

**CONSTRUCTION PHASE AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION AND
CITY OF ANN ARBOR
FOR THE CONSTRUCTION OF A SUB-GRADE PEDESTRIAN CROSSING**

This Construction Phase Agreement (“Agreement”) effective this ____ day of _____, 2024 (“Effective Date”), is made by and between National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq* and the laws of the District of Columbia (“Amtrak”) and the City of Ann Arbor, a municipal corporation with its principal offices located at 301 E. Huron Street, Ann Arbor, MI 48104 (“Developer”) (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 AM-7.60 at CP Town Line in Wayne City to Milepost AM-119.60 at CP Baron in Calhoun County and from Milepost AM-121.30 in Gord, Calhoun County to Milepost AM-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 operated, maintain and manage the Michigan Line, including the provision of certain services in connection with construction projects relating to the Michigan Line; and

WHEREAS, Developer desires to construct a sub-grade box culvert pedestrian crossing which is to be located under Amtrak’s property (at railroad milepost AM 37.94 of the Michigan Line) (“Project”); and

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

WHEREAS, the design phase of the Project is nearing completion and Developer now desires that Amtrak provide various services during the construction phase of the Project; and

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

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

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

the Parties agree as follows:

1. **Incorporation of Recitals.**

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

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

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

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

3. **Cost Estimate.**

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

4. **Billable Costs.**

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

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

- (ii) Costs for all materials and supplies required for performance of the Services. Any materials and supplies issued from Amtrak's inventory shall be charged at Amtrak's inventory cost in effect at the time the material or supplies are issued, plus any actual shipping/transportation costs and shipping/ transportation cost additives. Any materials and supplies which are procured by Amtrak, but which are not issued from Amtrak's inventory, shall be charged at Amtrak's actual cost incurred. Material handling and General and Administrative ("G&A") overhead rates as set forth in the Overhead Schedule shall be added to the cost of all materials and supplies.
- (iii) Costs for all third-party contract services and for any related additional insurance. Costs will be billed at actual cost incurred, plus the G&A overhead rates as set forth in the Overhead Schedule.
- (iv) Costs for equipment, vehicles, work trains, wire trains, rolling stock and any other such items which are leased by Amtrak and required for performance of the Services shall be charged at the actual cost of the lease, plus the G&A overhead rates as set forth in the Overhead Schedule.
- (v) For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items, reimbursement shall be at the rates published in "Amtrak Rental Rates for Railroad Equipment," as amended periodically, plus the G&A overhead rates as set forth in the Overhead Schedule. For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items not specifically itemized therein, reimbursement shall be based on a comparable market rate, plus the G&A overhead rates as set forth in the Overhead Schedule. Vehicles/equipment obtained through a General Services Administration ("GSA") schedule shall be construed as Amtrak-owned.
- (vi) Mobilization and demobilization costs and the cost of training of Amtrak employees to the extent required for the Project. Amtrak shall be reimbursed for the actual costs, plus the applicable overhead rates as set forth in the Overhead Schedule.
- (vii) Retroactive wage and benefit costs (i.e., adjustments made subsequent to performance of the Services) which shall be reimbursed based on the actual cost, plus all associated current overhead rates as set forth in the Overhead Schedule. Developer's obligation to reimburse Amtrak for such retroactive costs shall survive expiration or termination of this Agreement.
- (viii) Other actual costs not included in any other provision of this Agreement, necessary to effectively perform Services hereunder shall be charged at actual costs, plus Amtrak's overhead rates as set forth in the Overhead Schedule.
- (b) In addition to reimbursement of the costs described above, Developer shall pay Amtrak a management fee of ten percent (10%) applied to all billable costs and overhead rates.
- (c) The overhead rates referred to herein are computed in accordance with Amtrak's accounting policies and procedures. These rates are updated periodically by Amtrak and will be made available to Developer, upon request. The applicable billable overhead rates

shall be the rates in effect (i) at the time of performance of the Services with respect to Services performed by Amtrak forces, and (ii) as of the date Amtrak receives the invoice from its contractors with respect to Services performed by Amtrak contractors.

5. **Payments.**

(a) Prior to initiation of any Services by Amtrak, Developer shall provide Amtrak with an advance deposit in the amount of the Construction Phase Estimate. Such advance deposit shall be applied to Amtrak's costs as they are incurred as reflected in monthly statements and/or invoices provided by Amtrak. If, during the course of the construction phase of the Project, Amtrak or Developer determines that the Construction Phase Estimate needs to be increased, Amtrak shall provide a revised estimate. Developer shall provide to Amtrak, prior to Amtrak's continuation of Services, an additional amount representing the amount by which the estimate was increased. If and when the balance of the deposit has been reduced to \$0, each subsequent statement and/or invoice shall be paid by Developer, as provided in subsection (c) below.

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

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

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

(e) Upon completion of the construction phase of the Project (or completion of Amtrak's Services or cancellation of the Project, as the case may be), Developer will request that Amtrak close out the construction phase of the Project by signing and

submitting the Scope of Work Completion Report (“SOWCR”) in the form of Exhibit C attached hereto and incorporated herein. This will initiate close-out of the construction phase of the Project on Amtrak’s side and Amtrak will submit final invoices for costs incurred by Amtrak. Within ninety (90) days of execution of the SOWCR, Amtrak will send Developer its final invoices (with the exception of invoices for retroactive wage and benefit costs as set forth in Section 4(a)(vii) hereof).

6. **Schedule.**

(a) Amtrak and Developer agree to cooperate and to require their respective contractor(s) to cooperate so as to coordinate their schedules. However, Developer acknowledges that Amtrak has workforce and other resource constraints and other work commitments and demands, that only limited track outages are available, and that these outages must be shared and/or rationed among all potential projects (including other Amtrak, state, municipal, commuter and third-party projects). These restrictions may prevent Amtrak from performing the Services according to Developer’s schedule and may prevent Developer from gaining access to Amtrak’s property according to such schedule.

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

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

(d) On an annual basis, by January 31st of each year (or later as advised by Amtrak), Developer is required to submit to Amtrak its proposed scope of work and associated Amtrak resource requirements (i.e., force account, track outages, and specialized equipment) for the upcoming fiscal year (10/1 – 9/30). Developer shall submit the required information to Amtrak in a form provided by Amtrak. For example, in order to be considered for inclusion in Amtrak’s FY24 capital construction program, Developer must provide its scope of work and resource requirements to Amtrak no later than January 31, 2023 (or later as advised by Amtrak). Submissions received after this date will be considered lower priority for inclusion in the capital construction program. In general, Amtrak encourages developers to submit their scopes of work and resources requirements to Amtrak as early as possible, including for fiscal years beyond the upcoming fiscal year, if known.

7. **Review of Documents.**

(a) Developer shall submit all Documents (as defined in Section 2(a)) relating to the Project to Amtrak for its review and approval. Developer agrees to incorporate into the construction plans for the Project all Amtrak comments pertaining to matters that impact (or have the potential to impact) Amtrak’s operations, facilities and/or property. Amtrak shall have a minimum of thirty (30) business days to review any Documents presented for Amtrak’s review.

(b) Any review of such Documents by Amtrak shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Amtrak’s

operations, facilities and/or property. No review, correction or approval of Documents by Amtrak shall relieve Developer and its officers, directors, employees, agents, Contractors (as defined in Section 10(a) hereof), design professionals or any other person acting for or by permission of Developer (collectively referred to hereafter as “Developer Parties”) from the entire responsibility for errors or omissions in such Documents or for the adequacy thereof. **Amtrak assumes no responsibility for and makes no representations or warranties, express or implied, as to the design, workmanship or adequacy of the Documents or the Project.**

(c) Amtrak may notify the Federal Railroad Administration (“FRA”) of its review of Developer’s plans and designs for those elements involving passenger boarding, platform work and/or network configuration changes, or for other purposes as determined appropriate by Amtrak.

8. **Permit to Enter.**

If entry on, over, under or adjacent to Amtrak's right-of-way or other property is required for purposes of this Project by Developer or its Contractors, Developer agrees that the entity seeking entry must notify Amtrak at least thirty (30) business days in advance and must obtain Amtrak's “Temporary Permit to Enter Upon Property” prior to any such entry, available at: <https://www.amtrak.com/about-amtrak/permit-process.html>.

9. **Safety and Security Requirements.**

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

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

10. **Risk of Liability; Indemnification.**

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

(i) injury, death, or disease to any person (excluding only employees of

Amtrak to the extent Amtrak has coverage for such employees under the force account insurance maintained by Amtrak as described in Section 11(d) of this Agreement, and only to the limits of Ten Million Dollars (\$10,000,000)), and/or

(ii) damage (including environmental contamination) to or loss of any property, including property of Amtrak arising out of, or in any degree directly or indirectly caused by or resulting from activities of, or work performed by Amtrak and/or the Developer Parties in connection with this Agreement. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Developer or any of its contractors, subcontractors, consultants or subconsultants (“Contractors”) and shall survive termination or expiration of this Agreement for any reason. This provision 10(a) does not and shall not be construed to waive or limit Developer’s governmental immunity.

(b) Developer’s Contractors’ Obligations. If any of Developer’s Contractors’ work is to be performed on, over, under or adjacent to Amtrak property, it will be necessary for such Contractors to execute Amtrak’s “Temporary Permit to Enter Upon Property”, as set forth in Section 8 of this Agreement. The permit contains the relevant indemnification obligations. Developer shall ensure that such Contractors execute the permit.

(c) Developer’s Design Contractors’ Obligations. Developer agrees to have its Contractors who perform design or engineering functions in support of the Project execute a copy of the certificate attached hereto and incorporated herein as Exhibit D and return the certificate to Amtrak at the address listed in Section 16 hereof. (Contractors who perform design or engineering functions are referred to as “consultants” in Exhibit D.) 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 Developer’s Contractors who enter on, above, below or adjacent to Amtrak’s property are set forth in the Temporary Permit to Enter Upon Property as provided in Sections 8 and 10(b) above.

11. **Insurance.**

(a) Developer’s Insurance. Developer shall procure and maintain in effect during the course of the construction phase of the Project, at its sole cost and expense, the insurance coverage specified below. Developer shall submit to Amtrak certificates 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 Developer on, under, over or adjacent to Amtrak property. In addition, Developer agrees to provide certified copies of the insurance policies within thirty (30) days of Amtrak’s written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Developer and Developer Contractors’ personnel and equipment have been removed from Amtrak’s property, and any work has been formally accepted. Developer may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Developer 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. Developer will provide the following insurance:

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

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

Coverage under this policy shall have limits of liability of not less than 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 "follow form" excess or umbrella liability policy. Any such excess or umbrella liability insurance policy shall provide substantially the same coverage as the underlying CGL insurance (including the additional insureds as required above) and shall expressly provide that the excess or umbrella coverage will drop down over a reduced or exhausted aggregate limit of the underlying insurance. Any such excess or umbrella liability insurance policy shall not be less than a "follow form", and coverage shall also be primary coverage to Amtrak (including primary insurance to Amtrak's own CGL and excess policies) and Developer's umbrella insurer shall agree not to seek contribution from Amtrak's insurance. Any such excess or umbrella liability insurance policy shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

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

(iii) **Automobile Liability Insurance** covering the liability of Developer 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 Developer's CGL insurance. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds with respect to the operations to be performed. Coverage under this policy shall have limits of liability of not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

(iv) **Builders Risk Insurance** covering all risks of direct physical loss or damage including collapse in a form such as ISO form CP 0020 1090 or an equivalent policy form. The policy shall contain no cofferdam exclusions and no coinsurance penalty clause. The policy shall cover the full replacement cost value of work performed including labor, equipment, supplies and materials at the location of the work, as well as at any off-site storage locations and while in transit by any conveyance to and/or from the site. Sublimits of Twenty-five Million Dollars (\$25,000,000) per occurrence for loss caused by flood and Twenty-five Million Dollars (\$25,000,000) for loss caused by earthquake are acceptable. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, shall provide coverage on a LEG 3 basis, and shall grant permission to occupy (allowing the building or structure to be partially occupied prior to completion, without detrimental effect to the coverage being provided). Such policy shall name National Railroad Passenger Corporation as insured and include Developer's Contractors of all tiers as additional insureds. Developer and National Railroad Passenger Corporation shall also be named as loss payees as their interests may appear. In the alternative, Developer may cause its Contractors to procure and maintain this coverage.

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

(vi) **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Developer, its contractor or transporter, as well as the disposal site operator, shall maintain this insurance. Developer shall designate the disposal site and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads

that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate. In the alternative, Developer may cause its Contractors to procure and maintain this coverage.

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

(vii) **Waiver of Subrogation.** As to all insurance policies required herein, Developer 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.

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

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

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

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

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

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

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

(xi) **Evidence of Insurance.** Developer 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, Developer shall furnish evidence of insurance replacing the cancelled or expired policies. THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION ALONG THE RAILROAD RIGHT-OF-WAY (typically given by milepost designation) IN ORDER TO FACILITATE PROCESSING. The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Developer begin Operations without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent via email to: JointProjects@amtrak.com, Attn: Jason Young, Director Joint Project Development.

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

(c) Additional Insurance for Developer's Contractors who Perform Design or Engineering Functions. Developer shall require its Contractors who perform design or engineering functions to provide and maintain in effect during the Project professional liability insurance as set forth in Exhibit D hereof. Such Contractors shall provide Amtrak with a certificate of insurance evidencing the insurance coverage required hereunder. Amtrak will not progress the Services until it has received such certificates.

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

12. Environmental and Geotechnical Matters.

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

(b) Soil Disturbance and Testing.

(i) Preconditions for Soil Disturbance and Testing. Developer (and its

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

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

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

(iv) Responsibility for Environmental Activities. If the soil disturbance or the environmental or geotechnical tests performed in connection with the Project (whether performed during the design or construction phase of the Project) indicate contamination of Amtrak owned or controlled property (or property adjoining any such Amtrak property) at levels requiring reporting, further investigation, testing, monitoring and/or remediation ("Environmental Activities"), Developer shall promptly inform Amtrak of such event and all such Environmental Activities shall be at the sole cost and expense of Developer, regardless of the extent thereof, and regardless of whether any action of Developer (or its Contractors or agents) caused or contributed to the contamination or condition.

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

(c) Waste, Contamination or Adverse Environmental Conditions Created by Developer, its Contractors or Agents.

- (i) Disposal. In the event Developer, its Contractors or agents create any waste, contamination or adverse environmental conditions (either purposefully or accidentally) on Amtrak owned or controlled property in connection with the performance of activities pursuant to this Agreement, they shall promptly inform Amtrak of such incident. Further, they shall dispose of such waste, contamination and/or adverse environmental conditions, including hazardous wastes, at their sole cost and expense, all without limit and without regard to the negligence or fault of any third party. Developer or its Contractors or agents shall dispose of said waste, contamination and/or adverse environmental conditions using their own EPA generator number(s). In no event shall Amtrak be identified as the generator. Developer will promptly provide Amtrak with a copy of any hazardous waste manifests.
- (ii) Developer Costs. In the event that reporting, investigating, testing, monitoring, or remediation of such waste, contamination or conditions is necessary, Developer shall promptly inform Amtrak of such event and the costs and expense of same shall be borne solely by Developer.
- (iii) Defense and Satisfaction of Liabilities. In addition, the cost and expense of defense and satisfaction of any liabilities due to personal injury of third parties or damage to property of third parties arising from waste, contamination or adverse environmental conditions resulting from the activities of Developer or its Contractors shall be borne solely by Developer and its Contractors.
- (iv) Test Results. Amtrak reserves the right to require Developer to provide to Amtrak a copy of the results of any tests conducted by or for Developer on any such wastes and, at Amtrak's request, to perform additional reasonable tests and/or examinations of any such wastes at Developer's expense, prior to disposal.
- (d) Alteration, Suspension, Cancellation or Modification of Schedule. Amtrak retains the right to alter, suspend, cancel or otherwise modify Developer's work schedule pending the resolution of any of the above environmental issues. Amtrak shall not be held responsible for any claims related to any such changes in Developer's schedule, including without limitation, claims related to damages resulting from any such delays or cancellations.
- (e) Noncompliance Notice. Amtrak may notify Developer of any known or suspected noncompliance with the foregoing provisions and the action to be taken. Developer shall, after receipt of such notice, promptly take corrective action in accordance with all applicable federal, state and local requirements. If Developer fails or refuses to comply promptly, Amtrak may issue an order stopping all or part of the Project work until satisfactory corrective action has been taken. In addition, Amtrak may immediately undertake necessary corrective actions; the cost and expense of all such actions shall be borne by Developer. No claims by Developer for reimbursement related to costs and expenses charged to Developer for corrective actions undertaken by Amtrak, nor time lost due to any such orders, shall be made the subject of a claim for excess costs or damages by Developer.
- (f) Survival of Environmental Obligations. The foregoing environmental obligations

shall survive expiration or termination of this Agreement.

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

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

(b) Developer and its Contractors shall perform all work in accordance with Amtrak's standards as set forth in Exhibit E attached hereto and incorporated herein.

These standards shall be incorporated into any specifications for the Project. Copies of Amtrak's standards either have been or will be provided to Developer.

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

14. **Qualifications of Developer and its Contractors.**

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

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

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

Neither Developer nor its Contractors shall perform any construction activities related to the Project affecting Amtrak's operations, facilities or property until: (a) this Agreement has been fully executed; (b) Amtrak has approved the Documents in writing; (c) Amtrak's forces are available to support the Project; (d) as required by Amtrak, a Temporary Permit to Enter Upon Property has been executed; (e) all required insurance certificates have been provided; (f) all real estate agreements (including, but not limited to, any licenses, permanent or temporary easements) required by Amtrak have been fully executed; (g) any operations and maintenance agreements required by Amtrak have been fully executed; (h) Developer has paid all previous invoices; and (i) Amtrak has given its written authorization to proceed with construction as it relates to and/or affects Amtrak's operations, facilities or property.

16. **Notices.**

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one Party to serve any notice, request, demand, report or other communication (collectively "Notice") on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by electronic mail and where the electronic mail is immediately followed by service of the

Notice in another manner permitted herein, or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to Developer:

City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI 48104
Attn: Derek Delacourt

With a copy to:

City of Ann Arbor
301 E. Huron Street, 3rd Floor
Ann Arbor, MI 48104
Attn: Atleen Kaur, City Attorney
Email: AKaur@a2gov.org

If to Amtrak:

Email: JointProjects@amtrak.com
Attn: Dir. Strategy & Joint Project Dev.

With a copy to:

Amtrak
1 Massachusetts Avenue NW, Washington, DC 20001
Attention: General Counsel

(b) Any Party may, from time to time, by notice in writing served upon the other Party, designate an additional and/or a different mailing address or an additional and/or a different person to whom such Notice is thereafter to be addressed. Any Notice served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by electronic mail will be deemed delivered on the date of receipt as shown on the received electronic mail (provided, that the original is thereafter delivered as aforesaid).

17. **Dispute Resolution.**

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

18. **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.

19. **Developer's Representations and Warranties.**

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

20. **Entire Agreement.**

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

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

(c) Developer hereby represents and warrants to Amtrak that there are no Project funding related requirements, whether federal, state, or local, that apply to Amtrak. Developer shall indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 10 above), from and against any and all losses, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs (including cost of defense and attorneys' fees), which any of the Indemnified Parties may incur, be responsible for, or pay as a result of a breach of the foregoing representation and warranty. In addition, Developer shall be responsible for performing any Project funding related requirements that apply to Amtrak and are not expressly set forth in this Agreement, even if those requirements would be read into this Agreement by applicable law, regulation, rule of construction or by operation of law. The foregoing representations, warranties and obligations shall survive expiration or termination of this Agreement.

21. **Successors and Assigns.**

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

22. **Miscellaneous.**

(a) Subject to applicable statutes of limitation, no failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or

further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for at law or in equity.

(b) Nothing in this Agreement shall be deemed to create any right in any person not a party hereto other than permitted successors and assigns of a Party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

(c) If any provision of this Agreement shall be determined to be invalid, illegal or unenforceable in any respect, such determination shall not affect any other provision hereof.

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

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

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

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

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____

Name: _____

Title: _____

CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

By _____
Milton Dohoney Jr., City Administrator

By _____
Derek Delacourt, Community Services
Area Administrator

Approved as to form

By _____
Atleen Kaur, City Attorney

Exhibit A

Construction Phase Estimate

AMTRAK CONSTRUCTION PHASE COST ESTIMATE

City of Ann Arbor
Bandemer Barton Sub-Grade Pedestrian Crossing

Construction Phase
AM-37.94
Ann Arbor, MI

NATIONAL RAILROAD PASSENGER CORPORATION
DEPARTMENT OF ENGINEERING SERVICES
DATE: 1/2/2024

	QUANTITY	UNITS	UNIT COST	TOTAL
ENGINEERING				
Project Manager, Construction/Division	1	MD	\$1,300	\$1,300
Project Initiation and Development Document Archiving/Document Controls	1	MD	\$1,300	\$1,300
Construction/Division: Manager	1	MD	\$1,300	\$1,300
Site Inspection	5	MD	\$1,300	\$6,500
Plan Review and Meetings	2	MD	\$1,300	\$2,600
ENGINEERING TOTAL				\$13,000
FORCE ACCOUNT				
Labor:				
C&S Inspector	1	MD	\$1,150	\$1,150
C&S Maintainer	2	MD	\$1,050	\$2,100
C&S Supervisor	5	MD	\$1,400	\$7,000
Track Foreman	57	MD	\$1,100	\$62,700
Track Supervisor	5	MD	\$1,250	\$6,250
Trackman / Watchman	6	MD	\$900	\$5,400
Equipment:				
6 Man Pick-Up	2	Day	\$250	\$500
3 Man Pick-up	53	Day	\$200	\$10,600
Front End Loader	2	Day	\$550	\$1,100
Tamper	1	Day	\$1,750	\$1,750
Ballast Regulator	1	Day	\$900	\$900
Welding Truck	2	Day	\$350	\$700
FORCE ACCOUNT TOTAL				\$100,150
SUB TOTAL				\$113,150
CONTINGENCY (10%)				\$11,315
SUB TOTAL				\$124,465
MANAGEMENT FEE (10%)				\$12,447
TOTAL				\$136,912

The estimate is based on an estimated 53 day duration of work. The actual number of man-days is contingent upon the contractor's procedure and time schedule. Colliers Engineering provided this information to Amtrak in an email dated 12/8/2023. 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 B

Overhead Schedule

National Railroad Passenger Corporation
Overhead Additive Rates

EXHIBIT B

Effective January 1, 2024

	Operations Support Overhead	Department Overhead	Training Overhead	Vacation & Holiday	Force Account Insurance	Fringe Benefits 1/2024 - 9/2024	Total Additive for Labor	G&A	Material Handling Rate*	Labor Composite	Material Composite
Engineering Rates											
Straight Time Labor	6.78%	47.79%	9.78%	14.45%	16.00%	42.80%	137.60%	7.33%	12.56%	155.02%	20.81%
Over Time Labor	6.78%	47.79%	9.78%	14.45%	16.00%	20.39%	115.19%	7.33%	12.56%	130.97%	20.81%
Engineering Exempt Labor											
Straight Time Exempt Labor		34.48%		23.27%		37.35%	95.10%	7.33%	12.56%	109.41%	20.81%

(*) The material handling rate also includes the indirect shipping costs previously captured under the freight rate and applied to all material postings.

Exhibit C

Scope of Work Completion Report



Scope of Work Completion Report



PROJECT INFORMATION – FOR AMTRAK USE ONLY			
Project Title			
Customer/Counterparty			
Date of Agreement			
WBS			
Maximo WO#		Customer PO#	
Project Type (check all that apply)	<input type="checkbox"/> Agreement Type	<input type="checkbox"/> Construction <input type="checkbox"/> Site Access	<input type="checkbox"/> Design <input type="checkbox"/> Other <input type="checkbox"/> Combo (Design & Construction)
	<input type="checkbox"/> PTE File No.		

SCOPE OF WORK COMPLETION STATEMENT
(to be filled out by Counterparty Representative)

Counterparty requests that Amtrak close out the Project referenced above and refund the balance, if any, of the force account included with the Project referenced above. Counterparty confirms that: (choose one)

- The design phase has concluded. The project plans were approved on _____ and the Amtrak approval letter is attached. *(Date)*
- The construction phase has been completed according to the scope of work and/or Approved Project Plans, specifications, and requirements outlined in the Agreement/Permit referenced above.
- The work related to this Project was not performed because _____

(Signature)

(Date)

For Return Balance of Force Account:

Name: _____

Title: _____

Payable to: _____

Phone: _____

Address: _____

Email: _____

City, State, Zip: _____

Sign and forward to the appropriate Construction Project Manager for processing (allow 2 weeks)

STATEMENT OF ACCEPTANCE – FOR AMTRAK USE ONLY

The Scope of Work Completion Statement outlined above has been accepted. The job number(s) can be closed, and the process for refunding the balance of the Force Account can be initiated.

(Signature)

(Date)

Print Name: _____

Phone: _____

Title: _____

Email: _____

Allow up to 150 days after Statement of Acceptance to receive balance refund.



Scope of Work Completion Report



Steps for Submitting Scope of Work Completion Report (SOWCR)

1. Ensure all required information is filled out for the SOWCR Statement.
2. Review all information and make sure it's correct.
3. Sign the SOWCR Statement on the signature line (either electronically or print, sign and scan to PDF) and return page 1 to the following email address:



PLEASE NOTE:

- The SOWCR does not imply that all billing is complete, rather that the project itself is deemed complete.
- Incomplete SOWCR or errors in the SOWCR will cause delays in processing.

Exhibit D

Consultant's Certificate

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 D

CERTIFICATE BY COLLIERS ENGINEERING TO NATIONAL RAILROAD PASSENGER CORPORATION

This Certificate (“Certificate”) effective this ____ day of _____, 20__, is made by Colliers Engineering & Design, a corporation with its principal offices located at 7050 West Saginaw Highway, Suite 200, Lansing, Michigan 48917 (“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, 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 AM-7.60 at CP Town Line in Wayne City to Milepost AM-119.60 at CP Baron in Calhoun County and from Milepost AM-121.30 in Gord, Calhoun County to Milepost AM-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 operated, maintain and manage the Michigan Line, including the provision of certain services in connection with construction projects relating to the Michigan Line; and

WHEREAS, The City of Ann Arbor (“Developer”) desires to construct a sub-grade box culvert pedestrian crossing which is to be located under Amtrak’s property (at railroad milepost AM 37.94 of the Michigan Line) (“Project”); and

WHEREAS, Developer 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 Developer, 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, subsidiaries and insurers (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, subcontractors, 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 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 subcontractors, subconsultants or agents, and shall survive the termination of the agreement between Amtrak and the Developer. Consultant further agrees that its liability and indemnity obligations to Amtrak hereunder are further governed by Section 28103(b) of Title 49 of the United States Code and that such provision precludes and preempts any other federal or state law with regard to indemnity.

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, subcontractors, 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 Developer 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 Two million dollars (\$2,000,000) per claim and Two million dollars (\$2,000,000) in the annual aggregate.

Prior to Amtrak reviewing any plans, drawings, and specifications, Consultant shall provide to Amtrak an insurance certificate reflecting that Consultant has the insurance as stated above. At least one (1) time every year thereafter, Consultant shall provide to Amtrak an updated insurance certificate reflecting that Consultant has the insurance as stated above.

5. Review of Documents. Any review of Consultant’s plans, drawings, and specifications by Amtrak shall be for the purpose of examining the general arrangement, design and details of the Project for potential impact on Amtrak's property and operations. Amtrak assumes no responsibility for, and makes no representations or warranties, express or implied, as to the design, condition, workmanship and/or adequacy of the plans, drawings, and specifications.

6. Permit to Enter. Nothing herein is intended to grant Consultant the right to enter upon the right-of-way or other property of Amtrak. If entry onto, above, or below Amtrak's right-of-way or other property is required for purposes of this Project by Consultant, Consultant must execute the then-current version of Amtrak's “Temporary Permit to Enter Upon Property”.

7. Governing Law. This Certificate shall be governed by and construed under the laws of the District of Columbia. All legal proceedings in connection with any dispute arising under or relating to this Certificate shall be brought in the United States District Court for the District of Columbia.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has executed this Certificate.

Consultant

By: _____

Name: _____

Title: _____

Date: _____

Exhibit E

List of Amtrak Standards

EXHIBIT E

Amtrak List of Standards and Specifications

- i. Amtrak Engineering Practices 2031 – Track Monitoring for work disturbing roadbed;
- ii. Amtrak Engineering Practice 3005 – Design and Construction specifications for pipelines within Amtrak Right-of-Way;
- iii. Amtrak Engineering Practices 3014 - Maintenance and Protection of Railroad Traffic During Contractor Operations;
 - a. Section 0114A – Safety and Protection of Railroad Traffic and Property;
 - b. 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;
 - c. Section 02261A – Requirements for Temporary Sheeting and Shoring to Support Amtrak Tracks;
- iv. Amtrak Engineering Practice 3016 – Storm Water Drainage and Discharge from Adjacent Property onto Amtrak Right-of-Way;
- v. Amtrak Standard Track Plans – Minimum Roadway Clearances. Drawing Nos. 70050.001.08 and 70050.002.08;
- vi. Amtrak Engineering Specification No. 63 – Track Design;