offices located at 60 Massachusetts Avenue, N.E., Washington, DC, 20002 (“Amtrak”) and **the City of Ann Arbor**, a municipal corporation with its principal offices located at 301 E. Huron Street, Ann Arbor, MI 48104 (“City”) (hereinafter collectively referred to as the “Parties” or in the singular as “Party,” as the context requires).

**WHEREAS**, the State of Michigan, acting by and through its Department of Transportation (“MDOT”) owns certain railroad right-of-way, including, but not limited to, the land, tracks, bridges, buildings, structures, drainage, communication and signal systems, switches, crossovers, interlocking devices and related rail facilities, which extends generally from Milepost 7.60 at CP Town Line in Wayne County to Milepost 119.60 at CP Baron in Calhoun County and from Milepost 121.39 in Gord, Calhoun County to Milepost 145.60 in Kalamazoo, Kalamazoo County, all in the State of Michigan (collectively known as the “Michigan Line”); and

**WHEREAS**, Amtrak and MDOT have entered into that certain Dispatch, Maintenance, Management and Service Outcomes Agreement Dated December 7, 2012, as amended, pursuant to which Amtrak has been engaged by MDOT to operate, maintain and manage the Michigan Line, including the provision of certain services in connection with construction projects relating to the Michigan Line; and

**WHEREAS**, City proposes to undertake the design of a stormwater culvert and separate pedestrian tunnel (to be referred to as the Allen Creek Railroad Berm Opening Project) below the Michigan Line tracks in Ann Arbor, Michigan, between railroad mileposts 37.30 and 37.61 (the “Project”); and

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

**WHEREAS**, City desires that Amtrak perform various services as set forth herein during the preliminary engineering or design phase of the Project; and

**WHEREAS**, Amtrak is willing to provide such assistance in accordance with the terms set forth herein; and

**WHEREAS**, City is responsible for funding the entire cost of the Project, including the cost of Amtrak’s Services (as defined below) to be provided in connection with the Project; and

**WHEREAS**, the Parties agree that protection of MDOT’s and Amtrak’s property and Amtrak’s operations is a paramount public safety concern; and

**WHEREAS**, the Parties have agreed to more fully set forth in detail the work, material, equipment, and labor for the services to be performed by Amtrak, and the costs thereof.

**NOW, THEREFORE**, 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 to incorporate the forgoing recitals (or WHEREAS clauses) into this Agreement, and further agree as follows:

1. **Definitions.** The following words and phrases, when used in this Agreement, shall have the meanings ascribed to them below.

“**Approved Project Plans**” shall have the meaning ascribed to it in Paragraph 9(a) hereof.

“**C&S**” shall mean communication and signal systems.

“**Documents**” shall mean all plans, drawings and specifications relating to the Project relating to any aspect of the Project that may affect Amtrak’s operations (including safety of those operations) or any property that is owned or controlled by Amtrak, including the Michigan Line.

“**Effective Date**” shall be the date inserted into the opening paragraph.

“**Indemnified Parties**” shall mean Amtrak and MDOT, along with their respective subsidiaries and affiliates, and their officers, directors, employees, agents, servants, successors, and assigns.

“**Michigan Line**” shall have the meaning set forth in the first recital.

“**Overhead Rate**” shall mean the additives for Amtrak’s overhead costs, including General and Administrative (G&A) and force account insurance, in effect at the time of performance of the Services, referred to in the plural as “Overhead Rates”. The current Overhead Rates are set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

“**Project**” has the meaning set forth in the third recital herein.

“**Services**” shall mean the preliminary engineering, protective and other design phase related services to be performed by Amtrak as specified in Paragraphs 3(a) and 3 (b) hereof.

2. **Project Description**

City shall design, or cause to be designed, the Project, the scope of which is described in **Exhibit A** attached hereto and incorporated by reference, in accordance with the terms of this Agreement. City has received federal funding for a portion of the Project costs, and shall be responsible for the payment of all such costs of all of the work arising out of or in connection with the design phase of the Project. City shall comply with all applicable federal, state and local laws in the design phase of the Project.

City hereby represents and warrants to Amtrak that there are no Project funding related requirements, whether federal, state, county or local, that apply to Amtrak other than the obligations described in this Agreement. City shall be responsible for performing any and all 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. To the extent permitted by law, City shall indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 1 above), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses,

liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs (including cost of defense and attorney's fees), which any of the Indemnified Parties may incur, be responsible for, or pay as a result of the breach of the foregoing representation and warranty.

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

**(a) Design Phase.** Amtrak agrees to perform (or have performed by third parties) the following services so as to facilitate progression of the design phase of the Project by the City: (i) review the City's or its contractor's plans, drawings, specifications, and schedules for impact on operations of the Michigan Line; (ii) perform inspection services, as required; (iii) perform services required for the protection of railroad traffic, such as flagging, and/or track outages, as may be necessary; (iv) prepare estimates of Amtrak's costs for services to be performed by Amtrak during the construction phase of the Project; (v) attend meetings; (vi) perform environmental reviews, if necessary; and (vii) perform such additional related services as set forth herein or as may be agreed upon by the Parties. These services, together with the services referred to in Section 3(b) hereof, are hereinafter collectively referred to as the "Services."

**(b)** The Services may be performed by Amtrak's own forces or by those of one or more contractors retained by Amtrak. Nothing herein shall be interpreted to require Amtrak to provide the Services without compensation.

**5. Cost Estimate.**

An estimate of Amtrak's costs for the design phase of the Project is attached hereto as **Exhibit B**. The providing of such estimate does not, however, limit the City's obligation to reimburse Amtrak for all costs actually incurred by Amtrak in connection with this or any other phase of the Project.

**6. Billable Costs.**

**(a)** The City agrees to reimburse Amtrak for all costs incurred by Amtrak in connection with the Project. Such costs shall include, but not be 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.

**(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 procured by Amtrak (but not issued from Amtrak's inventory) shall be charged at Amtrak's actual cost incurred. Material handling and, as applicable, Overhead Rates will 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 applicable Overhead Rates.

(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.

(v) For Amtrak-owned equipment, vehicles, work trains and rolling stock, reimbursement shall be at the rates published in "Amtrak Rental Rates for Railroad Equipment," plus applicable Overhead Rates. For Amtrak-owned equipment, vehicles, work trains, wire trains and rolling stock not specifically itemized therein, reimbursement shall be based on a comparable market rate, plus the applicable Overhead Rates. Vehicles/equipment obtained through a GSA Schedule shall be construed as Amtrak-owned.

(vi) Set-up (mobilization/demobilization) costs and/or the cost of training of Amtrak employees to the extent required for this Project. Amtrak shall be reimbursed for the actual costs, plus the applicable Overhead Rates.

(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. City of Ann Arbor's obligation to reimburse Amtrak for such retroactive costs shall survive termination of this Agreement.

(viii) Other actual costs not included in any other provision of this Agreement, necessary to effectively perform Services under this Agreement shall be charged at actual costs, plus Amtrak's Overhead Rates.

(b) 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 City of Ann Arbor, upon request. The rates in effect at the time of performance of the Services shall be the applicable Overhead Rates.

## 7. **Payments.**

(a) Prior to commencement of any Services by Amtrak, the City shall remit payment to Amtrak in the amount of Seventy-One Thousand, Nine Hundred Forty Dollars (\$71,940.00) which represents the amount of Amtrak's cost estimate for the design phase of the Project. Such advance deposit shall be applied to Amtrak's costs as they are incurred. If, during the course of the Project, the cost estimate needs to be increased, the City shall remit an additional amount to Amtrak representing the amount by which the estimate was increased. Upon completion of the Project, Amtrak shall return to the City any portion of the advance deposit (if any) that has not been expended by Amtrak.

(b) Invoice documentation 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 hours worked, payroll amounts, dates and names of agreement-covered employees who provided services to the Project. Amtrak shall also provide copies of material invoices, third party service invoices, a report of materials issued from inventory, Amtrak owned equipment utilization pricing statement, management labor detail, and a statement of other costs and charges.

(c) Payments of any Amtrak invoices are due within 30 days of receipt of invoice by the City. Payments not made by the City by the due date shall be subject to an interest charge of one and

one-half percent per month. Payments shall be made in full without deduction, setoff or counterclaim. Nonpayment of invoices pursuant to the terms of this Agreement shall constitute a material breach of the Agreement, and shall be cause for Amtrak to cease all work. The City will be responsible for any and all costs incurred by Amtrak as a result of the City's breach.

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

8. **Project Schedule.**

(a) Amtrak and City agree to cooperate and to require their respective consultant(s)/contractor(s) to cooperate so as to coordinate their respective schedules in an effort to not delay the Project. However, City acknowledges that Amtrak has manpower and other resource constraints, other work commitments and demands, and that only limited track outages are available, and that these constraints and outages must be shared and/or rationed among all potential projects (including other Amtrak, MDOT, municipal, commuter and third party projects) in the vicinity of the Project area. These restrictions may prevent Amtrak from performing its Services according to the City of Ann Arbor's schedule and may prevent the City of Ann Arbor from gaining access to the Michigan Line according to such schedule.

(b) Amtrak and City agree that the continuity and on-time performance of Amtrak rail service during all phases of the Project is of primary importance. Amtrak will not be expected to disrupt the operations of any trains or grant track outages that disrupt train operations in furtherance of this Project. All City activities with the potential to disrupt train 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.

9. **Review of Documents.**

(a) City shall submit to Amtrak for its review and approval all Documents relating to any aspect of the Project that may affect Michigan Line operations (including safety of those operations) or any property that is owned or controlled by Amtrak. City agrees that Amtrak shall have a minimum of thirty (30) working days to review any Documents. The City agrees to incorporate all of Amtrak's comments into the final construction plans for the Project, which final construction plans shall, upon Amtrak's written approval, constitute the "Approved Project Plans". Any changes to the Approved Project Plans, whether prior to the commencement of construction or after construction has commenced, must be reviewed and approved by Amtrak in writing prior to the commencement of the construction activities impacted by the change.

(b) Any review of such Documents shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Michigan Line and/or the operations of the Michigan Line. No review, correction or approval of Documents by Amtrak shall

relieve City and its contractors/consultants 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 adequacy of the Documents or the Project.

(c) City shall submit all of the Documents to MDOT for MDOT's approval in connection with the planned construction of the Project. City shall copy Amtrak on all submittals to MDOT in connection with the Project. Prior to the commencement of any construction activities, City shall provide to Amtrak copies of MDOT's written approval of/no exceptions taken to the Documents.

10. **Permit to Enter.**

If entry on, over, under, or adjacent to the Michigan Line is required for purposes of this Project by City or its contractors, City agrees that the entity seeking entry must notify Amtrak at least twenty-one (21) 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**.

11. **Safety and Security Requirements.**

(a) City shall require that when any work is being done on, over, under or adjacent to the Michigan Line right-of-way by anyone other than Amtrak forces, all operations affecting the assets which comprise the Michigan Line, or the safe and uninterrupted operation of trains on the Michigan Line 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 to the Temporary Permit to Enter Upon Property as Attachment A. Compliance with such specifications shall be at no cost to Amtrak.

(b) City shall, at its sole cost, 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 security training, wearing of appropriate identification, and the barring from Amtrak property of personnel who have been convicted or found not guilty by reason of insanity of certain disqualifying criminal offenses.

12. **Risk of Liability.**

(a) **The City's Obligations.** To the extent permitted by law, the City shall indemnify and hold harmless the Indemnified Parties, irrespective of negligence or fault on the part of the Indemnified Parties, from and against losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and reasonable attorney's fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of:

(i) injury, death, disease, or occupational disease to any person (excluding only the employees of Amtrak for which Amtrak has coverage under the force account insurance maintained by Amtrak as described in Section 12(c) of this Agreement, and only to the limits of Ten Million Dollars (\$10,000,000.00)\$10 million, or

(ii) damage (including environmental contamination and loss of use) to or loss of any property, including property of Amtrak or MDOT

arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed in connection with the Project by Amtrak, the City and/or their officers, employees, agents, servants, contractors, subcontractors or any other person acting for or by

permission of them. 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 any contractor, subcontractor or consultant, and shall survive termination of the Agreement for any reason. This provision 12(a) does not and shall not be construed to waive or limit the City's governmental immunity.

(b) The City's Contractors. If any of the City's contractors' work is to be performed on, over or under the Michigan Line, it will be necessary for such contractors to execute Amtrak's then-current "Temporary Permit to Enter Upon Property" form, as provided for in Section 10 hereof. The Temporary Permit to Enter Upon Property contains the relevant indemnification obligations.

(c) The City's Design Consultants' Obligations. The City agrees to have its consultants who perform design or engineering functions in support of the Project to defend, indemnify and hold harmless Amtrak and MDOT in accordance with the terms of **Exhibit E**. Such consultants must execute a copy of the indemnification form attached hereto as **Exhibit E** and return the form to Amtrak at the address listed in Section 18 hereof. Amtrak will not review the Documents until it has received an executed copy of such form.

13. **Insurance Requirements.**

(a) The City and its Contractors' Insurance. The City shall require its contractors to procure and maintain in effect during the course of the design phase of the Project, at no cost to Amtrak, insurance as specified in Amtrak's "Insurance Requirements," a copy of which is attached to the Temporary Permit to Enter Upon Property as Attachment B. The City or its contractors shall furnish evidence of such policies to Amtrak prior to commencing work on, over, below or adjacent to Amtrak property.

(b) Additional Insurance. The City shall insert the following paragraph in its contracts with any consultants who perform design or engineering functions in support of the Project:

"Consultant shall procure and maintain in effect professional liability insurance covering the liability of the Consultant for any and all errors or omissions committed by the Consultant or any other person acting for or by permission of the Consultant. The professional liability insurance shall be maintained during the term of the contract between the City of Ann Arbor and the Consultant and for at least three (3) years following completion of all operations to be performed by the Consultant. This insurance shall have limits of liability of not less than Two Million Dollars (\$2,000,000.00) per claim."

The City shall require its consultants performing design or engineering functions to 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.

(c) Amtrak's Insurance. If Amtrak performs any force account work in connection with this Project, Amtrak shall maintain, 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 (\$10,000,000.00) per occurrence. Amtrak reserves the right to self-insure for this coverage.

14. **Environmental Matters.**

City and its contractors shall comply with all applicable federal, state, and local laws, regulations, ordinances, and orders concerning the environment and/or waste generation and disposal, and shall promptly inform Amtrak of all communications with any governmental authority relating to the Project or to reporting, investigation, testing, monitoring and/or remediation. In addition, the City shall, and shall require its contractors to, promptly provide Amtrak with a copy of all test results at no cost to Amtrak, and to invite Amtrak to attend any relevant meetings. The foregoing provisions shall survive termination of this Agreement.

15. **Non Performance of Construction Activities.**

City and its contractors shall not perform any construction activities related to the Project affecting the operations of the Michigan Line until: (a) Amtrak has approved the Documents, (b) the City has obtained MDOT's approval of the Documents, (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) a Temporary Permit to Enter Upon Property has been executed, (f) insurance certificates have been provided, (g) all real estate agreements, including licenses, permanent or temporary easements required by MDOT have been fully executed, and (h) Amtrak has given its written authorization to proceed with construction. The commencement of any construction phase activities related to the Project affecting the Michigan Line and/or operations on the Michigan Line prior to the satisfaction of items (a) through (h) above shall be deemed a material breach of this Agreement by City.

16. **Entire Agreement.**

This Agreement constitutes the entire agreement between the Parties as to scope and subject matter. All prior discussions, understandings and prior agreements 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.

17. **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 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.

18. **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 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 Ann Arbor  
Project Management Services Unit  
301 E. Huron Street  
Ann Arbor, Michigan 48104  
Attn: Nicholas Hutchinson, P.E., City Engineer



If to Amtrak:

National Railroad Passenger Corporation  
30<sup>th</sup> Street Station  
2955 Market Streets, Mailbox No. 46  
Philadelphia, PA 19104  
Attn: Chief Engineer

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

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

(b) The City and its contractors shall perform all work hereunder in compliance with all federal, state and local laws, regulations and requirements including, but not limited to, the Americans with Disabilities Act of 1990 and regulations, ordinances, and orders concerning the environment and/or waste generation and disposal.

(c) The City and its contractors shall perform all work in accordance with Amtrak's standards, including but not limited to, the following:

- (i) Amtrak Engineering Practices 3014 - Maintenance and Protection of Railroad Traffic During Contractor Operations.
- (ii) Amtrak Engineering Practices Section 01141A - Safety and Protection of Railroad Traffic and Property.
- (iii) Amtrak Engineering Practices 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.
- (iv) Amtrak Engineering Practices Section 02261A - Requirements for Temporary Sheeting and Shoring to Support Amtrak Tracks.
- (v) Amtrak Engineering Practices 3016 - Storm Water Drainage and Discharge from Adjacent Property onto Amtrak Right-Of-Way.
- (vi) Amtrak Engineering Specification No. 150 - Stormwater Management Policy.
- (vii) Amtrak Standard Track Plan - Minimum Roadway Clearances Dwg. Nos. 70050.001.08 & 70050.002.08.
- (viii) Amtrak Engineering Practices 3005-02081A - Pipeline Occupancy – Specifications
- (ix) Amtrak Engineering Practices 3005-02082A – Pipeline Occupancy Specifications Additional Requirements for Horizontal Directional Drilling (HDD) / Directional Boring.
- (x) Amtrak Engineering Practices 3003 - Blasting Procedures.

- (xi) CE – 4 Specifications for Wire, Conduit and Cable Occupations of National Railroad Passenger Corporation Property.
- (xii) Latest ADA Standards for Accessible Design available at [www.ada.gov](http://www.ada.gov).

These standards, copies of which have been provided to the City, shall be incorporated into any specifications for the Project.

20. **Qualifications of the City and its Contractors.**

(a) City and its contractors shall ensure that all subcontractors, agents and employees possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.

(b) With respect to C&S design, Amtrak will provide a list of those contractors pre-qualified by Amtrak to perform C&S design work affecting MDOT the Michigan Line. City will retain a contractor from that list for C&S design work related to the Project.

21. **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 by law 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.

22. **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.

23. **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 MDOT and 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 (other than MDOT) 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 City represents and warrants that it has the authority to enter into this Agreement and that the execution and delivery of this Agreement by the City and the performance by the City 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 termination of this Agreement.

(e) 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 shall be deemed to have been jointly prepared by the Parties. This Agreement has been 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.

(f) 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 City 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.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their proper officials, pursuant to due and legal action authorizing the same to be done, as of the day and year first above written.

**NATIONAL RAILROAD PASSENGER CORPORATION**

By: \_\_\_\_\_  
C.W. Moorman  
President and Chief Executive Officer

**CITY OF ANN ARBOR**

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to substance

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

\_\_\_\_\_  
Craig Hupy, Public Services Area Administrator

Approved as to form and content

\_\_\_\_\_  
Stephen K. Postema, City Attorney

**Exhibit A**  
(Project Description)

## **Allen Creek Railroad Berm Opening Project**

### **Project Background and Scope:**

The railroad berm near the mouth of Allen Creek in the vicinity of Depot Street and Main Street, just west of the Ann Arbor Amtrak Station, is oriented perpendicular to the overland drainage flow pattern and causes the floodplain depth in this area of the City to be as deep as 10 feet. Upstream of the influence of this berm, flood depths are more typically in the 3 to 5 foot range. See Attached visual overview of the area.

In December of 2013, the City and its consultant completed a Feasibility Study to determine if it was possible to create openings in the railroad berm to accommodate passage of floodwaters and to allow pedestrians to cross safely under the railroad to get to the park facilities to the north.

The Feasibility Study indicated that it is possible to lower the floodplain elevation in the area by as much as 6.5 feet as well as to accommodate non-motorized access under the railroad.

Two separate culverts (each 60 feet long) would be constructed. A lower culvert (20' span x 6' rise) would be used to convey floodwaters to the north side of the railroad tracks, and a higher culvert (14' span x 8' rise) would be used to accommodate pedestrians. The culverts would be side by side as depicted in the attached Figure 15.

MDOT (railroad owner) is supportive of the preferred alternative.

The Project completes a non-motorized transportation network in a larger region by connecting downtown Ann Arbor and its immediate neighborhoods, to the Border to Border(B2B)/Iron Belle Trail in Washtenaw County. The B2B Trail extends from the county border with Livingston County to the border with Wayne County including over 24 miles of paved, shared-use paths. According to a study from Michigan State University in 2009, the B2B had 114,405 estimated uses for a spring and fall period with 57% of users originated from Ann Arbor. The proposed trail link fits into the larger network of regional and state pedestrian and bicycle infrastructure, and responds to the strong public appeal for pedestrian access in this area. The project introduces an additional transportation choice that improves Non-motorized access for people without a driver's license or a car, those unable to drive and that enhances personal health, economic viability and air quality.

There is a known trespassing hazard near the project. The lack of a convenient and reasonable pedestrian access linking the downtown area to the B2B Trail leads to the dangerous trespassing behavior. The project will provide safe access to the B2B trail from the population center and eliminate this hazard.

Additionally, the project will reduce the flooding of transportation facilities and private properties in the adjacent area. Several key transportation facilities including the Wolverine Rail line, Depot St, 4th Ave and N. Main Street will benefit from reducing the floodplain elevation upstream (south) of the railroad.

Minimizing flooding also serves to improve water quality by reducing the Allen Creek Drain contamination of the Huron River. During flooding event, in the upper reaches of Allen Creek floodplain, rainwater collects on Depot and adjoining street and picks up contaminants during the flood stages. Automobile related, heavy metals, oils and other chemicals as well as debris are washed into the Huron River as torrents of rainwater rush from the flooded streets and parking areas, and into the Huron River. Construction of the storm water opening will drop the flood level approximately 6 feet during the 1% storm event, thereby improving water quality. Two potential pedestrian routes to and from the proposed railroad berm opening area were identified, but a preferred route was not issues also remain to be resolved at the terminus of those routes.

### **Preliminary Scope Statement:**

The City of Ann Arbor is proposing to construct two separate culverts (each 60 feet long) beneath the railroad tracks between Mileposts 37 & 38 of what is collectively known as the “Michigan Line”. The Project aims at creating a new pedestrian connection linking downtown Ann Arbor and its neighborhoods with the Border to Border (B2B)/Iron Belle Trail through the railroad berm in the vicinity of the Allen Creek. This project also includes a storm water culvert that when installed will lower the floodplain through the lower reach of Allen Creek in the vicinity of Depot Street and North Fourth Avenue, just west of the Ann Arbor Amtrak station. A portion of the project is eligible for a grant from Federal Emergency Management Agency (FEMA). During the design phase the precise location of the culverts will be located, but in general they will be situated between the existing elevated Ann Arbor Railroad tracks and just west of the existing Ann Arbor Station.

### **Scope Definition:**

A lower culvert (20’ span x 6’ rise) would be used to convey floodwaters to the north side of the railroad tracks, and a higher culvert (14’ span x 8’ rise) would be used to accommodate pedestrians. The culverts would be side by side as depicted in the attached Figure 15. It will be necessary to construct a concrete drop structure to allow floodwaters to flow into the lower culvert from the adjacent parking lot.

A short (~4-foot) floodwall would need to be constructed to isolate the pedestrian culvert from the 1% storm flood depths in the parking lot at 201 Depot. This will allow the pedestrian culvert to be isolated from the floodwaters that will favor the lower culvert. The downstream side of the pedestrian culvert will require additional walls to isolate the pedestrian underpass from the Huron River 1% storm floodplain.

The upstream end of the lower (flood conveyance) culvert will be surrounded by a concrete chamber that provides the vertical transition from elevation 770.0 to 763.5. The top of the concrete chamber will act as a weir. A grating/cover shall be installed over the top of the

chamber to discourage anyone from entering the chamber, which will be over six feet deep. The bottom of the chamber should be sloped so as to avoid any standing water and making cleanout/maintenance easier.

### **Project Deliverables:**

The City of Ann Arbor will submit the following to Amtrak:

- Provide soil boring and analytical results collected during the design phase.
- Provide 60% and 90% design plans to Amtrak and all affected agencies for their review and comment.
- Provide verification of environmental clearance to construct the proposed project.
- Provide 100% complete construction plans, specifications, and cost estimates.
- Execute permanent maintenance agreement.
- Provide all easements necessary to construct the project.
- Provide all completed permit applications necessary to construct this project.

### **Amtrak Services:**

The City of Ann Arbor is requesting that Amtrak perform the following services:

- Review and comment on 60% and 90% design plans.
- Participate in meetings via video conferencing or telephone.
- Participate in the preparation of a final maintenance agreement.
- Provide a letter of no exceptions.
- Approval of final Construction plans and specifications.
- Provide flag control during construction.

### **Preliminary Drawing:**

The attached Figure 14 shows the preliminary layout of the proposed culverts. During the design phase, the precise location of the culverts will be located, after a detailed topographic survey and soil borings have been performed.

### **Preliminary Project Cost:**

The current project estimate is \$4,305,000. \$3,040,000 is attributable to the storm

water/flood mitigation aspect of the project. The remaining \$1,265,000 is related to the pedestrian access.

### **Preliminary Project Funding:**

The City of Ann Arbor applied for a phased FEMA Flood Mitigation Grant and Phase 1 of the grant was approved by FEMA in July of 2016.

The phased FEMA Flood Mitigation Grant includes two phases:

Phase 1 - Engineering Design and Construction Plans, and Phase 2 FEMA Grant development

Phase 2 - Construction

This City intends to submit a grant application for Phase 2, upon completion of a final design. The FEMA Flood Mitigation Grant is expected to cover 75% of the storm water/flood mitigation part of the project. The City of Ann Arbor will absorb the remaining portion of the storm water costs. The pedestrian portion has several potential funding sources, including a potential Michigan Transportation Alternative Program (TAP) grant, but will have to be determined prior to the Phase 2 FEMA Grant application.

### **Preliminary Project Schedule:**

June/July 2016 – FEMA approval of grant for Phase 1

August 2016 – Grant Agreement to City Council

September 2016 – Issue RFP for Engineering Design and Construction Plans, Phase 2 FEMA Grant development, Easement acquisition, and permitting.

December 2016 – Resolution to City Council to hire Bergmann and Associates for Engineering Design and Construction Plans, Phase 2 FEMA Grant development, Easement acquisition, and permitting.

February – June 2017 – Finalize Proposed Design

July 2017 – Finalize easements and other agreements

August 2017 – Submit FEMA Grant application for Phase 2

November 2017 – Grant Agreement to City Council

January 2018– Issue ITB for construction contractor

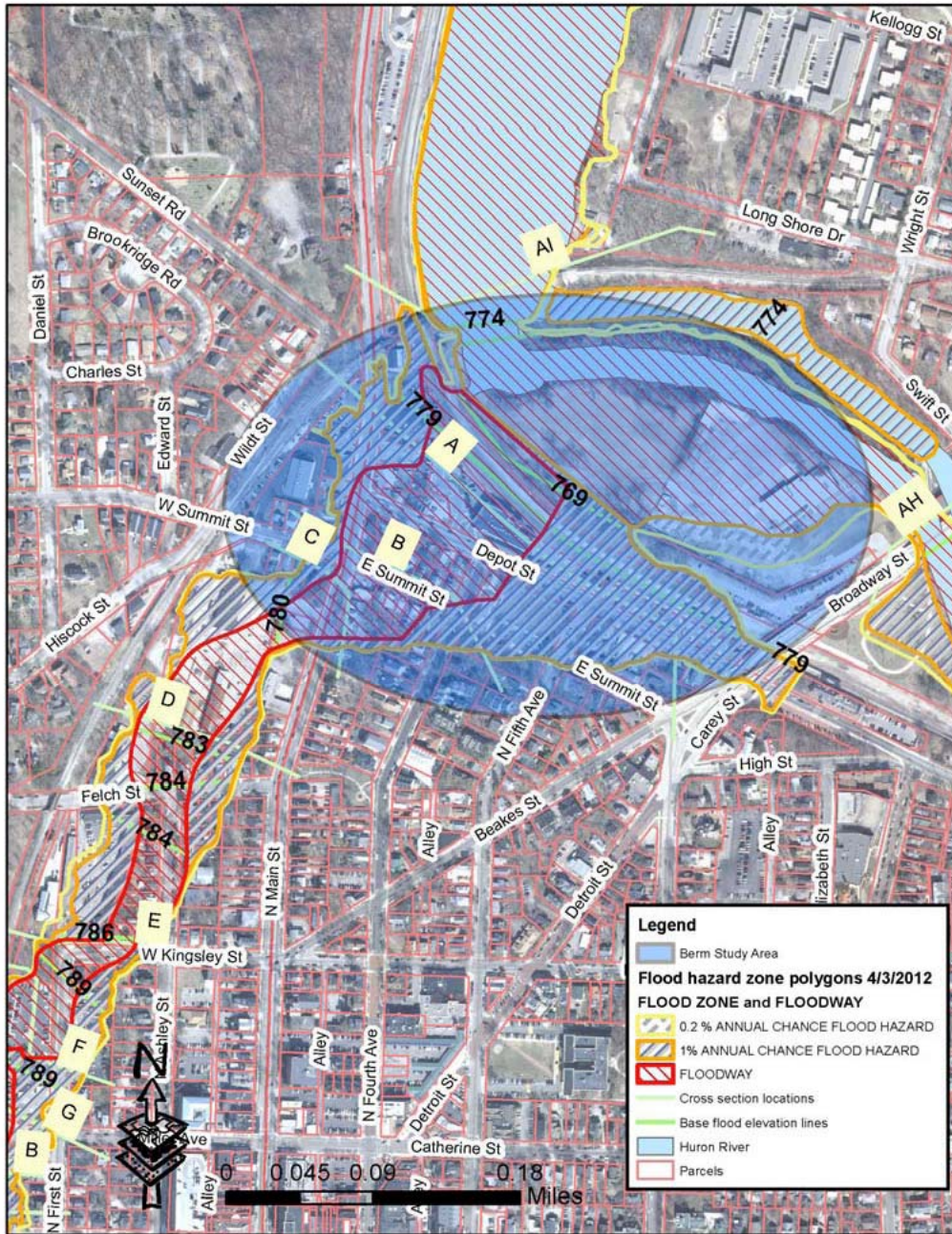
March 2018 – Construction contract to City Council

Spring/Summer of 2018 – Construct project

September 25, 2018 – Construction required to be completed for FEMA Grant



# Allen Creek Berm Study Area



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This map complies with National Map Accuracy Standards for mapping at 1 inch = 100 feet. The City of Ann Arbor and its mapping contractors assume no legal responsibility for the content and/or inappropriate use of information represented on this map.



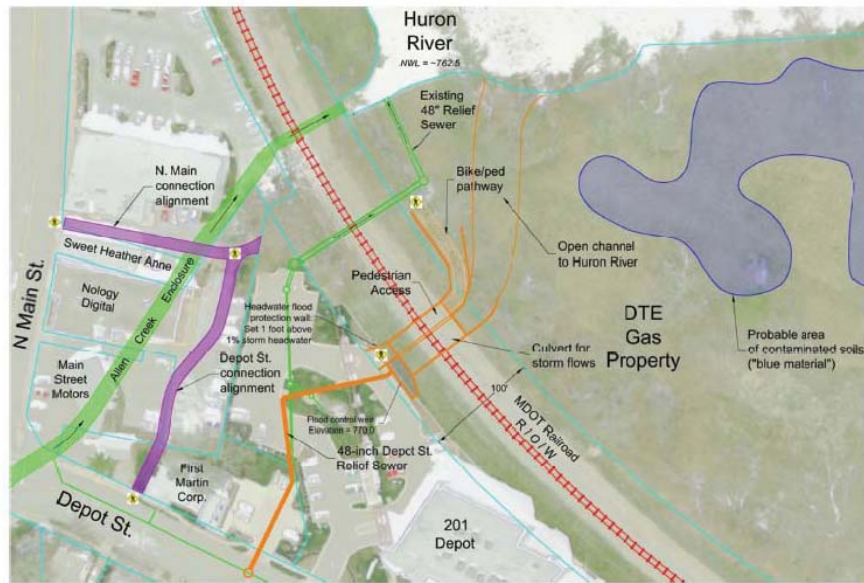


Figure 14  
Preferred Alternative

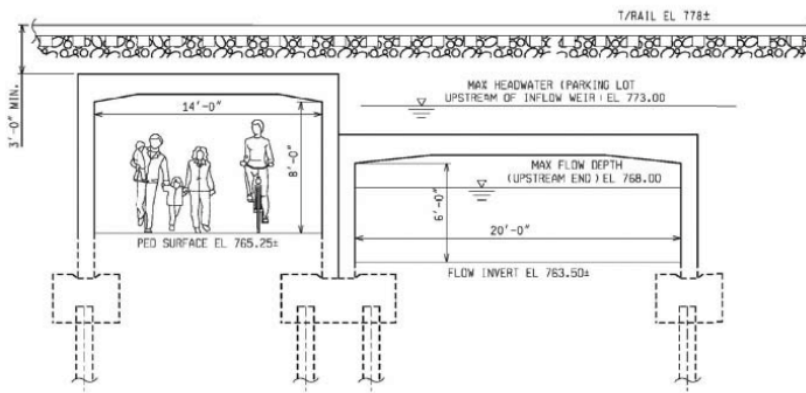


Figure 15  
Preferred Alternative – Culvert Cross Section

**Exhibit B**  
(Design Phase Cost Estimate)

**AMTRAK PRELIMINARY ENGINEERING ESTIMATE**  
MDOT MICHIGAN LINE  
DESIGN PHASE  
STORMWATER CULVERT AND PEDESTRIAN TUNNEL UNDER THE  
MDOT OWNED MICHIGAN LINE BETWEEN MP 37.30 & 37.61 IN  
THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MI  
(ALLEN CREEK RAILROAD BERM OPENING PROJECT)

NATIONAL RAILROAD PASSENGER CORPORATION  
OFFICE OF THE CHIEF ENGINEER  
DATE : APRIL 18, 2017  
BY: KATHRYN HAYWOOD

	QUANTITY	UNITS	UNIT COST	TOTAL
<b>ENGINEERING</b>				
Project Initiation and Development				
Meetings and Plan Review	12	MD	\$1,200	\$14,400
Document Control	2	MD	\$900	\$1,800
Structures				
Meetings and Plan Review	6	MD	\$1,200	\$7,200
Track				
Meetings and Plan Review	6	MD	\$1,200	\$7,200
Clearance				
Meetings and Plan Review	6	MD	\$1,200	\$7,200
Communications and Signals				
Meetings and Plan Review	12	MD	\$1,200	\$14,400
Division				
Meetings and Plan Review	6	MD	\$1,200	\$7,200
Site Inspection	2	MD	\$1,200	\$2,400
Construction Force Account Estimate	3	MD	\$1,200	\$3,600
<b>SUB TOTAL</b>				<b>\$65,400</b>
CONTINGENCY (10%)				\$6,540
<b>TOTAL</b>				<b>\$71,940</b>

Amtrak's Preliminary Engineering Design Phase Estimate is based on review of the 60%, 90% and 100% design submissions and no field inspection. The actual number of engineering review man-days is contingent upon the number and complexity of design submittals throughout the design phase of the project. The information was provided to Amtrak in an email from the City of Ann Arbor dated 1/13/2017, 2/7/2017, & 4/18/17. The above rates are current and include fully allocated additives for vacation and paid holidays, force account insurance, employee benefits and overhead. Overhead rates will change annually, effective with expenses incurred January 1st each year, and fringe benefit rates are subject to change quarterly. This is only an estimate. Final billing will be based on the actual labor, material, and equipment costs incurred.

## Exhibit C (Overhead Rates)

NATIONAL RAILROAD PASSENGER CORPORATION  
 OVERHEAD ADDITIVE RATES FOR USE WITH The City of Ann Arbor  
 For the Design of a Stormwater Culvert and Pedestrian Tunnel Under the MDOT Owned Michigan Line between MP 37.30 and 37.61 (Allen Creek Railroad Berr  
 DESIGN PHASE AGREEMENT  
 EFFECTIVE JANUARY 1, 2017

LOCATION	SYSTEM OVERHEAD	DIVISION OVERHEAD	VACATION & HOLIDAY	FORCE ACCT INS	Avg FY2017		G&A	S/T LABOR COMPOSITE	O/T LABOR COMPOSITE	MATERIAL HANDLING ADDITIVE	MATERIAL HANDLING COMPOSITE
					S/T FRINGE BENEFITS	O/T FRINGE BENEFITS					
<b>CENTRAL DIVISION</b>											
NON-EXEMPT LABOR	21.94%	54.65%	17.00%	16.00%	54.04%	19.87%	5.81%	178.95%	142.79%	7.91%	14.18%
EXEMPT LABOR	21.05%	11.59%	12.70%	n/a	15.86%		5.81%	70.56%	n/a	7.91%	14.18%

**Exhibit D**  
(Permit to Enter Template)

NATIONAL RAILROAD PASSENGER CORPORATION  
TEMPORARY PERMIT TO ENTER UPON STATE OF  
MICHIGAN PROPERTY C.E.-17 (REVISED 3/15/13)  
Order:

Date:  
File: E-47-  
Internal

WBS Element:

ATTN:

1. TEMPORARY PERMISSION. Temporary permission is hereby granted to \_\_\_\_\_ (hereinafter called "Permittee"), to enter property owned by the State of Michigan (hereinafter called "State") and operated, maintained and managed by the National Railroad Passenger Corporation (hereinafter called "Railroad"), for the purpose of \_\_\_\_\_ at \_\_\_\_\_, State of Michigan, under the terms and conditions set forth below.

2. LOCATION AND ACCESS. (Give map reference, description or both)

\_\_\_\_\_  
(hereinafter called "Property").

3. INDEMNIFICATION. Permittee shall indemnify and hold harmless the State, Railroad, their officers, directors, employees, agents, servants, successors, assigns and subsidiaries, irrespective of their negligence or fault, from and against losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including cost of defense and reasonable attorneys' fees), which any or all of them may hereafter incur, be responsible for, or pay as a result of injury, death, disease, or occupational disease to any person, and for damage (including environmental contamination and loss of use) to or loss of any property, including property of State and of Railroad, arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Permittee, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Permittee. 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 Permittee or any contractor or subcontractor, and shall survive the termination of this Temporary Permit for any reason. As used in this paragraph, the term "Railroad" also includes all commuter agencies and other railroads with rights to operate over State property, and their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries.

4. CONSIDERATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the sum of One Thousand Dollars (\$1,000.00) as compensation for the preparation of this Temporary Permit. This fee is to be delivered to Railroad at the address set forth in paragraph 17 hereof.

5. STARTING OF USE OF PROPERTY. Permittee shall notify Railroad's Deputy Chief Engineer-Construction, or his designee, at least ten (10) days in advance before entering upon, or starting any work on, the Property. No entry upon or use of the Property will be permitted until a fully executed copy of this Temporary Permit is returned to Railroad, and specific permission to enter upon the Property is received by Permittee from Railroad's Senior Manager Engineering. (See paragraph 17 for contact

information.)

6. RAILROAD OPERATIONS. All activities performed by or on behalf of Permittee shall be performed so as not to interfere with Railroad's operations or with any of Railroad's facilities. In no event shall personnel, equipment or material cross a track or tracks without special advance permission from Railroad's Deputy Chief Engineer-Construction or his designee. If, in the opinion of Railroad's Deputy Chief Engineer-Construction or his designee, conditions warrant at any time, Railroad will provide flag service and/or other protection at the sole cost and expense of Permittee, and Permittee agrees to pay to Railroad the full cost and expense therefor.

7. CLEARANCES. All equipment and material of Permittee shall be kept at all times not less than fifteen (15) feet from the centerline of the outside track, unless specifically otherwise authorized in writing by Railroad's Deputy Chief Engineer-Construction or his designee. Permittee shall conduct all operations so that no part of any equipment shall foul an operated track; transmission, communication or signal line; or any other structure or facility of Railroad.

8. RESTORATION OF PREMISES. Upon completion of its work, Permittee shall, at the option of Railroad, (a) leave the Property in a condition satisfactory to Railroad, or (b) restore the Property to its original condition. This may include, without limitation, the restoration of any fences removed or damaged by Permittee.

9. TERM OF TEMPORARY PERMIT. This Temporary Permit shall commence on the date Railroad receives a fully executed copy of this Temporary Permit pursuant to paragraph 17 hereof and shall extend until the end of the period Railroad determines is necessary for Permittee to accomplish the purpose set forth in paragraph 1 hereof; provided, however, Railroad reserves the right to revoke this Temporary Permit at any time, and in no event shall this Temporary Permit extend beyond \_\_\_\_\_, 20\_\_\_\_. Under no circumstances shall this Temporary Permit be construed as granting to Permittee any right, title or interest of any kind in any property of State or of Railroad.

10. PROTECTION. All work on, over, under, within or adjacent to the Property shall be performed in accordance with the document entitled "SPECIFICATIONS REGARDING SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY," a copy of which is attached hereto as Attachment A and incorporated herein by reference.

11. INSURANCE. Before Permittee commences any work on, over, under, within or adjacent to the Property, Permittee and its contractors (unless Permittee opts to provide the required coverage for them), shall furnish to Railroad's Senior Manager Engineering, evidence of the insurance coverages specified in the document entitled "INSURANCE REQUIREMENTS - NATIONAL RAILROAD PASSENGER CORPORATION," a copy of which is attached hereto as Attachment B and incorporated herein by reference.

12. SAFETY ORIENTATION CLASS. No person may enter within twenty-five (25) feet of the Property until he/she has attended Railroad's Safety Orientation Class, as noted in paragraph 12 of Attachment A.

13. COMPLIANCE BY CONTRACTORS. Permittee shall take all steps necessary to ensure that its contractors and subcontractors comply with the terms and conditions of this Temporary Permit.

14. SUPPORT SERVICES; COSTS; PAYMENTS. Railroad shall not be responsible for any costs incurred by Permittee in relation to any matter whatsoever. Permittee is required to reimburse Railroad for all costs incurred by Railroad in relation to this Temporary Permit. Without limiting the foregoing, Permittee is required to reimburse Railroad for all costs incurred by Railroad in connection with the review of any plans, drawings or other submissions made by Permittee.

Railroad's costs, expenses and labor charges will be billed to Permittee at Railroad's standard force account rates. Except as specified in paragraphs 1 and 4 hereof, all payments due from Permittee to Railroad under this Temporary Permit shall be due and payable within thirty (30) days from the date of invoice. Permittee shall have no right to set off against any payment due under this Temporary Permit any sums which Permittee may believe are due to it from Railroad for any reason whatsoever. In the event that Permittee shall fail to pay, when due, any amount payable by it under this Temporary Permit, Permittee shall also pay to Railroad, together with such overdue payment, interest on the overdue amount at an annual rate of six (6) percentage points over and above the rate published from time to time by *The Wall Street Journal* as the prime commercial lending rate (or the highest rate allowed by law, if less than the foregoing), calculated from the date the payment was due until paid. All payments due from Permittee to Railroad hereunder shall be: (a) made by check drawn from currently available funds; (b) deemed made only upon receipt by Railroad of collected funds; (c) made payable to National Railroad Passenger Corporation; and (d) delivered to the National Railroad Passenger Corporation, 23615 Network Place, Chicago, IL 60673-1236. (However, the permit fee referenced in paragraph 4 hereof and the Railroad Protective Liability premium referenced in Attachment B, if applicable, shall be delivered to Railroad at the address set forth in paragraph 17 hereof.) All payment obligations of Permittee under this Temporary Permit shall survive the termination or expiration of this Temporary Permit.

15. ENVIRONMENTAL AND GEOTECHNICAL TESTS AND STUDIES. Permittee shall not perform any environmental or geotechnical tests or studies (e.g., air, soil or water sampling) unless specifically identified and authorized in paragraph 1 of this Temporary Permit. If any such tests or studies are performed, Permittee shall promptly furnish to Railroad, at no cost, a copy of the results including any reports or analyses obtained or compiled. Except as may be required by applicable law or as authorized by Railroad in writing, Permittee shall not disclose the results of any such tests or studies to anyone other than Railroad or Permittee's client. Failure to comply with the provisions of this clause shall result in immediate termination of this Temporary Permit and forfeiture of all compensation paid Railroad therefor.

16. SEVERABILITY. If any provision of this Temporary Permit is found to be unlawful, invalid or unenforceable, that provision shall be deemed deleted without prejudice to the lawfulness, validity and enforceability of the remainder of the Temporary Permit.

17. ACCEPTANCE. To confirm acceptance of this Temporary Permit, one fully executed copy must be returned to: Senior Manager Engineering, National Railroad Passenger Corporation, 30th Street

Station, 2955 Market Street, Mail Box 64, Philadelphia, PA 19104 (215/349-1750). The second copy may be retained for your file.

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
Deputy Chief Engineer - Construction

Date: \_\_\_\_\_

AGREED TO AND ACCEPTED:

By: \_\_\_\_\_  
(signature)

Title: \_\_\_\_\_  
Must be an Owner/Partner or  
duly authorized representative

Date: \_\_\_\_\_

cc: State of Michigan, acting by and through its Department of  
Transportation Attn: Shaun Bates



**ATTACHMENT A**  
**Temporary Permit to Enter Upon Property**

**SPECIFICATIONS REGARDING SAFETY**  
**AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY (Revised**  
**10/1/12)**

National Railroad Passenger Corporation (Railroad)

In the following Specifications, "Railroad" shall mean National Railroad Passenger Corporation; "Chief Engineer" shall mean Railroad's Chief Engineer or his/her duly authorized representative; "Permittee" shall mean the party so identified in the Temporary Permit to Enter Upon Property; and "Contractor" shall mean the entity retained by the Permittee or the entity with whom Railroad has contracted in a Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase Agreement, Force Account Agreement, or other such agreement, as applicable. Reference to "Permittee/Contractor" includes both the Permittee and the Contractor.

(1) Pre-Entry Meeting: Before entry of Permittee/Contractor onto Railroad's property, a pre-entry meeting shall be held at which time Permittee/Contractor shall submit for written approval of the Chief Engineer, plans, computations, a Site Specific Safety Work Plan and site-specific work plans that include a detailed description of proposed methods for accomplishing the work and protecting railroad traffic. Any such written approval shall not relieve Permittee/Contractor of its complete responsibility for the adequacy and safety of its operations.

(2) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety and continuity, and Permittee/Contractor shall conduct its operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad's property. Permittee /Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of Railroad's safety rules, regulations, or requirements shall be grounds for the immediate suspension of Permittee/Contractor work, and the re-training of all personnel, at Permittee's/Contractor's expense.

(3) Maintenance of Safe Conditions: If tracks or other property of Railroad are endangered during the work, Permittee/Contractor shall immediately take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee/Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad's trains, tracks, right-of-way or other property caused by the operations of Permittee/Contractor, shall be paid by Permittee.

(4) Protection in General: Permittee/Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of railroad traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagmen, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee/Contractor. The cost of same shall be paid directly to Railroad by Permittee/Contractor. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee/Contractor from its complete responsibility for the adequacy and safety of its operations.

(5) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee/Contractor must supply an adequate length of grounding cable (4/0 copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

(6) Fouling of Track or Wire: No work will be permitted within twenty-five (25) feet of the centerline of track or the energized wire or have potential of getting within twenty-five (25) feet of track wire without the approval of the Chief Engineer. Permittee/Contractor shall conduct its work so that no part of any equipment or material shall foul an active track or overhead wire without the written permission of the Chief Engineer. When Permittee /Contractor desires to foul an active track, it must provide the Chief Engineer with its site-specific work plan a minimum of twenty-one (21) working days in advance, so that, if approved, arrangements may be made for proper protection of Railroad. Any equipment shall be considered to be fouling a track or overhead wire when located (a) within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire, or (b) in such a position that failure of same, with or without a load, would bring it within fifteen (15) feet from the centerline of the track or within fifteen (15) feet from the wire and requires the presence of the proper Railroad protection personnel.

If acceptable to the Chief Engineer, a safety barrier (approved temporary fence or barricade) may be installed at fifteen (15) feet from centerline of track or overhead wire to afford the Permittee/Contractor with a work area that is not considered fouling. Nevertheless, protection personnel may be required at the discretion of the Chief Engineer.

(7) Track Outages: Permittee/Contractor shall verify the time and schedule of track outages from Railroad before scheduling any of its work on, over, under, within, or adjacent to Railroad's right-of-way. Railroad does not guarantee the availability of any track outage at any particular time. Permittee/Contractor shall schedule all work to be performed in such a manner as not to interfere with Railroad operations. Permittee/Contractor shall use all necessary care and precaution to avoid accidents, delay or interference with Railroad's trains or other property.

(8) Demolition: During any demolition, Permittee/Contractor must provide horizontal and vertical shields, designed by a Professional Engineer registered in the state in which the work takes place. These shields shall be designed in accordance with Railroad's specifications and approved by Railroad, so as to prevent any debris from falling onto Railroad's right-of-way or other property. A grounded temporary vertical protective barrier must be provided if an existing vertical protective barrier is removed during demolition. In addition, if any openings are left in an existing bridge deck, a protective fence must be erected at both ends of the bridge to prohibit unauthorized persons from entering onto the bridge.

Ballasted track structure shall be kept free of all construction and demolition debris.

(9) Equipment Condition: All equipment to be used in the vicinity of operating tracks shall be in "certified" first-class condition so as to prevent failures that might cause delay to trains or damage to Railroad's property. No equipment shall be placed or put into operation near or adjacent to operating tracks without first obtaining permission from the Chief Engineer. Under no circumstances shall any equipment or materials be placed or stored within twenty-five (25) feet from the centerline of an outside track, except as approved by Railroad in accordance with Permittee's/Contractor's Site Specific Safety Work Plan. To ensure compliance with this requirement, Permittee/Contractor must establish a twenty-five (25) foot foul line prior to the start of work by either driving stakes, taping off or erecting a temporary fence, or providing an alternate method as approved by the Chief Engineer. Permittee/Contractor will be issued warning stickers which must be placed in the operating cabs of all equipment as a constant reminder of the twenty-five (25) foot clearance envelope.

(10) Storage of Materials and Equipment: No material or equipment shall be stored on Railroad's property without first having obtained permission from the Chief Engineer. Any such storage will be on the condition that Railroad will not be liable for loss of or damage to such materials or equipment from any cause.

If permission is granted for the storage of compressed gas cylinders on Railroad property, they shall be stored a minimum of 25 feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when the Permittee/Contractor is not on the project site.

(11) Condition of Railroad's Property: Permittee/Contractor shall keep Railroad's property clear of all refuse and debris from its operations. Upon completion of the work, Permittee/Contractor shall remove from Railroad's property all machinery, equipment, surplus materials, falsework, rubbish, temporary structures, and other property of Permittee/Contractor and shall leave Railroad's property in a condition satisfactory to the Chief Engineer.

(12) Safety Training: All individuals, including representatives and employees of Permittee/Contractor, before entering onto Railroad's property and before coming within twenty-five (25) feet of the centerline of the track or energized wire must first attend Railroad's

Contractor Orientation Computer Based Training Class. The Contractor Orientation Class will be provided electronically @www.amtrakcontractor.com. Upon successful completion of the course and test, the individual taking the course will receive a temporary certificate without a photo that is valid for three weeks. The individual must upload a photo of himself/herself that will be embedded in the permanent ID card. The photo ID will be mailed to the individual's home address and must be worn/displayed while on Railroad property. Training is valid for one calendar year. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee/Contractor. Permittee /Contractor shall appoint a qualified person as its Safety Representative. The Safety Representative shall continuously ensure that all individuals comply with Railroad's safety requirements. All safety training records must be maintained with the Permittee's/Contractor's site specific work plan.

(13) No Charges to Railroad: It is expressly understood that neither these Specifications, nor any document to which they are attached, include any work for which Railroad is to be billed by Permittee/Contractor, unless Railroad makes a specific written request that such work be performed at Railroad's expense.

**ATTACHMENT B  
INSURANCE REQUIREMENTS  
NATIONAL RAILROAD PASSENGER CORPORATION  
(Amtrak) MICHIGAN DEPARTMENT OF  
TRANSPORTATION (MDOT)**

**Design Phase Agreement with the City of Ann Arbor,  
Michigan for The Allen Creek Railroad Berm Opening Project  
Revised as of February 1, 2017**

**DEFINITIONS**

In these Insurance Requirements "State" shall mean State of Michigan, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation and as appropriate, its subsidiaries Chicago Union Station Company ("CUSCO") and Washington Terminal Company ("WTC"). "Contractor" shall mean the party identified as "Permittee" in the Temporary Permit to Enter Upon Property Agreement or the party with whom Amtrak has contracted in the Preliminary Engineering Agreement or Force Account Agreement, as well as its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Permittee or Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter Upon Property Agreement, Preliminary Engineering Agreement, or Force Account Agreement, as applicable.

**INSURANCE**

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak the original Railroad Protective Liability Policy and certificates of insurance evidencing the other required insurance, prior to commencement of Operations. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within 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. Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to Amtrak so stipulates. 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 Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted. The Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except however that the Contractor 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. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

**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 Contractor. Employer's Liability coverage with limits of not less than \$1 million 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.

In the event that the Contractor or its subcontractors are considered a railroad, Employers Liability coverage shall be extended to cover FELA with a limit of not less than \$10 million each accident, illness, or occurrence.

**Commercial General Liability (CGL) Insurance** covering liability of Contractor with respect to all operations to be performed and all obligations assumed by Contractor under the terms of the Agreement. Products-completed 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 the State, National Railroad Passenger Corporation, as appropriate CUSCO or WTC, 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 as respects any other insurance the additional insureds carry.

Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence, 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 following form excess or umbrella liability policy.

**Automobile Liability Insurance** covering the liability of Contractor 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 Contractor's Commercial General Liability insurance. The policy shall name the State, National Railroad Passenger Corporation, as appropriate CUSCO or WTC, 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 \$2 million each occurrence, combined single limit, for bodily injury and property damage (including loss of use) liability.

In the event Contractor or any subcontractor will be transporting and/or disposing of any hazardous material or waste off of the jobsite, a MCS-90 Endorsement is to be added to this policy and the limits of liability are to be increased to \$5 million each occurrence.

**Railroad Protective Liability (RRP) Insurance** covering the Operations performed by Contractor or any subcontractor within fifty (50) feet vertically or horizontally of railroad tracks. The current ISO Occurrence Form (claims-made forms are unacceptable) in the name of the State,

National Railroad Passenger Corporation (and as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue) shall have limits of liability of not less than \$2 million each occurrence, combined single limit, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss or damage to or destruction of property, including the loss of use thereof. A \$6 million annual aggregate shall apply. Further, "Physical Damage to Property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'Physical Damage to Property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control."

The original RRP Liability Insurance Policy must be submitted to Amtrak prior to commencement of Operations.

**All Risk Property Insurance** covering physical loss or damage to all property used in the performance of the Operations on a full replacement cost basis. The policy shall have limits of liability adequate to cover all property of Contractor (including personal property of others in Contractor's care, custody or control) and shall include a waiver of subrogation against Amtrak and all commuter agencies and railroads that operate over the property or tracks at issue.

**Contractor's Pollution Liability Insurance** covering the liability of Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the Operations of Contractor with the State, National Railroad Passenger Corporation, as appropriate CUSCO or WTC, and all commuter agencies and railroads that operate over the property or tracks at issue named as additional insureds. Coverage under this policy shall have limits of liability of not less than \$2 million each occurrence. The coverage shall be maintained during the term of the project, and for at least two (2) years following Amtrak acceptance of the completion of all Operations to be performed.

**Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Contractor, its subcontractor or transporter, as well as the disposal site operator, shall maintain this insurance. Contractor shall designate the disposal site, and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name the State, National Railroad Passenger Corporation, as appropriate CUSCO or WTC, 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 \$2 million per claim.

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 Contractor.

**Professional Liability Insurance** covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Operations, regardless of the type of damages. The coverage shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof. The policy shall have limits of liability of not less than \$2 million per claim and in the annual aggregate. The policy may contain a deductible of a maximum of two hundred fifty thousand dollars (\$250,000), but in such case the deductible is the sole responsibility of Contractor, and no portion of such deductible is the responsibility of Amtrak.

If Contractor is not performing professional design or engineering services, Contractor may elect to satisfy this requirement through the addition of endorsement CG2279 “Incidental Professional Liability” to its CGL policy.

**Waiver of Subrogation** As to all insurance policies required herein, Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against the State, Amtrak, as appropriate CUSCO and WTC, and their agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.

**Punitive Damages** Where allowed by law, no liability insurance policies required above shall include an exclusion for punitive or exemplary damages, including but not limited to CGL insurance and Railroad Protective Liability insurance.

**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 Contractor’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. Contractor will use its best efforts to maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Commercial General Liability, Professional Liability) for at least three (3) years following completion of the Operations; and
- d. If insurance is terminated for any reason, Contractor will purchase an extended reporting provision of at least two (2) years to report claims arising from Operations.

**Evidence of Insurance** Contractor 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, Contractor 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 Contractor begin Operations without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Senior Manager Engineering

National Railroad Passenger Corporation 30th Street Station, Mail Box 64



This Certificate is to be executed by an authorized representative of a consultant performing design or engineering services in support of the project described herein. Amtrak will not review plans, drawings or specifications until this Certificate is executed and returned to Amtrak.

### Exhibit E

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

This Certificate (“Certificate”) effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 60 Massachusetts Avenue, N.E., Washington, DC, 20002 (“Amtrak”).

**WHEREAS**, the State of Michigan, acting by and through its Department of Transportation (“MDOT”) owns certain railroad right-of-way, including, but not limited to, the land, tracks, bridges, buildings, structures, drainage, communication and signal systems, switches, crossovers, interlocking devices and related rail facilities, which extends generally from Milepost 7.60 at CP Town Line in Wayne County to Milepost 119.60 at CP Baron in Calhoun County and from Milepost 121.39 in Gord, Calhoun County to Milepost 145.60 in Kalamazoo, Kalamazoo County, all in the State of Michigan (collectively known as the “Michigan Line”); and

**WHEREAS**, Amtrak and MDOT have entered into that certain Dispatch, Maintenance, Management and Service Outcomes Agreement Dated December 7, 2012, as amended, pursuant to which Amtrak has been engaged by MDOT to operate, maintain and manage the Michigan Line, including the provision of certain services in connection with construction projects relating to the Michigan Line; and

**WHEREAS**, City proposes to undertake the design of a stormwater culvert and separate pedestrian tunnel (to be referred to as the Allen Creek Railroad Berm Opening Project) below the Michigan Line tracks in Ann Arbor, Michigan, between railroad mileposts 37.30 and 37.61 (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; and

**WHEREAS**, in order to advance the Project, Consultant desires Amtrak’s review and approval of its plans, drawings and specifications; 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, drawings and specifications 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, MDOT, 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 \$2 million dollars (\$2,000,000) per claim and \$2 million (\$2,000,000) in the annual aggregate.

Prior to Amtrak reviewing any plans, drawings and specifications, 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, drawings and specifications 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, drawings and specifications.
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: \_\_\_\_\_