

# REQUEST FOR PROPOSAL

**RFP # 24-22**

## **Construction Engineering for Barton/Bandemer Park Pedestrian Tunnel Project**

City of Ann Arbor  
Community Services Area / Parks and Recreation Services Area



**Due Date: May 1, 2024 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 Barton/Bandemer Park Pedestrian Tunnel Project.

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

The City of Ann Arbor, Parks and Recreation 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 April 19, 2024 at 10:00 a.m.,** and should be addressed as follows:

Scope of Work/Proposal Content questions shall be e-mailed to Hillary Hanzel, Landscape Architect IV – [hhanzel@a2gov.org](mailto:hhanzel@a2gov.org)

RFP Process and Compliance questions shall be e-mailed to Colin Spencer, Buyer - [CSpencer@a2gov.org](mailto: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](http://a2gov.org) and [MITN.info](http://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 non-mandatory, virtual pre-proposal conference for this project will be held on April 16, 2024, at 11:00am via Microsoft Teams. Contact the project manager, Hillary Hanzel, at [HHanzel@a2gov.org](mailto:HHanzel@a2gov.org) by April 16, 2024, at 9:00 a.m. to receive an email invite to the meeting.

Attendance at this conference is highly recommended. Administrative and technical questions regarding this project will be answered at this time. The pre-proposal conference is for information only. Any answers furnished will not be official until verified in writing by the Financial Service Area, Procurement Unit. Answers that change or substantially clarify the proposal will be affirmed in 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 offeror. An official authorized to bind the offeror to its provisions must sign the proposal. 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 weeks of May 20 and May 27, 2024. 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, May 1, 2024 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 should submit in a single separate sealed envelope marked Fee Proposal**

- two (2) copies of the fee proposal

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

Proposals submitted should be clearly marked: **“RFP No. 24-22 – Construction Engineering for Barton/Bandemer Park Pedestrian Tunnel 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 48104

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 bids may be dropped off in the Purchasing drop box located in the Ann Street (north) vestibule/entrance of City Hall which is open to the public Monday through Friday from 8am to 5pm (except 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 may be disqualified if the following required forms are not included with the proposal:**

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

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

***Please provide the forms outlined above (Attachments E, F and G) within your narrative proposal, not 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 E 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 protests must be in writing and filed with the Purchasing Agent within 5 business days of any notices of intent, including, but not exclusively, divisions on pre-qualification of bidders, shortlisting of bidders, or a notice of intent to award a contract. Only bidders who responded to the solicitation may file a bid protest. 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.

<b>Activity/Event</b>	<b>Anticipated Date</b>
Pre-proposal Meeting	April 16, 2024, 11:00am
Written Question Deadline	April 19, 2024, 10:00 a.m.
Addenda Published (if needed)	Week of April 22, 2024
Proposal Due Date	May 1, 2024, 2:00 p.m. (Local Time)
Tentative Interviews (if needed)	Weeks of May 20 and May 27, 2024
Selection/Negotiations	June 2024
Expected City Council Authorizations	June 2024

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 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.

## **SECTION II - SCOPE OF SERVICES**

### 1. Background

The project will create a new pedestrian tunnel between Bandemer Park and Barton Nature Area, providing a safe and legal pedestrian connection beneath the MDOT owned railroad. This is a critical non-motorized connection for the Border-to-Border (B2B) Trail along the Huron River near downtown Ann Arbor and a key piece of infrastructure to connect the B2B trail westward. The project includes extending the paved B2B trail from the Bandemer Park road to the parking area located along Huron River Drive just south of the Huron River. It also includes reconfiguring and paving the parking lot off Huron River Drive.

The B2B Trail system provides access to nature and the many parks and natural areas along the Huron River, as well as being an important non-motorized transportation corridor for commuters to Ann Arbor and the University of Michigan. It is also part of the Iron-Belle trail system that extends from Detroit's Belle Isle all the way to western end of Michigan's Upper Peninsula.

There is currently heavy trespassing of the railroad in this location where the B2B trail currently terminates and where there is a strong desire to connect westward. The railroad is part of Michigan's High Speed train service from Detroit to Chicago, operated by Amtrak and owned by the State of Michigan.

A feasibility study was completed in 2019 which built upon previous studies for getting safely across the tracks. The feasibility study concluded that an underpass located near the Huron River is the only feasible option.

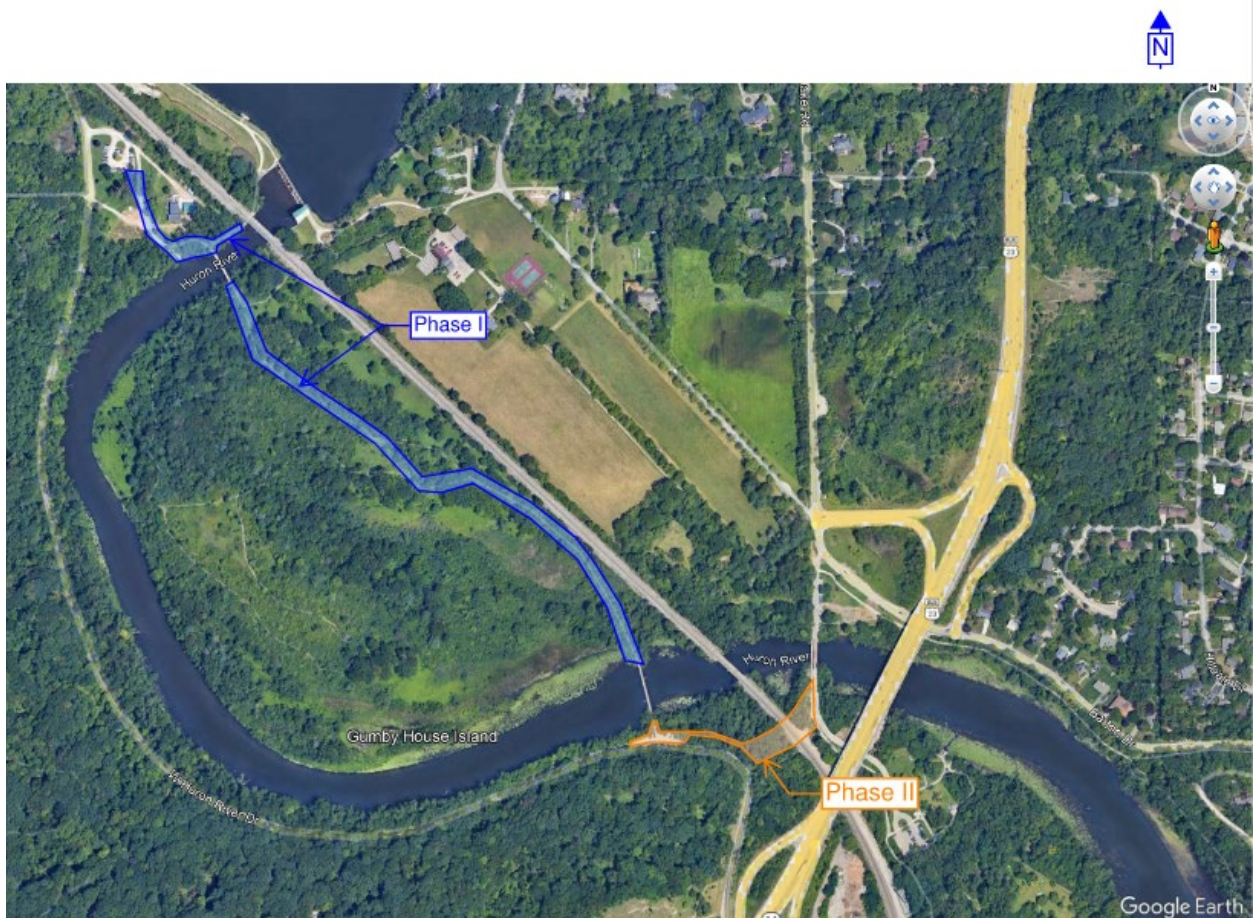
Providing this pedestrian access and eliminating the trespassing hazard is acceptable to the Michigan Department of Transportation (MDOT), who is the owner of the railroad.

The construction plans and specifications were submitted to the National Railroad Passenger Corporation (Amtrak) and Amtrak has provided the City with a letter of no exception.

The City of Ann Arbor and Washtenaw County Parks & Recreation (WCPRC) have partnered to deliver this project, and the non-profit Huron Waterloo Pathways Initiative is a funding partner as well. However, this contract and the contract with the construction contractor will both be held by the City. This project is funded solely by local agency funds and does not have any state or federal funds associated with it.

This portion of the project is considered Phase II of a larger project which includes Phase I which is already under construction. Phase I includes paving the trail within Barton Nature Area from the Barton Dam parking lot, to the north bridge over the

Huron River, through the oxbow peninsula, to the south pedestrian bridge over the Huron River (where Phase II begins).



Project Overview Map

## A. DESCRIPTION

This project is the 2<sup>nd</sup> and final phase of the Barton-Bandemer connection project as part of the Border to Border trail system. The first phase is currently under construction and expected to be completed by summer of 2024, extending from the north end of the south pedestrian bridge over the Huron River to the Barton Dam area.

A new 16' wide x 12' tall box culvert will be installed beneath the railroad tracks to convey pedestrians between Bandemer Park and Barton Nature Area. The pedestrian tunnel will include aesthetic treatments, fencing, and lighting. The tunnel will be installed under a short-term track outage to be coordinated with MDOT's Office of Rail and Amtrak. Temporary sheet piling with tie rods will be required to support the tracks while constructing portions of the tunnel in advance of the track outage. Groundwater may need to be controlled during construction for installation of the culvert.

This project includes the construction of approximately 800-feet of non-motorized concrete path, which also includes an 18-foot timber bridge that spans over a relocated stream to be constructed. The pedestrian access provided by this project will be lighted at the tunnel with transition lighting provided on each end of the tunnel.

Ornamental fencing will be installed on top of the culvert and wingwalls as well as along the permanent sheeting wall along the river. Split rail fencing is required along the Amtrak access road and select portions of the project. Chain link fencing with a gate is required from the culvert to the pier of the M-14 freeway bridge along the RR R/W including a gate located at the Amtrak access road.

The project includes reconfiguration and paving of the parking area near the south end of the south pedestrian bridge over the Huron River, along Huron River Drive. Interface of the trail and the parking area will allow connectivity of the trail while optimizing trailhead parking.

Modular block walls will be installed at two locations, holding up the trail at one location and holding back the slope along the trail at the second location.

## **B. TASKS**

We are 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 Barton/Bandemer Pedestrian Tunnel 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 "A" and Draft Progress Clause in Attachment "C") 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.
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, EGLE, 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 will be required to comply with all Amtrak (National Railroad Passenger Corporation) and MDOT Office of Rail requirements relating to the consultant's role in the project on behalf of the City which may include being a party to a Construction Phase Agreement with Amtrak, signing a consultant indemnification certificate with Amtrak, submitting and obtaining a permit to enter, agreeing to indemnify those entities, meeting specific insurance requirements and providing proof thereof, or other requirements. Samples of a Construction Phase Agreement is included as "Attachment A" and a consultant indemnification form is included as "Attachment B".

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 construction, 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 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, 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. Develop press releases for distribution to local media;
  - e. Develop and distribute "local flyers" to communicate issues of "local" importance/impact (i.e. night work);
  - f. Develop, update, and maintain a project specific webpage within the City's 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. Locate and stake the locations of existing and proposed wingwalls and dead anchors.
- i. Stake centerline of proposed culvert at maximum intervals of 50 feet;
- j. Stake drainage structure centerlines with dual offset stakes;
- k. Stake other miscellaneous structure locations and grades;
- l. 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);
- m. Stake/layout demolition and/or removal limits of all work that is to remain in place;
- n. 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;
- o. Verify formwork of cast-in-place retaining walls and/or construction of retaining walls for verticality and horizontal alignment;
- p. 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:** 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 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; 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.

## **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 – 20 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 – 30 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 - 20 points

Fee schedules should 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 relevant details. The proposal should highlight key staff and positions that would likely be involved with projects. Offerors 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 should be 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](http://www.mitn.info) and/or the City of Ann Arbor web site [www.A2gov.org](http://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 – Sample Indemnification Certificate between the National Railroad Passenger Corporation (Amtrak) and a consultant

Attachment C – Draft Special Provision for Progress Clause

Attachment D - Legal Status of Offeror

Attachment E – Non-Discrimination Ordinance Declaration of Compliance Form

Attachment F – Living Wage Declaration of Compliance Form

Attachment G – Vendor Conflict of Interest Disclosure Form

Attachment H – Non-Discrimination Ordinance Poster

Attachment I – Living Wage Ordinance Poster



**ATTACHMENT A**  
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**PASSENGER CORPORATION (AMTRAK) AND THE CITY OF ANN ARBOR**

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

This Construction Phase Agreement (“Agreement”) effective this \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), is made by and between National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq* and the laws of the District of Columbia (“Amtrak”) and the City of Ann Arbor, a municipal corporation with its principal offices located at 301 E. Huron Street, Ann Arbor, MI 48104 (“Developer”) (hereinafter collectively referred to as the “Parties” or in the singular as “Party,” as the context requires).

**WHEREAS**, the State of Michigan, acting by and through its Department of Transportation (“MDOT”) owns certain railroad right-of-way, including, but not limited to, the land, tracks, bridges, buildings, structures, drainage, communication and signal systems, switches, crossovers, interlocking devices and related rail facilities, which extends generally from Milepost AM-7.60 at CP Town Line in Wayne City to Milepost AM-119.60 at CP Baron in Calhoun County and from Milepost AM-121.30 in Gord, Calhoun County to Milepost AM-145.6 in Kalamazoo, Kalamazoo County, all in the State of Michigan (collectively known as the “Michigan Line”);and

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

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

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

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

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

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

**NOW THEREFORE**, for good and valuable consideration each to the other in hand paid, the receipt and sufficiency of which is hereby acknowledged, and for and in consideration of the

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**PASSENGER CORPORATION (AMTRAK) AND THE CITY OF ANN ARBOR**

promises and the mutual covenants herein contained, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Incorporation of Recitals.**

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

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

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

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

3. **Cost Estimate.**

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

4. **Billable Costs.**

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

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

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Amtrak's overhead rate schedule. A copy of the current version is attached hereto and incorporated herein as Exhibit B ("Overhead Schedule").

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

(iii) Costs for all third-party contract services and for any related additional insurance. Costs will be billed at actual cost incurred, plus the G&A overhead rates as set forth in the Overhead Schedule.

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

(v) For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items, reimbursement shall be at the rates published in "Amtrak Rental Rates for Railroad Equipment," as amended periodically, plus the G&A overhead rates as set forth in the Overhead Schedule. For Amtrak-owned equipment, vehicles, work trains, wire trains, rolling stock and other such items not specifically itemized therein, reimbursement shall be based on a comparable market rate, plus the G&A overhead rates as set forth in the Overhead Schedule. Vehicles/equipment obtained through a General Services Administration ("GSA") schedule shall be construed as Amtrak-owned.

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

(vii) Retroactive wage and benefit costs (i.e., adjustments made subsequent to performance of the Services) which shall be reimbursed based on the actual cost, plus all associated current overhead rates as set forth in the Overhead Schedule. Developer's obligation to reimburse Amtrak for such retroactive costs shall survive expiration or termination of this Agreement.

(viii) Other actual costs not included in any other provision of this Agreement, necessary to effectively perform Services hereunder shall be charged at actual costs, plus Amtrak's overhead rates as set forth in the Overhead Schedule.

(b) In addition to reimbursement of the costs described above, Developer shall pay Amtrak a management fee of ten percent (10%) applied to all billable costs and overhead rates.

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(c) The overhead rates referred to herein are computed in accordance with Amtrak's accounting policies and procedures. These rates are updated periodically by Amtrak and will be made available to Developer, upon request. The applicable billable overhead rates shall be the rates in effect (i) at the time of performance of the Services with respect to Services performed by Amtrak forces, and (ii) as of the date Amtrak receives the invoice from its contractors with respect to Services performed by Amtrak contractors.

**5. Payments.**

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

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

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

(d) If Developer objects to any charges identified on an invoice, it shall notify Amtrak of its objection in writing within thirty (30) days of receipt of said invoice. Within thirty (30) days thereafter, Amtrak will provide Developer with additional documentation and/or explanation as required, to support the accuracy of the charges. The objection shall be considered resolved unless Developer provides additional written objection within thirty (30) days of receipt of such additional documentation and/or explanation from Amtrak. If Amtrak finds an adjustment is due, Amtrak will issue a credit memo in the amount of the adjustment. If, after reviewing the additional information provided by Developer, the

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billing dispute is still not resolved, either Party may pursue any right or remedy as specified in this Agreement.

(e) Upon completion of the construction phase of the Project (or completion of Amtrak's Services or cancellation of the Project, as the case may be), Developer will request that Amtrak close out the construction phase of the Project by signing and submitting the Scope of Work Completion Report ("SOWCR") in the form of Exhibit C attached hereto and incorporated herein. This will initiate close-out of the construction phase of the Project on Amtrak's side and Amtrak will submit final invoices for costs incurred by Amtrak. Within ninety (90) days of execution of the SOWCR, Amtrak will send Developer its final invoices (with the exception of invoices for retroactive wage and benefit costs as set forth in Section 4(a)(vii) hereof).

6. **Schedule.**

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

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

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

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

7. **Review of Documents.**

(a) Developer shall submit all Documents (as defined in Section 2(a)) relating to the Project to Amtrak for its review and approval. Developer agrees to incorporate into the

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construction plans for the Project all Amtrak comments pertaining to matters that impact (or have the potential to impact) Amtrak's operations, facilities and/or property. Amtrak shall have a minimum of thirty (30) business days to review any Documents presented for Amtrak's review.

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

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

8. **Permit to Enter.**

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

9. **Safety and Security Requirements.**

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

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

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

(a) Developer's Obligations. To the extent permitted by law, Developer hereby releases and shall defend, indemnify and hold harmless Amtrak and any other affected railroad (as other railroads utilize Amtrak property), as well as their respective officers,

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directors, employees, agents, successors, assigns and subsidiaries (collectively “the Indemnified Parties”), irrespective of negligence or fault on the part of the Indemnified Parties, from and against any and all losses and liabilities, penalties, fines, demands, claims, causes of action, suits, and costs (including cost of defense and reasonable attorneys’ fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of either or both of the following:

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

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

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

(c) Developer’s Design Contractors’ Obligations. Developer agrees to have its Contractors who perform design or engineering functions in support of the Project execute a copy of the certificate attached hereto and incorporated herein as Exhibit D and return the certificate to Amtrak at the address listed in Section 16 hereof. (Contractors who perform design or engineering functions are referred to as “consultants” in Exhibit D.) This certificate contains the relevant indemnification obligations. Amtrak will not review the Documents until it has received an executed copy of such certificate. The additional indemnification obligations of Developer’s Contractors who enter on, above, below or adjacent to Amtrak’s property are set forth in the Temporary Permit to Enter Upon Property as provided in Sections 8 and 10(b) above.

**11. Insurance.**

(a) Developer’s Insurance. Developer shall procure and maintain in effect during the course of the construction phase of the Project, at its sole cost and expense, the insurance coverage specified below. Developer shall submit to Amtrak certificates of insurance evidencing the required insurance prior to commencement of Operations. As used in this Section 11(a), “Operations” shall mean activities or work performed by or on behalf of Developer on, under, over or adjacent to Amtrak property. In addition, Developer agrees to provide certified copies of the insurance policies within thirty (30) days of Amtrak’s written request. All insurance shall be procured from insurers authorized to do business in

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the jurisdiction(s) where the Operations are to be performed. The insurance shall provide for thirty (30) days prior written notice to Amtrak in the event coverage is substantially changed, canceled or non-renewed. All insurance shall remain in force until all Operations are satisfactorily completed (unless otherwise noted below), all Developer and Developer Contractors' personnel and equipment have been removed from Amtrak's property, and any work has been formally accepted. Developer may provide for the insurance coverages with such deductibles or retained amounts as Amtrak may approve from time to time, except, however, that Developer shall, at its sole expense, pay for all claims and damages which fall within such deductible or retained amount on the same basis as if there were full commercial insurance in force in compliance with these requirements. Developer will provide the following insurance:

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

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

Coverage under this policy shall have limits of liability of not less than Five Million Dollars (\$5,000,000) each occurrence and in the annual aggregate, combined single limit, for bodily injury (including disease or death), personal injury and property damage (including loss of use) liability.

Such coverage may be provided by a combination of a primary CGL policy and a "follow form" excess or umbrella liability policy. Any such excess or umbrella liability insurance policy shall provide substantially the same coverage as the underlying CGL insurance (including the additional insureds as required above) and shall expressly provide that the excess or umbrella coverage will drop down over a reduced or exhausted aggregate limit of the underlying insurance. Any such excess or umbrella liability insurance policy shall not be less than a "follow form", and coverage shall also be primary coverage to Amtrak (including primary



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insurance to Amtrak's own CGL and excess policies) and Developer's umbrella insurer shall agree not to seek contribution from Amtrak's insurance. Any such excess or umbrella liability insurance policy shall comply with all insurance requirements, terms and provisions set forth in this Agreement for the applicable type of coverage.

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

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

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

(v) **Professional Liability Insurance** covering the liability of Developer for any and all negligent errors or omissions committed by Developer or its Contractors in their performance of services in support of the Project. The insurance shall be maintained during the term of the Operations, and for at least three (3) years following completion thereof. The policy shall have a retroactive date that precedes any design work on the Project and shall have limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate. This insurance can be provided by using a combination of the professional liability insurance provided by Developer's Contractors performing design or engineering functions and Owners Protective Professional Liability

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insurance provided by Developer, but in no event will the total insurance provided be less than Two Million Dollars (\$2,000,000) per claim. In the alternative, Developer may cause its Contractors to procure and maintain this coverage.

(vi) **Pollution Legal Liability Insurance** is required if any hazardous material or waste is to be transported or disposed of off of the jobsite. Developer, its contractor or transporter, as well as the disposal site operator, shall maintain this insurance. Developer shall designate the disposal site and must provide a certificate of insurance from the disposal facility to Amtrak. The policy shall name National Railroad Passenger Corporation and all commuter agencies and railroads that operate over the property or tracks at issue as additional insureds, with limits of liability of not less than Two Million Dollars (\$2,000,000) per claim and in the annual aggregate. In the alternative, Developer may cause its Contractors to procure and maintain this coverage.

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

(vii) **Waiver of Subrogation.** As to all insurance policies required herein, Developer waives all rights of recovery, and its insurers must waive all rights of subrogation of damages against Amtrak and its agents, officers, directors, and employees. The waiver must be stated on the certificate of insurance.

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

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

- a. The retroactive date shall coincide with or precede Developer's start of Operations (including subsequent policies purchased as renewals or replacements);
- b. The policy shall allow for the reporting of circumstances or incidents that might give rise to future claims;
- c. Developer will maintain similar insurance under the same terms and conditions that describe each type of policy listed above (e.g., Professional Liability, Pollution Legal Liability) for at least three (3) years following completion of the Operations; and
- d. If insurance is terminated for any reason, Developer will purchase an extended reporting provision of at least six (6) years to report claims arising from Operations.

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

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

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

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

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

12. **Environmental and Geotechnical Matters.**

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

(b) Soil Disturbance and Testing.

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

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

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

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

(v) Developer to Inform Amtrak. Developer shall promptly inform Amtrak of all communications with any governmental authority relating to any such Environmental Activities on Amtrak owned or controlled property, and Amtrak shall be invited to attend any relevant meetings. Developer shall provide Amtrak with all plans and/or submissions for any such Environmental Activities on any such Amtrak property and Amtrak shall have the right to approve such plans and/or

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submissions prior to their implementation. Developer shall promptly provide Amtrak with a copy of any hazardous waste manifests, and such hazardous waste manifests shall in no event identify Amtrak as the generator of such wastes. Developer (and its Contractors and agents) shall dispose of all waste and contamination using their own EPA generator number(s). Amtrak reserves the right to require Developer to provide to Amtrak a copy of the results of any further tests conducted by or for Developer on any such wastes. Amtrak also reserves the right to review and approve the disposal site for any such wastes related to Developer's Environmental Activities.

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

(i) Disposal. In the event Developer, its Contractors or agents create any waste, contamination or adverse environmental conditions (either purposefully or accidentally) on Amtrak owned or controlled property in connection with the performance of activities pursuant to this Agreement, they shall promptly inform Amtrak of such incident. Further, they shall dispose of such waste, contamination and/or adverse environmental conditions, including hazardous wastes, at their sole cost and expense, all without limit and without regard to the negligence or fault of any third party. Developer or its Contractors or agents shall dispose of said waste, contamination and/or adverse environmental conditions using their own EPA generator number(s). In no event shall Amtrak be identified as the generator. Developer will promptly provide Amtrak with a copy of any hazardous waste manifests.

(ii) Developer Costs. In the event that reporting, investigating, testing, monitoring, or remediation of such waste, contamination or conditions is necessary, Developer shall promptly inform Amtrak of such event and the costs and expense of same shall be borne solely by Developer.

(iii) Defense and Satisfaction of Liabilities. In addition, the cost and expense of defense and satisfaction of any liabilities due to personal injury of third parties or damage to property of third parties arising from waste, contamination or adverse environmental conditions resulting from the activities of Developer or its Contractors shall be borne solely by Developer and its Contractors.

(iv) Test Results. Amtrak reserves the right to require Developer to provide to Amtrak a copy of the results of any tests conducted by or for Developer on any such wastes and, at Amtrak's request, to perform additional reasonable tests and/or examinations of any such wastes at Developer's expense, prior to disposal.

(d) Alteration, Suspension, Cancellation or Modification of Schedule. Amtrak retains the right to alter, suspend, cancel or otherwise modify Developer's work schedule pending the resolution of any of the above environmental issues. Amtrak shall not be held responsible for any claims related to any such changes in Developer's schedule, including without limitation, claims related to damages resulting from any such delays or cancellations.

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(e) Noncompliance Notice. Amtrak may notify Developer of any known or suspected noncompliance with the foregoing provisions and the action to be taken. Developer shall, after receipt of such notice, promptly take corrective action in accordance with all applicable federal, state and local requirements. If Developer fails or refuses to comply promptly, Amtrak may issue an order stopping all or part of the Project work until satisfactory corrective action has been taken. In addition, Amtrak may immediately undertake necessary corrective actions; the cost and expense of all such actions shall be borne by Developer. No claims by Developer for reimbursement related to costs and expenses charged to Developer for corrective actions undertaken by Amtrak, nor time lost due to any such orders, shall be made the subject of a claim for excess costs or damages by Developer.

(f) Survival of Environmental Obligations. The foregoing environmental obligations shall survive expiration or termination of this Agreement.

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

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

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

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

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

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

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

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

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

Neither Developer nor its Contractors shall perform any construction activities related to the Project affecting Amtrak's operations, facilities or property until: (a) this Agreement has been fully executed; (b) Amtrak has approved the Documents in writing; (c) Amtrak's forces are available to support the Project; (d) as required by Amtrak, a Temporary Permit to Enter Upon Property has been executed; (e) all required insurance certificates have been

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provided; (f) all real estate agreements (including, but not limited to, any licenses, permanent or temporary easements) required by Amtrak have been fully executed; (g) any operations and maintenance agreements required by Amtrak have been fully executed; (h) Developer has paid all previous invoices; and (i) Amtrak has given its written authorization to proceed with construction as it relates to and/or affects Amtrak's operations, facilities or property.

16. **Notices.**

(a) Whenever under the provisions of this Agreement it will be necessary or desirable for one Party to serve any notice, request, demand, report or other communication (collectively "Notice") on another Party, the same will be in writing and will not be effective for any purpose unless and until actually received by the addressee or unless served (i) personally, (ii) by independent, reputable, overnight commercial courier, (iii) by electronic mail and where the electronic mail is immediately followed by service of the Notice in another manner permitted herein, or (iv) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested, addressed as follows:

If to Developer:

City of Ann Arbor  
301 E. Huron Street  
Ann Arbor, MI 48104  
Attn: Hillary Hanzel  
Email: HHanzel@a2gov.org

With a copy to:

City of Ann Arbor  
Office of the City Attorney  
301 E. Huron Street, 3<sup>rd</sup> Floor  
Ann Arbor, MI 48107  
Attn: Atleen Kaur, City Attorney  
Email: AKaur@a2gov.org

If to Amtrak:

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

With a copy to:

Amtrak  
1 Massachusetts Avenue NW, Washington, DC 20001  
Attention: General Counsel  
Email: AchesoE@amtrak.com

(b) Any Party may, from time to time, by notice in writing served upon the other Party, designate an additional and/or a different mailing address or an additional and/or a different

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person to whom such Notice is thereafter to be addressed. Any Notice served personally will be deemed delivered upon receipt, if served by mail or independent courier will be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the United States Postal Service or independent courier, and if served by electronic mail will be deemed delivered on the date of receipt as shown on the received electronic mail (provided, that the original is thereafter delivered as aforesaid).

17. **Dispute Resolution.**

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

18. **Labor Rights.**

This Agreement shall not require Amtrak to contravene the provisions of its labor agreements. In the event of a conflict or inconsistency between this Agreement and such labor agreements, the labor agreements shall control as to such provisions. Any delay in the progress of the Project relating to such conflict or inconsistency shall not create any liability for or additional cost to Amtrak.

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

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

20. **Entire Agreement.**

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

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

(c) Developer hereby represents and warrants to Amtrak that there are no Project funding related requirements, whether federal, state, or local, that apply to Amtrak. Developer shall indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 10 above), from and against any and all losses, liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs (including cost of defense and attorneys' fees), which any of the Indemnified Parties may incur, be responsible for, or pay as a result of a breach of the foregoing representation and warranty. In addition, Developer



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shall be responsible for performing any Project funding related requirements that apply to Amtrak and are not expressly set forth in this Agreement, even if those requirements would be read into this Agreement by applicable law, regulation, rule of construction or by operation of law. The foregoing representations, warranties and obligations shall survive expiration or termination of this Agreement.

21. **Successors and Assigns.**

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

22. **Miscellaneous.**

(a) Subject to applicable statutes of limitation, no failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for at law or in equity.

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

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

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

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

(f) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original agreement, and all of which taken together will constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered

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by PDF, facsimile, or other electronic signature by email transmission by the Parties. The receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original has been received. No Party shall contest the admissibility or enforceability of the electronically signed copy of the Agreement in any proceeding arising out of the terms and conditions of this Agreement.

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

**NATIONAL RAILROAD PASSENGER CORPORATION**

By: \_\_\_\_\_

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

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

**CITY OF ANN ARBOR**

By: \_\_\_\_\_

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

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

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**Exhibit A**

Construction Phase Estimate

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**Exhibit B**

Overhead Schedule

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**Exhibit C**

Scope of Work Completion Report

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**Exhibit D**

Consultant's Certificate

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**Exhibit E**

List of Amtrak Standards

DRAFT



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.

**ATTACHMENT B**  
**SAMPLE INDEMNIFICATION CERTIFICATE BETWEEN THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) AND A CONSULTANT FOR THE CITY OF ANN ARBOR**

**EXHIBIT D**

**CERTIFICATE BY CONSULTANT, INC.**  
**TO NATIONAL RAILROAD PASSENGER CORPORATION**

This Certificate ("Certificate") effective this \_\_\_\_ day of \_\_\_\_\_, 2024 is made by Consultant, Inc., a corporation with its principal offices located at 1515 Arboretum Drive S.E., Grand Rapids, MI 49546 ("Consultant") to National Railroad Passenger Corporation, a District of Columbia corporation with its principal offices located at 1 Massachusetts Avenue, N.W., Washington, DC, 20001 ("Amtrak").

**WHEREAS**, the State of Michigan, acting by and through its Department of Transportation ("MOOT") 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 MOOT 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**, the City of Ann Arbor (hereinafter "Developer") proposes to construct a superstructure replacement of the bridge on East Medical Drive, which is to be located over Amtrak's property (at railroad milepost AM-36.76 of the Michigan Line) ("Project"); and

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

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

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

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

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

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

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

3. Indemnification. Consultant hereby releases and agrees to defend, indemnify and hold harmless Amtrak and any other affected railroad, as well as their respective officers, directors, employees, agents, successors, assigns, subsidiaries and insurers (collectively "the Indemnified Parties"), from and against any and all losses, liabilities, claims, demands, fines, suits, and costs (including cost of defense and attorneys' fees) which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of negligent errors or omissions in Consultant's work and/or in the work of its officers, directors, employees, agents, subcontractors, subconsultants, successors, assigns, subsidiaries, and any other persons acting for or by permission of Consultant relating to the design and/or engineering services Consultant is providing for Developer in support of the Project. The foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Consultant or its subcontractors, subconsultants or agents, and shall survive the termination of the agreement between Amtrak and the Developer. Consultant further agrees that its liability and indemnity obligations to Amtrak hereunder are further governed by Section 28103(b) of Title 49 of the United States Code and that such provision precludes and preempts any other federal or state law with regard to indemnity.

4. Insurance. Consultant agrees to procure and maintain in effect professional liability insurance covering the liability of Consultant for all negligent errors or omissions committed by Consultant, its officers, directors, employees, agents, subcontractors, subconsultants, successors, assigns, and subsidiaries, and any other persons acting for or by permission of Consultant in the performance of any design and/or engineering services in support of the Project. The insurance shall be maintained during the term of Consultant's agreement with Developer and for at least three years following completion of all services to be performed by Consultant in support of the Project. The insurance shall have limits of liability of not less than Two million dollars (\$2,000,000) per claim and Two million dollars (\$2,000,000) in the annual aggregate.

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

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

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

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

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

**Consultant**

By: \_\_\_\_\_

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

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

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

**ATTACHMENT C**  
**DRAFT SPECIAL PROVISION FOR PROGRESS CLAUSE**

CITY OF ANN ARBOR

SPECIAL PROVISION  
FOR  
**PROGRESS CLAUSE**

BBT:CED

1 of 1

3/12/24

The Engineer anticipates that construction can begin no earlier than ten (10) calendar days after award or as directed by the Engineer.

In no case can any work be commenced prior to receipt of formal notice of award by the Department.

Date to be coordinated with  
MDOT/City

Prepare and submit a complete, detailed, signed Progress Schedule to the Engineer.

The Progress Schedule shall include, at minimum, the controlling work items for the completion of the project, as well as the planned dates or work days that these work items will be controlling operations. All contract dates including open to traffic, project completion, interim completion and any other controlling dates in the Contract, must be included in the Progress Schedule. If the bidding Proposal specifies other controlling dates, these shall also be included in the Progress Schedule.

The project shall be completed in its entirety including final site restoration and clean-up on or before **December 20<sup>th</sup>, 2024** excluding the acceptance of slope restoration, tree plantings, and watering & cultivating. Slope restoration and watering & cultivating requirements must be met prior to final acceptance of the project. A 36-hour track outage has been scheduled on, or about, **October 9<sup>th</sup>, 2024** for the purposes of constructing the project under the railroad tracks. If inclement weather occurs during the original track outage date, a back-up track outage date scheduled approximately 2 weeks after the originally scheduled outage must be coordinated with the Engineer. All work required for preparation for this outage must be done prior to **October 9<sup>th</sup>, 2024**. The actual outage start and stop times will be provided by the Engineer. The Contractor will be given a 30-hour uninterrupted time for which to construct the work required during the track outage.

The Contractor shall include an hour-by-hour schedule for the work planned during the track outage to be approved by the Engineer. The hour-by-hour schedule shall include the Contractor coordinating with Amtrak to show durations for the work tasks Amtrak will be responsible for during the track outage. The hour-by-hour schedule shall indicate an emergency stop work plan indicating the point at which the Contractor will no longer be able to stop and return the site to a condition ready for Amtrak to perform their work in reopening to rail traffic within the planned outage timeframe.

Unless specific pay items are provided in the contract, any extra costs incurred by the Contractor due to cold-weather protection and winter grading will not be paid for separately, but will be included in the payment of other pay items in the contract.

After award and prior to start of work, the Contractor must attend a preconstruction meeting with the Engineer. The Engineer will determine the date, time, and place for the preconstruction

meeting. The meeting will be conducted after project award and may be rescheduled if there are delays in the award of the project.

The named subcontractor(s) for Designated and/or Specialty Items, as shown in the Proposal, should attend the preconstruction meeting if such items materially affect the work schedule.

For compliance with threatened and endangered bats, tree clearing must be completed between October 1 and March 31.

Failure by the Contractor to meet interim completion, open to traffic, and/or final completion dates will result in the assessment of liquidated damages in accordance with subsections 108.10.C.1 and 108.10.C.2 of the Standard Specifications for Construction.

Failure by the Contractor to reopen the rail line to rail traffic within the track outage timeframe defined above will result in the assessment of liquidated damages in accordance with the Special Provision for Liquidated Damages for Other Department Costs.

**ATTACHMENT D  
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 F  
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 \$16.43/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 \$18.32/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 G**

<b>VENDOR CONFLICT OF INTEREST DISCLOSURE FORM</b>
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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/> <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 H  
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](http://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](http://www.a2gov.org/humanrights). Then submit it to the Human Rights Commission by e-mail ([hrc@a2gov.org](mailto: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](mailto: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 I

CITY OF ANN ARBOR LIVING WAGE ORDINANCE

**RATE EFFECTIVE APRIL 30, 2024 - ENDING APRIL 29, 2025**

**\$16.43 per hour**

If the employer provides health care benefits\*

**\$18.32 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](mailto:cspencer@a2gov.org)**

## APPENDIX A - SAMPLE CONTRACT

### PROFESSIONAL SERVICES AGREEMENT BETWEEN [TBD] AND THE CITY OF ANN ARBOR FOR [TBD]

This agreement ("Agreement") is between the City of Ann Arbor, a Michigan municipal corporation, 301 E. Huron St. Ann Arbor, Michigan 48104 ("City"), and [TBD], a(n) [TBD] \_\_\_\_\_, [TBD], [TBD], [TBD] [TBD] ("Contractor"). City and Contractor agree as follows:

#### 1. DEFINITIONS

**Administering Service Area/Unit** means [TBD].

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

**Deliverables** means all documents, plans, specifications, reports, recommendations, and other materials developed for and delivered to City by Contractor under this Agreement.

**Effective Date** means the date this Agreement is signed by the last party to sign it.

**Project** means [TBD].

**Services** means [TBD] as further described in Exhibit A.

#### 2. DURATION

- A. The obligations of this Agreement shall apply beginning on the Effective Date and this Agreement shall remain in effect until satisfactory completion of the Services unless terminated as provided for in this Agreement.

#### 3. SERVICES

- A. Contractor shall perform all Services in compliance with this Agreement. The City retains the right to make changes to the quantities of Services 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 compensation 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. Contractor shall perform Services in compliance with all applicable statutory, regulatory, and contractual requirements now or hereafter in effect. Contractor shall also comply with and be subject to City policies applicable to independent contractors.

- D. Contractor may rely upon the accuracy of reports and surveys provided by the City, except when a defect should have been apparent to a reasonably competent professional or when Contractor has actual notice of a defect.

**4. INDEPENDENT CONTRACTOR**

- A. 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 is 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.
- B. Contractor does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf, or to bind the City in any way.

**5. COMPENSATION OF CONTRACTOR**

- A. The total amount of compensation paid to Contractor under this Agreement shall not exceed \$0.00, which shall be paid upon invoice by Contractor to the City for services rendered according to the schedule in Exhibit B. Compensation of Contractor includes all reimbursable expenses unless a schedule of reimbursable expenses is included in an attached Exhibit B. Expenses outside those identified in the attached schedule must be approved in advance by the Contract Administrator.
- B. Payment shall be made monthly following receipt of invoices submitted by Contractor and approved by the Contract Administrator, unless a different payment schedule is specified in Exhibit B.
- C. Contractor shall be compensated for additional work or Services beyond those specified in this Agreement only when the scope of and compensation for the additional work or Services have received prior written approval of the Contract Administrator.
- D. Contractor shall keep complete records of work performed (e.g. tasks performed, hours allocated, etc.) so that the City may verify invoices submitted by Contractor. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

**6. INSURANCE/INDEMNIFICATION**

- A. Contractor shall procure and maintain from the Effective Date or Commencement Date of this Agreement (whichever is earlier) through the conclusion of this Agreement, such insurance policies, including those required by this Agreement, as will protect itself and the City from all claims for bodily injury, death, or property damage that may arise under this Agreement; whether the act(s) or omission(s) giving rise to the claim were made by Contractor, Contractor's subcontractor, or anyone employed by Contractor

or Contractor's subcontractor directly or indirectly. Prior to commencement of work under this Agreement, Contractor shall provide documentation to the City demonstrating Contractor has obtained the policies and endorsements required by this Agreement. Contractor shall provide such documentation in a form and manner satisfactory to the City. Currently, the City requires insurance to be submitted through its contractor, myCOI. 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 subcontractors.

- B. All insurance providers 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 and its officers, employees, and agents harmless from all suits, claims, judgments, and expenses, including attorney's fees, resulting or alleged to result, from an act or omission by Contractor or Contractor's employees or agents occurring in the performance or breach of 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, willful misconduct, or failure to comply with a material obligation of this Agreement. The obligations of this paragraph shall survive the expiration or termination of this Agreement.
- D. Contractor is required to have the following minimum insurance coverage:
  - 1. Professional Liability Insurance or Errors and Omissions Insurance protecting Contractor and its employees - \$1,000,000.
  - 2. 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.

\$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
  - 3. Worker's Compensation Insurance in accordance with all applicable state and federal statutes; also, Employers Liability Coverage for:

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
  - 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. 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.
- E. Commercial General Liability Insurance and Motor Vehicle Liability Insurance (if required by this Agreement) 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. Contractor agrees to waive any right of recovery by its insurer against the City for any insurance listed herein.
- F. 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. If any of the above coverages expire by their terms during the term of this Agreement, 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.

## 7. **WAGE AND NONDISCRIMINATION REQUIREMENTS**

- A. Nondiscrimination. Contractor shall comply, and require its subcontractors to comply, with the nondiscrimination provisions of MCL 37.2209. Contractor shall comply with the provisions of Section 9:158 of Chapter 112 of Ann Arbor City Code and assure that Contractor's applicants for employment and employees are treated in a manner which provides equal employment opportunity.
- B. Living Wage. If Contractor is a "covered employer" as defined in Chapter 23 of Ann Arbor City Code, Contractor must comply with the living wage provisions of Chapter 23 of Ann Arbor City Code, which requires Contractor 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.

## **8. REPRESENTATIONS AND WARRANTIES BY CONTRACTOR**

- A. Contractor warrants that the quality of Services shall conform to the level of quality performed by persons regularly rendering this type of service.
- B. Contractor warrants that it has all the skills, experience, and professional and other licenses necessary to perform the Services.
- C. Contractor warrants that it has available, or will engage at its own expense, sufficient trained employees to provide the Services.
- D. Contractor warrants that it has no personal or financial interest in this Agreement other than the fee it is to receive under this Agreement. Contractor certifies that it will not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of the Services. Contractor certifies that it does not and will not employ or engage any person with a personal or financial interest in this Agreement.
- E. 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. Further Contractor agrees that the City shall have the right to set off any such debt against compensation awarded for Services under this Agreement.
- F. Contractor warrants that its bid or proposal for services under this Agreement was made in good faith, that it arrived at the costs of its proposal independently, without consultation, communication, or agreement for the purpose of restricting competition as to any matter relating to such costs with any competitor for these services; and no attempt has been made or will be made by Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.
- G. The person signing this Agreement on behalf of Contractor represents and warrants that they have express authority to sign this Agreement for Contractor and agrees to hold the City harmless for any costs or consequences of the absence of actual authority to sign.
- H. The obligations, representations, and warranties of this section 8 shall survive the expiration or termination of this Agreement.

## **9. OBLIGATIONS OF THE CITY**

- A. The City shall give Contractor access to City properties and project areas as required to perform the Services.
- B. The City shall notify Contractor of any defect in the Services of which the Contract Administrator has actual notice.



## **10. ASSIGNMENT**

- A. 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 required of Contractor under the Agreement unless specifically released from the requirement in writing by the City.
- B. Contractor shall retain the right to pledge payments due and payable under this Agreement to third parties.

## **11. TERMINATION OF AGREEMENT**

- A. If either party is in breach of this Agreement for a period of 15 days following receipt of notice from the non-breaching party with respect to the breach, the non-breaching party may pursue any remedies available against the breaching party under applicable law, including 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 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 through the City budget process. If funds 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 30 days after the Contract Administrator has received notice of such non-appropriation.
- D. The expiration or termination of this Agreement shall not release either party from any obligation or liability to the other party that has accrued at the time of expiration or termination, including a payment obligation that has already accrued and Contractor's obligation to deliver all Deliverables due as of the date of termination of the Agreement.

## **12. REMEDIES**

- A. This Agreement does not, and is not intended to, impair, divest, delegate, or contravene any constitutional, statutory, 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 other agreement between the parties, or otherwise.

- C. Absent a written waiver, no act, failure, or delay by a party to pursue or enforce any right or remedy under this Agreement shall constitute a waiver of that right 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, 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 affect the waiving party's right to require strict performance of this Agreement.

### **13. 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 below 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 Contractor:

[TBD]  
ATTN: [TBD]  
[TBD]  
[TBD], [TBD] [TBD]

If Notice is sent to the City:

City of Ann Arbor  
ATTN: [TBD]  
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, 3<sup>rd</sup> Floor  
Ann Arbor, Michigan 48104

### **14. 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.

## **15. OWNERSHIP OF DOCUMENTS**

Upon completion or termination of this Agreement, all Deliverables prepared by or obtained by 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 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 Services. Prior to completion of the Services the City shall have a recognized proprietary interest in the work product of Contractor.

## **16. 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 and to obtain the City's consent therefor. The City's prospective consent to 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, Contractor has obtained sensitive, proprietary, or otherwise confidential information of a non-public nature that, if known to another client of 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.

## **17. 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 is 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.

## **18. EXTENT OF AGREEMENT**

This Agreement, together with all Exhibits constitutes the entire understanding between the City and 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 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 terms or conditions. 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 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.

#### **19. ELECTRONIC TRANSACTION**

The parties agree that signatures on this Agreement may be delivered electronically or by facsimile in lieu of an physical signature and agree to treat electronic or facsimile signatures as binding.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

SAMPLE

[TBD]

**CITY OF ANN ARBOR**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Name: Milton Dohoney Jr.

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

Title: City Administrator

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

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

**Approved as to substance:**

By: \_\_\_\_\_

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

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

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

**Approved as to form:**

By: \_\_\_\_\_

Name: Atleen Kaur

Title: City Attorney

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

SAMPLE

**EXHIBIT A**  
**Scope of Services**

**EXHIBIT B**  
**Compensation**