

**CONSTRUCTION PHASE AGREEMENT  
BETWEEN  
NATIONAL RAILROAD PASSENGER CORPORATION AND  
The City of Ann Arbor, Washtenaw County, MI  
For the Construction of a Stormwater Culvert and Pedestrian Tunnel Under  
The MDOT Owned Michigan Line at MP 37.5±  
(Allen Creek Railroad Berm Opening Project)**

This Construction Phase Agreement (“Agreement”), effective this \_\_\_\_ day of \_\_\_\_\_, 2019 (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 1 Massachusetts Avenue, N.W., Washington, DC 20001 (“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 City to Milepost 119.60 at CP Baron in Calhoun County and from Milepost 121.30 in Gord, Calhoun County to Milepost 145.6 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 construction 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, at railroad milepost 37.50± (the “Project”); and

**WHEREAS**, on July 25, 2017, the Parties entered into that certain Design Phase Agreement providing for, inter alia, the performance by Amtrak of various services in connection with the design phase of the Project, and further providing for the reimbursement by City of Amtrak’s costs thereof; and

**WHEREAS**, the design phase of the Project has been completed and the Parties now desire to enter into an agreement setting forth the rights and obligations of the Parties during the construction phase of the Project; and

**WHEREAS**, due to the proximity of the Project to the Michigan Line and to railroad operations on the Michigan Line, City desires input from Amtrak on the potential impact of the Project on railroad operations on the Michigan Line; and

**WHEREAS**, construction of the Project will require City and its contractors to enter onto, over, under or adjacent to the Michigan Line, will require various assistance from Amtrak and may require alterations to MDOT facilities; 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**, the Parties agree that protection of the Michigan Line and railroad operations on the Michigan Line is a paramount public safety concern; and

**WHEREAS**, City desires that Amtrak perform various services as set forth herein during the construction 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 to be provided in connection with the Project; and

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

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

1. **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 2 hereof.

**"C&S"** shall mean communication and signal systems.

**"Documents"** shall mean all plans, drawings and specifications 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.

**"G&A Overhead Rate"** shall mean the additive for Amtrak's general and administrative costs included among the Overhead Rates.

**"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 Rates"** shall mean, collectively, the additives for Amtrak's various overhead costs, as set forth in the Overhead Schedule attached hereto as **Exhibit C**, and incorporated herein by this reference, as such rates are adjusted as set forth in Paragraph 5(b).

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

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

2. **Project Description.**

City shall construct, or cause to be constructed, the Project, the scope of which is described in **Exhibit A** attached hereto and incorporated by reference, in accordance with the Approved Project Plans and the terms of this Agreement. City shall be responsible for the cost of all of the work arising out of or in connection with the Project. City shall comply with all applicable federal, state and local laws in the construction phase of the Project. As used in this Agreement, the term “Approved Project Plans” shall mean the design Documents approved by Amtrak during the design phase of the Project pursuant to the Design Phase Agreement, with such modifications thereto as may be submitted to and approved in writing by Amtrak during the construction phase of the Project.

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

(a) **Construction Phase.** Amtrak agrees to perform (or have performed by third parties) the following services so as to facilitate progression of the construction phase and to enable City to complete the construction phase of the Project: (i) review City’s or its contractor’s plans, drawings and specifications, including without limitation any changes to the Approved Plans, for impact on operations of the Michigan Line; (ii) attend meetings; (iii) perform inspection services; (iv) perform certain engineering services; (v) perform services required for the protection of railroad traffic, such as flagging and/or track outages; (vi) prepare estimates of Amtrak’s costs for services to be performed by Amtrak during the construction phase of the Project; (vii) perform environmental reviews, if necessary; (viii) perform construction or construction-related services in connection with the Project, such as coordination and execution of passenger detours while track is out-of-service, removal of railroad infrastructure (track, ties, etc.), installation of railroad infrastructure (ties, track, ballast, etc.), and testing of tracks prior to reinstatement of train service; and (ix) provide such additional services as set forth herein or as may be agreed upon by the Parties. These services 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.

4. **Cost Estimate.**

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

5. **Billable Costs.**

(a) 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 as set forth in the Overhead Schedule.

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

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

(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," as amended periodically, plus the G&A Overhead Rate as set forth in the Overhead Schedule. 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 G&A Overhead Rate as set forth in the Overhead Schedule. Vehicles/equipment obtained through a General Services Administration (GSA) Schedule shall be construed as Amtrak-owned.

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

(vii) Retroactive wage and benefit costs (i.e., adjustments made subsequent to performance of the Services) which shall be reimbursed based on the actual cost, plus all associated current Overhead Rates as set forth in the Overhead Schedule. City'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 as set forth in the Overhead Schedule.

(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 City, upon request. The applicable billable Overhead Rates shall be the rates in effect (i) at the time of performance with respect to Services performed by Amtrak forces and (ii) as of the date Amtrak receives the invoice from its contractor with respect to services provided by Amtrak contractors.

6. **Payments.**

(a) Prior to commencement of any Services by Amtrak, City shall remit payment to Amtrak in the amount of One Hundred Thirty-Six Thousand and Six Hundred Thirty-Five Dollars (\$136,635) Dollars which represents the amount of Amtrak's cost estimate for the construction 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, 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 City (upon its request) any portion of the advance deposit (if any) that has not been expended by Amtrak, provided that City has paid all prior invoices.

(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. Amtrak will not be required to provide an independent field verification voucher to substantiate costs.

(c) Payments of any Amtrak invoices are due within 30 days of receipt of invoice by City. Payments not made by City by the due date shall be subject to an interest charge of one and one-half percent (1.5%) 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. City will be responsible for any and all costs incurred by Amtrak as a result of City's breach.

(d) If 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 City with additional documentation and/or explanation as required, to support the accuracy of the charges. The objection shall be considered resolved unless 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, Amtrak shall issue a credit memo in the amount of the adjustment. If, after reviewing the additional information provided by City, the billing dispute is still not resolved, either Party may pursue any right or remedy as specified in this Agreement.

7. **Project Schedule.**

(a) Amtrak and City agree to cooperate and to require their 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 workforce and other resource constraints and other work commitments and demands, that only limited track outages are available, and that these outages must be shared and/or rationed among all potential projects (including other Amtrak, state, municipal, commuter and third party projects) in the vicinity of the Project area. These restrictions may prevent Amtrak from performing its Services according to City's schedule and may prevent City from gaining access to the Michigan Line according to such schedule.

(b) Amtrak and City agree that the continuity and on-time performance of 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.

8. **Review of Documents.**

(a) City shall submit to Amtrak for its review and approval all changes to the Approved Project Plans and other 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 changes to the Approved Project Plans or other Documents relating to any aspect of the Project presented for Amtrak's review. City agrees to incorporate all of Amtrak's comments pertaining to matters that may impact the Michigan Line or train operations into the revised Approved Project Plans ("Revised Approved Project Plans") for the Project.

(b) Any review of such Approved Project Plans or Revised Approved Project Plans shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Michigan Line operations. No review, correction or approval of Approved Project Plans or Revised Approved Project Plans by Amtrak shall relieve City and its officers, directors, employees, agents, servants, consultants, contractors, subcontractors, design professionals or any other person acting for or by permission of the (collectively, "City Parties") from the entire responsibility for errors or omissions in such Approved Project Plans or Revised Approved Project Plans or for the adequacy thereof. Amtrak assumes no responsibility for and makes no representations or warranties, express or implied, as to the design, workmanship or adequacy of the Approved Project Plans or Revised Approved Project Plans, if any, or the Project.

9. **Permit to Enter.**

If entry on, over or under the Michigan Line is required for purposes of this Project by City and its contractors, City agrees that the entity seeking entry must notify Amtrak thirty (30) working days in advance and must execute the then-current version of Amtrak's "Temporary Permit to Enter Upon Property" form. A copy of the current version is attached hereto and incorporated herein as **Exhibit D.**

10. **Safety and Security Requirements.**

(a) City shall require that when work is being done on, over, under or adjacent to the Michigan Line right-of-way by other than Amtrak forces, all operations affecting the assets which comprise the Michigan Line and the safe and uninterrupted operation of trains on the Michigan Line shall be carried out in accordance with Amtrak's "Specifications Regarding Safety and Protection of Railroad Traffic and Property," a copy of which is attached to the Temporary Permit to Enter Upon Property as Attachment A.

(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.

11. **Risk of Liability.**

(a) **City's Obligations.** To the extent permitted by law, City hereby 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 either or both of the following:

(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), and/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 and/ or the City Parties. 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 City or any contractor, subcontractor or consultant, and shall survive termination of the Agreement for any reason. This provision 11(a) does not and shall not be construed to waive or limit City's governmental immunity.

(b) **City's Contractors.** If City's or any of City's contractors' work is to be performed on, over or under the Michigan Line, it will be necessary for City and such contractors to execute Amtrak's then-current "Temporary Permit to Enter Upon Property" form, as provided for in Section 9 hereof. The Temporary Permit to Enter Upon Property contains the relevant indemnification obligations. City shall ensure that such contractors (and the City if applicable) execute the permit.

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

12. **Insurance Requirements.**

(a) City shall provide and maintain in effect during the course of the Project, at its sole cost and expense, the insurance coverage specified below. City shall submit to Amtrak a certificate of insurance evidencing the required insurance, prior to commencement of Operations. As used in this Section 11(a), "Operations" shall mean activities or work performed by or on behalf of City on, under or over MDOT property. In addition, City agrees to provide certified copies of the insurance policies for the required insurance within thirty (30) days of Amtrak's written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all City and City contractors and subcontractors personnel and equipment have been removed from MDOT property, and any work has been formally accepted. City may provide for

the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that City 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.

(i) Workers' Compensation Insurance complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of City. Employer's Liability coverage with limits of not less than **one million (\$1,000,000)** each accident or illness shall be included. A waiver of subrogation in favor of Amtrak and its subsidiaries and their respective agents, officers, directors and employees is required. In the event the Operations are to be performed on, over, or adjacent to navigable waterways, a U.S. Longshoremen and Harbor Workers' Compensation Act Endorsement and Outer Continental Lands Act Endorsement are required.

(ii) Commercial General Liability (CGL) Insurance issued on an occurrence basis covering liability of City with respect to all operations to be performed and all obligations assumed by City 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. Coverage for punitive damages is also required to be included. The policy shall name National Railroad Passenger Corporation as an additional insured with respect to the operations to be performed. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other insurance the additional insured may carry.

Coverage under this policy shall have limits of liability of not less than **five million dollars (\$5,000,000)** each occurrence and in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

(iii) If City will perform Operations, City shall provide and maintain in effect during the course 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.

(b) City Contractors' Insurance. City shall ensure that all of its contractors provide and maintain in effect during the course 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. City shall require all of its contractors to provide Amtrak with a certificate of insurance evidencing the insurance coverage required hereunder prior to commencing work on, over, below or adjacent to the Michigan Line .

(c) City Design Contractors Insurance. City shall ensure that its contractors who perform design or engineering functions to provide and maintain in effect during the Project professional liability insurance as set forth in **Exhibit E** hereof. Such contractors shall provide Amtrak with a certificate of insurance evidencing the insurance coverage required hereunder. Amtrak will not progress the Services until it has received such certificates.

(d) Amtrak's Insurance. If Amtrak performs any force account work in connection with this Project, Amtrak shall maintain in effect, during the period of performance under this Agreement,



force account insurance issued to Amtrak and covering liabilities for bodily injury, including death and property damage, imposed upon Amtrak with respect to the Services to be performed pursuant to this Agreement. The limits of liability shall not be less than ten million dollars (\$10,000,000) per occurrence. The cost of this force account insurance is reflected in **Exhibit B**. Amtrak reserves the right to self-insure for this coverage.

13. **Environmental Matters.**

City and its contractors shall comply with all applicable regulations, ordinances, approved remedial action plans 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, 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.

14. **Non Performance of Construction Activities.**

Neither City nor its contractors shall perform any construction activities related to the Project affecting the operations of the Michigan Line until (a) this Agreement has been fully executed, (b) Amtrak and MDOT have approved any changes to the Approved Project Plan or other Documents, that may affect Michigan Line operations (including safety of those operations) or any property that is owned or controlled by Amtrak, (c) the advance deposit for 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 but not limited to licenses, permanent or temporary easements) required by MDOT have been fully executed, and (h) Amtrak has given its written authorization to proceed with construction as it relates to and affects the Michigan Line or Amtrak's operations.

15. **Entire Agreement.**

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

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. To the extent permitted by law, City shall indemnify, defend and hold harmless the Indemnified Parties, 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 attorneys' 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. In addition, 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.

16. **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 hereunder to any person, firm, or corporation

without obtaining the prior written consent of the other, which consent shall not be unreasonably withheld.

17. **Notices.**

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made, given or furnished to the other Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to 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

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

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

(b) City and its contractors shall perform all work hereunder in accordance 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) 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 01520A - Requirements for Temporary Protection Shields for Demolition and Construction of Overhead Bridges and Other Structures.

- (v) Amtrak Engineering Practices Section 02261A - Requirements for Temporary Sheeting and Shoring to Support Amtrak Tracks.
- (vi) Amtrak Engineering Practices 3016 - Storm Water Drainage and Discharge from Adjacent Property onto Amtrak Right-Of-Way.
- (vii) Amtrak Engineering Specification No. 150 - Stormwater Management Policy.
- (viii) Amtrak Engineering Practices 3006 - Design and Construction Criteria for Overhead Bridges.
- (ix) Amtrak Standard Track Plan - Minimum Roadway Clearances Dwg. Nos. 70050.0001.08 & 70050.002.08.
- (x) AREMA Manual for Railway Engineering, Section 2.1.5.1 Pier Protection Adjacent to Railroad Tracks.
- (xi) Amtrak Engineering Practices 3005 - Pipeline Occupancy – Specification 02081A.
- (xii) Amtrak Engineering Practices 3003 - Blasting Procedures.
- (xiii) CE – 4 Specifications for Wire, Conduit and Cable Occupations of National Railroad Passenger Corporation Property.

These standards, copies of which (with the exception of the AREMA document) have been provided to City, shall be incorporated into any specifications for the Project.

19. **Qualifications of Contractors and Consultants.**

- (a) City and its contractors shall ensure that all employees, contractors, subcontractors, and agents possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform.
- (b) With respect to Communications and Signals (C&S) design, Amtrak will provide a list of those contractors pre-qualified by Amtrak to perform C&S design work affecting Amtrak property. City shall furnish for Amtrak’s review resumes of individuals who will be performing these design functions. Amtrak reserves the right to reject resumes that do not support Amtrak’s qualification requirements.

20. **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.

21. **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.

22. **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) City represents and warrants that it has the authority to enter into this Agreement and that the execution and delivery of this Agreement by City and the performance by City of its obligations to be performed hereunder have been duly authorized by all necessary and appropriate corporate or other action.

(e) 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. 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.

(f) The recitals set forth in the WHEREAS clauses of this Agreement are incorporated by reference into the terms of this Agreement as if fully set forth herein.

(g) 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.

**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: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOR THE 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 during heavy storm events. Upstream of the influence of this berm, flood depths are more typically in the 3 to 5 foot range.

In December of 2013, the City and its consultant, OHM Advisors, completed a feasibility study to determine if it was possible to create openings in the railroad berm to accommodate passage of floodwaters, as well as to allow pedestrians to cross safely under the railroad to get to the park facilities to the north. The feasibility study indicated that it would be possible to lower the floodplain elevation in the area by as much as 6.5 feet as well as accommodate non-motorized access under the railroad.

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.

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.

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 and illegal trespassing behavior. The project will provide safe and legal access to the B2B trail from the population center and eliminate this hazard.

Providing this pedestrian access and eliminating the trespassing hazard is acceptable to the Michigan Department of Transportation (MDOT), who is the owner of the railroad.

This project also includes a stormwater culvert that when installed will lower the floodplain of Allen Creek in the vicinity of Depot Street and North 4th Avenue, just west of the Ann Arbor Amtrak station.

Minimizing flooding also serves to improve water quality by reducing the Allen Creek Drain contamination of the Huron River. During flooding events, rainwater collects on Depot and adjoining streets, picking up and transporting contaminants to the Huron River. 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 stormwater opening will drop the flood level approximately 6 feet during the 1% storm event.

On June 27, 2016, the Michigan State Police-Emergency Management Division (MSP-EM) provided City Staff with a FEMA Hazard Mitigation Assistance Grant agreement for the first phase of a two phase project to create openings in the railroad berm. Phase one consisted of the engineering design, development of construction plans, and preparation of the phase two hazard mitigation grant application. A construction phase FEMA Hazard Mitigation Grant application was prepared and submitted.

### Preliminary Scope Statement:

Three separate culverts will be installed beneath the railroad tracks, as part of this project. The lower culverts (twin 12 feet span x 7 feet rise) would be used to convey floodwater to the north side of the railroad tracks and discharge into the Huron River. A higher culvert (14 feet span x 12 feet rise) will be used to accommodate pedestrians.

The three culverts would be (4)-sided concrete pre-cast sections. As the pedestrian/bicycle pathway needs to be protected against inundation during extreme flow events, a flood protection wall will be constructed along the pathway and will be set at one foot above the 100 year flood elevation.

A 48" storm sewer will be installed from Depot Street (just west of 4th Avenue) up to the new constructed hydraulic weir at the inlet of the new twin box culverts to convey flood water to the Huron River.

This project includes the construction of approximately 1,275 feet of non-motorized path, which includes a 52-foot prefabricated truss bridge that spans over the Allen Creek outfall. The pedestrian access provided by this project will be lighted using solar energy and serve as the initial phase of the Allen Creek Treeline Urban Trail (ACT) formally known as the Allen Creek Greenway (ACG). The ACG is a priority recommendation in the City of Ann Arbor's Non-motorized Transportation Plan (NTP). The ACT runs from the Creeks' outfall located at the Huron River, north end of the Allen Creek, southerly along the Ann Arbor railroad corridor to the intersection of State Street and the Ann Arbor Railroad.

Fencing will be installed along both sides of the railroad right-of-way, extending from the Ann Arbor RR overpass to the Amtrak train station. This barrier is required by the railroad owner and is intended to prevent the public from trespassing which is both dangerous and against the law.

### Scope Definition:

Three separate culverts will be installed beneath the railroad tracks, as part of this project. The lower culverts (twin 12 feet span x 7 feet rise) would be used to convey floodwater to the north side of the



railroad tracks and discharge into the Huron River. A higher culvert (14 feet span x 12 feet rise) would be used to accommodate pedestrians.

The three culverts will be (4)-sided concrete pre-cast sections. As the pedestrian/bicycle pathway needs to be protected against inundation during extreme flow events, a flood protection wall will be constructed along the pathway and will be set to one foot above the 100 year flood elevation. A short (~4-foot) floodwall would need to be constructed to isolate the pedestrian culvert from the 100 year 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 upstream end of the lower (flood conveyance) culverts will be surrounded by a concrete chamber that provides the vertical transition from elevation 769.5 to 761.2. The top of the concrete chamber will act as a weir. A fence shall be installed along the edge 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:

- As-Bid Final Project plans and specifications
- Proposed construction schedule
- Project contact list
- Project Construction shop drawing submittal
- Future permits to enter

### Amtrak Services:

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

- Track work associated with cutting, removal, and reinstallation of ballast and track in conjunction with the short term track outage for the placement of the three culverts under the railroad tracks. Coordination with Construction Contractor on scheduling and timing.
- Provide coordination and minor relocation of the fiber optic cable during installation of the culvert sections leading up to the short term track outage.
- Relocation of copper communication line. Provide all labor, materials and equipment necessary to complete relocation of Amtrak communication line. Actively coordinate with Contractor on schedule and timing for the use of temporary support systems in conjunction with relocation.
- Provide flag control during construction. Costs incurred for inspection and flagging are to be paid directly by the Construction Contractor.

### Estimated Project Cost:

The current project estimate is \$7,361.821.00.

## Project Funding:

In November of 2018, Michigan State Police-Emergency Management Division (MSP-EM) notified the City Staff that the City has received a Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant for the construction of the stormwater portion of the Allen Creek Berm Opening Project.

The City has been awarded a Transportation Alternatives Program (TAP) Grant to fund a portion of the non-motorized elements of the Allen Creek Berm Opening Project. In addition, the City has also received a Michigan Department of Natural Resources Trust Fund Grant to fund a portion of the non-motorized elements of the Allen Creek Berm Opening Project. The remainder of the project cost shall be funded by the City of Ann Arbor.

MDOT TAP	\$ 971,250.00
STP Urban	\$ 315,000.00
FEMA Funding (Design & Construction)	\$ 3,712,332.00
DNR Trust Fund Grant	\$ 300,000.00
	<hr/>
Outside Funding sub-total	\$ 5,298,582.00
City Share Storm	\$ 1,410,239.00
City Share Alt. Transportation	\$ 653,000.00
	<hr/>
City Funding sub-total	\$ 2,063,239.00
TOTAL	<hr/>
	\$ 7,361,821.00

## Preliminary Project Schedule:

December 2017 – Submit FEMA Grant application for Phase 2

February 2018 – Finalize Proposed Design

May 2018 – Amtrak Letter of No Exception

December 2018 – FEMA approval of Grant for Phase 2

January 2019– Issue RFP for Construction Engineering Services

March 2019 – Finalize easements and other agreements

March 2019 – Resolution Approved by City Council to hire Fishbeck, Thompson, Carr & Huber for Construction Phase Engineering Services

May 2019 – Project released for Advertisement by MDOT

June 2019 – Bid Letting for Construction Contract

June 2019 – Pre-Construction Meeting

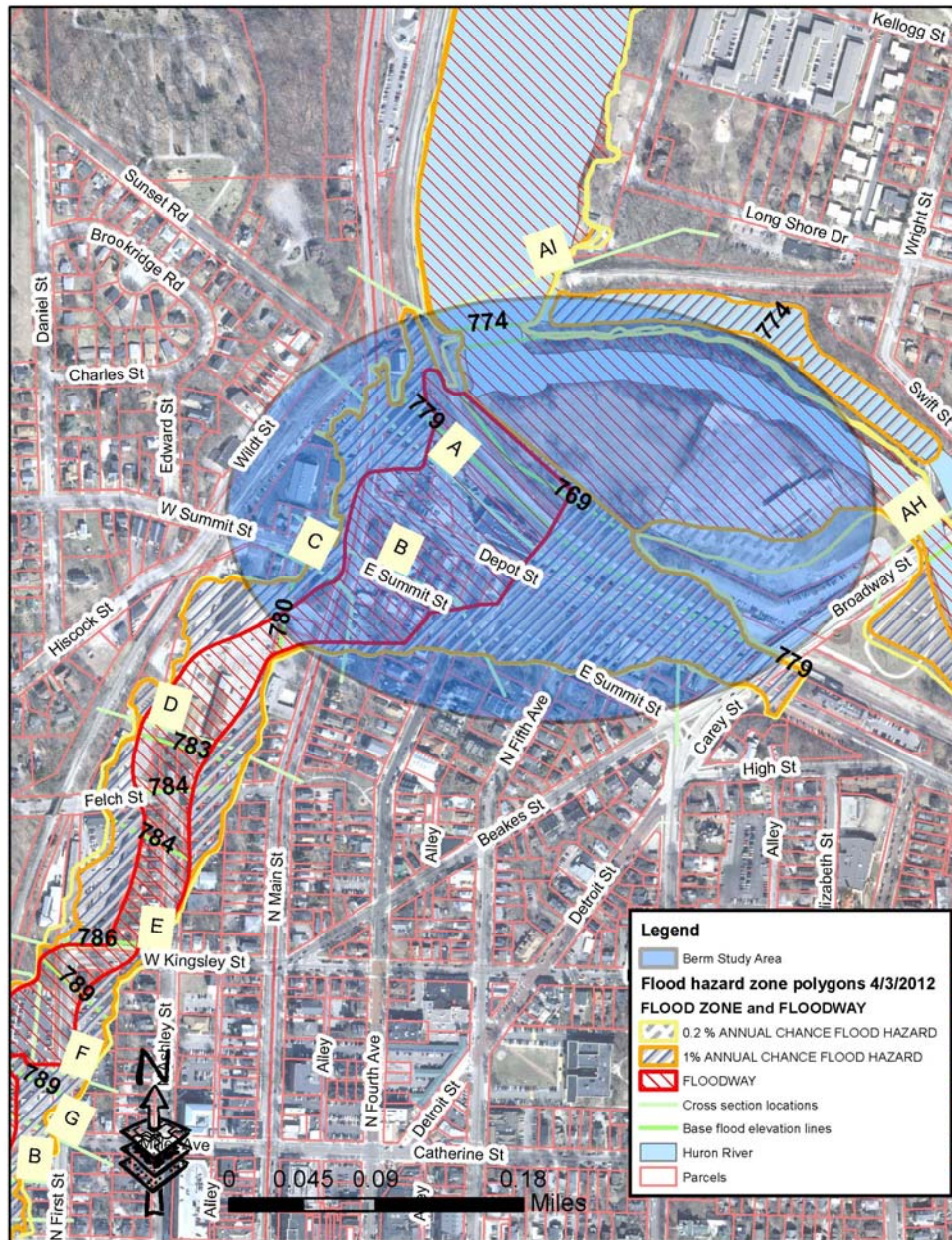
July 2019 – Construction start

August / September 2019 – 24-hour Railroad Outage

May 2020 – Final Restoration

June 2020 - Construction required to be completed for FEMA Grant

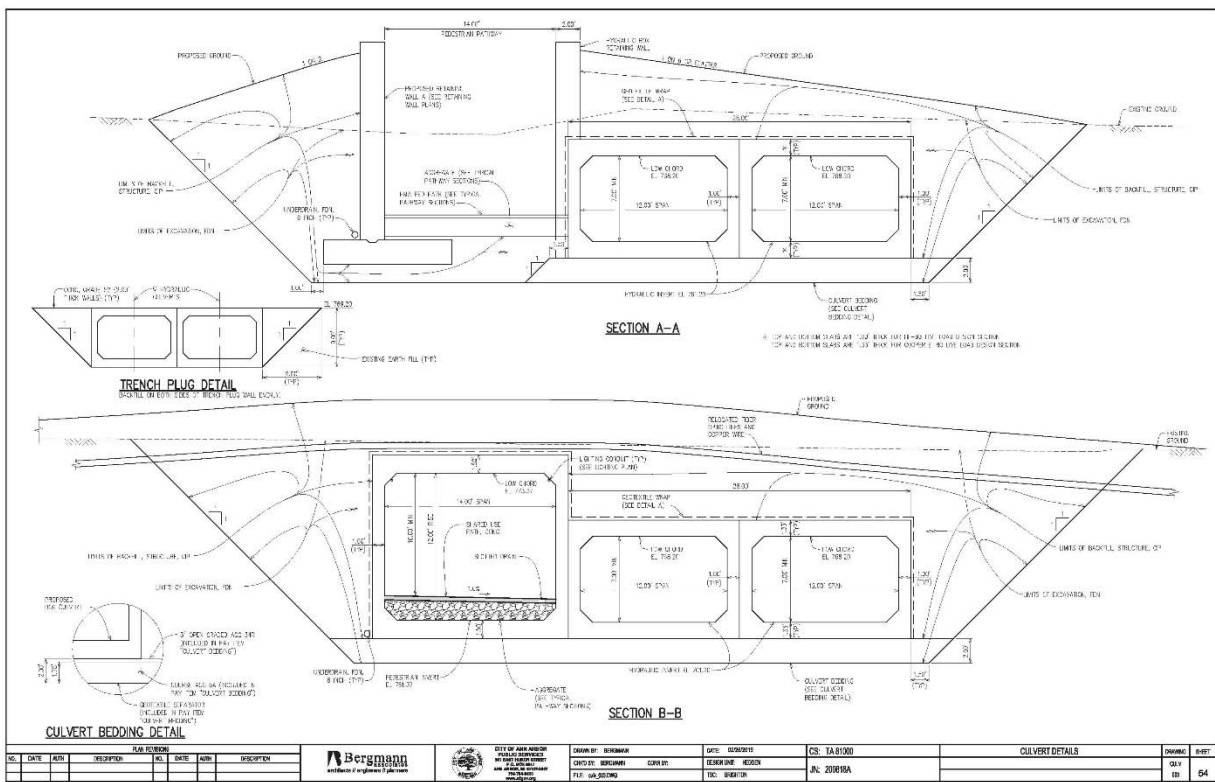
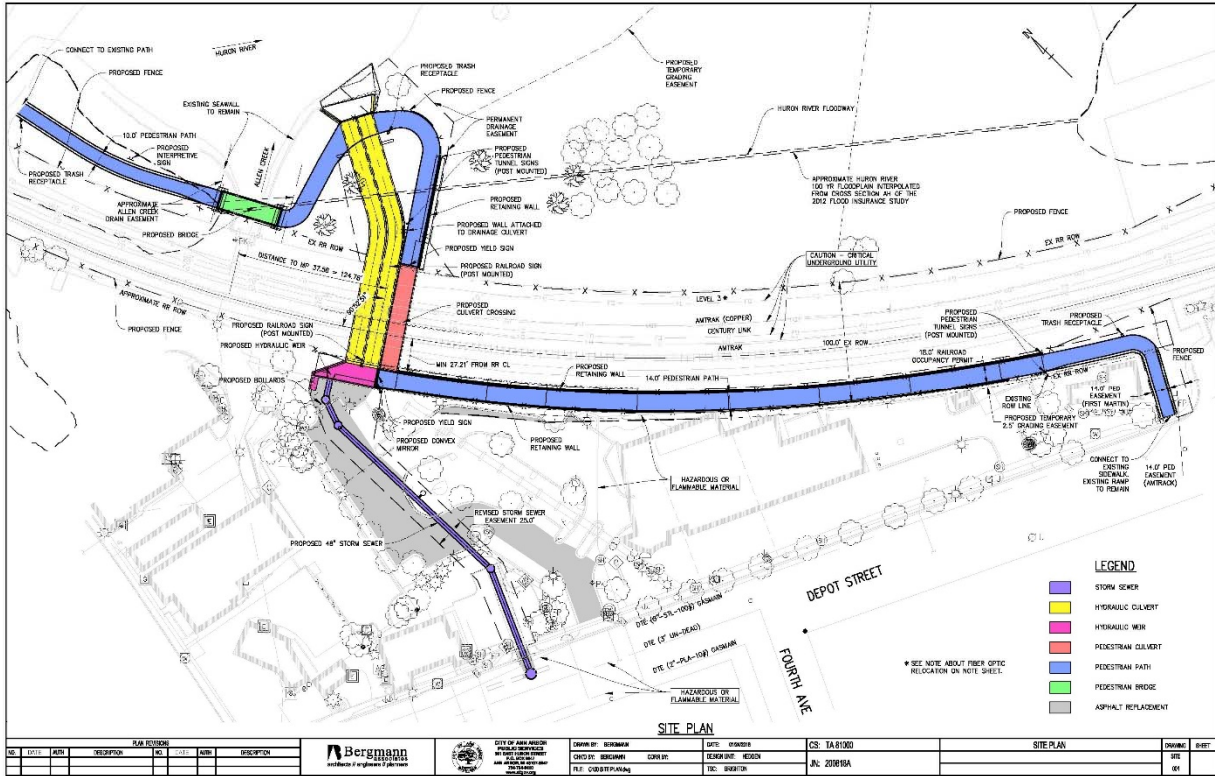
# Allen Creek Berm Study Area



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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.



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

Exhibit B

**AMTRAK CONSTRUCTION PHASE COST ESTIMATE**

Ann Arbor, MI, M.P. 37.50 (MDOT Michigan Line)  
 Allen Creek Berm Opening Project - Construction  
 City of Ann Arbor

NATIONAL RAILROAD PASSENGER CORPORATION

OFFICE OF THE CHIEF ENGINEER

DATE: July 30, 2019

BY: Dave Roberts / Kate McGrath

	QUANTITY	UNITS	UNIT COST	TOTAL
<b>ENGINEERING</b>				
Deputy Division Engineer	4	MD	\$1,200	\$4,800
Sr. Manager Engineer	4	MD	\$1,200	\$4,800
Project Engineer	8	MD	\$1,200	\$9,600
Project Development Officer	1	MD	\$1,200	\$1,200
<b>FORCE ACCOUNT</b>				
Labor:				
Track Foreman	41	MD	\$1,000	\$41,000
Trackman	2	MD	\$800	\$1,600
Track Truck Driver	5	MD	\$800	\$4,000
Track Machine Operator	2	MD	\$800	\$1,600
Track Welder	4	MD	\$800	\$3,200
Foreman - Surfacing	2	MD	\$1,000	\$2,000
Machine Operator - Surfacing	6	MD	\$900	\$5,400
Trackman - Surfacing	2	MD	\$800	\$1,600
Track Supervisor	5	MD	\$1,000	\$5,000
C&S Supervisor	5	MD	\$1,100	\$5,500
C&S Maintainer (2)	10	MD	\$900	\$9,000
Equipment:				
3-Man Pick-up Truck	41	Day	\$80	\$3,280
6-Man Pick-up Truck	2	Day	\$90	\$180
3-Man Utility Truck	5	Day	\$90	\$450
Front End Loader	2	Day	\$335	\$670
6-Man Welding Truck	2	Day	\$235	\$470
Ballast Regulator	2	Day	\$700	\$1,400
Ballast Tamper	2	Day	\$4,600	\$9,200
3-Man Dump Truck	5	Day	\$305	\$1,525
Material:				
Ballast - 200 Tons	1	Each	\$16,339	\$16,339
<b>SUB TOTAL</b>				\$124,214
CONTINGENCY @ 10%				\$12,421
<b>TOTAL</b>				\$136,635

The estimate is based on an estimated 41 day duration of work. The actual number of man-days is contingent upon the contractor's procedure and time schedule. 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 Schedule)



NATIONAL RAILROAD PASSENGER CORPORATION  
OVERHEAD ADDITIVES FOR USE WITH THE CITY OF ANN ARBOR, WASHTENAW CITY, MI  
CONSTRUCTION PHASE AGREEMENT  
FOR THE CONSTRUCTION OF A STORMWATER CULVERT AND PEDESTRIAN TUNNEL UNDER THE MDOT OWNED MICHIGAN LINE BETWEEN MP 37.30 AND 37.61  
(Allen Creek Railroad Berm Opening Project)  
EFFECTIVE JANUARY 1, 2019

EXHIBIT C

	VP OPERATIONS OVERHEAD	ENGINEERING SYSTEM OVERHEAD	DIVISION / FIELD OVERHEAD	TRAINING OVERHEAD	VACATION & HOLIDAY	FORCE ACCOUNT INSURANCE	CY19 AVERAGE FRINGE BENEFITS (*)	TOTAL ADDITIVE FOR LABOR	G&A	MATERIAL HANDLING ADDITIVE	LABOR COMPOSITE	MATERIAL COMPOSITE
<b>CENTRAL DIVISION</b>												
<b>Engineering Labor</b>												
Straight Time Labor	5.33%	20.14%	37.94%	7.29%	16.58%	16.00%	55.13%	158.41%	6.66%	8.57%	175.64%	15.81%
Over Time Labor	5.33%	20.14%	37.94%	7.29%	16.58%	16.00%	20.93%	124.21%	6.66%	8.57%	139.16%	15.81%
<b>EXEMPT LABOR</b>												
Straight Time Labor		18.95%	10.45%		17.26%		33.47%	80.13%	6.66%	8.57%	92.13%	15.81%

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

**EXHIBIT D**

NATIONAL RAILROAD PASSENGER CORPORATION  
TEMPORARY PERMIT TO ENTER UPON STATE OF  
MICHIGAN PROPERTY C.E.-17 (REVISED 9/21/18)

Transmittal Date: \_\_\_\_\_  
File: E-47-  
Internal Order: \_\_\_\_\_  
WBS Element: \_\_\_\_\_  
Reference: \_\_\_\_\_

ATTN:

1. TEMPORARY PERMISSION. Temporary permission is hereby granted to:

\_\_\_\_\_

(hereinafter called "Permittee") to enter property owned and/or controlled by National Railroad Passenger Corporation (hereinafter called "Railroad") for the purpose of:

\_\_\_\_\_

under the terms and conditions set forth below.

2. LOCATION AND ACCESS. (Give map reference, description or both – include city and state)

\_\_\_\_\_

(hereinafter called "Property").

3. INDEMNIFICATION. Permittee hereby releases and agrees to defend, indemnify and hold harmless Railroad, as well as its officers, directors, employees, agents, successors, assigns and subsidiaries (collectively the "Indemnified Parties"), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses and liabilities, penalties, fines, demands, claims, causes of action, suits, and costs (including cost of defense and attorneys' fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of either or both of the following:

- A. injury, death, or disease of any person, and/or
- B. damage (including environmental contamination and loss of use) to or loss of any property, including property of Railroad

arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Railroad and/or Permittee (as well as Permittee's employees, agents, contractors, subcontractors, or any other person acting for or by permission of Permittee) in connection with this Temporary Permit. 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 or expiration of this Temporary Permit for any reason.

As used in this section, the term "Railroad" also includes all commuter agencies and other railroads with rights to operate over Railroad property, and their respective officers, directors, employees, agents, successors, assigns and subsidiaries.

4. COMPENSATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the sum of One Thousand, Two Hundred Fifty Dollars (\$1,250.00) as compensation for the preparation of this Temporary Permit. This fee is to be paid upon Permittee's execution of this Temporary Permit and delivered to: Senior Manager Engineering, National Railroad Passenger Corporation, 30th Street Station, 2955 Market Street, Mail Box 64, Philadelphia, PA 19104.

5. STARTING OF USE OF PROPERTY. Permittee shall notify Railroad's Deputy Chief Engineer-Construction, or his/her designee, in writing, at least ten (10) working days before it desires to enter upon

## EXHIBIT D

the Property. No entry upon the Property will be permitted until this Temporary Permit has been fully executed and specific written permission to enter upon the Property has been received by Permittee via electronic mail from Railroad's Engineering – I&C Department.

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

7. CLEARANCES. All equipment and material of Permittee shall be kept away from the tracks by the distances set forth in Attachment A hereof, unless specifically otherwise authorized in writing by Railroad's Deputy Chief Engineer-Construction or his/her designee. Permittee shall conduct all operations so that no part of any equipment or material can foul: an operating track; transmission, communication or signal line; or any other structure or facility of Railroad.

8. RESTORATION OF PROPERTY. Upon completion of its work, Permittee shall, at the option of Railroad, leave the Property in a condition satisfactory to Railroad or restore the Property to its original condition. This may include the restoration of any fences removed or damaged by Permittee.

9. TERM OF TEMPORARY PERMIT. The term shall commence on the date Railroad executes this Temporary Permit ("Execution Date"). Railroad will not execute this Temporary Permit until Railroad has received: payment of any fees/costs identified in section 1 hereof, payment of the fee set forth in section 4 hereof, and satisfactory evidence of the insurance required pursuant to section 11 hereof. The term shall extend until the end of the period Railroad determines is necessary for Permittee to accomplish the purpose set forth in section 1 hereof; provided, however, Railroad reserves the right to revoke this Temporary Permit at any time for any reason, and in no event shall this Temporary Permit extend beyond the Expiration Date. 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 Railroad.

10. SAFETY AND 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. Failure to comply with Railroad's safety requirements and Attachment A shall, at Railroad's option, result in immediate termination of this Temporary Permit, denial of future Temporary Permit requests by Permittee, and forfeiture of all funds paid to Railroad.

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.

12. SAFETY TRAINING CLASS. No person may enter upon Railroad property or within twenty-five (25) feet of the centerline of any track or energized wire until he/she has successfully completed Railroad's contractor orientation computer based safety training class, as noted in section 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. REIMBURSEMENT OF 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,

## EXHIBIT D

Permittee is required to reimburse Railroad for all costs incurred by Railroad in performing flagging and other protective services and in reviewing any plans, drawings or other submissions.

*Railroad's costs, expenses and labor charges will be billed to Permittee at Railroad's then-current standard force account rates. Permittee understands that Railroad employees working under expired collective bargaining agreements may receive future, retroactive hourly wage increases for their work performed in support of Permittee's activities under this Temporary Permit. Upon payment to the applicable employees of retroactive hourly wage increases (and regardless of whether such payment is made during or after the term of this Temporary Permit), Railroad will invoice Permittee for, and Permittee will pay, the retroactive hourly wage increases, including the applicable overhead additives and benefit costs associated with the support services performed by Railroad.*

Except as specified in section 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 a rate of one and one-half percent (1.5%) per month or the highest rate allowed by law, if less than the foregoing, calculated from the date the payment was due until paid. Railroad also has the right to suspend its support services, without penalty, until Permittee has paid all past due amounts with accrued interest. All payments due from Permittee to Railroad hereunder shall be: (a) made by check drawn from currently available funds; (b) made payable to National Railroad Passenger Corporation; and (c) delivered to the address indicated on the invoice. (However, the permit fee referenced in section 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 section 4 hereof.) All payment obligations of Permittee under this Temporary Permit shall survive the termination or expiration of this Temporary Permit for any reason.

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 section 1 hereof. 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, at Railroad's option, result in immediate termination of this Temporary Permit, forfeiture of all compensation paid Railroad therefor, and pursuance of any other remedies (at law or in equity) that may be available to Railroad. The obligations of Permittee under this section shall survive the termination or expiration of this Temporary Permit for any reason.

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. GOVERNING LAW. This Temporary Permit shall be governed by and construed under the laws of the District of Columbia and pursuant to 49 USC 28103(b) which precludes and preempts any other federal or state laws. All legal proceedings in connection with any dispute arising under or relating to this Temporary Permit shall be brought in the United States District Court for the District of Columbia.

**EXHIBIT D**

\*AGREED TO AND ACCEPTED BY PERMITTEE:

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

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

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

\* By signing this Temporary Permit, Permittee certifies that this document has not been altered in any manner from the original version as submitted by Railroad.

NATIONAL RAILROAD PASSENGER CORPORATION

By: \_\_\_\_\_  
AVP – Project Delivery

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

Expiration Date: (For Amtrak Use Only)

- 1 yr from Execution Date
- Project Completion
- Other:

## EXHIBIT D

### ATTACHMENT A

#### Temporary Permit to Enter Upon Property

#### SPECIFICATIONS REGARDING SAFETY AND PROTECTION OF RAILROAD TRAFFIC AND PROPERTY (Revised 9/21/18)

##### National Railroad Passenger Corporation

In the following Specifications, "Temporary Permit" means Railroad's "Temporary Permit to Enter Upon Property"; "Railroad" means National Railroad Passenger Corporation; "Chief Engineer" means Railroad's Chief Engineer or his/her duly authorized representative; "Permittee" means the party so identified in the Temporary Permit; and "Contractor" means 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, License 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 in accordance with Amtrak Engineering Practices EP 3014. 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, security 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 such rules, regulations, or requirements shall be grounds for the termination of the Temporary Permit and/or 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 notify Railroad and 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/Contractor. Any work (or equipment being staged onsite during the work) performed at or near a railroad crossing must not obstruct the view of flashing light units or gates to oncoming traffic.
- (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 thereof must be strictly observed. No employees or equipment

## EXHIBIT D

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 a track or energized wire or that has the potential of getting within twenty-five (25) feet of such track or 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 or overhead wire, 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 the 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 such distance in (a) above and shall require 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 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 must be kept free of all construction and demolition debris.

(9) Equipment Condition and Location: 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 be placed or put into operation 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.

If work to be performed on Railroad property involves heavy trucks, equipment, or machinery along the right-of-way, duct lines and pull boxes shall be inspected by on-site Railroad personnel and the equipment operator to ensure they can withstand the weight.



## EXHIBIT D

(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 twenty-five (25) feet from the nearest track in an approved lockable enclosure. The enclosure shall be locked when 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 a track or overhead wire, must first complete Railroad's contractor orientation computer based safety training class. The class is provided electronically at [www.amtrakcontractor.com](http://www.amtrakcontractor.com). Upon successful completion of the class and test, the individual taking the class will receive a temporary certificate without a photo that is valid for fourteen (14) days. 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 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.

(14) Utilities: All underground utilities, cables, and facilities must be located and protected before any excavating, drilling of any kind, boring, ground penetrating activities, or construction activities take place. This includes, but is not limited to, Railroad and commercial utilities, cables, duct lines, and facilities. The "call before you dig" process must be followed. Railroad is not part of that process; therefore, Permittee/Contractor must contact Railroad's Engineering Department to have Railroad's underground utilities and assets located. If requested by Railroad, existing depths of any utilities being crossed must be verified through test pits performed by Permittee/Contractor as directed by and under the direct supervision of Railroad personnel. Hand digging may be required, as directed by Railroad's on-site support personnel. No activities may be performed in close proximity to Railroad duct bank or communication facilities unless monitored by on-site Railroad personnel. Railroad maintains the right to access its existing cables and conduits throughout construction and reserves the right to upgrade and install new cables and conduits in the affected area. Precautions must be taken by Permittee/Contractor to prevent any interruption to Railroad's operations.

## EXHIBIT D

### ATTACHMENT B INSURANCE REQUIREMENTS NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) WASHINGTON TERMINAL COMPANY (WTC)

#### Construction Phase Agreement for the Allen Creek Berm Opening Project in Ann Arbor, MI Revised as of February 13, 2018

#### DEFINITIONS

In these Insurance Requirements, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation. "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 another agreement (e.g., Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase 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 Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter upon Property Agreement or other such 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 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. Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that 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. The insurance required herein shall be primary and non-contributory to any insurance maintained by Amtrak. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1. **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. A waiver of subrogation in favor of Amtrak is required.
2. **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 and with no exclusions for Explosion/Collapse/ Underground (X-C-U). The policy shall name Amtrak as an additional insured with respect to the Operations. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for such additional insureds shall be primary and non-contributory with respect to any other

## EXHIBIT D

insurance the additional insureds may carry. Coverage under this policy shall have limits of liability of not less than \$5 million each occurrence and \$5 million in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability. Such coverage may be provided by a combination of a primary CGL policy and a following form excess or umbrella liability policy.

3. **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 CGL insurance. The policy shall name Amtrak as an additional insured with respect to the Operations. Coverage under this policy shall have limits of liability of not less than \$1 million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.
4. **All Risk Property Insurance** covering physical loss or damage to all property used in 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.
5. **Railroad Protective Liability Insurance**. When Contractor is performing work within fifty feet, horizontally or vertically, of railroad tracks, Contractor shall provide railroad protective liability insurance coverage issued on the current AAR-AASHTO (ISO/RIMA) Occurrence Form (claims-made forms are unacceptable), in the name of National Railroad Passenger Corporation and any other railroad operating over the tracks. The policy shall have minimum limits of insurance of \$5,000,000 each occurrence and \$5,000,000 policy aggregate. Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. 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 arising out of the acts or omissions of the contractor named on the Declarations."

The policy must provide coverage for obligations of the insureds under the Federal Employers Liability Act, as amended. The original Railroad Protective Liability Insurance policy must be submitted to Amtrak prior to commencement of work under the Contract. Amtrak, at its sole discretion, may elect to replace this requirement for contractor-provided Railroad Protective Liability Insurance with coverage through Amtrak, at no cost of obligation to the Contractor.

6. **Builder's Risk/Installation Floater**. When the Contractor's work involves construction or renovation of a building or structure, Contractor shall provide builder's risk coverage issued for the work to cover property in the course of construction, soft costs, and delay in completion, including coverage for damage to existing property and property of others, and the loss of use thereof. In addition, the Contractor shall provide installation floater coverage for personal property installed, fabricated or erected by the Contractor, including material in transit or storage during the course of the work. Coverage shall be on an all-risk, full replacement value basis, including labor, materials in place, on site, in storage, off-site or in transit and include coverage for perils of Flood, Earth Movement, Wind and Terrorism. National Railroad Passenger Corporation shall be named as a loss payee, with respect to its interest in the covered property.
7. **Pollution Liability Insurance**. When the Contractor's work involves soil disturbance and/or the handling of hazardous materials, Contractor shall provide contractor's pollution liability coverage issued on an occurrence basis for the liability of Contractor arising out of the pollution or impairment of the environment, including clean-up costs and the transportation and disposal of any

## EXHIBIT D

hazardous material or waste, as a result of sudden/accidental and gradual pollution conditions arising from the work. The policy shall name Amtrak as an additional insured with respect to the Operations. Coverage under this policy shall have limits of liability of not less than the limits required for the commercial general liability insurance above and shall provide coverage for completed operations for a period of at least three years.

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.

8. **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. Coverage under this policy shall have limits of liability of not less than \$5 million each occurrence and \$5 million in the annual aggregate.

In addition the insurance policy shall provide that:

- A. The coverage shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof.
  - B. The policy shall have a retroactive date that precedes any design work on the project
9. **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 Amtrak and its agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.
  10. **Punitive Damages** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.
  11. **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 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  
Philadelphia, PA 19104-2817

**Exhibit E**  
(Consultant Indemnification Form Template)

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 1 Massachusetts Avenue, N.W., Washington, DC, 20001 (“Amtrak”).

**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 construction 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, at railroad milepost 37.50± (the “Project”); and

**WHEREAS**, on July 25, 2017, the City and Amtrak entered into that certain Design Phase Agreement providing for, inter alia, the performance by Amtrak of various services in connection with the design phase of the Project, and further providing for the reimbursement by City of Amtrak’s costs thereof; and

**WHEREAS**, the design phase of the Project has been completed and City and Amtrak have executed that a Construction Phase Agreement setting forth the rights and obligations of such parties during the construction phase of the Project; and

**WHEREAS**, due to the proximity of the Project to the Michigan Line and to railroad operations on the Michigan Line, City desires input from Amtrak on the potential impact of the Project on railroad operations on the Michigan Line; and

**WHEREAS**, construction of the Project will require City and its contractors to enter onto, over, under or adjacent to the Michigan Line, will require various assistance from Amtrak and may require alterations to MDOT facilities; 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 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 [Developer/City/State] 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 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 five million dollars (\$5,000,000) per claim and five million dollars (\$5,000,000) 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: \_\_\_\_\_