

**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)

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

**Exhibit C**  
(Overhead Schedule)

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

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