

AGREEMENT

BETWEEN

AMTRAK

AND

SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY

FOR OPERATION OF

COMMUTER SERVICES

Dated: June 1, 1992

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**AGREEMENT BETWEEN
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
AND
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)
FOR OPERATION OF COMMUTER SERVICES
DATED JUNE 1, 1992**

THIS AGREEMENT, DATED JUNE 1, 1992, IS ENTERED INTO BY AND BETWEEN THE SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY AND THE NATIONAL RAILROAD PASSENGER CORPORATION ("AMTRAK").

1. **DEFINITIONS.**

- a. "Approved Budget" means the budget agreed upon by the parties pursuant to the process described in Section 5.b. of this Agreement, including any amendments to such budget.
- b. "Amtrak" means the National Railroad Passenger Corporation.
- c. "CPUC" means the California Public Utilities Commission.
- d. "Direct Costs" shall have the meaning stated in Section 5.a.(1) of this Agreement.
- e. The "Fiscal Year" is the fiscal year used by SCRRA, which is July 1 through June 30.
- f. "FRA" means the Federal Railroad Administration.
- g. "LACTC" means the Los Angeles County Transportation Commission, or its successor in interest.
- h. "Mobilization Period" shall mean the period of time between the date of the Notice to Proceed and the Start Date.
- i. "Modified Services" means any additional Services, or other changes to existing Services, of the kind currently provided, on existing or new routes.

- j. "Notice to Proceed" means the Limited Notice to Proceed issued by SCRRA on February 21, 1992, which authorizes Amtrak to begin mobilization and start-up activities with respect to the proposed SCRRA Commuter Railroad Operations.
- k. "Operating Plan" shall mean the detailed description of the operation of the Services in a Fiscal Year, and shall reflect specific routes on which Amtrak is to provide Services, timetables, train consists, employee counts and job assignments, units of equipment to be maintained, locations for signal and right-of-way maintenance, and other related services, all as agreed upon by the parties, prior to the start of each Fiscal Year, or as amended by agreement of the parties during the course of the Fiscal Year.
- l. "Operator" when used in this Agreement or the Appendices to it shall mean Amtrak.
- m. "Overhead" shall have the meaning stated in Section 5.a.(2) of this Agreement.
- n. "SCRRA" means the Southern California Regional Rail Authority, a Joint Powers Board created pursuant to Cal. Public Utilities Code §130255 and Cal. Govt. Code §6500 et seq., and pursuant to an agreement which is currently among the following public agencies: LACTC; Orange County Transportation Authority; Riverside County Transportation Commission; San Bernardino Associated Government; and Ventura County Transportation Commission.
- o. "SCRRA Commuter Railroad Operations" means the railroad passenger services to be provided under the auspices of SCRRA, and all related or ancillary functions that are part of the provision of those services.
- p. "Service Property" means tracks, land, structures and other facilities (including stations) that are located on or adjacent to the rail lines and at the yards listed on Appendix 1, that are to be used by Amtrak in provision of the Services under this Agreement. The "Service Property" does not include any structures, land or other facilities owned or controlled by SCRRA and located on or adjacent to the

Section 2

property listed in Appendix 1 which Amtrak does not require to provide the Services. The parties may supplement the list of rail lines and yard facilities in Appendix 1 to be included in the Service Property by including a description of any such additional rail lines and yards in the Operating Plan.

- q. "Services" means those train operations and related functions that are to be performed by Amtrak for SCRRA pursuant to this Agreement.
- r. "Start Date" shall be October 26, 1992, which is the date on which the scheduled passenger service over the Service Property or a portion thereof will begin, unless SCRRA, by notice provided to Amtrak by no later than September 1, 1992, prescribes a later date for such services to commence.

2. SERVICES PROVIDED.

a. General Management. Amtrak agrees that it will provide the Services on the terms and conditions described in this Agreement. Amtrak shall make available to SCRRA a staff of qualified management personnel who shall manage the provision of the Services in a manner that is consistent with both parties' objective of providing the highest quality service to the public, and consistent with the policies of and in the best interests of the SCRRA Commuter Railroad Operations and SCRRA. The Amtrak management assigned to the Services shall have experience and knowledge in the area of railroad passenger operations and shall have authority to make decisions concerning the daily operations and management of the Services consistent with this Agreement. Amtrak shall administer and manage all functions involved in providing the Services as set forth and described more fully in this Agreement in a manner which will provide a safe and well-maintained facility and on-time train operations, and will be in compliance with all applicable local, state and federal requirements. All personnel provided by Amtrak and Amtrak's subcontractors involved in any aspect of providing the Services shall be employees or contractors of Amtrak or its subcontractors, and not of SCRRA, and shall be subject to the direction, supervision and control of Amtrak and not of SCRRA, and, except as provided specifically in this Agreement, shall be assigned exclusively to SCRRA Commuter Railroad Operations and shall not perform functions in connection with Amtrak's intercity passenger service.

(1) General Manager. Amtrak will operate the Services under the direction of a full time General Manager, Commuter Operations, who will have overall responsibility for all aspects of the Services. The General Manager shall report initially to Amtrak's General Superintendent - Western Division. SCRRA may request a revision of this reporting relationship, and Amtrak shall not unreasonably withhold its approval of the requested change. Amtrak shall select a General Manager subject to SCRRA's prior approval. If SCRRA is dissatisfied with the performance of the General Manager, and following consultation between Amtrak's Executive Vice President of Operations and SCRRA's Executive Director, Amtrak will replace him or her on ninety (90) days notice. The General Manager will be available to attend monthly service meetings with SCRRA staff.

(2) Other management personnel. The General Manager shall have the authority to discharge and replace all Amtrak personnel who are engaged in providing the Services. The following positions shall report directly to the General Manager: Superintendent, Commuter Operations; Commuter Relations Officer; Manager, Resource Management; Manager - Maintenance of Equipment; Manager - Maintenance of Way. Amtrak shall select personnel to fill these positions, subject to SCRRA's prior approval of the candidates. Amtrak will not transfer the General Manager or any of his or her direct reports away from that assignment for at least one (1) year, except as required by applicable law, regulation or any provision of this Agreement, or with the consent or at the request of SCRRA. Amtrak shall no later than ninety (90) days prior to the Start Date provide SCRRA with a list of all other management positions and of the persons who will fill those positions initially.

b. Assistance and Planning Prior to Start of Revenue Service.

(1) Mobilization Planning. This Agreement shall supercede the Notice to Proceed. As soon as possible after execution of this Agreement, SCRRA will provide a service plan to Amtrak, which shall describe the routes over which Amtrak is to provide Services on the Start Date and the proposed frequency of the train operations on those routes. Amtrak shall deliver to SCRRA a Mobilization Period budget within 10 days of execution of this Agreement, by Fiscal Year

Section 2.b. (con'd)

specifying Direct Costs, Overhead and management fees to be paid by SCRRA during the Mobilization Period. At the same time, Amtrak shall deliver a mobilization plan which will explain in detail the planning required for commencement and implementation of proposed Services on the Start Date, and which will specify the objectives and tasks to be completed prior to the Start Date, along with a schedule for achieving those objectives or completing those tasks. The mobilization plan will include a schedule for delivery of the following documents that are to be developed and finalized prior to the Start Date: the System Safety Plan as described more fully in Appendix 2, which shall include a disaster and emergency relief plan; a proposed Operating Plan and budget for operations during the Fiscal Year ending June 30, 1993. SCRRA shall review the mobilization plan and, subject to modifications agreed upon by the parties, approve the plan by no later than thirty (30) days from its receipt of the plan.

(2) Personnel. The General Manager, Commuter Operations, will be hired and in place on a full time basis no later than May 1, 1992. In addition, Amtrak will make available a mobilization team to work with the General Manager on implementation of the mobilization plan.

c. Obligations After Start of Scheduled Revenue Service.

(1) Train Operations.

(a) Operations. During the term of the Agreement, Amtrak shall manage, operate, maintain and provide staff for the Services. Subject to any applicable rules or regulations of the FRA, and subject to SCRRA's review of the listed documents, the operating policies and procedures which shall guide Amtrak's operation of the Services are: the General Code of Operating Rules, Amtrak's Rules Governing Conductors and Trainmen (to the extent they apply to commuter rail service), other Amtrak rules and instructions for its employees including special rules developed for SCRRA Commuter Railroad Operations, any additional standards or procedures as the parties may agree upon from time to time, and the procedures which are set forth in Appendix 2. SCRRA shall be entitled to review and approve

changes in any of those documents that affect SCRRRA Commuter Railroad Operations and apply only to Amtrak, provided that such approval shall not be unreasonably withheld. These policies and procedures shall be amended from time to time, upon request of either party, as the needs of the operations change, and the other party's consent to any such requested change shall not unreasonably be withheld. Amtrak shall operate the commuter trains of SCRRRA on schedules which shall be recommended by SCRRRA based on consultations with Amtrak staff and agreed upon by the parties.

- (b) Dispatching. Amtrak will provide dispatching services for any trains operating over those portions of the Service Property owned or under the control of SCRRRA. These dispatching services shall be governed by the General Code of Operating Rules; the rules governing priority as between SCRRRA trains and Amtrak's intercity trains that are set forth in Appendix 3 to this Agreement; the applicable provisions of the agreements between LACTC or SCRRRA and freight railroads that operate over the portions of the Service Property for which Amtrak is providing dispatching services; and such other procedures and standards as may be agreed upon by the parties.
- (c) Delays. Amtrak will provide immediate notice to SCRRRA by telephone of any situation which would significantly affect the on-time operation of the SCRRRA Commuter Railroad Operations and cooperate with SCRRRA in notifying the passengers affected by the resultant delays.

(2) Maintenance of Rolling Stock. Amtrak shall maintain, repair, clean, inspect and service all rolling stock in accordance with the equipment maintenance standards described in Appendix 4. Amtrak shall do this work in a timely manner at Taylor Yard or at such other facilities provided by SCRRRA as may be mutually agreed upon by the parties. Amtrak shall comply fully with the terms of any manufacturer's warranty on equipment used in providing the Services, shall cooperate with SCRRRA in the fulfillment of any

obligations of any such warranty, and shall provide SCRRRA with any information required for SCRRRA to administer the relationship with manufacturers under the warranties. At its sole discretion, SCRRRA may elect to arrange for outside contractors to perform major repairs or modifications to the equipment, including performance of such work at Taylor Yard or other locations on the Service Property. Amtrak will retain for a period of at least three years and make available to SCRRRA upon request all of its records and reports concerning inspection, maintenance and cleaning of each unit of equipment, and will deliver such records to SCRRRA at the end of that period. Amtrak shall also maintain in good working order the equipment and machinery that is used to maintain the rolling stock, subject to ordinary wear and tear. Amtrak shall not make any repairs of any kind to any unit of SCRRRA rolling stock without prior written approval of SCRRRA if the cost of modifications or of repairs due to damage to that unit of equipment will exceed Ten Thousand Dollars (\$10,000).

(3) Maintenance of Way, Signals and Communication Systems. Amtrak will perform all maintenance on rail lines, signal and communications systems and related facilities included in the Service Property for which Amtrak has such responsibility, as described in the Operating Plan, in accordance with the scope of work and standards described in Appendix 5. SCRRRA shall have the right to approve all modifications which Amtrak proposes to make to the Service Property and shall have the right to inspect the property at any time, subject to compliance with all applicable operating and safety rules. The right of inspection by SCRRRA shall not relieve Amtrak from the responsibility of providing quality control measures continuously to assure that all Services comply with this Agreement.

(4) Materials Management.

- (a) Except for locomotive fuel and all utilities, Amtrak shall be responsible for and shall manage the purchasing of all materials required to perform the Services under this Agreement. The Operating Plan shall provide for sufficient positions to perform the materials control function required to perform the Services, including the administration of fuel

Section 2.c. (con'd)

purchasing contracts as described in sub-section c(4)(b), below. All materials or equipment purchased by Amtrak pursuant to this Agreement for the provision of the Services shall be used solely for the purpose of providing the Services to SCRRA and shall be the property of SCRRA. Unless otherwise agreed, SCRRA shall purchase materials for implementation of capital programs not included within the Services. Amtrak will inform SCRRA on a quarterly basis of its intent to advertise for and acquire materials for the Services or for other uses within its Western Division that SCRRA might require in connection with the Services or other operations and projects, when the aggregated value of the materials included in that advertisement is more than Fifty Thousand Dollars (\$50,000). SCRRA shall notify Amtrak of its intent to advertise for and acquire materials for its operations or projects when the aggregated value of such materials included in the advertisement is more than Fifty Thousand Dollars (\$50,000).

- (b) SCRRA shall contract for the purchase of locomotive fuel, and Amtrak shall coordinate delivery requirements and acknowledge deliveries made pursuant to such contracts.
- (c) Amtrak shall collect a materials handling fee of two percent (2%) of the invoiced cost for all materials purchased by Amtrak for use in the provision of the Services, except rail, ties and ballast, for which Amtrak shall collect a materials handling fee of one percent (1%) of the invoiced cost. Amtrak shall not collect any materials handling fee for fuel purchased by SCRRA.
- (d) In emergency circumstances where parts or supplies needed for provision of the Services are not available from SCRRA's supplies but are available in the inventory maintained by Amtrak for its intercity rail passenger service, Amtrak may use such parts or supplies to provide the Services. SCRRA shall reimburse Amtrak for its actual cost of replacing any such parts or supplies, plus materials handling fees of 2% and 1% as described in sub-section c(4)(c), above.

- (e) In making purchasing decisions, Amtrak shall purchase, where prudent and cost-effective, from local vendors, but shall in all circumstances take into account and give full consideration to factors to include, but not be limited to, price, delivery schedule, freight charges and the DBE requirements specified in Section 3.m. of this Agreement and of applicable local, state and federal regulations.
- (f) Amtrak will institute a materials management system that will maximize efficiency and reduce inventory cost through forecasting of replenishment requirements as well as control of all phases of the materials handling function. The system used by Amtrak shall generate the reports listed in items 2.i. and 3.b. of Appendix 6.

(5) Police and Security. Upon no less than seven (7) months prior written notice, SCRRRA may request Amtrak to provide police and security for all maintenance facilities and layover locations to protect SCRRRA equipment and operations and to conduct investigations, or to provide other police or security services as may be required from time to time. SCRRRA may discontinue Amtrak's provision of any such security services at any or all locations upon thirty (30) days notice to Amtrak.

(6) Clearing of Wrecks. Amtrak will have full responsibility for clearing wrecks which involve SCRRRA trains. Where a wreck involves a freight railroad operating on SCRRRA property and Amtrak is called upon to assist in clearing the property, Amtrak shall support SCRRRA's efforts to obtain reimbursement from the freight railroad for expenses incurred in clearing the wreck. The respective rights and obligations of the freight railroad and SCRRRA shall be governed by the terms and conditions of agreements, if any, between SCRRRA and that railroad. SCRRRA shall reimburse Amtrak for Direct Costs incurred in clearing wrecks. SCRRRA shall pay Amtrak an additional Overhead payment in the amount of 5.5% of the Direct Cost of clearing wrecks. Such Direct Costs are not included in the Approved Budget and, as a result shall be excluded from the sum of actual Direct Costs incurred and billed by Amtrak in the computations described in Section 7.c. and d. of this Agreement.

(7) Special Trains. The cost of operation of any special trains shall not be included in the budget proposal submitted pursuant to Section 5.b. or in the Approved Budget. No less than fifteen (15) working days prior to any event for which SCRRRA anticipates providing special train service, it shall submit to the General Manager a request in writing to operate such service. Amtrak shall, not less than ten (10) working days prior to the anticipated service date, inform SCRRRA in writing of the cost of providing such service in accordance with the cost provisions of Section 5.a., and Amtrak shall operate the service as requested, subject to operational feasibility and availability of equipment, unless SCRRRA has withdrawn its request for the service. SCRRRA shall reimburse Amtrak for Direct Costs incurred in operating such special trains. Such Direct Costs shall be excluded from the sum of actual Direct Costs incurred and billed by Amtrak in the computations described in Sections 7.c. and d. of this Agreement. SCRRRA shall be entitled to have twelve (12) round trip special trains operated per Fiscal Year without any increase in the Management Fee established pursuant to Section 6.a. Amtrak shall receive additional Overhead payment in the amount of 5.5% of the Direct Costs of all special trains, and an additional Management Fee payment equal to 5.5% of the Direct Costs and Overhead Costs of those trains operated in excess of twelve (12) round trips each Fiscal Year. If SCRRRA provides shorter notice of the intended special service, Amtrak shall respond to SCRRRA's request as soon as possible, and Amtrak shall use its best efforts to supply crews and other necessary personnel to operate the special train service.

(8) Verification of Fares. Subject to SCRRRA's right to hire or provide on-board personnel for other than operating functions, Amtrak personnel shall conduct fare verification inspections, and shall perform all other related functions (including issuance of citations and any resulting required attendance at court hearings) except for ticket sales, according to a plan and procedures to be developed by SCRRRA and reviewed by Amtrak. As required in Section 5.b(3), Amtrak shall provide SCRRRA with an estimate of the cost of making employees available for court attendance or other functions related to verification of fares and enforcement of violations that is in addition to the cost of the Extra Board for operating employees included in the Approved Budget. SCRRRA shall reimburse Amtrak for Direct Costs incurred in

performing such ancillary functions. Such Direct Costs, other than the costs of the Extra Board which are to be included in the Approved Budget, shall be excluded from the sum of actual Direct Costs incurred and billed by Amtrak in the computations described in Section 7.c. and d. of this Agreement. SCRRRA shall pay Amtrak an additional Overhead payment in the amount of 5.5% of the Direct Cost of performing such ancillary functions.

3. **OTHER OBLIGATIONS OF AMTRAK.**

a. **Hiring of Employees to Provide the Services.**

(1) Amtrak shall hire all labor, administrative, professional, and supervisory personnel required to provide the Services; provided, however, that SCRRRA reserves the right to hire or provide on-board personnel for other than operating functions; and provided further, that Amtrak shall have the right to contract with third parties to provide any of the Services, subject to the requirements of Section 3.o. of this Agreement. The total number of full-time equivalent positions will not exceed the total number of positions included in the Approved Budget for a period of more than thirty (30) days without the prior approval of SCRRRA, which approval shall not unreasonably be withheld.

(2) All such personnel hired by Amtrak or its subcontractors shall be qualified and experienced, and will be employees of Amtrak or the subcontractor, respectively, and not of SCRRRA. As between Amtrak and SCRRRA, Amtrak will be solely responsible for determination of and payment of the wages and benefits and other terms and conditions of employment of its or any subcontractor's employees; provided, however, that Amtrak or the subcontractor shall comply with any applicable mandatory state or federal prevailing wage rate, safety or wage-hour laws. Amtrak will comply with the terms and conditions of all applicable agreements with any labor organization representing Amtrak's employees concerning wages, benefits and terms and conditions of employment. Amtrak will comply with all applicable laws, regulations, rules and procedures respecting employer's liability, worker's compensation, unemployment insurance and other forms of social security or railroad retirement, and also with

Section 3.b.

respect to any other required withholding from the wages of employees. Amtrak will indemnify and hold harmless SCRRRA for any and all liability, damages, claims, costs (including reasonable attorneys' fees), and other expenses of whatever nature arising from alleged violations of such laws, regulations, or rules.

b. Additional Meetings. Amtrak shall make available its Executive Vice President - Chief Operating Officer for not less than two (2) quarterly meetings per year, and the Vice President - Transportation available for not less than two quarterly meetings per year, at locations to be specified by SCRRRA, at each of which Amtrak and SCRRRA shall review the performance of the Services and the work of the management team. The cost of making these or other management personnel selected by Amtrak available to attend these meetings is included in Amtrak's Overhead for providing the Services.

c. Reports. Amtrak shall provide SCRRRA with the reports at the times listed in Appendix 6 to this Agreement. In addition, Amtrak shall prepare and submit all reports affecting the Services which are required to be submitted to any federal, state or local governmental agency, and shall furnish copies simultaneously to SCRRRA. Amtrak shall also promptly furnish to SCRRRA copies of any citations or complaints issued by an enforcement or regulatory body which affect the Services or the Service Property, and Amtrak will advise SCRRRA of the disposition of such citations or complaints. The purpose of the reports described here is to keep SCRRRA apprised of the performance of, and incidents which may impact upon the operation of, the Services. Amtrak agrees to keep full and accurate records required herein, and to provide SCRRRA with such other reports or information as will fulfill the purpose described in the previous sentence. All reports prepared pursuant to this Agreement shall be the property of SCRRRA and Amtrak shall not voluntarily release or disclose any of the contents of those reports without the prior approval of SCRRRA.

d. Safety.

(1) Amtrak shall prepare a System Safety Plan as described more fully in Appendix 2, and shall at all times conduct its operations in a safe manner. Amtrak shall promptly take all precautions which are reasonable or necessary to safeguard against risks, and shall make

regular safety inspections of the rolling stock and the Service Property. Amtrak shall be solely responsible for the discovery, determination and correction of any unsafe conditions arising in connection with the performance of the Services.

(2) Amtrak shall comply with all applicable safety laws, standards, codes, rules and regulations, including any safety program established by SCRRRA in consultation with Amtrak. Amtrak shall cooperate and coordinate with the SCRRRA, controlling freight railroads and with any other SCRRRA contractors on safety matters, and shall promptly comply with any specific safety instructions or directions given by any duly authorized regulatory agency.

e. Application to FRA. For those portions of the Service Property on which Amtrak will have responsibility for the functions described in 49 C.F.R. §213.5, Amtrak will petition the FRA to recognize Amtrak as the party to whom such responsibility is assigned for the purpose of complying with that regulation.

f. Training of Employees. Amtrak will establish and provide training programs for all employees who are working on the Services, including but not limited to the training required by 49 C.F.R. Part 217. All training programs or portions thereof that are designed specifically for the Services will be reviewed and approved by SCRRRA, and will be designed, developed and implemented in accordance with established professional standards for performance-based instruction. Amtrak will provide SCRRRA with copies of all training programs used for employees who are working on the Services. Amtrak will provide SCRRRA with an annual training report which will include specific programs and man-hours spent in training sessions.

g. Drug and Alcohol Testing. Amtrak will comply with the drug and alcohol testing procedures applicable to Amtrak employees on the effective date of this Agreement. Amtrak will change the drug and alcohol testing procedures as and when required by any applicable law or regulation, but will not make any other changes to these procedures without prior notice to SCRRRA.

h. Labor Agreements.

(1) Special Agreements for SCRRRA Service. Amtrak will not voluntarily enter into agreements in which it changes the rates of pay, rules and working conditions agreed upon specifically for SCRRRA service, which are summarized in the letter from Raymond V. Lanman to Richard Stanger, dated October 22, 1991, a copy of which is attached to this Agreement as Appendix 7.

(2) Existing Labor Agreements. Nothing contained in this Agreement will require Amtrak to perform any service or take any action that would violate any term or condition of any labor agreement between Amtrak and any organization representing Amtrak's employees or applicable to Amtrak. Amtrak represents and warrants that no provision of this Agreement conflicts with any term or condition of any such labor agreement. Amtrak will not voluntarily enter into agreements which would change the current agreements with operating employees that allow crews to perform both yard and road service. SCRRRA does not accept, succeed to or assume, and this Agreement shall not be construed to impose or allow any acceptance, succession to or assumption of, any obligations of Amtrak under any of its collective bargaining agreements with its employees or their representatives.

(3) Changes to Existing Labor Agreements. Amtrak shall promptly advise SCRRRA, and provide SCRRRA with a copy, of any valid notice from the representatives of its employees which seeks a change in the wage rates paid to employees who are providing the Service, or which seeks any other change that would materially affect Amtrak's cost of or efficiency in providing the Services. Amtrak shall also provide SCRRRA with a copy of its response to any such notice, along with an analysis of the potential impact of the changes proposed by both Amtrak and the labor organization on the Direct Costs of providing the Services. Amtrak shall use its best efforts to minimize any wage increases, retroactive or prospective, which are to be included in the agreements that apply uniquely to employees engaged in providing the Services, and will provide SCRRRA with regular reports of the status of the negotiations. Upon completion of those negotiations and the execution of an agreement, SCRRRA shall pay Amtrak promptly the

Section 3.i.

amount, if any, of the retroactive wage increase required by such agreement that is attributable to time worked in providing the Services. If SCRRA pays Amtrak more than 15 days after the meeting of the SCRRA Board that occurs next after Amtrak's execution of the labor agreement, the payment shall bear interest at the Chase Manhattan Bank prime rate from the date of execution until the date of payment.

i. California Code Provisions. If the California Public Utilities Commission, or any court or other tribunal of competent jurisdiction, determines with finality that Section 6901 of the California State Labor Code applies and requires crews larger than the two person crews currently included in Amtrak's proposed plan for provision of the Services, Amtrak will bear, and will fully indemnify SCRRA for, any additional cost of any additional operating personnel who may be required to satisfy the terms of any such determination. Notwithstanding the foregoing, Amtrak will not bear the cost of or indemnify SCRRA for any such additional cost which may result from a change in any applicable federal law.

j. Maintenance and Capital Plan. Amtrak will prepare and update annually a maintenance and capital plan as described more fully in Appendix 6, item 1.b.

k. Relationships with Freight Carriers. Amtrak expressly acknowledges that it has reviewed the agreements between SCRRA or LACTC, respectively, and Southern Pacific Transportation Company and the Union Pacific Railroad Company, respectively, governing lines included in the Service Property. Amtrak expressly undertakes to operate the Services in a manner which is consistent with the obligations undertaken by SCRRA or LACTC, respectively, in those agreements. SCRRA for itself and on behalf of LACTC agrees that it will not change any provision of such agreements, or enter into new agreements, which affect Amtrak's provision of the Services until Amtrak has reviewed those terms which relate to the Services.

l. Operations at Los Angeles Union Passenger Terminal. Amtrak and SCRRA have negotiated a separate agreement governing train operations in the rail yard at Los Angeles Union Passenger Terminal, dated June 1,

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1992, and the sharing and use of the rail yard at that terminal shall be governed by that agreement.

m. Compliance with SCRRRA DBE Goals. SCRRRA shall advise Amtrak of SCRRRA's standards and goals, and procedures to be followed to achieve those standards and goals, for purchase of materials and services used by Amtrak in providing the Services from Disadvantaged Business Enterprises ("DBE"). LACTC, as agent for SCRRRA, will certify the businesses to be included on the approved list of DBE's, and will provide Amtrak with that list and any revisions which LACTC may make, at its sole discretion, from time to time. Only businesses included on that list may be used to comply with the DBE obligations of this Agreement. Amtrak shall comply with those procedures and use its best efforts to meet those goals and standards.

n. Amtrak's Qualifications to Perform Service. Amtrak hereby warrants and represents that it has the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and that it will provide the necessary tools and materials not provided by SCRRRA to perform the Services in an efficient, professional and timely manner in accordance with the terms and conditions of this Agreement.

o. Selection of Subcontractors. Amtrak may not employ subcontractors to perform any of its obligations under this Agreement without the prior written approval by SCRRRA of the subcontractor and the scope of work to be performed by that subcontractor. In selecting subcontractors, Amtrak shall be mindful of the DBE goals set forth in this Agreement. Amtrak shall remain solely responsible for any work for which it employs a subcontractor, and SCRRRA shall have no obligation to such subcontractors whatsoever.

p. Use of Equipment, Materials and Services. Amtrak will use the equipment, materials and services provided or paid for by SCRRRA solely for the purpose of providing the Services. Amtrak will acknowledge receipt of all equipment, materials and fixed assets and will include in the Annual Report described in item 1.a. of Appendix 6, an inventory showing additions, deletions or other changes to the list of such equipment, materials and fixed assets. Prior to the Start Date, Amtrak shall prepare and submit to SCRRRA for its approval a policy governing the distribution

Section 3.q.

and replacement of equipment, material and fixed assets, including but not limited to small tools issued by Amtrak to employees who are working on providing the Services.

q. Assistance in Distribution of Public Information. Amtrak will cooperate with SCRRRA in distributing notices and making announcements to passengers informing them on matters related to the SCRRRA Commuter Railroad Operations, and will otherwise render assistance to SCRRRA in monitoring and supervising such operations. At the request of SCRRRA, Amtrak will distribute schedules and other information to the public. Content of informational materials is at the sole discretion of SCRRRA. Amtrak shall provide its employees who work in intercity service at stations also used by SCRRRA in SCRRRA Commuter Railroad Operations, with information about timetables and fares, and shall train those employees to answer questions about those operations in a courteous and informative manner.

r. Bicycles. Amtrak shall permit up to two passengers in each car to bring a bicycle on the trains, subject to rules and procedures to be developed by SCRRRA in consultation with Amtrak. Amtrak shall use its best efforts to prevent any delays of more than five (5) minutes at a station from loading or unloading of bicycles. In the determination of on-time performance under Section 6.b., SCRRRA shall allow a tolerance for delays caused by the loading or unloading of bicycles.

s. Accounting Standards. Amtrak shall maintain the books and records which are required by this Agreement, and shall provide any financial or other reports required by this Agreement, all in accordance with Generally Accepted Accounting Principles.

t. Transportation of Employees. Amtrak shall permit crews employed in providing the Services to travel at no charge on Amtrak intercity trains within the area served by SCRRRA as necessary to transport such crews between SCRRRA stations or facilities in connection with performance of the Services.

u. Payment of Freight Railroad and Employee Incentives. Subject to the provisions of Section 7.e., Amtrak shall make incentive payments to freight railroads that dispatch and maintain lines of railroad over which Amtrak

provides Services. Amtrak shall make incentive payments to Amtrak employees who work on provision of the Services, in amounts determined according to Section 7.f. of this Agreement.

v. Engineers Extra Board. Amtrak will maintain a common Extra Board for engineers to be used in providing the Services and in provision of Amtrak's intercity passenger service. The Direct Costs payable by SCRRA shall include, in addition to the wage costs (including related additives and allowances) of engineers drawn from the Extra Board for work in providing the Services, an apportionment of all Extra Board employee costs that are not assignable specifically either to the Services or Amtrak's intercity rail passenger service. This apportionment shall be based on the proportional amounts of the cost of engineers in Amtrak's Los Angeles crew base that are directly assignable to each service and shall be billed on a monthly basis.

w. Conductors Extra Board. Amtrak will maintain separate Extra Boards for conductors in SCRRA Commuter Railroad Operations service and Amtrak's intercity service, respectively. Extra Board employees on the SCRRA Conductors Extra Board who are not assigned to vacancies as conductors may be called as assistant conductors for fare verification duty. In the event that the Extra Board for conductors for SCRRA Commuter Railroad Operations is exhausted, Amtrak agrees to provide extra conductors from the Amtrak intercity Extra Board if a sufficient number of conductors is available and is qualified to work in SCRRA Commuter Railroad Operations. The use of employees from the Amtrak intercity conductors Extra Board will be restricted to occasional or emergency use. If Amtrak is required to call such employees frequently, the Extra Board for SCRRA service will be increased to meet the demand.

4. RIGHTS AND OBLIGATIONS OF SCRRA.

a. Access to Equipment and Property.

(1) At no cost to Amtrak, SCRRA shall provide, and shall allow Amtrak the necessary access to, the portions of the Service Property, locomotives and passenger cars, maintenance facilities, equipment and machinery necessary and to be used in provision of the Services. SCRRA hereby grants Amtrak the right to enter upon and utilize the

foregoing for the purpose of performance of Amtrak's obligations under this Agreement. The property provided by SCRRA shall include office space and storage space. SCRRA shall pay for all utilities in all facilities, office and storage space provided pursuant to this Agreement. If SCRRA cannot provide office and/or storage space to Amtrak, Amtrak may lease other office or storage space subject to SCRRA's approval. Any lease or utility payments for such office or storage space shall be a Direct Cost for which SCRRA will reimburse Amtrak under the terms of this Agreement.

(2) Prior to the date that Amtrak assumes responsibility for maintenance of a segment of the Service Property, SCRRA and Amtrak shall conduct a joint audit of that segment which shall establish its condition as of that date. Prior to the Start Date, SCRRA and Amtrak will conduct a joint inspection and sign a report reflecting the mechanical condition of the interior and exterior of each locomotive and passenger car used for the Services. Amtrak shall make no changes to the Service Property or equipment to be used in providing the Services without SCRRA's prior written approval.

(3) SCRRA shall mark and identify all vehicles and other equipment provided for Amtrak's use in providing the Services with the SCRRA "METROLINK" colors, logo or other identification marks. Amtrak employees' use of such vehicles shall be in accordance with the then-current Amtrak policy governing vehicle use.

b. Changes in Equipment Provided. SCRRA has the right to make specific improvements or additions to, or to change entirely the assigned equipment, and Amtrak shall make every reasonable effort to implement operations using such different equipment as soon as possible; provided, however, that no such change shall have any adverse effect on Amtrak's ability to operate the Services on-time and in accordance with Amtrak's obligations under this Agreement. Amtrak's obligations to perform the Services under this Agreement will not be excused due to the introduction or use of the so-called "California Car" proposed by the California Department of Transportation.

c. Fares, Timetables and Ticket Sales. SCRRA assumes all responsibility for establishing fares, for obtaining and printing timetables and tickets, and

for distributing timetables to Amtrak. SCRRA employees will be responsible for selling and distributing, or arranging for the sale or distribution of, all commuter rail service passenger tickets and collecting the revenue therefrom. SCRRA may at its sole discretion provide on-board personnel to assist Amtrak employees in the conduct of fare inspections or other non-operating tasks. Except as provided in sub-section j. below, only SCRRA may issue passes for free transportation on trains in SCRRA Commuter Railroad Operations.

d. Operations and Management Supervision. In addition to the rights and obligations stated elsewhere in this Agreement, SCRRA shall have the following rights with respect to oversight and monitoring of Amtrak's performance:

(1) Monitor the records, facilities, and equipment developed or used, and monitor the personnel used, by Amtrak in performance of its obligations under this Agreement, as well as timetable adherence and fare inspection procedures;

(2) Specify lubricants, materials, repair parts, supplies, and machinery to be used by Amtrak in maintaining the Service Property and the equipment used in providing the Services.

(3) Inspect any equipment at any time, and remove from service any equipment which, in SCRRA's sole discretion, is in an unacceptable condition.

(4) At SCRRA's sole discretion, direct Amtrak to cease operation of any trains operated in the SCRRA Commuter Railroad Operations. Amtrak shall resume operation of any such train or trains only upon receipt of approval from SCRRA.

e. SCRRA's Right to Information. SCRRA shall have the right to obtain from Amtrak within thirty (30) days of a request any information related to the Services or the Service Property.

f. Planning for Modifications to the Services. SCRRA may from time to time require changes, and will develop proposals and work with Amtrak to

Section 4.f. (con'd)

plan and implement such changes, in the following aspects of the SCRRR Commuter Railroad Operations:

- (1) Times of day and days of week when trains operate;
- (2) Increases or decreases in the level of train operations, including changes in train consists, or changes in the location and number of station stops with adjustments in scheduled running times, all as determined pursuant to Section 8;
- (3) Modifications in standards for maintenance of equipment and maintenance of the Service Property;
- (4) Fares, including modifications to the revenue collection system;
- (5) Additions to or replacement of equipment; and
- (6) Advertising, promotion and public information.

g. Public Information Responsibilities. SCRRR will assume all responsibility for marketing the public use of the SCRRR Commuter Railroad Operations, through advertisements or other promotions. SCRRR reserves the right to determine the locations for ticket sales. SCRRR assumes all responsibility for informing the public about the SCRRR Commuter Railroad Operations; provided, however, that Amtrak will cooperate with SCRRR and shall provide such information as it is directed by SCRRR to transmit to the public, including information concerning any disruptions and resulting delays due to emergencies. Amtrak will assist in the investigation of passenger complaints and in the preparation of responses to such complaints. Amtrak will install SCRRR-approved promotional materials or public information notices on the Service Property and equipment pursuant to procedures established by SCRRR.

h. Advertising. Only SCRRR may utilize or authorize the utilization of the interior of trains used or operated in the Services for the display of any written or printed advertising, promotional material, or public information notices, and any revenues from such advertisements shall be for the account of SCRRR.

Section 4.i.

- i. Liaison With Other Transit Agencies. SCRRRA shall coordinate with other transit agencies in such matters as intermodal transfers, passes, connecting schedules, or other matters determined at SCRRRA's discretion.
- j. Transportation of Amtrak Employees. SCRRRA shall permit crews employed by Amtrak in intercity rail passenger service to travel at no charge on SCRRRA trains as necessary to transport such crews between SCRRRA stations or facilities. SCRRRA shall allow Amtrak employees holding Amtrak inspection permits to travel on SCRRRA trains as necessary.
- k. Other Contracting Rights. SCRRRA specifically reserves the right to contract with another person, corporation or other entity for performance of any tasks required for the SCRRRA Commuter Railroad Operations that are not specifically assigned to Amtrak by this Agreement. Any employee or contractor of such person, corporation or other entity shall be permitted to perform the contracted functions at any location on the Service Property; provided, however, that no such employee or contractor shall unreasonably interfere with Amtrak's provision of the Services.

5. COSTS AND BUDGETING.

a. Costs.

- (1) Direct Costs. The Direct Costs billable to SCRRRA shall be those incurred directly in the provision of the Services as described in Appendix 8.
- (2) Overhead. The costs and expenses listed in Appendix 9 shall not be included in the Direct Costs but shall be included in General and Administrative and Overhead Costs (collectively referred to as "Overhead"). The amount of Overhead payable in a Fiscal Year shall be a fixed amount that is determined at the beginning of that Fiscal Year, and shall be adjusted only when the parties agree to amend the Approved Budget due to a change in service levels pursuant to Section 8, or when the parties agree to amend the Approved Budget according to sub-section d., below. SCRRRA shall pay additional Overhead on Direct Costs incurred in providing any Services in addition to those provided for in the Approved Budget, including but not limited to the Services described in Sections 2.c(6), (7) and (8) and 9.d. The amount of Overhead payable during a Fiscal Year shall not be changed if the

Section 5.a. (con'd)

Approved Budget is amended for any other reason. Each year that the Direct Costs included in the Approved Budget are less than Ten Million Dollars (\$10,000,000), the total amount of Overhead payable under this Agreement shall equal Direct Costs divided by .94, minus Direct Costs [i.e., $\text{Overhead} = (\text{Direct Costs} \div .94) - (\text{Direct Costs})$]. If the Direct Costs included in the Approved Budget are greater than Ten Million Dollars (\$10,000,000,) the amount of Overhead payable in each year shall equal Six Hundred Thirty Eight Thousand Dollars (\$638,000), plus Direct Costs in excess of \$10,000,000, divided by .945, minus Direct Costs in excess of \$10,000,000.

b. Annual Budget Process.

(1) Preparation of Proposed Service Plan. Prior to January 1 of each year during the term of this Agreement, SCRRA shall prepare and submit to Amtrak a service plan for the next Fiscal Year, which shall include a detailed description of the Services SCRRA expects Amtrak to provide in the next Fiscal Year, and will form the basis for the Approved Budget and the Operating Plan.

(2) Preparation of Proposed Budget. No later than February 1 of each year during the term of this Agreement, Amtrak shall prepare and submit to SCRRA a proposed budget, in a format to be agreed upon by the parties, for provision of the Services described in the service plan for the next Fiscal Year. The proposed budget shall reflect actual operations and levels of Services being provided during the then current Fiscal Year, except as modified by the service plan for the coming Fiscal Year. The proposed budget shall: (a) be consistent with the service plan; (b) list all positions, both management and non-management, whose time will be chargeable directly during the coming Fiscal Year; (c) specify Direct Costs and Overhead projected for the Fiscal Year; (d) specify the assumptions used in developing the proposed budget; and (e) include a proposed Operating Plan. The proposed budget shall not include the Direct Costs Amtrak will incur in clearing wrecks, operating special trains, assisting third parties who are permitted access to the Service Property, or providing personnel in addition to regularly assigned extra board personnel to allow Amtrak employees to attend court proceedings regarding violations of fare payment requirements.

Section 5.b. (con'd)

(3) Additional Information to Accompany Proposed Budget. At the same time that it prepares and submits the proposed budget, Amtrak shall submit to SCRRA the following additional items for which SCRRA will set aside funds during the next Fiscal Year: (a) an estimate of an appropriate contingency fund that would be sufficient to cover unforeseen expenses that might include, but would not be limited to, the Direct Cost of functions identified in the last sentence of the preceding sub-section b(2), or the cost of changes in the terms and conditions of labor agreements that may be approved during the Fiscal Year; (b) the projected Management Fee, as described in Section 6.a.; (c) the projected cost to SCRRA of all incentives due Amtrak, its employees and the freight railroads pursuant to this Agreement; and (d) a projection of the user fees to be paid to the FRA pursuant to 49 C.F.R. Part 245 for SCRRA Commuter Railroad Operations in the next Fiscal Year. At the same time, Amtrak shall provide the proposed annual maintenance and capital plan as required by Section 3.j., but the cost of implementation of that plan shall not be included in the proposed budget except upon specific agreement of the parties.

(4) SCRRA Review of Proposed Budget. By no later than March 1 of each year, SCRRA shall present to Amtrak its comments on the proposed budget, the proposed Operating Plan, and all other proposals Amtrak has provided pursuant to sub-sections (2) and (3), above, which shall specify the item(s), if any, to which SCRRA objects, and the basis for each objection. SCRRA and Amtrak shall promptly negotiate with respect to any items to which SCRRA objected and shall complete the negotiation process by no later than April 1 of each year. The SCRRA Board will review the proposed budget by no later than May 1. In the event the SCRRA Board does not approve the proposed budget by May 1, SCRRA shall provide to Amtrak by May 15, a copy of all documents upon which the parties have reached agreement, and a copy of all documents of which all or part is not yet agreed upon, along with a precise statement of the items that remain unresolved. Amtrak shall provide SCRRA staff with a statement of Amtrak's position on any unresolved items by May 25 and, unless otherwise agreed, both the SCRRA statement and Amtrak's statement shall be submitted to the Chairperson and Vice Chairperson of the SCRRA Board by June 1.

Section 5.b. (con'd)

(5) Approved Budget. In addition to stating the Direct Costs and Overhead required to provide the Services for the Fiscal Year as provided in clause (c) of Section 5.b(2), the Approved Budget shall include as an attachment an Operating Plan, and an agreed upon mechanism for funding the contingency described in clause (a) in subsection b(3), above.

(6) Operations Without Budget. If Amtrak and SCRRA are unable to agree on a budget by the beginning of the next Fiscal Year, SCRRA shall make monthly payments to Amtrak pending completion of the negotiations which are at least equal to the monthly advance payment made during the last month of the Fiscal Year just completed. SCRRA shall also pay Amtrak for Services included in the service plan for the next Fiscal Year that were not provided by Amtrak in the Fiscal Year just completed, in accordance with the procedure described in Section 8.b. When the parties agree on an Approved Budget, the prospective monthly payments shall be adjusted accordingly and the parties shall reconcile the difference between the amounts already paid for that Fiscal Year and the amounts due under the Approved Budget, with payment of interest at the Chase Manhattan Bank prime rate from the date of overpayment or underpayment until settlement of the difference.

c. Monitoring Adherence to the Approved Budget. No longer than thirty (30) calendar days after the end of each month, Amtrak will provide SCRRA with a statement showing its performance during that month in comparison with the Approved Budget amount for that month and for the Fiscal Year to date, along with an explanation of the reasons for the variance (if any) and of the actions Amtrak will take, subject to SCRRA's approval, to bring any continuing variance back into conformity with the Approved Budget. Amtrak shall provide the monthly reports described in items 2.a through and including f, in Appendix 6. In addition, on January 20 of each year, Amtrak shall provide to SCRRA a forecast of expected actual expenses and variances for the remainder of that Fiscal Year.

d. Budget Amendment for Unforeseen Events. Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Budget, which will cause a material change in the assumptions used in developing the Direct Costs or Overhead included in the Approved Budget, the parties shall agree upon amendments to the Approved Budget,

Section 5.d. (con'd)

including both Direct Costs and Overhead, and to the Management Fee payable to Amtrak during that Fiscal Year to reflect those changes. The procedure for agreeing upon amendments shall be that set forth in Section 8.b. for revising a budget for changes in service levels.

e. Budget Revisions Required Due to Excessive Cost Overruns. If during a Fiscal Year, Direct Costs and Overhead are projected to exceed the Approved Budget by Three Hundred Thousand Dollars (\$300,000) or three percent (3%), whichever is higher, the parties shall meet to discuss the circumstances which have caused the cost overrun. Amtrak shall submit a proposed revised budget to SCRRA as soon as possible, and the parties shall promptly negotiate a revised Approved Budget for the remainder of the Fiscal Year. If the Approved Budget is revised for reasons other than a change in the level of Services pursuant to Section 8 or the existence of unforeseen circumstances as provided in sub-section d:

- (1) Amtrak shall remain obligated to pay the amount described in Section 7.c.;
- (2) the Management Fee payable pursuant to Section 6.a. shall not increase; and
- (3) the cap on Management Fee and Incentives for Fiscal Year pursuant to Section 6.e. shall not increase.

If the parties are unable to agree upon a revised Approved Budget for provision of the Services for the remainder of the Fiscal Year, the parties will meet to agree upon reductions or other modifications in the Services that will permit operation for the remainder of the Fiscal Year within the operating funds available to SCRRA for the Services. If SCRRA fails to respond promptly to a request by Amtrak for a budget change, or if the parties are unable to agree upon changes in the Services required to permit operation within the operating funds available to SCRRA for the Services, the matter shall be promptly referred to arbitration pursuant to Section 16 to determine what (if any) reduction is required in order to operate the Services for the remainder of the Fiscal Year within the funds available to SCRRA for payment to Amtrak for provision of the Services. When a dispute is referred to arbitration pursuant to this sub-section, the parties' prior attempts to resolve the matter shall be deemed to satisfy the requirements of Section 16.a. Following referral of the matter to the

Section 5.e. (con'd)

Executive Director of SCRRRA and the Executive Vice President of Amtrak as required by Section 16.b., the parties shall follow the procedure in Section 16.c., except that each of the parties shall designate its arbitrator within ten (10) days of the notice, the two designated arbitrators shall have ten (10) days to appoint a neutral third member, and the arbitrators shall render their decision by no later than thirty (30) days after the appointment of the third arbitrator. While the arbitration is pending, Amtrak shall continue to operate the Services at the existing level until the parties agree upon a change in the level of Services or a modified level of Services is ordered in the course of the arbitration process; provided, however, that Amtrak upon fourteen (14) days prior written notice, may cease providing the Services completely when the actual Direct Costs and Overhead, plus the reasonably anticipated costs of ceasing the Services, reach the level of 108% of the Approved Budget; provided further, however, that Amtrak may not provide such notice and cease providing the Services unless SCRRRA has failed to make a payment within the time permitted in Section 7.b.

6. ADDITIONAL COMPENSATION.

a. Management Fee.

(1) General. In addition to the payment of Direct Costs and Overhead, SCRRRA shall pay to Amtrak in each Fiscal Year that the Approved Budget is less than Ten Million Dollars (\$10,000,000), a Management Fee of 5.7% of the Approved Budget. When the Approved Budget exceeds Ten Million Dollars, the Management Fee shall be Five Hundred Seventy Thousand Dollars (\$570,000) plus 5.5% of the amount by which the Approved Budget exceeds Ten Million Dollars. For the Fiscal Year that begins July 1, 1992, the Management Fee shall be determined pursuant to sub-section a(2), below. Except for Services provided pursuant to Sections 2.c(6) and (8), and except to the extent limited by Section 2.c(7), Amtrak shall also receive an additional Management Fee of 5.5% of Direct Costs and Overhead incurred in providing any Services in addition to those provided for in the Approved Budget. The Management Fee for Services included in the Approved Budget shall be adjusted when the parties agree to amend the Approved Budget pursuant to Section 5.d., or due to changes in the Services as provided in Section 8, and for no other reason.

Section 6.a. (con'd)

(2) Mobilization Period. For the portion of the Mobilization Period that occurs prior to July 1, 1992, SCRRA shall pay a Management Fee to Amtrak of Forty Three Thousand Dollars (\$43,000). For the portion of the Mobilization Period that starts on July 1, 1992 and continues through and including October 25, 1992, the Management Fee shall be One Hundred Fifty Eight Thousand and Nine Hundred Dollars (\$158,900). For the Fiscal Year that begins on July 1, 1992, the Management Fee determined under sub-section a.(1), above, for Services provided after the Start Date shall be 5.7% of the Approved Budget if the Approved Budget is less than Seven Million Six Hundred Fifty One Thousand Dollars (\$7,651,000). If the Approved Budget for services provided after the Start Date during that Fiscal Year exceeds that amount, then the Management Fee shall be Four Hundred Thirty Six Thousand One Hundred Dollars (\$436,100) plus 5.5% of the amount by which the Approved Budget for such Services exceeds Seven Million Six Hundred Fifty One Thousand Dollars (\$7,651,000).

b. On-Time Performance Incentives and Penalties. Subject to the limitation in Section 6.e., below, SCRRA will pay to Amtrak a monthly incentive payment for on-time performance each month, or will collect from Amtrak a penalty payment for failure to meet on-time standards, both as determined according to this Section.

(1) Calculation of On-Time Performance. Amtrak shall determine and shall report to SCRRA on a monthly basis the on-time performance of trains for each route on which Amtrak is providing Services. Amtrak shall calculate the On-Time Performance percentage by dividing the number of times the trains on the route arrived on-time by the number of trips operated by trains on the route during the month. A train will be considered on-time if its actual arrival time is at or before its scheduled arrival time at the train platform at the terminal station as agreed to by the parties and specified in the employee timetable, plus a standard tolerance of five minutes. The following time shall be deducted from the actual arrival time for each trip of a train prior to making the above determination, and no other delays or tolerance will be allowed in determining whether a train is on-time or late.

(a) The amount of time lost handling passengers with disabilities.

Section 6.b. (con'd)

- (b) The amount of time required by programs (including maintenance of way programs) specified or approved by SCRRRA, or by periodic safety tests required by the FRA and approved by SCRRRA. (The latter shall not include brake tests or other inspections required by the FRA in the daily course of operations.)
- (c) The amount of time lost handling passengers with bicycles.
- (d) The amount of time a train is delayed by actions or omissions of a freight railroad which controls the line over which the train is operating.
- (e) The amount of time a train is delayed as a result of adherence to and implementation of the policy governing priority of trains set forth in Appendix 3.
- (f) The amount of time a train is delayed because it is held at a station at the specific request of SCRRRA or pursuant to a written policy of SCRRRA.

(2) Trains Not Included in Calculation. Trains that are annulled or arrive late due to the following conditions shall not be counted in either the numerator or denominator in calculating on-time performance.

- (a) Trains that do not meet the predetermined power-to-weight ratio due to the addition of cars to a train's normal consist as agreed to by SCRRRA.
- (b) Trains delayed by grade-crossing accidents.
- (c) Trains delayed by injuries to passenger or trespassers.
- (d) Trains delayed by force majeure, as defined in this Agreement.
- (e) Trains held by civil authorities.
- (f) Trains delayed by acts of vandalism.

Section 6.b. (con'd)

(g) Subsequent trains delayed by one of the causes listed above in this Section 6.b(1) and (2).

(3) Incentive or Penalty Payments. The incentive payment or penalty for a month for each route is calculated by multiplying the incentive or penalty rate corresponding to the range in which the actual percentage on-time falls, as shown in Table 1, by the number of revenue train miles operated in the month by Amtrak on the route. Amtrak shall not incur a penalty under this Section 6.b. in any month which exceeds the total of (1) the net incentive payments to Amtrak under this Section 6.b. for the preceding twelve (12) months, and (2) the current month's Management Fee.

TABLE 1

ON-TIME PERFORMANCE %	INCENTIVE PAYMENT (+) OR PENALTY (-) (RATES PER TRAIN MILE)
99.0 - 100	\$1.75
98.0 - 98.9	\$1.50
97.0 - 97.9	\$1.25
96.0 - 96.9	\$1.00
95.0 - 95.9	\$0.75
94.0 - 94.9	\$0.25
93.0 - 93.9	\$ 0
92.0 - 92.9	\$-0.25
91.0 - 91.9	\$-0.75
90.0 - 90.9	\$-1.00
89.0 - 89.9	\$-1.25
88.9 and Below	\$-1.50

Section 6.b. (con'd)

(4) On-Time Performance Records. Amtrak shall maintain daily on-time performance records for each route in a form to be agreed upon by the parties. Delays to trains shall be as reported by Train Conductors, and supporting documentation shall be retained for inspection and verification by SCRRA. Amtrak shall maintain monthly summaries of on-time performance for each route in a form to be agreed upon by the parties. The monthly summary of on-time performance shall be completed within ten (10) days of the end of each month. Amtrak shall also maintain a Fiscal Year summary by month of incentives payable to Amtrak and employees on a form to be agreed upon by the parties. Such form shall summarize each route's on-time performance as well as the actual performance payments paid to Amtrak and its employees, and the penalties deducted from amounts otherwise payable to Amtrak and its employees. This form shall be completed within ten (10) calendar days of the end of each month.

c. Equipment Availability Incentives and Penalties. SCRRA will pay to Amtrak an incentive payment, or Amtrak will be liable to SCRRA for a penalty, of up to Fifteen Thousand Dollars (\$15,000) per month, based on Amtrak's performance on measures of reliability and availability of the equipment used to provide the Services, as provided in this Section. The number of mechanical units (locomotives, cab cars and trailer cars) that must be available to meet the daily requirements will be established by agreement of the parties based on agreed upon train consists, schedules, and maintenance requirements, as reflected in the Operating Plan.

(1) Determination of Availability. Available units of equipment will be determined as follows:

- (a) A locomotive shall be counted as available if it completes its scheduled trip without a mechanical failure which causes the trip to be counted as late under Section 6.b(1) of this Agreement. A locomotive that incurs accidental damages while en route which causes the trip to be counted as late will be counted as available for the purposes of this subsection.
- (b) A car shall be counted as available if it completes its scheduled trip without:

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- (i) heating or air conditioning failure.
 - (ii) toilet failure when there is no adjacent car with a properly functioning toilet.
 - (iii) a mechanical failure which causes the trip to be counted as late under Section 6.b(1) of this Agreement. A car that incurs accidental damages while en route which causes the trip to be counted as late will be counted as available for the purposes of this sub-section.
- (c) Non-revenue deadhead cars will not be counted in determining availability.
 - (d) A car operated on a train in excess of the agreed upon consist due to passenger demand will be counted as available.

(2) Availability Percentage. The percentage of equipment available during a calendar month compared to that called for in the Operating Plan will be calculated by dividing the monthly total number of equipment units available by the monthly number of equipment units required to operate the service.

- (a) The monthly total number of equipment units available shall be calculated by determining the total number of units available for each day in a month for each unit type (locomotives, cab cars, or trailer cars), using the guidelines set forth in sub-section c(1), above. The monthly total number of equipment units available shall equal the sum of all such daily totals.
- (b) The daily total number of equipment units required to operate the service shall be calculated by adding the number of units specified in the Operating Plan's consist requirements for a day's operation, to the number of units operated in any train for the day in excess of the Operating Plan because of passenger demand. The monthly total

Section 6.c. (con'd)

number of equipment units required equals the sum of the daily number of units required.

(3) Monthly Incentive or Penalty. The monthly Equipment Availability Incentive or Penalty will be determined by multiplying the percentage set forth in the right hand column of Table 2 for the range in which the actual availability percentage for that month falls, by \$15,000. Amtrak shall not incur a penalty under this Section 6.c. in any month which exceeds the total of (1) the net incentive payments to Amtrak under this Section 6.c. for the preceding twelve (12) months, and (2) the current month's Management Fee.

TABLE 2

AVAILABILITY PERCENTAGE	INCENTIVE POTENTIAL (% OF \$15,000 PER MONTH)
98.0 and Above	100%
97.0 - 97.9	75%
96.0 - 96.9	50%
95.0 - 95.9	25%
94.0 - 94.9	0
93.0 - 93.9	0
92.0 - 92.9	-25%
91.0 - 91.9	-50%
90.0 - 90.9	-75%
89.0 - 89.9	-100%
88.9 or Below	-100%

Section 6.c. (con'd)

(4) Records of Equipment Availability. Amtrak shall prepare a daily statement of equipment availability performance for all routes for each day of each month, and shall compile a monthly equipment availability performance report that provides the information in a format to be agreed upon by the parties. The monthly summary report shall be provided to SCRRRA no later than ten (10) calendar days after the end of the month. Equipment units not available for scheduled train departures and equipment failures enroute shall be as reported by train conductors, and supporting documentation shall be retained by Amtrak for inspection and verification by SCRRRA. Amtrak shall also maintain a Fiscal Year summary of Amtrak and employee equipment availability incentive payments on a monthly basis, in a form to be agreed upon by the parties. The Fiscal Year summary report shall be completed within twenty (20) days of the end of the Fiscal Year.

d. Ridership Growth Incentive Payment. Beginning with the Fiscal Year ending on June 30, 1994, a ridership growth incentive of \$.10 per rider will be paid annually for each additional one-way rider above a base level of annual ridership. The initial base level will be four (4) times the level of ridership attained during the months of April, May and June 1993. In subsequent years, the base level used to determine ridership growth will be actual ridership for the preceding Fiscal Year.

e. Cap on Management Fee and Incentives. The Management Fee and On-Time Performance Incentive, Equipment Availability Incentive and Ridership Growth Incentive payments in a Fiscal Year, net of penalties and liquidated damages assessed under this Agreement, shall not exceed 10% of the Approved Budget amount for that Fiscal Year. When calculating the total amounts of Management Fee and Incentive payments according to the preceding sentence, the amount of Equipment Availability Incentive used in the calculation shall be only 90% of the total amount earned by Amtrak under Section 6.c.

f. Liquidated Damages. Because the damages to SCRRRA or to SCRRRA Commuter Railroad Operations from the occurrence of the following events cannot be accurately determined, the parties agree that the following amounts shall be assessed as liquidated damages:

Section 6.f. (con'd)

(1) After Amtrak receives a first warning notice with respect to an individual and has a reasonable opportunity to correct the deficiency, a penalty of \$200 per person per day shall be assessed against compensation otherwise payable to Amtrak pursuant to this Agreement for Amtrak's failure to ensure that its employees are qualified and trained to do the job to which they are assigned.

(2) In the event of a signal failure, Amtrak will use its best efforts to initiate action promptly to correct the deficiency. If a commuter train in SCRRRA Commuter Railroad Operations is scheduled to operate over the track on which the signal failure has occurred within the next 12 hours after the failure occurs, Amtrak shall initiate corrective action to repair such failure within three hours of the signal failure. If Amtrak does not initiate such corrective action within that time frame, Amtrak shall pay SCRRRA \$500 per occurrence; provided, however, that Amtrak shall not be required to make any such payments if no such commuter train is affected by the signal failure, if the FRA assesses a fine for the same occurrence, or if, because of occurrences beyond the control of Amtrak, a maintainer was not available due to the Hours of Service Act.

7. **PAYMENT.**

a. **Mobilization Period Payments.** Upon execution of this Agreement, SCRRRA shall pay to Amtrak as an estimated payment Three Hundred Thousand Dollars (\$300,000) for the portion of the Mobilization Period between February 21, 1992 and June 30, 1992 to cover Direct Costs, Overhead and the Management Fee for this period. By July 20, 1992, Amtrak shall provide SCRRRA with an itemization of actual Direct Costs incurred during that period. By July 31, 1992, SCRRRA shall pay to Amtrak any additional amounts due for that period. On the first day of each month from July 1, 1992 through the Start Date, SCRRRA shall pay to Amtrak a monthly estimated payment of Six Hundred Twenty Six Thousand, Nine Hundred Seventy Five Dollars (\$626,975) to cover Direct Costs, Overhead and the Management Fee for this period. By November 20, 1992, Amtrak shall provide SCRRRA with an itemization of Direct Costs incurred during that period. By December 1, 1992, SCRRRA shall pay to Amtrak any additional amounts due for that period.

Section 7.b.

b. Schedule of Regular Payments.

(1) No later than the first working day of each month after the Start Date, SCRRA shall pay to Amtrak in advance for that month one-twelfth (1/12) of the total amount of the Approved Budget, and one-twelfth (1/12) of the Management Fee for that Fiscal Year; provided, however, that in the Fiscal Year ending June 30, 1993, the amount of each monthly advance for that Fiscal Year shall be determined by dividing the total of the Approved Budget and Management Fee for that Fiscal Year by the number of months between the Start Date and the end of the Fiscal Year.

(2) Within twenty (20) days after the end of each month, Amtrak shall submit to SCRRA a bill for the Direct Costs actually incurred in that month, and for any incentives earned or penalties incurred in connection with on-time performance and equipment availability with respect to the month. Subject to Section 7.c. of this Agreement, SCRRA shall adjust the monthly payment made pursuant to subsection b(1), above, that is due on the sixtieth day following the end of the month in which the Direct Costs were incurred, to reflect additional amounts due Amtrak, or amounts owed by Amtrak to SCRRA, for all billings that are timely submitted, without any withholding or offset as a result of disputes concerning the interpretation or application of the cost and incentive provisions of the Agreement; provided, however, that SCRRA may withhold payment of amounts related to mathematical computation or computer coding errors; and provided further, that SCRRA may withhold payment of amounts for compensation of an employee in a position that is not listed in the Operating Plan or the Approved Budget. SCRRA shall notify Amtrak that it is withholding a payment pursuant to the previous sentence at the time that it pays the remaining balance on that invoice. Where it is not feasible to include the adjustment in a regular monthly advance payment as described in the second sentence of this sub-section, the amount owed shall be paid separately as soon as is practicable.

(3) If penalties incurred during a month result in a net amount due SCRRA for that month, then the monthly advance paid on or about the sixtieth day following the end of the month in which such penalties were incurred shall be reduced (up to an amount that shall

Section 7.b. (con'd)

not exceed 1/12 of the Management Fee for that Fiscal Year) by the amount due SCRRRA.

(4) SCRRRA shall not be required to pay to Amtrak in any month an amount of incentives that would cause the total amount of incentive payments (net of penalties) paid to Amtrak during that Fiscal Year, to exceed an amount equal to 10% of the incentives that Amtrak is eligible to receive during that Fiscal Year according to Section 6.e. multiplied times the number of months that have been completed in the Fiscal Year. Any incentives that are earned but not paid in a month because of the restrictions contained in the preceding sentence shall be paid in subsequent months, subject to the restrictions of the preceding sentence and of Section 6.e.

(5) SCRRRA shall not be required to pay, and shall not incur any liability with respect to, any incentive payments in excess of the amount of Management Fee and Incentives that Amtrak is eligible to earn in a Fiscal Year according to the provisions of Section 6.e. of this Agreement.

(6) In the event a payment is not made in a timely fashion or it is ultimately agreed by the parties or otherwise determined that a payment made by the Authority was excessive or was insufficient, the of the overpayment or underpayment shall bear interest at the Chase Manhattan Bank prime rate from the date the overpayment or underpayment occurred until the amount is repaid or paid.

c. Costs in Excess of the Approved Budget. If the sum of actual Direct Costs incurred and billed by Amtrak for items included in the Approved Budget in a Fiscal Year exceeds one hundred and one percent (101%) of the Direct Costs included in the Approved Budget, SCRRRA shall not be required to reimburse Amtrak for fifty percent (50%) of the amount by which such Direct Costs exceed 101% of the Direct Costs included in the Approved Budget; provided, however, that the maximum amount for which SCRRRA shall not be obligated to reimburse Amtrak is \$100,000 per year (i.e., 50% of the first \$200,000 in excess of 101% of the Direct Costs included in the Approved Budget).

d. Costs Less than the Approved Budget. If the sum of actual Direct Costs incurred and billed by Amtrak for items included in the Approved

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Budget in a Fiscal Year are less than ninety-nine percent (99%) of the Direct Costs included in the Approved Budget, SCRRA shall pay Amtrak an amount equal to fifty percent (50%) of the difference between actual Direct Costs and 99% of the Direct Costs included in the Approved Budget; provided, however, that the maximum amount that SCRRA shall be obligated to pay Amtrak pursuant to this subsection is \$100,000 per year. Payment under this Section 7.d. shall be made not later than sixty (60) days after the end of the Fiscal Year.

e. Freight Railroad Incentives.

(1) Unless otherwise agreed, SCRRA shall pay to Amtrak each month a performance payment which Amtrak shall pay to each freight railroad that dispatches and maintains a line of railroad over which an SCRRA train operates. The parties may agree that Amtrak will make no such payments to a freight railroad. The provisions of this subsection are solely for the benefit of the parties to this Agreement and all or any part of this provision may be suspended, modified or terminated if the parties agree. This Agreement does not confer, and shall not be interpreted as conferring, upon any freight railroad any right to receive any such payment.

(2) The monthly payment for each railroad shall be based upon the on-time performance percentage for that month for trains operated on lines dispatched and maintained by that freight railroad. The percentage on-time performance of such trains will be determined as provided in Section 6.b., except that the performance shall be adjusted by deducting the amount of time Amtrak was relieved for freight railroad caused delays, and will be further adjusted to add the amount of time SCRRA trains were delayed for mechanical causes. The amount of incentives that a freight railroad may receive in a month shall be determined by multiplying 60% of the incentive rate (if any) per train mile shown in Table 1 of Section 6.b. for the on-time performance on a line times the number of train miles operated over trackage dispatched and maintained by the freight railroad on the route; provided, however, that the maximum amount of such freight railroad incentives that may be paid to all freight railroads in a Fiscal Year shall not exceed an amount determined by multiplying the maximum incentive Amtrak could earn in On-Time Performance incentives under Section 6.b. (up to the amount of the cap on Amtrak

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incentives established by sub-section 6.e.) times the ratio of the route miles that freight railroads dispatch and maintain to the total route miles over which SCRRRA trains are operated times 60%. In conjunction with the budgeting process provided in Section 5, the parties shall develop an annual budget for freight railroad incentives. In the event of a failure by the parties to agree upon a budget amount for freight incentives for a year, the matter of the need for and amount (if any) of incentives to obtain greater efforts by freight railroads to participate in providing high quality commuter railroad service shall be submitted to arbitration pursuant to Section 16. Amtrak shall maintain a summary for each Fiscal Year of Freight Railroad On-Time Incentive Payments on a monthly basis in a form to be agreed upon by the parties. Amtrak shall complete such a report within ten (10) days of the end of each month.

f. Employee Incentive Payments. The parties are establishing an employee incentive plan to provide performance incentives to all Amtrak employees who are included in the Direct Costs paid to Amtrak by SCRRRA. Beginning in August 1993, and each August thereafter during the term of this Agreement, SCRRRA shall pay to Amtrak and Amtrak shall distribute to its employees working on providing the Services a pool of funds (net of required tax payments) that is determined as follows.

(1) The pool of funds will be composed of:

- (a) An amount contributed by Amtrak that is equal to ten percent of the Equipment Availability Performance incentive paid to Amtrak pursuant to Section 6.c. during the Fiscal Year ending the previous June 30.
- (b) An additional amount which shall be paid to Amtrak by SCRRRA no later than August 1, equal to six percent of On-Time Performance incentives earned by Amtrak pursuant to Section 6.b. during the Fiscal Year ending the previous June 30, without regard for the cap described in Section 6.e.
- (c) An amount up to Forty Eight Thousand Dollars (\$48,000) per year to be determined on the basis of customer correspondence received and/or surveys conducted during the Fiscal Year ending the previous June 30, which shall be

paid to Amtrak by SCRRA no later than August 1. This maximum amount shall be increased or decreased annually by the same percentage as the increase or decrease in the direct wage cost portion of the Approved Budget compared to the prior year.

(2) The pool of funds available for employee incentive payments will be reduced by \$250 per incident for each incident which involves a failure to stop for or otherwise reasonably accommodate disabled individuals and by \$200 per incident for each incident of conduct unbecoming an employee (as defined in Section 19.a.) or of failure to wear a proper uniform.

(3) Amtrak will provide SCRRA with an annual report showing the amount paid to each employee.

g. User Fees. Amtrak shall calculate and pay to FRA the user fees attributable to SCRRA Commuter Railroad Operations determined according to 49 C.F.R. Part 245. Amtrak shall submit an invoice to SCRRA for such user fees no sooner than forty five (45) days prior to the date they are due to be paid to FRA, and SCRRA shall pay that invoice within twenty (20) days. Amtrak shall pay the amount due upon receipt of payment from SCRRA.

8. **CHANGES IN SERVICES OR SERVICE LEVELS.**

a. Procedure.

(1) SCRRA may request at any time, upon reasonable notice, that Amtrak provide modified or additional Services on existing routes of the kind currently provided. For the purposes of this Agreement, the routes between LAUPT and the following points shall be considered "existing routes" regardless of whether service on these routes commences on the Start Date: San Bernardino, San Juan Capistrano (current Orange County Transportation Authority train), Moorpark; Santa Clarita and Riverside (via Ontario). If SCRRA Commuter Railroad Operations are not being provided over those routes as of the Start Date, then the commencement of Services on these routes shall be handled in accordance with this Section 8.a.

Section 8.a. (con'd)

(2) Subject to agreement with respect to the budget and necessary special conditions (if any) in connection with the proposed Modified Services. Amtrak shall commence operation of the Modified Services in a timely fashion in accordance with SCRRRA's request. The additional payment for any Modified Services shall be determined in the same manner as Direct Costs and Overhead are calculated pursuant to Section 5, and Management Fee and incentive payments are calculated pursuant to Section 6. After receiving a request from SCRRRA for Modified Services, Amtrak shall prepare a proposed budget within 30 days to cover the Services in accordance with the cost provisions of this Agreement, and the parties shall proceed promptly to discuss and agree upon a modification to the Approved Budget.

b. Service Changes Without Budget Agreement. In the event that Amtrak asserts that more personnel and materials are required for operation of the Modified Services than SCRRRA believes are appropriate and the parties are therefore unable to agree within fifteen (15) days upon a budget for the Modified Services, Amtrak shall, if requested by SCRRRA, institute the Modified Services as soon as possible and the question of what personnel or materials are required for operation of the Services shall be submitted immediately for resolution by arbitration pursuant to Section 16. If Amtrak believes that the additional personnel or materials are essential for the Modified Service, Amtrak shall provide the Services pending resolution of the dispute by arbitration and SCRRRA shall make regular periodic payments to Amtrak that include the cost of all personnel and materials actually being provided. In the event (and to the extent) that SCRRRA prevails in the arbitration, Amtrak will be required to repay SCRRRA with interest, at the Chase Manhattan Bank prime rate, the amount of the costs SCRRRA has paid that the arbitrators have determined are excessive; provided, however, such payment shall be retroactive for costs SCRRRA has paid for a period not to exceed six (6) months and shall not exceed One Hundred Thousand Dollars (\$100,000), before addition of interest. Further, upon such determination, Amtrak shall promptly eliminate the personnel or use of materials that have been determined by the arbitrators to be excessive.

c. Service on New Routes. SCRRRA may from time to time request Amtrak to begin providing Services on routes that are not specified in subsection a(1), above, or that have not been added to the Service Property by

agreement of the parties. Upon receipt of such a request, Amtrak shall within thirty (30) days prepare a proposed budget to cover those new Services, using the Direct Cost and Overhead provisions of Section 5.a. of this Agreement. After completion of the negotiation of an amendment to the Approved Budget and any special provisions required to accommodate the new Services, such Services will begin as soon as is feasible, taking into consideration availability of personnel and equipment to operate the new Services. The amendment to the Approved Budget shall include an amended Operating Plan, which will include supplements to Appendices as required to accurately describe the changes in Services to be provided.

9. ACCESS TO SERVICE PROPERTY BY THIRD PARTIES.

a. SCRRRA and Amtrak shall each have the right to permit third party contractors to enter upon those portions of the Service Property which Amtrak dispatches or over which Amtrak has maintenance responsibility subject to compliance with all applicable operating and safety rules. Before any such third party is allowed access to the Service Property, Amtrak or SCRRRA, respectively, shall require that third party to execute a permit to enter upon the property in the form agreed upon by the parties; and to secure railroad protective liability insurance, naming Amtrak, SCRRRA and any other railroad which operates on that portion of the Service Property, as named insureds under the policy, as well as such other insurance as the parties may agree. The third party shall provide original counterparts of all policies to the insureds. Any such insurance shall remain in effect for one year following completion of the work on or other access to the Service Property.

b. When SCRRRA allows a third party to have access to a portion of the Service Property described in sub-section a., SCRRRA shall notify Amtrak promptly of the scope, purpose and duration of that third party's access.

c. All utility crossings, construction, or encroachments upon the Service Property by or for third parties must be approved by SCRRRA and shall then be conducted under the direction of Amtrak. Approval by SCRRRA engineering personnel of all construction standards, forms, plans, utility crossings, and encroachments shall be a prior condition to any authorization by either Amtrak or SCRRRA for work by a third party to proceed. Forms and standards may receive a one-time approval until

Section 9.c. (con'd)

revised. SCRRRA reserves the exclusive right to charge a rental or occupancy fee for any such access.

d. When SCRRRA permits a third party to have access to the Service Property, SCRRRA shall collect from such third party fees and charges, including Overhead and Management Fee described in this sub-section d., for services, including but not limited to engineering, flagging and inspection, that Amtrak provides to the third party. When requested by SCRRRA, Amtrak shall submit a proposed schedule of such fees and charges to SCRRRA for its use in contracting with third parties. The Direct Costs incurred by Amtrak in providing services to third parties shall not be included in the Approved Budget and, as a result, shall be excluded from the sum of actual Direct Costs included in the computations described in Sections 7.c. and d. of this Agreement. Amtrak shall receive an additional Overhead payment in the amount of 5.5% of the Direct Costs incurred in providing such services to third parties, and an additional Management Fee payment equal to 5.5% of the Direct Costs and Overhead paid due to the provision of such services.

10. **EMERGENCIES.**

a. Force Majeure. Each party will be excused from performance of any of its obligations to the other hereunder, where such nonperformance is occasioned by any event beyond the non-performing party's control which shall include without limitation, any order, rule, or regulation of any federal, state, or local government body, agent, or instrumentality, work stoppage, accident, natural disaster, or civil disorder; provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, or remove such event in the shortest practical time. Amtrak shall use its best efforts to undertake and complete the repair, restoration, or replacement of any property which is necessary for the provision of Services in accordance with established train schedules and shall resume normal commuter operations and performance of its other obligations hereunder as soon as reasonably possible.

b. Operation by SCRRRA. If Amtrak is excused from performing its obligations under this Agreement for any of the reasons listed in subsection a., above, and such an interruption in the Services continues for fifteen (15) days, SCRRRA may provide notice to Amtrak of its intent to begin providing

the Services, and may provide those Services itself with its own or other personnel without liability to Amtrak.

11. **INSURANCE.**

a. **Commercial and General Liability Insurance.** SCRRRA shall procure and maintain for the duration of this Agreement commercial and general liability insurance in the name of SCRRRA, LACTC and Amtrak, as well as others to be added at SCRRRA or LACTC's sole discretion. Such insurance shall cover property damage and injury or death of persons, arising out of SCRRRA's Commuter Railroad Operations, including provision of the Services pursuant to this Agreement. Such insurance shall not cover liability for employees of Amtrak or its subcontractors for which Amtrak is responsible as provided in Section 12.a. The annual aggregate and per occurrence limits of liability shall be at least \$150 million. SCRRRA shall have the right to self-insure for any part of the insurance coverage up to \$5 million per year; provided, however, that Amtrak shall agree to allow SCRRRA to change the amount that is self-insured if SCRRRA demonstrates that it has established safeguards to ensure that Amtrak's risk exposure is no greater than it would be with a \$5 million self-insurance retention. Amtrak shall have the right of approval that the insurance policies and self-insurance arrangements adequately protect Amtrak against claims for property damage, personal injury or death. By no later than July 1, 1992, and by June 1 of each year thereafter, SCRRRA will deliver to Amtrak satisfactory evidence that SCRRRA has obtained this insurance coverage with reputable insurers, and Amtrak's approval of the insurance coverage and the insurance carriers shall not be unreasonably withheld. For the self-insured retention, SCRRRA shall deliver at the same time to Amtrak satisfactory evidence of the availability of sufficient funds and an adequate mechanism to provide reserves created for self-insured claims, and Amtrak's approval of the funds and SCRRRA's proposed mechanism shall not be unreasonably withheld.

b. **Property Insurance.** SCRRRA shall procure and maintain for the duration of this Agreement, property insurance covering the real and personal property of SCRRRA (including, but not limited to, railroad equipment, rolling stock, and right of way) against all risk of physical damage usually covered in a railroad property insurance policy. Amtrak shall be named as an additional insured as respects SCRRRA property in

Section 11.c.

Amtrak's care, custody, and control, and SCRRRA shall cause the property insurer to waive all rights of subrogation against Amtrak.

c. Automobile Insurance. SCRRRA shall procure and maintain for the duration of this Agreement automobile insurance covering the liability of Amtrak and SCRRRA arising out of the use of all owned, non-owned, hired, rented or leased vehicles used by either party for the SCRRRA Commuter Railroad Operations, and also covering the physical damage and loss exposure of such vehicles. The automobile insurance shall name Amtrak as an additional insured with respect to operations to be performed in connection with the Services. Coverage under this policy shall have limits of liability of not less than Five Million Dollars (\$5,000,000) per occurrence, combined single limits, for bodily injury and property damage liability, as well as physical damage limits sufficient to cover the actual cash value of the covered vehicle.

12. LIABILITY AND INDEMNIFICATION.

a. Allocation of Liability. SCRRRA shall, at its sole expense, indemnify and hold harmless Amtrak, its employees, agents, or contractors, from any and all liability for injuries to or death of any person or persons, other than persons described in the next sentence, and from any and all liability for loss, damage or destruction to any property, which arises out of the operation of the SCRRRA Commuter Railroad Operations. Amtrak agrees, at its sole expense to defend, indemnify and hold harmless SCRRRA against any claims for injury or death to the employees of Amtrak and employees of subcontractors hired by Amtrak to perform the Services.

b. Environmental Liability. Before Amtrak occupies or assumes responsibility for any part or segment of the Service Property, SCRRRA will provide Amtrak with copies of all environmental studies or assessments to which it has access with respect to the Service Property. SCRRRA will defend, indemnify and hold harmless Amtrak, its employees, agents or contractors, from any and all liability for any loss or damages to the environment that occurred or existed prior to the date that Amtrak occupies or assumes responsibility or control of each such part of the Service Property. Liability for any loss or damages occurring after such date shall be allocated according to Sections 12a. and 12c. of this Agreement.

Section 12.c.

c. Excluded Conduct. Notwithstanding sub-section a., above, SCRRRA will not indemnify and hold harmless Amtrak for any award of exemplary damages against Amtrak, or for a portion of a settlement of a claim to the extent that it is determined pursuant to arbitration as provided in Section 16 of this Agreement that such portion was paid due to the probability that exemplary damages would be awarded against Amtrak in litigation with respect to the claim, and Amtrak will indemnify and hold harmless SCRRRA for any such award or any such portion of a settlement. Exemplary damages are damages for which there is clear and convincing evidence that the damages arise out of an act or omission in which there has been conduct which constitutes oppression, fraud, or malice. For the purposes of this Agreement, the following definitions shall apply:

- (1) "Malice" means conduct which is intended to cause injury to others or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others.
- (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.
- (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact with the intention of thereby depriving a person of property or legal rights or otherwise causing injury.

Furthermore, Amtrak shall not be responsible for exemplary damages based on the acts or omissions of an employee unless an officer, director or managing agent of Amtrak had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the exemplary damages were or would have been awarded.

13. CLAIMS HANDLING AND DEFENSE. SCRRRA will handle, at its sole expense, the investigation, defense, and settlement of all claims against Amtrak or SCRRRA arising out of the SCRRRA Commuter Railroad Operations, except for claims with respect to injury or death of employees of Amtrak or its subcontractors hired to perform the Services. Amtrak shall have the right of prior approval of the settlement by SCRRRA of any claim against Amtrak in which a request for exemplary damages is made. If such prior approval is not

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obtained and SCRRRA proceeds with the settlement absent such approval, the exclusion described in Section 12.c. will not apply. Amtrak shall promptly notify SCRRRA of any incident, accident or injury that Amtrak reasonably believes may lead to a claim for which SCRRRA may be responsible under the provisions of this Agreement. Amtrak shall give notice to SCRRRA within ten (10) working days of its actual receipt of any claim or complaint for which SCRRRA is responsible under the provisions set forth in this Agreement. If Amtrak fails to provide SCRRRA with timely notice as required hereunder, SCRRRA's obligations to indemnify and defend Amtrak shall exclude any increased costs or increased damages incurred solely as a result of such failure.

14. EFFECTIVE DATE, TERM AND TERMINATION.

a. Term.

(1) This Agreement shall take effect February 21, 1992 and shall remain in effect at least until June 30, 1995. This Agreement shall continue in effect for an additional two (2) year term, through and including June 30, 1997, unless SCRRRA shall have provided written notice no later than June 30, 1994, of its intent to terminate the Agreement effective June 30, 1995. After June 30, 1997, this Agreement may be extended for additional terms of two (2) years each if SCRRRA notifies Amtrak of its intent to extend by no later than the June 30 which is twelve (12) months before the end of the existing term, and if Amtrak notifies SCRRRA by no later than November 1 of the same year that it agrees to extension of the term of the Agreement.

(2) If SCRRRA does not serve notice by June 30, 1994, of its intent to terminate this Agreement, either party may serve a notice on the other no later than October 1, 1994 of its intent to negotiate changes with respect to the following and only the following issues: (1) the rates of incentives paid and penalties assessed for On-Time Performance (Section 6.b., Table 1, right column) and Equipment Availability (Section 6.c., Table 2, right column); and (2) the On-Time Performance percentages in Table 1 (left column) and Availability percentages in Table 2 (left column); (3) the basis for determining the amount included in the annual budget for FELA claims. If the parties are unable to agree on changes with respect to these issues by no later than January 1, 1995, the terms and conditions of this Agreement shall remain in effect for the next two (2) year period.

Section 14.b.

b. Termination for Cause by SCRRRA. SCRRRA may, at its sole discretion, terminate this Agreement upon the occurrence of a material breach of this Agreement, which shall include, but not be limited to, the following:

(1) Amtrak's refusal to perform any of the Services under this Agreement, when such refusal significantly disrupts the SCRRRA Commuter Railroad Operations and is not excused by any other provisions of this Agreement.

(2) Amtrak shall have incurred net penalties in four (4) consecutive quarters under the On-Time Performance and Equipment Availability Incentives and Penalties provisions (Sections 6.b. and c.) of this Agreement.

(3) Amtrak's assignment or subcontracting of any of its obligations under this Agreement without any required prior written approval of SCRRRA.

(4) Amtrak's insolvency or inability to meet its obligations, or the filing of an involuntary petition in bankruptcy against it, or the adjudication that it is bankrupt, or Amtrak's making an assignment for the benefit of creditors, filing a petition for an arrangement, composition or compromise with its creditors under any applicable laws, or having a trustee, receiver, or other officer appointed to take charge of its assets.

(5) Amtrak's failure to comply with a valid and applicable law, ordinance, rule, regulation or order of any legal authority that has a material impact on Amtrak's ability or fitness to carry out its obligations to provide the Services under this Agreement.

(6) A strike by railroad labor that causes a major impairment in the operation of the Services by Amtrak for a period of sixty (60) consecutive days or more.

c. Termination for Cause by Amtrak. Amtrak may at its sole discretion terminate this Agreement upon the occurrence of a material breach of this Agreement by SCRRRA, which shall include, but not be limited to, the

Section 14.d.

failure of SCRRA to make two or more monthly payments as required by Section 7 of this Agreement.

d. Termination for Convenience. SCRRA may, no later than thirty (30) days after the occurrence of any of the following, where the occurrence of the event makes it impossible or unsuitable for Amtrak to continue as operator of the Services, terminate this Agreement:

- (1) The abolition of SCRRA or merger of SCRRA with another entity.
- (2) Legislation or court decision requiring that another entity operate the Services.
- (3) Funding is no longer available for the Services.
- (4) Secession from the SCRRA of a member county, or failure of a member county to fund Services within its jurisdiction, where the secession or failure would render impossible the efficient provision of the Services, and modification of the Services provided and of the Approved Budget will not be sufficient to account for the loss to SCRRA and to the commuter rail system of that county's participation.
- (5) Patronage on trains included in the SCRRA Commuter Railroad Operations falls so short of projections that the Service is not deemed cost effective with respect to the transportation and air quality goals of the region.
- (6) Legislation, regulation or court decision places on SCRRA or on the operation of the Services, financial or operational burdens which are so great as to degrade service quality below acceptable levels, or imposes unforeseen and excessive (in SCRRA's sole discretion) liabilities on SCRRA, or raises costs to a level where costs are deemed to exceed benefits.
- (7) Determination by SCRRA that continued provision of Services by Amtrak will result in imminent danger to the public health or safety. SCRRA may make such a determination if SCRRA has ordered Amtrak to cease providing all or a portion of the Services under

Section 14.e.

Section 4.d(4) of this Agreement for public health and safety reasons and Amtrak has been unable within fifteen (15) days of such order to remediate the cause for the order when the cause was a factor within Amtrak's control.

e. Termination Procedure. Upon the occurrence of one of the events described in the foregoing sub-sections b., c. and d., the party electing to terminate the Agreement shall follow the procedure set forth below:

(1) The party electing to terminate shall notify the other in writing of its election to terminate and of the basis for that action.

(2) The termination shall be effective no later than ten (10) days after the date of notice, except that a termination for cause shall not become effective if the other party shall have taken action to substantially remedy the default within that ten (10) day period.

f. Rights and Obligations Upon Termination.

(1) Upon termination for cause or termination by SCRRRA pursuant to sub-section d(7), above, SCRRRA shall have the right to arrange for provision of the Services by another operator.

(2) Amtrak shall bear any incremental cost incurred by either SCRRRA or Amtrak that is attributable to termination for cause by SCRRRA.

(3) SCRRRA shall bear any incremental cost incurred by either SCRRRA or Amtrak that is attributable to termination for cause by Amtrak.

(4) SCRRRA shall pay the following termination costs to Amtrak:

(i) the reasonable cost of settling and paying claims arising out of the termination of Services under subcontracts or purchase orders.

(ii) reasonable costs determined at the time of termination which are incurred pursuant to the performance of any

Section 14.f.

specific written instructions received from the SCRRRA concerning such termination; and

(iii) any other reasonable costs incidental to such termination of Services.

(5) Notwithstanding the foregoing, the total amount of termination costs payable to Amtrak shall not exceed 1/12 of the Approved Budget for the Fiscal Year in which the termination occurs.

(6) No termination of this Agreement shall in any way diminish or otherwise affect SCRRRA's obligation to pay for any Services rendered, or to fulfill any other obligations incurred, prior to the effective date of the termination.

15. **LABOR PROTECTION.**

a. Applicability of Appendix C-2. Amtrak and SCRRRA expressly agree that Appendix C-2, the labor protection arrangement applicable to Amtrak employees under the Rail Passenger Service Act, does not apply to the Services as contemplated by this Agreement and that SCRRRA will have no liability for any such labor protection, or for any labor protection payments arising out of an agreement between Amtrak and its employees or their representatives. Amtrak will defend, indemnify and hold harmless SCRRRA from and against the payment of any dismissal allowances, displacement allowances or any other related cost, benefit or expense, including attorneys' fees, arising from any claims, demands or liability asserted against SCRRRA for the dismissal, displacement or other alleged injury owed to any employee of Amtrak which is asserted to arise under Appendix C-2 or the labor protection provisions of any agreement between Amtrak and its employees or their representatives.

b. Other Labor Protection Obligations. Notwithstanding sub-section a., above, SCRRRA will assume the cost of any labor protection obligations triggered by: (1) the application of §13(c) of the Federal Transit Act, 49 U.S.C. § 1609(c), to the SCRRRA Commuter Railroad Operations; (2) any changes in applicable local, state or federal ordinance or legislation which affect SCRRRA's operations and Amtrak's or SCRRRA's obligations to the Amtrak employees who are providing the Services; or (3) any other

Section 16.

affirmative act of SCRRRA. In the event of any changes described in clause (2) of the previous sentence, Amtrak will diligently pursue efforts to negotiate an agreement with its employees or their representatives that minimizes the impact of such protection obligation or the cost to SCRRRA.

16. **DISPUTE RESOLUTION.**

a. **Settlement of Disputes.** Both of the parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to arbitration. The parties shall make every reasonable effort to meet within thirty (30) days to discuss disputes arising under Section 7.b. If the parties so agree, they may involve a disinterested person experienced in railroad operations, or an accountant if appropriate, to render his or her objective advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by his or her judgment in a particular instance.

b. **Controversies Subject to Arbitration.** Any claim or controversy between SCRRRA and Amtrak which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Agreement shall be resolved by submitting it to arbitration pursuant to the provisions of this Section 16; provided, however, that no such claim or controversy shall be submitted to arbitration until it has first been submitted to the Executive Director of SCRRRA and the Executive Vice President of Amtrak for resolution between them.

c. **Arbitration Procedure.** Any controversy between the parties which cannot be resolved pursuant to sub-section b., above, within thirty (30) calendar days or such other time as the parties may agree in writing, shall be submitted to disinterested arbitrators, one of whom shall be appointed by Amtrak and the other of whom shall be appointed by the SCRRRA; and the two arbitrators so chosen shall select a third arbitrator, and the decisions of a majority of them shall be final and conclusive between the parties hereto. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid within the period of thirty (30) calendar days after written notice given by either party to make such appointment, then and in that event the arbitrator that has been appointed shall appoint a like competent and disinterested arbitrator for the defaulting party, and the said two arbitrators, so appointed, shall select a third arbitrator, and

Section 16.c. (con'd)

the three so chosen shall hear and decide such difference or dispute, and their decision, or that of a majority of them, shall be final and conclusive upon the parties hereto. In the event that the two appointed arbitrators shall be unable to agree upon a third arbitrator within thirty (30) days after the appointment of the second arbitrator, such third arbitrator shall be appointed, upon the application of either party hereto, upon reasonable notice to the other party, by the American Arbitration Association. If any arbitrator shall decline or fail to act, the party or person by whom he was chosen, as the case may be, shall appoint another to act in his place.

d. Pending Resolution. Except as provided specifically in other sections of this Agreement, while such arbitration proceeding is pending, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used, and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

e. Cost of Arbitration. Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses attributable to the services of the disinterested person or the third arbitrator.

f. Enforcement. Upon failure of a party to comply with an arbitration award issued pursuant to this Section, the other party may refer the matter to a court of competent jurisdiction for enforcement of the said award.

17. **INSPECTION AND AUDIT.** SCRRRA may, at any time during reasonable business hours and at its own cost, conduct or have conducted an inspection or audit of any aspect of Amtrak's performance of its duties and obligations under this Agreement. Upon reasonable notice, Amtrak shall permit auditors or any other duly authorized agent of SCRRRA to inspect and examine all financial books, records, and accounts relating to activities under this Agreement. All such books, records, accounts, and documents shall be maintained and be accessible to SCRRRA for three years from the end of each fiscal year of operation under this Agreement, or longer as the parties may agree. Any payment by SCRRRA shall be subject to a reasonable audit (in accordance with Generally

Section 18.

Accepted Auditing Standards) and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be either financial or operational, or both, and may include, in addition to costs and wages reimbursed by SCRRRA, Amtrak's controls, practices, and procedures and their effect upon the efficiency and quality of performance provided by Amtrak. Upon completion of the audit, any adjustments required to make any reconciliation required shall be paid or credited, as the case may be, in accordance with the provisions of Section 7.b. of this Agreement.

18. FAIR EMPLOYMENT PRACTICES. Amtrak will comply with all applicable local, state and federal laws and regulations pertaining to non-discrimination in employment. Amtrak will not discriminate against any employee or applicant for employment because of age, race, religion, color, national origin, ancestry, marital status, or sex. In addition, Amtrak will comply with all provisions of LACTC's affirmative action and labor compliance policies, as amended, which are incorporated herein by reference.

19. EMPLOYEE DISCIPLINE AND REMOVAL.

a. **Employee Conduct.** All employees who are engaged in the provision of the Services shall be qualified, shall perform their duties in a courteous, efficient and safe manner, and employees dealing with the public shall be clean and properly attired while on duty. Because of the importance to the success of the SCRRRA Commuter Railroad Operations of the courtesy and proper decorum of the employees who are involved in the Services in any way, the parties consider any conduct which is not consistent with the objectives stated in the first sentence to be "conduct unbecoming an employee", and Amtrak shall discipline accordingly an employee whose conduct is not consistent with those objectives. Examples of conduct unbecoming an employee include, but are not limited, to the following:

- (1) Any instance of use of language that is obscene, risqué or religiously, ethnically or sexually demeaning, or making light of physical handicap, regardless of whether it is directed at a customer.
- (2) Any instance of belligerent or malicious behavior toward a customer or another crew member.

Section 19.a. (con'd)

(3) Repeated instances of littering of rolling stock, station areas or any other part of the Service Property.

(4) Repeated instances of snacking, smoking, reading, listening to radio or other audio devices or watching or listening to TV while on duty.

(5) Repeated instances of willful failure to assist customers.

b. Employees Held out of Service. If requested by SCRRA, Amtrak will hold employees out of SCRRA service pending a disciplinary hearing into charges of conduct unbecoming an employee. If the hearing results in a finding of guilt, the employee shall be barred from service in SCRRA Commuter Railroad Operations upon request from SCRRA. If the employee is returned to service as a result of the hearing, SCRRA will bear the cost of lost wages for employees held out of SCRRA service when (1) SCRRA initiated the charge and (2) an arbitrator rules the discipline assessed was excessive and awards back pay for time lost.

20. COMPLIANCE WITH RULES AND REGULATIONS.

a. General. Amtrak shall be responsible for compliance with the provisions of all applicable regulations of FRA and other entities with regulatory authority over the rail industry as well as other applicable federal, state and municipal laws regarding the condition of the Service Property. Unless SCRRA has withheld from Amtrak the funding specifically requested by Amtrak to remedy a violation or other authority to remedy it, Amtrak shall also indemnify, protect, defend and save SCRRA and its officers, agents and employees harmless from all fines, penalties and liabilities imposed under such laws and regulations regarding the condition of the Service Property.

b. Americans With Disabilities Act. Notwithstanding the foregoing, SCRRA shall be responsible for all costs associated with bringing all equipment and facilities used solely in SCRRA Commuter Railroad Operations into compliance with the access and other requirements of the Americans with Disabilities Act ("ADA") or any other law, ordinance or regulation with regard to accessibility of equipment and facilities. For any equipment or any facilities on the Service Property used jointly in SCRRA

Section 21.

Commuter Railroad Operations and Amtrak intercity rail passenger service, SCRRRA shall be responsible for the costs of bringing such facilities or equipment into compliance with that Act, and Amtrak shall pay to SCRRRA the portion of such costs, if any, which it is obligated to pay under applicable law. Amtrak shall operate all facilities and equipment provided by SCRRRA in a manner which is consistent with the ADA or any other federal, state or local law or ordinance relating to accessibility for disabled persons.

21. **MISCELLANEOUS PROVISIONS.**

a. **Governing Law.** The interpretation of this Agreement shall be governed by the laws of the District of Columbia.

b. **Entire Agreement.** This contract embodies the entire agreement between the SCRRRA and Amtrak relating to the Services. No oral statement or prior written matter will have any force or effect. The parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement will not be modified except in writing subscribed to by both parties.

c. **Severability.** In the event that any term, covenant, condition, or provision of this Agreement or the application thereof to any person or circumstance is found to be invalid or unenforceable in any respect, the remainder of this Agreement or the application of such term or provision to persons or circumstances shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted. This will not apply where the term, covenant, condition, or provision or part thereof that is declared invalid or unenforceable is so fundamental to the Agreement that the remainder of the Agreement, standing alone, does not represent a meeting of the minds of the parties, or substantially alters the rights or obligations of either party under the Agreement.

d. **Waiver.** None of the provisions of this Agreement shall be considered waived by either party unless such waiver is reduced to writing and signed by the party to be charged. No such waiver shall be construed as a modification of any of the provisions of this Agreement or as a waiver of any past or future default or breach hereof, except as expressly stated in

Section 21.d. (con'd)

the waiver. The failure of either party to insist at any time upon the strict observance of any of the provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof.

e. Notices. All notices required under this Agreement shall be mailed by first class mail to:

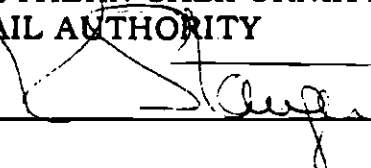
Richard Stanger
Executive Director
Southern California Regional
Rail Authority
818 West Seventh Street
Los Angeles, CA 90017
Telecopy: 213-489-1469

John T. Johnston
Manager, Contract Administration
National Railroad Passenger
Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002
Telecopy: 202-906-2652

With a copy to: General Manager,
Commuter Operations

IN WITNESS WHEREOF, the parties hereto have set their hands,

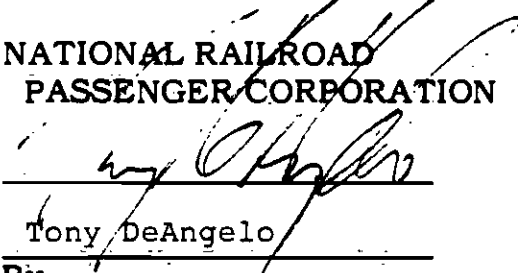
SOUTHERN CALIFORNIA REGIONAL
RAIL AUTHORITY



By:

Its:

NATIONAL RAILROAD
PASSENGER CORPORATION



By:

Its:

APPROVED AS TO FORM:

DeWitt W. Clinton
County Counsel
County of Los Angeles

By: 

Helen S. Parker
Principal Deputy County Counsel

**INDEX OF APPENDICES
TO
AGREEMENT BETWEEN
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY
AND
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)**

1. Service Property (Rail Lines and Yards Used in SCRRRA Commuter Railroad Operations) - §1.p.
2. Commuter Rail Operator Train Operation Duties and Responsibilities - §2.c.(1)(a)
3. Relative Operating Priorities of Amtrak and SCRRRA Trains- §2.c(1)(b)
4. Maintenance of Equipment Responsibilities- §2.c(2)
5. Maintenance of Way Responsibilities - §2.c(3)
6. Required Reports - §3.c.
7. R. Lanman letter to R. Stanger dated 10/22/91 - §3.h(1)
8. Direct Costs Billable to SCRRRA- §5.a(1)
9. General and Administrative and Overhead Costs - §5.a(2)

Appendix 1

**Service Property
(Rail Lines and Yards Used in
SCRRA Commuter Rail Operations)
Section 1.p**

APPENDIX 1

**SERVICE PROPERTY
RAIL LINES AND YARDS USED IN
SCRRA COMMUTER RAILROAD OPERATIONS¹**

<u>Line Segment</u>	<u>MP to MP</u>	<u>Rail Lines</u>
LAUPT - Mission Tower	482.8 482.2	All services
Mission Tower - Taylor Yard	482.2 480.0	North, west and access to and from Taylor Yard
Taylor Yard - Burbank Jct.	480.0 471.6	North, west
Burbank Jct. - Moorpark	462.6 427.0	West
Burbank Jct. - Santa Clarita	471.6 449.0	North
Mission Tower - E. Bank Jct.	482.2 481.9	East
State Street Jct. - El Monte	482.4 496.5	East
El Monte - Bassett	494.6 497.3	East
Bassett - Claremont	497.3 514.4	East

Equipment Storage and Maintenance Facilities:

Saugus Layover	450.7
Moorpark Layover	426.8
Taylor Yard	480.0
Midway Yard	

Maintenance-of-Way Facility:

Covina

¹ May be amended by the annual Operating Plan.

**Commuter Rail Operator
Train Operation Duties and Responsibilities
§2.c.(1)(a)**

APPENDIX 2

COMMUTER RAIL OPERATOR TRAIN OPERATION DUTIES AND RESPONSIBILITIES

General

The Operator shall perform the train operations and related functions described in the Agreement in a manner that will (1) provide a safe and well maintained facility and on-time train operations, (2) be consistent with the objective of providing the highest quality service to the public, consistent with the policies of and in the best interests of SCRRA, and (3) be in accordance with all applicable local, state and federal requirements.

Safety

The Services shall be operated at all times in a safe manner. Operator shall comply with all applicable safety laws, standards, codes, rules and regulations, including the System Safety Plan developed for the SCRRA Commuter Railroad Operations.

Operator shall prepare a System Safety Plan, which shall include procedures for maintenance and inspection of right-of-way and of vehicles and equipment as required to maintain safe operation, as well as a Disaster and Emergency Response Plan. Operator is responsible for implementing the System Safety Plan and for taking all precautions which are reasonable and necessary to safeguard against risks in the SCRRA Commuter Railroad Operations.

The System Safety Plan shall establish safety guidelines for prevention of accidents, injuries and illnesses and to provide for the safe performance of the Services. The Plan will include equipment (rolling stock) inspection and maintenance checks, procedures and corrective actions, in accordance with all applicable federal, state and industry standards, and will provide for monthly inspections of the following three areas:

1. Safety (blue signal protection, employee protective equipment, fire extinguishers and first aid equipment, facility lighting)
2. Housekeeping (yard and building free from debris, floor free from hazards, chemicals properly identified and stored, employee washrooms and locker rooms, material handling and waste)
3. Equipment cleaning (exterior, interior, windows, vestibules, toilets)

The Plan will also include a written safety manual covering all departments, which will be distributed to employees at all levels. Operator will ensure that all of its employees receive training in the System Safety Plan and safe job procedures. All operating employees shall complete the "STOP Safety Program" before commencing work. All employees will be required to wear approved operation stickers while on duty to indicate they have been safety trained. Operator will conduct regular safety meetings and other safety programs for all employees and will organize safety committees. All supervisors shall be responsible for continuously monitoring the work operations of subordinates, correcting hazardous job practices and educating subordinates in safe job procedures. Any contractors who have access to the Service Property or any SCRRRA right-of-way will also be fully instructed and qualified in applicable safety rules.

The disaster response plan that is included in the System Safety Plan will include emergency procedures governing including earthquake, train evacuation, grade crossing accident and others, including steps employees will take to accommodate and assist disabled persons during emergencies. Operator will conduct necessary training and coordination with local fire, police and other public agencies in support of emergency preparedness.

Operator will perform operating and safety tests as required. Copies of written results of such tests will be provided to SCRRRA upon request.

Operator will maintain a Safety Information System available to commuter service management and to SCRRRA.

Operator is responsible for clearing of wrecks and derailments which involve SCRRRA trains and may assist freight railroads operating on SCRRRA property in clearing of wrecks of their trains. Operator shall repair damages from these incidents and from natural disasters on SCRRRA lines.

Operations Management

The Services shall be operated in compliance with the following Rules and Regulations:

- Applicable federal, state and local laws and regulations including those of the FRA and CPUC;
- Necessary crew qualifications, including FRA certification of engineers
- General Code of Operating Rules
- Amtrak Rules and Instructions Governing Conductors and Trainmen
- Other instructions governing Amtrak employees

- System Safety Plan developed for SCRRRA Commuter Railroad Operations
- Equipment operating instructions issued or approved by SCRRRA or Operator
- Train schedules or timetables agreed upon by the parties.

Operator will cooperate in arranging hi-rail or other inspection trips as requested by SCRRRA.

Operator will perform observation or tests of its employees' passenger relations practices and knowledge, including fare verification and information, general service information and connecting transportation services.

Operator will provide proper uniforms and identification badges to designated personnel, as approved by SCRRRA.

Train and Engine Service Employees

Crew members will perform any duties normally required by Operator of its employees performing the same or similar work. Train and engine service employees will maintain proficiency required to perform the above, including qualifications required by law or other railroads operated over by Operator on behalf of SCRRRA. All extra board employees are to be qualified by the Operator on all SCRRRA routes and other train and engine service employees are to be qualified as deemed appropriate by both parties.

Operator will establish and provide training programs for all T&E service employees who are working on the SCRRRA Commuter Railroad Operations.

Train crew members may be utilized in addition to normal crew assignments at SCRRRA's option to perform fare verification, passenger counts, passenger assistance, gather or disseminate information or perform any other duties normally performed by train crew members.

SCRRRA may employ persons other than Operator's employees to perform fare verification, passenger assistance, marketing, informational functions, passenger counts or other similar duties, but not to perform any operating functions.

There will be no yard or road crew distinctions. Any crew may perform any tasks and any mixture of tasks such as revenue commuter service, non-revenue movements, switching or work train service.

Responsibilities of Crew Members in Normal Train Operations

- Report for duty in the proper uniform (if applicable) as scheduled.

- Contact the designated employee for instructions.
- Inspect and prepare train, including: exterior, brake system, cables or connections, lights, doors, destination signs, public address system.
- Ensure that necessary supplies are on board.
- Perform brake or other required tests
- Start or regulate air conditioning or heat
- Switch cars in or out of train as necessary and make all connections
- On assignments where equipment is scheduled to make a subsequent revenue trip before being cleaned and serviced, crews will pick up newspapers and all litter which may be picked up by hand, and will change destination signs as necessary.
- Move train to platform and spot for boarding.
- Assist with boarding.
 - Conductors are to be visible on platform unless duties require presence elsewhere.
 - Conductors shall assist disabled passengers as required by SCRRRA or applicable laws or regulations.
 - Conductors shall make periodic announcements.
 - Conductors will operate doors and signal engineer for departure.

En Route

- Trains shall be operated in an expeditious manner, consistent with applicable operating rules, special or other instructions and the employee timetable.
- Trains shall not depart any station prior to the departure time published for that station in public timetables.
- Trains shall be spotted appropriately at stops and passenger assistance rendered as above.
- Conductors shall answer passenger questions in a courteous and informative manner.
- Conductors shall provide assistance to disabled passengers in accordance with SCRRRA policy.

- Crew members will perform passenger counts as required by SCRRA, including those required to satisfy federal, state or local funding or reporting requirements.
- Conductors shall verify fares according to SCRRA policy.
- Conductors shall make required announcements as specified by SCRRA and as appropriate to circumstances, including concerning safety, delays or unusual conditions.
- All employees shall avoid conduct unbecoming an employee, as defined in the Agreement.
- Crew members will enforce SCRRA policies such as smoking, noise, passenger behavior, bicycles, baggage/packages, etc.. Handling of disorderly passengers will be in accordance with policy agreed upon by SCRRA and the Operator.
- Crew members will take emergency actions and procedures as required.
- Crew members will operate mechanical controls and breakers as instructed.
- Crew members will report mechanical or electrical problems in manner specified: by radio, telephone or orally to expedite repair arrangements as well as in writing on the specified report and/or form.
- Crew members will operate communications, public information or other equipment which SCRRA may install, consistent with other duties.

Arrival

- Conductors will assist with general and passenger disembarking and information.
- Engineers will secure the train, change controlling cabs and make brake tests as required.
- Train crews shall walk through and inspect train to determine that: all passengers have detrained, mechanical and toilet problems have been identified, lost personal items are collected and doors are secured.
- Fill out required reports, including mechanical
- Crews will reposition train at terminal as required or take train to the appropriate location for servicing.
- Crews will perform switching, work train or other services as required.

Relative Operating Priorities of Amtrak and SCRRRA Trains

§2.c.(1)(b)



May 7, 1992

Mr. Richard Stanger
Executive Director
Southern California Regional Rail
Authority
818 West Seventh Street
Los Angeles, California 90017

RE: Relative Operating Priorities of Amtrak and
SCRRA Trains

Dear Mr. Stanger:

The purpose of this letter is to set forth the agreement of the parties concerning operating priorities and the impact on incentive/penalty performance arrangements governing Amtrak trains operated on rail lines over which SCRRA commuter trains are also operated; provided, however, that it does not govern operations of trains for the benefit of either Amtrak or SCRRA within the rail yard at Los Angeles Union Passenger Terminal ("LAUPT"), which is governed by a separate agreement between the parties.

Amtrak and SCRRA agree that trains of either party operating toward LAUPT in the morning peak hours (i.e., 6:00 a.m. to 9:00 a.m.) and away from LAUPT in the afternoon peak hours (i.e., 4:30 p.m. to 7:00 p.m.) shall be given preference over trains operating in the opposite direction. When trains are operating in opposing directions in periods other than the peak hours identified in the preceding sentence and one train is operating later than its scheduled time, the train that is operating on-time shall be given preference. When trains of both parties are operating in the same direction at any time, the trains will be handled in the order presented without regard to whether they are operating on-time or late.

Amtrak agrees that it will undertake to amend the performance incentive/penalty provisions of its operating agreements with freight railroads to the extent they apply to operation of Amtrak trains on rail lines owned or formerly owned by such freight railroads that are still operated or maintained by such freight railroads. The purpose of the amendments will be to provide the freight railroad relief in measuring on-time performance for delays to Amtrak trains 1) as a result of the preference accorded pursuant to the first sentence of the preceding paragraph, 2) as a result of an Amtrak train being required to operate behind a commuter train operating in the same direction in the morning or afternoon peak hours because it was operating more

Mr. Richard Stanger
SCRRA
Page 2

than five minutes later than its scheduled time and the commuter train was operating within five minutes of its scheduled time, or 3) as a result of a commuter train being given preference pursuant to the second sentence of the preceding paragraph, but only if the Amtrak train that was operating late had not been delayed by actions of the contracting freight railroad.

If the provisions set forth above accurately describe your understanding of the agreement between Amtrak and SCRRA with respect to operating priorities and freight railroad performance arrangements, please have the extra copy of this letter signed on behalf of SCRRA in the space provided below, and return one copy to me.

Sincerely,


Robert C. VanderClute

Agreed by Southern California
Regional Rail Authority

By: 

Title: EXECUTIVE DIRECTOR

Maintenance of Equipment Responsibilities

§2.c(2)

MAINTENANCE OF EQUIPMENT RESPONSIBILITIES**I. General**

Operator will maintain rolling stock and equipment for the SCRRRA Commuter Railroad Operations at Taylor Yard, or at such other facilities provided by SCRRRA as may be mutually agreed upon by the parties, and at the layover facilities according to the specifications as provided or as modified by mutual agreement.

In implementing the maintenance of equipment program for the SCRRRA Commuter Railroad Operations, Operator will:

- Comply with all applicable Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) regulations, and Association of American Railroads (AAR) and accepted industry standards, as well as with the standards set forth in this Appendix, or as modified by mutual agreement.
- Comply with the terms of any manufacturers' warranties on equipment used in the Service, and cooperate with SCRRRA in the fulfillment of any obligation of those warranties.
- Perform daily turnaround and running repairs on rolling stock at the Taylor maintenance facility, and at the layover facilities.
- Implement a comprehensive preventive maintenance program.
- Implement a strict quality control program.
- Implement a System Safety Plan, as described in Appendix 2.
- Institute a Materials Management System for inventory control and cost-effective, efficient procurement and material dispersal, accounting, and all warranty administration, including the implementation of an accounting material purchasing system.
- Document the mechanical history on each piece of equipment for control, repair scheduling and planning purposes, as well as for warranties. Operator will retain all records and reports concerning inspection, maintenance and cleaning of the rolling stock for a period of three years and will make these available to SCRRRA upon request.
- Maintain in good working order the equipment used to maintain the rolling stock.

- Prepare and update annually a maintenance and capital replacement plan, as described in Appendix 6, Item 1.b.

In performance of the above, Operator will ensure that all personnel assigned to the maintenance of equipment function, including subcontractors, will be fully trained and qualified to perform their assigned duties.

Operator shall not make any changes to the design of the cars or locomotives without SCRRA's prior written approval.

Operator will provide, within the existing Overhead structure, assistance in review of plans, specifications, CPM schedule and cost estimates for all SCRRA-obtained locomotive and rolling stock associated with SCRRA Commuter Railroad Operations.

II. Pre-Start Activities

Operator will provide support for and will participate with SCRRA and equipment manufacturers in the testing and acceptance of rolling stock. A joint review of all equipment and facilities will be conducted prior to start-up of operations.

Operator will work with SCRRA to define performance standards, procedures and reporting formats for the maintenance of equipment, including the preparation of quality control standards.

Operator will work with the equipment manufacturers and SCRRA to develop appropriate technical training courses, and to train employees in their required functions.

III. Daily Turnaround Servicing and Running Repairs

Each day prior to being placed in service, Operator (or its approved subcontractors) will clean, service and inspect equipment in accordance with mutually agreed-to standards, and in compliance with 49 CFR, Part 229. All defects that are found will be corrected as promptly as practicable, and in accordance with applicable law.

SCRRA shall supply utilities (wayside power, water and electricity) at all points of layover or servicing.

A. Taylor Yard Servicing

During the period the equipment remains in the servicing area, the following work will be performed:

1. Locomotives will be fueled on predetermined schedule.
2. Locomotives and cab cars will be sanded, if needed.

3. Daily inspection will be performed on locomotives and cab cars. At a minimum, this will include inspection of wheels, trucks, brake shoes, running gear, engine (audio-visual inspection), doors, lighting, toilets, communications, HVAC, control functions, and handicap ramp and accommodations.
4. Turnaround cleaning will be performed on all cars in accordance with standards outlined in Exhibit A: Car Cleaning Standards.
5. Running repairs will be performed on all equipment. Items of repair that require additional time will be repaired in the coach or locomotive shop, and the car or locomotive with the defect will be replaced from the available equipment pool.

Running repairs include such items as removing and replacing governors, injectors, water and oil pumps, starting and fuel pump motors, turbochargers, manifolds, cooling fans, and control cards and contractors. Necessary replacement of cab control devices, truck component and wheel repairs, changeout of traction motors, and touch-up and small component painting are also normal running repair maintenance items. Running repairs do not include heavy overhaul of vehicles or major components.

B. Layover Facilities

Turnaround servicing will be performed at all overnight layover points. The work to be performed is as follows:

1. Provide stand-by power to rail cars.
2. Perform daily inspection of diesel locomotives as required to be in compliance with 49 CFR, Part 229, on layover locomotives. Start locomotives.
3. Test and inspect air brake system.
4. Perform electrical and mechanical inspections of locomotives and cab cars.
5. Make repairs to equipment as required to ensure safe, clean, comfortable and on-time train service.
6. Clean cars as described in Exhibit A: Car Cleaning Standards (unless performed at Taylor Yard).
7. Windows that are damaged are to be changed if time and material is available, or taped to assure safety.

8. Start or regulate air conditioning or heat.
9. Post, distribute or stock bins with passenger notices.
10. Visually inspect train exterior, brake system, cables or connections, lights, doors, and test public address system.
11. Ensure that necessary crew supplies are on board.
12. Pick up newspapers and all litter.
13. Perform brake or other required tests which are within crew capabilities and duties.
14. If necessary, start or regulate air conditioning or heat.
15. Disconnect standby power, if used.

Each layover facility will be equipped with jumper cables to start locomotives with weak or dead batteries from other locomotives. Operator will retain the emergency services of a local truck-mounted arc welder with sufficient amperage to start problem locomotives. Problem battery racks will be replaced immediately.

IV. Preventive Maintenance Program

Operator shall institute a preventive maintenance program for the SCRRA Commuter Railroad Operation, as follows:

- The preventive maintenance line at Taylor Yard will operate five days per week Monday through Friday.
- Each train set will be scheduled into the preventive maintenance shop at intervals of no more than 22 working days.
- The preventive maintenance work will be performed in accordance with all manufacturers' maintenance instructions and warranty provisions. Operator will utilize F.R.A.-accepted and SCRRA-approved maintenance, test, and service forms during these inspections. Work will be performed in accordance with detailed printed instructions, and will require sign-off by the mechanic performing the function. All work will also be reviewed and signed by the foreman in charge. Daily, quarterly and annual servicing and inspection records will be retained on file for three years.

A. Locomotive Preventive Maintenance

Operator will perform periodic inspections of the locomotive fleet on a 22 working day and 62 calendar day schedule. The 62 calendar day inspection would coincide with the second 22 working day inspection cycle for the cars, and would be in compliance with the FRA 92 calendar day inspection.

Annual preventive maintenance will include detailed engine, rotating electrical, primary and ancillary systems inspections with performance testing and adjustment.

Biennial preventive maintenance will include air brake work, traction motor changeouts, truck modification and/or minor overhauls, mechanical and electrical repairs, interior work, minor body work and structural work, repair or replacement of couplers, brakes, engine or electrical components including turbochargers, power assemblies, HEP packages, etc. Locomotive car bodies, fuel tanks, engine rooms, trucks and operating cabs and appurtenances will be cleaned and hand-detailed. Wheels will be trued as required.

B. Car Preventive Maintenance

Operator will perform periodic inspection and maintenance of the car fleet every 22 working days.

Work to be performed will include a complete check of all air conditioning, heating, lighting, air brake, trucks, trainline connections, and safety appliances. The cars will also undergo thorough cleaning. All upholstery and carpeting will be inspected, cleaned or replaced. Maintenance will include wheel set changeouts, modification and/or minor overhauls, mechanical and electrical repairs, interior work, body work, repair or replacement of couplers, doors, etc., as required.

Wheel truing and major component changeout may be performed at Amtrak's Eighth Street/Redondo facility only if the parties agree on the need for such work and on the terms and conditions (including compensation provisions) for performance of the work.

V. Heavy Overhaul

Heavy overhaul is not within the current scope of the services performed by Operator under this Agreement.

VI. Maintenance of Other Equipment and Facilities

Operator shall maintain the facilities for which it is responsible in good working order. Safety in the work place shall receive highest priority.

Special tools and equipment provided and owned by the Authority shall be properly secured and maintained.

The car washer will be maintained as per manufacturer's specifications.

All wayside power supply equipment and facilities shall be properly maintained for safe working conditions and optimum work performance.

A. Central Storage and Maintenance Facility Operational and Maintenance Requirements.

The following outlines those responsibilities of the operator with respect to the initial setup and subsequent operations of the facilities constructed by SCRRA and referred to as "Central Storage and Maintenance Facility".

1. Initial Setup

The Operator is responsible for providing all necessary equipment, tooling, furnishings, and supplies required to perform routine cleaning, inspection, and maintenance for the fleet of railway coaches and locomotives provided by the SCRRA. SCRRA has provided the basic building and equipment necessary to support cleaning, inspection, and maintenance operations through the three-year FRA-mandated air brake component qualification and AAR truck certification. Prior to the Start Date, the parties shall agree on a written inventory of the equipment, materials and fixed assets that have been furnished by SCRRA. The agreed-upon inventory shall be updated annually.

2. Facility Maintenance

The Operator is responsible for providing all necessary labor, equipment, and supplies required to maintain the facilities that comprise the Central Storage and Maintenance Facility in an operational and safe manner and in accordance with all equipment warranties and maintenance instructions. Upon turnover of the facilities to the Operator, one copy of all such equipment warranties and maintenance manuals will be turned over to the Operator. Included in these responsibilities but not limited to are the following:

- periodic cleaning of all work areas including periodic steam cleaning of all pits, platforms and work surfaces to remove grease, oil and other substances. Office areas are to be maintained in a clean and neat fashion at all times.

- replacement of light bulbs
- replacement of filters and inspection and replacement of belts on fans and motors
- inspection, lubrication, and maintenance of all equipment listed above in Section 1.0 but not limited to
- routine replacement of fueling filter elements and sanding nozzles and hoses, standby power connectors, wash brushes, washer reclamation equipment, wheel truing machine cutter inserts and rollers, and other components of equipment furnished by SCRRRA whose replacement is caused by normal use by the Operator or a failure of the Operator to operate and maintain the equipment in accordance with the manuals supplied by SCRRRA.
- periodic flushing of the toilet manifold system
- periodic cleaning of the washer reclamation system

3. Facility Operation

The Operator is responsible for all labor, equipment, and supplies required to operate the facility including but not limited to the following:

- supply of chemicals and detergents for the washer system
- supply of fuel to operate the locomotive fueling system
- supply of sand for the car and locomotive sanding systems
- removal of waste oil from the oil water separators by a licensed hauler
- removal of sludge from the washer system by a licensed hauler
- removal of wheel truing chips
- supply of containers and removal of all trash and consumables in accordance with all regulations
- specialty fixtures, slings, tools, and specialty work benches as required to maintain the cars and locomotives
- office furnishings and lunch room tables
- all costs involved in telephone and other utility costs

- minor facility repairs, i.e., water piping leaks, and repairs due to vandalism
- material handling equipment such as fork lift trucks

VII. Quality Control Program

Prior to start-up, Operator will work with SCRRRA to develop a Quality Control Program, including guidelines, standards and procedures for implementation.

Operator will conduct monthly reviews to check vendor compliance with specifications, material quality, and compliance with maintenance standards and procedures. A monthly facility quality control measurement report will be compiled from inspections performed by all management and quality control personnel.

VIII. Safety Plan

Operator shall work with SCRRRA to develop and implement a System Safety Plan, as required in Section 3.d. of the Agreement and described in Appendix 2. Operator shall comply with all applicable safety laws, standards, codes, rules and regulations, including any the System Safety Plan developed for SCRRRA Commuter Railroad Operations.

IX. Reporting Requirements

Working with SCRRRA and equipment suppliers, Operator shall develop and maintain an on-line database system recording the maintenance status and history of each piece of equipment, which shall provide the following reports and perform the indicated functions:

- Passenger Car Trip Inspection
- Locomotive Daily Inspection
- Locomotive Condition Report
- Coordinate all preventive maintenance cycles, providing highest possible availability of equipment while assuring that all reported defects are corrected in the most efficient manner.
- Maintain history on all equipment, helping to analyze defect patterns and correct failure trends.
- Record and follow up on repairs to all equipment, man hours expended on tasks, etc. Repair forms are filled out and signed out daily by the operating crew. Forms list all defects known to the crew and inspectors.

forwarded to the maintenance planning office and the data is entered in the system. In no case will a piece of defective equipment be dispatched from the preventive maintenance line until every reported defect has been corrected. The defects will remain a part of that equipment maintenance history and will be used to show failure trends on that piece of equipment, the vehicle, or the entire fleet. Ensure that warranty claims against the manufacturer can be substantiated and collected.

Aid in the scheduling of all preventive maintenance and FRA inspections. The maintenance history will reflect all past/future inspection dates.

This data base will be used for control, repair scheduling, and planning purposes, as well as for warranty administration. All records will be retained for a period of three years.

Operator shall provide SCRRRA with daily, weekly, monthly and annual reports relating to the maintenance of equipment and material control functions, as set forth in Appendix 6.

**EXHIBIT A
TO APPENDIX 4**

**METROLINK COMMUTER RAIL SERVICE
CAR CLEANING STANDARDS**

1. **Trip or Turnaround Cleaning** is performed where practicable and when a train has a short layover of one to four hours. The activities are as follows:
 - Pick up newspapers, cups, other trash.
 - Sweep heater boxes and under-seat debris into aisle.
 - Sweep aisles and bag refuse.
 - Wipe windows using window cleaner, remove gum and other adhesives from upholstery as needed.
 - Mop tiled portions of floor, if necessary.
 - Clean window sills, arm rests, and heater boxes as needed.
 - Brush seats and seat backs.
 - Clean and stock toilets.
 - Clean drinking fountain.
 - Clean spills.
 - Clean door racks.
 - Spot clean stairs.
 - Spot clean walls and ceilings, as required.

2. **Layover cleaning** is performed when a train lays over at night or during the day for more than four hours:
 - Pick up papers and trash.
 - Sweep between seats and aisles.
 - Sweep heater boxes and under seat debris into aisle.
 - Sweep aisle and bag refuse.
 - Wipe windows using window cleaner, remove gum and other adhesives from upholstery and floor.
 - Mop tiled portions of floor.
 - Clean window sills, arm rests, heater boxes.
 - Clean and mop rest rooms.
 - Clean toilet bowl, seat and cover.
 - Stock toilets.
 - Dump and/or service toilets as needed.
 - Wipe mirrors.
 - Replace seat cushions, as required.
 - Clean sinks.
 - Brush seats and seat backs.
 - Remove graffiti from interior panels, fittings, ceiling and seats.
 - Water cars.

- Clean drinking fountain.
- Clean spills.
- Clean door tracks.
- Spot clean stairs.
- Clean cab control area.
- Vacuum.

3. **Periodic maintenance cleaning** involves those tasks performed during trip and layover cleaning, plus several special cleaning tasks. Major cleaning of car interiors will be performed every 22 working days during preventive maintenance:

- Drop ceiling panels and blow car thoroughly, including HVAC ducts, heater boxes, seats and seat backs.
- Wash ceilings, sidewalls and bulkheads.
- Wash seat frames and clean cushions, heater boxes, rest rooms - toilets, light fixtures completely, using cleaning fluid and/or detergent.
- Remove all chewing gum, graffiti, stains, and other adhesives, scrub floor thoroughly, paying attention to the corners and under seats and stairways.
- Clean windows with window cleaner.
- Wash and polish interior stainless steel, chrome and aluminum surfaces.
- Clean and remove all dirt and stains from a.c. intake grills.
- Clean exterior end sheets, end windows, skirting, step wells, step treads, trucks and under car boxes, pilots.
- Shampoo carpets.
- Upholstery cleaning will be performed once every three months.

4. **Exterior Washing:**

Each car and locomotive will be washed at least twice weekly. Equipment exteriors not successfully cleaned by the washing equipment will be hand-detailed to maintain appearance standards.

5. **Graffiti Removal:**

Graffiti will be removed as promptly as practicable.

Maintenance of Way Responsibilities

§2.c(3)

MAINTENANCE OF WAY RESPONSIBILITIES

A. GENERAL

On segments identified in Exhibit 1 to this Appendix Five, Operator will provide a safe and well-maintained right-of-way for SCRRA Commuter Railroad Operations, according to specifications stated in this Appendix or as modified by mutual agreement. More specifically, Operator will:

- Provide a safe, well-maintained track and signal system to support commuter locomotives and passenger cars traveling at SCRRA-approved track speeds.
- Complete all inspections and perform all maintenance work in a manner consistent with SCRRA, FRA and CPUC requirements and with industry good practices.
- Ensure safe and clean maintenance facilities to encourage efficient maintenance, servicing and inspection of all SCRRA-owned rolling stock.
- Provide trained and qualified individuals to inspect and maintain all track, signal and communication systems and facilities.
- Equip the work force with vehicles, radios and other equipment necessary for the correct performance of its functions. All maintenance vehicles will be designated with METROLINK symbols.
- Prepare and update annually a maintenance and capital replacement plan, as described in Appendix 6, Item 1.b.
- Implement a right-of-way preventive maintenance program which permits operation at prescribed track speeds and a superior ride quality for commuter service.
- Implement the System Safety Plan described in Appendix 2.

Track or C & S headquarters and assembly points may be relocated within a seniority district subject to provisions of applicable labor agreements without penalty payments.

B. SCOPE OF SERVICES

The Operator shall provide all labor, materials, tools, services and incidentals to maintain facilities over right-of-way routes and lines shown in Exhibit 1 to this Appendix 5.

Prior to the Start Date, the parties shall agree on a written inventory of any equipment, materials and fixed assets that have been furnished by SCRRA. The agreed-upon inventory shall be updated annually.

C. ORGANIZATION

The Operator shall annually provide in its proposed budget an organizational chart of management and other personnel capable of providing the required maintenance over the system designated in Exhibit 1 to this Appendix. The proposed budget shall include an identification of all management personnel and their related experience and a definition of the duties and responsibilities of all personnel. All costs to provide the Services described in this Appendix are to be included in the Operator's proposed budget request, except for costs associated with Section J of this Appendix and other unanticipated costs which will be separately defined and estimated in accordance with Section 5.b(3) of the Agreement.

D. TRACK MAINTENANCE

Operator will provide track inspection and maintenance as prescribed by the standards of CPUC and FRA for Class 4 track for all main trackage, and Class 2 track for all yard trackage, and as required to maintain high ride quality. The schedule of maintenance work to be done will be developed through daily inspection reports and visual inspections. The Amtrak MW1000 form will serve as the guide for track maintenance practices until SCRRA manuals are completed and implemented.

All main line track shall be inspected by hi-rail or by foot at least twice per week. It is the intent of SCRRA and the Operator to inspect main line track as often as is required to meet FRA standards and to maintain high ride quality standards. Based on the inspections, areas which require immediate repair will be identified and repaired immediately. Conditions that require less immediate repairs will be programmed for maintenance, prior to becoming FRA defects which would require the imposition of slow orders.

Based on geometry degradation rates, Operator will implement a maintenance cycle of track surfacing of approximately every 18 - 24 months. Irregular surface and line "spots" will be corrected as detected and scheduled. Conventional smoothing machines will be used as required.

Main track surfacing will be cost effectively maintained for Class IV or better standards, including use of Amtrak's Torsion Beam Tamper.

In addition to the foregoing services, the Operator will perform other track related "spot" maintenance services, other than production work, which will include but not be limited to:

- defective rail replacement
- defective tie or fastener replacement
- grade crossing panel/pavement approach repair
- ditch and drainage systems maintenance
- right-of-way cleanup
- flagman protection service (reimbursed by third party contractor; SCRRRA reserves the right to provide its own qualified flagman)
- switch adjustment and lubrication
- curve lubricator maintenance

Training/Work Hours

Trackmen will be qualified and experienced, and receive a one-month training program. This training would encompass Amtrak's STOP (Safety) Program, Foreman School training, qualifications on Rules and Characteristics of the SCRRRA system, operation of hi-rail vehicles, Protection Against Trains (PAT), Hazardous Materials and Right to Know, on-the-job experience with standard maintenance practices, and, as applicable, cross training on various job functions.

Night work and other flexible scheduling procedures to maximize available track time and minimize disruption to trains will be utilized. Work hours and days of the week can be changed on five (5) working days' notice.

E. C & S DEPARTMENT FUNCTIONS

Operator shall properly inspect and maintain all wayside signals, highway crossing protection, interlocking appliances, CTC equipment, fiber optics and telephone and radio communications. Tests and inspections shall be made in conformance to SCRRRA, FRA and CPUC rules and requirements. Amtrak's AMT-23 and C & S 27 procedures will be followed in this regard until SCRRRA completes its manuals.

Electronic Technicians will be experienced and qualified to maintain C&S equipment, which shall include but is not limited to, all grade-crossing predictor apparatus, electronic track code, overlay, hot box detectors, dragging equipment detectors, and CTC field code equipment. They will also be qualified Maintainers in order to provide prompt backup coverage of any switch or signal problems that might otherwise interfere with on-time operation.

An experienced "second trick" Maintainer will be assigned to cover the entire territory with a radio-equipped "trouble" truck during the outbound commuter operation in the afternoon and early evening. This Maintainer will have assigned testing and preventive maintenance duties, but will be ready at all times to go to any track site. This Maintainer will normally be assigned duties on the East Line during the evening rush hour to place him closer to potential trouble spots and maintenance duties carried over from previous tricks that should be performed before the first inbound train in the morning. This Maintainer will ensure that the lines are free of trouble for the first outbound trains and inbound fleet in the morning.

A Radio & Communications Maintainer will service all mobile and portable radios, radio base stations, public address systems, telephones, and other communications systems, both inside and outside. Amtrak will use its best efforts to provide an individual who is qualified to maintain the fiber optics communications system installed by SCRRRA.

F. BRIDGE AND BUILDING AND OTHER STRUCTURE MAINTENANCE

The Operator will not provide a dedicated force to function in this area, however the Operator shall perform bridge inspection services with the Track Inspector(s) who will be qualified in bridge inspection procedures and the associated reporting process. Generally, traditional B & B maintenance requirements will be performed by outside contractors. Specialized disciplines related to building maintenance, such as HVAC, lighting and plumbing repair will be contracted as applicable. Contract forces providing maintenance of equipment requirements at the layover bases will also provide any B & B services at these locations.

G. CROSS-TRAINING AND JOB EXCHANGE PERFORMANCE

Maintenance of Way personnel will be cross-trained in accordance with special agreements, described in Appendix 7, to perform applicable jobs in either the track or the B & B departments. Amtrak will investigate other opportunities to cross-utilize maintenance employees.

H. SAFETY PLAN

Operator shall comply at all times with the System Safety Plan described in Appendix 2.

I. ENGINEERING SERVICES (INCLUDED IN OVERHEAD)

The Operator will provide, within the existing Overhead structure, the following services:

- Managerial, technical and operational review of proposed capital plan scope, schedule and expenditures for SCRRA-funded maintenance-of-way projects.
- Review of plans, specifications, CPM schedules, and cost estimates for all SCRRA-approved capital improvement projects associated with the SCRRA Commuter Railroad Operations.
- Coordination of desired changes to existing facilities to minimize impact on train operation in a cost efficient manner.

J. OTHER CONTRACTED SERVICES

Engineering and Construction Management Services.

As requested by the SCRRA, and upon reasonable notice and subject to the availability of personnel, Operator will provide the following additional services at Direct Cost plus Overhead of 5.5% of Direct Costs, plus a Management Fee of 5.5% of the total of Direct Cost and Overhead charged for the provision of such services:

- Preparation of plans, specifications, Critical Path Method schedules, or cost estimates for SCRRA-approved capital improvement projects associated with SCRRA Commuter Railroad Operations.

Other SCRRA Capital Program Work

SCRRA retains the right to advertise competitive bidding for any capital program, contract maintenance item or other work outside the scope of the Approved Budget. The Operator may bid on this work, which can include, but is not limited to the following:

- Construction and implementation of track or signal changes or improvements.
- Use of other Maintenance of Way equipment and machinery, including Torsion Beam Tamper, as applicable to capital program work, excluding that already provided for in the Approved Budget.
- Planning, engineering, design, construction management and inspection service.
- Production Work
- Rail Detector Car
- Rail Grinding

- Ballast Cleaning or Replenishment
- Rail Replacement Program
- Switch and Turnout Upgrading
- Wood Tie Renewal Program
- Highway Crossing Rehabilitation
- Vegetation Control
- Major Bridge and Culvert Repairs
- Signal/Communication System services not considered as "covered services" under the "Hours of Service Act"
- Station and Platform Maintenance

No third parties will be permitted to perform work on the SCRRA Service Property without reasonable notice to Operator, so proper protection or any other required services can be provided.

EXHIBIT 1 TO APPENDIX 5

LINES AND MILE POST LIMITS

FACILITIES MAINTAINED

<u>East Lines</u>	<u>R/W</u>	<u>Track</u>	<u>Structures</u>	<u>Signals</u>	<u>Communi- cations</u>
State St. Line- Mission Tower MP 482.2 to El Monte MP 496.5	X	X	X	X	X
El Monte MP 496.5 to Bassett 497.3	X	X	X	X	X
Bassett MP 497.3 to Claremont MP 514.4	X	X	X	X	X
<u>West Line</u>					
Burbank Jct. MP 462.61 to Raymer, MP 454.10 2nd Main Track Only	X	X	X		
Moorpark Layover Facility	X	X	X		
<u>North Line</u>					
Mission Tower, MP 482.2 to CR Inter- locking, MP 479.4 (Former UP)	X	X	X	X	X
Saugus Layover Facility	X	X	X		
Central Maint. Facility and Storage Yard; All Tracks	X	X	X	X	X
<u>Other</u>					
Midway Yard	X	X	X		
Dispatcher/CTC				X	X

Required Reports

§3.c.

REQUIRED REPORTS1. Annually

a. By August 1 for the previous fiscal year, an annual report which shall include: performance record compared to standards; record of accomplishments; issues requiring action, and recommendations; complete financial report on the fiscal year; assessment of the condition of all capital property, both rolling stock (include locomotive and car maintenance and utilization report) and right-of-way and structures, which assessment is to be related to the attainment of DBE goals; a listing of all assets held by or under the control of Operator, the value of which exceeds \$5,000; and a list of all changes during that Fiscal Year (additions or deletions) to the inventory of equipment, materials and fixed assets provided to and paid for by SCRRA.

b. An annual maintenance and capital plan, which shall describe Operator's plans to maintain rolling stock, way and structures, and which shall describe Operator's recommendations for major procurements, renovations and other maintenance work which is beyond the scope of the routine maintenance covered by this Agreement. This plan shall detail work plans recommended in the coming year, and shall also present major requirements foreseen in the ensuing five years.

c. By January 20 of each Fiscal Year, a forecast of expenses and variances for the remainder of that Fiscal Year.

2. Monthly (within 20 days of the end of the month, unless otherwise specified by the parties)

- a. Statement of actual ridership
- b. Statement of expenses vs. budget, together with complete analysis of variances, to be provided within thirty days of the end of the month
- c. Statement of Management Fee and Incentive and Penalty payments
- d. Fare evasion report
- e. Late train report (greater than 5 minutes), including data on cause of delay
- f. Train- and car-mile report (including revenue and deadhead miles, and including train- and car-miles for freight railroad operations on the Service Property owned by SCRRA or maintained by Operator pursuant to this Agreement)
- g. Injuries and fatalities (both passenger, employee and third party, including copies of FRA-required reports)
- h. Employee discipline reports
- i. Maximum load point and average passenger counts by train

- j. Report of damage, by accident, vandalism or whatever reason, to any property used in providing the Services
 - k. Description of planned major maintenance work that will require slow orders during the month (to be delivered on the first, not the 20th day of the month)
 - l. Material Control System reports (material activity summary; perpetual inventory by store/stock; inventory value balance; material payment account status; material transaction register; perpetual inventory difference listing; TC 266 receipts)
3. Weekly (on the first working day at joint service meetings)
- a. Complaint report
 - b. Material Control System Reports (open transfers pending acknowledgement; items below reorder point; material transaction register; transfer activity shipped by and acknowledged by; perpetual inventory difference listing; maintenance changes and errors; master inventory file maintenance; perpetual inventory master file record transfer; negative balance report; material accounting distribution; program control counts; summary 205 by ICC-Sub; program control totals)
4. Daily (next day by 7:00 a.m.)
- a. Report on previous day's operations, including on-time performance and causes for delays
 - b. Service delay or stoppage (including reason)
 - c. Vandalism other than incidents described in Item 5.d., below
5. Immediately
- a. Loss of life, injuries, stoppage or major disruption of service, major damage.
 - b. Substance abuse reports.
 - c. Any order imposed by competent regulatory authority
 - d. Major vandalism or other illegal activity that substantially disrupts SCRRA Commuter Railroad Operations (report shall be made concurrently to appropriate law-enforcement authority)

R. Lanman letter to R. Stanger
Dated 10/22/91

§3.h(1)

Amtrak



October 22, 1991

Mr. Richard Stanger
Executive Director
Southern California Regional
Rail Authority
818 West Seventh Street, Suite 1100
Los Angeles, CA 90017

RE: Contract #CR-006

Dear Mr. Stanger:

As you know, Amtrak has been working actively with our various labor organizations to structure innovative work rules specific to the Metrolink project. Our technical proposal to the Southern California Regional Rail Authority outlined the special agreements already negotiated for train and engine crews, which provide for:

- Two-person train and engine crews (engineer and conductor only service)
- Expansion of crew base from thirty to fifty miles at Los Angeles, San Bernardino and San Diego
- Substantial relief from held-time payments
- Recognition that Appendix C-2 (labor protection) of the Rail Passenger Service Act does not apply to this service.
- This service to be performed by train and engine service employees in the existing Amtrak Southern California Work Zone.

Copies of signed agreements with the United Transportation Union and the Brotherhood of Locomotive Engineers reflecting the above modifications to work rules have already been forwarded to you.

Since that time, we have successfully concluded negotiations with these and other labor organizations for still further concessions for the Metrolink service. These agreements clearly demonstrate the spirit of cooperation and the excellent working relationships which exist between Amtrak and its unions. Many of

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these concessions represent true innovations and set a precedent for future agreements. Certainly, they attest to the strength of our mutual goal -- that of providing the highest level of service to SCRRA.

Enclosed are copies of agreements which have been executed after the submission of our Technical Proposal. Significant highlights are as follows:

- 1) Signed letter agreement with the United Transportation Union, allowing Amtrak to pay performance bonuses to conductors.
- 2) Signed letter agreement with the Brotherhood of Locomotive Engineers, allowing Amtrak to pay performance bonuses to its members.
- 3) Agreement with the Brotherhood of Maintenance of Way Employees, which establishes the following:
 - A combined Track/B&B Mechanic position, for greater flexibility in performing maintenance work.
 - Appendix C-2 (labor protection) of the Rail Passenger Service Act does not apply to this service.
 - Amtrak may pay performance bonuses to its member employees.
- 4) Signed letter agreement with the Brotherhood of Railroad Signalmen, which allows for:
 - Payment of performance bonuses to union members.
 - Recognition that Appendix C-2 (labor protection) does not apply to commuter service operations in California.

- 5) Signed agreement with the Joint Council of Carmen, Helpers, Coach Cleaners, which:
 - Establishes a separate seniority district for the Metrolink Service.
 - Relieves Amtrak of liability under the Transfer of Work-Abandonment of Facilities rule, if the Authority changes operators or discontinues the Service.
 - Recognizes that Appendix C-2 does not apply to this service.
 - Allows Amtrak to pay performance bonuses to its member employees.

- 6) Signed agreement with the Transportation Communications Workers, representing clerical support staff, which:
 - Recognizes that Appendix C-2 does not apply to this service.
 - Allows Amtrak to pay performance bonuses to its member employees.

- 7) Signed agreement with the International Brotherhood of Electrical Workers which:
 - Establishes a separate seniority district for the SCRRA commuter service.
 - Relieves Amtrak of liability under the Transfer of Work-Abandonment of Facilities rule, in the event that SCRRA changes operators or discontinues service.
 - Recognizes that Appendix C-2 does not apply to this service.

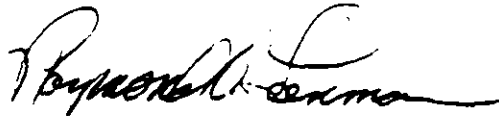
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- Allows Amtrak to pay performance bonuses to its member employees.

Again, I wish to emphasize that Amtrak and its labor organizations are committed to working together to achieve mutual goals -- on a national basis, and for the Metrolink service specifically. We will continue to explore and negotiate further innovative and beneficial work rules to maximize service quality, safety and efficiency.

Amtrak looks forward to working with SCRRA to provide a quality commuter service in Southern California.

Sincerely,



Raymond V. Lanman
Assistant Vice President
Corporate Development

Enclosures

Direct Costs Billable to SCRRA

§5.a(1)

DIRECT COSTS BILLABLE TO SCRRA

All costs of labor, associated employee benefits, materials, contracted services, and other expenses incurred directly for the benefit of maintenance and operation of the Services shall be considered as Direct Costs. These costs include those incurred by or in support of the Transportation, Mechanical, and Engineering functions included in the Services. The component categories for Direct Costs are described below.

1. Labor costs shall include the costs of salaries and wages (including all allowances) earned by employees engaged in providing the Services, as well as pay for vacation, holiday, and other paid absences for those employees. Management positions dedicated to the Services shall be agreed upon and shall be billable as Direct Costs. Other management positions required by Amtrak for performance of the Services shall not be billed to SCRRA as Direct Costs.

2. Employee benefit and injury costs shall include prorated corporate costs of Amtrak for insurance for disability, sickness, health, and dental coverage; for life insurance and travel insurance; and an additive for employee injuries. Also included are Amtrak's cost of the Employee Savings and Investment Plan, pension costs accrued, Railroad Retirement taxes, and other employee benefit plans. The costs or additives for non-agreement employees shall not be modified during a Fiscal Year after the Approved Budget has been agreed upon by the parties.

3. Material costs shall include the costs of all materials whether issued from Amtrak's inventory (at Amtrak's system average price) or purchased specifically for use in providing the Services, plus a materials handling additive of 2%, except that the materials handling additive for rails, ties and ballast shall be 1%.

4. Relocations Costs billable as Direct Costs shall include all relocation costs for the General Manager and for his or her direct reports and their direct reports who are moved to the Los Angeles area for SCRRA service if SCRRA has approved in advance both the employee and the relocation to Los Angeles. All relocation costs reimbursable by SCRRA shall be incurred and shall be reimbursed in amounts that are consistent with LACTC's relocation policy.

5. Contracted services shall include all payments to third parties for provision of goods and services that are directly identified as required for the Services.

6. Training Costs billable as Direct Costs shall include:

- (i) The cost of course development by Amtrak personnel of new programs requested by SCRRA.

- (ii) The cost of course development, training, facilities and other associated costs that are paid to third parties and are required specifically for training for SCRRA Service.
- (iii) The cost of wages, benefits, and expenses of attendees.

7. Other costs shall include directly identified expenses necessary to effectively provide the Services. Examples of such costs are:

Employee Travel ¹	Printing & Photography
Employee Uniforms	Radio & Communications
Facility charges	Safety Equipment
Forms Supplies	Service Disruption Expenses
Heating Fuel	Telephone
License fees and expenses	Vehicle and Equipment Expense
Medical Expenses	(rent, maintenance, supplies) ²
Office Supplies, Equipment, and Expenses	

-
- ¹ For directly billable employees only, and SCRRA approval required for travel outside the state of California, except that all travel costs of Amtrak employees for mobilization efforts shall be directly reimbursable if approved in the Mobilization Budget.
 - ² Rent cost includes rent paid to third parties as well as Amtrak's rates for work equipment and automobiles as published by Amtrak's Corporate Development Department from time to time.

General and Administrative and Overhead Costs

§5.b(2)

APPENDIX 9

GENERAL AND ADMINISTRATIVE AND OVERHEAD COSTS

Costs included in the general and administrative and overhead category represent those general functions which are not directly identifiable to provision of the Contract Services, but are, nevertheless, necessarily incurred by Amtrak for the provision of the Services. The following general functions are not reimbursable as Direct Costs.

Affirmative Action	Operations and Maintenance Management
Consumer Affairs	- Engineering Staff ¹
Contract Administration	- Mechanical Engineering Staff ¹
Division Management and Support	- Operations Planning
Emergency Procedures	Personnel and Administration
Employee Assistance Programs	- Benefits Plans
Employee Uniforms Program Administration	- Administration
Engineer Certification ²	- Hiring
Environmental Controls	- Personnel Records
Finance and Accounting	Planning-Corporate
- Accounts Payable	Police and Security Liaison
- Auditing	Public Affairs
- Budgeting	Railroad Liaison
- Corporate Accounting	Relocation of Management Employees ³
- Material Accounting	Rules Examiner
- Payroll	Rules Program Management
Government Affairs	Safety Program Management ⁴
Information Systems	

Labor Relations

- Appeals and Litigation
- Claims and Handling
- Negotiations

Preparation and printing of all plans and reports required by the Agreement

Management Reports-Corporate

Medical Program Management

Operation Lifesaver

Fines or penalties assessed by FRA or other instrumentality of government for non-compliance

Line inspection and use of track geometry car on lines otherwise used by Amtrak in provision of intercity rail passenger services

Scheduling and Timetable Preparations³

Substance Abuse Detection

Training⁶

- Course Development
- Instruction

Administration of EEO and DBE programs, including LACTC certification⁷

Salary, travel and expenses of all Amtrak staff other than positions identified in Approved Budget as directly billable positions

Administration of procurement services, except that SCRRRA will pay as a Direct Cost a materials handling fee described in the Agreement as well as any other item identified in the Approved Budget

Footnotes

1. Excluding preparation of design and construction estimates for capital work not routinely performed pursuant to this Agreement.
2. SCRRRA will pay for training of engineers to provide the Services, as provided in Appendix 8 (Direct Costs) but will not pay as Direct Costs any other costs which may arise out of additional certification requirements imposed by FRA in 49 C.F.R. Part 240, as of February 1, 1992.
3. Includes all costs of relocating employees to or from Southern California other than those costs specifically included in Direct Costs.
4. Not including safety equipment.
5. Not including printing and distribution costs required specifically for the Services.
6. The following training costs are included in Overhead Costs:
 - (i) The cost of Amtrak trainers, training material and training facilities for training programs that are used generally for Amtrak training and that are also used for the Services.
 - (ii) The cost of development and modification by Amtrak personnel of existing and future courses used by Amtrak.
7. Does not include functions to be performed by Commuter Relations Manager