

REQUEST FOR PROPOSAL

RFP # 19-02

Construction Engineering for Allen Creek Railroad Berm Opening Project

City of Ann Arbor
Public Service Area - Engineering



Due Date: January 22, 2019 by 2:00 p.m. (local time)

Issued By:

City of Ann Arbor
Procurement Unit
301 E. Huron Street
Ann Arbor, MI 48104

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SECTION I - GENERAL INFORMATION

A. OBJECTIVE

The City of Ann Arbor is requesting proposals from professional civil engineering firms to provide construction engineering, survey and project management for the Allen Creek Railroad Berm Opening Project.

See Section II, Scope of Services, for a detailed task overview.

The City of Ann Arbor, Engineering Services Unit will oversee the direction and quality of work of this consultant.

B. QUESTIONS AND CLARIFICATIONS / DESIGNATED CITY CONTACTS

All questions regarding this Request for Proposal (RFP) shall be submitted via e-mail. Questions will be accepted and answered in accordance with the terms and conditions of this RFP.

All questions shall be submitted on or before January 11, 2019 at 4:00 p.m.,
and should be addressed as follows:

Scope of Work/Proposal Content questions shall be e-mailed to Anne Warrow,
Project Manager - AWarrow@a2gov.org

RFP Process and Compliance questions shall be e-mailed to Colin Spencer,
Buyer - CSpencer@a2gov.org

Should any prospective offeror be in doubt as to the true meaning of any portion of this RFP, or should the prospective offeror find any ambiguity, inconsistency, or omission therein, the prospective offeror shall make a written request for an official interpretation or correction by the due date for questions above.

All interpretations, corrections, or additions to this RFP will be made only as an official addendum that will be posted to a2gov.org and MITN.info and it shall be the prospective offeror's responsibility to ensure they have received all addenda before submitting a proposal. Any addendum issued by the City shall become part of the RFP, and must be incorporated in the proposal where applicable.

C. PRE-PROPOSAL MEETING

A pre-proposal meeting will be held:

WHEN: Monday, January 7, 2019 at 10:30 a.m.

WHERE: City Hall Building, Basement Conference Room, 301 East Huron
Street, Ann Arbor, Michigan 48107

The meeting is not mandatory; however, it is highly recommended that interested consultants attend the meeting. The purpose of this meeting is to discuss the project with prospective consultants and to answer any questions concerning RFP 19-02. In addition, construction plans and specifications will be made available at this meeting. Any questions and answers furnished in the pre-proposal meeting will not be official until verified in writing through an addendum.

D. PROPOSAL FORMAT

To be considered, each firm must submit a response to this RFP using the format provided in Section III. No other distribution of proposals is to be made by the prospective consultant. An official authorized to bind the offeror to its provisions must sign the proposal in ink. Each proposal must remain valid for at least ninety days from the due date of this RFP.

Proposals should be prepared simply and economically providing a straightforward, concise description of the offeror's ability to meet the requirements of the RFP. No erasures are permitted. Mistakes may be crossed out and corrected and must be initialed in ink by the person signing the proposal.

E. SELECTION CRITERIA

Responses to this RFP will be evaluated using a point system as shown in Section III. A selection committee comprised of staff from the City will complete the evaluation.

The fee proposals will not be reviewed at the initial evaluation. After initial evaluation, the City will determine top proposals, and open only those fee proposals. The City will then determine which, if any, firms will be interviewed. During the interviews, the selected firms will be given the opportunity to discuss their proposal, qualifications, past experience, and their fee proposal in more detail. The City further reserves the right to interview the key personnel assigned by the selected offeror to this project. If the City chooses to interview any respondents, the interviews will be tentatively held the **week of February 4th, 2019**. Offeror must be available on these dates.

All proposals submitted may be subject to clarifications and further negotiation. All agreements resulting from negotiations that differ from what is represented within the RFP or in the proposal response shall be documented and included as part of the final contract.

F. SEALED PROPOSAL SUBMISSION

All proposals are due and must be delivered to the City on or before, January 22, 2019 at 2:00 p.m. (local time). Proposals submitted late or via oral, telephonic, telegraphic, electronic mail or facsimile **will not** be considered or accepted.

Each respondent must submit in a sealed envelope

- **one (1) original proposal**
- **three (3) additional proposal copies**
- **one (1) digital copy of the proposal preferably on a USB/flash drive as one file in PDF format**

Each respondent must submit in a single separate sealed envelope marked Fee Proposal

- **two (2) copies of the fee proposal**

The fee proposal and all costs must be separate from the rest of the proposal.

Proposals submitted must be clearly marked: **“RFP No.19-02 – Construction Engineering for the Allen Creek Railroad Berm Opening Project”** and list the offeror’s name and address.

Proposals must be addressed and delivered to:
City of Ann Arbor
c/o Customer Service
301 East Huron Street
Ann Arbor, MI 48107

All proposals received on or before the due date will be publicly opened and recorded on the due date. No immediate decisions will be rendered.

Hand delivered proposals must be date/time stamped by the Customer Service Department at the address above in order to be considered. Delivery hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding Holidays.

The City will not be liable to any prospective offeror for any unforeseen circumstances, delivery, or postal delays. Postmarking on the due date will not substitute for receipt of the proposal. Offerors are responsible for submission of their proposal. Additional time will not be granted to a single prospective offeror. However, additional time may be granted to all prospective offerors at the discretion of the City.

A proposal will be disqualified if the following required forms are not included with the proposal:

- **Attachment C - City of Ann Arbor Non-Discrimination Declaration of Compliance**
- **Attachment D - City of Ann Arbor Living Wage Declaration of Compliance**
- **Attachment E - Vendor Conflict of Interest Disclosure Form of the RFP Document**

Proposals that fail to provide these completed forms listed above upon proposal opening will be deemed non-responsive and will not be considered for award.

Please do not provide these forms outlined directly above only within the separately sealed Fee Proposal envelope.

All proposed fees, cost or compensation for the services requested herein should be provided in the separately sealed Fee Proposal envelope only.

G. DISCLOSURES

Under the Freedom of Information Act (Public Act 442), the City is obligated to permit review of its files, if requested by others. All information in a proposal is subject to disclosure under this provision. This act also provides for a complete disclosure of contracts and attachments thereto.

H. TYPE OF CONTRACT

A sample of the Professional Services Agreement is included as Appendix A. Those who wish to submit a proposal to the City are required to review this sample agreement carefully. **The City will not entertain changes to its Professional Services Agreement.**

The City reserves the right to award the total proposal, to reject any or all proposals in whole or in part, and to waive any informality or technical defects if, in the City's sole judgment, the best interests of the City will be so served.

This RFP and the selected offeror's response thereto, shall constitute the basis of the scope of services in the contract by reference.

I. NONDISCRIMINATION

All offerors proposing to do business with the City shall satisfy the contract compliance administrative policy adopted by the City Administrator in accordance with the Section 9:158 of the Ann Arbor City Code. Breach of the obligation not to discriminate as outlined in Attachment B shall be a material breach of the contract. Contractors are required to post a copy of Ann Arbor's Non-Discrimination Ordinance attached at all work locations where its employees provide services under a contract with the City.

J. WAGE REQUIREMENTS

The Attachments provided herein outline the requirements for payment of prevailing wages or of a "living wage" to employees providing service to the City under this contract. The successful offeror must comply with all applicable requirements and provide documentary proof of compliance when requested.

K. CONFLICT OF INTEREST DISCLOSURE

The City of Ann Arbor Purchasing Policy requires that the consultant complete a Conflict of Interest Disclosure form. A contract may not be awarded to the selected offeror unless and until the Procurement Unit and the City Administrator have reviewed the Disclosure form and determined that no conflict exists under applicable federal, state, or local law or administrative regulation. Not every relationship or situation disclosed on the Disclosure Form may be a disqualifying conflict. Depending on applicable law and regulations, some contracts may awarded on the recommendation of the City Administrator after full disclosure, where such action is allowed by law, if demonstrated competitive pricing exists and/or it is determined the award is in the best interest of the City. A copy of the Conflict of Interest Disclosure Form is attached.

L. COST LIABILITY

The City of Ann Arbor assumes no responsibility or liability for costs incurred by the offeror prior to the execution of a Professional Services Agreement. The liability of the City is limited to the terms and conditions outlined in the Agreement. By submitting a proposal, offeror agrees to bear all costs incurred or related to the preparation, submission, and selection process for the proposal.

M. DEBARMENT

Submission of a proposal in response to this RFP is certification that the Respondent is not currently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from participation in this transaction by any State or Federal departments or agency. Submission is also agreement that the City will be notified of any changes in this status.

N. PROPOSAL PROTEST

All proposal protests must be in writing and filed with the Purchasing Manager within five (5) business days of the award action. The offeror must clearly state the reasons for the protest. If an offeror contacts a City Service Area/Unit and indicates a desire to protest an award, the Service Area/Unit shall refer the offeror to the Purchasing Manager. The Purchasing Manager will provide the offeror with the appropriate instructions for filing the protest. The protest shall be reviewed by the City Administrator or designee, whose decision shall be final.

Any inquiries or requests regarding this procurement should be only submitted in writing to the Designated City Contacts provided herein. Attempts by the offeror to initiate contact with anyone other than the Designated City Contacts provided herein that the offeror believes can influence the procurement decision, e.g., Elected Officials, City Administrator, Selection Committee Members, Appointed Committee Members, etc., may lead to immediate elimination from further consideration.

O. SCHEDULE

The proposals submitted should define an appropriate schedule in accordance with the requirements of the Proposed Work Plan in Section III.

The following is the schedule for this RFP process.

| Activity/Event | Anticipated Date |
|--------------------------------------|--|
| Pre-proposal Meeting | January 7, 2019, 10:30 a.m. |
| Written Question Deadline | January 11, 2019, 4:00 p.m. |
| Addenda Published (if needed) | Week of January 15, 2019 |
| Proposal Due Date | January 22, 2019, 2:00 p.m. (Local Time) |
| Tentative Interviews (if needed) | Week of February 4, 2019 |
| Selection/Negotiations | February 2019 |
| Expected City Council Authorizations | March 2019 |

The above schedule is for information purposes only and is subject to change at the City's discretion.

P. IRS FORM W-9

The selected offeror will be required to provide the City of Ann Arbor an IRS form W-9.

Q. RESERVATION OF RIGHTS

1. The City reserves the right in its sole and absolute discretion to accept or reject any or all proposals, or alternative proposals, in whole or in part, with or without cause.
2. The City reserves the right to waive, or not waive, informalities or irregularities in terms or conditions of any proposal if determined by the City to be in its best interest.
3. The City reserves the right to request additional information from any or all offerors.
4. The City reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested within RFP.
5. The City reserves the right to determine whether the scope of the project will be entirely as described in the RFP, a portion of the scope, or a revised scope be implemented.
6. The City reserves the right to select one or more consultants to perform services.
7. The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this RFP, unless clearly and specifically noted in the proposal submitted.

8. The City reserves the right to disqualify proposals that fail to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents outlined within RFP.

R. ENVIRONMENTAL COMMITMENT

The City of Ann Arbor recognizes its responsibility to minimize negative impacts on human health and the environment while supporting a vibrant community and economy. The City further recognizes that the products and services the City buys have inherent environmental and economic impacts and that the City should make procurement decisions that embody, promote, and encourage the City's commitment to the environment.

The City encourages potential vendors to bring forward emerging and progressive products and services that are best suited to the City's environmental principles.

S. USE OF CITY SEAL AND FLAG

Please be aware in responding to this formal solicitation that use of the City's seal or flag in a manner inconsistent with Title I, Chapter 9 of the City's Code of Ordinances is prohibited.

SECTION II - SCOPE OF SERVICES

A. BACKGROUND

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

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

The project aims at creating a new pedestrian connection linking downtown Ann Arbor and its neighborhoods with the Border to Border (B2B)/Iron Belle Trail through the railroad berm in the vicinity of the Allen Creek.

The B2B Trail extends from the county border with Livingston County to the border with Wayne County including over 24 miles of paved, shared-use paths. According to a study from Michigan State University in 2009, the B2B had 114,405 estimated uses for a spring and fall period with 57% of users originated from Ann Arbor. The proposed trail link fits into the larger network of regional and state pedestrian and bicycle infrastructure, and responds to the strong public appeal for pedestrian access in this area.

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

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

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

Minimizing flooding also serves to improve water quality by reducing the Allen Creek Drain contamination of the Huron River. During flooding events, rainwater collects on Depot and adjoining streets, picking up and transporting contaminants to the Huron

River. Automobile related, heavy metals, oils and other chemicals as well as debris are washed into the Huron River as torrents of rainwater rush from the flooded streets and parking areas, and into the Huron River. Construction of the stormwater opening will drop the flood level approximately 6 feet during the 1% storm event.

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

On January 3, 2017, City Council authorized a Professional Services Agreement with Bergmann Associates, Architects, Engineers, Landscape Architects & Surveyors, D.P.C. (Bergmann) to assist staff in developing and preparing the construction plans and specifications.

The construction plans and specifications were submitted to the National Railroad Passenger Corporation (Amtrak) for review and approval. Amtrak has provided a letter of no exceptions.

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

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

B. DESCRIPTION

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

The three culverts would be (4)-sided concrete pre-cast sections set on pile-supported footings. As the pedestrian/bicycle pathway needs to be protected against inundation during extreme flow events, a flood protection wall will be constructed along the pathway and will be set to one foot above the 1% flood elevation.

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

This project includes the construction of approximately 1,275 feet of non-motorized path, which includes a 54-foot prefabricated truss bridge that spans over the Allen Creek outfall. The pedestrian access provided by this project will be lighted using solar energy and serve as the initial phase of the Allen Creek Treeline Urban Trail (ACT) formally known as the Allen Creek Greenway (ACG). The ACG is a priority recommendation in the City of Ann Arbor's Non-motorized Transportation Plan (NTP). The ACT runs from the Creeks' outfall located at the Huron River, north end of the Allen Creek, southerly along the Ann Arbor railroad corridor to the intersection of State Street and the Ann Arbor Railroad.

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

C. TASKS

We are now seeking proposals from well-qualified professional engineering firms to perform the necessary tasks to provide construction engineering, construction survey, staking, full-time inspection, construction material testing and project management for the Allen Creek Railroad Berm Opening Project.

The following items shall be addressed by the consulting firm, along with specific tasks detailed below, and the anticipated project schedule (reference Section IV, Attachment "B") in accordance with Section III of this request:

1. Project personnel shall have a demonstrated history of performing project management, design and construction engineering, and inspection on a variety of projects. All personnel shall have a minimum of 5 years of full-time experience in these areas. The Consultant shall prepare and submit resumes' of all proposed project team members with complete educational backgrounds and work experiences for the last 5 years. The resume' shall include a listing of the specific job duties performed on each project. The proposed Project Manager and Resident Engineer shall be Registered Professional Engineers in the State of Michigan.

The Consultant shall prepare and include an Organizational Chart that clearly defines the roles, responsibilities, and hierarchy of the proposed project team. The chart must include the names of the key personnel selected for this project, their roles on the project, the name of the Consultant that they are employed by, and the lines of communication that they are to follow. Also, indicate those individuals that will be communicating with the City's Project Manager.

The Consultant's Project Manager shall have the authority to make binding

decisions on behalf of the entire project team as it relates to project duties, specific work assignments, hours of work, and all other related matters.

2. Once personnel are assigned to this project, their removal will not be allowed unless specifically requested by the City of Ann Arbor, or mutually agreed upon by the City of Ann Arbor and the Consultant. The Consultant shall certify that the personnel of its, and that of its sub-consultants being proposed as part of this RFP, are available to work on the project and have sufficient time available to perform the services as described in the proposal. Personnel assigned to this project shall not work on any other project, unless it is agreed to by the City of Ann Arbor.
3. Meeting attendance will be required to discuss and update various City Departments and other bodies on the progress of construction. The Consultant's Project Manager, or other requested personnel, shall be available to attend these meetings as required.
4. Coordinate all elements of the construction with all affected parties, including, but not limited to, MDOT, MDEQ, various City Departments, University of Michigan, Police, Fire, Amtrak and all other Emergency Response Agencies, private utility companies, and the public in general.
5. Schedule and chair construction progress meetings to be held on a weekly basis, or as required to ensure the project's timely completion. This is to include a pre-construction meeting in which all affected parties to the construction will be contacted and invited to attend. Prepare and distribute meeting minutes for all progress and coordination meetings.
6. The selected consultant shall be required to be a party to a formal Construction Phase Agreement with Amtrak, which a draft can be found in Attachment A. The selected consultant shall submit a Permit to Enter to Amtrak, which can be found in Exhibit D on page 44 of Attachment A. In addition, the selected consultant shall submit Consultant Indemnification Form, which can be found in Exhibit E on page 55 of Attachment A.

The Consultant shall perform all needed project tasks in conformance with the requirements of the City of Ann Arbor, the Federal Highway Administration, the Michigan Department of Transportation and the National Railroad Passenger Corporation (Amtrak).

In general, the following items will need to be addressed by the consulting firm, in accordance with Section III of this request and the project schedule below.

1. **Project Management and Resident Engineering:** This task includes all functions and activities necessary to manage and coordinate the project in a capacity as **the City's agent**.

The functions and activities of this task include those typically associated with a reconstruction project of this nature, including, but not limited to:

- a. Establish and maintain lines of communication between all involved parties;

- b. Meet with the City's Project Manager to review all aspects of the project;
- c. Review all project documents (plans and proposal) and the applicable City and MDOT standard specifications to insure a full and complete understanding of the scope of work, staging, and schedule;
- d. Prior to bidding, review the project plans and proposal to identify potential design/detailing issues and make written recommendations to the City relative to these issues;
- e. Provide oversight and coordination of the Consultant's "project oversight team" including inspection, survey, material testing, asphalt plant sampling, public relations, and any other personnel whether described herein or not;
- f. Plan and facilitate regular "oversight team" meetings;
- g. Respond to inquiries and/or requests for information;
- h. Resolve issues that arise during construction of the project with the various City Departments, Amtrak; Ann Arbor Area Transportation Association, the University of Michigan, police agencies, fire department, emergency response agencies, utility companies, local business interests, other formal and informal community groups, and the general public;
- i. Coordinate and consult with the City's Project Manager as needed;
- j. Attend meetings as requested;
- k. Review proposals/claims and make recommendations related to contract modifications, extra work, extra compensation, and/or extensions of contract time;
- l. Maintain proper records on issues involving disputed claims for compensation;
- m. Inspect the project work for acceptance for traffic and substantial completion of work for interim and final contract completion dates;
- n. Daily oversight, management, and coordination of all surveying, inspection (on-site/off-site), testing, and project documentation activities;
- o. Plan and conduct the pre-construction meeting, the weekly progress/planning meetings, and others as necessary (prepare and distribute written minutes);
- p. Review and approve the Contractor's Material Source Lists (MSLs);
- q. Review and accept the Contractor's Critical Path Network, review the Contractor's overall performance and progress and make recommendations, as necessary, regarding the Contractor's conformance with the project's Progress Clause;
- r. Review and approve the bi-weekly construction estimate;
- s. Properly measure, calculate, and document all material quantities;
- t. Document the project consistent with Federal-aid, MDOT, and City requirements;
- u. Review and approve shop drawings;
- v. Maintain records related to shop drawing submittal and approval;
- w. Review and approve contractor submittals for proposed construction methods;
- x. Maintain records related to contractor construction methods submittal and approval;
- y. Verify that the contractor uses equipment and methods approved in or specified by the contract;

- z. Daily oversight of the contractor's activities to verify that the project is being constructed in conformance with the project plans, specifications, and schedule;
 - aa. Verify that the contractor complies with all contract requirements related to the protection of utilities, property, and the environment, safety and health, the EEO, DBE, and OJT provisions;
 - bb. Verify that the contractor complies with all permit requirements as they pertain to MDOT, MDEQ, City of Ann Arbor, etc.;
 - cc. Resolve daily contractor disputes and prepare work orders as necessary.
2. **Office Engineering:** The office engineering and contract administration tasks include those typically associated with a reconstruction project of this nature, including:
- a. Establish, maintain, and utilize a project documentation filing system using standard MDOT "File Manual" format with in ProjectWise;
 - b. Initialize and update material source files associated with FieldManager/FieldBook;
 - c. Import, review, and post Inspector's Daily Reports (IDR) and any associated calculation/drawings;
 - d. Track materials (certification/testing) and material quantities;
 - e. Generate and process the bi-weekly construction estimate;
 - f. Track agency participation and dollar amounts relative to standard, non-standard, and pro-rated pay item participation;
 - g. Create all needed project performance, monitoring, and milestone reporting and monitoring records for submittal to the City, FHWA, Amtrak and MDOT;
 - h. Monitor certified payrolls in relation to IDRs and other project records;
 - i. Process and maintain records for contract modifications and/or work orders;
 - j. Generate and process the BiWeekly Construction Progress Report;
 - k. Monitor project progress vs. the planned critical path method schedule;
 - l. Track and maintain status of miscellaneous submittals and Requests for Information; and
 - m. Balance final quantities of pay items as the project progresses.
3. **Public / Media Relations:** The public and media relations tasks include:
- a. Regular communications with various City Areas and/or Units relative to maintenance of traffic and current or planned work activities;
 - b. Daily communication with Amtrak personnel relative to work within or adjacent to the railroad right-of-way;
 - c. Daily communication with emergency response agencies relative to existing, planned, or changing maintenance of traffic situations;
 - d. Plan and facilitate a maximum of 3 community workshops to communicate project accomplishments/milestones;
 - e. Develop a maximum of 5 project "newsletters" for City distribution;
 - f. Develop press releases for distribution to local media;
 - g. Develop and distribute "local flyers" to communicate issues of "local" importance/impact (i.e. night work);
 - h. Develop, update, and maintain a project specific website; accumulate a project photo gallery and post photos to website as desired and needed.

4. **Project Surveying & "As-Built" Plans:** These tasks will include all survey layout and staking activities necessary for the Contractor's use in constructing the project as detailed on the plans and in the specifications, and all activities associated with developing "as-built" plans.

The specific project surveying tasks include:

- a. Check and verify horizontal and vertical control;
- b. Establish permanent witnessed monuments to serve as primary project control;
- c. Monument proposed right-of-way as required;
- d. Layout all required detour route signing and sign locations;
- e. Stake all earthwork items at maximum intervals of 50 feet;
- f. Stake pedestrian path at maximum intervals of 50 feet, and at all PVI's, PC's, PT's;
- g. Layout retaining wall limits and elevations;
- h. Stake layout of pedestrian bridge foundations;
- i. Locate and stake the locations of existing and proposed wingwalls and dead anchors.
- j. Stake centerline of all proposed culverts at maximum intervals of 50 feet;
- k. Stake centerline of all storm sewer at maximum intervals of 50 feet;
- l. Stake drainage structure centerlines with dual offset stakes;
- m. Stake other miscellaneous structure locations and grades;
- n. Establish and stake out curb and gutter locations and grades at 25 foot intervals, or closer, in order to properly establish all needed points along the roadway(s);
- o. Stake/layout demolition and/or removal limits of all work that is to remain in place;
- p. Stake any required fence relocations, protective fence installation limits, clearing limits, erosion control device locations, driveway approaches, sidewalks, bike paths, sidewalk ramps, and miscellaneous sign locations;
- q. Verify formwork of cast-in-place retaining walls and/or construction of retaining walls for verticality and horizontal alignment;
- r. Develop, check, and distribute cut sheets for all culvert, storm sewer, and curb and gutter; and, maintain field notes in bound books and daily logs.

The specific tasks associated with the development of the "as-built" plans include:

- a. Obtain "original" (electronic format) contract plans from the City;
- b. Document all plan changes, extra work, "revisions to" notes, etc. as project work progresses;
- c. Collect and confirm all field changes;
- d. Develop the appropriate "as-constructed" notes;
- e. Develop/draft the "as-built" drawings;
- f. Review and approve the "as-built" plans.

The "as-built" plans will conform to the City's Standard Specifications and the Public Services Department's AutoCAD drafting standards and will be provided to

the City on CD or other approved media.

All construction staking will be performed in accordance with the current edition of the City of Ann Arbor Public Services Department Standard Specifications and as approved by the City. **The Consultant will provide the necessary resources to stake out the project features more than one time due to the length of the project, weather conditions, obliterating of the staking by the contractor, and other related factors.**

5. **On-Site Inspection:** Activities associated with this task will be dedicated to verifying that all materials provided and work performed is in conformance with the project plans and specifications, and they include:
 - a. Providing inspection personnel that possess the necessary, current, accreditations consistent with Federal-aid oversight procedures;
 - b. Thorough review of the plans and specifications and other project related documents prior to construction start up;
 - c. Daily communication with Amtrak personnel and contractor supervision to coordinate inspection activities and to properly inspect, test, measure, and document the work;
 - d. Daily communication with the Amtrak personnel and contractor, advising of needed corrections to the work, i.e. traffic control or soil erosion device maintenance, etc.;
 - e. Daily communication with the survey crew(s) to obtain proper interpretation of stakes and coordinate daily staking needs;
 - f. Daily communication with testing personnel to properly sample and test the materials and work;
 - g. Attend the weekly progress/planning meeting;
 - h. Inspect materials to be used in the work, verifying they meet the project specifications;
 - i. Document material usage and quantities on the IDR using FieldBook;
 - j. Review/inspect the Contractor's equipment to confirm it meets the project specifications, and document the specific type and amount of equipment used on the IDR;
 - k. Inspect the contractor's workmanship to verify that it meets the methods, tolerances, time requirements, temperature requirements etc., of the specifications, and document this on the IDR;
 - l. Inspect and document that the work is performed and completed to the lines, grades, and elevations required by the project plans and specifications;
 - m. Document the contractor workforce and weather conditions on the IDR;
 - n. Document daily contractor activities, including any description and explanation of downtime, damage to the work, any actions taken by others including utilities, City forces, adjacent property owners, etc. on the IDR;
 - o. Where possible final measure work as it's done by the contractor, calculate quantities and document this on the IDR or in field books as appropriate;

- p. Conduct daily review/inspection of temporary traffic control devices and the maintenance of traffic throughout the construction influence area;
- q. Conduct periodic nighttime review/inspection of temporary traffic control devices and the maintenance of traffic throughout the construction influence area;
- r. Provide certified storm water operators and conduct daily inspection of all soil erosion and sedimentation control devices for proper maintenance and effectiveness as placed;
- s. Perform and document NPDES inspections at the required frequencies;
- t. Suspend any work and/or reject any materials not conforming to the contract requirements;
- u. Perform and document wage rate interviews;
- v. Document changes, extra work, "revisions to" notes etc. on the plans to assist in the preparation of "as built" plans;
- w. Develop and maintain the project "punch list";
- x. Keep all needed force account documentation, as required.

The Consultant shall furnish its inspectors with equipment and materials as necessary to properly perform their work. This will include, but is not limited to; laptop computers equipped with FieldBook, cell phones with texting and internet capabilities, proposal, plans, MDOT Standard Specifications for Construction, City of Ann Arbor standard plans and specifications, MDOT standard plans, a Nikon AP-5 Auto Level with tri-pod legs or equivalent, eye level, right angle prism, plumb bob with gammon reel, 25 foot grade pole, 6 foot level, 1 torpedo level, 1-100 foot cloth tape, 1-25 foot steel tape, measuring wheel, pick axe, road point shovel, 8# sledge hammer, paint, first-aid kit, and any other hand tools needed to inspect the work.

Once assigned to the project, inspection personnel will not be removed from, or added to, the project without the written authorization of the City's Project Manager.

6. **Materials Testing & Fabrication Inspection:** National Highway System Federal-aid oversight procedures will be in place for this project. Consequently, all testing will be performed in conformance with current FHWA, MDOT, and City standards, methods, and requirements. The work of this project is on an expedited schedule and as such the material testing consultant shall be expected to perform all required testing such that the project schedule is not negatively impacted by the material testing operations. This shall be deemed to include any and all required costs associated with expedited testing to obtain test results to meet the project requirements. In addition to the aforementioned requirement, asphalt testing results and the required written reports shall be returned to the Resident Engineer and the City no later than 4 business days of the original paving. For the purposes of this project, Saturday's are considered business days.

The testing and inspection activities associated with these tasks include: proctor and sieve analyses; in place density control; concrete testing including,

compressive and flexural strength tests (cylinders and beams), air, temperature and slump tests; bituminous materials testing including, in-place density, extractions, crush count verification, asphaltic cement content; volumetric testing including, air voids, voids in mineral aggregate, voids filled with asphalt, theoretical maximum density, fines to binder ratio, and performance grade binder verification.

7. **Technical Support:** The technical support activities associated with this task include: review and approve shop drawing submittals; review existing contract documents and make recommendations relative to specification and/or design changes or modifications prior to bidding; provide design engineering, specification and design drawing development when approved changes or modifications are not considered "Construction Design Services"; review and make recommendations relative to methods of construction submittals by the contractor; provide technical support in resolving disputes and issues that arise during construction and documentation of the project.
8. **Project Close-Out:** The project close-out tasks include: Resolve all outstanding disputes and issues relative to extra or additional work, pay item quantities, and materials documentation; preparation for, and attendance at, any and all construction claim meeting(s) at any level of the MDOT dispute resolution process; preparation of any necessary claim packages on behalf of the City; review, analysis of, and recommendations regarding, Contractor-generated claim materials; prepare, review, and balance all final pay item quantities; prepare all final contract modifications; provide complete project documentation and files, specifically as they relate to correspondence, meeting minutes, submittals, contract modifications, work orders, material certifications, test reports, certified payrolls, and interim progress estimates; prepare the contractor's evaluation report; facilitate the MDOT Project Record Review; generate and process the final estimate package; coordinate submittal of project files and "as-built" plans to the City.

The Consultant will obtain MDOT approval of all required files, material certifications, certified payrolls, pay estimates, and the like. The project files will be purged of all duplicate and extraneous materials and organized in a neat and professional manner. An index detailing the location of project materials will be provided.

9. **Construction Design Services:** Design services in the disciplines of road and utility engineering will be provided on an "as needed" basis to incorporate City approved changes or modifications to the original project plans and specifications that require professional design effort and result in the development of new plan drawings, details, or specifications. The hours shown in the Consultant's Proposed Person-hour Schedule for the Allen Creek Railroad Berm Opening Project are an estimate and shall be used to establish a budget for these services. The Consultant will be reimbursed the actual cost for all approved construction design services. The need for any construction design services shall be approved and agreed to by

both the City and the Consultant before the work proceeds. All design work will conform to current AASHTO, FHWA, MDOT, Amtrak and City practices, guidelines, policies, and standards. The specific tasks associated with construction design services include: prepare the required plans, cross-sections, and specifications; identify pay items and associated quantities; compute cost estimate; provide internal peer review; facilitate City approval of the design; and, incorporate design into "as-built" plans.

Consultant's Proposal

In keeping with the objective, the description, the requirements, and the consultant's tasks as previously indicated in this Request for Proposal, the consultants submitting proposals shall outline in detail the manner in which the consultant shall work with the City to fulfill the City's needs.

The outline at a minimum shall address:

- A. Staffing and personnel.
- B. Communication and coordination.
- C. Compatibility with city's standards, goals, and objectives.
- D. Working relationship between consultant and City staff.
- E. Information which will assist the City to determine the consultant's capability of performing the work.

SECTION III - MINIMUM INFORMATION REQUIRED

PROPOSAL FORMAT

Offerors should organize Proposals into the following Sections:

- A. Professional Qualifications
- B. Past Involvement with Similar Projects
- C. Proposed Work Plan
- D. Fee Proposal (include in a separate sealed envelope clearly marked "Fee Proposal")
- E. Authorized Negotiator
- F. Attachments

The following describes the elements that should be included in each of the proposal sections and the weighted point system that will be used for evaluation of the proposals.

A. Professional Qualifications – 15 points

1. State the full name and address of your organization and, if applicable, the branch office or other subsidiary element that will perform, or assist in performing, the work hereunder. Indicate whether it operates as an individual, partnership, or corporation. If as a corporation, include whether it is licensed to operate in the State of Michigan.
2. Include the name of executive and professional personnel by skill and qualification that will be employed in the work. Show where these personnel will be physically located during the time they are engaged in the work. Indicate which of these individuals you consider key to the successful completion of the project. Identify only individuals who will do the work on this project by name and title. Resumes and qualifications are required for all proposed project personnel, including all subcontractors. Qualifications and capabilities of any subcontractors must also be included.
3. State history of the firm, in terms of length of existence, types of services provided, etc. Identify the technical details that make the firm uniquely qualified for this work.

B. Past involvement with Similar Projects – 30 points

The written proposal must include a list of specific experience in the project area and indicate proven ability in implementing similar projects for the firm **and** the individuals to be involved in the project. A complete list of client references must be provided for similar projects recently completed.

The list shall include the firm/agency name, address, telephone number, project title, and contact person.

C. Proposed Work Plan – 45 points

Provide a detailed and comprehensive description of how the offeror intends to provide the services requested in this RFP. This description shall include, but not be limited to: how the project(s) will be managed and scheduled, how and when data and materials will be delivered to the City, communication and coordination, the working relationship between the offeror and City staff, and the company's general philosophy in regards to providing the requested services.

A detailed work plan shall list all tasks determined to be necessary to accomplish the work of this project. The work plan shall define resources needed for each task (title and individual person hours) and the firm's staff person completing the project task. In addition, the work plan shall include a timeline schedule depicting the sequence and duration of tasks showing how the work will be organized and executed.

1. The work plan shall be sufficiently detailed and clear to identify the progress milestones (i.e., when project elements, measures, and deliverables are to be completed) and the extent and timing of the City personnel involvement. Additional project elements suggested by the Proposer are to be included in the work plan and identified as Proposer suggested elements.
2. The work plan must identify information the Proposer will need from City staff in order to complete the project. Include estimated time and resource commitment from City staff.
3. The work plan shall include any other information that the Proposer believes to be pertinent but not specifically asked for elsewhere.
4. Also include in the work plan proposed steps, if any, to expedite completion of the project. This will be given due consideration during evaluation of proposals.

Offerors shall be evaluated on the clarity, thoroughness, and content of their responses to the above items.

D. Fee Proposal - 10 points

Fee quotations shall be submitted in a separate sealed envelope as part of the proposal. Fee quotations are to include the names, title, hourly rates, overhead factors, and any other details, including hours of effort for each team member by task, by which the overall and project element costs have been derived. The fee quotation is to relate in detail to each item of the proposed work plan.

Consultants shall be capable of justifying the details of the fee proposal relative to personnel costs, overhead, how the overhead rate is derived, material and time.

The fee proposed must include the total estimated cost for the project when it is 100% complete. This total may be adjusted after negotiations with the City and prior to signing a formal contract, if justified.

E. Authorized Negotiator

Include the name, phone number, and e-mail address of persons(s) in your organization authorized to negotiate the agreement with the City

F. Attachments

Legal Status of Offeror, Conflict of Interest Form, Living Wage Compliance Form, and the Non-Discrimination Form must be completed and returned with the proposal. These elements should be included as attachments to the proposal submission.

PROPOSAL EVALUATION

1. The selection committee will evaluate each proposal by the above-described criteria and point system (A through C) to select a short-list of firms for further consideration. The City reserves the right to reject any proposal that it determines to be unresponsive and deficient in any of the information requested for evaluation. A proposal with all the requested information does not guarantee the proposing firm to be a candidate for an interview. The committee may contact references to verify material submitted by the offerors.
2. The committee then will schedule interviews with the selected firms if necessary. The selected firms will be given the opportunity to discuss in more detail their qualifications, past experience, proposed work plan and fee proposal.
3. The interview must include the project team members expected to complete a majority of work on the project, but no more than six members total. The interview shall consist of a presentation of up to thirty minutes (or the length provided by the committee) by the offeror, including the person who will be the project manager on this contract, followed by approximately thirty minutes of questions and answers. Audiovisual aids may be used during the oral interviews. The committee may record the oral interviews.
4. The firms interviewed will then be re-evaluated by the above criteria (A through D), and adjustments to scoring will be made as appropriate. After evaluation of the proposals, further negotiation with the selected firm may be pursued leading to the award of a contract by City Council, if suitable proposals are received.

The City reserves the right to waive the interview process and evaluate the offerors based on their proposals and fee schedules alone and open fee schedules before or prior to interviews.

The City will determine whether the final scope of the project to be negotiated will be entirely as described in this RFP, a portion of the scope, or a revised scope.

Work to be done under this contract is generally described through the detailed specifications and must be completed fully in accordance with the contract documents.

Any proposal that does not conform fully to these instructions may be rejected.

PREPARATION OF PROPOSALS

Proposals should have no plastic bindings but will not be rejected as non-responsive for being bound. Staples or binder clips are acceptable. Proposals should be printed double sided on recycled paper. Proposals should not be more than 50 sheets (100 sides), not including required attachments and resumes.

Each person signing the proposal certifies that they are a person in the offeror's firm/organization responsible for the decisions regarding the fees being offered in the Proposal and has not and will not participate in any action contrary to the terms of this provision.

ADDENDA

If it becomes necessary to revise any part of the RFP, notice of the addendum will be posted to Michigan Inter-governmental Trade Network (MITN) www.mitn.info and/or the City of Ann Arbor web site www.A2gov.org for all parties to download.

Each offeror must acknowledge in its proposal all addenda it has received. The failure of an offeror to receive or acknowledge receipt of any addenda shall not relieve the offeror of the responsibility for complying with the terms thereof. The City will not be bound by oral responses to inquiries or written responses other than official written addenda.

SECTION IV - ATTACHMENTS

Attachment A – Draft Construction Phase Agreement between the National Railroad Passenger Corporation (Amtrak) and the City of Ann Arbor

Attachment B - Legal Status of Offeror

Attachment C – Non-Discrimination Ordinance Declaration of Compliance Form

Attachment D – Living Wage Declaration of Compliance Form

Attachment E – Vendor Conflict of Interest Disclosure Form

Attachment F – Non-Discrimination Ordinance Poster

Attachment G – Living Wage Ordinance Poster

ATTACHMENT A
DRAFT CONSTRUCTION PHASE AGREEMENT BETWEEN THE NATIONAL RAILROAD
PASSENGER CORPORATION (AMTRAK) AND THE CITY OF ANN ARBOR

**DRAFT 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 _____, 2018 (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 _____ Dollars (\$ [insert cost estimate]) 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 any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and 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 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. 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
30th 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)

[TO BE PROVIDED BY CITY]

Exhibit B
(Construction Phase Cost Estimate)

[TO BE PROVIDED BY AMTRAK PRIOR TO EXECUTION]

Exhibit C
(Overhead Schedule)

NATIONAL RAILROAD PASSENGER CORPORATION
OVERHEAD ADDITIVES FOR USE WITH THE CITY OF ANN ARBOR, WASHTENAW CITY, M
CONSTRUCTION PHASE AGREEMENT
FOR THE CONSTRUCTION OF A STORMWATER CULVERT AND PEDESTRIAN TUNNEL UNDER THE MDOT OWNED MICHIGAN LINE BETWEEN MP 37.30 AND 37.6
(Allen Creek Railroad Berm Opening Project)
EFFECTIVE JANUARY 1, 2018

EXHIBIT C

| LOCATION | SYSTEM OVERHEAD | DIVISION OVERHEAD | VACATION & HOLIDAY | FAI | Avg FY2018 | | G&A | S/T LABOR COMPOSITE | O/T LABOR COMPOSITE | MATERIAL HANDLING ADDITIVE | MATERIAL HANDLING COMPOSITE |
|-------------------------|--------------------|----------------------|-----------------------|--------|---------------------------|---------------------------|-------|---------------------------|---------------------------|----------------------------------|-----------------------------------|
| | | | | | S/T FRINGE BENEFITS | O/T FRINGE BENEFITS | | | | | |
| CENTRAL DIVISION | | | | | | | | | | | |
| NON-EXEMPT LABOR | 30.09% | 49.52% | 16.84% | 16.00% | 54.16% | 20.95% | 5.95% | 182.48% | 147.28% | 8.66% | 15.13% |
| EXEMPT LABOR | 20.77% | 10.94% | 12.38% | n/a | 12.86% | | 5.95% | 66.28% | n/a | 8.66% | 15.13% |

Exhibit D
(Permit to Enter Template)

EXHIBIT D

NATIONAL RAILROAD PASSENGER CORPORATION
TEMPORARY PERMIT TO ENTER UPON STATE OF
MICHIGAN PROPERTY C.E.-17 (REVISED 10/01/17)

Date:
File: E-47-
Internal Order:
WBS Element:

ATTN:

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

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

(hereinafter called "Property").

3. INDEMNIFICATION. Permittee shall defend, indemnify and hold harmless the State, Railroad, their officers, directors, employees, agents, servants, successors, assigns and subsidiaries, irrespective of their negligence or fault, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses (including cost of defense and attorneys' fees), which any or all of them may hereafter incur, be responsible for, or pay as a result of injury, death, disease, or occupational disease to any person, and for damage (including environmental contamination and loss of use) to or loss of any property, including property of State and of Railroad, arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by Permittee, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Permittee. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Permittee or any contractor or subcontractor, and shall survive the termination of this Temporary Permit for any reason. As used in this paragraph, the term "Railroad" also includes all commuter agencies and other railroads with rights to operate over State property, and their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries.

4. CONSIDERATION FOR PREPARATION OF TEMPORARY PERMIT. Permittee will pay to Railroad the sum of One Thousand, Two Hundred and Fifty Dollars (\$1,250.00) as compensation for the preparation of this Temporary Permit. This fee is to be delivered to Railroad at the address set forth in paragraph 17 hereof.

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

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

EXHIBIT D

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

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

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

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

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

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

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

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

Railroad's costs, expenses and labor charges will be billed to Permittee at Railroad's standard force account rates. Except as specified in paragraphs 1 and 4 hereof, all payments due from Permittee to Railroad under this Temporary Permit shall be due and payable within thirty (30) days from the date of invoice. Permittee shall have no right to set off against any payment due under this Temporary Permit any sums which Permittee may believe are due to it from Railroad for any reason whatsoever. In the event that Permittee shall fail to pay, when due, any amount payable by it under this Temporary Permit, Permittee shall also pay to Railroad, together with such overdue payment, interest on the overdue amount at an annual rate of six (6) percentage points over and above the rate published from time to time by *The Wall Street Journal* as the prime commercial lending rate (or the highest rate allowed by law, if less than

EXHIBIT D

the foregoing), calculated from the date the payment was due until paid. All payments due from Permittee to Railroad hereunder shall be: (a) made by check drawn from currently available funds; (b) deemed made only upon receipt by Railroad of collected funds; (c) made payable to National Railroad Passenger Corporation; and (d) delivered to the National Railroad Passenger Corporation, 23615 Network Place, Chicago, IL 60673-1236. (However, the permit fee referenced in paragraph 4 hereof and the Railroad Protective Liability premium referenced in Attachment B, if applicable, shall be delivered to Railroad at the address set forth in paragraph 17 hereof.) All payment obligations of Permittee under this Temporary Permit shall survive the termination or expiration of this Temporary Permit.

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

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

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EXHIBIT D

17. ACCEPTANCE. To confirm acceptance of this Temporary Permit, one fully executed copy must be returned to: Senior Manager Engineering, National Railroad Passenger Corporation, 30th Street Station, 2955 Market Street, Mail Box 64, Philadelphia, PA 19104 (215/349-4367). The second copy may be retained for your file.

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
Deputy Chief Engineer – Construction

Date: _____

AGREED TO AND ACCEPTED:

By: _____
(signature)

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

Date: _____

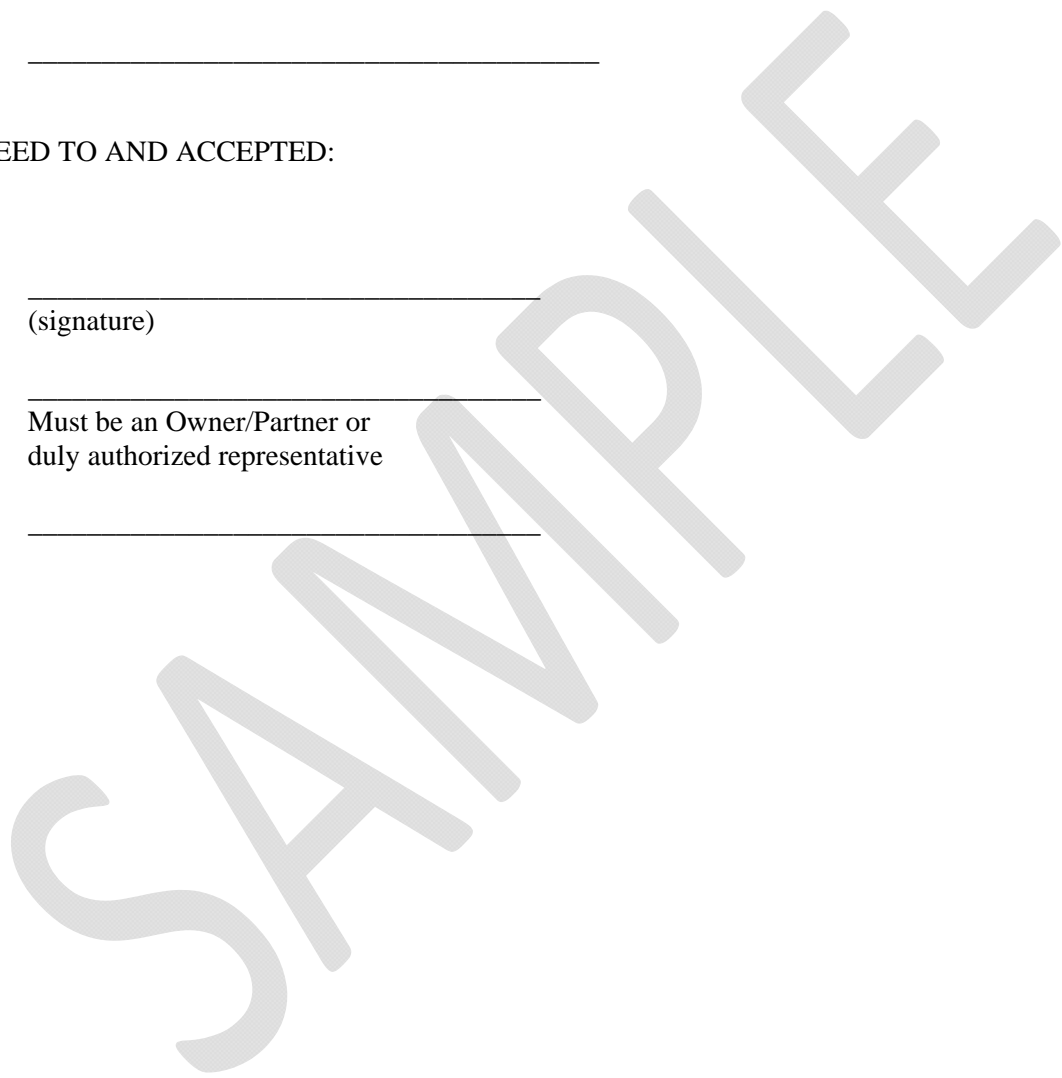


EXHIBIT D

ATTACHMENT A

Temporary Permit to Enter Upon Property

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

National Railroad Passenger Corporation (Railroad)

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

- (1) Pre-Entry Meeting: Before entry of Permittee/Contractor onto Railroad's property, a pre-entry meeting shall be held at which time Permittee/Contractor shall submit for written approval of the Chief Engineer, plans, computations, a Site Specific Safety Work Plan and site-specific work plans that include a detailed description of proposed methods for accomplishing the work and protecting railroad traffic. Any such written approval shall not relieve Permittee/Contractor of its complete responsibility for the adequacy and safety of its operations.
- (2) Rules, Regulations and Requirements: Railroad traffic shall be maintained at all times with safety and continuity, and Permittee/Contractor shall conduct its operations in compliance with all rules, regulations, and requirements of Railroad (including these Specifications) with respect to any work performed on, over, under, within or adjacent to Railroad's property. Permittee /Contractor shall be responsible for acquainting itself with such rules, regulations and requirements. Any violation of Railroad's safety rules, regulations, or requirements shall be grounds for the immediate suspension of Permittee/Contractor work, and the re-training of all personnel, at Permittee's/Contractor's expense.
- (3) Maintenance of Safe Conditions: If tracks or other property of Railroad are endangered during the work, Permittee/Contractor shall immediately take such steps as may be directed by Railroad to restore safe conditions, and upon failure of Permittee/Contractor to immediately carry out such direction, Railroad may take whatever steps are reasonably necessary to restore safe conditions. All costs and expenses of restoring safe conditions, and of repairing any damage to Railroad's trains, tracks, right-of-way or other property caused by the operations of Permittee/Contractor, shall be paid by Permittee.
- (4) Protection in General: Permittee/Contractor shall consult with the Chief Engineer to determine the type and extent of protection required to ensure safety and continuity of railroad traffic. Any Inspectors, Track Foremen, Track Watchmen, Flagmen, Signalmen, Electric Traction Linemen, or other employees deemed necessary by Railroad, at its sole discretion, for protective services shall be obtained from Railroad by Permittee/Contractor. The cost of same shall be paid directly to Railroad by Permittee/Contractor. The provision of such employees by Railroad, and any other precautionary measures taken by Railroad, shall not relieve Permittee/Contractor from its complete responsibility for the adequacy and safety of its operations.
- (5) Protection for Work Near Electrified Track or Wire: Whenever work is performed in the vicinity of electrified tracks and/or high voltage wires, particular care must be exercised, and Railroad's requirements regarding clearance to be maintained between equipment and tracks and/or energized wires, and otherwise regarding work in the vicinity of electrified tracks, must be strictly observed. No employees or equipment will be permitted to work near overhead wires, except when protected by a Class A employee of Railroad. Permittee/Contractor must supply an adequate length of grounding cable (4/0

EXHIBIT D

copper with approved clamps) for each piece of equipment working near or adjacent to any overhead wire.

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

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

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

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

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

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

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

EXHIBIT D

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

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

(12) Safety Training: All individuals, including representatives and employees of Permittee/Contractor, before entering onto Railroad's property and before coming within twenty-five (25) feet of the centerline of the track or energized wire must first attend Railroad's Contractor Orientation Computer Based Training Class. The Contractor Orientation Class will be provided electronically @www.amtrakcontractor.com. Upon successful completion of the course and test, the individual taking the course will receive a temporary certificate without a photo that is valid for three weeks. The individual must upload a photo of himself/herself that will be embedded in the permanent ID card. The photo ID will be mailed to the individual's home address and must be worn/displayed while on Railroad property. Training is valid for one calendar year. All costs of complying with Railroad's safety training shall be at the sole expense of Permittee/Contractor. Permittee /Contractor shall appoint a qualified person as its Safety Representative. The Safety Representative shall continuously ensure that all individuals comply with Railroad's safety requirements. All safety training records must be maintained with the Permittee's/Contractor's site specific work plan.

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

EXHIBIT D

EXHIBIT B

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

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

DEFINITIONS

In these Insurance Requirements, "Railroad" or "Amtrak" shall mean National Railroad Passenger Corporation. "Contractor" shall mean the party identified as "Permittee" in the Temporary Permit to Enter Upon Property Agreement or the party with whom Amtrak has contracted in another agreement (e.g., Preliminary Engineering Agreement, Design Phase Agreement, Construction Phase Agreement or Force Account Agreement), as well as its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of Contractor. "Operations" shall mean activities of or work performed by Contractor. "Agreement" shall mean the Temporary Permit to Enter upon Property Agreement or other such agreement, as applicable.

INSURANCE

Contractor shall procure and maintain, at its sole cost and expense, the types of insurance specified below. Contractor shall evidence such coverage by submitting to Amtrak certificates of insurance evidencing the other required insurance, prior to commencement of Operations. In addition, Contractor agrees to provide certified copies of the insurance policies for the required insurance within 30 days of Amtrak's written request. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Operations are to be performed. Contractor shall require all subcontractors to carry the insurance required herein or Contractor may, at its option, provide the coverage for any or all subcontractors, provided the evidence of insurance submitted by Contractor to Amtrak so stipulates. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Contractor personnel and equipment have been removed from Railroad property, and any work has been formally accepted. Contractor may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Contractor shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. The insurance required herein shall be primary and non-contributory to any insurance maintained by Amtrak. Contractor's failure to comply with the insurance requirements set forth herein shall constitute a violation of the Agreement.

1. **Workers' Compensation Insurance** complying with the requirements of the statutes of the jurisdiction(s) in which the Operations will be performed, covering all employees of Contractor. Employer's Liability coverage with limits of not less than \$1 million each accident or illness shall be included. A waiver of subrogation in favor of Amtrak is required.
2. **Commercial General Liability (CGL) Insurance** covering liability of Contractor with respect to all operations to be performed and all obligations assumed by Contractor under the terms of the Agreement. Products-completed operations, independent contractors and contractual liability coverages are to be included and with no exclusions for Explosion/Collapse/ Underground (X-C-U). The policy shall name Amtrak as an additional insured with respect to the Operations. In addition, the policy shall include an ISO endorsement Form CG 24 17 10 01 or its equivalent providing contractual liability coverage for railroads listed as additional insureds. Coverage for

EXHIBIT D

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

3. **Automobile Liability Insurance** covering the liability of Contractor arising out of the use of any vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated, and which are not covered under Contractor's CGL insurance. The policy shall name Amtrak as an additional insured with respect to the Operations. Coverage under this policy shall have limits of liability of not less than \$1 million each occurrence, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.
4. **All Risk Property Insurance** covering physical loss or damage to all property used in performance of the Operations on a full replacement cost basis. The policy shall have limits of liability adequate to cover all property of Contractor (including personal property of others in Contractor's care, custody or control) and shall include a waiver of subrogation against Amtrak.
5. **Railroad Protective Liability Insurance.** When Contractor is performing work within fifty feet, horizontally or vertically, of railroad tracks, Contractor shall provide railroad protective liability insurance coverage issued on the current AAR-AASHTO (ISO/RIMA) Occurrence Form (claims-made forms are unacceptable), in the name of National Railroad Passenger Corporation and any other railroad operating over the tracks. The policy shall have minimum limits of insurance of \$5,000,000 each occurrence and \$5,000,000 policy aggregate. Policy Endorsement CG 28 31 - Pollution Exclusion Amendment, is required to be endorsed onto the policy. Further, "physical damage to property" as defined in the policy is to be deleted and replaced by the following endorsement:

"It is agreed that 'physical damage to property' means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

The policy must provide coverage for obligations of the insureds under the Federal Employers Liability Act, as amended. The original Railroad Protective Liability Insurance policy must be submitted to Amtrak prior to commencement of work under the Contract. Amtrak, at its sole discretion, may elect to replace this requirement for contractor-provided Railroad Protective Liability Insurance with coverage through Amtrak, at no cost of obligation to the Contractor.
6. **Builder's Risk/Installation Floater.** When the Contractor's work involves construction or renovation of a building or structure, Contractor shall provide builder's risk coverage issued for the work to cover property in the course of construction, soft costs, and delay in completion, including coverage for damage to existing property and property of others, and the loss of use thereof. In addition, the Contractor shall provide installation floater coverage for personal property installed, fabricated or erected by the Contractor, including material in transit or storage during the course of the work. Coverage shall be on an all-risk, full replacement value basis, including labor, materials in place, on site, in storage, off-site or in transit and include coverage for perils of Flood, Earth Movement, Wind and Terrorism. National Railroad Passenger Corporation shall be named as a loss payee, with respect to its interest in the covered property.
7. **Pollution Liability Insurance.** When the Contractor's work involves soil disturbance and/or the handling of hazardous materials, Contractor shall provide contractor's pollution liability coverage issued on an occurrence basis for the liability of Contractor arising out of the pollution or

EXHIBIT D

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

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

8. **Professional Liability Insurance** covering the liability of Contractor for any and all errors or omissions committed by Contractor in the performance of the Operations, regardless of the type of damages. Coverage under this policy shall have limits of liability of not less than \$5 million each occurrence and \$5 million in the annual aggregate.

In addition the insurance policy shall provide that:

- A. The coverage shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof.
 - B. The policy shall have a retroactive date that precedes any design work on the project
9. **Waiver of Subrogation** As to all insurance policies required herein, Contractor waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak and its agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.
 10. **Punitive Damages** Unless prohibited by law, no liability insurance policies required above shall contain an exclusion for punitive or exemplary damages.
 11. **Evidence of Insurance** Contractor shall furnish evidence of insurance as specified above at least fifteen (15) days prior to commencing Operations. Prior to the cancellation, renewal, or expiration of any insurance policy specified above, Contractor shall furnish evidence of insurance replacing the cancelled or expired policies. **THESE DOCUMENTS SHALL INCLUDE A DESCRIPTION OF THE PROJECT AND THE LOCATION IN ORDER TO FACILITATE PROCESSING.** The fifteen (15) day advance notice of coverage may be waived by Amtrak in situations where such waiver will benefit Amtrak, but under no circumstances will Contractor begin Operations without providing satisfactory evidence of insurance as approved by Amtrak. Such evidence of insurance coverage shall be sent to:

Senior Manager Engineering
National Railroad Passenger Corporation
30th Street Station, Mail Box 64
Philadelphia, PA 19104-2817

Exhibit E
(Consultant Indemnification Form Template)

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

EXHIBIT E

CERTIFICATE BY _____ [insert name of consultant] TO NATIONAL RAILROAD PASSENGER CORPORATION

This Certificate (“Certificate”) effective this ____ day of _____, 20__, is made by _____ [insert name of entity], a _____ [insert type of entity (e.g., corporation/partnership/limited liability company) and state of incorporation or formation – for example, a Delaware limited liability company] with its principal offices located at _____ [insert location] (“Consultant”) to National Railroad Passenger Corporation, a District of Columbia corporation with its principal offices located at 1 Massachusetts Avenue, N.W., Washington, DC, 20001 (“Amtrak”).

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

WHEREAS, City proposes to undertake the construction of a stormwater culvert and separate pedestrian tunnel (to be referred to as the Allen Creek Railroad Berm Opening Project) below the Michigan Line tracks in Ann Arbor, Michigan, at railroad milepost 37.50± (the “Project”); and

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

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

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

WHEREAS, construction of the Project will require City and its contractors to enter onto, over, under or adjacent to the Michigan Line, will require various assistance from Amtrak and may require alterations to MDOT facilities; and

WHEREAS, City has retained the services of Consultant to provide engineering and/or design services in support of the Project; and

WHEREAS, due to the location of the Project relative to Amtrak property and the potential impact of the Project on Amtrak’s property and/or operations, the Project work may not proceed without Amtrak’s prior review and approval of the plans, drawings and specifications; and

WHEREAS, in order to advance the Project, Consultant desires Amtrak’s review and approval of its plans, drawings, and specifications; and

WHEREAS, Consultant agrees that protection of Amtrak’s property and operations is a paramount public safety concern.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the covenants and agreements contained herein, intending to be legally bound, Consultant hereby represents, acknowledges, and agrees as follows:

1. Recitals. The recitals set forth above in the WHEREAS clauses are incorporated into the terms of this Certificate as if fully set forth herein.

2. Consideration for Execution of this Certificate. In consideration, *inter alia*, for Amtrak reviewing the plans, drawings, and specifications which are needed for Consultant to perform its obligations under Consultant's agreement with City, Consultant hereby executes this Certificate.

3. Indemnification. Consultant hereby releases and agrees to defend, indemnify and hold harmless Amtrak and any other affected railroad, as well as their respective officers, directors, employees, agents, successors, assigns, and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses, liabilities, claims, demands, fines, suits, and costs (including cost of defense and attorneys' fees) which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of negligent errors or omissions in Consultant's work and/or in the work of its officers, directors, employees, agents, subconsultants, successors, assigns, subsidiaries, and any other persons acting for or by permission of Consultant relating to the design and/or engineering services Consultant is providing for [Developer/City/State] in support of the Project. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Consultant or its subconsultants or agents, and shall survive the termination of the agreement between Amtrak and City.

4. Insurance. Consultant agrees to procure and maintain in effect professional liability insurance covering the liability of Consultant for all negligent errors or omissions committed by Consultant, its officers, directors, employees, agents, subconsultants, successors, assigns, and subsidiaries, and any other persons acting for or by permission of Consultant in the performance of any design and/or engineering services in support of the Project. The insurance shall be maintained during the term of Consultant's agreement with City and for at least three years following completion of all services to be performed by Consultant in support of the Project. The insurance shall have limits of liability of not less than five million dollars (\$5,000,000) per claim and five million dollars (\$5,000,000) in the annual aggregate.

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

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

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

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

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

Consultant

By: _____

Name: _____

Title: _____

Date: _____

**ATTACHMENT B
LEGAL STATUS OF OFFEROR**

(The Respondent shall fill out the provision and strike out the remaining ones.)

The Respondent is:

- A corporation organized and doing business under the laws of the state of _____, for whom _____ bearing the office title of _____, whose signature is affixed to this proposal, is authorized to execute contracts on behalf of respondent.*

*If not incorporated in Michigan, please attach the corporation's Certificate of Authority

- A limited liability company doing business under the laws of the State of _____, whom _____ bearing the title of _____ whose signature is affixed to this proposal, is authorized to execute contract on behalf of the LLC.
- A partnership organized under the laws of the State of _____ and filed with the County of _____, whose members are (attach list including street and mailing address for each.)
- An individual, whose signature with address, is affixed to this RFP.

Respondent has examined the basic requirements of this RFP and its scope of services, including all Addendum (if applicable) and hereby agrees to offer the services as specified in the RFP.

_____, Date: _____,
Signature

(Print) Name _____ Title _____

Firm: _____

Address: _____

Contact Phone _____ Fax _____

Email _____

**ATTACHMENT C
CITY OF ANN ARBOR DECLARATION OF COMPLIANCE**

Non-Discrimination Ordinance

The “non discrimination by city contractors” provision of the City of Ann Arbor Non-Discrimination Ordinance (Ann Arbor City Code Chapter 112, Section 9:158) requires all contractors proposing to do business with the City to treat employees in a manner which provides equal employment opportunity and does not discriminate against any of their employees, any City employee working with them, or any applicant for employment on the basis of actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight. It also requires that the contractors include a similar provision in all subcontracts that they execute for City work or programs.

In addition the City Non-Discrimination Ordinance requires that all contractors proposing to do business with the City of Ann Arbor must satisfy the contract compliance administrative policy adopted by the City Administrator. A copy of that policy may be obtained from the Purchasing Manager

The Contractor agrees:

- (a) To comply with the terms of the City of Ann Arbor’s Non-Discrimination Ordinance and contract compliance administrative policy.
- (b) To post the City of Ann Arbor’s Non-Discrimination Ordinance Notice in every work place or other location in which employees or other persons are contracted to provide services under a contract with the City.
- (c) To provide documentation within the specified time frame in connection with any workforce verification, compliance review or complaint investigation.
- (d) To permit access to employees and work sites to City representatives for the purposes of monitoring compliance, or investigating complaints of non-compliance.

The undersigned states that he/she has the requisite authority to act on behalf of his/her employer in these matters and has offered to provide the services in accordance with the terms of the Ann Arbor Non-Discrimination Ordinance. The undersigned certifies that he/she has read and is familiar with the terms of the Non-Discrimination Ordinance, obligates the Contractor to those terms and acknowledges that if his/her employer is found to be in violation of Ordinance it may be subject to civil penalties and termination of the awarded contract.

Company Name

Signature of Authorized Representative

Date

Print Name and Title

Address, City, State, Zip

Phone/Email address

Questions about the Notice or the City Administrative Policy, Please contact:
Procurement Office of the City of Ann Arbor
(734) 794-6500

Revised 3/31/15 Rev. 0

NDO-2

**ATTACHMENT D
CITY OF ANN ARBOR
LIVING WAGE ORDINANCE DECLARATION OF COMPLIANCE**

The Ann Arbor Living Wage Ordinance (Section 1:811-1:821 of Chapter 23 of Title I of the Code) requires that an employer who is (a) a contractor providing services to or for the City for a value greater than \$10,000 for any twelve-month contract term, or (b) a recipient of federal, state, or local grant funding administered by the City for a value greater than \$10,000, or (c) a recipient of financial assistance awarded by the City for a value greater than \$10,000, shall pay its employees a prescribed minimum level of compensation (i.e., Living Wage) for the time those employees perform work on the contract or in connection with the grant or financial assistance. The Living Wage must be paid to these employees for the length of the contract/program.

Companies employing fewer than 5 persons and non-profits employing fewer than 10 persons are exempt from compliance with the Living Wage Ordinance. If this exemption applies to your company/non-profit agency please check here No. of employees__

The Contractor or Grantee agrees:

- (a) To pay each of its employees whose wage level is not required to comply with federal, state or local prevailing wage law, for work covered or funded by a contract with or grant from the City, no less than the Living Wage. The current Living Wage is defined as \$13.22/hour for those employers that provide employee health care (as defined in the Ordinance at Section 1:815 Sec. 1 (a)), or no less than \$14.75/hour for those employers that do not provide health care. The Contractor or Grantor understands that the Living Wage is adjusted and established annually on April 30 in accordance with the Ordinance and covered employers shall be required to pay the adjusted amount thereafter to be in compliance with Section 1:815(3).

Check the applicable box below which applies to your workforce

Employees who are assigned to any covered City contract/grant will be paid at or above the applicable living wage without health benefits

Employees who are assigned to any covered City contract/grant will be paid at or above the applicable living wage with health benefits

- (b) To post a notice approved by the City regarding the applicability of the Living Wage Ordinance in every work place or other location in which employees or other persons contracting for employment are working.
- (c) To provide to the City payroll records or other documentation within ten (10) business days from the receipt of a request by the City.
- (d) To permit access to work sites to City representatives for the purposes of monitoring compliance, and investigating complaints or non-compliance.
- (e) To take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee covered by the Living Wage Ordinance or any person contracted for employment and covered by the Living Wage Ordinance in order to pay the living wage required by the Living Wage Ordinance.

The undersigned states that he/she has the requisite authority to act on behalf of his/her employer in these matters and has offered to provide the services or agrees to accept financial assistance in accordance with the terms of the Living Wage Ordinance. The undersigned certifies that he/she has read and is familiar with the terms of the Living Wage Ordinance, obligates the Employer/Grantee to those terms and acknowledges that if his/her employer is found to be in violation of Ordinance it may be subject to civil penalties and termination of the awarded contract or grant of financial assistance.

Company Name

Street Address

Signature of Authorized Representative

Date

City, State, Zip

Print Name and Title

Phone/Email address



ATTACHMENT E

| |
|--|
| VENDOR CONFLICT OF INTEREST DISCLOSURE FORM |
|--|

All vendors interested in conducting business with the City of Ann Arbor must complete and return the Vendor Conflict of Interest Disclosure Form in order to be eligible to be awarded a contract. Please note that all vendors are subject to comply with the City of Ann Arbor's conflict of interest policies as stated within the certification section below.

If a vendor has a relationship with a City of Ann Arbor official or employee, an immediate family member of a City of Ann Arbor official or employee, the vendor shall disclose the information required below.

1. No City official or employee or City employee's immediate family member has an ownership interest in vendor's company or is deriving personal financial gain from this contract.
2. No retired or separated City official or employee who has been retired or separated from the City for less than one (1) year has an ownership interest in vendor's Company.
3. No City employee is contemporaneously employed or prospectively to be employed with the vendor.
4. Vendor hereby declares it has not and will not provide gifts or hospitality of any dollar value or any other gratuities to any City employee or elected official to obtain or maintain a contract.
5. Please note any exceptions below:

| Conflict of Interest Disclosure* | |
|---|---|
| Name of City of Ann Arbor employees, elected officials or immediate family members with whom there may be a potential conflict of interest. | <input type="checkbox"/> Relationship to employee <hr style="border: 0; border-top: 1px solid black;"/> <input type="checkbox"/> Interest in vendor's company <input type="checkbox"/> Other (please describe in box below) |
| | |

*Disclosing a potential conflict of interest does not disqualify vendors. In the event vendors do not disclose potential conflicts of interest and they are detected by the City, vendor will be exempt from doing business with the City.

| I certify that this Conflict of Interest Disclosure has been examined by me and that its contents are true and correct to my knowledge and belief and I have the authority to so certify on behalf of the Vendor by my signature below: | | |
|--|----------------------------|---|
| | | |
| Vendor Name | Vendor Phone Number | |
| | | |
| Signature of Vendor Authorized Representative | Date | Printed Name of Vendor Authorized Representative |

**ATTACHMENT F
CITY OF ANN ARBOR NON-DISCRIMINATION ORDINANCE**

Relevant provisions of Chapter 112, Nondiscrimination, of the Ann Arbor City Code are included below.
You can review the entire ordinance at www.a2gov.org/humanrights.

Intent: It is the intent of the city that no individual be denied equal protection of the laws; nor shall any individual be denied the enjoyment of his or her civil or political rights or be discriminated against because of actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight.

Discriminatory Employment Practices: No person shall discriminate in the hire, employment, compensation, work classifications, conditions or terms, promotion or demotion, or termination of employment of any individual. No person shall discriminate in limiting membership, conditions of membership or termination of membership in any labor union or apprenticeship program.

Discriminatory Effects: No person shall adopt, enforce or employ any policy or requirement which has the effect of creating unequal opportunities according to actual or perceived age, arrest record, color, disability, educational association, familial status, family responsibilities, gender expression, gender identity, genetic information, height, HIV status, marital status, national origin, political beliefs, race, religion, sex, sexual orientation, source of income, veteran status, victim of domestic violence or stalking, or weight for an individual to obtain housing, employment or public accommodation, except for a bona fide business necessity. Such a necessity does not arise due to a mere inconvenience or because of suspected objection to such a person by neighbors, customers or other persons.

Nondiscrimination by City Contractors: All contractors proposing to do business with the City of Ann Arbor shall satisfy the contract compliance administrative policy adopted by the City Administrator in accordance with the guidelines of this section. All city contractors shall ensure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity and tends to eliminate inequality based upon any classification protected by this chapter. All contractors shall agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of any applicable protected classification. All contractors shall be required to post a copy of Ann Arbor's Non-Discrimination Ordinance at all work locations where its employees provide services under a contract with the city.

Complaint Procedure: If any individual believes there has been a violation of this chapter, he/she may file a complaint with the City's Human Rights Commission. The complaint must be filed within 180 calendar days from the date of the individual's knowledge of the allegedly discriminatory action or 180 calendar days from the date when the individual should have known of the allegedly discriminatory action. A complaint that is not filed within this timeframe cannot be considered by the Human Rights Commission. To file a complaint, first complete the complaint form, which is available at www.a2gov.org/humanrights. Then submit it to the Human Rights Commission by e-mail (hrc@a2gov.org), by mail (Ann Arbor Human Rights Commission, PO Box 8647, Ann Arbor, MI 48107), or in person (City Clerk's Office). For further information, please call the commission at 734-794-6141 or e-mail the commission at hrc@a2gov.org.

Private Actions For Damages or Injunctive Relief: To the extent allowed by law, an individual who is the victim of discriminatory action in violation of this chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this chapter.

**THIS IS AN OFFICIAL GOVERNMENT NOTICE AND
MUST BE DISPLAYED WHERE EMPLOYEES CAN READILY SEE IT.**

ATTACHMENT G

CITY OF ANN ARBOR LIVING WAGE ORDINANCE

RATE EFFECTIVE APRIL 30, 2018 - ENDING APRIL 29, 2019

\$13.22 per hour

If the employer provides health care benefits*

\$14.75 per hour

If the employer does **NOT** provide health care benefits*

Employers providing services to or for the City of Ann Arbor or recipients of grants or financial assistance from the City of Ann Arbor for a value of more than \$10,000 in a twelve-month period of time must pay those employees performing work on a City of Ann Arbor contract or grant, the above living wage.

ENFORCEMENT

The City of Ann Arbor may recover back wages either administratively or through court action for the employees that have been underpaid in violation of the law. Persons denied payment of the living wage have the right to bring a civil action for damages in addition to any action taken by the City.

Violation of this Ordinance is punishable by fines of not more than \$500/violation plus costs, with each day being considered a separate violation. Additionally, the City of Ann Arbor has the right to modify, terminate, cancel or suspend a contract in the event of a violation of the Ordinance.

* Health Care benefits include those paid for by the employer or making an employer contribution toward the purchase of health care. The employee contribution must not exceed \$.50 an hour for an average work week; and the employer cost or contribution must equal no less than \$1/hr for the average work week.

The Law Requires Employers to Display This Poster Where Employees Can Readily See It.

**For Additional Information or to File a Complaint Contact
Colin Spencer at 734/794-6500 or cspencer@a2gov.org**

APPENDIX A: SAMPLE PROFESSIONAL SERVICES AGREEMENT

If a contract is awarded, the selected Firm(s) will be required to adhere to a set of general contract provisions which will become a part of any formal agreement. These provisions are general principles which apply to all contractors/service providers to the City of Ann Arbor. The required provisions are:

(2018 PSA over \$25,000 Auto AI)

PROFESSIONAL SERVICES AGREEMENT BETWEEN

AND THE CITY OF ANN ARBOR
FOR _____

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and

("Contractor"), a(n) _____
(State where organized) (Partnership, Sole Proprietorship, or Corporation)

with its address at _____, agree as follows:

The Contractor agrees to provide services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means _____.

Contract Administrator means _____, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

Project means _____.
Project name

II. DURATION

Contractor shall commence performance on _____, 20____ ("Commencement Date"). This Agreement shall remain in effect until satisfactory completion of the Services specified below unless terminated as provided for in Article XI. The terms and conditions of this Agreement shall apply to the earlier of the Effective Date or Commencement Date.

III. SERVICES

- A. The Contractor agrees to provide _____

type of service

("Services") in connection with the Project as described in Exhibit A. The City retains the right to make changes to the quantities of service within the general scope of the Agreement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement.

- B. Quality of Services under this Agreement shall be of the level of quality performed by persons regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory, and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Contractor may rely upon the accuracy of reports and surveys provided to it by the City (if any) except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. INDEPENDENT CONTRACTOR

The Parties agree that at all times and for all purposes under the terms of this Agreement each Party's relationship to any other Party shall be that of an independent contractor. Each Party will be solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer/employee relationship, either express or implied, shall arise or accrue to any Party as a result of this Agreement.

V. COMPENSATION OF CONTRACTOR

- A. The Contractor shall be paid in the manner set forth in Exhibit B. Payment shall be made monthly, unless another payment term is specified in Exhibit B, following receipt of invoices submitted by the Contractor, and approved by the Contract Administrator.
- B. The Contractor will be compensated for Services performed in addition to the Services described in Article III, only when the scope of and compensation for those additional Services have received prior written approval of the Contract Administrator.
- C. The Contractor shall keep complete records of work performed (e.g. tasks performed, hours allocated, etc.) so that the City may verify invoices submitted by the Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

VI. INSURANCE/INDEMNIFICATION

- A. The Contractor shall procure and maintain during the life of this contract such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage that may arise under this contract; whether the act(s) or omission(s) giving rise to the claim were made by the Contractor, any subcontractor or anyone employed by them directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide to the City documentation satisfactory to the City, through City-approved means (currently myCOI), demonstrating it has obtained the policies and endorsements required by Exhibit C. Contractor shall add registration@mycoitracking.com to its safe sender's list so that it will receive necessary communication from myCOI. When requested, Contractor shall provide the same documentation for its subcontractor(s) (if any).

- B. Any insurance provider of Contractor shall be authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-authorized insurance companies are not acceptable unless approved in writing by the City.

- C. To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Contractor or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement.

VII. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Contractor agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of MCL 37.2209. The Contractor further agrees to comply with the provisions of Section 9:158 of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. Living Wage. If the Contractor is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code, the Contractor agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Contractor agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VIII. WARRANTIES BY THE CONTRACTOR

- A. The Contractor warrants that the quality of its Services under this Agreement shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. The Contractor warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Contractor warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Contractor warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.
- E. The Contractor warrants that its proposal for services was made in good faith, it arrived at the costs of its proposal independently, without consultation, communication or agreement, for the purpose of restricting completion as to any matter relating to such fees with any competitor for these Services; and no attempt has been made or shall be made by the Contractor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Contractor access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Contractor of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Contractor shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Contractor shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Contractor shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice. The waiver of any breach by any party to this Agreement shall not waive any subsequent breach by any party.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to Contractor, except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. The Contract Administrator shall give Contractor written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.
- D. The provisions of Articles VI and VIII shall survive the expiration or earlier termination of this Agreement for any reason. The expiration or termination of this Agreement, for any reason, shall not release either party from any obligation or liability to the other party, including any payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

XII. REMEDIES

- A. This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory and/or other legal right, privilege, power, obligation, duty or immunity of the Parties.

- B. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any agreement between the parties or otherwise.
- C. Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

XIII. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONTRACTOR, it shall be addressed and sent to:

If Notice is sent to the CITY, it shall be addressed and sent to:

City of Ann Arbor

(insert name of Administering Service Area Administrator)

301 E. Huron St.
Ann Arbor, Michigan 48104

With a copy to: The City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron Street, 3rd Floor
Ann Arbor, Michigan 48104

XIV. CHOICE OF LAW AND FORUM

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction, excepting the principles of conflicts of law. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XV. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., Deliverables) prepared by or obtained by the Contractor as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Contractor as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Contractor.

Unless otherwise stated in this Agreement, any intellectual property owned by Contractor prior to the effective date of this Agreement (i.e., Preexisting Information) shall remain the exclusive property of Contractor even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XVI. CONFLICTS OF INTEREST OR REPRESENTATION

Contractor certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Contractor further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

Contractor agrees to advise the City if Contractor has been or is retained to handle any matter in which its representation is adverse to the City. The City's prospective consent to the Contractor's representation of a client in matters adverse to the City, as identified above, will not apply in any instance where, as the result of Contractor's representation, the Contractor has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to another client of the Contractor, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case by case basis.

XVII. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVIII. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Contractor with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. No terms or conditions of either party's invoice, purchase order or other administrative document shall modify the terms and conditions of this Agreement, regardless of the other party's failure to object to such form. This Agreement shall be binding on and shall inure to the benefit of the parties to this Agreement and their permitted successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. This Agreement may only be altered, amended or modified by written amendment signed by the Contractor and the City. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

XIX. ELECTRONIC TRANSACTION

The parties agree that signatures on this Agreement may be delivered electronically in lieu of an original signature and agree to treat electronic signatures as original signatures that bind them to this Agreement.

XX. EFFECTIVE DATE

This Agreement will become effective when all parties have signed it. The Effective Date of this Agreement will be the date this Agreement is signed by the last party to sign it.

FOR CONTRACTOR

By _____
Type Name

Its

Date: _____

FOR THE CITY OF ANN ARBOR

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Type Name
Service Area Administrator

Howard S. Lazarus, City Administrator

Approved as to form and content

Stephen K. Postema, City Attorney

**EXHIBIT A
SCOPE OF SERVICES**

(Insert/Attach Scope of Work & Deliverables Schedule)

EXHIBIT B COMPENSATION

General

Contractor shall be paid for those Services performed pursuant to this Agreement inclusive of all reimbursable expenses (if applicable), in accordance with the terms and conditions herein. The Compensation Schedule below/attached states nature and amount of compensation the Contractor may charge the City:

(insert/Attach Negotiated Fee Arrangement)

**EXHIBIT C
INSURANCE REQUIREMENTS**

From the earlier of the Effective Date or the Commencement Date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall have, at a minimum, the following insurance, including all endorsements necessary for Contractor to have or provide the required coverage.

A. The Contractor shall have insurance that meets the following minimum requirements:

1. Professional Liability Insurance or Errors and Omissions Insurance protecting the Contractor and its employees in an amount not less than \$1,000,000.
2. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit
3. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 04 13 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined
\$2,000,000 Per Project General Aggregate
\$1,000,000 Personal and Advertising Injury
4. Motor Vehicle Liability Insurance equivalent to, as a minimum, Insurance Services Office form CA 00 01 10 13 or current equivalent. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements that diminish the City's protections as an additional insured under the policy. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
5. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

- B. Insurance required under A.3 and A.4 above shall be considered primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City for any insurance listed herein.
- C. Insurance companies and policy forms are subject to approval of the City Attorney, which approval shall not be unreasonably withheld. Documentation must provide and demonstrate an unconditional and unqualified 30-day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number(s); name of insurance company; name(s), email address(es), and address(es) of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions, which may be approved by the City in its sole discretion; (c) that the policy conforms to the requirements specified. Contractor shall furnish the City with satisfactory certificates of insurance and endorsements prior to commencement of any work. Upon request, the Contractor shall provide within 30 days, a copy of the policy(ies) and all required endorsements to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies and endorsements to the Administering Service Area/Unit at least ten days prior to the expiration date.

