

NOSSAMAN  
GUTHNER  
KNOX &  
ELLIOTT LLP

**BART - KAO**

JUL 29 1998

**EXTENSIONS LEGAL**

# **CAPITOL RAIL CORRIDOR TRANSFER**

**July 1, 1998**

## TRANSCRIPT INDEX

### INTERAGENCY TRANSFER AGREEMENT

Appendix A	Cost Savings Statement
Appendix B	Business Plan Update For Fiscal Years 1997-98 and 1998-99
Appendix C	Statement of Five-Year Funding
Appendix D	Fund Transfer Agreement
Appendix E	Equipment Lease
Appendix F	New Operating Agreement
Appendix G	New Transfer Agreement
Appendix H	Transfer Agreement
Appendix I	Maintenance Agreement
Appendix J	Operating Agreement
Appendix K	Functions Assumed by the Authority
Appendix L	Performance Standards
Appendix M	General Liability Insurance
Appendix N	Excess Liability Insurance

### FUND TRANSFER AGREEMENT

Attachment I	Fund Encumbrance Document
Attachment II	Authority Resolution

### EQUIPMENT LEASE

Appendix A	Description of Equipment
Appendix B	Contract No. 75-92001
Appendix C	Contract No. 75-93001
Appendix D	Amerail Operating Manual
Appendix E	F59PHI Operator's Manual
Appendix F	Deployment Plan for the Capitol and San Joaquin Corridors
Appendix G	Inspection Documents

### NEW OPERATING AGREEMENT

Appendix I	Capitol Service Schedule
Appendix II	Associated Capital Costs of Service
Appendix III	CCJPA's Financial Obligation to Amtrak
Appendix IV	Fair Employment Practices Addendum
Appendix A	Capitol Connecting Bus Service Levels

### NEW TRANSFER AGREEMENT

Appendix 1	State-owned Equipment Operating Procedures
------------	--

### AMENDMENT NO. 2 TO TRANSFER AGREEMENT





# **INTERAGENCY TRANSFER AGREEMENT**

**BETWEEN**

**THE STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**AND THE**

**CAPITOL CORRIDOR  
JOINT POWERS AUTHORITY**

**EFFECTIVE DATE: July 1, 1998**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>RECITALS</b> .....	1
<b>AGREEMENT</b> .....	4
Article 1.    Definitions.....	4
Article 2.    Transfer of Responsibilities .....	10
Article 3.    Term of Agreement; Option to Renew .....	10
Article 4.    Annual Level of Funding .....	11
Article 5.    Planned Service Improvements.....	11
Article 6.    Estimated State Costs for First Year; Requirement That the Secretary Determine That Cost Reductions Can Be Achieved by the Authority; First Year Cost Savings; Statement of Anticipated Operating Subsidy by State.....	13
Article 7.    Subsequent Year Authority Costs.....	15
Article 8.    Service Responsibilities .....	17
Article 9.    Operation of Feeder Bus Service .....	26
Article 10.   Annual Business Plan .....	29
Article 11.   State as Third Party Beneficiary to Amtrak Contract; Authority as Agency of the State .....	34
Article 12.   Performance Standards .....	35
Article 13.   Force Majeure .....	35
Article 14.   Liability and Indemnification .....	35
Article 15.   Funding Shortfalls; Deficit Financing; Reduction in Level of Passenger Rail Service in the Corridor.....	42
Article 16.   No Guaranty of Funding .....	45
Article 17.   Termination by Parties.....	45

**Interagency Transfer Agreement**  
**Agreement No. 75RCCJPA-2**

Article 18. Arbitration.....48

Article 19. Audit .....49

Article 20. Successor Acts .....50

Article 21. Successors and Assigns to the Parties.....50

Article 22. Notices .....51

Article 23. Amendment.....52

Article 24. Representations and Warranties of the Parties.....52

Article 25. Construction: Number, Gender and Captions.....54

Article 26. Complete Agreement .....55

Article 27. Partial Invalidity.....55

Article 28. Conflicts Between This Agreement and Other Agreements.....55

Article 29. Counterparts.....56

Article 30. Signatures.....57

**TABLE OF APPENDICES**

<u>Appendix</u>	<u>Description</u>	<u>Reference</u>
A	Cost Savings Statement	1.10, 6.2
B	Business Plan Update For Fiscal Years 1997-98 and 1998-99	1.6, 6.3
C	Statement of Five-Year Funding	1.35
D	Fund Transfer Agreement	1.18
E	Equipment Lease	1.14, 1.36
F	New Operating Agreement	1.27
G	New Transfer Agreement	1.28
H	Transfer Agreement	1.40
I	Maintenance Agreement	1.23
J	Operating Agreement	1.29
K	Functions Assumed by the Authority	1.17, 8.6
L	Performance Standards	1.30, 12.1
M	General Liability Insurance	1.19
N	Excess Liability Insurance	1.15

## INTERAGENCY TRANSFER AGREEMENT

This Agreement (“Agreement”) is made and entered into as of the Effective Date in the State of California by and between the **Capitol Corridor Joint Powers Authority (“Authority”)**, a joint exercise of powers authority organized under the provisions of Government Code Sections 6500 et seq. and under the provisions of Government Code Sections 14076 and 14076.2, and the **State of California (“State”)**, acting by and through its **Department of Transportation**.

### RECITALS

This Agreement is made with reference to the following facts:

- A. On July 23, 1996, the Governor signed into law S.B. 457, the Intercity Passenger Rail Act of 1996, as Chapter 263, Statutes of 1996; on September 24, 1996, the Governor signed into law A.B. 1720 (Statutes of 1996, Chapter 878) adding, among other things, Articles 5 and 5.6 to Chapter 1, Part 5, Division 3, Title 2 commencing with Section 14070, repealing and adding Section 14031.8, and repealing Sections 14031.9 and 14031.10 of the California Government Code; on August 9, 1997, the Governor signed into law S.B. 47, as Chapter 252, Statutes of 1997, amending Sections 14076 and 14076.2 (collectively, the “Act”). The Act authorizes, among other things, the formation of the Authority which is empowered to enter into an interagency transfer agreement which would effect the transfer of administration and management of the Service to the Authority.
- B. The following public agencies have been designated by the Act to be the member agencies of the Authority:

- (i) Placer County Transportation Planning Agency;
  - (ii) Sacramento Regional Transit District;
  - (iii) San Francisco Bay Area Rapid Transit District;
  - (iv) Santa Clara County Transit District, aka the Santa Clara Valley Transportation Authority;
  - (v) Solano Transportation Authority, which serves as the congestion management agency for the County of Solano; and
  - (vi) Yolo County Transportation District, which serves as the congestion management agency for the County of Yolo.
- C. This Agreement provides for the transfer of responsibility for administering the Service from the State to the Authority, subject to the Secretary's determining that transferring responsibility for intercity rail service in the Capitol Corridor would result in administrative or operating cost reductions.
- D. The Authority has produced a business plan ("Business Plan") which contains a proposal for the use of the annual State funding allocation for each of the initial five years of operation of the Service and which describes the methods by which the Authority will administer such rail service and seek to increase ridership in the Capitol Corridor, and which shall be updated and submitted by the Authority to the Secretary by April 1 of each year.
- E. In accordance with the Act, the Authority may, through a competitive solicitation process, contract with the National Railroad Passenger Corporation ("Amtrak") or with other organizations not precluded by state or federal law to provide

passenger rail service, for the operation of the Service, and may contract with rail corporations and other rail operators for the use of tracks and other facilities and for the provision of passenger services on terms and conditions as the parties may agree. Under such circumstances, the State would be deemed to be a third-party beneficiary of each passenger rail service contract, and these contracts may not contain any provision or provisions that would negatively impact on or conflict with any other contracts the State has regarding intercity rail service.

- F. Consistent with the Business Plan, as updated annually, and budget processes described herein, the State will annually prepare and submit to the Legislature a proposed funding allocation for funding which is consistent with and sufficient for agreed upon operations and planned service improvements to the Service as set forth in an approved Business Plan and budget.
  
- G. The Authority has been formed in accordance with the provisions of California Government Code Sections 6500 et seq., 14076 and 14076.2.



## AGREEMENT

**NOW THEREFORE**, in consideration of the recitals and the rights, duties and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the State hereby agree to the following:

### **ARTICLE 1. DEFINITIONS**

The terms defined in this Section 1.0 shall for all purposes of this Agreement have the meanings specified herein.

- 1.1 “Act” has the meaning set forth in Recital A to this Agreement.
- 1.2 “Agencies” shall mean those public entity members of the Authority named in Recital B to this Agreement.
- 1.3 “Agreement” shall mean this agreement whereby the State transfers, as provided for in the Act and as set forth herein, responsibility for operating and administering the Service to the Authority, including all applicable cost control established hereunder or by statute.
- 1.4 “Agreements” shall mean this Agreement, the Equipment Lease, the Fund Transfer Agreement, the New Operating Agreement and the New Transfer Agreement.
- 1.5 “Amtrak” shall have the meaning set forth in Recital E to this Agreement.
- 1.6 “Business Plan” shall mean the business plan which has been submitted by the Authority to the Secretary of the Business, Transportation and Housing

Agency, which includes a description of the proposed use of an annual state funding allocation for each of the initial five years of the transfer, as mandated by California Government Code Section 14070.4, subdivision (b) and containing such other information as the State may reasonably require, but in no event less than each of the requirements of Section 14070.4, subdivision (b). Copies of the Business Plan and the 1998-99 Business Plan Update are attached to this Agreement as **Appendix B**. The Business Plan shall be updated and submitted annually thereafter by a Business Plan Update.

- 1.7 “Caltrans” has the meaning set forth in Section 1.12.
- 1.8 “Capitol Corridor Joint Powers Authority” or “Authority” shall mean the public agency created by and organized as a joint exercise of powers agency pursuant to California Government Code Sections 6500 *et seq.*, 14076 and 14076.2, which shall assume administrative responsibility for the Service as more fully provided in this Agreement.
- 1.9 “Corridor” means the rail corridor which has as its termini and intermediate stations, the following: Colfax-Sacramento-Suisun City-Oakland-San Jose.
- 1.10 “Cost Savings Statement” means the statement described in Section 6.2 hereof, a copy of which is attached to this Agreement as **Appendix A**.
- 1.11 “CTC” has the meaning set forth in Section 5.4.
- 1.12 “Department” means the Department of Transportation of the State of California.
- 1.13 “Effective Date” means the date set forth in Section 2.1.

- 1.14 “Equipment Lease” means that certain Equipment Lease of even date herewith between the State and the Authority, a copy of which is attached to this Agreement as **Appendix E**.
- 1.15 "Excess Liability Insurance" means the policy of excess liability insurance which is described in Section 14.6 hereof and a copy of which is attached to this Agreement as **Appendix N**.
- 1.16 “Expanded Service” has the meaning set forth in Section 15.3.
- 1.17 “Functions Assumed by the Authority" means the statement of functions assumed by the Authority which is attached to this Agreement as **Appendix K**.
- 1.18 “Fund Transfer Agreement” means that certain Standard Provisions of Intercity Rail Fund Transfer Agreement Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority Covering Allocations of State Transportation Planning and Development Account Funds of even date herewith, a copy of which is attached to this Agreement as **Appendix D**.
- 1.19 "General Liability Insurance" means the general liability insurance policy coverage described in Section 14.6, a copy of which is attached to this Agreement as **Appendix M**
- 1.20 “Governor” means the Governor of the State of California.

- 1.21 “Intercity Rail Program” means the Service, the San Joaquin corridor rail service and the San Diegan/Lossan corridor rail service and the feeder bus services related thereto.
- 1.22 “Legislature” means the State Legislature of the State of California.
- 1.23 “Maintenance Agreement” means that certain Maintenance Agreement Between California Department of Transportation (Caltrans) and National Railroad Passenger Corporation (Amtrak) for the Maintenance of State Provided Equipment dated November 20, 1994, a copy of which is attached to this Agreement as **Appendix I**.
- 1.24 "Maintenance Transfer Date" shall have the meaning set forth in Subsection 8.2.g.
- 1.25 “Minimum Service” has the meaning set forth in Section 15.2.
- 1.26 “Minor Capital Projects” means minor capital projects as defined in and authorized by California Government Code Section 14037.
- 1.27 "New Operating Agreement" means that certain Operating Agreement between the Authority and Amtrak for the operation of the Service of even date herewith, a copy of which is attached to this Agreement as **Appendix F**.
- 1.28 "New Transfer Agreement" means that certain agreement among the Authority, the State and Amtrak for the operation of the Service of even date herewith, a copy of which is attached to this Agreement as **Appendix G**.
- 1.29 “Operating Agreement” means that certain Agreement for the Provision of Rail Passenger Service Pursuant to Title 49 U.S.C. Section 24107 between the

State and Amtrak and dated as of October 1, 1997, a copy of which is attached to this Agreement as **Appendix J**.

- 1.30 “Performance Standards” means the standards referred to in Article 12 hereof, a copy of which are attached to this Agreement as **Appendix L**.
- 1.31 “Retained Equipment” shall have the meaning set forth in Section 8.5.f.
- 1.32 “Secretary” shall mean the Secretary of the California Business, Transportation and Housing Agency. Unless the context otherwise requires, any reference to the Secretary includes the Business, Transportation and Housing Agency and its officers and employees.
- 1.33 “Service” shall mean rail and related service in the Corridor, including feeder bus services related thereto, as expanded, modified and developed by the Authority pursuant to this Agreement or any amendment thereto.
- 1.34 “State” shall mean the State of California, acting by and through its Department of Transportation.
- 1.35 "Statement of Five-Year Funding" means the statement described in Section 6.4., a copy of which is attached to this Agreement as **Appendix C**.
- 1.36 “State-owned Equipment” means the train sets (rail cars and locomotives) identified in **Appendix A** to the Equipment Lease, which Equipment Lease is attached to this Agreement as **Appendix E**.
- 1.37 “Surplus Funding” shall have the meaning set forth in Section 7.3 hereof.

- 1.38 “Term” has the meaning set forth in Section 3.1.
- 1.39 “Track and Signal Improvements” shall mean the improvements to the Capitol Corridor being performed pursuant to the Union Pacific Agreement referred to in Section 1.41.
- 1.40 “Transfer Agreement” means the Transfer Agreement Between the California Department of Transportation (Caltrans) and the National Railroad Passenger Corporation (Amtrak) for the Transfer and Operation of State Provided Rail Equipment dated November 20, 1994, a copy of which is attached to this Agreement as **Appendix H**.
- 1.41 “Union Pacific Agreement” means that Agreement Relating to Rail Passenger Operating Conditions, Levels of Train Service and Capital Improvements for the Capitol Corridor Between Oakland and Sacramento, entered into as of February 20, 1996 by and between the State of California acting by and through its Department of Transportation and the Southern Pacific Transportation Company, which agreement by reason of the merger of the Southern Pacific Transportation Company and Union Pacific, has become an obligation of Union Pacific, for the implementation of Track and Signal Improvements in the Capitol Corridor.
- 1.42 “UP” has the meaning set forth in Section 5.1.
- 1.43 "Update" or "Business Plan Update" has the meaning set forth in Section 1.6.

**ARTICLE 2. TRANSFER OF RESPONSIBILITIES**

2.1 Except as otherwise provided for herein, the State hereby transfers management and control of the Service to the Authority, effective as of July 1, 1998 (the "Effective Date"). Subject to the terms and conditions of this Agreement and except as otherwise provided herein, as of such date, the Authority assumes responsibility for operating and administering the Service as set forth herein, and, as of such date, succeeds to the State's powers, obligations and duties relative to such Service as provided in this Agreement.

2.2 The State agrees that the Authority may have its Mechanical Officer present at the site of rail car maintenance from and after the Effective Date to monitor maintenance on behalf of the Authority.

**ARTICLE 3. TERM OF AGREEMENT; OPTION TO RENEW**

3.1 The Term of this Agreement, as provided in Government Code Section 14070.4, subdivision (b), shall commence on the Effective Date set forth in Section 2.1 above and shall terminate, subject to earlier termination as provided herein, on the third anniversary date of the Effective Date.

3.2 Subject to a finding by the Secretary, which finding shall be made in a report to be submitted to the parties hereto not less than 180 days prior to the termination date set forth in the preceding paragraph, that the Authority has met or exceeded Performance Standards as required hereby and is not otherwise in material breach of any term, condition or other obligation under this Agreement, the Authority shall have the option, to be exercised by written notice given to the State not less than 90 days prior to such termination date, to renew this Agreement on the same terms and conditions as stated herein for

a further three year term commencing on the date of termination of the Term of this Agreement, to, but not including, the date which is the sixth anniversary date of the Effective Date.

#### **ARTICLE 4. ANNUAL LEVEL OF FUNDING**

- 4.1 Subject to the Business Plan or any Business Plan Update or amendment thereto and to a demonstration with respect to the first year's budget under this Agreement, to the satisfaction of the Secretary, that cost reductions can be achieved, the State shall seek to obtain funding for the Authority which is consistent with each successive approved budget contained in the Business Plan Update. Subject to appropriation by the Legislature, all funding to be provided by the State for the Term and the term of any subsequent agreements, shall seek to ensure an annual level of funding consistent with and sufficient for the level of operating requirements and service improvements to the Service which are contained in each successive approved Business Plan.

#### **ARTICLE 5. PLANNED SERVICE IMPROVEMENTS**

- 5.1 The Authority believes that there are adequate facilities and equipment for up to six daily round trips for the Service, including an extension of one daily round trip to Colfax. It is the intent of the Authority, subject to any necessary consents or approvals of Union Pacific Railroad ("UP") as successor to the Southern Pacific Transportation Company pursuant to the Union Pacific Agreement, to implement the fifth and sixth round trips in October, 1998. The extension of one round trip to Colfax was implemented on January 26, 1998.



- 5.2 The parties hereto acknowledge that the California Rail Passenger Program Report (December 1993) identifies up to 10 round trips for the Service, and the parties agree to work to accomplish this service level to the extent reasonably feasible, subject to the availability of necessary funding, trackage rights and equipment, and consistent with the requirements of other Intercity Rail Programs for operating funding, train sets and rail capacity during the term of this Agreement. It is the intent of the parties that the State shall support the Service, provided such support does not prejudice the programs of other Intercity Rail Programs. It is also the intent of the foregoing that the State shall support these other Intercity Rail Programs, provided such support does not disproportionately prejudice the programs of the Service.
- 5.3 The annual Update to the Business Plan shall identify the scope of operations and capital improvements, if any, to the Service for the identified State fiscal year and shall be the basis for projecting funding requirements to operate, administer and market the Service by the Authority. The State and the Secretary will receive, review, modify as required or deemed advisable and the Secretary shall approve on or before July 31 of each year, each Update to the Business Plan, and shall exercise reasonable efforts to secure from the Legislature the appropriation for the level of the Service agreed upon therein. Subject to Article 15 hereof, this Service will be operated to the extent that the Legislature appropriates necessary funds.
- 5.4 Funding for capital improvements to implement agreed upon enhanced levels of the Service may be obtained through available federal, state and local capital funding programs, Operating Revenues (as defined in Article III, Section 3(a)(iv)(A) of the Fund Transfer Agreement) attributed to the Service and in excess of projected revenues, revenues from operating improvements and efficiencies, and private resources. To the extent that the Authority requests capital funding through state capital funding programs, the Authority

shall prepare and submit the appropriate documentation which meets State requirements governing such programs for submittal in accordance with all applicable rules, regulations, policies, procedures and timetables of the California Transportation Commission ("CTC" herein) as they relate to such submittals.

**ARTICLE 6. ESTIMATED STATE COSTS FOR FIRST YEAR;  
REQUIREMENT THAT THE SECRETARY  
DETERMINE THAT COST REDUCTIONS CAN BE  
ACHIEVED BY THE AUTHORITY; FIRST YEAR COST  
SAVINGS; STATEMENT OF ANTICIPATED  
OPERATING SUBSIDY BY STATE**

- 6.1 As determined by baseline calculations provided by the State for State's proposed administration, marketing and operating costs for fiscal year 1998-99, it is agreed that the total estimated cost to the Authority and the maximum amount of funds to be transferred by the State to the Authority to operate the Service for the balance of the Amtrak contract year 1997-1998 from the Effective Date, net of maintenance supervision funds retained by the State pursuant to the terms of the Equipment Lease, would be Amtrak's estimate of \$1,310,400 (for the last 2 months of the Operating Agreement period ending Sept. 30, 1998 less maintenance amount; State has prepaid operating and maintenance amount for July, 1998). State has prepaid Amtrak the Advance Payment for July, 1998 in June, 1998 and will encumber the available operating funds (for the months of August, and September, 1998) to the Authority within the Fund Transfer Agreement. For Amtrak contract year 1998-1999 (October 1, 1998 through September 30, 1999) funds to be transferred for Amtrak operations (excluding maintenance supervision retained by the State and provided for in the Equipment Lease) are:

\$12,893,000. For State FY 1998-1999 (beginning on the effective date, July 1, 1998 through June 30, 1999) Marketing funds to be transferred are \$1,174,000 and Administrative funds to be transferred are \$1,023,839. Such amounts include State operating subsidies and funds currently used by the State for administration and marketing of the Service. These amounts, or such other amounts as are set forth in the annual Business Plan Update submitted by the Authority and as modified by the Secretary, shall be included in the State budget proposal submitted to the Legislature by the State. Such amount shall be allocated and transferred by the Secretary or, to the extent legally required, the CTC as provided herein, to the Authority following appropriation by the Legislature, but, pursuant to the provisions of Article 16 of this Agreement, there is no guaranty of State funding.

- 6.2 In order to authorize the Department to enter into this Agreement to effect transfer of administrative functions to the Authority, and in accordance with and pursuant to the Cost Saving Statement, the Secretary has determined that transferring responsibility for intercity rail service in the Capitol Corridor to the Authority would reasonably result in the estimated cost reductions identified in **Appendix A**.
  
- 6.3 The Authority has submitted to the Secretary for the first year of the Agreement, a Business Plan for fiscal year 1997-98 and a separate business plan for fiscal year 1998-1999 which Business Plan includes all the information required under Article 10 hereof, including but not limited to a budget for the administration of the Service for the balance of fiscal year 1997-1998 which shall be less than the estimated State costs set forth in Section 6.1 above, or which shall provide additional service for fiscal year 1997-1998 for an amount not in excess of the amount set forth in Section 6.1.

A copy of the Business Plan Update for fiscal years 1997-98 and 1998-99 is attached hereto as Appendix B.

- 6.4 The attached Statement of Five (5) Year Funding, is a statement of the annual level of funding for a five year period from the Effective Date of this Agreement (which level of funding is consistent with and sufficient for the planned service improvements within the Corridor), together with a statement for each year of this Agreement, of the funds intended to be transferred by the State to the Authority, subject to Legislative appropriation for support at the same level, including (a) State operating subsidies made available for the Service, and (b) funds currently used by the State for administration and marketing of the Service, with such amounts adjusted for inflation and in accordance with the approved Business Plan.

## **ARTICLE 7. SUBSEQUENT YEAR AUTHORITY COSTS**

- 7.1 On or before April 1 of each year in which this Agreement, or any subsequent agreement regarding the Service, is in effect, the Authority shall submit to the Secretary for review and approval, subject to any recommended modifications, to be made on or before July 31, as part of the Authority's annual Business Plan Update to the Business Plan, the projected costs for the next State fiscal year to administer the Service. The State's share of such annual projected costs, when approved by the Secretary, shall be included in the State budget proposal submitted to the Legislature and shall, subject to appropriation by the Legislature and, to the extent legally required, to programming by the CTC, be allocated to the Authority.
- 7.2 The amount sought to be appropriated by the Legislature shall cover the State's share of all Authority and State costs to administer, manage, maintain,

market and operate the Service including all planned service improvements as set forth in Article 5 and such other additions and extensions within the Capitol Corridor to which the State and the Authority may agree. In addition, the Authority may use any cost savings from operational improvements or efficiencies achieved by it, or increases in Operating Revenues (as defined in Article III, Section 3(a)(iv)(A) of the Fund Transfer Agreement) in excess of Business Plan projections to provide service improvements related to intercity service; provided that revenues which are not expended in the year recognized may be subject to reversion in the event that the Legislature, by budget control language or otherwise, requires such reversion.

- 7.3 If the budget allocation provided by the State to the Authority in any State fiscal year for passenger rail services operations exceeds the level of actual billings from the Authority's contracting passenger rail operating service provider, the difference between the allocated amount for such operating services and the aggregate amount of actual billings for such services in the fiscal year by such passenger rail operating service provider, other than any true cost savings achieved through operational improvements or efficiencies gained plus operating revenues in excess of Business Plan projections, shall be considered to be Surplus Funding and not cost savings (such difference herein, "Surplus Funding.") Such Surplus Funding shall be identified by the Authority and the State shall be promptly notified upon receipt by the Authority of a final invoice for the fiscal year from the passenger rail operating service provider, and such amount will be subtracted from the State's annual budget allocation request for the next subsequent fiscal year.

**ARTICLE 8. SERVICE RESPONSIBILITIES**

8.1 The respective duties, obligations and responsibilities of the Authority, the Secretary and of the State for the Service, effective, unless otherwise indicated, as of the Effective Date, shall be as specified in this Section.

8.2 The duties, obligations and responsibilities of the State shall be the following:

- a. Based upon the Secretary's approval of a budget in the Authority's applicable annual Business Plan Update, prepare and submit proposals for funding appropriations to the Legislature in connection with the State's annual budget process.
- b. Account for the disbursement to the Authority of amounts appropriated by the Legislature in accordance with a Fund Transfer Agreement which is to be entered into by the parties as of the Effective Date of this Agreement. The effectiveness of this Agreement is specifically contingent upon the approval and execution of the Agreements.
- c. Audit the operations of the Authority in accordance with this Agreement, the Fund Transfer Agreement and the Equipment Lease.
- d. Coordinate among Intercity Rail Programs. In connection therewith, the State shall have the reasonable right to review and approve in advance the terms of any agreement or amendment or modification thereof between the Authority and any other party which would have a direct and material impact upon the coordination of the Service with other Intercity Rail Programs.

- e. Review and monitor Performance Standards and equipment maintenance standards.
- f. Review the annual Business Plan Update.
- g. Administer maintenance of all equipment designated in Section 8.5a, below, until such time as maintenance administration responsibility passes to the Authority in accordance with the provisions of the Equipment Lease (the "Maintenance Transfer Date" therein).
- h. Administer warranty claims made with respect to the State-owned Equipment, until the Maintenance Transfer Date, in accordance with the provisions of such Equipment Lease.
- i. Administer and monitor any amendment or modification to the Service or to maintenance of equipment in accordance with any agreed upon amendment to this Agreement, the Fund Transfer Agreement, the Equipment Lease, the New Operating Agreement and/or the New Transfer Agreement as required or desired by the parties to this Agreement.
- j. Prepare reports, summaries, including the California Rail Passenger Program Report or similar report, as required by the Legislature, or otherwise required or deemed advisable by the State, with input from the Authority regarding the Service as requested by the State.
- k. Administer and coordinate systemwide contracts involving market research and ridership/revenue demand models.

- l. Administer the Union Pacific Agreement in accordance with Section 8.10.
- 8.3 The duties, obligations and responsibilities of the Secretary shall be the following:
- a. Develop, review and, subject to modification, approve Performance Standards.
  - b. Review and, subject to modification, approve each annual Business Plan Update.
- 8.4 The Authority will use its best efforts to coordinate Service schedules jointly with any Intercity Rail Program with which it shares tracks and/or equipment. Should the parties be unable to reach agreement on mutually acceptable schedules, the dispute shall not be submitted to arbitration pursuant to Article 18 hereof and instead the Secretary or the Secretary's designee shall set such schedules, which determination shall be binding upon the parties.
- 8.5
- a. On the Maintenance Transfer Date, and subject to any maintenance or warranty administration responsibility retained by the State under the Equipment Lease, the Authority will assume responsibility for administration of the delegated maintenance oversight for the rail cars and locomotives assigned to the Service and any other Intercity Rail Program with which the Authority shares tracks and rail cars, including leased equipment, the equipment designated and purchased by the State for such Intercity Rail Program as set forth in the State's California Rail Passenger Program Report (December 1993), and equipment utilized for such Intercity Rail Program which is or may be



acquired subsequent to the execution of this Agreement (the "State-owned Equipment").

- b. The terms for transferring the State-owned Equipment and other equipment and property owned by the State and required for the Service, including the number of units to be provided, liability coverages, maintenance and warranty responsibility and indemnification issues, are as set forth herein and in the Equipment Lease which is to be executed by the parties as of the Effective Date of this Agreement.
- c. The effectiveness of this Agreement is specifically contingent upon the approval and execution and attachment hereto of the Agreements, all dated as of the Effective Date. If the parties to each of the Agreements have not agreed upon and executed each of the Agreements to which it is a party as of the Effective Date of this Agreement, neither party hereto shall have any further obligation or liability to the other party.
- d. The State-owned Equipment is subject to the terms of the Transfer Agreement, the Maintenance Agreement and the New Transfer Agreement. Each of the Transfer Agreement and the Maintenance Agreement is for a term commencing on November 20, 1994 and continuing until terminated upon sixty (60) days prior notice. The New Transfer Agreement is for a term commencing on the Effective Date and continuing until terminated in accordance with the provisions thereof.
- e. The parties agree that the New Operating Agreement is intended to govern the operation of the Service as between the Authority and Amtrak and that the Operating Agreement is superseded only to the

extent that it relates to operation of the Service as covered in the New Operating Agreement. The New Transfer Agreement is intended to govern certain operational issues among the Authority, the State, and Amtrak pending transfer of maintenance administration responsibility (subject to any defined responsibility retained by the State) with respect to the State-owned Equipment in accordance with the provisions of the Equipment Lease. Until the Maintenance Transfer Date, the State shall be the party charged with maintenance supervision responsibility pursuant to the terms of the Transfer Agreement and the Maintenance Agreement which shall continue to be administered by the State. Certain operational issues are governed by the New Transfer Agreement pending transfer of maintenance supervision responsibility to the Authority. Prior to the Maintenance Transfer Date, it is the intent of the parties that the Authority and Amtrak will enter into separate maintenance and transfer agreements with respect to the State-owned Equipment over which the Authority will have maintenance supervision responsibility under the provisions of this Agreement and the Equipment Lease. Alternatively, and at the State's option and subject to any required approval or consent of Amtrak, the State will assign or contractually transfer its rights and obligations under these agreements with respect to the State-owned Equipment which is the subject of the Service, or over which the Authority has maintenance supervision responsibility under the terms of this Agreement, to the Authority, effective as of the Maintenance Transfer Date. To the extent that the Authority and Amtrak (and, if it so elects, the State) enter into a subsequent transfer agreement and/or maintenance agreement, such agreement or agreements shall be subject to the prior approval of the State and the Secretary. The terms and conditions of any assignment of rights and obligations under the Maintenance Agreement or the Transfer Agreement in accordance with

these provisions shall likewise be subject to the prior approval of the State and the Secretary. Effective upon assignment of the State's rights and obligations for the Service under the Transfer Agreement and Maintenance Agreement, or the entering into of a subsequent transfer agreement and maintenance agreements between the Authority and Amtrak (and, if it so elects, the State) governing operation and maintenance with respect to the Service, the New Transfer Agreement shall be terminated.

- f. With respect to the State-owned Equipment being transferred to the Authority for operation of the Service and maintenance supervision responsibility transferred to the Authority, it is the intent of the parties that, in accordance with the provisions of the Equipment Lease, no rights in any specifically identified units of the State-owned Equipment shall be transferred to the Authority. Rather, it is the intent of the parties, and it is hereby agreed, that this Agreement and the Equipment Lease transfer to the Authority the right to operate within the Corridor and, effective upon transfer of maintenance supervision responsibility, the obligation to supervise maintenance of a number of units of each type of State-owned Equipment, as identified in Appendix A to the Equipment Lease, as such Appendix A may be modified or amended from time to time in accordance with the provisions of the Equipment Lease. To the extent that there is State-owned Equipment that is not being transferred to the Authority in accordance herewith and pursuant to the Equipment Lease because such State-owned Equipment is being employed by another Intercity Rail Program (the "Retained Equipment"), such Retained Equipment shall be operated and maintained in accordance with the provisions of the Operating Agreement, the Transfer Agreement and the Maintenance Agreement. Effective upon transfer of maintenance

supervision responsibility to the Authority, State shall either (i) amend the existing Transfer Agreement and Maintenance Agreement to delete or suspend State control over State-owned Equipment which is not also Retained Equipment, (ii) enter into a subsequent or replacement, separate transfer agreement and maintenance agreement with Amtrak for such Retained Equipment, or (iii) at the State's option and subject to the consent of Amtrak and the Authority, the Authority, the State (or any successor operator of another Intercity Rail Program), and Amtrak may be included as parties to the current Transfer Agreement and Maintenance Agreement, by amendment thereto. If option (ii) is selected, the State shall retain responsibility under the Maintenance Agreement and the Transfer Agreement with respect to the Retained Equipment.

8.6 The Authority shall, as of the effective dates applicable to such specific responsibilities as may be set forth herein and in the Equipment Lease, assume from the State, the State's functions, duties, obligations and responsibilities related to management, administration, operations, equipment, maintenance, facilities, finance, contracts, passenger services, legislative outreach, service planning, capital development, Minor Capital Projects, marketing and legal services for the Service, including but not limited to the specific functions and responsibilities set forth in **Appendix K**, attached hereto, and excluding those functions and responsibilities retained by the State or the Secretary and set forth in Sections 8.2 and 8.3 above.

8.7 The Authority shall set fares for the Service; provided, however, that where the Service is directly contiguous with any part of any other California Intercity Rail Program, the parties will attempt to reach agreement on the fare structure for such contiguous area. Failing such agreement, the dispute shall not be submitted to arbitration pursuant to Article 18 hereof, but shall instead

be resolved by the Secretary or the Secretary's designee, such determination to be final and binding upon the parties.

- 8.8
- a. With respect to all equipment and facilities, including rail cars, rail equipment, buses and rail tracks and stations, used jointly by both the Service and any other California Intercity Rail Program, all savings in operations attributable to such other Intercity Rail Program shall be allocated to such Intercity Rail Program, and not to the Authority. Likewise, effective as of the Maintenance Transfer Date, the Authority shall supervise and administer maintenance on any rail cars and equipment jointly used for the Service and another California Intercity Rail Program, but all such maintenance expenses shall be equitably apportioned between such Intercity Rail Programs based upon total car and locomotive miles traveled in service.
  
  - b. The Authority and the State agree to use their respective best efforts to minimize any negative impacts of such joint use and to maximize the efficient use of the equipment and facilities by taking, without limitation, the following steps: (i) maintenance and cleanliness standards shall be the same for any joint-use equipment or facilities; (ii) assignment of equipment to individual trains shall be in accordance with a deployment plan agreed to by the Authority and the State; (iii) the percent of scheduled car and locomotive miles by equipment type not covered because of mechanical failure compared to total scheduled miles shall be balanced between Intercity Rail Programs; and (iv) the percent of on-line failures delaying service by type of equipment per one thousand (1,000) hours of scheduled operation will be balanced between Intercity Rail Programs.

- c. Authority shall maintain all stations and appurtenances over which it has control or responsibility, including, but not limited to, restroom facilities, in good condition and repair, and in accordance with high standards of cleanliness (Public Utilities Code, Section 99317.8).
- 8.9
- a. The Operating Agreement is a one-year agreement between the State and Amtrak with an effective date of October 1, 1997, subject to renewal at the end of the first year of that agreement for successive terms of twelve (12) months. As of the Effective Date, the Authority and Amtrak will enter into the New Operating Agreement with respect to the Service. Effective as of the Effective Date, the Operating Agreement will be amended by Amtrak and the State to exclude the Service from its provisions.
  - b. The parties further agree that the New Operating Agreement between the Authority and Amtrak, and any subsequent operating agreement between the Authority and any subsequent operator with respect to the Service, and any assignment of the State's rights and obligations with respect to the Service and/or the State-owned Equipment under the Transfer Agreement or the Maintenance Agreement, pursuant to any new maintenance and/or transfer agreement between the Authority and Amtrak (or any subsequent operator) shall be subject to review and approval by the Secretary or the Secretary's designee prior to its execution by the Authority, which approval shall not be unreasonably withheld.
- 8.10
- a. The Union Pacific Agreement will continue until completion of track and signal improvements, contracted to be completed no later than February 20, 1998, in the case of track improvements, and February 20, 1999 in the case of signal improvements, subject to earlier

termination on thirty (30) days notice in the event that UP is not making satisfactory progress with improvements or otherwise does not comply with that agreement.

- b. Funding for the Union Pacific Agreement has been provided by Proposition 116 bond proceeds and is not subject to the annual Business Plan Update, budget and appropriation processes described herein.
  
- c. Because funding of the Union Pacific Agreement has been provided, and because the work to be performed has commenced under the supervision of the State, which supervision, the parties hereto hereby agree, could not be efficiently transferred to the Authority, the parties agree that it is in their mutual best interest for the State to continue as the sole public entity party to the Union Pacific Agreement and to continue to administer and supervise that agreement. The State agrees to consult with the Authority regarding any change orders, amendments or modification of the scope of work to be performed which is sought or recommended by UP, and to review and consider, and if it deems appropriate, to seek to effect any changes recommended by the Authority to the scope of work.

## **ARTICLE 9. OPERATION OF FEEDER BUS SERVICE**

- 9.1 The Authority will take over the administration of the following feeder bus routes which operate primarily in conjunction with the Service:

Route 20 - Sparks, Reno, Truckee, Grass Valley, Sacramento;

Route 21 - Oakland, San Jose, Salinas, Monterey, San Luis Obispo, Santa Barbara;

Route 22 - San Jose, Santa Cruz;

Route 23 - Carson City, South Lake Tahoe, Sacramento;

Route 28 - Emeryville, San Francisco International Airport.

9.2 All costs of operation of the above-listed bus routes will be the responsibility of the Authority; all revenue credits for the bus portion of the trip generated from passenger tickets used for travel on these bus routes will be retained by the Authority for the Service.

9.3 The Authority may change schedules of Corridor trains and may change schedules of the connecting bus routes administered by the Authority as listed in Section 9.1 above, or the Authority may discontinue individual bus trips on these bus routes, provided the level of Service provides at least substantially the same number of route miles as in effect on July 22, 1996. Such rail or bus schedule changes may break or eliminate existing Corridor feeder bus connections with the following San Joaquin Corridor feeder bus routes (or with San Joaquin corridor train service if such rail service is extended from Stockton to Sacramento) administered by the State or its successor:

At Sacramento: Feeder Bus Route 3  
(Sacramento-Redding)

At Martinez: Feeder Bus Route 7  
(Martinez-Santa Rosa-Eureka-McKinleyville)



Conversely, changes in schedules made by the State or any successor Intercity Rail Program on the San Joaquin corridor services listed above may break or eliminate existing San Joaquin corridor connections with Service or connecting bus routes as listed in Section 9.1 above.

The parties agree that the services changes of the type described above may result in potential adverse impacts upon the rail and bus services administered by the other party or service as a direct result of breaking or eliminating connections with such services. Adverse impacts will be considered to apply only if:

- a. A loss of a daily average of two or more passengers over the first three months following the service change occurs on the impacted service, and
- b. The connection in question is one hour or less at the time of execution of this Agreement.

Therefore, if a potential adverse impact arises as a result of a service change proposed by either party, the parties will attempt to agree on a mutually agreeable service change. If the parties cannot agree, the party initiating the service change may elect not to have the change made. Alternatively, the initiating party may elect to make the change. In the latter event, the initiating party agrees to bear any added bus expense or to reimburse any lost revenues incurred by the adversely impacted party as a direct result of implementation of the service change, until (i) the original connection is reestablished, (ii) the parties agree that there is no longer a need for the connection, or (iii) this Agreement is terminated. Additional bus expense may result from operation of additional bus trips to continue to provide connections to an impacted rail

or feeder bus service. Lost revenues may result if an additional bus trip is not operated, and such lost revenues shall consist of full ticket revenues lost, including the bus portion and rail revenues directly associated with such bus service.

9.4 The basic Service timetable produced with State funds shall provide full schedule information for the entire extent of train and bus services, including feeder bus routes not listed above which are operated by the State in connection with or supplemental to the Service.

9.5 The parties shall also allow any State administered feeder bus services to use Service facilities, stations and appurtenances without any charge by Authority to State or the operator. Authority will not prohibit and will assist in the placement by State of signs and informational material designed to alert the public to the availability of State administered feeder bus service. (For the purposes of this Section, "State administered feeder bus service" includes any bus service funded pursuant to California Public Utilities Code, Section 99316).

## **ARTICLE 10. ANNUAL BUSINESS PLAN**

10.1 The Business Plan Update shall each year describe the responsibilities and identify the annual level of funding consistent with and sufficient for operation of the Service and for any planned improvements to the Service.

10.2 The first Business Plan and the 1998-99 Business Plan Update have been submitted by the Authority to the State, and contain budget, operating and capital improvement proposals, as well as all other required elements of the

Business Plan as set forth below, for fiscal years 1997-98 and 1998-99 respectively.

- 10.3 The Authority's Business Plan proposed budget for 1997-98 has been reviewed by the Secretary and the Department and has been included, with any modifications made by the Secretary or the Legislature, in the 1997 State Budget Act for 1997-98.
  
- 10.4 The 1998-99 Business Plan Update has been reviewed by the Secretary and by the Department and shall be approved, with any modifications requested by the Secretary, as soon as reasonably possible following the Effective Date. The budget proposal of such approved 1998-99 Business Plan Update shall be incorporated into the Department's budget proposal which shall be submitted to the Governor in accordance with the deadline established by the State of California Department of Finance to be included in the Governor's budget proposal to the Legislature for the 1998-99 fiscal year. In the event that the Authority does not agree with the amount provided in the Department's budget proposal for the Service, it shall be permitted to make its views known to the Legislature and to the Governor during the state budget approval process.
  
- 10.5 Not later than ten (10) business days following the receipt by Authority from Amtrak of the adjusted and final contract amount for the New Operating Agreement for a subsequent federal fiscal year, or if the Authority has entered into a similar agreement with another operator of the Service, within ten (10) business days following receipt by the Authority of an adjusted and final contract amount for a subsequent year of such other similar agreement, the Authority shall submit to the State an amendment to the Business Plan or 1998-99 Business Plan Update reflecting the final contract amount.

- 10.6 Subsequent State fiscal year Business Plan Updates shall be submitted no later than April 1 of each year of the term of this Agreement or any renewal thereof and shall contain budget information for the State fiscal year subsequent to the next year of the Agreement. The Business Plan Update shall be reviewed and, subject to modification by the Secretary, approved by the Secretary on or before July 31 of each year, with any recommended modifications, and the approved budget incorporated into the Department's proposed budget for inclusion in the Governor's budget in accordance with the procedures set forth in Section 10.4 above.
- 10.7 Each Business Plan Update shall be consistent with the provisions and requirements of this Agreement and shall contain each of the requirements contained in California Government Code Section 14070.4, subdivision (b), including, without limitation, provisions regarding the following matters.
- a. A report on recent as well as historical performance of the Service, an overall operating plan including proposed service enhancements to increase ridership and provide for increased traveler demands in the Corridor for the upcoming year, short term and long term capital improvement programs, funding requirements for the upcoming fiscal year, and an action plan with specific performance goals and objectives.
  - b. Documentation of Service improvements to provide the planned level of service, including operating plans to serve peak period work trips, and consideration of other Service expansions and enhancements.
  - c. A clear delineation of how funding and accounting for State-sponsored Intercity Rail Program services shall be separate from locally

sponsored services in the Corridor. Any proposals to expand or modify the Service shall be accompanied by the identification of all associated costs and ridership projections.

- d. The establishment of fares, operating strategies, capital improvements needed, and marketing and operating strategies designed to meet Performance Standards required by the Act.
- e. Service amenities, food and beverage services, and commissary services.
- f. The Authority's proposed levels of train performance.
- g. Any proposed modification or amendment to Performance Standards.

10.8 Should the Business Plan or Business Plan Update as approved by the Secretary include an estimated completion date or dates for any items of work identified therein, the Authority shall conform to those completion dates. In accordance with the provisions of the Fund Transfer Agreement, any failure to conform may constitute the basis for delaying or withholding payment for the work to the extent of the delay.

10.9 Methods the State will use for its annual review of the Business Plan Update and annual proposal on funding and appropriations will include evaluation of the Business Plan Update to determine that the Business Plan Update is an integrated program that provides all of the necessary components for producing the required intercity passenger rail services, including, but not limited to, specific determinations that the Business Plan Update addresses:

- a. Cost levels for the provision of the proposed level of passenger rail service;
- b. Route and schedule coordination with other Intercity Rail Programs and other passenger rail services, and with feeder bus services for such Intercity Rail Programs and other passenger rail services, including, as appropriate, a comparison of proposed fares, schedules and service amenities with other competitive transportation modes within the Corridor to ensure that projected route performance is reasonable and achievable;
- c. Compliance with Performance Standards as modified from time to time;
- d. Non-violation of (i) the provisions of this Agreement, (ii) other Agreements with respect to the Service and the State-Owned Equipment, and (iii) applicable law and regulations;
- e. Reasonableness of projections of ridership, revenues and funding needs using standard rail industry and financial evaluation tools and models;
- f. Identified and documented annual funding and appropriations requirements for each year of this Agreement;
- g. Fiscal results of the prior year's operations.

Such review will also include a determination as to whether all necessary resources are available and have been included in the Business Plan Update, that key assumptions are reasonable and consistent, and that proposed levels

of passenger rail and feeder bus service are sufficient to meet anticipated customer needs on a cost-effective basis.

**ARTICLE 11. STATE AS THIRD PARTY BENEFICIARY TO  
AMTRAK CONTRACT; AUTHORITY AS AGENCY OF  
THE STATE**

- 11.1 In accordance with the Act, the State is deemed to be a third-party beneficiary of any contract for passenger rail services between the Authority and Amtrak (or any other passenger rail service provider under contract with the Authority pursuant to California Government Code Section 14070.6) for use of tracks and other facilities and for the provision of passenger services on such terms and conditions as the parties may agree.
- 11.2 No such contract shall contain any provision which would have a materially detrimental effect on any other contract the State may have regarding other California Intercity Rail Programs, nor shall the State enter into any contract during the Term hereof regarding any other Intercity Rail Programs which contains any provision which is anticipated to have a materially detrimental effect on the Service.
- 11.3 As provided in California Government Code Section 14070.6, the Authority is deemed to be an agency of the State of California for purposes related to providing passenger rail services. By executing this Agreement, the Authority acknowledges and agrees that such provision does not render it an agent of the Department or the Secretary.

**ARTICLE 12. PERFORMANCE STANDARDS**

- 12.1 **Appendix L** is the Performance Standards for the operation of the Service by the Authority. These Performance Standards are the final Performance Standards adopted by the Secretary in accordance with the Act as of December 31, 1997.

**ARTICLE 13. FORCE MAJEURE**

- 13.1 Each party will be excused from performance of its obligations where such non-performance is caused by any event beyond its control, such as any nonappealable order, rule or regulation of any federal or state governmental body, agent or instrumentality, a work stoppage, major accident or incident, a natural disaster declared as such by a public official authorized to make such declaration, or civil disorder, provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.
- 13.2 Should a *force majeure* event occur which renders it impossible for a period of forty-five (45) or more consecutive days for either party to perform its obligations hereunder, the parties agree to negotiate in good faith to amend the existing Business Plan or Business Plan Update to deal with such event and to seek additional sources of funding to continue the operation of the Service.

**ARTICLE 14. LIABILITY AND INDEMNIFICATION**

- 14.1 Liability, indemnification and insurance coverage for liability imposed for injury or damage to State, the Authority or any third party related to or arising



out of any obligation, responsibility or duty delegated to or assumed by the State or the Authority under this Agreement shall be provided for as follows:

- a. The Authority shall indemnify, defend and hold harmless the State and the Secretary and their respective officers and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by the Authority under this Agreement or in conjunction with any obligation, responsibility or duty delegated to or assumed by the Authority under this Agreement. As described in Section 14.2 below, the Authority shall bear all expenses and costs and shall pay all settlements or final judgments arising out of any claim, action, or proceeding arising out of any obligation, responsibility or duty delegated to or assumed by the Authority under this Agreement, including, but not limited to, the operation and maintenance of the Service provided for pursuant to this Agreement, including the costs of defense as incurred.
  
- b. The State shall indemnify, defend and hold harmless the Authority and its officers and employees, from any liability imposed for injury or damages occurring by reason of anything done or omitted to be done by the State under this Agreement or in conjunction with any obligation, responsibility or duty delegated to or assumed by the State under this Agreement. As described in Section 14.2 below, the State shall bear all expenses and costs and shall pay all settlements or final judgments arising out of any claim, action, or proceeding arising out of any obligation, responsibility or duty delegated to or assumed by the State under this Agreement, including, but not limited to, the operation and maintenance of the Service provided for pursuant to this Agreement, including the costs of defense.

14.2 The indemnifying party shall bear all expenses, costs and shall pay all settlements or final judgments arising out of any claim, action or proceeding involving the injury to and/or death of any person or damages to or any loss of any property arising from any indemnification obligation of the indemnifying party under Section 14.1 above, including the costs of defense and settlement. Should a claim, action or proceeding of any nature be brought at any time against a party entitled to indemnification pursuant to Section 14.1 above, asserting liability on the part of the such party for such injury, death, damage or loss, the party entitled to such indemnification shall promptly provide notice to the indemnifying party of such claim, action or proceeding and shall tender the defense of such claim, action or proceeding to the indemnifying party which shall thereafter provide all such defense, indemnity and protections as are necessary under the provisions of this Agreement. The party entitled to indemnification shall provide such additional information or assistance as is reasonably requested by the indemnifying party to assist in the defense, prosecution or settlement of any such claim, action or proceeding. The indemnifying party may engage counsel of its choice to defend the indemnified party subject to the indemnified party's consent, such consent not to be unreasonably withheld.

14.3 The Authority will name or cause to be named the State and the Secretary as additional insureds, indemnified parties and/or loss payees (pertaining to State-owned Equipment) to any policy of insurance purchased by the Authority and in any indemnity provision in any agreement between the Authority and Amtrak or any successor operator to Amtrak, UP or any other railroad or entity controlled thereby or any successor thereto, feeder bus operators, or any other party the Authority has an agreement with that involves or is related in any way to the administration, operation, or maintenance of the Service by the Authority. The Authority will provide or

cause to be provided to the State, copies of all applicable insurance policies and/or certificates and agreements containing indemnity provisions.

14.4 State will name or cause to be named the Authority as an additional insured and/or indemnified party with respect to any policy of insurance purchased by the State and in any indemnity provision in any agreement between the State and Amtrak or any successor operator, UP or any successor thereto, feeder bus operators, or any other party the State has an agreement with that involves or is related in any way to the administration, operation, or maintenance of the Service or the State-owned Equipment by the State. The State will provide or cause to be provided to the Authority, copies of all applicable insurance policies and/or certificates and agreements containing indemnity provisions upon request.

14.5 Effective upon assumption by the Authority of operating or maintenance responsibility for the State-owned Equipment, the Authority will require that Amtrak or any subsequent operator continue to provide physical damage insurance for State-owned Equipment at the same or higher levels and at least the same terms and conditions as currently included in the Operating Agreement in effect on the date of execution of this Agreement. Any change to this coverage shall require the prior written approval of the State. Unless otherwise approved in writing by the State, the insurance referenced herein shall be written on an equipment replacement cost basis with a deductible not to exceed \$100,000 per occurrence. The State shall be named as an additional insured and the sole loss payee as respects its interest in the State-owned Equipment entrusted to the Authority. The Authority shall cause the insurer to waive all rights of subrogation against the State.

14.6 Commencing no later than the Effective Date, the Authority will obtain and maintain in force, the following additional insurance:

- a. General Liability Insurance coverage for property damage and bodily injury in the amount of ten million dollars (\$10,000,000), with a deductible not to exceed \$50,000 per occurrence covering the activities of the Authority, and naming the State and the Secretary as additional insureds; the policy shall contain the coverages and exclusions contained in the policy.
  
- b. Excess Liability Insurance coverage for property damage and personal injury in excess of the insurance provided for in subdivision (a) above, in the amount of one hundred forty million dollars (\$140,000,000), generally covering the activities of the Authority, and naming the State and the Secretary as additional insureds; the policy or policies shall contain substantially the same coverages and exclusions contained in the policy or policies which are attached to this Agreement.
  
- c. All premiums for the procurement and continuation of the insurance provided for in Section 14.5 and subdivisions a. and b. of this Section 14.6 and the incremental cost of adding the State and the Secretary as additional named insureds for these policies described above will be included in the Business Plan Update for submission to the Legislature for appropriation with the balance of the State's budget. An amount estimated to be sufficient to cover the deductible obligation of the policy referenced in subdivision a. above will be included in the Business Plan for submission to the Legislature for appropriation. Subject to the deductible identified in the preceding sentence, any deductible obligation under the policy described in subdivision a. shall be the sole responsibility of the Authority.

- d. Any deductible obligation under the property damage policy for State-owned Equipment required to be maintained under the provisions of the Operating Agreement and referenced in Section 14.5 above shall be the responsibility of the State. The State will provide funding to the Authority on an as needed and as available basis to cover this obligation from other unencumbered Intercity Rail Program funds. In the event of an occurrence requiring the State to fund the deductible amount or any portion thereof, the Authority will immediately notify the Secretary and the State will take the necessary steps to seek to increase the funding of the current Fund Transfer Agreement with the Authority to include the specific loss up to the full \$100,000 deductible sum. To the extent that there is no available unobligated Intercity Rail Program funding, the deductible sum at issue will be covered by the Authority from budgeted rail funds already allocated to the Authority through the Business Plan Update process.

- 14.7 Provided that the Authority furnishes and maintains all of the insurance that it is contractually required to obtain under this Agreement, then, in accordance with the present terms of the joint exercise of powers agreement pursuant to which the Authority has been organized, any indemnity obligations of the Authority hereunder shall not flow through to become obligations of any Authority Agency as a consequence of that Agency's status as an Agency of the Authority. In other words, in accordance with the foregoing, no Agency shall have any liability or obligation for indemnification hereunder to the extent that its activities with respect to the Authority are limited to its appointment of a member of the Authority board as its representative thereto, and such member's activities with respect to the Authority are limited to participation on the board and any committees thereof in board and committee activities to the extent permitted by law and in the usual and customary manner. To the extent that the negligence of any Agency causes or

contributes to a loss for which the State has been finally adjudged jointly, or jointly and severally, liable with the Agency, the State may seek contribution and/or indemnity from that Agency to the extent permitted by applicable law.

- 14.8 Except as may be purchased hereafter, the State does not maintain, nor does it intend to maintain or cause to be maintained during the course of this Agreement, any insurance coverages for its indemnification obligations herein. The foregoing notwithstanding, the State reserves the right to purchase or cause to be purchased at any time during the term of this Agreement or any extension thereof, insurance coverage for such indemnification obligations.
- 14.9 Pursuant to California Government Code Section 895.4, the foregoing Sections 14.1 through 14.8 constitute the entire agreement between the parties hereto regarding indemnification for liabilities which may be incurred by either party under this Agreement.
- 14.10 Any disputes under this Article 14 shall be resolved by arbitration pursuant to Article 18 hereof.
- 14.11 This Agreement, the Fund Transfer Agreement, the Equipment Lease, and (as respects the State's participation therein), the New Transfer Agreement are solely intended to establish standards and controls governing the expenditure of State-provided funds and the use of State-owned Equipment for the Service to be operated and maintained by the Authority.

**ARTICLE 15. FUNDING SHORTFALLS; DEFICIT FINANCING;  
REDUCTION IN LEVEL OF PASSENGER RAIL  
SERVICE IN THE CORRIDOR**

15.1 Subject to funding appropriation by the Legislature and to the extent legally required, to programming by the CTC, the parties agree that the level of Service to be funded by the State is described in Sections 5.1 and 5.2 above. Subject to the Minimum Service requirement described below, the Authority shall not be obligated to operate any Service for which funding is not available at the time the Service is to be provided.

15.2 Subject to funding appropriation by the Legislature and to the extent legally required, to programming by the CTC, and as required by the Act, the parties agree that for not less than three years from the Effective Date of this Agreement, a minimum level of service shall be maintained by the Authority and funded by the State. This minimum level of service is defined as two (2) daily round trips between Sacramento and San Jose, one (1) additional daily round trip between Roseville and San Jose and, lastly, one (1) daily round trip between Sacramento and Oakland (Jack London Square) together with the associated feeder bus services described in Sections 9.1 through 9.5 with substantially the same number of route miles as was provided on July 22, 1996 (hereinafter, "Minimum Service").

15.3 The parties agree that any other proposed service that goes beyond Minimum Service, whether called additional service, locally sponsored service, State sponsored service, enhanced service, or any other similarly descriptive term, shall hereinafter be referred to as "Expanded Service." Expanded Service shall only be operated by the Authority if sufficient funding is included in the annual Business Plan Update budget, to the extent required by law, is

appropriated by the Legislature and programmed by the CTC, or otherwise is available for expenditure when the Expanded Service commences. Funding for Expanded Service may be provided by the State, any jurisdiction served by the Service, or any other available funding source. In the event the Authority determines that funds appropriated by the Legislature or otherwise available for Expanded Service will be insufficient to operate the Expanded Service during the State fiscal year, the Authority shall obtain any additional funds required or make adjustments to the level of Expanded Service to the extent necessary to operate at least Minimum Service with available funding.

- 15.4 In recognition of the obligations imposed by the Act on the Authority to operate the Minimum Service and on the State to fund that Minimum Service, the parties shall use their best efforts to include adequate funding in the proposed budget submitted to the legislature. The Business Plan Update budget shall set forth a specific line item amount identified solely for the operation of the Minimum Service.
- 15.5 If there is a shortfall between the funding approved in the proposed budget contained in an annual Business Plan Update and the actual amount appropriated by the Legislature, or actually available from the State or any other funding source at the time the Service is to be provided, the level of Service shall be reduced to a level that can be sustained by available funding during the fiscal year, but in no event less than the Minimum Service. If Minimum Service cannot be provided because the Legislature has not appropriated funds identified in the Business Plan sufficient to maintain Minimum Service, Authority may terminate this Agreement in accordance with Section 17.5.a hereof.
- 15.6 If the level of funding described in Section 15.2 above is appropriated by the Legislature and, to the extent required by law, is programmed by the CTC, but



additional funding is still needed to operate the Minimum Service without interruption, the following steps will be taken:

- a. To the extent feasible, the Authority will make adjustments to the level of passenger rail service for service other than the defined Minimum Service during the fiscal year, to the extent necessary to continue the uninterrupted operation of an amended form of the Service, but in no event less than the Minimum Service;
- b. If additional funding is still required, the Authority will seek to obtain such additional funding from available sources. If, following good faith efforts by the Authority to obtain such supplemental funding, the Authority is unable to do so, the Authority shall continue to operate the Minimum Service for so long as it has funds available to provide such Minimum Service. Not less than thirty (30) days in advance of the date that the Authority anticipates that it will exhaust funds available to provide Minimum Service or amended Minimum Service, it shall notify the State that it is terminating the Agreement, which termination shall be effective sixty (60) days following the date anticipated for exhaustion of funds to maintain such Minimum Service or amended Minimum Service. In such event, and at least ninety (90) days (or such other notice period contained in any contract with a subsequent operator of termination of such contract) prior to the effective date of termination of this Agreement, the Authority shall have notified Amtrak or any subsequent operator that it intends to terminate this Agreement and shall have obtained the consent of Amtrak or any such subsequent operator to continue the Service to the date of termination of the Agreement, which Service shall be maintained for such period at a level to be agreed upon between State and Amtrak or such subsequent operator. In such event, the State

agrees to fund Minimum Service or such other service level as may be agreed upon between the State and Amtrak or any subsequent operator, for such period and to compensate the Authority for administration of the Service for such period in monthly amounts for each monthly period during which the Service is continued, equal to one twelfth (1/12) of the amount appropriated by the Legislature for the then-current State fiscal year for administration of the Service by the Authority. Such amount shall be paid in accordance with the provisions of Article III of the Fund Transfer Agreement.

## **ARTICLE 16. NO GUARANTY OF FUNDING**

16.1 Notwithstanding any other provisions of this Agreement, the State has no obligation or duty and no representation or warranty is made by the State herein that any funding will actually be appropriated by the Legislature and, to the extent required, programmed by the CTC, to carry out the purposes of this Agreement. The obligation of the State is limited to preparing, supporting, and submitting budgets and appropriation requests to the Legislature on a timely basis, all as set forth in this Agreement.

## **ARTICLE 17. TERMINATION BY PARTIES**

17.1 Notwithstanding any other provisions of this Agreement, either party may terminate this Agreement without cause, by giving not less than ninety (90) days advance written notice to the other.

17.2 In the event that a party terminates this Agreement, the parties agree to cooperate with each other to facilitate the transfer of responsibilities from the Authority to another entity or back to the State with the minimum disruption

to passenger service and in the most cost effective manner possible. To the extent reasonably feasible, the parties shall endeavor to make the effective date of termination coincident with the beginning of the State's next fiscal year.

- 17.3 In the event that there are any funds provided by the State remaining unspent by the Authority as of the date of termination of the Agreement, such funds shall be promptly released or reimbursed to the State to be used by the State to provide the Service or for transfer to a successor administering agency of the Service.
- 17.4 Section 17.1 notwithstanding, the State may, in its sole discretion, terminate this Agreement upon not less than thirty (30) days prior notice upon the occurrence of a material breach of any of the Agreements, which material breach shall include, but not be limited to, the following:
- a. Authority's refusal to perform any of the Services as required under the Agreements when such refusal significantly disrupts operations in the Corridor and is not excused by any other provision of this Agreement;
  - b. Authority's insolvency or inability to meet its obligations, the filing of an involuntary petition in bankruptcy, its making of 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;

- c. Authority's failure to comply with any valid law, ordinance, rule, regulation or order of any legal entity or authority which failure has a material impact on Authority's ability to perform this Agreement;
- d. The abolition, termination or other dissolution of the Authority;
- e. The material breach of any other obligation duty, responsibility, covenant or condition agreed to by the Authority pursuant to the Agreements.

17.5 Section 17.1 notwithstanding, the Authority may, at its sole discretion, terminate this Agreement upon not less than thirty (30) days prior notice upon the occurrence of a material breach of the Agreement by State, which shall include, but not be limited to:

- a. The failure of the Legislature to appropriate sufficient funds to operate the Service at Minimum Service levels;
- b. The failure of State to make payments as required by this Agreement or the Fund Transfer Agreement;
- c. The material breach of any other obligation duty, responsibility, covenant or condition agreed to by the State pursuant to the Agreements.

17.6 Upon termination, the party electing to terminate shall notify the other party in writing stating the basis for termination. If termination is for cause, and the other party has taken effective action to remedy the default within the notice period, such termination shall not become effective.

- 17.7 Upon termination for cause, State shall have the right to enter into an agreement with another party for administration and/or operation of the Service. In the event of termination for cause, the terminating party shall also be entitled to unavoidable incremental allowable costs actually incurred and attributable to the termination, but, in the event of termination for cause by the State, not for any operating costs for continuation of the Service which would otherwise have been incurred had the State not exercised its right to terminate.
- 17.8 Except as set forth in this Article 17, no party shall have any liability or obligation to the other party by reason of termination of this Agreement.
- 17.9 Any exercise of State's right to terminate this Agreement shall be subject to the prior written approval of the Secretary.

## **ARTICLE 18. ARBITRATION**

- 18.1 In the event of a dispute between the parties which has not been satisfactorily resolved by those parties within sixty (60) days of the commencement of the dispute, said dispute shall be submitted to arbitration by a panel of three arbitrators who shall conduct the arbitration pursuant to the rules of the American Arbitration Association. The panel of arbitrators shall consist of one arbitrator appointed by each of the disputants, the third arbitrator to be appointed by mutual consent of the other two arbitrators.
- 18.2 The arbitration panel shall resolve the dispute in accordance with the terms of this Agreement, and such resolution shall be final and binding upon the parties. Each party shall bear its own costs of arbitration, including reasonable attorneys fees. The cost of the third arbitrator shall be divided equally

between the disputants. Any proceeding convened under this provision shall be conducted in the city of Sacramento, California. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. 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 award.

18.3 Unless otherwise agreed by the disputants, only disputes regarding a disputant's rights and obligations arising under the terms of: (i) this Agreement, (ii) the Agreements, or (iii) any other agreement between the disputants in which this arbitration provision is incorporated by reference shall be subject to arbitration pursuant to Section 18.1.

18.4 The foregoing notwithstanding, with respect to contract claims or disputes arising under this Agreement or any Appendix hereto which may be subject to the provisions of California Public Contract Code Section 10240, such claims or disputes shall be resolved by arbitration conducted by a single arbitrator selected by the parties from the certified list created by the California Public Works Contract Arbitration Committee and in accordance with the requirements and procedures set forth in such Section 10240.

## **ARTICLE 19. AUDIT**

19.1 The State shall perform such audits and reviews of the financial statements and operations of the Authority and Service as are specified herein and as are more fully set forth in the Fund Transfer Agreement. Such audits and reviews shall be conducted by State staff, by an independent auditor selected by the State, or any combination thereof.

- 19.2 The State may conduct such reviews or audits of the operation or financial statements of the Authority at such other times and under such circumstances as State may determine, upon reasonable notice to the Authority. Reviews and audits shall include the financial statements, documentation and the physical operations of the Authority. Auditors shall have access to the financial statements and supporting documents, including books and records of account, sufficient to form an opinion as to the financial condition and operations of the Authority. Costs incurred by the State to perform such audits and reviews shall be borne by the State. Costs incurred by the Authority's staff related to the performance of such reviews and audits may not be invoiced to the State but may be recovered through the Authority's indirect cost rate.

## **ARTICLE 20. SUCCESSOR ACTS**

- 20.1 All statutes cited herein shall be deemed to include amendments to and successor statutes to the cited statutes as they presently exist.

## **ARTICLE 21. SUCCESSORS AND ASSIGNS TO THE PARTIES**

- 21.1 Neither this Agreement nor any right, duty or obligation hereunder may be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party; provided, that, unless otherwise expressly required herein, a party shall not be obligated to obtain the written consent of the other party with respect to any contract related to the Service for the provision of goods and/or services to the contracting party in the ordinary course of business.

**ARTICLE 22. NOTICES**

22.1 Any notice which may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addressees set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to State:

State of California  
Department of Transportation  
P.O. Box 942874  
Sacramento, CA 94274-0001  
Attention: Rail Program Manager, MS 74

with a copy to:

State of California  
Office of the Secretary  
Business, Transportation and Housing Agency  
U.S. Bank Building  
980 9th Street, Suite 2450  
Sacramento, CA 95814-2719  
Attention: Deputy Secretary, Rail and Transit



If given to Authority:

Capitol Corridor Joint Powers Authority  
P.O. Box 12688 (LMA-2)  
Oakland, CA 94604-2688  
Attention: Board Secretary

**ARTICLE 23. AMENDMENT**

- 23.1 This Agreement may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this Agreement shall be void and of no effect.

**ARTICLE 24. REPRESENTATIONS AND WARRANTIES OF THE PARTIES**

- 24.1 The Authority hereby represents and warrants to State that:
- a. The Authority is in good standing under applicable law, with all requisite power and authority to carry on the activities for which it has been organized and proposed to be conducted pursuant to the Agreements.
  - b. The Authority has the requisite power and authority to execute and deliver the Agreements and to carry out its obligations hereunder. The execution and delivery of the Agreements by such entity, the performance by it of its obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized by

the governing board of such entity and no other proceedings are necessary to authorize the Agreements or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by such entity and constitute valid and binding obligations of such entity, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

- c. Neither the execution and delivery of the Agreements and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any provision of any agreement among the Agencies; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

24.2 The State does hereby represent and warrant with respect to each of the Agreements to the Authority that:

- a. It is validly existing with all requisite power and authority to carry on the activities proposed to be conducted pursuant to the Agreements.
- b. It has the requisite power and authority to execute and deliver the Agreements and to carry out its obligations thereunder. The execution and delivery of the Agreements, the performance by it of its

obligations thereunder and the consummation of the transactions contemplated thereby have been duly authorized and no other proceedings are necessary to authorize the Agreements or to consummate the transactions contemplated thereby. The Agreements have been duly and validly executed and delivered by it and constitute valid and binding obligations, enforceable against it in accordance with their terms, except to the extent that such enforceability may be subject to bankruptcy, insolvency, reorganization, moratorium or other laws now or hereinafter in effect relating to creditor's rights and the remedy of specific enforcement and injunctive and other forms of equitable relief, and may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

- c. Neither the execution and delivery of the Agreements and the performance of its obligations thereunder nor the consummation of the transactions contemplated thereby will (i) conflict with or result in a breach of any other agreement; (ii) violate any writ, order, judgment, injunction, decree, statute, rule or regulation of any court or governmental authority applicable to such entity or its property or assets.

**ARTICLE 25. CONSTRUCTION: NUMBER, GENDER AND CAPTIONS**

- 25.1 The Agreements have been executed in the State of California and shall be construed according to the law of said State. Numbers and gender as used therein shall be construed to include that number and/or gender which is appropriate in the context of the text in which either is included. Captions are

included therein for the purposes of ease of reading and identification. Neither gender, number nor captions used therein shall be construed to alter the plain meaning of the text in which any or all of them appear.

**ARTICLE 26. COMPLETE AGREEMENT**

26.1 This Agreement, including Appendices, constitutes the full and complete agreement of the parties, superseding and incorporating all prior oral and written agreements relating to the subject matter of this Agreement.

26.2 All attached Appendices A through N are hereby incorporated and made an integral part of this Agreement by this reference.

**ARTICLE 27. PARTIAL INVALIDITY**

27.1 If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

**ARTICLE 28. CONFLICTS BETWEEN THIS AGREEMENT AND OTHER AGREEMENTS**

28.1 To the extent that any provision or requirement of this Agreement may conflict with a provision or requirement of any Agreement between the parties hereto, or between a party hereto and any other party, which is attached to this Agreement as an Appendix, the priority of agreements set forth in the Equipment Lease shall be employed to resolve such conflict.

**ARTICLE 29. COUNTERPARTS**

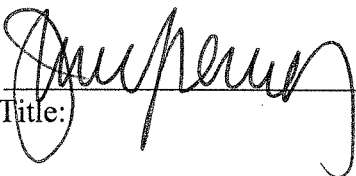
29.1 This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which shall be deemed to be one instrument. Copies of this Agreement may be used in lieu of the original.

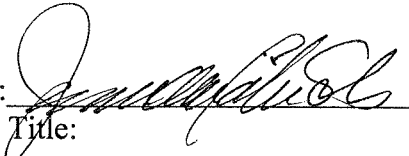
**ARTICLE 30. SIGNATURES**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date set forth above.

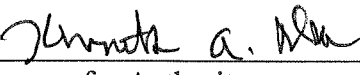
**CAPITOL CORRIDOR JOINT POWERS  
AUTHORITY**

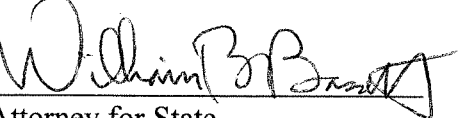
**STATE OF CALIFORNIA**  
Department of Transportation  
JAMES VAN LOBEN SELS  
Director

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

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

**Approved as to Form and Procedure:**

By:   
Attorney for Authority

By:   
Attorney for State



**APPENDIX A  
COST SAVINGS STATEMENT  
Capitol Corridor Joint Powers Authority**

**REVISED BASED ON STATE ANALYSIS (DATED 1-15-98)**

**A. FIRST-YEAR COST SAVINGS**

**1. Operating**

Fuel - Based on conversations with the manufacturer of the locomotives used on the Capitol Corridor, these locomotives should average about 1.5 gallons per train-mile. The train-miles for the Capitol Corridor during the previous Amtrak contract period, federal fiscal year (FFY) 96/97, was 371,800. Using an industry average fuel cost of \$0.81 per gallon and the fuel efficiency for the locomotives (1.5 gallons/train-mile), the fuel cost for the Capitol Corridor for FFY 96/97 should be \$451,737 as compared to the actual total billing for FFY 96/97 of \$606,110. As such, the CCJPA will work with Amtrak to evaluate the fuel tickets and establish where the fuel actually goes and what should be charged to the Capitol Corridor. With this process, the CCJPA expects that during its first twelve months of administration the cost of fuel allocated to the Capitol Corridor will be reduced \$100,000.

General Support and Transportation - Based on Amtrak's FFY 97/98 budget for the Capitol Corridor, these two overhead categories represent 28.5% of the total cost of the service. Other passenger rail services such as SCRRA and Caltrain have 8% of their total budget applied to these two categories. By going through each line item of service provided, and eliminating those that are not necessary, the CCJPA expects over the first twelve months of administration to reduce General Support by \$100,000 (2.4%) and Transportation by \$40,000 (1.67%) when compared to Amtrak's FFY 97/98 Capitol Corridor budget.

On-Board Services - The category for On-Board Supplies identifies personnel titles that should not be included and appear to be covered in other categories. By eliminating this redundancy over the first twelve months of administration, the CCJPA will reduce the expense by \$19,000 (4.2% of the \$448,000 allocated in Amtrak's FFY 97/98 Capitol Corridor budget).

**2. Marketing**

Media Buying. The CCJPA will buy media through independent media consultants rather than using an advertising agency. The CCJPA's administrative budget includes an allocation of funds for a marketing consultant who has extensive media buying experience and will perform media buying in-house. Therefore, the CCJPA will not incur any outside overhead charges when buying media services. The marketing consultant will also develop marketing programs and manage the marketing and advertising contracts.

Based on the State's analysis, which states a 14% average mark-up of outside ad agencies, the CCJPA will eliminate the 14% advertising agency overhead charge for media buying and obtain \$99,400 (14% of the CCJPA's media buying budget of \$710,000) in cost savings in the first year of administration. Once again, these cost savings by the CCJPA are attained because the CCJPA will buy media through its internal administrative resources rather than retaining an advertising agency, which will avoid paying a 14% overhead charge.

Creative Services. The CCJPA will use a competitive bid process to retain independent creative consultants who do not charge an overhead for production costs. Based on the information by the State's analysis that Caltrans pays a maximum overhead charge of 10%, the CCJPA's cost savings will be \$8,250 (10% of the CCJPA's Capitol Corridor creative services budget of \$82,500).

**3. Administrative**

Budget. By March 1997 the parties were having difficulty establishing mathematically the amount of the Caltrans Rail Program's State FY (SFY) 1997/98 administrative budget that was used for the Capitol

Corridor and could be transferred to the CCJPA. Caltrans initially proposed an administrative budget transfer to the CCJPA of approximately \$900,000 (\$1,050,000 with maintenance supervision transfer). The CCJPA's calculations indicated that the SFY 97/98 administrative budget transfer from Caltrans should be approximately \$1,745,000 (\$2,190,000 with maintenance supervision). Since it appeared the transfer was imminent, and to avoid protracted negotiations and evaluation, the parties agreed that the avoidable cost to the Caltrans Rail Program in the transfer to the CCJPA is \$1,072,430 (\$1,302,003 when maintenance supervision is transferred to the CCJPA). Based on Caltrans' SFY 97/98 avoidable cost of \$1,072,430 and the CCJPA's first-year administrative budget of \$1,022,430, there is a cost savings of \$50,000.

## B. REINVESTMENT OF SAVINGS

### 1. Operating

Passenger Information System. Amtrak has real time information on the train status and operations, which is not delivered to the passengers waiting at the stations. Connecting this information from Amtrak's computers through a server, modems and phone lines to real-time information signs will provide the basic service information to the passengers. The installation of this system is estimated to be about \$159,000.

Additional signage. There is a need for signs and maps at the train stations along the corridor identifying the train route, station location, and the local area including transit connections. The cost of these additional signs at the stations is approximately \$100,000.

### 2. Marketing

Additional Media Buying. The \$99,400 in cost savings from the elimination of the media buying overhead will be reinvested for additional media purchase. These savings will be reinvested in the Service through additional media coverage such as (1) adding 8,300 extra column inches in the local newspapers such as the San Francisco Chronicle or (2) running an extra thirty (30) 1/4 page ads in various print media.

Creative Services. The CCJPA will apply the \$8,250 in cost savings to provide thirty-three (33) \$250 radio spots.

### 3. Administrative

The cost savings of \$50,000 will be used to procure an insurance policy for the CCJPA which will cover the activities of the CCJPA in its administration of the Capitol Corridor Service and will name the State as an additional insured. This coverage is currently unfunded during the State's administration of the Service.

## C. SUMMARY

<u>Cost Savings Item</u>	<u>Savings</u>	<u>Reinvested Savings</u>	<u>Cost</u>
<b>Operating</b>		<b>Operating</b>	
Fuel	\$100,000	Passenger Information System	\$159,000
General Support and Transportation	\$140,000	<u>Additional signage</u>	<u>\$100,000</u>
On-Board Services- Supplies	<u>\$19,000</u>	<b>Subtotal-Operating</b>	<b>\$259,000</b>
<b>Subtotal-Operating</b>	<b>\$259,000</b>		
<b>Marketing</b>		<b>Marketing</b>	
Media Buying	\$99,400	Added Media Buying	\$99,400
Creative Services	<u>\$8,250</u>	<u>More Radio/Media</u>	<u>\$8,250</u>
<b>Subtotal-Marketing</b>	<b>\$107,650</b>	<b>Subtotal-Marketing</b>	<b>\$107,650</b>
<b>Administrative</b>	<b>\$ 50,000</b>	<b>Administrative Insurance</b>	<b>\$50,000</b>
<b>TOTAL-Cost Savings</b>	<b>\$416,650</b>	<b>TOTAL-Reinvested Savings</b>	<b>\$416,650</b>





---

## **CAPITOL CORRIDOR SERVICE**

**(Colfax-Sacramento-Davis-Suisun/Fairfield-Martinez-Emeryville/San Francisco-Oakland-San Jose)**

***FY 97/98 - FY 98/99 BUSINESS PLAN UPDATE***

---

**Prepared by**

**Capitol Corridor Joint Powers Authority**

**Prepared for**

**State of California  
Business, Transportation and Housing Agency**

***April 1998***

**TABLE OF CONTENTS**

<b>1. INTRODUCTION</b>	<b>1</b>
<b>2. HISTORICAL PERFORMANCE OF THE SERVICE</b>	<b>3</b>
<b>3. OVERALL OPERATING PLAN</b>	<b>6</b>
<b>4. SHORT-TERM AND LONG-TERM CAPITAL IMPROVEMENT PROGRAMS</b>	<b>7</b>
<b>5. ACTION PLAN AND PERFORMANCE STANDARDS</b>	<b>12</b>
<b>6. OPERATING STRATEGIES</b>	<b>15</b>
<b>7. ESTABLISHMENT OF FARES</b>	<b>21</b>
<b>8. SERVICE AMENITIES, AND FOOD AND BEVERAGE SERVICES</b>	<b>23</b>
<b>9. MARKETING STRATEGIES</b>	<b>25</b>
<b>10. ANNUAL FUNDING REQUIREMENT: COSTS AND RIDERSHIP PROJECTIONS</b>	<b>27</b>
<b>11. SEPARATION OF FUNDING</b>	<b>29</b>
<b>12. CONSIDERATION OF OTHER SERVICE EXPANSIONS AND ENHANCEMENTS</b>	<b>29</b>

## EXECUTIVE SUMMARY

The FY 1997/98 - FY 1998/99 Business Plan Update for Capitol Corridor Service is a revision of the previous business plan submitted to the State of California Business, Transportation and Housing Agency (BT&H) in April 1997. The business plan is the result of Senate Bill (SB) 457 to place management of the Capitol Corridor Service (Colfax-Sacramento-Davis-Suisun City-Martinez-Emeryville/San Francisco-Oakland-San Jose) with the Capitol Corridor Joint Powers Authority (CCJPA) with continued oversight and financing by the State of California. The governing board of the CCJPA is the Capitol Corridor Joint Powers Board, which represents stakeholders in the eight counties of the corridor (Placer, Sacramento, Yolo, Solano, Contra Costa, Alameda, San Francisco, and Santa Clara). The CCJPA will focus on cost management, revenue enhancement and other efficiencies and, through an annual business plan update, will seek to implement the State's program for Capitol Corridor Service consistent with the *California Rail Passenger Program Report* (December 1993) to increase from the current 4 daily round trips to 6 round trips followed by the phased introduction of 10 daily round trips.

The Capitol Corridor Service began in December 1991 and currently provides four daily round-trips between Colfax/Sacramento and Oakland/San Jose. The 185-mile corridor route has 16 stations and connects directly with 12 public transit bus systems, at least 16 private intercity bus routes, and four passenger rail or rail transit systems. Amtrak currently operates the state-supported Capitol Corridor Service on track owned by the Union Pacific (UP) and manages the contracts for dedicated feeder bus routes under the direction of the State. From FY 92/93 (the first complete fiscal year of service) through FY 96/97, ridership and revenue have increased steadily at an annual rate of 22% and 20%, respectively, while operating expenses for train and bus service have also increased 29% a year resulting in an average annual farebox operating ratio of 36.6%. For FY 97/98, ridership growth is expected to increase by approximately 7 percent, yet State operating costs are projected to significantly increase due to decreasing operating assistance from Amtrak resulting in a projected decrease in the farebox operating ratio to 30 percent.

In accordance with the Interagency Transfer Agreement (ITA) between the CCJPA and the State, the CCJPA is to assume the responsibilities to administer the Capitol Corridor Service's four daily round trips (including 6 feeder bus routes) on June 1, 1998 with an increase in frequency to six (6) daily round-trips in October 1998 (per the Governor's proposed FY 98/99 budget). Increased service can be accomplished with the current state-funded track and signal improvement project between Sacramento and Emeryville and the recent acquisition and delivery of state-owned passenger cars and locomotives. Using these state-funded improvements and other locally-sponsored projects, the CCJPA will focus on improving service reliability, coordination with local and regional transport systems, and marketing initiatives to increase ridership. Operating strategies have been developed to add more service, preserve and improve service to existing markets, and target and serve the underutilized weekday travel market. Steps will be taken to evaluate joint-ticketing strategies, improve physical facilities and develop intermodal connections with local and regional transportation providers.

Performance standards have been developed by the State for the Capitol Corridor Service, which will be used to measure the usage, cost efficiency, and quality of the service delivery by monitoring the financial, operational, and service aspects. For example, train on-time performance is currently under 80 percent and will be intermittently lower due to the completion of the current construction of the track and signal improvement project, but will subsequently be upgraded to at least 90 percent. With the introduction of the 5th and 6th daily round trips, ridership is expected to increase by 33.6% during federal fiscal year 98/99 and then 5% the following year with a steady increase in the farebox operating ratio of 1% per year.

Reliability and increased frequency are seen as vital components to the continued improvement of Capitol Corridor Service.

To support these performance standards, the CCJPA will develop, implement, and update an action plan for the Capitol Corridor Service. For the balance of FY 97/98 and during FY 98/99, the CCJPA's Action Plan will include among other items and activities: a policy for service standards; the development and continuous refinement of a Capital Improvement Program (CIP); marketing programs; improved operating, financial, and performance reporting; market research program; operating coordination with UP and Amtrak on scheduling and train performance; coordination of fares and service schedules with connecting services; implementation of the 5th and 6th trains; identification of special seasonal markets; update of performance standards and the annual business plan update; and a service plan for the implementation of seven to 10 round-trips.

As identified in the ITA, the CCJPA will establish fares for the Capitol Corridor Service except where the Capitol Corridor and San Joaquin Services share the rail route between Martinez and Oakland. The CCJPA will evaluate and refine fares as necessary during FY 98/99 in conjunction with Amtrak and utilize the unique service amenities and features of the state-owned equipment to ensure that Capitol Corridor Service provides a competitive and attractive alternative to other transportation modes in the Capitol Corridor.

The principal purpose of this Business Plan Update is to identify the CCJPA's request of annual State funds for the balance of FY 97/98 and during FY 98/99 to operate, administer and market the Capitol Corridor Service for agreed-upon service levels. Consistent with the ITA, the Capitol Corridor Service, as administered by the CCJPA, will remain as part of the State's intercity rail system and is funded through the State legislative budget process. The CCJPA will provide the level of service consistent with the funding appropriation. As such, the fund request for the balance of FY 97/98 is \$2,236,114 for the current four-train service including one daily train to Colfax. The CCJPA's FY 98/99 fund request is submitted to the State for incorporation into the FY 98/99 Legislative Budget process. The fund request for FY 98/99 is \$15,176,965 to support the increase to six daily round-trip trains in October 1998. Table 10.1 provides a detailed summary of the CCJPA's operating, administrative, marketing and other expenses for the balance of FY 97/98 and during FY 98/99.

Beyond the proposed service plans through FY 98/99, the CCJPA will seek to increase service frequency from the proposed 6 round trips to 10 round trips as identified in the *California Rail Passenger Program Report* (December 1993). Additional opportunities include the expansion of train service to extend the reach of the Capitol Corridor (i.e., Tahoe/Reno, Monterey, Central Coast to meet the San Diegan Service) and enhancements to various travel markets within the existing corridor (i.e., Sacramento, San Francisco/Oakland, and Santa Clara County/Silicon Valley). These proposed extensions and enhancements are preliminary and require further evaluation to determine the necessary operating and capital funding requirements.

The FY 97/98 - FY 98/99 Business Plan Update for Capitol Corridor Service identifies the annual funding requirements to support CCJPA's service plan for the rail and dedicated feeder bus services. In general, the business plan seeks to strengthen the Capitol Corridor Service and offer the traveling public in the Capitol Corridor a viable alternative through the implementation of the CCJPA's service plan. To steadily improve the Capitol Corridor Service, the CCJPA will need to: secure operating and capital funding assistance; control costs; increase service frequency, ridership and revenues; and provide a safe, reliable passenger service.

## 1. INTRODUCTION

The purpose of this Business Plan Update is to identify the Capitol Corridor Joint Powers Authority's (CCJPA) intentions for the remaining portion of State Fiscal Year (FY) 97/98 and the full FY 98/99 in its management of the Capitol Corridor Service (Colfax-Sacramento-Davis-Suisun City-Martinez-Emeryville/San Francisco-Oakland-San Jose) under the Interagency Transfer Agreement (ITA) with the State of California pursuant to Senate Bill (SB) 457, the Intercity Passenger Rail Act of 1996, signed by the Governor on July 23, 1996. This statute permits the CCJPA to establish its board of control, to enter into an Interagency Transfer Agreement (ITA) with the State to transfer the administration responsibilities of the Capitol Corridor Service to the CCJPA and develop and implement a program of improvements.

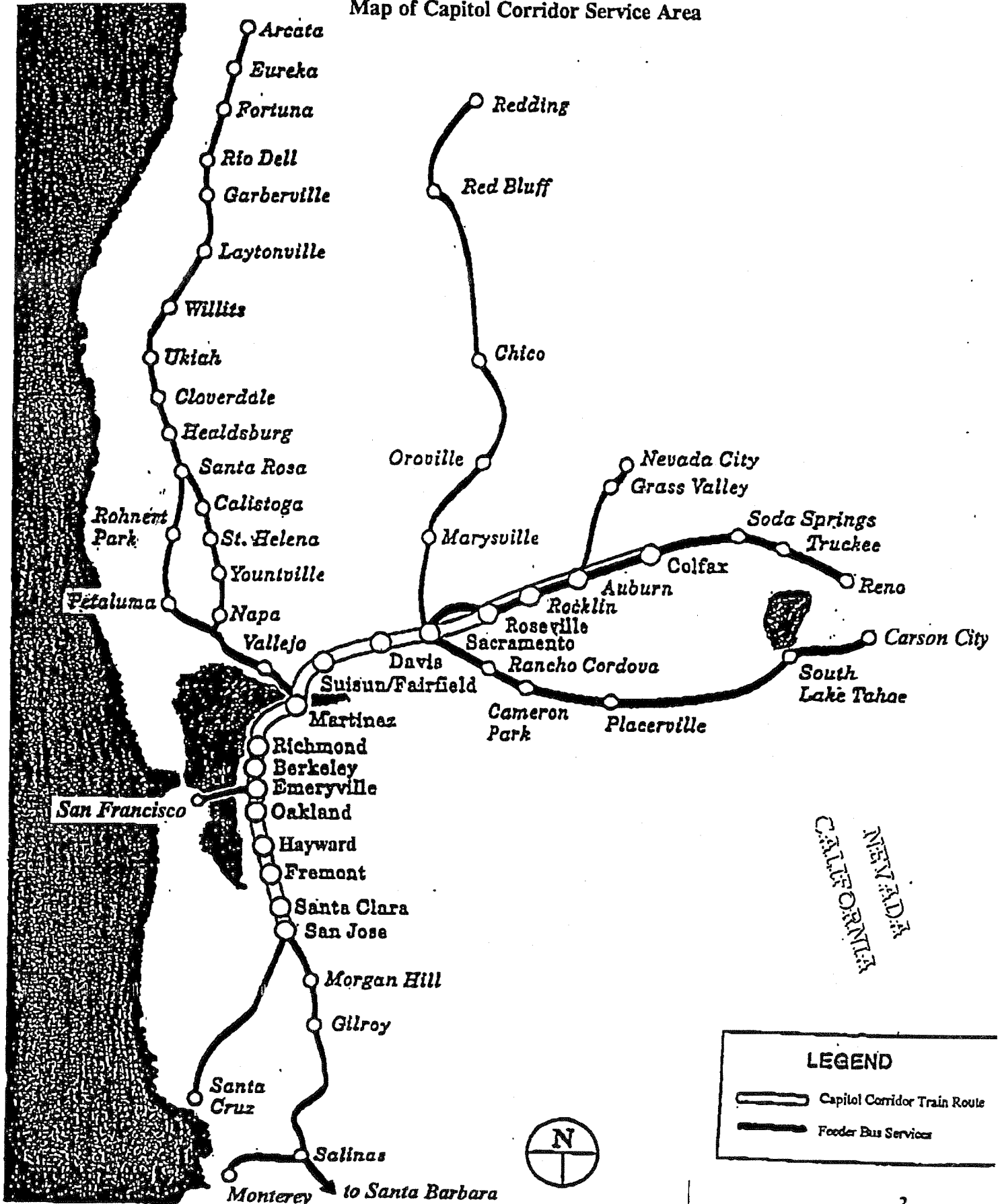
The governing board of the CCJPA is the Capitol Corridor Joint Powers Board which includes representatives of eight counties (Placer, Sacramento, Yolo, Solano, Contra Costa, Alameda, San Francisco, and Santa Clara). A Joint Exercise of Powers Agreement was executed on December 31, 1996 among the six (6) agencies of the CCJPA: Placer County Transportation Planning Agency, Sacramento Regional Transit District, Yolo County Transportation Authority, Solano County Transportation Authority, San Francisco Bay Area Rapid Transit District and the Santa Clara Valley Transportation Authority.

The ITA between the CCJPA and the State signed by both parties on \_\_\_\_\_ 1998 identifies the transfer of responsibilities on June 1, 1998. The CCJPA will become responsible for duties now undertaken by the State's Department of Transportation (Caltrans). These duties shall include the following:

- oversight of the day-to-day train operations by entering into an operating agreement with the current contract operator, the National Railroad Passenger Corporation (Amtrak);
- negotiating changes to the current contract or select another qualified operator;
- manage and administer the State-owned and other rolling stock (passenger cars and locomotives) assigned to the Capitol Corridor and, once maintenance supervision has been transferred to the CCJPA, assume the responsibility for overseeing the maintenance of the rolling stock assigned to the Capitol Corridor and the San Joaquin Corridor, as it supervises Amtrak's fleet maintenance functions performed on this entire fleet, under a single maintenance management staff (warranty administration for the new cars and locomotives will remain a State responsibility);
- overseeing the portion of the dedicated feeder bus system for the Capitol Corridor Service which is subcontracted to private bus operators through the Amtrak contract.

As required by SB 457, an annual Business Plan by the CCJPA is to be submitted to the State of California Business, Transportation and Housing Agency by April 1 of each year during the term of the ITA. The document will be reviewed and approved by the State and used to develop annual appropriation requests to the State legislature.

Figure 1.1  
Map of Capitol Corridor Service Area



**LEGEND**

- Capitol Corridor Train Route
- Feeder Bus Services

## 2. HISTORICAL PERFORMANCE OF THE SERVICE

Beginning with the introduction of the Amtrak national network twenty years ago, passenger train service has been expanding in California. The State initiated, co-funded and operated intercity rail service under the authority of Section 403(b) of the federal Rail Passenger Services Act. Amtrak provided these trains under a contract with the State that includes a cost-sharing agreement and identifies the proportion of subsidy requirements paid by the State.

The introduction of service in the San Diegan and San Joaquin Corridor was followed by trains in the Capitol Corridor. The Capitol Corridor Service began on December 11, 1991. Four daily round-trip trains currently serve sixteen (16) stations along the 185-mile rail corridor connecting Placer, Sacramento, Yolo, Solano, Contra Costa, Alameda, San Francisco and Santa Clara Counties. The train service parallels the I-80 corridor between Sacramento and Oakland and I-880 between Oakland and San Jose. The route connects directly with 12 public transit bus systems, at least 16 private intercity bus routes, and four passenger rail or rail transit systems (Amtrak long distance trains, San Joaquin Corridor, BART and Caltrain). Together, the Capitol Corridor Service and these local systems serve the second largest urban service area in the Western United States. Under provisions defined in Proposition 116, ACR-132, and SB 457, one daily Capitol Corridor round-trip train was extended in Placer County on January 26, 1998 to serve stations in Rocklin, Auburn, and Colfax.

Amtrak operates the state-supported Capitol Corridor intercity service on track owned by the Union Pacific Railroad (UP) through its operating agreement with the UP and manages the contracts for dedicated feeder bus routes under the direction of the State. The State has provided operating and management policy regarding capital and operating funds, fares, service levels, schedules and business planning for Capitol Corridor trains.

### Ridership

The Capitol Corridor Service currently operates with four daily round-trips between Colfax/Sacramento and Oakland/San Jose (the fourth round-trip began on April 14, 1996). In June 1993, annual ridership was less than 240,000. Ridership reached 496,586 in State Fiscal Year (SFY) 96/97, a 42% increase over two years. Table 2.1 presents historical ridership.

**Table 2.1**  
**Historical Ridership**

State Fiscal Year	Annual Ridership	Average Monthly Ridership	Percent Change Over Prior FY
91/92 (a)	173,672	26,719	--
92/93	238,785	19,899	--
93/94	364,070	30,340	+52.5%
94/95	349,056	29,090	-4.1%
95/96	403,050	33,590	+15.5%
96/97	496,586	41,382	+23.1%
97/98 (b)	--	41,268	-0.3%

(a) Six and one half months of SFY 91/92.

(b) SFY through March 1998.

Sources: "Capitol Route Charts," Charts CR-A1 (4/14/98) and CR-C1 (1/22/97).



Capitol Corridor ServiceApril 1998FY 97/98 - FY 98/99 Business Plan Update**Financial Performance**

The revenue sources used to cover the operating costs of Capitol Corridor Service are:

- Train and connecting bus passenger fares;
- Onboard food and beverage service revenue;
- Amtrak's hare share of operating assistance; and
- State operating assistance.

In the five-year period, SFY 92/93 - 96/97, ridership and revenue increased at an annual rate of 22% and 20% respectively. Revenue growth has increased at a slower rate than ridership due to fare promotions and discounted multi-ride tickets. The revenue in the table below includes all sources of revenue. It is estimated food and beverage service is approximately 10% of the rail passenger fare revenue.

**Table 2.2  
Historical Revenue**

State Fiscal Year	Annual Revenue (a)	Average Monthly Revenue (a)	Percent Change Over Prior FY
91/92 (b)	\$1,973,255	\$303,578	--
92/93	\$2,970,103	\$247,510	--
93/94	\$3,598,978	\$299,917	+21.2%
94/95	\$3,757,146	\$313,092	+4.4%
95/96	\$4,805,072	\$400,423	+27.9%
96/97	\$5,938,072	\$494,839	+23.6%
97/98 (c)	--	\$518,537	+4.8%

a) Includes train, bus, and food and beverage revenue.

b) Six and one-half months of SFY 91/92.

c) SFY through January 1998.

Sources: "Capitol Route Charts," Charts CR-A1 (4/14/98) and CR-C1 (1/22/97).

The financial performance of the Capitol Corridor Service is dependent on several institutional arrangements. The most important arrangement is the State's contract with Amtrak to operate the service and maintain any assigned equipment and facilities. The State contract is carried out by Amtrak West, Amtrak's Strategic Business Unit (SBU) covering the states of California, Oregon, and Washington, and represents the largest single cost center for operating the Capitol Corridor Service. The Capitol Corridor operating expenses include:

- Onboard labor, equipment maintenance;
- Railroad performance permits;
- Train fuel and power;
- Property insurance for state-owned rolling stock operated and maintained by Amtrak;
- Commissary and station costs;
- Support of Amtrak's national and local operation (e.g., phone information and reservations system); and
- Connecting bus service and other operating expenses.

Total operating expenses (including connecting bus service) have increased at an annual average of 9% between FY 92/93 and FY 96/97. The following table presents operating costs for train and connecting bus service.

**Table 2.3**  
**Historical Operating Expenses**

State Fiscal Year	Annual Operating Expenses (a)	Average Monthly Operating Expenses (a)	Percent Change Over Prior FY
91/92 (b)	\$4,848,967	\$745,995	--
92/93	\$8,333,093	\$694,424	--
93/94	\$9,911,735	\$825,978	+18.9%
94/95	\$9,678,401	\$806,533	-2.4%
95/96	\$11,077,485	\$923,124	+14.5%
96/97	\$20,510,936	\$1,709,245	+85.2%
97/98 (c)	--	\$1,673,057	-2.1%

a) Does not include administrative and marketing expenses and capital equipment costs.

b) Six and one half months through FY 91/92.

c) SFY 97/98 through January 1998.

Sources: "Capitol Route Charts," Charts CR-A1 (4/14/98) and CR-E (4/26/95).

The operating revenue to operating cost ratio, or farebox operating ratio (FOR), indicates how much of the operating costs is covered by operating revenue and conversely, how much state operating assistance is required to operate the service. For reporting purposes to date, the State has excluded the administrative and marketing expenses and capital equipment costs for the Capitol Corridor Service in the calculation of operating expense and the FOR.

**Table 2.4**  
**Farebox Operating Ratio**

State Fiscal Year	Farebox Ratio (a)	Percent Change Over Prior FY
91/92 (b)	40.7%	--
92/93	35.6%	--
93/94	36.3%	+2.0%
94/95	38.8%	+6.9%
95/96	43.4%	+11.9%
96/97	29.0%	-33.2%
97/98 (c)	31.0%	+6.9%

a) Farebox ratio excludes annual administration and marketing expenses and capital equipment costs.

b) Six and one-half months of SFY 91/92.

c) SFY through January 1998.

Sources: "Capitol Route Charts," Charts CR-A1 (4/14/98) and CR-E (4/26/95).

The current annual contract with Amtrak is based on a cost-sharing arrangement between the State and Amtrak to fund the costs to operate the service net of revenue. Table 2.5 indicates the State's share of the costs to operate Capitol Corridor Service. From December 1991 through

September 1995, the State has paid approximately 65 percent of the long-term avoidable train operating loss. In 1995, as a result of financial constraints imposed by Congress, Amtrak announced its intention to significantly increase the costs of service contracted to all state-sponsored rail systems by phasing out its portion of the train operating loss. For SFY 95/96, the State paid (1) 100% of the long-term avoidable train operating loss from October 1995 through September 1996 and (2) its portion of the addition of the fourth daily round-trip train on April 14, 1996, which represented a 7 percent increase in the State's share of operating costs for Capitol Corridor Service when compared to SFY 94/95. For the FY 96/97 Operating Agreement with Amtrak (October 1996 through September 1997), the State's share of train operating loss increased from 100% of long-term avoidable costs to 55% of fully allocated costs, which resulted in a 51.1% increase when compared to SFY 95/96. In late 1996, Amtrak received strong resistance from the current and future service sponsors regarding this pricing mechanism and introduced a new policy which allows funding partners or sponsors to negotiate with Amtrak the costs for which Amtrak will charge for the train service.

**Table 2.5**  
**Historical State Operating Costs**

State Fiscal Year	Annual State Operating Costs (a)	Average State Monthly Operating Costs (a)	Percent Change Over Prior FY
91/92 (b)	\$1,592,907	\$245,062	--
92/93	\$6,712,017	\$559,335	--
93/94	\$6,714,761	\$559,563	0%
94/95	\$6,012,315	\$501,026	-10.5%
95/96 (c)	\$6,434,940	\$535,245	+7.0%
96/97	\$9,701,519	\$808,640	+51.1%
97/98 (d)	--	\$847,668	+4.8%

- a) Does not include administrative and marketing expenses and capital equipment costs.  
 b) Six and one half months through FY 91/92.  
 c) Fourth daily round-trip train added April 14, 1996.  
 d) SFY 97/98 through January 1998.

Sources: Charts CR FY 97-98 Summary (4/14/98), CR FY 96-97 Summary (3/11/98) and CR-C1 (1/22/97).

### 3. OVERALL OPERATING PLAN

The CCJPA is committed to implementing the State's service plan in accordance with the *California Rail Passenger Program Report* (December 1993) which identifies up to ten (10) round trips for the Capitol Corridor Service. With the extension of train service to Colfax, the CCJPA's highest priority is an increase in frequency to six (6) daily round-trip trains. This level of train service is supported by the State's acquisition of California passenger cars and locomotives. The last delivery of California Cars has been completed.

To implement this increased operating plan, the CCJPA, in cooperation with the State, will be required to secure: (1) an approved schedule from the Union Pacific Railroad in conjunction with UP's completion of track and signal improvements between Sacramento and Oakland and (2) a budget and service plan from Amtrak to operate the proposed service levels in the annual operating agreement. Amtrak has provided an initial estimate of the net cost of operating this service plan including a dedicated network of feeder bus routes, which is provided in Section 10.

Section 6, below, describes the specific operating strategies proposed to implement this level of service.

To support this basic level of train service, the Capitol Corridor Service is extended via connections with an extensive, dedicated feeder bus network. In addition, the CCJPA is committed to improve the linkages among the corridor's regional and local public transport systems. Currently, the Capitol Corridor Service connects with (1) the BART rapid transit system in Richmond, (2) the Caltrain Service (Gilroy-San Jose-San Francisco) at San Jose-Diridon Station, and (3) the planned Altamont Commuter Express service (ACE) (Stockton-San Jose) at the Fremont-Centerville, Great America-Santa Clara and San Jose-Diridon stations.

Notwithstanding these shared stations, there is no direct platform-to-platform connections with the light rail systems in Sacramento and Santa Clara Valley. In addition, local bus systems serve all stations on the corridor but require further coordination. Providing an efficient transfer between the Capitol Corridor Service and other public transportation systems will offer an improved option for mobility in the corridor. To implement this portion of the CCJPA's overall operating plan, steps will be taken by the CCJPA, utilizing the capabilities of its member agencies as local/regional transportation providers, to advance coordination, evaluate joint-ticketing strategies, improve physical facilities and develop intermodal connections with local and regional transportation providers.

#### **4. SHORT-TERM AND LONG-TERM CAPITAL IMPROVEMENT PROGRAMS**

The CCJPA has begun to identify and implement an Capital Improvement Program (CIP) that builds upon the previous capital investments from the State and local and regional agencies and will continue to pursue, support and implement capital projects that will strengthen the Capitol Corridor Service. The goal of the CCJPA CIP is to increase the performance of the passenger railroad operation and expand the current market of riders and serve additional ridership markets. The CCJPA will identify, evaluate, and implement capital improvements that are (1) *systemwide* to increase passenger rail convenience and reduce travel times that offer a viable alternative to auto travel and (2) *local/regional* to target specific areas and station to continually increase ridership.

Major investments are underway and others are being proposed. The following major investments (over \$90 million) were programmed for the Capitol Corridor Service since November 1995 through Propositions 108 and 116 (source: Caltrans, 1996):

- Track/signal improvements (Sacramento-Emeryville)
- Track, station, facilities improvements (Santa Clara/Fremont-Oakland)
- Acquisition of California Cars and Locomotives
- Oakland-Jack London Square Station
- Hayward and Fremont Stations
- Wheelchair lifts: Santa Clara/Great America and Sacramento Stations

Highlights of these investments and others which are completed, underway or planned include:

- New GM Electro-Motive Division F59PHI Diesel Locomotives and new California coaches including trailers, cab cars, and food service cars.

- Infrastructure improvements between Oakland and Sacramento including new ties, continuous welded rail, crossovers, modern reverse running central traffic control (CTC) signal system, new grade crossings, and updated track circuits for higher speeds.
- Raised platforms to improve accessibility at Sacramento, Davis, Suisun City, Martinez, Richmond, and San Jose.
- Construction of new stations at Jack London Square, Emeryville, Santa Clara-Great America, Fremont-Centerville, and Hayward.
- Rehabilitation or enhancements of existing stations at San Jose, Martinez, Richmond and Suisun City.

Table 4.1 on the following page provide a more detailed list which shows the programmed improvements and funding allocations at the Capitol Corridor stations prior to SFY 97/98.

As the CCJPA initiates its responsibilities under the ITA with the State, additional new capital investment requirements will be identified to maintain a state of good repair, to increase ridership through increasing the attractiveness of the service and expanding the service area and to reduce operating costs. Initial short-term and long-term Capital Improvement Programs represent a current view of the investments required to meet the needs of the Capitol Corridor.

For the FY 98/99 and in subsequent years, the CCJPA will begin to establish an annual capital program in consultation with its constituents and in some cases apply for projects under its direct sponsorship.

#### **Short-Term Capitol Corridor Capital Improvements**

FY 97/98. Since its formation in December 1996, the CCJPA has been active to support and advance to completion those capital projects that are currently underway (i.e., Proposition 108 and 116 and other locally-funded projects). It should be noted that as part of the ITA, the State will retain responsibility for securing the completion of the track and signal improvements between Sacramento and Emeryville.

During FY 97/98, the CCJPA has been working with the State, regional, and local transportation funding agencies in the review and endorsement of various capital projects in the Capitol Corridor. Table 4.2 presents a summary of the projects, funding sources, and allocation in the Capitol Corridor during FY 97/98. The CCJPA has been and will continue to work with the project sponsors in the Capitol Corridor to: (1) ensure that the projects meet the project delivery schedule; (2) minimize the construction impacts of these projects on the Capitol Corridor Service; and (3) maximize the benefits of these projects to the Service.

Capitol Corridor Service

April 1998

FY 97/98 - FY 98/99 Business Plan Update

**Table 4.1**  
**Capitol Corridor Programmed and Ongoing Station Projects**  
**(as of April 1998)**

Station	Project Description	Schedule	Funding Allocated
Colfax	UP to donate existing station and land to City. City to renovate station, lighting, landscaping, platforms, parking. Upgrade restrooms to ADA specifications. Provide bicycle facilities.	1997-98	\$1,485,000
Auburn	Site acquisition (complete) Construct shelter or partial station. Construct 50-space long-term parking. Construct bus/transit transfer facility.	Late 1997-Early 1998	\$665,000
Rocklin	Secure parking lot site. Construct 60 spaces.	Later half of 1997	\$450,000
Roseville	Add 40-space Park & Ride lot. ADA-platform improvement	Late 1997	\$585,000
Sacramento	Improve parking lot, pedestrian access, restrooms, waiting room/canopy, switch work, track and signals. Provide LRT access. ADA-platform improvement. Future station: Design work	TBD (partial completion by June 1997)	\$1,470,000
Davis	<ul style="list-style-type: none"> <li>• Install bike racks, security fence, crossing gate.</li> <li>Grading of parking lot. ADA-platform improvement</li> <li>• Design of parking structure (ROW already purchased)</li> </ul>	Sep 1997 TBD	\$735,000
Fairfield-Vacaville (f)	Acquire 10 acres of right-of-way	1998	\$900,000
Suisun-Fairfield	ADA-platform improvement. Install ticket vending machine	TBD (design underway)	\$638,000
Martinez	Site acquisition, construct 600 parking spaces (Phase 1 = 200, Phase 2 = 400), 10 bus bays, 20 bike lockers, station and ADA-platform, pedestrian overcrossing, vehicle grade-crossing. UP railroad project: trackwork, road-crossing signals	Spring 1998	\$15,590,000
Richmond	<ul style="list-style-type: none"> <li>• BART Station: general improvements (cleaning, repainting, replacement work, exterior repairs).</li> <li>• BART Station: elevator/escalator rehabilitation</li> <li>• AC Transit: improve bus access and circulation</li> <li>• Amtrak project: install security measures (improved lighting, video surveillance cameras, PA system)</li> <li>• ADA-platform improvements</li> </ul>	mid 1998 1998/1999 early/mid 1998 1997 (design underway) Sep. 1997	\$3,507,900 (partially funded)
Berkeley	<ul style="list-style-type: none"> <li>• Improve parking, signage, lighting, streetscape, local transit connections, install improved shelter, ADA-platform improvements</li> </ul>	Sep-Dec 1997	\$665,000 (partially funded)
Emeryville	Pedestrian overcrossing	May 1997	\$2,500,000
Hayward	Construct rail/bus shelter-type station and 35 parking spaces	May 1997	\$1,445,000
Fremont-Centerville	<ul style="list-style-type: none"> <li>• Rehabilitate depot (unstaffed waiting area, restrooms).</li> <li>• Construct 61 parking spaces</li> </ul>	Winter 1997 Fall 1997	\$748,000
San Jose-Diridon	ADA-platform improvements, lighting and canopy	TBD (design is underway)	\$940,000

(f) = future planned station for Capitol Corridor Rail Service

TBD = to be determined

Capitol Corridor Service

April 1998

FY 97/98 - FY 98/99 Business Plan Update

**Table 4.2**  
**FY 97/98 Capitol Corridor Programmed Capital Improvements**

<b>Project Description</b>	<b>Funding Source</b>	<b>Allocation</b>
Martinez Intermodal Facility, Phase 1 and 2	FY 97/98 TCI	\$2,315,000
Placer County track/signal/station improvements	FY 97/98 TCI	\$1,900,000
Davis Intercity Rail Station Improvement Phase VII(a)	FY 97/98 TCI	\$200,000
Richmond Intermodal Station Phase 2	FY 97/98 TCI	\$500,000
	<u>Prop. 116 (Contra Costa)</u>	<u>\$1,500,000</u>
	Subtotal-Richmond Ph. 2	\$2,000,000
Suisun/Fairfield Intercity Railroad Station	FY 97/98 TCI	\$591,000
Oakland Coliseum Station design & engineering	FY 97/98 TCI	\$369,500
Great America-Santa Clara Station Improvements	Santa Clara VTA funds	
Stairway and mini-high platform		\$420,000
<u>Elevator</u>		<u>\$800,000</u>
Subtotal		\$1,220,000
<b>TOTAL</b>		<b>\$8,560,500</b>

FY 97/98 TCI = Fiscal Year 97/98 Intercity Rail Transit Capital Improvement Program.  
Prop. 116 (Contra Costa) = Proposition 116 funds from Contra Costa County.

FY 98/99. With the enactment of Senate Bill 45 in 1997, the State transportation funding program has been significantly modified where all state-funded capital projects are now required to be included in the State Transportation Improvement Program (STIP). As such, for FY 98/99 the CCJPA has been working with various project sponsors, the Caltrans Rail Program and the California Transportation Commission (CTC) in the development of rail projects in the Capitol Corridor to be included in the Interregional Transportation Improvement Program (ITIP) of the 1998 State Transportation Improvement Program (STIP). In accordance with state laws, project study reports have been prepared for each project by the project sponsor and the CCJPA and submitted to Caltrans Rail Program to be included in the 1998 STIP.

Table 4.3 on the following page identifies the list of projects in the Capitol Corridor requested by the CCJPA and local project sponsors to be included in the 1998 STIP. These projects are a comprehensive program of improvements to reduce travel times, increase ridership, and improve service reliability of the Capitol Corridor intercity train service and represent a coordinated effort among the state, regional, and local transportation agencies. The CTC is expected to adopt the 1998 STIP in June 1998.

Table 4.3

Summary of Capitol Corridor Intercity Rail Projects  
1998 State Transportation Improvement Program

Project	Sponsor	Description/Benefits	1998 FTIP	1998 RTUP	Other	Total
Auburn, Colfax, and Rocklin Station Improvements	Placer County TPA	With the extension of Capitol Corridor trains to Rocklin, Auburn and Colfax in January 1998, this project will install permanent station platforms/amenities.	\$640,000	\$977,000		\$1,617,000
Colfax Layover Facility	Placer County TPA	With the extension of Capitol Corridor trains to Rocklin, Auburn and Colfax in January 1998, this project will upgrade the temporary plant and construct a full-service layover facility.	\$1,000,000			\$1,000,000
Davis Intercity Rail Station	City of Davis	This project is part of multi-phase improvement program for the station. This phase would construct additional parking for autos, buses, and bicycles.	\$580,000		\$200,000	\$780,000
Martinez Intermodal Project	City of Martinez	This \$25.7 M station program is sponsored by local, regional, state, and federal agencies. These funds would complete Phases 1 and 2 and alleviate flooding problems at the station.	\$2,800,000			\$2,800,000
Oakland Coliseum Intercity Rail Station	City of Oakland/ CCJPA	Funds for this project would acquire the right-of-way and construct an unstaffed station that provide intermodal connections with BART, the Coliseum, and the Oakland Airport.	\$3,150,000	\$923,000	\$150,000	\$4,223,000
Richmond Intermodal Station, Phase 3	WCCTAC	This project is included in an overall station enhancement plan. This phase will improve access to BART/Amtrak ticketing, enhance safety/access, and build a train station building.	\$2,500,000			\$2,500,000
Sacramento Intermodal Station	City of Sacramento	This project would renovate the existing station and improve intermodal capacity of the terminal served by feeder and local transit buses and light rail.	\$7,000,000		\$1,250,000	\$8,250,000
Station Kiosk-Passenger Information & Communications System	CCJPA	These kiosks will provide patrons at the stations with real time information on the train service and information on fares, schedules, transit services, and local destinations.	\$500,000			\$500,000
Berkeley Rail Stop and Intermodal Facility Improvements	City of Berkeley	This project would increase usage of train stop by improving lighting, disabled access, information kiosks, and transit connections.		\$641,042	\$410,068	\$1,051,110
Union City Station Preliminary Engineering	City of Union City	This project would conduct preliminary engineering for a proposed train station including reconstruction of access to adjacent BART Station.		\$341,798		\$341,798
<b>TOTAL</b>			<b>\$18,170,000</b>	<b>\$2,892,840</b>	<b>\$2,010,068</b>	<b>\$23,062,908</b>



### **Long-Term Capitol Corridor Capital Improvements**

A initial list of preliminary long-term improvements is identified below, which requires further review by CCJPA and is subject to approval from the State, Union Pacific, local and regional agencies, and other interested parties. For this initial submission the list is provided to demonstrate the possibilities for the future.

- Ticket Vending Machines using cash/credit/debit ticket vending.
- Passenger Information System to provide schedule, location of connecting services, fare and ticket information, identification of local area, and announcements.
- Management Information System to connect operations and maintenance bases with the CCJPA to get information on operations status, maintenance information, passenger information and financial information.
- Coordinate interface of Capitol Corridor Service with the extension of Sacramento LRT to Sacramento Depot
- Additional rolling-stock to achieve a ten (10) round-trip schedule.
- Construction of new or improved stations at West Oakland, San Jose, Santa Clara/Great America, Richmond, and Sacramento in accordance with CCJPA policy on station and service standards.
- Construction or rehabilitation of maintenance base
- Track and signal improvements at Niles Junction, between Martinez and Richmond, and between Sacramento and Colfax to increase travel speeds and reduce running times.

### **5. ACTION PLAN AND PERFORMANCE STANDARDS**

Prior to the assumption of responsibility for the Capitol Corridor Service, the CCJPA has undertaken or is undertaking the following activities:

- Prepare initial Marketing, Public Communications and Information Programs;
- Develop detailed information on rolling stock, operations and maintenance costs, infrastructure, capital investment requirements and facility programs underway; and
- Hire and train CCJPA Managing Agency staff regarding contracts, institutional arrangements and funding and other programs.

#### **Service**

The operation of the Capitol Corridor Service will be successful if it is possible to control expenses while increasing ridership. Ridership growth is secured by providing a product that is competitive in terms of travel time, reliability, and price. When responsibility for the Service is transferred, the CCJPA will maintain the existing service levels and make use of the marketing research budget to identify new markets and those markets needing additional emphasis by both the train and feeder bus services. The Service will be adjusted to meet those markets with strategies for the initial operating plan as described in Section 6.

#### **Performance Standards**

Pursuant to SB 457, the Secretary of the Business, Transportation and Housing Agency (BT&H) is required to submit a set of uniform performance standards by December 31, 1997 for all state-sponsored intercity passenger rail corridors. These standards will allow the administrators and operators of these intercity services to control cost and improve efficiency.

Table 5.1 below identifies the performance standards for the Capitol Corridor Service as provided in the "Intercity Rail Passenger Rail Act of 1996 - Uniform Performance Standards Adopted" prepared by the Secretary of BT&H (dated December 31, 1997). Three (3) primary uniform performance standards have been selected by the Secretary for Federal Fiscal Years (FFY) 97/98, 98/99, and 1999/2000:

- Route Ridership: This standard will be used to determine the "usage" of the Service and can measure the success in attracting and retaining riders. Amtrak projects that FFY 98/99 ridership is expected to increase by 33.6% due to the introduction of the 5th and 6th daily round-trip trains when compared to projections for FFY 97/98 with a service level of 4 daily round trips.
- Farebox return (train and feeder bus): Also known as the farebox operating ratio, this standard will measure "cost efficiency" of the Service and will determine if the Service is being delivered in accordance with the business plan and budget. It is anticipated that the farebox return will increase each year due to the increased train frequencies for the Service starting FFY 98/99.
- On-time Performance: This standard will be used to measure the "service quality" and reliability of the train service. The measurement for FFY 98/99 and 99/00 is expected to increase to 90% to meet the requirements detailed in the contract for track and signal upgrades between Emeryville and Sacramento, which is scheduled to be completed by early 1999.

**Table 5.1**  
**Performance Standards for Capitol Corridor Service**

Performance Standard	Actual SFY 96/97	FFY 97/98	FFY 98/99	FFY 99/00
Route Ridership	496,586	536,000	716,000	752,000
Farebox Return (train and feeder bus)	28.9%	30.0%	31.0%	32.0%
On-Time Performance	70%	80%	90%	90%

Source: "Intercity Rail Passenger Rail Act of 1996 - Uniform Performance Standards Adopted" (Secretary of BT&H, December 31, 1997).

As stated in the "Intercity Rail Passenger Rail Act of 1996 - Uniform Performance Standards Adopted," these performance standards serve as goals to "set the standard for a route's improvement..." and be utilized "to improve the service's performance." The performance standards for FFY 98/99 and 99/00 may be revised if Amtrak's cost projections are different from the current estimate.

In support of the State's performance standards, upon the transfer of Service, the CCJPA will develop various measures to continuously monitor the financial, operational, and service performance of the Capitol Corridor Service.

**FY 97/98 - FY 98/99 Action Plan**

During the balance of FY 97/98 (June 1998) and the entire FY 98/99, the CCJPA will continuously develop action plans with service criteria and objectives to increase ridership, control costs, improve quality, increase the benefits of the Capitol Corridor and better integrate all corridor public transit systems with Capitol Corridor Service, including dedicated feeder bus service. Each action will be part of the CCJPA's overall management of the passenger train and feeder bus service as a transportation product in a highly competitive travel market. The goal will be to consider the service as a product and the rider as a customer. The following is a list of areas to be covered:

- Develop schedules for 5th and 6th round-trip trains in conjunction with UP, State, and Amtrak by August 1998.
- Develop CCJPA policy for service standards (service levels and extensions, new station stops, train running times, station design criteria, etc.) by September 1998.
- Prepare and implement Public Communications and Information Program and Marketing Program by September 1998.
- Develop FY 1999/2000 Business Plan and update Performance Standards by September 1998.
- Develop O-D database on existing trips in a user-friendly, computer environment by September 1998.
- Negotiate revisions to Amtrak operating agreement to improve performance reporting and decrease costs for operating agreement starting October 1, 1998.
- Implement 5th and 6th round-trip trains in October 1998.
- Develop monthly performance reporting procedures by October 1998.
- Establish operating coordination with UP and Amtrak on scheduling and train performance by October 1998.
- Identify potential markets for special trains to winter resorts by November 1998.
- Conduct market research program by December 1998.
- Monitor and report on status of Business Plan projections.
- Refine consolidated Capital Improvement Program by March 1999.
- Develop FY 00/01 Business Plan and update Performance Standard by March 1999.
- Identify potential markets for special trains to summer resorts by April 1999.
- Coordinate fares and service schedules with connecting transport systems by May 1999.
- Refine marketing program.
- Publish and distribute new schedules as needed.
- Develop and carry-out a Public Information Campaign on new schedules.
- Review and monitor feeder bus performance.
- Implement changes to operator contract (for FFY 98/99) to secure cost efficiencies by agreement starting October 1, 1999.
- Refine a demonstration project for ticket vending machines in June 1999.
- Identify future infrastructure (track, signal, and bridge) and facility projects to support increased service levels and extensions and improve performance of service by June 1999.
- Develop a service plan for implementing the 7th through the 10th round-trips by June 1999.

## 6. OPERATING STRATEGIES

The CCJPA believes that the Capitol Corridor Service can appropriately serve the 180-mile route in northern California through a phased increase in service up to 10 daily round trips as identified in the *California Rail Passenger Program Report* (December 1993). Therefore, the CCJPA's near term operating strategy (FY 97/98 - FY 98/99) is to provide expanded high quality passenger rail service to markets that produce ridership and revenue growth.

### Service Improvements for the Planned Level of Service

The State is now currently investing over \$56 million in track and signal improvements on UP right-of-way in the Capitol Corridor between Emeryville and Sacramento. This major program is reported by the UP to be within budget and on schedule for the planned February 1999 completion schedule. In addition, the UP is implementing capital improvements between Roseville and Colfax. These track and signal improvements will substantially increase the capacity on the trackway and reduce travel times.

The State has received final delivery of state-purchased passenger cars (including coaches, cab cars for push-pull operation, dining/cafe cars, and baggage cars) and locomotives. The service levels identified in the operating plan will be supported by the state-owned fleet of California Cars and Locomotives in accordance with a deployment prepared by the State, Amtrak, and the CCJPA. Additional rolling stock is required beyond the current 3 trainsets to provide the six (6) daily round trips in accordance with the CCJPA's operating plan. To meet this requirement, the State has designated a fourth trainset from its purchase of California Cars and Locomotives to support this planned increase to 6 daily round trips.

With these service improvements, the CCJPA believes that adequate facilities and operating equipment is available to implement up to 6 daily round trips for the Capitol Corridor Service.

### FY 97/98 - FY 98/99 Operating Strategies

With the transfer of Capitol Corridor Service, the CCJPA will assume the administrative responsibilities for the current four daily round trips and six (6) dedicated feeder bus routes (20A: Sacramento-Nevada City; 20B: Sacramento-Reno/Sparks, NV; 21: San Jose-Monterey/Carmel/Santa Barbara; 22: San Jose-Santa Cruz; 23: Sacramento-Carson City, NV; and 28: Emeryville-San Francisco International Airport-Millbrae (Caltrain Station)). Concurrently, the CCJPA will work with the State to ensure that the Capitol Corridor Service benefits from the current track and signal improvements between Emeryville and Sacramento. The benefits of this section include increased capacity, reduced travel time, improved on-time performance and access for up to twenty (20) daily round-trip trains.

The CCJPA, in its administration of the Capitol Corridor Service, will oversee the implementation of the planned service improvements and monitor the operating performance of the train and feeder bus service. One of the first things the CCJPA is going to address is the need to continually improve on-time performance, which consists of two components. First, the track and signal work between Oakland and Sacramento is nearing completion and needs to be monitored with Amtrak and Union Pacific. As sections are sufficiently finished, these completed portions of the route will be returned to normal service. It is expected that a reliable on-time performance measure of 90% will be achieved and maintained over these completed sections.

The second area to address is the random nature of the current delays. The recent performance is such that one in every four trips will not be completed within the acceptable window. Thus passengers do not know when, where, or for how long these delays will affect their trips. A process must be developed so that delays from known sources are calculated in advance, passengers are notified, and the delays are managed as advertised and coordinated with the dedicated feeder bus services. Passengers will accept, if notified in advance, that, for example, next week their train will be late by a given amount of time due to temporary delays associated with the track and signal upgrades or similar work programs. Passengers, however, will be less likely to accept unexpected delays nor will they accept announced delays with random or unspecified lengths. The passengers should be considered as customers who want to plan their lives, and should have that opportunity to the extent it can be done.

Beyond monitoring and improving the performance of the current 4 daily round trips and dedicated feeder bus routes, the CCJPA's primary effort for the operating strategies for the balance of FY 97/98 and for FY 98/99 is to implement the six (6) daily round-trip trains as soon as possible. The CCJPA's strategy is to build on serving the current travel markets and expanding service into business and work trip travel markets.

There is a market for increased intercity travel between Colfax/Sacramento and San Jose and the intermediate stations. However, the current timetable shown on Table 6.1 provides a schedule and train frequency that cannot fully develop ridership growth. Currently, the best opportunity appears to fill in the gaps between the existing 4 daily round-trip trains.

Recognizing that only one additional set of equipment is available, two preliminary timetables shown in Tables 6.2 and 6.3 have been developed that build on the current four daily round-trip trains to provide the 5th and 6th daily round-trip trains in October 1998. These timetables are preliminary and are for planning purposes only. A market research program will be conducted to identify which travel markets have the greatest ridership and revenue potential. The CCJPA, in conjunction with the State, Amtrak West, and the Union Pacific Railroad, will then use the results of the market research to develop final timetables and schedules for the trains and feeder bus routes that maximizes the efficient use of existing and added equipment.

Table 6.2 provides a sample timetable for a 6-train service plan which identifies the following operating strategies for the balance of FY 97/98 and during 98/99:

- In October 1998, add a trip from Roseville to Oakland-Jack London Square to arrive at Emeryville at about 8:30 am between Trains 721 and 723, thus providing three opportunities to arrive in the Bay Area in morning from Sacramento and nearby areas.
- In October 1998, extend Train 721, which currently terminates at Oakland-Jack London Square, to San Jose for an arrival at approximately 8:50 am to serve the Silicon Valley business travel market.

Capitol Corridor Service

April 1998

FY 97/98 - FY 98/99 Business Plan Update

**Table 6.1**  
**Timetable for Capitol Corridor Service**  
**Current 4-Train Schedule**  
**(Revised January 26, 1998)**

**WEEKDAY SCHEDULE**

Read down 721	Read down 723	Read down 725	Read down 727	Train/ Station	Read up 722	Read up 724	Read up 726	Read up 728
	550 am			Colfax			920 pm	
	630 am			Auburn			850 pm	
	659 am			Rocklin			831 pm	
	715 am			Roseville			820 pm	
515 am	745 am	1240 pm	545 pm	Sacramento	950 am	415 pm	747 pm	905 pm
531 am	801 am	1256 pm	601 pm	Davis	918 am	343 pm	720 pm	833 pm
602 am	832 am	127 pm	632 pm	Suisun City	848 am	313 pm	650 pm	803 pm
627 am	857 am	152 pm	657 pm	Martinez	826 am	251 pm	628 pm	741 pm
701 am	926 am	221 pm	726 pm	Richmond	748 am	213 pm	550 pm	703 pm
708 am	934 am	229 pm	734 pm	Berkeley	740 am	205 pm	542 pm	655 pm
720 am	950 am	235 pm	750 pm	Emeryville	736 am	201 pm	538 pm	651 pm
740 am	1003 am	248 pm	803 pm	Oakland-JLS*	722 am	147 pm	525 pm	637 pm
	1021 am	306 pm	821 pm	Hayward	702 am	127 pm		617 pm
	1037 am	321 pm	837 pm	Fremont	647 am	112 pm		602 pm
	1052 am	336 pm	852 pm	Great America**	632 am	1257 pm		547 pm
	1113 am	410 pm	915 pm	San Jose	620 am	1245 pm		535 pm

**WEEKEND SCHEDULE**

Read down 723	Read down 733	Read down 725	Read down 727	Train/ Station	Read up 722	Read up 724	Read up 736	Read up 728
550 am				Colfax			755 pm	
630 am				Auburn			725 pm	
659 am				Rocklin			706 pm	
715 am				Roseville			655 pm	
745 am	845 am	1240 pm	545 pm	Sacramento	950 am	415 pm	622 pm	905 pm
801 am	901 am	1256 pm	601 pm	Davis	918 am	343 pm	555 pm	833 pm
832 am	932 am	127 pm	632 pm	Suisun City	848 am	313 pm	525 pm	803 pm
857 am	957 am	152 pm	657 pm	Martinez	826 am	251 pm	503 pm	741 pm
926 am	1026 am	221 pm	726 pm	Richmond	748 am	213 pm	425 pm	703 pm
934 am	1034 am	229 pm	734 pm	Berkeley	740 am	205 pm	417 pm	655 pm
950 am	1104 am	235 pm	750 pm	Emeryville	736 am	201 pm	413 pm	651 pm
1003 am	1115 am	248 pm	803 pm	Oakland-JLS*	722 am	147 pm	400 pm	637 pm
1021 am		306 pm	821 pm	Hayward	702 am	127 pm		617 pm
1037 am		321 pm	837 pm	Fremont	647 am	112 pm		602 pm
1052 am		336 pm	852 pm	Great America**	632 am	1257 pm		547 pm
1113 am		410 pm	915 pm	San Jose	620 am	1245 pm		535 pm

(Source: Amtrak California Folder No. AC-3-198)

**Notes:**

- \* Oakland-JLS is Oakland-Jack London Square Station in Oakland.  
 \*\* Great America Station is located in the City of Santa Clara.

Capitol Corridor Rail Service

April 1998

FY 1997/98 - FY 1998/99 Business Plan Update

Table 6.2

Sample Preliminary Timetable for Capitol Corridor Rail Service  
Proposed 6-Train Schedule - Option A (October 1998)

WEEKDAY SCHEDULE

Read down 721	Read down 5th Train	Read down 723	Read down 725	Read down 6th Train	Read down 727	Train/ Station	Read up 722	Read up 5th Train	Read up 724	Read up 726	Read up 728	Read up 6th Train
		600 am				Colfax				911 pm		
		630 am				Auburn				856 pm		
		700 am				Rocklin				826 pm		
	545 am	715 am				Roseville				820 pm		
515 am	615 am	745 am	105 pm	330 pm	545 pm	Sacramento	950 am	130 pm	435 pm	747 pm	905 pm	1145 pm
537 am	631 am	801 am	120 pm	352 pm	607 pm	Davis	913 am	1253 pm	358 pm	718 pm	828 pm	1115 pm
608 am	702 am	832 am	152 pm	423 pm	638 pm	Suisun City	843 am	1223 pm	328 pm	648 pm	758 pm	1038 pm
631 am	727 am	857 am	221 pm	446 pm	701 pm	Maricopa	819 am	1159 pm	304 pm	626 pm	736 pm	1008 pm
704 am	756 am	926 am	246 pm	519 pm	734 pm	Richmond	750 am	1130 am	235 pm	626 pm	705 pm	944 pm
711 am	804 am	934 am	253 pm	526 pm	741 pm	Berkeley	742 am	1122 am	227 pm	547 pm	657 pm	915 pm
720 am	820 am	950 am	310 pm	535 pm	748 pm	Emeryville	735 am	1115 am	220 pm	542 pm	652 pm	907 pm
745 am	845 am	1003 am	323 pm	555 pm	810 pm	Oakland-JLS*	713 am	1103 am	158 pm	520 pm	637 pm	900 pm
803 am		1021 am	340 pm	612 pm	824 pm	Hayward	702 am	1042 am	147 pm	617 pm	727 pm	848 pm
816 am		1041 am	357 pm	626 pm	841 pm	Fremont	647 am	1027 am	132 pm	602 pm	717 pm	827 pm
831 am		1056 am	412 pm	641 pm	856 pm	Great America**	632 am	1012 am	117 pm	547 pm	657 pm	757 pm
848 am		1115 am	435 pm	700 pm	915 pm	San Jose	620 am	1000 am	105 pm	535 pm	645 pm	745 pm

WEEKEND SCHEDULE

Read down 5th Train	Read down 723	Read down 733	Read down 725	Read down 6th Train	Read down 727	Train/ Station	Read up 722	Read up 5th Train	Read up 724	Read up 736	Read up 739	Read up 6th Train
	600 am					Colfax				1011 pm		
	630 am					Auburn				956 pm		
	700 am					Rocklin				926 pm		
	715 am					Roseville				920 pm		
545 am	645 am	845 am	105 pm	330 pm	545 pm	Sacramento	950 am	130 pm	435 pm	847 pm	1005 pm	1145 pm
600 am	700 am	905 am	127 pm	352 pm	607 pm	Davis	913 am	1253 pm	358 pm	818 pm	928 pm	1115 pm
622 am	722 am	936 am	158 pm	423 pm	638 pm	Suisun City	843 am	1223 pm	328 pm	748 pm	858 pm	1038 pm
653 am	753 am	959 am	221 pm	426 pm	701 pm	Maricopa	819 am	1159 pm	304 pm	726 pm	836 pm	1008 pm
716 am	816 am	1030 am	254 pm	519 pm	734 pm	Richmond	750 am	1130 am	235 pm	655 pm	765 pm	944 pm
749 am	849 am	1037 am	301 pm	526 pm	741 pm	Berkeley	742 am	1122 am	227 pm	647 pm	757 pm	915 pm
756 am	856 am	1055 am	308 pm	535 pm	748 pm	Emeryville	735 am	1115 am	220 pm	642 pm	752 pm	907 pm
803 am	903 am	1055 am	323 pm	555 pm	810 pm	Oakland-JLS*	713 am	1103 am	158 pm	642 pm	752 pm	900 pm
815 am	915 am	1115 am	340 pm	612 pm	824 pm	Hayward	702 am	1042 pm	147 pm	730 pm	840 pm	900 pm
832 am	932 am	1056 am	401 pm	626 pm	841 pm	Fremont	647 am	1027 am	132 pm	717 pm	827 pm	900 pm
856 am	956 am	1056 am	416 pm	641 pm	856 pm	Great America**	632 am	1012 am	117 pm	702 pm	812 pm	882 pm
911 am	1011 am	1056 am	435 pm	700 pm	915 pm	San Jose	620 am	1000 am	105 pm	647 pm	757 pm	848 pm
928 am	1028 am	1115 am	435 pm	700 pm	915 pm	San Jose	620 am	1000 am	105 pm	635 pm	745 pm	827 pm

Schedules are preliminary and draft and are for planning purposes only. Final schedules will be developed with the State, Amtrak and Union Pacific Railroad

Notes:

\* Oakland-JLS is Oakland-Jack London Square Station in Oakland.

\*\* Great America Station is located in the City of Santa Clara.

DRAFT





- In October 1998, add a trip from San Jose to Sacramento, departing at approximately 10:00 am and providing mid-day service through the Bay Area to the Sacramento area, and, if properly scheduled, eliminate the connector bus service from San Jose to Oakland and from Martinez to Sacramento.
- In October 1998, provide an additional trip departing Sacramento between the current scheduled times of 12:40 pm and 5:45 pm (trains 725 and 727, respectively) at about 3:30 pm to provide service early afternoon departures from Sacramento (business and recreational) and Davis (students) to the Bay Area and San Jose.
- In October 1998, as a return trip from San Jose at approximately 7:45 pm and arriving in Roseville at about 11:45 pm as a late-evening train (business and/or recreational travel markets) or as a daily clean-up service for those passengers who could not use earlier departing trains.

Table 6.3 provides a sample timetable for a 6-train service plan which identifies the following operating strategies for the balance of FY 97/98 and during 98/99:

- In October 1998, add a trip departing Oakland-Jack London Square at approximately 6:00 am to arrive at Sacramento at about 8:30 am before train 722, providing an opportunity for business travelers to arrive in Sacramento before 9:00 am.
- Similar to Table 6.2, in October 1998, extend Train 721, which currently terminates at Oakland-Jack London Square, to San Jose for an arrival at approximately 8:50 am.
- In October 1998, provide an additional trip departing Sacramento between the current scheduled times of 7:45 am and 12:40 pm (trains 723 and 725, respectively) at approximately 10:45 am to provide service for late-morning departures from Sacramento (business and recreational) and Davis (students) to the Bay Area and San Jose.
- Similar to Table 6.2, in October 1998, add a trip from San Jose to Sacramento, departing at approximately 10:00 am and providing mid-day service through the Bay Area to the Sacramento area, and, if properly scheduled, eliminate the connector bus service from San Jose to Oakland and from Martinez to Sacramento.
- Similar to Table 6.2., in October 1998, provide an additional trip departing Sacramento between the current scheduled times of 12:40 pm and 5:45 pm (trains 725 and 727, respectively) at about 3:30 pm.
- In October 1998, Train 726 would begin in San Jose about 4:30 pm, which would replace the current feeder bus service connection from San Jose to Oakland-Jack London Square, and would arrive in Sacramento at about 7:45 pm and continue to Colfax for an arrival at about 9:15 pm.

Beyond the introduction of the 5th and 6th round trips, for the balance of FY 97/98 and during FY 98/99, the CCJPA will (1) evaluate the opportunities to serve additional recreational markets

through the expansion of weekend service and (2) investigate the extension of additional trains from Sacramento to Placer County (Roseville, Auburn, Colfax, others) to support business travel and recreational markets. These efforts will be based on market research to identify the opportunities, benefits and funding requirements for these efforts in conjunction with the State, Amtrak West, and the Union Pacific Railroad.

Tables 6.2 and 6.3 provide preliminary schedules and timetables for planning purposes only and any final schedules for the trains and dedicated feeder buses will be developed with the State, Union Pacific and Amtrak West and will be completed prior to the implementation of additional service. Once the 5th and 6th round-trip trains are operating, the CCJPA will monitor the performance of the Capitol Corridor Service, and, as required, refine the schedules to better meet the needs of the passengers.

The maintenance cycles for the rolling stock performed at the Oakland Maintenance Base require that some trains terminate at Oakland-Jack London Square. Turning the trains in Oakland reduces the costs associated with deadheading empty trains back to the maintenance base from San Jose. This practice needs further evaluation because the high ridership to and from San Jose is sacrificed by limiting the number of trains between Oakland-Jack London Square and San Jose.

Special Event Trains (FY 97/98 - FY 98/99). In addition to the operating strategies for daily Capitol Corridor Service, the CCJPA will evaluate and implement trains for special events beyond regularly scheduled service. High ridership on weekends, holidays and from special events provide revenue that increases the cost efficiency of successful transportation systems. Properly served, this travel market yields revenues greater than the resulting incremental costs either directly or through promotional value. Regional demographics, increased disposable income, more retirees, and increased leisure time continue to support the growth of this market.

During the balance of FY 97/98 and for FY 98/99, the CCJPA will work with local/regional transportation agencies and other interests to evaluate joint marketing and promotions to provide up to twenty (20) event trains. These trains are planned to meet specific market needs, determine service potential, and promote the Capitol Corridor Service and could serve such events as:

- Major professional sporting events (e.g., (Oakland) Warriors and A's and (San Jose) Sharks games);
- Community festivals (e.g., the Sacramento Summer Jazz Festival);
- Seasonal excursion services (e.g., Reno and Monterey weekend markets);
- Sesquicentennial and historic special events (e.g., World Gold Panning Championships);
- Year-round tourism excursion services (e.g., Gold Country exploration); and
- Other events to be determined.

## **7. ESTABLISHMENT OF FARES**

As set forth in the ITA, the CCJPA is responsible for establishing fares for the Capitol Corridor Service except where the Service shares its route with the San Joaquin Corridor Service between Oakland/Jack London Square and Martinez, where the fares mutually developed. The CCJPA will develop fares in conjunction with Amtrak West to ensure that the Capitol Corridor Service is attractive and competitive with other transportation modes in the corridor including the automobile.

**FY 97/98-FY 98/99 Fares**

Amtrak West, in conjunction with the State, revised the fare structure effective January 28, 1997. The previous fare structure, which was priced round trip tariffs for \$1 more than one-way tariffs, was revised to offer round-trip fares that are double one-way fares. The resulting published tariffs raised round-trip tariffs in general by approximately 15%, while reducing one-way fares by about 40%. During the summer of 1998, Amtrak West and the State plan to raise fares by approximately \$2 per direction for the peak (summer) period (May 22, 1998-September 7, 1998). After this period, fares will then be reduced by about \$1 per direction.

During FY 98/99, the CCJPA will conduct a review of fare policy options and will modify as appropriate fares for Capitol Corridor Service in conjunction with Amtrak West. The review of fares will include the following:

- Fares, fare structure and fare increases;
- Fare promotions and discounts as part of marketing and other special programs;
- Fare passes including multi-ride discount passes;
- Intermodal passes including transfer agreements with connecting transit systems; and
- Fare collection and revenue accounting.

Potential changes to the current program include adjusting the current policy of annual fare increases and demonstration programs to increase joint ticketing for travel on both Capitol Corridor and local transit systems. It is the intent of the CCJPA to implement annual fare increases at a rate that approximates an indexed rate of regional inflation. Pending review of the rate of expense increases at the close of the current fiscal year, the CCJPA will evaluate the rate of the next annual fare increase during FY 97/98.

Several opportunities exist to use current fares to increase customer service and ridership. These options will be implemented without making major changes to Amtrak West's current fares and fare structure. These include the following:

1. Ticket purchase by mail and telephone.
2. The marketing of multi-ride tickets and passes to business, higher education and other multi-ride travel markets will be increased and promoted.
3. New joint ticketing will be evaluated and implemented if feasible with the Capitol Corridor Service and connecting transportation systems.
4. In 1998, the CCJPA will consider participation in the Metropolitan Transportation Commission's (MTC) Translink Program to include the Capitol Corridor Service. A demonstration program is expected to begin in 1998 to test smart-card fare collection technology in major areas in the Capitol Corridor.
5. The CCJPA will investigate a demonstration program with interested service providers to test a reciprocal policy in 1998 to honor tickets where Capitol Corridor train service shares a similar route with another service, such as the Altamont Commuter Express

(ACE) train service, which services the same route between the Fremont-Centerville and San Jose-Diridon stations.

6. The CCJPA will evaluate and implement, if feasible, a pilot program to install a limited number of automated ticket vending machines (TVM) at 4-5 selected stations, including credit card payment features. The TVMs installed in the demonstration program can be adapted for use by Translink fare media.
7. As part of monitoring MTC 's Translink demonstration program, and initiating its own TVM program, the CCJPA will identify longer term options to reorganize revenue collection and accounting and to perform appropriate areas of this function within the CCJPA's support organization.

### 8. SERVICE AMENITIES, AND FOOD AND BEVERAGE SERVICES

The State has identified the distribution of the state-owned rolling stock in northern California for the Capitol Corridor and San Joaquin Corridor Services with any remaining rolling stock to be used as maintenance spares. The administrators for these corridors will each develop consist lists for the equipment distributed to each corridor. The CCJPA will be responsible for the administration of the state-owned and Amtrak fleet of rail cars and locomotives assigned to the northern California in accordance with the terms and conditions of the Equipment Lease between the State and the CCJPA. In accordance with the ITA, the CCJPA will seek to insure that (1) the maintenance and cleanliness standards are equitable among the Capitol Corridor and San Joaquin rail fleet and (2) upon transfer of maintenance supervision to the CCJPA, the unique features and amenities of the state-owned equipment are utilized and maintained in accordance with the transfer and maintenance or related agreements between the State and the CCJPA.

The CCJPA recognizes that the Capitol Corridor and San Joaquin Corridor Services are interrelated between Martinez and Oakland regarding rolling stock maintenance as well as scheduling and fares. The operation and maintenance of equipment assigned to the Capitol Corridor and San Joaquin Corridor Services (including dedicated feeder bus routes) in northern California has been specifically addressed in the ITA so that one service is not subordinate to the other. If agreement cannot be reached between the administrators of the corridors on a particular item within the area of a shared route, then the ITA between the State and the CCJPA states that the Secretary of BT&H will be responsible for resolving the matter.

#### Service Amenities

**Door Control.** An essential feature of the California Cars is the ability for doors to be operated remotely on either side of the train from a single point of control. This feature allows the operator to maximize passenger flow in boarding and alighting operations, and thereby minimize station dwell time.

**Accessibility.** The CCJPA will maintain the State's current goal to provide total accessibility to the state-owned equipment dedicated to the Capitol Corridor and San Joaquin Corridor, including all its features and amenities. No person shall be denied access on the basis of physical ability.

The California Car is equipped with on-board wheelchair lifts, one on either side of the car, both located at the door openings at the 'B' end of the car. Two spaces for passengers in wheelchairs

are provided in the lower level passenger seating area. All double and single seats have movable armrests to allow the transfer of a passenger from a wheelchair to a standard passenger seat. Persons for whom a single seat location may provide insufficient comfort may use a double seat with the center armrest raised. Two (2) lavatories on the lower level are designed for access by passengers in wheelchairs.

Information Displays. The California Car is equipped with trainlined destination and passenger information displays which provide advance notice of station arrivals, service information, and any such public information that the State specifies. Two displays are located on the outside of the car, on either side, two in the upper level passenger area and two in the lower level passenger area. An additional display is provided on the 'A' end of cab cars. Food service cars have one display in the lower level.

The destination sign system, once fully operational, shall incorporate a GPS-based locating system to activate voice announcements programmed for the route. Central programming and control is located in the food service car, and trainlined throughout each consist.

Audio Entertainment System. California cab, trailer, and baggage/trailer combinations provide at-seat audio entertainment and information. Each car is equipped with a 3-channel audio system, with a central control complex located in the electrical locker. The audio system includes two multiple-disc compact disc changers, a cassette tape player/AM-FM radio tuner, and an amplifier. Each seating location is provided with a personal control unit (PCU) with channel selector and volume controls. The PCU accepts standard wire-type headsets, either passengers' personal property or, as available, headsets purchased on board the train.

Seat Back Information Cards. The State and Amtrak have jointly developed printed content for provision in seat-back pockets, including vehicle information, safety and emergency procedures, entertainment programming, periodicals and marketing material. The CCJPA will approve and oversee the distribution of any printed material via seat-back pockets.

Lavatories. Lavatories in California Cars incorporate several features that differ from those on other Amtrak equipment operated in California. In particular, the lavatories include attendant call buttons, electric hand dryers, disposable soap dispensers, and infant diaper changing tables (Accessible lavatory only). The lavatory attendant call system is trainlined to sound an audible signal in each car of the train. The car in which the call button has been activated indicates via lights at each upper level inter-car passageway the specific space to which the call applies.

Telecommunications. California food service cars used in Capitol service are each equipped with one telephone for passenger use in the lower level of the car. On-board telecommunications services and equipment maintenance are provided under joint contract with GTE and Amtrak. The CCJPA will maintain the existing on-board telecommunications service contract, and will monitor the quality and responsiveness of the contractor.

Bicycle Access. Each California Car cab and trailer is equipped with one bicycle storage and securement unit, located in one passenger vestibule diagonally across from the accessible lavatory. The unit provides space and securement for up to three (3) bicycles, stored vertically on their rear wheels and secured to the inside bulkhead of the unit.

### **Food and Beverage Services**

After the CCJPA assumes responsibility for the Capitol Corridor Service, the existing food and beverage service will be continued, as currently, with the same type of service with the increase to 6 daily round trips. However, there are serious concerns with the current operation and an evaluation will be undertaken during FY 1998/99 on this activity. Topics to be covered include:

- Menu
- Inventory and storage
- Increasing the capacity and usefulness of the space in the cars
- Patron flow
- Signs and information
- Securing and accounting for stock and materials
- Mid-trip re-stocking
- Hours of operation

The results of this evaluation will be used in the later part of FY 98/99 to modify the operation to increase the sales per customer, improve customer satisfaction, and enhance the efficiency of the operation.

### **9. MARKETING STRATEGIES**

The completion of the ITA presents an opportunity to promote the start of new Capitol Corridor Service. The focus of the CCJPA's marketing program will be to make the public aware of the change in Capitol Corridor Service and to highlight the start of the 5th and 6th round-trip trains as part of this new service.

In preparation for the transfer of Service, the CCJPA will work with the various stakeholders, including the State, Amtrak West, Union Pacific and CCJPA member agencies, to produce a public event recognizing the transfer of service. As appropriate, the event will note the agreements with State and any agreements with Amtrak West and Union Pacific. The event will include an organized, official presentation and will focus on new agreements and new beginnings. The proposed goals of the event are: a) to convey to the public and media that a change in regional transportation service is now *beginning*; b) to educate the public of longer range possible improvements; and c) to publicize the availability of the Capitol Corridor Service.

Prior to the transfer of the Capitol Corridor Service, the CCJPA start-up marketing activities will include the following elements:

1. The status of other new improvements, stations and other changes will be presented.
2. Customer service "ambassadors" will be deployed at designated stations throughout the Capitol Corridor and along transit systems at BART, Sacramento RTD, and Santa Clara VTA. Coupons, customer handouts, timetables and mini surveys will be evaluated as handouts for maximum impact.

3. A public information program will be initiated in concert with Amtrak West and Union Pacific about the status of current track and signal construction. The program will describe the project, the expected benefits, the current schedule and the estimated completion.

### **FY 97/98 - FY 98/99 Marketing Program**

After this transition, the CCJPA will use the FY 98/99 marketing budget to build on and expand the initiatives launched during the start-up of service. The primary objective is to increase ridership by targeting the existing base of leisure travelers which include families, college students, and seniors and expanding outreach to business travelers. Subject to appropriation and allocation by the State, the FY 97/98 - FY 98/99 Marketing Plan for the Capitol Corridor Service as administered by the CCJPA will achieve the following initiatives:

1. Major promotion of the transfer of service through design of new schedules, signage and public information and announcement through a media event.
2. Design and implementation of major advertising campaigns to introduce service expansions and enhancements and to reach leisure travel market and business travelers through various media (i.e., television, radio, outdoor, magazine and newspaper media).
3. Coordination of joint promotions with major tourist and recreation attractions, hotels and entertainment partners to increase ridership of leisure travel market.
4. Continuation of business/employer outreach program including promotion of multi-ride tickets, Commuter Check, transit fair participation and development of presentation display and Internet Website.
5. Upon completion of market research efforts, continue and further target and implement a program to increase ridership in (1) areas with unstaffed stations, (2) communities served only by feeder bus routes, and (3) under-performing rail markets.
6. Work with Amtrak and Caltrans on joint media and promotion opportunities to achieve cost-efficiencies in marketing both the Capitol Corridor and San Joaquin Corridor Services (such as "Kids Ride Free" campaigns)
7. Enhance communication and marketing to current riders through bulletins, newsletters, informational brochures and timetables of connecting transport services, and special ridership promotions.
8. Introduction of new ticket vending machines and information kiosks at select stations.
9. Introduction and marketing for a joint ticket (Translink) demonstration program to offer riders, particularly business travelers, greater ease in purchasing tickets to use on regional transportation services.
10. Expansion of business/employer outreach program to new companies to promote joint ticketing and transit incentives.

## **10. ANNUAL FUNDING REQUIREMENT: COSTS AND RIDERSHIP PROJECTIONS**

The purpose of this Business Plan, as identified in the ITA, is to request the annual funds required by the CCJPA to operate, administer and market the Capitol Corridor Service for agreed-upon service levels. Previous sections in this document describe the proposed operating plan and strategies and planned service improvements, and capital improvements for the balance of FY 97/98 and for FY 98/99. As set forth in the ITA, the fund request for FY 97/98 identifies the maximum amount of funds to be transferred to the CCJPA for the balance of FY 97/98 and the fund request for FY 98/99 will be incorporated into the FY 98/99 Legislative Budget process.

### **FY 97/98 and FY 98/99 Operating Costs**

Based on the Overall Operating Plan (Section 3), Operating Strategies (Section 6), and approval by Union Pacific, Amtrak has provided the operating costs for Capitol Corridor Service for the balance of FY 97/98 and for FY 98/99. These costs are shown on Table 10.1 and include the basic train service and associated feeder bus (routes 20A, 20B, 21, 22, 23, and 28) service.

### **FY 97/98 and FY 98/99 Ridership and Revenue Projections**

Table 10.1 identifies the ridership and revenue projections for the balance of FY 97/98 and for FY 98/99, which were developed from the Overall Operating Plan and Marketing Strategies (Section 9).

### **FY 97/98 and FY 98/99 Marketing Expenses**

The State has indicated that all of the FY 97/98 marketing funds have been committed and that no marketing funds are available to the CCJPA for the balance of FY 97/98. The FY 98/99 marketing expenses for the CCJPA were developed from the Marketing Program presented in Section 9. These expenses illustrated on Table 10.1 represent only those direct expenses attributed to the CCJPA and do not include any costs for marketing programs provided solely by Amtrak or the State.

### **FY 97/98 and FY 98/99 Administrative Expenses**

Table 10.1 identifies the CCJPA administrative costs for the balance of FY 97/98 and for FY 98/99. Funds are required for the CCJPA to provide administrative support for the Capitol Corridor Service. As directed by the CCJPA, the Managing Agency staff perform the following general functions:

- plan, supervise, and implement (through contracted operators) Capitol Corridor train and feeder bus services and related capital projects/programs;
- supervise and monitor the performance of the train and feeder bus services;
- coordinate the daily activities with and monitor the performance of the contract operator and other contracted entities;
- develop and implement marketing, public information and communications programs;
- work with UP in the oversight of train dispatching and railroad related issues; and
- coordinate the train and feeder bus services and capital projects/programs with the State as part of the State's intercity rail system.



**Table 10.1  
CCJPA FY 97/98 - FY 98/99 State Funding Requirement  
Capitol Corridor Rail Service**

Expense Category	balance of FY 97/98 4 RTs	FY 98/99 4 RTs	FY 98/99 5th and 6th Trains	FY 98/99 TOTAL
Service Plan (a)	6/98-9/98	10/98-9/99	10/98-9/99	10/98-9/99
Ridership (b)	197,100	510,700	150,400	661,100
<b>Operating Cost</b>				
Train	\$5,161,250	\$18,233,000	\$6,233,000	\$24,466,000
Bus	\$598,000	\$2,465,000	\$617,000	\$3,082,000
Subtotal-Operating Cost	\$5,759,250	\$20,698,000	\$6,850,000	\$27,548,000
<b>Revenue</b>				
Train	\$1,317,755	\$5,270,000	\$1,680,000	\$6,950,000
Bus	\$295,000	\$1,290,000	\$230,000	\$1,520,000
Subtotal-Revenue	\$1,612,755	\$6,560,000	\$1,910,000	\$8,470,000
Subtotal- Net Operating Expense	\$4,146,495	\$14,138,000	\$4,940,000	\$19,078,000
Amtrak share of Net Operating Expense (c)	\$1,335,750	\$2,195,000	\$550,000	\$2,745,000
State Retention of M of E (d)	\$759,000	\$2,975,000	\$1,160,000	\$4,135,000
<b>CCJPA Funding Requirement</b>				
CCJPA share of Net Operating Expense (d)	\$2,051,745	\$8,968,000	\$3,230,000	\$12,198,000
Equipment Capital Cost (equipment lease) (e)	--	--	\$150,000	\$150,000
Additional Liability Insurance (f)	--	\$170,000	\$50,000	\$220,000
Minor Capital Projects (g)	\$95,000	\$325,000	--	\$325,000
Marketing Expenses (h)	\$0	\$1,174,000	--	\$1,174,000
Administrative Expenses (i)	\$89,369	\$1,109,965	--	\$1,109,965
<b>Total CCJPA Funding Requirement (j)</b>	<b>\$2,236,114</b>	<b>\$11,746,965</b>	<b>\$3,430,000</b>	<b>\$15,176,965</b>

RT = daily round trip

M of E = Maintenance of Equipment

- (a) For the balance of FY 97/98, service shall be in accordance with the Amtrak/CCJPA Operating Agreement from June 1, 1998 to September 30, 1998, which includes the current schedule of 4 daily round trips including one daily round trip to Colfax, which began on January 26, 1998. Per the Governor's budget proposal for FY 98/99, service plan includes introduction of the 5th and 6th daily round trips starting October 1998 through September 30, 1999.
- (b) Projections provided by Amtrak West.
- (c) Amtrak provides operating assistance for train service only.
- (d) State, through Caltrans, shall retain rail equipment maintenance supervision through FY 98/99.
- (e) The addition of the fourth train set to provide the 5th and 6th round trips requires the annual lease of one locomotive.
- (f) Estimate to purchase insurance coverage for incidents up to \$10 million.
- (g) Expenses to be allocated for small or minor capital projects for the balance of FY 97/98 and during FY 98/99.
- (h) As identified in the ITA, the State has indicated that the marketing funds for the balance of FY 97/98 (June 1 - 30, 1998) have been committed. The FY 98/99 marketing expenses were obtained from Table 3 of "Caltrans Report on Performance Standards For Intercity Rail Passenger Service" (December 31, 1997). Does not include contributions by Amtrak or additional resources provided by the State as part of market research program.
- (i) As provided in ITA, the funds to support the CCJPA administrative expenses are for the balance of FY 97/98 (June 1- 30, 1998). The FY 98/99 administrative expenses were developed by adjusting the full FY 97/98 administrative budget available to the CCJPA (\$1,072,430) for inflation at annual rate of 3.5% per the ITA.
- (j) Per the terms of the ITA, the CCJPA's budget for the balance of FY 97/98 shall not be in excess of the amount in the ITA with any remaining funds to provide service improvements such as a passenger information system, additional signage at stations, additional marketing, and/or an enhanced risk management and insurance program.

The Capitol Corridor Service, as administered by the CCJPA, will remain a part of the State's intercity rail system and continue to be funded by the State. The CCJPA will provide the level of service consistent with funding appropriated by the State and any cost savings identified by the CCJPA or revenues in excess of the business plan projections during the term of the ITA may be used by the CCJPA for service improvements in the Capitol Corridor.

### **11. SEPARATION OF FUNDING**

As identified in the Joint Exercise of Powers Agreement (JEPA) for the CCJPA, the Controller-Treasurer of the Managing Agency of the CCJPA shall perform the functions of Treasurer, Auditor, and Controller of the CCJPA. As such, BART is designated in the JEPA as the Managing Agency for the CCJPA during the term of the ITA and shall establish the appropriate accounting and financial procedures to insure that the funds appropriated and otherwise secured during the balance of FY 97/98 and during FY 98/99 for the CCJPA to support the Capitol Corridor Service are solely expended to operate, administer, and market the Service.

As identified in the ITA, the State shall perform audits and reviews of financial statements of the CCJPA with respect to Capitol Corridor Service. In addition, the CCJPA requires that the Controller-Treasurer shall provide for an annual independent audit of the accounts of the CCJPA within six (6) months of the close of the state fiscal year.

### **12. CONSIDERATION OF OTHER SERVICE EXPANSIONS AND ENHANCEMENTS**

This section presents service expansion and enhancement opportunities beyond the CCJPA's service plan and State funding requirement for the balance of FY 97/98 and for FY 98/99. Planning and potential implementation for the additional opportunities will require securing capital improvements, additional operating funds and institutional agreements.

#### **Additional Service Expansion**

The ITA establishes that the State and CCJPA will work to implement 10 daily round trips on the Capitol Corridor as identified in the *California Rail Passenger Program Report* (December 1993). A phased expansion to 10 round trips will be evaluated and a service plan for the Capitol Corridor Service under the management of the CCJPA will be prepared.

Beyond the state-funded program of 10 round trips, future service extensions to new markets require capital improvements, additional funding and institutional arrangements. Extensions of the current passenger rail network may also require cooperation and partnerships among the several passenger railroad services and local/regional transportation agencies that are currently being provided or being planned in northern California. Cooperative arrangements among these existing and future passenger railroad services could also provide mutual economies from cost sharing for joint facilities and equipment. These potential partners include:

- San Joaquin Corridor Service;
- Amtrak long distance service (i.e., California Zephyr and Coast Starlight);
- Altamont Commuter Express service (Stockton-Livermore-San Jose);
- Caltrain service (Gilroy/San Jose-San Francisco);
- Proposed service under evaluation between the San Francisco Bay Area and Monterey/Santa Cruz counties;

- Service planned between Colfax and Reno/Sparks via Truckee;
- California Intercity High Speed Rail Service;
- Extension of Capitol Corridor Service south of San Jose along the Coast Route to meet the San Diegan train service; and
- Other service providers.

The Reno, Monterey/Santa Cruz, and Coast Route expansions involve proposals for extending the Capitol Corridor Service as an alternative for achieving new service.

### **Enhancements to Levels of Capitol Corridor Service**

Beyond the proposed extensions of Capitol Corridor Service, future service enhancements between the three urban centers located in the Capitol Corridor (Sacramento, Oakland/San Francisco and San Jose) present the opportunity to achieve significant ridership increases. These service enhancements are in the preliminary planning stages and further evaluation is required to determine the feasibility and funding opportunities for the operation and necessary capital improvements to provide these additional rail services. Service options include short distance trains that would serve as shuttles between key origin and destinations to target business and work trip markets. The three locations for targeted service level enhancements and the required capital improvements are briefly described below.

Sacramento Markets. Previous analysis has identified the 65-mile corridor between Auburn and Davis as a large Sacramento regional passenger rail market. Peak period service between Davis, Auburn and Sacramento would attract work-trips between the rapidly growing residential areas in Yolo and Placer counties and job centers in Placer and Sacramento counties. Another rail work-trip market has been identified along the 60-mile Sacramento-Roseville-Lincoln-Marysville corridor.

San Francisco/Oakland Markets. In 1994, MTC began a two-year I-80 Corridor Study to identify peak period travel demand and capacity within a 60-mile segment of the Capitol Corridor between Solano County and Oakland/San Francisco. The MTC study identified a high potential demand for Capitol Corridor trains. Approximately 50% of the ridership projected for 2001 is either business travel or work-trip-related.

Silicon Valley/Santa Clara County Markets. Currently, three of the four weekday round-trips provide direct train service between Oakland and San Jose. The fourth round-trip is served by a bus shuttle between Oakland/Jack London Square and San Jose which, according to recent data, indicates a significant drop in ridership. With the high ridership to and from San Jose combined with the tremendous job and population growth in Santa Clara County, additional trains are planned with the potential to attract peak period ridership between the East Bay and Santa Clara County employment centers. While several station improvement projects are currently programmed or underway (San Jose and Great America-Santa Clara), other infrastructure capital improvements (track and signal) may be needed to increase track capacity to serve this potential ridership growth to Santa Clara County markets.



**APPENDIX C**  
**Statement of Five Year Funding**  
**Interagency Transfer Agreement**  
**Capitol Corridor Joint Powers Authority**

**Capitol Corridor Service**

(Colfax-Sacramento-Suisun City-Oakland/San Francisco-San Jose)

Item	Fiscal Year					
	97/98 (l)	98/99	99/00	00/01	01/02	02/03
Service Level (a)	4 RTs (m)	6 RTs (n)	7 RTs (o)	9 RTs (p)	10 RTs (q)	10 RTs (q)
Ridership	197,100	681,000	811,200	1,103,800	1,309,200	1,407,000
Operating Cost [FFY] (b)						
Train	5,161,250	\$24,686,000	\$28,410,000	\$33,920,000	\$37,058,000	\$38,355,000
Operations (except M of E)	4,402,250	\$20,551,000	--	--	--	--
M of E	759,000	\$4,135,000	--	--	--	--
Bus	598,000	\$3,082,000	\$3,491,000	\$4,274,000	\$4,669,000	\$4,809,000
Subtotal	5,759,250	\$27,768,000	\$31,901,000	\$38,194,000	\$41,727,000	\$43,164,000
Revenue [FFY] (c)						
Train	1,317,755	\$8,950,000	\$8,112,000	\$11,303,000	\$13,406,000	\$14,412,000
Bus	295,000	\$1,520,000	\$2,271,360	\$2,826,000	\$3,352,000	\$3,603,000
Subtotal - Revenue	1,612,755	\$8,470,000	\$10,383,360	\$14,129,000	\$16,758,000	\$18,015,000
Operating Loss [FFY]						
Amtrak share-Train only (d)	4,146,495	\$19,298,000	\$21,517,640	\$24,065,000	\$24,969,000	\$25,149,000
State share	1,335,750	\$2,745,000	\$3,900,000	\$1,750,000	\$0	\$0
Train loss	\$2,507,745	\$14,991,000	\$16,398,000	\$20,867,000	\$23,652,000	\$23,943,000
Bus loss	\$303,000	\$1,562,000	\$1,219,640	\$1,448,000	\$1,317,000	\$1,206,000
Subtotal-State share of loss	\$2,810,745	\$16,553,000	\$17,617,640	\$22,315,000	\$24,969,000	\$25,149,000
Equipment Capital Charges [FFY](e)	--	\$150,000	\$270,000	\$1,419,000	\$1,608,000	\$1,664,000
Minor Capital Projects [FFY] (f)	\$95,000	\$325,000	\$350,000	\$375,000	\$400,000	\$425,000
Total State Operating Costs (g)	\$2,905,745	\$17,028,000	\$18,237,640	\$24,109,000	\$26,977,000	\$27,238,000
Caltrans - Retention of M of E (h)	\$759,000	\$4,135,000	--	--	--	--
Authority Operating Costs	\$2,146,745	\$12,893,000	\$18,237,640	\$24,109,000	\$26,977,000	\$27,238,000
Marketing Costs [SFY] (i)	\$0	\$1,174,000	\$1,215,000	\$1,258,000	\$1,302,000	\$1,348,000
Administrative Costs [SFY] (j)	\$89,369	\$1,109,965	\$1,333,000	\$1,658,000	\$1,716,000	\$1,776,000
Total - Authority Funding (k)	\$2,236,114	\$15,176,965	\$20,785,640	\$27,025,000	\$29,995,000	\$30,362,000
Farebox operating ratio	28.0%	30.5%	32.5%	37.0%	40.2%	41.7%

RT = round trip

FFY = Federal fiscal year (October 1 through September 30 of following year).

SFY = State fiscal year (July 1 through June 30 of following year).

M of E = Maintenance of Equipment

The annual funding requirements are preliminary planning level estimates. These projections are intended to be used as an initial estimate of the potential costs of Capitol Corridor Service and are subject to change as service levels, pricing strategies, and capital requirements are further evaluated. Actual annual funding for the Authority is based on the appropriation by the Legislature and allocation by the State.

**APPENDIX C**  
**(Continued)**  
**Five Year Level of State Funding**  
**Interagency Transfer Agreement**  
**Capitol Corridor Joint Powers Authority**

**Capitol Corridor Service**  
**(Colfax-Sacramento-Suisun City-Oakland/San Francisco-San Jose)**

- a. Service levels are consistent with the "California Rail Passenger Program Report" (December 1993).
- b. Operating costs are based on Amtrak's revised pricing policy to phase out its subsidy starting in FFY 97/98 with 65% State share for trains and 100% State share for feeder buses.
- c. Includes train, bus, and food and beverage revenues.
- d. Assumes a phase-out of Amtrak's share of train operating loss by FY 2001/02.
- e. Assumes rolling stock rental charges will be needed when more than 4 trainsets are required at \$150,000/locomotive and \$1,000,000/set of cars and adjusted annually at 3.5%.
- f. Amounts for FFY 1997/98 and FFY 1998/99 from State and then increased annually by \$25,000.
- g. Includes State's share of Train and Bus Operating Loss, Equipment Capital Charges, and Minor Capital Projects.
- h. Assumes that Caltrans will retain rail equipment maintenance supervision through FFY 98/99 (June 1998 through September 1999) with a transfer of this responsibility to the Authority starting FFY 1999/2000.
- i. Does not include share of any Amtrak contribution. State indicated that all SFY 97/98 marketing funds have been committed and the Authority would receive no SFY 97/98 marketing funds with a transfer date of June 1, 1998. The SFY 98/99 marketing funds were obtained from Table 3 of "Caltrans Report on Performance Standards For Intercity Rail Passenger Service" (December 31, 1997). Future marketing funds are increased annually at 3.5%.
- j. As agreed to by the parties, a total of \$1,072,430 per year (in SFY 1997/98 \$) is available to the Authority prior to the Authority assuming rail equipment maintenance supervision responsibility and \$1,302,003 per year (in SFY 1997/98 \$) available to the Authority with the transfer of maintenance supervision on October 1, 1999. FY 1997/98 administrative expenses for the Authority are assumed to be a 1-month share of \$1,072,430 with a transfer date of June 1, 1998. Annual administrative costs thereafter have been pro-rated and increased annually for inflation accordingly.
- k. The sum of Authority Operating Costs, Marketing Costs, and Administrative Costs.
- l. Assumes a transfer date of June 1, 1998. Upon transfer, the CCJPA budget will include one month of administrative and marketing costs for remaining SFY 1997/98 (June 1998) and four (4) months of operating costs for remaining FFY 1997/98 (June through September 1998).
- m. Includes extension of daily round trip to Colfax starting January 26, 1998.
- n. Assumes commencement of 6 daily round-trip trains on October 1, 1998 for full FFY.
- o. Assumes 7th round trip starts at the beginning of the FFY 1999/2000.
- p. Assumes 8th and 9th round trips start at the beginning of the FFY 2000/01.
- q. Assumes 10th round trip starts at the beginning of the FFY 2001/02 and continuing through FFY 2002/03.

g:\capitol\SYR\$ITA.XLS

**Preliminary and Tentative**

26-May-98









*A complete copy of*

**EQUIPMENT LEASE**

*follows Fund Transfer Agreement*



*A complete copy of*

**NEW OPERATING AGREEMENT**

*follows Equipment Lease*



*follows New Operating Agreement*

**NEW TRANSFER AGREEMENT**

*A complete copy of*



**DEPARTMENT OF TRANSPORTATION**

DIVISION OF RAIL  
P. O. BOX 942874  
SACRAMENTO, CA 94274-0001  
916-227-9488  
TDD (916) 654-4014



June 2, 1995

Mr. G.O. Mallery  
Chief Executive Officer  
West Coast Strategic Business Unit  
National Railroad Passenger Corporation  
800 North Alameda Street  
Los Angeles, CA 90012

Subject: Caltrans/Amtrak  
Transfer/Maintenance Agreement

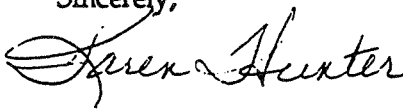
Response to: N/A

Dear Mr. Mallery:

Per Mr Fred Ohly's request is a clean copy of the final Transfer/Maintenance Agreement with all lined out items and bolded items deleted from the document. A draft copy was signed last week, but we are asking that Amtrak make every effort to expedite the signing of these final Agreements so that everyone may have an original for their files After receiving the original signed copies, Caltrans will sign them and return the Agreements to you via Federal Express .

If you have any questions, please contact Karen Hunter of my staff at (916) 227-9437.

Sincerely,

  
for STEVE ALSTON, Chief  
Office of Rail Equipment

cc: S. Alston (Caltrans)  
S. Longhofer (Caltrans)  
K. Hunter (Caltrans)

S. Stadtfeld (BAH)



---

TRANSFER AGREEMENT  
INDEX

1. GENERAL PROVISIONS
    - 1.1 Definitions
    - 1.2 Notices
    - 1.3 Successor and Assigns
    - 1.4 Entire Agreement
    - 1.5 Severability
    - 1.6 Waiver
    - 1.7 Authority of Caltrans Officer
    - 1.8 Interpretation of this Agreement
    - 1.9 Delivery
    - 1.10 Acceptance
    - 1.11 Title
    - 1.12 Transfer
  
  2. AMTRAK SERVICES TO BE PROVIDED
    - 2.1 Basic Scope of Services
    - 2.2 Administrative and Managerial Services
      - 2.2.1 General Management
      - 2.2.2 Accounting Records
      - 2.2.3 Performance Monitoring
    - 2.3 Deployment Plan
    - 2.4 Use of State Provided Equipment
      - 2.4.1 Emergency Circumstances
      - 2.4.2 Leasing of State Provided Equipment
      - 2.4.3 Special Trains
    - 2.5 Clearing of Wrecks
    - 2.6 Fares, Timetables and Ticket Sales
    - 2.7 Maintenance of State Provided Equipment
  
  3. AMTRAK RIGHTS AND OBLIGATIONS
    - 3.1 Training Obligations
    - 3.2 Subcontracting
    - 3.3 Compliance with Industry Codes, Regulations and Standards
    - 3.4 Reporting Obligations
    - 3.5 Accounting Standards
    - 3.6 Equipment Features
  
  4. CALTRANS RIGHTS AND OBLIGATIONS
    - 4.1 Operations and Management Supervision
    - 4.2 Access to Equipment
-

- 4.3 Caltrans Right to Additional Information
  - 4.4 Public Information Responsibilities
  - 4.5 Advertising
  - 4.6 Liaison with Transit Agencies
  - 4.7 Transportation of Caltrans Employees
  - 4.8 Other Contracting Rights
  
  - 5. BUDGETING PROCESS
    - 5.1 Initial Year Budget Process
    - 5.2 Annual Budget Process
      - 5.2.1 Preparation of Planned Deployment Plan
      - 5.2.2 Preparation of Proposed Budget
      - 5.2.3 Information to Accompany Proposed Budget
    - 5.3 Budget Amendment of Unforeseen Events
    - 5.4 Budget Revisions Required Due to Cost Overruns
    - 5.5 Additional Compensation
  
  - 6. INVOICING AND PAYMENT
    - 6.1 Form of Invoice
    - 6.2 Schedule of Payments
    - 6.3 Failure to Comply and Disputed Invoices
      - 6.3.1 Withholding Payment due to Failure to Comply
      - 6.3.2 Withholding Payment due to Invoice Dispute
  
  - 7. CHANGES IN SERVICES OR SERVICE LEVELS
  
  - 8. ACCESS TO STATE PROVIDED EQUIPMENT BY THIRD PARTIES
  
  - 9. DAMAGE TO EQUIPMENT
  
  - 10. DISPUTE RESOLUTION
    - 10.1 Settlement of Disputes
    - 10.2 Controversies Subject to Arbitration
    - 10.3 Arbitration Procedure
    - 10.4 Pending Resolution
    - 10.5 Cost of Arbitration
    - 10.6 Enforcement
  
  - 11. EMPLOYEE CONDUCT
    - 11.1 Employee Conduct and Discipline
  
  - 12. EMERGENCIES
    - 12.1 Force Majeure
-

- 12.2 Operation Disruption
- 12.3 Notification of Emergency

13. EFFECTIVE DATE, TERM AND TERMINATION

- 13.1 Term
- 13.2 Termination for Cause by Caltrans
- 13.3 Termination for Cause by Amtrak
- 13.4 Termination for Convenience
- 13.5 Termination Procedure
- 13.6 Rights and Obligations Upon Termination

APPENDIX 1

Transfer of Equipment Form

APPENDIX 2

Form of Budget  
Annual Contract Amount

APPENDIX 3

Form of Invoice

APPENDIX 4

State Provided Equipment Operating Procedures

TRANSFER AGREEMENT BETWEEN  
THE CALIFORNIA DEPARTMENT OF TRANSPORTATION  
(CALTRANS)  
AND  
THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)  
FOR THE TRANSFER AND OPERATION OF  
STATE PROVIDED RAIL EQUIPMENT  
DATED NOVEMBER 20, 1994

THIS AGREEMENT, DATED NOVEMBER 20, 1994, IS ENTERED INTO BY  
AND BETWEEN CALTRANS AND AMTRAK.

1. GENERAL PROVISIONS

1.1 Definitions

As used in this Agreement, the following terms shall have the meaning specified in this Section.

- a. Agreement. This Agreement and all appendices hereto as amended or modified pursuant to the terms hereof.
- b. Amtrak. The National Railroad Passenger Corporation.
- c. Amtrak Provided Equipment. Locomotives and passenger cars supplied by Amtrak under contract for State supported 49-U.S.C. 24704 service.
- d. Approved Contract Amount. The budget agreed upon by the parties pursuant to the process described in Section 5 of this Agreement, including any amendments to such budget.
- e. Caltrans. The California Department of Transportation.
- f. Caltrans Officer. The Chief of the Office of Equipment of the Rail Program of the California Department of Transportation, acting directly or through an authorized representative.
- g. Contract Services/Services. Those train operations and related functions that are specified to be performed by Amtrak for Caltrans by this Agreement and current 49-U.S.C. 24704 agreements.
- h. Delivery. The arrival and acceptance by Caltrans of vehicles, equipment, parts, materials, tools, documentation and training required under equipment manufacture contracts at the State-designated point of delivery in California.

- i. Equipment Delivery Period. The period of time between the first delivery of State Provided Equipment and the transfer to Amtrak of the final piece of State Provided Equipment.
- j. Federal Fiscal Year/Fiscal Year. The Federal Fiscal Year from October 1 through September 30.
- k. Maintenance Agreement. The agreement between Caltrans and Amtrak covering the maintenance by Amtrak of State Provided Equipment.
- l. Manufacturer. The original equipment manufacturers of State Provided Equipment including sub-suppliers.
- m. Operator. When used in this Agreement or the Appendices to it shall mean Amtrak.
- n. Planned Deployment Plan. The detailed description of the operation of State Provided Equipment in a Federal Fiscal Year, including specific routes on which Amtrak shall provide Services, train consists, units of equipment to be maintained, and other related services, all as agreed upon by the parties, prior to the start of each Federal Fiscal Year, or as amended by the agreement of the parties during the course of the Federal Fiscal Year.
- o. Service Property. The service property includes tracks, land, structures, and other maintenance facilities that are located on or adjacent to the rail lines and yards, that are used by Amtrak in provision of the Services under this Agreement.
- p. State. The State of California Department of Transportation.
- q. State Provided Equipment. Locomotives and passenger cars, including self propelled cars supplied by Caltrans, that are used in providing the Contract Services.
- r. Title. Documentation of ownership of locomotives and passenger cars as required by the State of California.
- s. Transfer. The change of custody for each locomotive or passenger car from Caltrans to Amtrak, or from Amtrak to Caltrans. Each locomotive or passenger car shall be considered transferred when the transfer document for the individual vehicle is signed by the Caltrans Officer and Amtrak's appropriate representative. Physical custody of each vehicle shall be assumed at a location agreed to by Caltrans and Amtrak.

1.2 Notices

Any notice, report, or other communication shall, unless otherwise specified, be in writing and shall be delivered in hand or mailed by first class mail, postage prepaid, addressed to:

G. O. Mallery  
Chief Executive Officer West Coast Strategic Business Unit  
National Railroad Passenger Corporation  
800 North Alameda Street  
Los Angeles, CA 90012  
Telecopy: (213) 683-6890

Rail Program  
Attention: Cindy McKim  
Deputy Director, Rail, Transit and Aeronautics  
California Department of Transportation  
1801 30th Street, East Building  
Sacramento, CA 95816  
Fax: (916) 227-9487

Either party may change the name, address, or title of the party to be notified hereunder by notifying the other party in writing of such change.

1.3 Successor and Assigns

The rights and obligations of Amtrak and Caltrans hereunder may not be assigned, other than by an act of Federal or State law, unless with the prior written consent of both parties.

1.4 Entire Agreement

This Agreement, which relates solely to the substitution of State Provided Equipment in lieu of Amtrak Provided Equipment, is in addition to agreements between Caltrans and Amtrak, which relate solely to the use of State funding to support Amtrak intercity operations.

This Agreement embodies the entire agreement between Caltrans and Amtrak as it relates to State Provided Equipment. No oral or prior written matter not incorporated herein 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, current 49-U.S.C. 24704 agreements, and the Maintenance Agreement for State Provided Equipment. This Agreement will not be modified except in writing subscribed to by both parties.

1.5 Severability

In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remainder of this Agreement shall nevertheless be

---

---

binding with the same effect as if the invalid or unenforceable provision were originally deleted. This will not apply where the provision 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 that deletion substantially alters the rights or obligations of either party under the Agreement.

#### 1.6 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 of breach hereof except as is expressly stated in 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 to be construed as a waiver or relinquishment thereof.

#### 1.7 Authority Of Caltrans Officer

The Caltrans Officer maintains sole authority and responsibility for the acceptance and transfer of State Provided Equipment on behalf of Caltrans. The Caltrans Officer has the authority to transfer State Provided Equipment from Caltrans to Amtrak or from Amtrak to Caltrans.

The Caltrans Officer shall decide on behalf of Caltrans all questions which may arise regarding the quality or acceptability of the Services performed under this Agreement; all questions which may arise regarding the interpretation of this Agreement; all questions that may arise regarding the acceptable fulfillment of this Agreement on the part of Amtrak; and all questions which may arise regarding compensation. In addition, the Caltrans Officer shall have complete authority to administer and make decisions on disputes and claims on behalf of Caltrans during the term of this Agreement. As the designated representative of Caltrans, the Caltrans Officer's decision shall be Caltrans final position and the Caltrans Officer shall have the authority to enforce and make effective such decisions and orders which Amtrak fails to carry out promptly. This is subject to the provisions of Section 10 "Dispute Resolution" of this Agreement.

The Caltrans Officer shall respond in writing, within twenty (20) working days of receipt, to all written questions and requests concerning approvals, interpretations, and other matters pertaining to this Agreement from Amtrak, unless otherwise allowed for by this Agreement.

Amtrak General Management shall respond, in writing, within twenty (20) working days of receipt, to all questions and requests for information in writing from the Caltrans Officer regarding this Agreement as those questions relate to Amtrak's operation of State Provided Equipment.

1.8 Interpretation of this Agreement

Should it appear that the services to be performed or any of the matters relative thereto are not sufficiently detailed or explained in this Agreement, Amtrak may request from the Caltrans Officer for such further written explanations as may be necessary, and shall as part of this Agreement conform to the explanation provided by the Caltrans Officer, provided that such explanation is consistent with the provisions of this Agreement.

1.9 Delivery

It is the sole responsibility of Caltrans to ensure that State Provided Equipment shall be delivered by the respective Contractors to a location determined and approved by Caltrans. After arrival of each locomotive or passenger car at the designated delivery point, and before the vehicle is placed in regular operation, a joint inspection shall be performed by Caltrans/Amtrak and the Manufacturer on each locomotive or passenger car and defects remedied prior to the transfer of State Provided Equipment to Amtrak. Removal of all temporary fittings required for shipment shall be the responsibility of the Manufacturer and shall be complete prior to transfer of State Provided Equipment.

1.10 Acceptance

After arrival at the designated point of delivery, each locomotive or passenger car will undergo acceptance testing by Caltrans with the assistance of Amtrak. When a locomotive or passenger car passes these tests to the satisfaction of the Caltrans Officer, written acceptance of the vehicle will be provided to the Manufacturer by the Caltrans Officer.

1.11 Title

Title to each vehicle shall be transferred to Caltrans immediately upon acceptance. Caltrans shall maintain title to all State Provided Equipment transferred to Amtrak. Title to State Provided Equipment shall remain with Caltrans at all times and shall not be assigned to any other party without the consent of the Caltrans Officer.

1.12 Transfer

The Caltrans Officer shall transfer State Provided Equipment to Amtrak for operations consistent with the Planned Deployment Plan. Locomotives and cars may be transferred individually, in consist, or in any quantity thereof. Transfer of each individual vehicle shall occur after joint inspection by Amtrak and Caltrans, and shall be formalized by the appropriate State and Amtrak documentation as contained in Appendix 1. Upon signature of the transfer document by the Caltrans Officer and Amtrak's appropriate representative, subject vehicles shall be considered in the custody of Amtrak for operation and maintenance in accordance with all of the terms of this Agreement. The parties shall modify the Statement of Condition in the Transfer of Equipment Form set forth in Appendix 1 to include any capital improvements or design changes/retrofits made during the term of this Agreement.

---



Transfer of each vehicle shall occur after delivery, and may occur either before or after acceptance and transfer of title from the Manufacturer.

In the event of special, unforeseen, or extenuating circumstances, or of termination or default of this Agreement by either Amtrak or Caltrans, Caltrans, as owner of the State Provided Equipment, may initiate transfer of custody of State Provided Equipment from Amtrak to the State of California. No later than thirty (30) days after receipt of the State's official written notification, Amtrak will transfer custody of designated State Provided Equipment to Caltrans at a Caltrans-determined location. The State Provided Equipment transferred back to Caltrans from Amtrak shall be in the same condition as referred in the initial transfer document, subject to normal wear and tear.

## 2. AMTRAK SERVICES TO BE PROVIDED

### 2.1 Basic Scope of Services

During the Agreement term, Amtrak shall operate and maintain State Provided Equipment in accordance with the Transfer and Maintenance Agreements and the Planned Deployment Plan in accordance with all applicable laws and regulations and in accordance with the terms and provisions herein set forth. The elements of the Contract Services may be altered by amendment of this Agreement as mutually agreed upon by Caltrans and Amtrak.

### 2.2 Administrative and Managerial Services

#### 2.2.1 General Management

Amtrak shall identify responsible qualified managers, based in California, who shall manage the provisions of this Agreement in a manner that is consistent with both parties' objective of providing the highest quality service to the public and the best interests of Caltrans.

The Amtrak managers assigned to the Services shall have experience and knowledge in the area of railroad passenger operations and shall have authority to make decisions in a timely manner 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 comply 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 Caltrans, and shall be subject to the direction, supervision and control of Amtrak and not of Caltrans.

#### 2.2.2 Accounting Records

During the Agreement term, Amtrak shall keep full and accurate accounting records of all costs associated with this Agreement covering State Provided

Equipment. Amtrak shall retain such records for at least three (3) years following the end of the accounting period to which the records apply; such records may be retained on microfiche or electronic medium. The State may inspect, audit and obtain copies of the accounting records of Amtrak pertaining to the Contract Services at any reasonable time during regular business hours at Amtrak's place of business where said records are kept. Such actions shall not unreasonably interfere with the business or accounting functions of Amtrak. Amtrak shall cooperate fully with Caltrans in the explanation of the contents of said records.

### 2.2.3 Performance Monitoring

Amtrak shall maintain performance records and furnish the written performance reports as required by this Agreement. The criteria on which Amtrak will be monitored on a performance basis will be as follows:

- a. Performance of maintenance work specified in this contract and the Maintenance Agreement;
- b. Adherence to Amtrak operating crew procedures as they relate to State Provided Equipment. For example; car door use failures or operation of wheelchair lift;
- c. Provision of operation/warranty/performance guarantee reports as required by this agreement and the Maintenance Agreement;
- d. Availability of Amtrak Provided Equipment and State Provided Equipment for service as scheduled;
- e. Compliance with the Planned Deployment Plan.

Non-compliance with these criteria will result in enforcement of the provisions of Section 6.3.1.

### 2.3 Deployment Plan

The operation of State Provided Equipment shall be in accordance with current 49-U.S.C. 24704 agreements and the Planned Deployment Plan.

### 2.4 Use of State Provided Equipment

Unless otherwise specifically provided for elsewhere in this Agreement, the use of State Provided Equipment transferred to Amtrak for operation shall be governed by this Section 2.4.

State Provided Equipment shall not be utilized on any trains other than State supported 49-U.S.C. 24704 trains within the State of California unless approved in writing in advance by the Caltrans Officer.

In the event Caltrans gives permission for Amtrak to use State Provided Equipment on non-49-U.S.C. 24704 service or Amtrak sponsored special trains, the

---

State shall be reimbursed by Amtrak for the use of the State Provided Equipment at a daily rate to be mutually agreed upon before use of the equipment.

#### 2.4.1 Emergency Circumstances

In "Emergency Circumstances" as detailed below, Amtrak may use State Provided Equipment without prior approval, providing that:

1. All reasonable efforts have been made to gain prior State approval; and,
2. The use of State Provided Equipment will not cause the substitution of non-State provided equipment in, or the annulment of, a State sponsored 49-U.S.C. 24704 service train; and,
3. The use of State Provided Equipment will not adversely impact State Supported 49-U.S.C. 24704 service schedules.

For the purpose of this section, "Emergency Circumstances" shall be considered all of the following:

1. Failure of Amtrak owned equipment that would cause the cancellation of an Amtrak funded service; and,
2. No replacement Amtrak owned equipment is available within 2 hours; and,
3. Replacement freight railroad owned equipment is not available within 2 hours.

In the event State Provided Equipment is used in "Emergency Circumstances" the State shall be reimbursed at the current highest lease rate charged by Amtrak to the State for similar Amtrak equipment.

In the event that Amtrak uses State Provided Equipment other than as provided for in this Agreement or as previously agreed to by the State in writing, then Amtrak shall compensate the State for the use of that State Provided Equipment at a rate of compensation to the State shall be two (2) times the current highest lease rate charged by Amtrak to the State for similar Amtrak equipment.

All reimbursements and compensation referred to in this section shall take the form of credits to the State to be applied to the then current month's invoice from Amtrak, and shall be expressly accounted for therein.

Amtrak is responsible for the maintenance and repair of any equipment used or damaged during Amtrak use on non-State sponsored trains, at no cost to Caltrans, prior to return to Caltrans. Amtrak shall continue to compensate the State at the applicable compensation rate until damaged State Provided Equipment is repaired and available for service in State sponsored service.

---

#### 2.4.2 Leasing of State Provided Equipment

Amtrak shall have the right, subject to Caltrans approval, to lease State Provided Equipment, for purposes other than provision of services covered by 49-U.S.C. 24704 agreements and by this Agreement, for use at times or places or during periods that do not impair Amtrak's ability to provide already contracted services, for which Caltrans shall be compensated as mutually agreed in advance of that equipment usage.

#### 2.4.3 Special Trains

Amtrak shall not use State Provided Equipment for special trains without the prior written approval of the State. Requests to use State Provided Equipment on special trains by Amtrak shall be submitted in writing at least thirty (30) days prior to the intended use. Such requests shall include the schedule for the special train, the duration that State Provided Equipment is required and any other relevant information required by Caltrans. Approval for use shall be at the sole discretion of the State. Caltrans shall respond to such requests no less than ten (10) working days after receipt of the written request. In the event that the State gives permission for Amtrak to use State Provided Equipment on non-49-U.S.C. 24704 services or Amtrak sponsored special trains, the State shall be reimbursed by Amtrak for the use of the State Provided Equipment, at a daily rate to be mutually agreed upon before the use of that State Provided Equipment.

The State shall have the absolute priority and right to use State Provided Equipment on State sponsored special trains. The operation of State sponsored special trains shall be mutually agreed upon between the State and Amtrak prior to operation. No less than thirty (30) days prior to any event for which Caltrans anticipates providing special train service, it shall submit to Amtrak a request in writing for Amtrak to operate such service. Amtrak shall, not less than ten (10) working days after receipt of the written request, inform Caltrans in writing of the cost of providing such service. Amtrak shall not unreasonably refuse to operate State sponsored special trains provided that State Provided Equipment and Amtrak crews are available. The operation of such special trains shall not unreasonably interfere with the contracted maintenance of State Provided Equipment.

The cost of operation of any special trains shall not be included in the approved contract amount unless specifically included in the Planned Deployment Plan. All reimbursements and compensations referred to in this section shall take the form of a credit to the State to be applied to the current month's invoice from Amtrak, and shall be expressly accounted for therein.

#### 2.5 Clearing of Wrecks

Amtrak will have full responsibility for clearing wrecks which involve State Provided Equipment.

The repair of wreck damaged State Provided Equipment shall be in accordance with the provisions of the Maintenance Agreement. Caltrans shall have access to the wreck site as allowed for in this agreement under Section 4.2 "Access to

---

---

Equipment". Caltrans shall be advised of wrecks pursuant to the provisions of Section 12.3 "Notification of Emergency".

## 2.6 Fares, Timetables and Ticket Sales

Fares, timetables and ticket sales shall be governed by the provisions of the 49-U.S.C. 24704 agreements in force at that time, unless otherwise agreed in writing.

## 2.7 Maintenance of State Provided Equipment

The maintenance of State Provided Equipment shall be in accordance with the separate Maintenance Agreement between Caltrans and Amtrak.

# 3. AMTRAK RIGHTS AND OBLIGATIONS

## 3.1 Training Obligations

Amtrak shall ensure that all employees and subcontractors assigned to the operation of State Provided Equipment are thoroughly trained in the operation of the specific features of State Provided Equipment. Operation of such features shall be in accordance with the provisions of this Agreement and standard Amtrak operating practice.

Amtrak will be responsible for ensuring that said training is provided when necessary and is regularly updated as required. Caltrans shall ensure that contracted training to be provided by the manufacturers is given to Amtrak's training personnel. This shall include the provision of trainer's notes to Amtrak. All subsequent training of personnel shall be the responsibility of Amtrak.

All training programs or portions thereof that are designed specifically for State Provided Equipment will be reviewed and approved by Caltrans, and will be designed, developed and implemented in accordance with established professional standards for performance-based instruction. Amtrak will provide Caltrans with copies of all training programs and records used for employees who are working on State Provided Equipment.

The training of Amtrak employees for the maintenance of State Provided Equipment shall be governed by the provisions of the Maintenance Agreement, Section 3.3. Amtrak shall maintain accurate training records which identify Amtrak personnel/subcontractors who received training, and the dates of courses taken. Training records shall be made readily available upon Caltrans request.

## 3.2 Subcontracting

Amtrak's subcontractors involved in any aspect of providing any Contract Services shall be subject to the direction, supervision, and control of Amtrak and not Caltrans.

### 3.3 Compliance with Industry Codes, Regulations and Standards

During the operation of State Provided Equipment, Amtrak shall comply with FRA and CPUC regulations, AAR and accepted industry standards, all applicable State and local codes, and all performance standards set forth in this document.

Amtrak shall be solely responsible for any fines or penalties resulting from violation of applicable laws and standards other than those that are solely a result of the original design and manufacture of State Provided Equipment.

### 3.4 Reporting Obligations

Amtrak shall provide Caltrans with access to the operational reports listed in this section. In addition, Amtrak shall prepare and submit in a timely manner, all reports affecting State Provided Equipment which are required to be submitted to any federal, state or local governmental agency, and shall furnish copies simultaneously to Caltrans. Amtrak shall also promptly furnish to Caltrans copies of any citations or complaints issued by an enforcement or regulatory body which involve State Provided Equipment, and Amtrak will advise Caltrans, within ten (10) working days, of the disposition of such citations or complaints. The purpose of the reports described in this section are to keep Caltrans apprised of the performance of, and incidents which may impact the operation of, State Provided Equipment.

Amtrak agrees to keep full and accurate records required herein and to provide Caltrans with such other reports or information as will fulfill the purpose described in the previous sentence. Amtrak shall not release or disclose any reports that relate solely to the performance of State Provided Equipment without prior notification to Caltrans.

Caltrans shall have on demand, via an Arrow terminal located at Caltrans Rail Program, access to the following Amtrak reports on an as needed basis:

- a. Unit Status List
- b. Display Unit Record Report
- c. Display Mechanical History Report
- d. Build Resources List Report
- e. Train Status Report for 49-U.S.C. 24704 Trains and Connections
- f. Daily Consist Report
- g. Daily West SBU Report

The Daily Division Report shall be supplied automatically each day by the Arrow printer at the Rail Program.

In addition, Amtrak shall supply copies of major incident reports, when completed, for incidents that involve State Provided Equipment or the Contract Services. The above reports are in addition to any other reports required elsewhere in this Agreement, in the 49-U.S.C. 24704 Agreement and in the Maintenance Agreement.

### 3.5 Accounting Standards

Amtrak shall maintain the books and records which are required by this Agreement, and shall provide or give access to, any financial or other reports required by this Agreement within fifteen (15) working days of receipt of a written request from Caltrans, all in accordance with Generally Accepted Accounting Principles.

### 3.6 Equipment Features

There are certain features specific to State Provided Equipment that require operation in accordance with the procedures detailed in Appendix 4 of this Agreement. Any revision to these procedures shall be mutually agreed between Amtrak and Caltrans and shall be followed by Amtrak on all State supported operations using State Provided Equipment.

## 4. CALTRANS RIGHTS AND OBLIGATIONS

### 4.1 Operations and Management Supervision

In addition to the rights and obligations stated elsewhere in this Agreement, Caltrans shall have the following rights with respect to control, oversight and monitoring of Amtrak's performance:

1. All facilities and equipment developed or used by Amtrak in the performance of its obligations under this Agreement and the levels of resources allocated/consumed to fulfill the terms of this Agreement and the Maintenance Agreement may be monitored.
2. State Provided Equipment may be inspected at any time and removed from service when in Caltrans sole discretion and with justifiable reason, any equipment is determined to be in an unacceptable condition.
3. At Caltrans sole discretion, the Caltrans Officer may direct Amtrak to cease operation of any State Provided Equipment operated in the 49-U.S.C. 24704 operations. Amtrak shall resume operation of any such State Provided Equipment only upon receipt of approval from Caltrans.

### 4.2 Access to Equipment

Authorized Caltrans staff will be allowed immediate and unannounced access to inspect State Provided Equipment transferred to Amtrak and may review Amtrak maintenance practices at any time.

A special access permit will not be required in the Amtrak maintenance facility, however Caltrans agrees that it will defend, indemnify and save harmless Amtrak and operating railroads, from and against any and all liability for bodily

---

---

injury, death, or property damage negligently caused by Caltrans staff while at Amtrak's mechanical facility. Upon arrival in that facility, authorized Caltrans staff will immediately contact Amtrak's Facility Manager or senior official prior to entering the equipment maintenance work area in order to coordinate their on-site activity. Authorized Caltrans staff and or representatives will comply with all Amtrak Safety rules and regulations while at the maintenance facility or on Amtrak property.

For head-end access, a special photo ID inspection permit will be required for Caltrans staff. Amtrak will provide no more than seven (7) photo ID Train Authorization Permits for Caltrans to issue its staff at any one time. The Amtrak Train Authorization Permit for selected Caltrans staff authorizes immediate and unannounced access to the cab of State Provided Locomotives (head-end) and on-board Amtrak trains. To protect the safety of Amtrak passengers and operating crews, Caltrans shall issue the Authorization Permit only to those individuals who have been trained, have knowledge of railroad operating rules and practices, and have a need, as determined by Caltrans, to have access to State Provided Equipment on Amtrak operated trains to perform their duties and responsibilities.

Amtrak agrees that authorized Caltrans staff will be permitted to inspect State Provided Equipment during revenue service, however, Caltrans agrees that it will defend, indemnify and save harmless Amtrak and the operating railroads, from and against any and all liability for bodily injury, death, or property damage negligently caused by Caltrans staff while inspecting State Provided Equipment in revenue service.

Authorized Caltrans staff shall have the right to be present at the site of wrecks or derailments involving State Provided Equipment and shall have the right to provide advice as to the recovery of State Provided Equipment. Notwithstanding the preceding sentence, Caltrans shall have no right to direct the actions of Amtrak or other parties in such cases. In the event that Caltrans advice is not followed and additional damage is caused to State Provided Equipment, Amtrak shall be responsible for the repair of said additional damage at no cost to Caltrans.

#### 4.3 Caltrans Right to Additional Information

Caltrans shall have the right to obtain from Amtrak within fifteen (15) working days of receipt of a written request, any reasonable information related to State Provided Equipment. This is in addition to any other rights to information and reports included in this Agreement and the 49-U.S.C. 24704 agreements.

#### 4.4 Public Information Responsibilities

Caltrans may assume some responsibility for marketing the public use of 49-U.S.C. 24704 services, and specifically State Provided Equipment, through advertisements or other promotions. Amtrak will cooperate with Caltrans in Caltrans marketing efforts as related to State Provided Equipment. This marketing authority is in addition to any related provisions within the 49-U.S.C. 24704 agreements.



Amtrak will inform Caltrans of all passenger complaints that relate to the design and function of State Provided Equipment. Amtrak will install at no cost to Caltrans, Caltrans-approved promotional materials or public information notices on State Provided Equipment pursuant to procedures established by Caltrans and Amtrak.

4.5 Advertising

Only Caltrans may utilize or authorize the utilization of the interior and exterior of State Provided Equipment for the display of any written or printed advertising, promotional material, or public information notices, and any revenues from such advertisements shall be credited to the Service.

Only Caltrans may authorize, in writing the use of the Caltrans Logo or images of State Provided Equipment.

4.6 Liaison with Transit Agencies

Caltrans reserves the right to coordinate with other transit agencies in such matters that do not affect the 49-U.S.C. 24704 agreement and the Planned Deployment Plan in force at that time. Such coordination will be at Caltrans sole discretion.

4.7 Transportation of Caltrans Employees

Amtrak shall permit staff employed by the Caltrans Rail Program to travel at no charge on Amtrak intercity trains when said employee presents an Amtrak-issued photo identification pass. Travel is limited within the area served by State Provided Equipment only as necessary to transport such staff between stations or facilities in connection with the administration and performance of this Agreement, 49-U.S.C. 24704 agreements, and the Maintenance Agreement for State Provided Equipment, and other related agreements.

4.8 Other Contracting Rights

Caltrans specifically reserves the right to contract with any other person, corporation or other entity for performance of any tasks required by Caltrans that are not specifically assigned to Amtrak by this Agreement and the 49-U.S.C. 24704 agreements in force at that time. Any employee or contractor of such person, corporation or other entity shall be permitted to perform contracted functions after daily operations at locations mutually agreed by Amtrak and Caltrans; provided however, that no such employee or contractor shall unreasonably interfere with Amtrak's operation, servicing, maintenance and inspection of State Provided Equipment or Amtrak equipment.

5. BUDGETING PROCESS

For the purpose of this Agreement, all budgets referred to shall be consolidated budgets that reflect all costs to the State for the provision of all current

---

49-U.S.C. 24704 services, provision of service as required by this Agreement and provision of services required by the Maintenance Agreement for any Federal Fiscal Year. No State funds are or will be encumbered under this Agreement.

### 5.1 Initial Year Budget Process

For the initial year of this Agreement, October 1, 1994 to September 30, 1995, the parties shall agree upon a Planned Deployment Plan.

For the initial year of this Agreement, Amtrak shall revise the previously submitted budget and submit it to Caltrans. This budget revision shall reflect the Planned Deployment Plan for the initial year.

A Planned Deployment Plan may be jointly modified at any time.

### 5.2 Annual Budget Process

#### 5.2.1 Preparation of Planned Deployment Plan

Prior to April 1 of each year during the term of this Agreement, Caltrans shall prepare and submit to Amtrak a draft Planned Deployment Plan, for State Provided Equipment, for the time period of October 1 to September 30. This draft Planned Deployment Plan shall include a detailed description of the utilization of State Provided Equipment Caltrans expects Amtrak to provide in the next Federal Fiscal Year, and will form the basis for the final Deployment Plan. This coincides with the contracting period for the provision of 49-U.S.C. 24704 service in California.

Prior to May 1 of each year during the term of this Agreement, Caltrans and Amtrak shall jointly agree on the final Planned Deployment Plan, for State Provided Equipment.

#### 5.2.2 Preparation of Proposed Budget

The Planned Deployment Plan shall form the basis for the budgeting of the Approved Contract Amount and the budget amount for the Maintenance Agreement in each Federal Fiscal Year. No later than June 1 of each year during the term of this Agreement, Amtrak shall prepare and submit to Caltrans a final budget, in a format as stated in this Agreement for provision of 49-U.S.C. 24704 Services, including appropriate detail concerning mechanical costs, described for the period October 1 to September 30. This budget shall reflect the costs to be incurred by the State for the actual operations and levels of Service provided during the current Federal Fiscal Year. The required form of the budget for the 49-U.S.C. 24704 Service is contained in Appendix 2 of this Agreement. The final budget shall be approved by Caltrans.

Once this budget is approved by Caltrans, it shall become the basis for the Approved Contract Amount for the next Federal Fiscal Year. The budget shall be approved by Caltrans no later than July 1.

---

The proposed budget shall reflect the costs to be incurred by the State for the actual operations and levels of Services being provided during the current Federal Fiscal Year, except as modified by the Planned Deployment Plan for any future period. The proposed budget shall be consistent with the Planned Deployment Plan and current 49-U.S.C. 24704 agreements and use the current Maintenance Agreement for State Provided Equipment (See Maintenance Agreement Appendix 7, Form of Budget). Amtrak shall specify the assumptions used in developing the proposed budget. The proposed budget shall not include any provision for the operation of special trains.

### 5.2.3 Information to Accompany Proposed Budget

For train routes that will not utilize State Provided Equipment in the next Federal Fiscal Year, the budget amount shall be as is currently provided under the 49-U.S.C. 24704 budget provisions.

For train routes that will use State Provided Equipment for part or all of the next Federal Fiscal Year, the train route budget shall show separate budget amounts for the following line items:

- a. Maintenance of State Provided Equipment (See Maintenance Agreement Appendix 7, Form of Budget)
- b. Fuel for State Provided Equipment
- c. Food Service Supplies and Consumables for State Provided Equipment

### 5.3 Budget Amendment for Unforeseen Events

Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Contract Amount, which events will cause a material change in the assumptions used in developing the costs included in the Approved Contract Amount, the parties shall agree upon amendments to the Approved Contract Amount for that Fiscal Year to reflect those changes.

### 5.4 Budget Revisions Required Due to Cost Overruns

If, during a Federal Fiscal Year, the costs to be incurred by the State are projected to exceed the Approved Contract Amount for that Federal Fiscal Year to date, Amtrak shall immediately inform Caltrans, with an explanation of the reasons for the projected cost overrun from the Approved Contract Amount to date, and of the actions Amtrak will take, subject to Caltrans approval, to bring any variance back into conformity with the Approved Contract Amount for that Federal Fiscal Year.

Amtrak shall submit a proposed revised budget to Caltrans within thirty (30) days of notification that Amtrak will exceed the approved contract amount, and the parties shall promptly agree upon a revised Approved Contract Amount for the remainder of the Federal Fiscal Year.

In addition, on May 1 of each Fiscal Year, Amtrak shall provide to Caltrans a forecast of expected actual costs to the State and any anticipated or known variance

from the Approved Contract Amount to provide the agreed services for the remainder of that Federal Fiscal Year.

If the parties are unable to agree upon a revised Approved Contract Amount for provision of the Services as detailed in this Agreement, the Maintenance Agreement and the 49-U.S.C. 24704 agreements for the remainder of the Federal Fiscal Year, the parties will meet to agree upon service reductions or modifications that will permit operation for the remainder of the Federal Fiscal Year within the operating funds available to Caltrans.

#### 5.5 Additional Compensation

In the event Caltrans requests additional services be provided by Amtrak, such as special trains, the cost to the State of such services shall be considered separate from the Approved Contract Amount and not subject to the other provisions of the Section 5 "Budgeting Process".

### 6. INVOICING AND PAYMENT

#### 6.1 Form of Invoice

The form of all invoices shall be as shown in Appendix 3 of this Agreement with the following additional information, to be provided as attachments to the invoice, as referenced in this section.

The payment and invoice process for 49-U.S.C. 24704 services shall not change from that referenced in the 49-U.S.C. 24704 agreements and shall include all costs associated with this agreement and the Maintenance Agreement, with the following exceptions as they relate to State Provided Equipment where additional support for the costs incurred is to be provided.

- a. Maintenance of State Provided Equipment,
- b. Fuel for State Provided Equipment; and,
- c. Food service supplies and consumables and revenues for State Provided Equipment.

For the following items included in 49-U.S.C. 24704 invoices, the following additional information shall be supplied with respect to State Provided Equipment:

- d. Rolling Stock Rental - for State Provided Equipment this shall be the actual cost incurred with details of the cause of such cost to be shown.
  - e. Depreciation and Interest - Depreciation and Interest shall not apply to State Provided Equipment.
  - f. Inventory Purchases - Caltrans costs for spare parts provided by Amtrak for State Provided Equipment shall be the same as current 49-U.S.C. 24704 agreements where the State Provided Equipment is used on
-

---

existing 49-U.S.C. 24704 services. For parts unique to State Provided Equipment which are in Caltrans Store Code, payment shall be made when Amtrak receives parts at the purchase order price plus freight. Shared parts shall be paid at time of issuance. In the event that State Provided Equipment is used to provide new service, this section shall be subject to renegotiation.

## 6.2 Schedule of Payments

The scheduling of payments shall be as provided in the 49-U.S.C. 24704 agreements, including advance monthly payments, with those exceptions as provided in Section 6 and 10 of this Agreement.

## 6.3 Failure to Comply and Disputed Invoices

In the event that Amtrak fails to perform the services as required by this Agreement and/or the Maintenance Agreement, or an invoiced amount is disputed by Caltrans, the provisions of this Section 6.3 shall apply.

### 6.3.1 Withholding Payment Due to Failure to Comply

In the event Amtrak does not comply with the requirements of this Agreement or the Maintenance Agreement as they relate to State Provided Equipment, Caltrans shall compute the value of the perceived failure and notify Amtrak in writing that a corresponding amount will be withheld from the monthly advanced payment following the next monthly payment if the perceived failure has not been resolved to Caltrans satisfaction. Caltrans shall detail the reason for the proposed withholding of payment and the actions Caltrans considers necessary to resolve the perceived failure.

Once resolution of the failure to comply is achieved between Caltrans and Amtrak, the notice to withhold will be withdrawn, or the monthly payment withheld will be remitted with the next monthly advanced payment. Should resolution of the non-compliance not be achieved through negotiation or the provisions of Section 10, "Dispute Resolution", the withheld amount will be paid under protest once the invoice for that month is presented. Such payment shall not be considered as resolution of the dispute and the process outlined in Section 10, "Dispute Resolution", shall be carried to its conclusion. Should the resolution of the dispute result in a refund to Caltrans, said refund shall be applied as a credit to the next monthly advanced payment, and shall be expressly accounted for therein.

### 6.3.2 Withholding Payment Due to Invoice Dispute

In the event Caltrans disputes a charge detailed in the monthly invoice, and Amtrak cannot provide an acceptable explanation of said charge, Caltrans shall have the right, at its sole discretion, to withhold the disputed invoice amount. Caltrans shall advise Amtrak of the amount of disputed charges withheld, detail reasons for the withholding, and the actions that Caltrans considers necessary to resolve the disputed invoice amount. Caltrans shall

---

---

notify Amtrak in writing one month in advance of its intention to withhold the payment of an invoice amount. In the event that resolution of the disputed invoice amount is not achieved within the notice period, Caltrans shall withhold the disputed invoice amount from the next invoice payment due after the notice period has expired.

If resolution of the disputed invoiced amount is achieved between Caltrans and Amtrak after the amount has been withheld, the withheld amount will be remitted with the next invoice payment. Should resolution of the disputed invoiced amount not be achieved through negotiation or the provisions of Section 10, "Dispute Resolution", the withheld amount will be paid under protest after three calendar months of withholding. Such payment shall not be considered as resolution of the dispute and the process outlined in Section 10, "Dispute Resolution", shall be carried to its conclusion.

#### 7. CHANGES IN SERVICES OR SERVICE LEVELS

All changes to levels of service for trains utilizing State Provided Equipment shall be conducted in accordance with the provisions of the 49-U.S.C. 24704 agreements and this Agreement. All agreed upon changes will be reflected in the issuance of a revised Approved Contract Amount and Planned Deployment Plan.

#### 8. ACCESS TO STATE PROVIDED EQUIPMENT BY THIRD PARTIES

Amtrak shall permit Caltrans third party contractors to enter upon those portions of the property over which Amtrak exercises control or over which Amtrak has maintenance responsibility for the purpose of conducting necessary work on State Provided Equipment subject to compliance with all applicable operating and safety rules. Before any such third party is given access approval, Amtrak may require advance notification and may require appropriate indemnification forms be signed. Amtrak shall not unreasonably refuse approval for access to State Provided Equipment by third parties, provided no existing Amtrak signatory labor contracts are violated.

#### 9. DAMAGE TO EQUIPMENT

Equipment owned/operated by Amtrak shall include State Provided Equipment for liability and repair purpose.

When it is determined by arbitration or agreement as provided in Section 10 of this agreement that damage to State Provided Equipment has been caused solely by the negligent acts or omissions of Amtrak, including its employees, subcontractors, or agents, Amtrak shall be solely responsible for the cost of clearing wrecks, repair of damage, or provision of replacement equipment to permit continued operation of the 49-U.S.C. 24704 service; such costs shall not be included in determining the avoidable deficit of the 49-U.S.C. 24704 service. In addition, no insurance or system self-insurance and wreck damage costs shall be charged to 49-

U.S.C. 24704 services to the extent that State Provided Equipment is used to operate that service. For purposes of this section, a railroad or other entity that has contracted to permit Amtrak to use its rail lines or services shall not be deemed to be a subcontractor or agent of Amtrak.

In the event Amtrak recovers costs from a third party due to damage to, or derailment of, State Provided Equipment, and Caltrans has contributed to the costs for recovery and/or repair of the affected State Provided Equipment, Caltrans shall be reimbursed its contribution by Amtrak in the form of a credit to the State, to be applied to the next current month's invoice from Amtrak. In no event shall the amount of reimbursement to Caltrans exceed Caltrans' original contribution or the amount recovered from the third party. To the extent that Amtrak is unable to pursue a third party responsible for damage to State Provided Equipment, then Amtrak shall assign such collection to the State if requested.

## 10. DISPUTE RESOLUTION

### 10.1 Settlement of Disputes

Both parties to this Agreement shall make every reasonable effort, through telephone communications, letters, and meetings, 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. 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.

### 10.2 Controversies Subject to Arbitration

Any claim or controversy between Caltrans 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 10; provided, however, that no such claim or controversy shall be submitted to arbitration until it has first been submitted to the Caltrans' Caltrans Officer and Amtrak's assigned manager of State-sponsored Services for resolution between them.

### 10.3 Arbitration Procedure

Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement which cannot be resolved by the parties, shall be submitted to mediation in the County of San Francisco, California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until the matter is either resolved, or the mediator finds, or the parties agree, that mediation should not continue. However, unless otherwise agreed, the mediation process shall not last more than sixty (60) days. If the parties cannot resolve the

---

controversy, claim or dispute through the mediation process described above, the matter shall upon the request of any party, be settled by arbitration in the County of San Francisco, California, administered by the American Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

#### 10.4 Pending Resolution

Except as provided specifically in other sections of this Agreement, when such arbitration is pending, the business, operations, physical plant 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.

#### 10.5 Cost of Arbitration

All direct costs and expenses of mediators, arbitrators, and associated facilities shall be borne equally by the parties; all costs and expenses of each party other than those for payment to the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party which incurs such expenses. In the event legal proceedings (other than mediation and arbitration) are instituted to enforce a settlement agreed to in a mediation or an arbitration decision, the prevailing party in said enforcement proceedings shall be compensated for all costs associated with enforcement of the settlement, including attorneys fees, in addition to any other relief to which it may be entitled.

#### 10.6 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.

### 11. EMPLOYEE CONDUCT

#### 11.1 Employee Conduct and Discipline

All Amtrak employees/subcontractors engaged in providing the State Provided Services shall be fully trained and qualified, according to Amtrak standards, and shall discharge their duties in a safe, courteous, and efficient manner. Employees dealing with the public shall be clean and properly attired while on duty. Amtrak shall properly discipline any employee whose conduct is not consistent with the proper and efficient operation of State Provided Equipment as listed below:

- a. Repeated instances of willful failure to use the features of State Provided Equipment in accordance with this Agreement and Amtrak and manufacturer operating procedures.



- b. Willful or negligent conduct resulting in damage to, or the degradation of, State Provided Equipment.

Amtrak shall promptly hold a disciplinary hearing, and if possible when requested by Caltrans, hold Amtrak employees and Subcontractors out of Services utilizing State Provided Equipment pending the hearing. Amtrak shall promptly hold disciplinary hearings, and in accordance with the findings of those hearings assess discipline in accordance with applicable Amtrak labor agreements. Information pertaining to employee conduct witnessed by Caltrans employees should be forwarded to Amtrak's Western Strategic Business Unit (SBU) in Los Angeles. If the hearing results in a finding of guilt, the employee shall be reassigned to the extent possible, from Services utilizing State Provided Equipment. The provisions of this section shall be governed by applicable Amtrak labor agreements.

## 12. EMERGENCIES

### 12.1 Force Majeure

Each party will be excused from performance of its obligation, except obligations involving payment to the other party, where such non-performance is caused by any event beyond its control, such as 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 non-performance and to overcome, remedy or remove such event in the shortest practical time.

### 12.2 Operation Disruption

Amtrak shall inform passengers on State Sponsored Service of any foreseeable disruptions and resulting delays. Amtrak may make reasonable temporary adjustments in schedules or consists and take other such actions as are necessary to minimize interference with train operations caused by the performance of necessary track and roadbed maintenance, track construction work or construction of public utilities or highways.

### 12.3 Notification of Emergency

In the event of an emergency involving State Provided Equipment, as detailed in this section, Amtrak shall notify Caltrans within two hours after Amtrak has been made aware of the occurrence of the emergency. Amtrak will notify Caltrans by any of the following procedures:

- a. The Caltrans 24 Hour Emergency Office;
- b. Caltrans "Arrow" terminal or printer - Sending a "FLASH" message.

For the purposes of this section, an emergency that requires notification involves a fatality, including crew members, on-board personnel or passengers, and

affects or was caused by State Provided Equipment or results in damages expected to exceed \$20,000 in repair or replacement of State Provided Equipment.

All other incidents not covered by the above shall be reported to Caltrans in the Daily Division Reports.

### 13. EFFECTIVE DATE, TERM AND TERMINATION

#### 13.1 Term

This Agreement shall take effect November 20, 1994 and remain in effect until terminated by 60 days advance notice from either party to the other.

#### 13.2 Termination for Cause by Caltrans

Caltrans may, at its sole discretion, terminate this Agreement upon thirty (30) days prior notification upon the occurrence of 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 scheduled or required under this Agreement when such refusal significantly disrupts Caltrans operations and is not excused by any other provisions of this Agreement.
2. Amtrak's insolvency or inability to meet its obligations, the filing of an involuntary petition in bankruptcy against it, the adjudication of bankruptcy, 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.
3. Amtrak's failure to comply with a valid law, ordinance, rule, regulation or order of any legal entity or authority and that failure has a material impact on Amtrak's ability or fitness to carry out its obligations to provide the Services under this Agreement.
4. Amtrak's failure to comply with the terms and conditions of the Maintenance Agreement.

#### 13.3 Termination for Cause by Amtrak

Amtrak may, at its sole discretion, terminate this Agreement upon the occurrence of material breach of this Agreement, which shall include, but not be limited to, the failure of Caltrans to make payments as required by this Agreement.

#### 13.4 Termination for Convenience

Caltrans 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 or merger of Caltrans with another entity.
2. Legislation or court decision requiring that another entity operate or finance the Services.
3. Funding is not available for the Services.
4. Patronage on trains included in the Caltrans operation falls so short of projections that the Service is not deemed cost effective with respect to the transportation benefits and air quality goals.
5. Legislation, regulation or court decision places on Caltrans, or on the operation of the Services, financial or operational burdens which are so great as to degrade service quality below acceptable levels, or which imposes unforeseen and excessive liabilities on Caltrans, or which raises costs to a level where costs are deemed by Caltrans to exceed benefits.
6. Caltrans determines that continued provision of Services by Amtrak will result in imminent danger to the public health or safety.

#### 13.5 Termination Procedure

Upon termination, 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 and clearly state the basis for that action.
2. The termination shall be effective no later than thirty (30) days after receipt of notice, except that a termination for cause shall not become effective if the other party has taken effective action to remedy the default within that thirty (30) day period.

#### 13.6 Rights and Obligations Upon Termination

1. Upon termination for cause or termination for convenience Caltrans shall have the right to contract for Services by another party.
2. Amtrak shall bear any incremental cost incurred by either Caltrans or Amtrak that is attributable to termination for cause by Caltrans.
3. Caltrans shall bear any incremental cost incurred by either Caltrans or Amtrak that is attributable to termination for cause by Amtrak.
4. Notwithstanding Subsections 2 and 3 above, Caltrans shall pay the following termination costs to Amtrak upon termination for convenience:

TRANSFER AGREEMENT

- a. The reasonable cost of settling and paying claims out of the termination of Services under subcontracts or purchase orders;
  - b. Reasonable costs determined at the time of termination which are incurred pursuant to the performance of any specific written instructions received from Caltrans concerning such termination; and,
  - c. Any other reasonable costs incidental to such termination of Services.
5. Notwithstanding all of the foregoing, the total amount of termination costs payable to Amtrak shall not exceed 1/12 of the Approved Contract Amount for the Fiscal Year in which the termination occurs.
  6. No termination of this Agreement shall diminish or affect Caltrans obligation to pay for any Services rendered or to fulfill other obligations incurred prior to the effective date of the termination.

IN WITNESS WHEREOF, the parties have set their hands

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

NATIONAL RAILROAD  
PASSENGER CORPORATION

\_\_\_\_\_  
(sign)

\_\_\_\_\_

\_\_\_\_\_  
(print)

\_\_\_\_\_

\_\_\_\_\_  
(date)

\_\_\_\_\_

By:

By:

Its:

Its:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name  
Title

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

APPENDIX 1  
TRANSFER OF EQUIPMENT FORM



APPENDIX 2

FORM OF BUDGET

AND

APPROVED CONTRACT AMOUNT

FORM OF BUDGET

Fiscal Year: \_\_\_\_\_

Train No # \_\_\_\_\_

Note 1

Revenues

Transportation	
Food & Beverage	
Mail, Express, other	

Total Projected Revenues

Expenses

	Amtrak Provided Equipment	State Provided Equipment
Train & Engine Crews	Note 2	
Train Fuel	Note 3	Note 4
OBS - labor	Note 3	Note 4
OBS - supplies	Note 3	Note 4
Rolling Stock Rental		
Station Services		
Transportation		
Maintenance of Equipment	Note 3	Note 5
Maintenance of Way		
Other Railroad		
Railroad Performance Payments		
Commissary		
Crew Base		
Sales and Marketing		
Reservations		
General Support		
Insurance		
Accounting & Administration		

Projected Annual Expense \_\_\_\_\_

Projected Annual Income (Deficit) \_\_\_\_\_

Projected State Share of Deficit Note 6

Equipment Capital Costs (D & I) \_\_\_\_\_

Total Annual State Contribution \_\_\_\_\_



NOTES

1. A separate budget sheet shall be prepared for each train number for the fiscal year. A single summary sheet shall show the total projected cost to the State for all 49-U.S.C. 24704 service for the next fiscal year.
2. Where no note is shown the budgeted value shall reflect the allocated cost as currently specified by 49-U.S.C. 24704 agreements.
3. Budget value based on allocated costs for Amtrak Provided Equipment.
4. Budget value based on actual costs for State Provided Equipment.
5. Budget based on the total maintenance budget, extracted on the basis of vehicle months for State Provided Equipment on that train number for the fiscal year, according to the Planned Deployment Plan. The total budget allocations for the maintenance of State Provided Equipment across all train numbers shall equal the total maintenance budget generated in accordance with the terms of the Maintenance Agreement. Section 6 - Materials Management, of the Maintenance Agreement.
6. Costs shared per existing 49-U.S.C. 24704 agreements.

ANNUAL CONTRACT AMOUNT

Fiscal Year \_\_\_\_\_

Total Annual State Contribution (Operating Expense)  
(Amount generated from Form of  
Budget for all Train Numbers) \_\_\_\_\_

Total State Cost for Inventory Control Personnel  
Personnel Salary \_\_\_\_\_

Personnel Benefits \_\_\_\_\_

TOTAL FOR INVENTORY CONTROL  
(See Form of Invoice, Note 7) \_\_\_\_\_

Total State Cost for Storage Facilities  
(Not included elsewhere) \_\_\_\_\_

TOTAL CONTRACT AMOUNT \_\_\_\_\_

APPENDIX 3  
FORM OF INVOICE

FORM OF INVOICE

Month: \_\_\_\_\_

Train No #  
\_\_\_\_\_

Note 1

Revenues

Transportation	
Food & Beverage	
Mail, Express, other	

Total Months Revenues \_\_\_\_\_

Expenses

	Amtrak Provided Equipment	State Provided Equipment
Train & Engine Crews	Note 2	
Train Fuel	Note 3	Note 4
OBS - labor	Note 3	Note 4
OBS - supplies	Note 3	Note 4
Rolling Stock Rental		
Station Services		
Transportation		
Maintenance of Equip	Note 3	Note 5
Maintenance of Way		
Other Railroad		
Railroad Performance Payments		
Commissary		
Crew base		
Sales and Marketing	Note 3	Note 4
Reservations		
General Support		
Insurance		
Accounting & Administration		

Total Month's Expenses \_\_\_\_\_

Months Income (Deficit) \_\_\_\_\_

State Share of Deficit \_\_\_\_\_ Note 6

Inventory Control \_\_\_\_\_ Note 7

Equipment Capital Costs (D & I) \_\_\_\_\_

Less:

Monthly Advanced Payment \_\_\_\_\_

Amount Due (Refund) from State \_\_\_\_\_

NOTES

1. A separate invoice shall be submitted for each train number for each month. A single summary sheet shall show the total State contribution for all 49-U.S.C. 24704 service for the month.
2. Where no note is shown the expense shall reflect the cost as currently specified by 49-U.S.C. 24704 agreements.
3. Expense shall be the costs for Amtrak Provided Equipment.
4. Expense shall be the actual costs for State Provided Equipment.
5. Expense shall be the actual cost for Equipment maintenance, extracted on the basis of vehicle months for State Provided Equipment on that Train Number for that month. The total actual cost for the maintenance of State Provided Equipment across all Train Numbers shall equal the total cost shown on the maintenance cost information sheet generated in accordance with the terms of the Maintenance Agreement. This does not include inventory control labor (1 person).
6. Shared costs based on current 49-U.S.C. 24704 agreements.
7. Expense shall be the actual cost for one inventory control position. Inventory control position shall be limited to one Personnel Year (PY) with benefits and salary not to exceed \$44,000/year.

APPENDIX 4

STATE PROVIDED EQUIPMENT OPERATING PROCEDURES

## DOOR CONTROL

### EQUIPMENT

The California Car is equipped with trainlined door control, to maximize passenger flow in boarding and alighting operations, and thereby minimize station dwell time. Each cab and trailer has two 52-inch wide passenger door openings on each side of the lower level. The doors are of the sliding pocket type, electrically controlled and pneumatically operated, with two door panels for each door opening.

The doors may be controlled from control panels located adjacent to the door openings at the "B" end of the car. The control panels are accessible and operable by a standard conductor's key. Each panel may be configured to control all doors ahead of the local door, all doors behind the local door, or the local door alone. The door control system is interlocked with the propulsion control system to prevent motion of the train when any of the doors are opened for passenger boarding or alighting. An override button is provided to allow one door leaf to be kept open upon departure at speeds up to 10 miles per hour, to allow Amtrak personnel to look out the door and in either direction of train travel. The override button must be kept depressed to keep the door open.

The lower floor of the California Car is 18 inches above the Top of Rail. Station platforms in California are intended to be constructed or modified to a height of 8 inches above the Top of Rail. The predominant step height between platform and car floor throughout California is therefore 10 inches. There are, however, platforms lower than the Top of Rail.

### PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the doors and trainlined door control system. The following shall supplement Amtrak's standard boarding and alighting procedures:

- Both leaves shall be opened at active doors throughout boarding and alighting.
- At stations with platforms constructed to 8 inches above the Top of Rail, all doors on the platform side of the train shall be opened for boarding and alighting when the train is stopped at a station.
- At stations with platforms constructed to 8 inches above the Top of Rail, when a consist is longer than a train platform, or the train must be stopped such that not all doors are positioned over the platform, only those doors over the platform shall be opened.
- At stations with platforms lower than 8 inches above the Top of Rail, the number of doors opened shall equal the number of train Amtrak personnel available to attend boarding and alighting, with one Amtrak personnel per open door.

- At stations with platforms lower than 8 inches above the Top of Rail, Amtrak personnel shall deploy step boxes on the platform to assist fully ambulatory passengers in boarding and alighting.
- When one or more wheelchair lift is deployed at any station, at least one other door shall be opened and crewed for boarding and alighting of fully ambulatory passengers.

## WHEELCHAIR ACCESS

### EQUIPMENT

The California Car is designed to maximize access to the car, its amenities and features for all passengers, regardless of physical ability. It is equipped with on-board wheelchair lifts, one on either side of the car, both located at the door openings at the "B" end of the car. The wheelchair lifts are manually deployed and electrically operated, and can be used for the boarding and alighting of passengers in wheelchairs over the entire range of platform/car floor height differentials. Door openings at the "B" end of the car are identified by standard wheelchair access symbols.

The lower level passenger seating area of the California Car is designed for access by passengers in wheelchairs. Two spaces for passengers in wheelchairs are provided in the lower level passenger seating area. These spaces are equipped with tip-up passenger seats which when stored, allow ample space for the positioning of a wheelchair, according to ADA requirements. In addition, all double and single seats have movable armrests to allow the transfer of a passenger from a wheelchair to a standard passenger seat.

There are two lavatories on the lower level, of which the one at the "A" end is designed for access by passengers in wheelchairs.

### PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the on-board wheelchair lifts. The following shall supplement Amtrak's standard procedures for providing access to passengers with physical disabilities.

- Amtrak personnel attending passenger doors shall identify in advance passengers on the train or on the platform who will require use of the on-board lift(s), and direct them to attended, lift-equipped doors.
- If all wheelchair seating locations in a given car are full, and a boarding passenger in a wheelchair does not wish to transfer to a standard seat, the passenger shall be directed to the nearest attended lift-equipped door, in a car that has adequate capacity. If no other lift-equipped door is attended,



Amtrak personnel shall attend the nearest lift-equipped door in a car that has adequate capacity.

- At stations with platforms lower than 8 inches above the Top of Rail, if lifts are deployed at one or more equipped door openings, at least one additional door shall be open and attended for the boarding and alighting of fully ambulatory passengers.
- Amtrak personnel attending doors where lifts are deployed shall direct fully ambulatory passengers to other doors for boarding and alighting.
- Amtrak personnel shall provide assistance as required or requested to passengers using the on-board lift to ensure their safe and secure boarding and alighting.
- Amtrak personnel shall direct passengers in wheelchairs to designated seating locations in the lower level passenger seating area, and shall provide whatever assistance is required to ensure that both the passengers and their mobility aids are safely and securely situated.
- Amtrak personnel shall assist passengers wishing to transfer from wheelchairs to standard passenger seats as required or requested, and shall assist them in transfer to their wheelchairs with ample time before the next scheduled stop to facilitate efficient passenger boarding and alighting.
- Wheelchairs of passengers transferring to standard seats shall be stored, if possible, in the bicycle storage locker of the same car. If the bicycle storage locker is entirely occupied by bicycles or other mobility aids, the passenger will be directed to a wheelchair seating location.
- Priority for use of wheelchair seating locations in a given car will be given to passengers in wheelchairs, over fully ambulatory passengers traveling with passengers in wheelchairs and using the tip-up seats, unless additional capacity can be provided in other cars.
- Groups of passengers traveling together in wheelchairs will be accommodated to the extent possible in a single car. If available capacity in a single car is exceeded, one or more passengers shall be asked to transfer to standard passenger seats if wheelchair storage space is available, or shall be directed to the nearest available car with adequate capacity. The on-board lift on that car shall be attended if it is not already.

## INFORMATION DISPLAYS

## EQUIPMENT

The California Car is equipped with trainlined destination and passenger information displays. The displays will be used to provide advance notice of station

---

arrivals, service information, and any such public information that Caltrans specifies. Two displays are located on the outside of the car, on either side, two in the upper level passenger area and two in the lower level passenger area. An additional display is provided on the "A" end of cab cars. Food service cars will have only one display in the lower level.

The system is controllable from a display keyboard, one of which is located in the electrical locker of each car. The displays for an entire consist may be controlled from the electrical locker of any car. The trainlined information display system has the capability, via Global Positioning System (GPS) technology, for preprogramming of all station announcements on a given route. Until this capability can be utilized, however, individual station announcements shall be actuated manually by Amtrak personnel in advance of arrivals. The information displays will also be programmable in advance with background information to be determined by Caltrans. Cab end displays shall indicate the terminus of the route to which the train is assigned.

#### PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the trainlined destination and passenger information signs. Some of the following procedures will become unnecessary when the full GPS-based capability of the destination sign system becomes available.

- Caltrans and Amtrak will agree on the content and format of all information to be programmed for display.
- Maintenance personnel shall ensure that only and all of the information determined by or agreed to with Caltrans is programmed for display in every car.
- Amtrak personnel shall scroll through all display contents in advance of each departure to verify the operability of the system and the content of preprogrammed background information and station announcements.
- Amtrak personnel shall monitor the operation of the system and content of all display information periodically throughout the course of each trip.
- Amtrak personnel shall key the appropriate code for each station stop in advance of arrival, prior to making a voice announcement.
- Amtrak personnel shall ensure that next stop information is canceled or overridden following each station stop.

#### AUDIO ENTERTAINMENT SYSTEM

## EQUIPMENT

California Car cabs and trailers provide at-seat audio entertainment and information. Each car is equipped with a 3-channel audio system, with a central control complex located in the electrical locker. The audio system includes two multiple-disc compact disc changers, a cassette tape player/AM-FM radio tuner, and an amplifier. Each seating location is provided with personal control unit (PCU) with channel selector and volume controls. The PCU accepts standard personal wire-type headsets, either passengers' personal property or headsets purchased on board the train. The audio entertainment broadcast may be overridden by Amtrak personnel or prerecorded voice announcements from the public address system.

## PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the audio entertainment and information system.

- Caltrans and Amtrak will agree on the content and format of all information to be programmed for broadcast.
- Maintenance personnel shall ensure that only and all of the entertainment and information determined by or agreed to with Caltrans is programmed for broadcast in every car.
- Amtrak personnel verify the operability of the system and the content of preprogrammed entertainment and information in advance of each departure.
- Amtrak personnel shall monitor the operation of the system and content of preprogrammed entertainment and information periodically throughout the course of each trip.
- Amtrak personnel shall ensure the security of the central control complex in the electrical locker of each car.
- Amtrak personnel shall vend headsets to passengers from the food service car upper level service area and any cart-based point of sale for a price to be agreed with Caltrans.

## SEAT BACK INFORMATION CARDS

### EQUIPMENT

Most seat locations in California Car cabs and trailers will be provided with seat-back magazine nets. These will be used to provide passengers with printed vehicle information, safety and emergency procedures, entertainment programming, Amtrak or Caltrans periodicals and marketing material.

## PROCEDURES

- Caltrans and Amtrak will agree on the content and format of all material to be provided at seat locations.
- Amtrak personnel will ensure the provision of current agreed material at each seat location prior to each departure.
- Amtrak personnel will ensure that sufficient replacement material is available aboard each train to replace that removed or requested by passengers.

## LAVATORIES

### EQUIPMENT

Lavatories in California Cars incorporate several features that differ from those on existing Amtrak equipment operated in California. In particular, the lavatories include attendant call buttons, electric hand dryers, disposable soap dispensers, and infant diaper changing tables (Accessible lavatory only).

The lavatory attendant call system is trainlined to sound an audible signal in each car of the train. The car in which the call button has been activated will indicate via lights at each upper level inter-car passageway the specific space to which the call applies.

### PROCEDURES

- Amtrak personnel shall verify the operability of all equipment and features, the cleanliness of the spaces and fixtures, and the provision of sufficient consumables in each lavatory space prior to each departure.
- Upon the sounding of a lavatory attendant call, Amtrak personnel shall identify the car and lavatory from which the call was initiated. Amtrak personnel shall knock on the lavatory door and inquire as to the assistance required. Should no response result, Amtrak personnel shall unlock the door, if locked, evaluate the situation and render assistance as necessary.
- Amtrak personnel shall reset the attendant call system, using the dedicated reset switch in the electrical locker, immediately upon completion of their assistance on scene.
- Amtrak personnel shall monitor the operability of all equipment and features, the cleanliness of the spaces and fixtures, and the provision of sufficient consumables in each lavatory space throughout the course of each trip.

Amtrak personnel shall restock all consumables in each lavatory (toilet tissue, hand soap, seat protectors, facial tissue, etc.) as required during the course of each trip.

#### FOOD SERVICE

Caltrans and Amtrak will determine, via separate and supplemental agreement, the standards, practices and procedures for the provision of service within the food service cars or via cart-based food service.

#### SEATS

#### EQUIPMENT

The California Car cabs trailers and baggage combines are equipped with single and double seats designed and arranged to maximize the comfort, convenience, aesthetics, and accessibility of the equipment. The intent of the equipment is that every passenger shall be provided the most comfortable travel possible for their fare.

The majority of seating in the passenger areas is in paired seats. A small number of single seats are provided as well. All seats are equipped with armrests that may be raised or lowered according to the preference of the passengers and to facilitate access to and egress from the seats. Seat pairs are fitted with center armrests between the two seating locations. When raised, the center armrest stows flush with the seat back, providing a continuous bench seat, wider than the two normally available widths combined.

#### PROCEDURES

A paid individual passenger boarding the California Car is entitled to one seat location for his or her person. No passenger shall be entitled to more than one seat location for their person or any personal effects. Only if light loading permits shall passengers use adjacent seat locations for placement of their belongings.

Amtrak personnel shall provide every assistance necessary for elderly or physically challenged passengers to be placed in or moved from a seat. In the event that an individual location, either a single or double seat, is not sufficient for the comfortable accommodation of a passenger because of physical dimension or handicap, such a passenger shall be permitted to occupy the entire width of a double seat with the center armrest raised. This expanded occupancy shall be provided at no additional cost to the passenger.

## BICYCLES

Amtrak shall permit passengers to bring bicycles on the trains, subject to the terms of this Agreement.

## EQUIPMENT

Each California Car cab and trailer are equipped with a bicycle storage and securement unit, located in one passenger vestibule diagonally across from the accessible lavatory. The unit provides space and securement for up to three bicycles, stored vertically on their rear wheels and secured to the inside bulkhead of the unit.

## PRIORITY

Bicycles shall be accommodated on California Car consists or consists including one or more California Cars, up to the combined capacity of California Car bicycle storage units. All 49-U.S.C. 24704 train consists and any special trains made up of or including California Cars shall accommodate bicycles to the extent of the available bicycle storage capacity.

The primary purpose of the bicycle storage unit shall be to secure storage and securement of bicycles. All bicycles boarding a consist of California Cars shall be stored and secured in the bicycle storage units.

## CAPACITY

Should the number of bicycles boarding a train made up of, or including, California Cars exceed the available bicycle storage capacity, the Conductor shall determine the available passenger space in the lower level of the cars. At the discretion of the conductor, additional bicycles may be boarded, provided that:

- a. They are held in a standing position in the lower level passenger seating area by the subject passenger and do not obstruct or impede the passage of other passengers, or
- b. They are held in a standing position in one of the lower level vestibules and do not obstruct or impede the passage of other passengers.

Amtrak personnel shall monitor bicycle storage capacity and direct passengers boarding bicycles in excess of the bicycle storage capacity of the car being boarded to other cars with available capacity. Should a passenger attempt to board a bicycle on a train which is at bicycle capacity, Amtrak personnel shall deny that boarding if the Amtrak personnel judges that regular passenger loading precludes the safe carriage of the bicycles.

## PROCEDURES

The following procedures shall be followed by Amtrak personnel in boarding, storing and alighting passengers with bicycles:

- a. Passengers boarding California Cars with bicycles shall be directed to the doors opening to the vestibule in which the bicycle storage unit is located.
- b. Passengers shall carry bicycles, clear of the ground, from the platform into the vestibule of the car. Amtrak personnel shall assist passengers carrying bicycles as necessary to ensure safe and expeditious boarding.
- c. In the vestibule, bicycles shall be lifted to a vertical position, with their rear wheels on the floor, for movement into the bicycle storage unit. Amtrak personnel shall assist passengers storing bicycles, as necessary, to ensure safe and expeditious boarding.
- d. Bicycles shall be secured in the bicycle storage unit as directed by storage device instructions, conspicuously displayed in or adjacent to the bicycle storage unit and included in this Appendix. Bicycles may be locked in the storage unit by passengers with personal bicycle locks.
- e. Passengers boarding bicycles shall take seats in the passenger seating areas of the train. Passengers with bicycles may remain in the company of their stored bicycle at the discretion of the Amtrak personnel if they do not obstruct or impede the passage of other passengers.
- f. Audible announcements of the next scheduled station stop shall provide adequate notice for passengers to remove bicycles from the storage unit.
- g. Amtrak personnel shall assist passengers removing bicycles, as necessary, to ensure safe and expeditious alighting.
- h. Passengers shall carry bicycles, clear of the ground, from the vestibule to the platform. Amtrak personnel shall assist passengers carrying bicycles as necessary to ensure safe and expeditious alighting.

## GROUPS OF BICYCLISTS

Groups of bicyclists shall be accommodated to the extent of available bicycle storage space on each car and in an entire consist. Should the number of passengers in a group boarding bicycles exceed the storage capacity of a single car, Amtrak personnel will direct the group to store additional bicycles in other cars. Should the number of passengers in a group boarding bicycles exceed the storage capacity of an entire train, Amtrak personnel will advise the group accordingly, and allow them the option to board part of the group or wait for a following train. At no point shall the safety and comfort of any other passengers be compromised to accommodate passengers carrying bicycles in excess of the capacity of the consist.





MAINTENANCE AGREEMENT  
INDEX

1. GENERAL PROVISIONS

- 1.1 Definitions
- 1.2 Notices
- 1.3 Successor and Assigns
- 1.4 Entire Agreement
- 1.5 Severability
- 1.6 Waiver
- 1.7 Authority of Caltrans Officer
- 1.8 Interpretation of this Contract

2. GENERAL SERVICES PROVIDED

- 2.1 General Scope of Services
- 2.2 Utilities
- 2.3 Warranty Support
- 2.4 Performance Guarantee Support
- 2.5 Testing and Acceptance

3. AMTRAK RIGHTS AND OBLIGATIONS

- 3.1 Documentation Requirements
- 3.2 Reporting Information
- 3.3 Trainings and Manuals
  - 3.3.1 Training of Amtrak/Caltrans Employees
  - 3.3.2 Manuals for State Provided Equipment
- 3.4 Quality Control
- 3.5 Subcontracting
- 3.6 Compliance with Industry Codes, Regulations and Standards
- 3.7 Security

4. CALTRANS RIGHTS AND OBLIGATIONS

- 4.1 Outside Contractors
- 4.2 Caltrans Right to Additional Information
- 4.3 Access to Equipment

5. MAINTENANCE OF STATE PROVIDED EQUIPMENT

- 5.1 Location of Maintenance of State Provided Equipment
- 5.2 General Maintenance Requirements
  - 5.2.1 Locomotive Maintenance Schedules
  - 5.2.2 Car Maintenance Schedules
  - 5.2.3 Food Service Car Maintenance Schedules
- 5.3 General Repair Requirements
  - 5.3.1 Damage to State Provided Equipment
  - 5.3.2 Heavy Overhaul
- 5.4 Maintenance and Repair Standards
  - 5.4.1 Equipment Cleaning and Inspection
  - 5.4.2 Alterations and Modifications
- 5.5 Event of Non-Compliance

6. MATERIALS MANAGEMENT

- 6.1 Material Management Systems
- 6.2 Purchasing of Spare Parts and Consumables
- 6.3 Reporting of Spare Parts Transactions
- 6.4 Materials Management Budget
- 6.5 Invoicing and Payment
  - 6.5.1 Invoicing for Material Management
  - 6.5.2 Invoicing for Purchased Spare Parts

7. ANNUAL MAINTENANCE BUDGET

8. INVOICING AND PAYMENT

9. DAMAGE TO EQUIPMENT

10. DISPUTE RESOLUTION

11. EFFECTIVE DATE, TERM AND TERMINATION

- 11.1 Term
- 11.2 Termination for Cause by Caltrans
- 11.3 Termination for Cause by Amtrak
- 11.4 Termination for Convenience
- 11.5 Termination Procedure
- 11.6 Rights and Obligations Upon Termination

APPENDIX 1

State Provided Equipment Vehicle Details

APPENDIX 2

Amtrak/Caltrans Warranty Tag Procedure for Caltrans Owned Locomotives and Cars

APPENDIX 3

Amtrak/Caltrans Maintenance Analysis Program - F59PHI Locomotive MAP Forms

APPENDIX 4

Amtrak/Caltrans Maintenance Analysis Program - Car MAP Forms

APPENDIX 5

Amtrak/Caltrans Maintenance Analysis Program - Food Service Car MAP Forms

APPENDIX 6

Spare Parts Invoice Format

APPENDIX 7

Form of Budget

MAINTENANCE AGREEMENT BETWEEN  
CALIFORNIA DEPARTMENT OF TRANSPORTATION  
(CALTRANS)  
AND  
NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)  
FOR THE MAINTENANCE OF  
STATE PROVIDED EQUIPMENT  
DATED NOVEMBER 20, 1994

THIS AGREEMENT, DATED NOVEMBER 20, 1994, IS ENTERED INTO BY AND BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) AND THE NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK).

1. GENERAL PROVISIONS

1.1 Definitions

As used in this Agreement, the following terms shall have the meaning specified in this Section.

- a. Agreement. This Agreement and all appendices hereto as amended or modified pursuant to the terms hereof.
- b. Amtrak. The National Railroad Passenger Corporation.
- c. Amtrak Provided Equipment. Locomotives and passenger cars supplied by Amtrak under contract for State supported 49-U.S.C. 24704 service.
- d. Approved Contract Amount. The budget agreed upon by the parties pursuant to the process described in Section 7 of this Agreement, including any amendments to such budget.
- e. Caltrans. The California Department of Transportation.
- f. Contract Services/Services. The train maintenance operations and related functions that are specified to be performed by Amtrak for Caltrans by this Agreement and current 49-U.S.C. 24704 agreements.
- g. Caltrans Officer. The Chief of the Office of Equipment of the Division of Rail of the California Department of Transportation, acting directly or through properly authorized agents, such agents acting within the scope of the particular duties assigned to them.

- h. Delivery. The arrival and acceptance by Caltrans, of vehicles, equipment, parts, materials, tools, documentation and training required under equipment manufacture contracts at the designated point of delivery in California.
  - i. Equipment Delivery Period. The period of time between the first delivery of State Provided Equipment and the transfer to Amtrak of the final piece of State Provided Equipment contemplated by this Agreement.
  - j. Federal Fiscal Year/Fiscal Year. The Federal Fiscal Year from October 1 through September 30.
  - k. Manufacturer. The original equipment manufacturers of State Provided Equipment including sub-suppliers.
  - l. Operator. When used in this Agreement or the Appendices to, it shall mean Amtrak.
  - m. Planned Deployment Plan. The detailed description of the operation of State Provided Equipment in a Federal Fiscal Year, including specific routes on which Amtrak shall provide Services, train consists, units of equipment to be maintained, and other related services, all as agreed upon by the parties, prior to the start of each Federal Fiscal Year, or as amended by the agreement of the parties during the course of the Federal Fiscal Year.
  - n. State. The State of California, Department of Transportation.
  - o. State Provided Equipment. Locomotives and passenger cars, including self propelled cars supplied by Caltrans, that are used in providing the Contract Services.
  - p. Service Property. The service property includes tracks, land, structures, and other maintenance facilities that are located on or adjacent to the rail lines and yards, that are used by Amtrak in provision of the Services under this Agreement.
  - q. Title. Documentation of ownership of locomotives and passenger cars as required by the State of California.
  - r. Transfer. Transfer is the change of custody for each locomotive or passenger car from Caltrans to Amtrak, or from Amtrak to Caltrans. Each locomotive or passenger car shall be considered transferred when the transfer document for the individual vehicle is signed by the Caltrans Officer and Amtrak's appropriate representative. Physical custody of each vehicle shall be assumed at a location agreed to by Caltrans and Amtrak.
-

- s. Transfer Agreement. The agreement between Caltrans and Amtrak covering the transfer to Amtrak and operation by Amtrak of State Provided Equipment.

## 1.2 Notices

Any notices, reports, or other communication shall unless otherwise specified be in writing, and shall be delivered in hand or mailed by first class mail, postage prepaid, and addressed to:

G.O. Mallery  
Chief Executive Officer West Coast Strategic Business Unit  
National Railroad Passenger Corporation  
800 North Alameda Street  
Los Angeles, CA 90012  
Telecopy: (213) 683-6890

Cindy McKim  
Deputy Director, Rail, Transit & Aeronautics  
California Department of Transportation  
1801 30th Street, East Building  
Sacramento, CA 95816  
Fax: (916) 227-9487

Either party may change the name, address or title of the party to be notified hereunder, by notifying the other party in writing of such change.

## 1.3 Successor and Assigns

The rights and obligations of Amtrak and Caltrans hereunder may not be assigned, other than by an act of federal or state law, unless with the prior written consent of both parties.

## 1.4 Entire Agreement

This Agreement, which relates solely to the substitution of State Provided Equipment in lieu of APE, is in addition to agreements between Caltrans and Amtrak, which relate solely to the use of State funding to support Amtrak intercity operations.

This Agreement embodies the entire agreement between Caltrans and Amtrak as it relates to State Provided Equipment. No oral or prior written matter not incorporated herein 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, current 49-U.S.C. 24704 agreements, and the Maintenance Agreement for State Provided Equipment. This Agreement will not be modified except in writing subscribed to by both parties.

1.5 Severability

In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remainder of this Agreement shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted. This will not apply where the provision 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 that deletion substantially alters the rights or obligations of either party under the Agreement.

1.6 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 of breach hereof except as is expressly stated in 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.

1.7 Authority Of Caltrans Officer

The Caltrans Officer shall decide on behalf of Caltrans all questions which may arise regarding the quality or acceptability of the Services performed under this Agreement; all questions which may arise regarding the interpretation of this Agreement; all questions that may arise regarding the acceptable fulfillment of this Agreement on the part of Amtrak; and all questions which may arise regarding compensation. In addition, the Officer shall have complete authority to administer and make decisions on disputes and claims on behalf of Caltrans during the term of this Agreement. As the designated representative of Caltrans, the Officer's decision shall be Caltrans final position and the Officer shall have the authority to enforce and make effective such decisions and orders which Amtrak fails to carry out promptly. This is subject to the provisions of Section 10 - Dispute Resolution, of this Agreement.

The Officer shall respond in writing, within twenty (20) working days of receipt, to all written questions and requests concerning approvals, interpretations, and other matters pertaining to this Agreement, unless otherwise allowed for by this Agreement.

Amtrak General Management shall respond in writing, within twenty (20) working days of receipt, to all written questions and requests for information from the Caltrans Officer regarding this Agreement as those questions relate to Amtrak's maintenance of State Provided Equipment.

1.8 Interpretation of the Agreement

Should it appear that the Services to be done, or any of the matters relative thereto are not sufficiently detailed or explained in this Agreement, Amtrak may apply to the Officer for such further written explanations as may be necessary, and shall as part of this Agreement conform to the explanation provided by the Officer, provided that such explanation is consistent with the provisions of this Agreement.

2. GENERAL SERVICES PROVIDED

2.1 General Scope of Services

Amtrak shall, within the funds available in the Final Budget each year, maintain, repair, clean, inspect, and service all State Provided Equipment in accordance with the equipment maintenance standards described in this Agreement. Amtrak shall do this Service work in a timely manner at designated maintenance facilities as detailed in this Agreement.

Specifically, Amtrak shall:

- a. Perform the scheduled maintenance, repair and cleaning of State Provided Equipment as detailed in Section 5 - Maintenance of State Provided Equipment, of this Agreement.
- b. Perform accident damage repairs to State Provided Equipment as allowed for by this Agreement.
- c. Perform the material management and purchasing functions as detailed in Section 6 - Materials Management, of this Agreement.

The actual vehicles that shall be considered State Provided Equipment for the purposes of this Agreement are listed in Appendix 1 - State Provided Equipment Vehicle Details.

2.2 Utilities

Amtrak shall be responsible for the supply of all utilities (wayside power, water and electricity) at all locations that are used in the provision of the Services

---



as required by this Agreement. This shall include the provision of utilities at any layover points that are required by this Agreement or the Transfer Agreement.

### 2.3 Warranty Support

Amtrak shall comply with the terms of any Manufacturer warranty on State Provided Equipment, and cooperate with Caltrans in the fulfillment of any manufacturer obligation on those warranties. Amtrak shall follow the warranty procedures and use the warranty forms and tags as illustrated in Appendix 2 - Amtrak/Caltrans Warranty Tag Procedure for Caltrans Owned Locomotives and Cars. All reimbursements from the manufacturers shall be in the form of parts or spare parts credit which shall be applied by Amtrak solely for the benefit of State Provided Equipment. Amtrak shall ensure that adequate controls are in place to ensure that Caltrans is not charged for Caltrans supplied items and that Caltrans supplied items are not diverted to non Caltrans uses.

Caltrans will be party to any dispute between Amtrak and the Manufacturers concerning warranty issues and reserves the right to be present at any tear down inspections of warranty disputed parts. Access to State Provided Equipment will be provided per Section 4 of the Transfer Agreement.

For warranty purposes, Amtrak shall maintain equipment histories on all State Provided Equipment listed in Appendix 1 - State Provided Equipment Vehicle Details. Amtrak will retain copies of warranty claim forms and all other warranty information in a location agreed to by Caltrans and Amtrak.

### 2.4 Performance Guarantee Support

Amtrak shall provide support and will participate with Caltrans in the measurement of vehicle availability as required under the Performance Guarantee provisions from the Manufacturers. Amtrak shall supply maintenance information as required by this Agreement, and operational information as required by the Transfer Agreement, to enable Caltrans to maximize its reimbursements from Manufacturer performance guarantees. All reimbursements from the Manufacturers shall be in the form of parts or spare parts credit which shall be applied by Amtrak solely for the benefit of State Provided Equipment. Amtrak shall ensure that adequate controls are in place to ensure that Caltrans is not charged for Caltrans supplied items and that Caltrans supplied items are not diverted to non Caltrans uses.

### 2.5 Testing and Acceptance

Amtrak shall provide support and will participate with Caltrans and equipment manufacturers in the testing and acceptance of State Provided Equipment. A joint inspection of each piece of new equipment shall be

---

conducted by Caltrans and Amtrak per Section 1 - General Provisions of the Transfer Agreement, and specifically Sections 1.9 through 1.12.

### 3. AMTRAK RIGHTS AND OBLIGATIONS

#### 3.1 Documentation Requirements

Amtrak shall document and maintain a complete and accurate mechanical history on each piece of State Provided Equipment for control, maintenance, and repair scheduling and planning purposes, as well as for warranties and performance guarantees.

#### 3.2 Reporting Information

Amtrak will retain, for at least three (3) years, and make available to Caltrans upon request, all records concerning the inspection, maintenance, repair and cleaning of each unit of State Provided Equipment and will deliver such records to Caltrans at the end of that period if Caltrans so requests.

#### 3.3 Training and Manuals

To ensure that State Provided Equipment is maintained to the correct standards and practices embodied in this Agreement, the following subsections shall govern the provision of manuals necessary for training and the training for Amtrak/Caltrans personnel.

##### 3.3.1 Training of Amtrak/Caltrans Employees

Caltrans shall ensure all training contracted to be provided by the Manufacturers is given to Amtrak/Caltrans personnel. This shall include the provision of trainer's notes to Amtrak. Amtrak shall work with the equipment manufacturers and Caltrans to develop appropriate technical training courses, and to train employees in their required functions. The training courses to be provided by the Manufactures are listed below:

##### Locomotive

- 710G3B Engine Maintenance
- F59PHI Orientation
- F59PHI Electrical Systems
- 26LUL Familiarization
- Caterpillar 3412TA Familiarization

Car

- Operations Training
- Running Maintenance Training
- Heavy Maintenance Training

All subsequent training of Service personnel shall be the responsibility of Amtrak. Amtrak will be responsible for ensuring training is provided when necessary and that training is regularly updated as required.

All training programs or portions thereof designed specifically for State Provided Equipment will be reviewed and approved by Caltrans and will be designed, developed and implemented in accordance with established professional standards for performance-based instruction. Amtrak will provide Caltrans with copies of all training programs used for employees who are maintaining and repairing State Provided Equipment.

Amtrak will maintain and store training records which will be made readily available to Caltrans upon request. Training records will identify each employee who has received training and the date of courses taken.

### 3.3.2 Manuals for State Provided Equipment

The inspection, maintenance and repair of State Provided Equipment shall be carried out in conformance with the various manufacturers' maintenance instructions after a minimum of ten (10) copies of each manual have been delivered. Amtrak will be guided by the following manuals and others that may reasonably be issued from time to time:

- EMD Service Manuals for F59PHI locomotives
- GE Service Manuals for Dash-8 locomotives
- Caterpillar Service Manuals for Head End Power engines
- MK Service Manuals for the California Car

Caltrans shall be responsible for supplying the initial manuals to Amtrak upon the transfer of State Provided Equipment or when they become available, whichever occurs first. Amtrak shall be responsible for updating the manuals in accordance with information provided by the original equipment Manufacturer and shall maintain at least one master set of manuals in good condition, fully updated, in each location where regularly scheduled maintenance will occur. Manuals rendered lost or unusable through Amtrak negligence shall be replaced at no cost to Caltrans. For manuals rendered unusable through reasonable wear and tear, Caltrans shall be invoiced for the cost of replacement price paid by Amtrak.

### 3.4 Quality Control

Amtrak and Caltrans shall establish a Quality Control Program, including guidelines, standards and procedures for implementation as it relates to the maintenance, repair, service, and cleaning of State Provided Equipment.

Amtrak will ensure vendor compliance with specifications, material quality, and compliance with maintenance standards and procedures. Amtrak, and Caltrans as necessary, will conduct quality control performance reviews to assess the standards of maintenance, repairs, servicing, and cleaning of State Provided Equipment. Caltrans shall have the right to perform quality control monitoring at any time as long as such monitoring or inspection shall not unreasonably affect Amtrak's ability to provide these Services and the services required under the Transfer Agreement.

Quality deficiencies found during monitoring will be witnessed by authorized Amtrak personnel as deficiencies are found, and the quality control form will be signed off by both the monitor and Amtrak with or without comments.

Amtrak will be accountable for quality deficiencies found during performance monitoring which occur between the completion of a MAP inspection and return to service.

Monitoring which takes place soon (i.e., after one or more revenue trips) after equipment has been returned to service after maintenance or cleaning, are intended to be advisory only and without punitive action.

### 3.5 Subcontracting

Amtrak shall have the right to subcontract any of the Services to be provided under this Agreement subject to Caltrans approval, which approval shall not be unreasonably withheld. The subcontracting of any aspect of the contracted work does not relieve Amtrak of any of its obligation under this Agreement.

Amtrak's subcontractors involved in any aspect of providing the Contract Services shall be subject to the direction, supervision, and control of Amtrak and not Caltrans.

### 3.6 Compliance with Industry Codes, Regulations and Standards

Amtrak shall comply with FRA and CPUC regulations, AAR and accepted industry standards, and all other applicable State and local codes, as well as the standards set forth in this Agreement, during maintenance of State Provided Equipment.

Amtrak shall be solely responsible for any fines or penalties resulting from violations of applicable laws and standards, other than those that are solely the result of the original design and manufacture of State Provided Equipment.

### 3.7 Security

Amtrak shall be responsible for the security of State Provided Equipment when it is in operation or is located at a designated maintenance or layover facility.

## 4. CALTRANS RIGHTS AND OBLIGATIONS

### 4.1 Outside Contractors

In circumstances not involving Amtrak's sole negligent acts or omissions as provided in Section 9 of the Transfer Agreement, at its sole discretion, Caltrans may elect to arrange for the original equipment suppliers or other outside contractors to perform major repairs or modifications to State Provided Equipment, including performance of such work at designated maintenance facilities or other locations to be agreed upon, subject to current labor agreements. Amtrak shall, when directed by Caltrans, subcontract wreck repair as directed by Caltrans in those instances where Caltrans has determined that the estimated time and costs for that directed repair work are in the State's best interests. Unless otherwise agreed to, the State will pay Amtrak in advance for the estimated costs of those directed repairs from the State operating funds encumbered under the 49-U.S.C. 24704 agreement.

### 4.2 Caltrans Right to Additional Information

Caltrans shall have the right to obtain from Amtrak, within fifteen (15) working days of receipt of a written request, any reasonable information related to Services performed on State Provided Equipment. This is in addition to any other rights to information and reports included in this Agreement and the 49-U.S.C. 24704 agreements.

### 4.3 Access to Equipment

Authorized Caltrans staff will be allowed immediate and unannounced access to State Provided Equipment as pronounced in the Transfer Agreement, Section 4.2.

## 5. MAINTENANCE OF STATE PROVIDED EQUIPMENT

---

5.1 Location of Maintenance of State Provided Equipment

The maintenance of State Provided Equipment as provided for by this Agreement shall be performed in the locations listed below. The location at which individual items are maintained shall be consistent with the Planned Deployment Plan from the Transfer Agreement, and shall be chosen to ensure maximum in-service fleet time is achieved. Maintenance or repair of State Provided Equipment shall not be conducted in other locations without the prior approval of Caltrans.

- Los Angeles - Redondo
- Los Angeles - 8th Street
- Oakland - Amtrak car shop
- Oakland - Amtrak
- San Jose

Additionally, layover facilities and cleaning and inspection of equipment shall be provided at the following additional locations as required by the current Planned Deployment Plan:

- Santa Barbara
- San Jose
- Bakersfield
- Sacramento
- San Diego
- Roseville
- Colfax (future)
- San Luis Obispo (future)

Unscheduled repairs to State Provided Equipment to allow the completion of scheduled current operations may be performed at any location consistent with minimizing the disruption to service, preventing equipment damage and maintaining safety.

5.2 General Maintenance Requirements

Amtrak shall maintain all State Provided Equipment in accordance with a scheduled preventative maintenance program that is identified in this Agreement. The program may be modified from time-to-time by mutual agreement between Amtrak and Caltrans.

Work performed will be fully documented by individual units where possible, including equipment type worked on, person-hours expended, spares and materials consumed.

Periodic maintenance work shall be done in accordance with printed instructions. These instructions shall be found on the maintenance worksheets contained in Appendices to this Agreement which may be revised by mutual agreement of the parties. Each item of maintenance shall be signed by the mechanic when completed. The completed forms shall then be signed by the foreman in charge and Amtrak's Mechanical Department Officer. The completed forms shall be available for inspection by Caltrans representatives at any time after the completion of the relevant work and shall be kept on file for at least 3 years.

#### 5.2.1 Locomotive Maintenance Schedules

The worksheets for the maintenance of State Provided Locomotives are in Appendix 3 and cover the following maintenance cycle time periods:

- a. Daily Maintenance Analysis Program MAP reports
- b. 15 Day Maintenance Analysis Program MAP reports
- c. 92 Day Maintenance Analysis Program MAP reports
- d. 180 Day Maintenance Analysis Program MAP reports
- e. 360 Day Maintenance Analysis Program MAP reports
- f. 720 Day Maintenance Analysis Program MAP reports
- g. 1080 Day Maintenance Analysis Program MAP reports

The 720 & 1080 Day Maintenance Analysis Program MAP reports are for reference only unless the term of this Agreement is extended as allowed for by the provisions of Section 11 - Effective Date, Term and Termination, of this Agreement.

#### 5.2.2 Car Maintenance Schedules

The worksheets for the maintenance of State Provided Cars are in Appendix 4 and cover the following maintenance cycle time periods:

- a. Daily Maintenance Analysis Program MAP reports
- b. 92 Day Air Brake Inspection MAP Report
- c. 120 Day Maintenance Analysis Program MAP reports
- d. 360 Day Maintenance Analysis Program MAP reports
- e. 720 Day Maintenance Analysis Program MAP reports

The 720 Day Maintenance Analysis Program MAP reports are for reference only unless the term of this Agreement is extended as allowed for by the provisions of Section 11 - Effective Date, Term and Termination, of this Agreement.

#### 5.2.3 Food Service Car Maintenance Schedules

The worksheets for the maintenance of State Provided Food Service Cars are in Appendix 5 and cover the following maintenance cycle time periods:

---

- a. Pre-Trip Cleaning Maintenance Analysis Program MAP reports
- b. 60 Day Maintenance Analysis Program MAP reports
- c. 120 Day Maintenance Analysis Program MAP reports
- d. 360 Day Maintenance Analysis Program MAP reports
- e. 720 Day Maintenance Analysis Program MAP reports

The 720 Day Maintenance Analysis Program MAP reports are for reference only unless the term of this Agreement is extended as allowed for by the provisions of Section 11 - Effective Date, Term and Termination, of this Agreement.

### 5.3 General Repair Requirements

Notwithstanding the requirements to complete scheduled maintenance of State Provided Equipment, Amtrak shall repair in a timely manner all failures of, and damage to, State Provided Equipment in accordance with the provisions of this Agreement. Such repairs shall be carried out in such a manner that downtime for the unit of equipment is minimized. Should the necessary repairs exceed five (5) working days, Caltrans shall have access to current downtime information (work completed and planned) through the Arrow system and shall be advised immediately if there will be any anticipated impact to Service.

#### 5.3.1 Damage to State Provided Equipment

In circumstances not involving Amtrak's sole negligent acts or omissions as provided in Section 9 of the Transfer Agreement, Amtrak shall not make any repairs to any unit of State Provided Equipment without prior written approval from Caltrans if the cost of the modifications or repairs due to damage to that unit of State Provided Equipment is expected to exceed \$20,000. Requests for approval shall include an assessment of all work to be completed and a budget amount for the completion of said work. Any such requests shall be submitted to Caltrans within five (5) working days of the incident causing the work to be required. Caltrans shall respond to any such request within (five) 5 working days of its receipt. Caltrans shall have the right to inspect any such damage and review the basis for the projected budget repair amount submitted by Amtrak. Caltrans shall have the right to have such repairs or modifications carried out by a third party at Caltrans sole discretion.

#### 5.3.2 Heavy Overhaul

No heavy overhauls are anticipated to be required by State Provided Equipment in the initial terms of this Agreement. However, should heavy overhaul of components be required, this shall be considered to be within Amtrak's scope of work whereupon Amtrak shall arrange for such heavy overhaul work to be completed at a location subject to Caltrans approval. Amtrak shall also make appropriate provision for such

---



heavy overhaul work in the Maintenance Budget if Caltrans determines that heavy overhaul may become necessary.

#### 5.4 Maintenance and Repair Standards

All work to be completed on State Provided Equipment under the terms of this Agreement shall be to the minimum standards specified in the maintenance procedures in this Agreement, and specifically this Section 5. Failure to achieve these standards shall be considered to be non-performance under the terms of this Agreement, and will be handled in accordance with Transfer Agreement Section 6.3.1 and/or Section 10.

All locomotives in service shall be equipped with spare jumpers and a functioning radio and maintained in order to develop their designed horsepower and speed. Locomotives must not be operated in revenue service with non-functional auxiliary equipment except with the permission of Caltrans or in the case of an emergency.

##### 5.4.1 Equipment Cleaning and Inspection

Amtrak will actively pursue and maintain a high standard for cleanliness for both the exteriors and interiors of State Provided Equipment. Caltrans will make every effort to work together with Amtrak to realize this important goal. Other than changes due to differences in equipment and interior decor, there will be no new standards imposed by Caltrans above the existing "Amtrak Car Cleaning Standards" (MCC004 Course Handout) at the outset. The existing Amtrak cleaning procedures and frequencies for cars and locomotives will be used and closely monitored.

Amtrak shall clean, service and inspect equipment in accordance with mutually agreed upon standards, and in compliance with 49 CFR, Part 229, each day prior to placing State Provided Equipment in service.

Amtrak shall wash the exterior of all State Provided Equipment as required to ensure that the visual exterior appearance of each train set is not noticeably affected. In any event, the exterior of all State Provided Equipment shall be cleaned at least once a week. In the event that an automatic train wash is used, any areas that are not reached by this equipment shall be washed manually during periodic maintenance.

Amtrak shall ensure all State Provided Equipment is clean when dispatched from the servicing point. Amtrak shall use its best reasonable efforts to monitor and report to Caltrans any cleaning deficiencies. It is understood and agreed that the obligation to perform car cleaning is that of Amtrak. Cleaning standards to be followed by Amtrak shall be in accordance with the "Amtrak Car Cleaning Standards" publication and this Agreement, unless otherwise mutually amended by both parties.

If Service results do not meet Caltrans expectations, the Amtrak cleaning program will be adjusted, either in procedure or interval, with a commensurate adjustment of costs if required, to achieve the desired standard.

#### 5.4.2 Alterations and Modifications

Amtrak shall not undertake any alteration or modification of State Provided Equipment without the express written permission of the Caltrans Officer. If a modification is sought by Amtrak, Amtrak shall submit a written description of the work, with sketches and wiring schematics as appropriate, and a detailed cost estimate for approval. During the course of a modification program, Amtrak shall maintain current permanent records of those units which have been modified. Amtrak shall also ensure modification information is available to Caltrans through the Arrow system. Revised vendor components which replace obsolete components and which may require minor installation modifications shall not be considered as modifications under the intent of this section.

#### 5.5 Event of Non-Compliance

In the event Amtrak fails to service State Provided Equipment in accordance with the terms of this Agreement, Caltrans and Amtrak shall be guided by Section 6.3.1 and/or Section 10 of the Transfer Agreement. If, after following the procedures set forth in Sections 6.3.1 or 10, no satisfactory resolution has been reached, Caltrans may at its sole discretion transfer maintenance of all or part of the State Provided Equipment to a third party. Prior to any such transfer, Amtrak shall be given thirty (30) days written notice.

### 6. MATERIALS MANAGEMENT

#### 6.1 Material Management Systems

Amtrak shall use AAMPS for inventory control and cost effective, efficient procurement and material dispersal, accounting, and all warranty administration, including the implementation of a material purchasing accounting system.

Amtrak shall provide AAMPS training and manuals for designated Caltrans contracted consultants and Caltrans employees who will monitor Amtrak inventory control.

All materials for use on State Provided Equipment shall be stored in a physically separate location and considered a unique location by the AAMPS system. If the Oakland Maintenance Facility is available, Amtrak shall be responsible for the provision

---

of all Caltrans/Amtrak supplied storage areas, shelving and security of the storage area, unless specifically excepted by this Agreement. If a shortage in Maintenance Facility space occurs, Amtrak and Caltrans shall mutually agree upon alternative sites for storage, shelving, and security arrangements. Parts and components shall be stored only in designated areas, and under security appropriate for the nature of the part. Parts and components that are sensitive to heat, cold, moisture or humidity shall be properly stored and protected.

Amtrak will institute a materials control and management system that will maximize efficiency, reduce inventory cost through forecasting of material requirements, and control all phases of the materials handling function. A review of maximum/minimum inventory levels will be conducted at least every three months, or as directed by Caltrans. Caltrans shall attend this review and respond in writing within ten (10) working days with any disagreement of the maximum/minimum inventory levels prior to implementation.

## 6.2 Purchasing of Spare Parts and Consumables

Amtrak shall be responsible for, and shall manage the purchasing of all materials required to maintain and repair State Provided Equipment. All materials or equipment purchased by Amtrak pursuant to this Agreement shall be used solely for the repair and maintenance of State Provided Equipment and shall remain the property of Caltrans. Unless otherwise agreed, Caltrans, through Amtrak or other sources, shall purchase materials for implementation of modifications or equipment improvements not included within the Contract Services.

Caltrans will submit a list of required parts to maintain and repair State Provided Equipment. Caltrans and Amtrak will agree that all applicable items have been included. Initial spare parts will be purchased by Caltrans through their contracts with equipment Manufacturers and transferred to Amtrak. This shall be at no additional cost to Caltrans.

In circumstances where parts or supplies required for State Provided Equipment are not available from Caltrans inventory but are available in the Amtrak inventory for its intercity or commuter rail passenger service, Amtrak may use such parts or supplies to maintain or repair State Provided Equipment. Caltrans shall reimburse Amtrak for its system average cost of replacing any such parts or supplies.

Amtrak shall purchase spare parts and lubricants in accordance with the terms of the warranty agreements between the Manufacturers and Caltrans for the duration of said warranty period.

In cases where Amtrak purchases spare parts or lubricants from other than the original equipment suppliers for reason of cost or delivery, Amtrak shall notify Caltrans. In all cases, the performance of selected spare parts, lubricants or consumables shall meet or exceed the performance of the originally specified part.

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 including, but not limited to, price, delivery schedule, freight charges and applicable local, state and federal regulations.

### 6.3 Reporting of Spare Parts Transactions

Each month Amtrak shall submit a comprehensive material accounting report showing all spare parts transactions related to State Provided Equipment for the previous month, including both parts received into stores and parts used. The comprehensive report shall include:

- Store Activity Report
- Issues by Location
- Monthly Transfers Activity
- Price Adjustments by Location
- Quantity Adjustments
- Removals by Location
- Receipt Transactions

Parts received during the month shall be listed in one of four categories listed below, showing quantity received, description, part number, unit cost and total cost:

- Purchased
- Supplied under warranty (by inquiry in AAMPS)
- Supplied under Performance guarantee (by inquiry in AAMPS)
- Transferred from Amtrak Stock

Parts used during the month shall be shown on an information only report by AAR class. Caltrans and Amtrak shall jointly agree what components shall be considered as consumable spare parts.

For consumable spare parts, the report need only show the total quantity of each component used for that month by location, along with unit price and total cost.

For all major spare parts, the report shall show the date, location, the unit of State Provided Equipment it was used on, unit price and total cost per unit as provided to Caltrans by inquiry in ARROW. This report for information only, will not result in any change to the monthly billing for spare parts submitted to Caltrans.

#### 6.4 Materials Management Budget

The materials management budget shall be included in the annual maintenance budget as written in Section 7 - Annual Maintenance Budget, and Appendix 7 - Form of Budget, of this Agreement.

#### 6.5 Invoicing and Payment

Payment shall be governed by the terms of this Agreement with spare parts included in the overall Maintenance Agreement invoice. Supporting documentation in the form of a material accounting statement, as shown in Appendix 6 - Spare Parts Invoice Format, shall be supplied to indicate the actual spare parts purchased and inventory control labor used during the invoice period.

##### 6.5.1 Invoicing for Material Management

The annual budget shall provide a position to perform the material control function required by this Agreement. Caltrans shall pay an amount not to exceed an annual salary plus benefits for one (1) PY for a Federal Fiscal Year.

Caltrans shall pay a fixed monthly amount to Amtrak for the provision of material management services in accordance with the amount contained in the current budget. This amount shall be included on the monthly invoice and shall be broken down to show direct labor costs and any applied overhead costs.

##### 6.5.2 Invoicing for Purchased Spare Parts

Caltrans shall be invoiced for the purchase of spare parts for the month in which Amtrak receives the invoice from its supplier. Amtrak shall provide, at Caltrans request, a copy of any invoices that require further clarification. The invoice to Caltrans shall show all items being charged for that month, with quantity, unit price, Amtrak part numbers, and total cost. In addition, a report of all Caltrans provided spare parts included in the material management system as a result of warranty claims and performance guarantees will be provided as outlined in Section 6.3. Suppliers part numbers are available through the materials management system.

7. ANNUAL MAINTENANCE BUDGET

For all State Provided Equipment, Amtrak shall provide equipment maintenance budget information. The total maintenance budget shall be separated among the train numbers on the basis of vehicle months that State Provided Equipment is used on each route. This amount shall be the maintenance line item shown on the budgets per Transfer Agreement, Section 5 - Budgeting Process. Maintenance budget information shall be submitted as detailed in Appendix 7- Form of Budget, of this Agreement, to be submitted concurrently with the Transfer Agreement budget.

8. INVOICING AND PAYMENT

For the maintenance of State Provided Equipment, Amtrak shall submit invoices for maintenance as required by the Transfer Agreement, Section 6. A monthly report of service activity as detailed in Agreement shall be submitted at the same time as the Transfer Agreement monthly invoice.

9. DAMAGE TO EQUIPMENT

Responsibility with respect to damage to the State Provided Equipment shall be as provided for in the terms of the Transfer Agreement, Section 9 - Damage to Equipment.

10. DISPUTE RESOLUTION

The process of dispute resolution embodied in the Transfer Agreement, Section 10 - Dispute Resolution, is hereby incorporated into this Agreement by this reference.

11. EFFECTIVE DATE, TERM AND TERMINATION

11.1 Term

This Agreement shall take effect November 20, 1994 and remain in effect so long as the Transfer Agreement is in effect.

11.2 Termination for Cause by Caltrans

Caltrans may at its sole discretion, terminate this Agreement upon thirty (30) days prior notification, upon the occurrence of 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 49-U.S.C. 24704 service and is not excused by any other provisions of this Agreement,
2. 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; of 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,
3. Amtrak's failure to comply with a valid and respectable law, ordinance, rule, regulation or order of any legal entity or authority that has a material impact on Amtrak's ability or fitness to carry out its obligations to provide the Services under this Agreement, or
4. Amtrak's failure to comply with the terms and conditions of this Agreement.

#### 11.3 Termination for Cause by Amtrak

Amtrak may at its sole discretion, terminate this Agreement upon the occurrence of material breach of this Agreement, which shall include, but not be limited to, the failure of Caltrans to make payments as required by this Agreement.

#### 11.4 Termination for Convenience

Caltrans 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 or merger of Caltrans with another entity.
  2. Legislation or court decision requiring that another entity operate or finance the Services.
  3. Funding is not available for the Services.
  4. Patronage on trains included in the Caltrans operation falls so short of projections that the Service is not deemed cost effective with respect to the transportation benefits and air quality goals.
  5. Legislation, regulation or court decision places on Caltrans, or on the operation of the Services, financial or operational burdens which are so great as to degrade service quality below acceptable levels, or which
-

imposes unforeseen and excessive liabilities on Caltrans, or which raises costs to a level where costs are deemed by Caltrans to exceed benefits.

6. Caltrans determines that continued provision of Services by Amtrak will result in imminent danger to the public health or safety.

#### 11.5 Termination Procedure

Upon termination, 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 and clearly state the basis for that action.
2. The termination shall be effective no later than thirty (30) days after date of notice, except that a termination for cause shall not become effective if the other party has taken effective action to remedy the default within that thirty (30) day period.

#### 11.6 Rights and Obligations Upon Termination

1. Upon termination for cause or termination for convenience, Caltrans shall have the right to contract for Services by another party.
  2. Amtrak shall bear any incremental cost incurred by either Caltrans or Amtrak that is attributable to termination for cause by Caltrans.
  3. Caltrans shall bear any incremental cost incurred by either Caltrans or Amtrak that is attributable to termination for cause by Amtrak.
  4. Notwithstanding Subsections 2 and 3 above, Caltrans shall pay the following termination costs to Amtrak upon termination for convenience:
    - a. The reasonable cost of settling and paying claims out of the termination of Services under subcontracts or purchase orders,
    - b. Reasonable costs determined at the time of termination which are incurred pursuant to the performance of any specific written instructions received from Caltrans concerning such termination; and,
    - c. Any other reasonable costs incidental to such termination of Services.
-



MAINTENANCE AGREEMENT

- c. 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 diminish or affect Caltrans obligation to pay for any Services rendered or to fulfill other obligations incurred prior to the effective date of the termination.

IN WITNESS WHEREOF, the parties have set their hands

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

NATIONAL RAILROAD  
PASSENGER CORPORATION

(sign) \_\_\_\_\_

\_\_\_\_\_

(print) \_\_\_\_\_

\_\_\_\_\_

(date) \_\_\_\_\_

\_\_\_\_\_

By:

By:

Its:

Its:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name  
Title

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

APPENDIX 1  
STATE PROVIDED EQUIPMENT  
VEHICLE DETAILS

Appendix 1  
 State Provided Equipment  
 Vehicle Details

For the purposes of this Agreement, the number of State Provided vehicles and the identity of each vehicle is listed below. At any given time during the term of this Agreement, not all the listed vehicles may be considered as State Provided Equipment. Only those vehicles that have been transferred to Amtrak under the terms of the Transfer Agreement are covered by the terms of this Agreement.

Locomotives

Type	Manufacturer	Serial No	Road No
F59PHI	GMLG	926339-01	2001
F59PHI	GMLG	926339-02	2002
F59PHI	GMLG	926339-03	2003
F59PHI	GMLG	926339-04	2004
F59PHI	GMLG	926339-05	2005
F59PHI	GMLG	926339-06	2006
F59PHI	GMLG	926339-07	2007
F59PHI	GMLG	926339-08	2008
F59PHI	GMLG	926339-09	2009
8-32BWH	GE	46837	2051
8-32BWH	GE	46838	2052

MAINTENANCE AGREEMENT

**Appendix 1  
State Provided Equipment  
Vehicle Details**

Rolling Stock

Type	Manufacturer	Serial No	Road No
Trailer Car	MK		8001
Trailer Car	MK		8002
Trailer Car	MK		8003
Trailer Car	MK		8004
Trailer Car	MK		8005
Trailer Car	MK		8006
Trailer Car	MK		8007
Trailer Car	MK		8008
Trailer Car	MK		8009
Trailer Car	MK		8010
Trailer Car	MK		8011
Trailer Car	MK		8012
Trailer Car	MK		8013
Trailer Car	MK		8014
Trailer Car	MK		8015
Trailer Car	MK		8016
Trailer Car	MK		8017
Trailer Car	MK		8018
Trailer Car	MK		8019
Trailer Car	MK		8020
Trailer Car	MK		8021
Trailer Car	MK		8022
Trailer Car	MK		8023
Trailer Car	MK		8024
Trailer Car	MK		8025
Trailer Car	MK		8026
Trailer Car	MK		8027
Trailer Car	MK		8028
Trailer Car	MK		8029
Trailer Car	MK		8030
Trailer Car	MK		8031
Trailer Car	MK		8032
Baggage Car	MK		8201
Baggage Car	MK		8202
Baggage Car	MK		8203
Baggage Car	MK		8204
Baggage Car	MK		8205
Baggage Car	MK		8206
Cab Car	MK		8301
Cab Car	MK		8302
Cab Car	MK		8303
Cab Car	MK		8304

## MAINTENANCE AGREEMENT

Cab Car	MK		8305
Cab Car	MK		8306
Cab Car	MK		8307
Cab Car	MK		8308
Cab Car	MK		8309
Cab Car	MK		8310
Cab Car	MK		8311
Cab Car	MK		8312
Cab Car	MK		8313
Cab Car	MK		8314
Food Service Car	MK		8801
Food Service Car	MK		8802
Food Service Car	MK		8803
Food Service Car	MK		8804
Food Service Car	MK		8805
Food Service Car	MK		8806
Food Service Car	MK		8807
Food Service Car	MK		8808
Food Service Car	MK		8809
Food Service Car	MK		8810
Food Service Car	MK		8811
Food Service Car	MK		8812
Food Service Car	MK		8813
Food Service Car	MK		8814

APPENDIX 2  
AMTRAK/CALTRANS WARRANTY TAG PROCEDURE FOR  
CALTRANS OWNED LOCOMOTIVES AND CARS

MATERIAL CONTROL WARRANTY PROCEDURES

1. Review warranty tag for completeness.
2. Confirm that the Application for Adjustment (AFA) part number agrees with the warranty tag and that all proper signatures are affixed. **NOTE:** Forms must be filled out for all exchanges, including one for one exchanges on site.
3. Input BPA no cost release. On the release include that AFA number and for items sent to the manufacturer, include a copy of the AFA with the shipping document which is forwarded to the manufacturer.

Identify in the document number field types of warranty as listed below:

WARR1 - One for one replacement of material

WARR2 - Material for warranty labor

WARR3 - Performance guarantee parts credit

4. On receipt of material, complete a transaction code 12 (repair and return) to bring the material back into the inventory.

MATERIAL CONTROL WARRANTY FILES

Up to the time of material arrival, the Material Control Warranty File will be kept in an open file. After receipt of the material, a copy of the receipt screen will be placed in the Warranty File which then can be placed in the closed file.

FILE IDENTIFICATION

File identification will be by noun description of AAMPS number (if applicable).

MAINTENANCE AGREEMENT

---

YELLOW TAG FORMAT

CALTRANS/AMTRAK WARRANTY TAG

SITE

TAG #

OAK \_\_\_\_\_

LAX \_\_\_\_\_

SAN \_\_\_\_\_

\_\_\_\_\_ OTH \_\_\_\_\_

Locomotive # \_\_\_\_\_ Car# \_\_\_\_\_ Mileage \_\_\_\_\_

Equipment Position #(for part) \_\_\_\_\_ Date Part Removed \_\_\_\_\_

Source of Part(s) Data: (Circle One) EMD MK AMMS Other \_\_\_\_\_

Part # \_\_\_\_\_

Part Name \_\_\_\_\_

Serial # Removed \_\_\_\_\_ Applied \_\_\_\_\_

Brief Description of Defect \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



**Amtrak/Caltrans Warranty Tag Procedure for  
Caltrans Owned Locomotives and Cars**

---

1. Amtrak shall develop and procure a Tag (Warranty Tag) to affix to each faulty part removed from the locomotives/cars under warranty, as well as an Amtrak/Caltrans Warranty Claim Request (AWCR) form that shall serve as a control document for tracking the disposition and handling of each faulty part.
2. Each M of E facility with the new locomotives/cars will designate a "M of E Warranty Contact" as follows:
  - OAK: Robert Vandenburg, Mgr. Maintenance Facility
  - LAX: Gil Bruno, Mgr. Maintenance Facility

The M of E Warranty Contact shall be responsible for ensuring that the following tasks are accomplished:

- A Warranty Tag is completed correctly and attached to each defective part
  - An AWCR form is completed for each Warranty Tag
  - The Service Representative has signed each AWCR form and indicated the disposition of each part
  - Each tagged part is delivered to the Material Control Storehouse at the facility
  - The Material Control Warranty Representative signs each AWCR form
3. Each Material Control location shall designate a "Warranty Representative" as follows:
    - OAK: Supvr., Material Control
    - LAX: J. C. Metzger, Mgr. Material Control
  4. The steps describing each event in the Warranty Cycle are as follows:
    - a) Amtrak mechanic removes a faulty part from the locomotive/car.
    - b) The mechanic tags each faulty part with a yellow Warranty Tag, filling in the information on the tag in either pen or indelible magic marker. The mechanic shall wire or tape the Warranty Tag to the defective part.

**NOTE:** Warranty Tags numbered from \_\_\_\_\_ through \_\_\_\_\_ are interim tags made of yellow cardstock. Final tags numbered \_\_\_\_\_ and up shall be made from yellow Tyvek material.

The Warranty Tag shall contain the following information:

- The pre-printed Warranty Control Number. The Warranty Control Number shall be eight characters:

Three alpha characters indicating the facility location, followed by five numeric characters indicating the current warranty claim at that facility.

The mechanic shall circle the appropriate location and write in the correct claim number.

Example:     \_\_\_     LAX 00078  
              \_\_\_     OTHER \_\_\_\_\_

If "OTHER" is circled, the mechanic shall write the facility name in front of "OTHER".

Remaining information on the Warranty Tag shall include:

- locomotive/car number
- locomotive/car mileage from computer
- date defective part removed from locomotive/car
- locomotive/car Position Number for the defective part

Source of part(s) Data: MK, EMD, AMMS, or OTHER. If "OTHER" write in manufacturer's name:

- part number for the defective part
- serial number, if applicable of removed part and of new part applied
- part name
- brief description of fault/trouble/failure of the part that requires warranty action

- c) Using the Warranty Tag information, an AWCR form (four sheet carbonless NCR form) is prepared by the M of E Warranty Contact Person.

The AWCR form, M of E Action section, shall contain the following information:

- Warranty Tag Number, i.e. "LA - 00078"
- locomotive/car number
- locomotive/car mileage from computer
- date defective part removed from locomotive/car
- locomotive/car Position Number for the defective part
- date locomotive/car was shopped (taken out of service)

Source of Part(s) Data: MK, EMD, AMMS, or OTHER. If "OTHER" write in manufacturer's name:

- part number for the defective part
- serial number, if applicable of removed part and of new part applied
- part name from parts manual
- AMMS number corresponding to EMD or MK part number (if known)
- brief description of fault/trouble/failure that required the part to be removed from locomotive/car
- brief description of any deviations from normal appearance, function, or condition of the part
- labor manhours by craft to remove the faulty part and replace it
- M of E Warranty Contact Person to sign and date AWCR form

d) EMD or MK's Service Representative shall complete the "Disposition Action" portion of the AWCR form, and decide the disposition of each warranty claim part according to the selections in the table below. The Service Representative shall provide the M of E Warranty Contact Person with a copy of the EMD or MK WCR form corresponding to each AWCR.

The Service Representative shall add the following information to the AWCR form:

- the EMD or MK WCR number
- the disposition of the faulty part (replacement, scrap, etc.)
- where the defective part shall be sent
- sign and date the disposition portion of the AWCR form
- whether the replacement part was supplied to Amtrak directly from EMD or MK's warehouse at the facility

Disposition action shall be defined as follows:

<u>Disposition Action</u>	<u>Action/Part Responsible</u>
Scrap Faulty Part a) or b)	Material Control to dispose of defective part via Amtrak procedures. Either: a) EMD or MK to replace part at no cost to Amtrak via BPO Release Number. Matl. Cntl. to receive replacement part and issue credit to M of E Dept. Net costs of M of E Dept. is zero,

or b) EMD or MK to replace part at no cost to Amtrak from EMD or MK stock on hand at facility. Net cost to M of E Department is zero.

-----  
Replacement of Faulty  
Part/Unit Exchange

-----  
Material Control to send defective part to EMD or MK collect. Either:

a) EMD or MK to replace part at no cost to Amtrak via BPO Release Number. Material Control to receive replacement part and issue credit to M of E Department. Net cost to M of E Department is zero,

or b) EMD or MK to replace part at no cost to Amtrak from EMD or MK stock on hand at facility. Net cost to the M of E Department is zero.

-----  
Warranty Claim  
Disallowed

-----  
Amtrak and EMD or MK to conduct a joint teardown inspection of the part; final determination of allowability of the warranty claim shall be resolved at the inspection, and noted on the AWCR form.

If the part is considered a warranty claim, the Material Control Warranty Representative shall arrange for the disposition of the part in accordance with either the "Scrap Faulty Part" or "Replacement of Faulty Part/Unit Exchange" noted in this procedure.

-----

- e) When replacement parts are ordered from EMD or MK, the Material Control Warranty Representative shall take the responsibility for:
- a BPO Release Number
  - placing the BPO Release Number in the "MCA" portion of the AWCR form
  - checking each AWCR form for appropriate signature
  - confirming that appropriate signatures are affixed
  - verifying that the correct number and name are assigned to the corresponding EMD or MK part number on the AWCR form
  - initiating a system request to assign an AMMS number to the EMD or MK part number, if one has not been assigned
  - disposing of each warranty claim part according to the instructions authorized by EMD or MK's Service Representative on the AWCR form
  - assuring that all parts returned to EMD or MK are shipped collect

No action is required on the AWCR form by the Material Control Representative when the part is furnished directly to Amtrak from EMD or MK's onsite warehouse.

- f) The M of E Warranty Contact Person shall retain the original page (white copy) of the AWCR form; the Material Control Warranty Representative shall retain the yellow copy of the AWCR form; Amtrak's Manager Warranty shall retain the pink copy of the form; EMD or MK's Service Representative shall retain the blue copy; and Caltrans shall receive a xerox of the white copy.
- g) The \_\_\_\_\_ person is responsible for updating the AMMS with the serial number of the replacement part.

AMTRAK/CAL TRAN OWNED EQUIPMENT  
WARRANTY CLAIM REQUEST

=====

M OF E ACTION

WARRANTY TAG NUMBER \_\_\_\_\_ CAR NUMBER \_\_\_\_\_  
DATE CAR SHOPPED \_\_\_\_\_ CAR MILEAGE \_\_\_\_\_  
CAR POSITION NUMBER FOR PART \_\_\_\_\_  
DATE PART REMOVED FROM CAR \_\_\_\_\_

MANUFACTURER ACTION

MANUFACTURER'S NAME \_\_\_\_\_  
MANUFACTURER'S PART NUMBER \_\_\_\_\_  
MANUFACTURER'S SERIAL NUMBER REMOVED APPLIED  
MANUFACTURER'S PART NAME \_\_\_\_\_

AMMS NUMBER \_\_\_\_\_

BRIEF DESCRIPTION OF NOTED DEVIATIONS (APPEARANCE, FUNCTION, OR  
CONDITION)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MANHOURS/CRAFT \_\_\_\_\_  
FOR AMTRAK \_\_\_\_\_

M of E Warranty Contact Person \_\_\_\_\_ Date \_\_\_\_\_

=====

MK DISPOSITION ACTION

MK WCR NUMBER \_\_\_\_\_  
SCRAP FAULTY PART \_\_\_\_\_ REPLACEMENT/UNIT EXCHANGE \_\_\_\_\_  
WARRANTY CLAIM DISALLOWED \_\_\_\_\_ (REASON) \_\_\_\_\_  
TEARDOWN INSPECTION RESOLUTION \_\_\_\_\_  
SHIP PART/ASSEMBLY TO: \_\_\_\_\_  
PART FURNISHED FROM MK WAREHOUSE AT FACILITY \_\_\_\_\_

FOR MK \_\_\_\_\_  
MK Company Authorization \_\_\_\_\_ Date \_\_\_\_\_

=====

MATERIAL CONTROL ACTION

BPO # \_\_\_\_\_ BPO RELEASE NUMBER \_\_\_\_\_  
RECEIVED \_\_\_\_\_  
Material Control Warranty Rep. \_\_\_\_\_ Date \_\_\_\_\_

=====

AMTRAK/CAL TRAN OWNED EQUIPMENT  
WARRANTY CLAIM REQUEST

=====

M OF E ACTION

WARRANTY TAG NUMBER \_\_\_\_\_ CAR NUMBER \_\_\_\_\_  
DATE CAR SHOPPED \_\_\_\_\_ CAR MILEAGE \_\_\_\_\_  
CAR POSITION NUMBER FOR PART \_\_\_\_\_  
DATE PART REMOVED FROM CAR \_\_\_\_\_

MANUFACTURER ACTION

MANUFACTURER'S NAME \_\_\_\_\_  
MANUFACTURER'S PART NUMBER \_\_\_\_\_  
MANUFACTURER'S SERIAL NUMBER REMOVED \_\_\_\_\_ APPLIED \_\_\_\_\_  
MANUFACTURER'S PART NAME \_\_\_\_\_

AMMS NUMBER \_\_\_\_\_

BRIEF DESCRIPTION OF NOTED DEVIATIONS (APPEARANCE, FUNCTION, OR  
CONDITION)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MANHOURS/CRAFT \_\_\_\_\_  
FOR AMTRAK \_\_\_\_\_

M of E Warranty Contact Person \_\_\_\_\_ Date \_\_\_\_\_

=====

EMD DISPOSITION ACTION

EMD WCR NUMBER \_\_\_\_\_  
SCRAP FAULTY PART \_\_\_\_\_ REPLACEMENT/UNIT EXCHANGE \_\_\_\_\_  
WARRANTY CLAIM DISALLOWED \_\_\_\_\_ (REASON) \_\_\_\_\_  
TEARDOWN INSPECTION RESOLUTION \_\_\_\_\_  
SHIP PART/ASSEMBLY TO: \_\_\_\_\_  
PART FURNISHED FROM EMD WAREHOUSE AT FACILITY \_\_\_\_\_

FOR EMD \_\_\_\_\_  
EMD Company Authorization \_\_\_\_\_ Date \_\_\_\_\_

=====

MATERIAL CONTROL ACTION

BPO # \_\_\_\_\_ BPO RELEASE NUMBER \_\_\_\_\_  
RECEIVED \_\_\_\_\_  
Material Control Warranty Rep. \_\_\_\_\_ Date \_\_\_\_\_

=====

APPENDIX 3  
AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM -  
F59PHI LOCOMOTIVE MAP FORMS



MAINTENANCE AGREEMENT

---

MAINTENANCE CYCLES AND MAP FORM COLORS FOR  
CALIFORNIA LOCOMOTIVE

Maintenance Cycle	Map Form Color
Daily	Blue
15 Day	Pink
90 Day	Canary
180 Day	Green
360 Day	Golden Rod
720 Day	Tan
1080 Day	White

**AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
DAILY INSPECTION - F-59PHI LOCOMOTIVES  
Includes MAP 6, MAP 8ATS & MAP 9  
RECORD DEFECTS ON MAP 9**

UNIT NO \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	OK	DEFECT
1. Check fuel and sand levels.		
2. Check engine room, HEP area, cab floor and windows (FRA 229.19)		
3. Replenish supply of spare fuse (12), torpedoes (6) and tools(2)		
4. Empty trash receptacles.		
5. Clean and check operation of toilet.		
6. Record defects and corrective actions on Map 9.		

\_\_\_\_\_  
SIGNATURE

DESCRIPTION	OK	DEFECT
1. Check all fire extinguishers are in place and sealed. Check date Tags.		
2. Check main, auxiliary engine, and air compressor, oil levels. Bring level to full mark.		
3. Check cooling water system for leaks. Check cooling water level and treatment.		
4. With engine running listed for unusual noises in diesel engine, auxiliary blower assembly, AR15 main generator, air compressor, HEP 480 volt alternator and auxiliary engine. Check for fuel, oil, and exhaust leak.		
5. Drain intercooler and dirt collector condensate. Check air compressor control air system. Drain condensate. (FRA 229.46)		
6. Inspect running gear, wheels, gear cases, axle caps, pins, bushings and brake shoes. (FRA 229.61 thru 229.75). Piston travel is within prescribed limits (2 1/2 to 3 inches).		
7. Records defects and corrective actions on MAP 9.		

\_\_\_\_\_  
SIGNATURE

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 DAILY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT
1. Check inspection cards for FRA compliance		
2. Inspect cabs seats and mountings, cab windows, sun visors, and doors including latching mechanisms and safety retainers.		
3. Test horn, bell and safety devices (FRA 229.46.)		
4. Test air brake and safety control devices (FRA 229.46)		
5. All air brake hoses are properly coupled and are in condition for service.		
6. All angle cocks and cutout cocks are properly positioned for services.		
7. ER and BP are within 3 pounds of each other and can be regulated.		
8. Check BP leakage, which must not exceed 3 pounds per minute.		
9. Check operation of handbrake and emergency brake valve in cab.		
10. Check operation of independent brake valve apply, release and bail-off features.		
11. Check operation of dynamic brake, alerter penalty brake application and blended brake.		
12. Check operation of sanders FRA 229.131.		
13. Check that carbody side panels are secured.		
14. Test alerter.		
15. Voice test radio.		
16. Check computer display for faults.		
17. Record defects and corrective actions on MAP 9.		

**SIGNATURE** \_\_\_\_\_



**AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
15-DAY INSPECTIONS - F-59PHI LOCOMOTIVES  
Includes MAP 6, MAP 8ATS, & MAP 9  
RECORD DEFECTS ON MAP 9**

**UNIT NO.** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. Take main and auxiliary engine lube oil samples, and coolant sample. Check inhibitor level.		
2. Drain moisture from main reservoirs and note that pressure is being maintained between 130 psi and 140 psi.		
3. Check manual and automatic drain valves. Set in automatic. (FRA 229.46)		
4. Inspect draft gear and safety appliances.		
5. Check gear cases for sufficient lubrication and signs of damage.		

\_\_\_\_\_  
**SIGNATURE**

**ELECTRICAL**

DESCRIPTION	OK	DEFECT
1. Test headlight, crossing lights, red strobe light, panel lights, red marker lights, and carbody lights. (FRA 229.125).		
2. Check operation of cab heaters and air conditioners.  Signature _____		
3. Power test traction engine in forward and reverse. Check operation of speed indicator when locomotive is moved.		
4. Inspect traction motor cables for damage.		
5. Check humidity indicators on air dryer.		
6. Assure speed recorder is operating.		
7. Records defects and corrective actions on MAP 9.		
8. Assure defects reported on MAP 9 and MAP 100 have been cleared.		

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**SUPERVISOR IN CHARGE**

AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
15-DAY INSPECTIONS - F-59 LOCOMOTIVES  
Includes MAP 6, MAP 8ATS & MAP 9  
RECORD DEFECTS ON MAP 9

MAP 9 WORKSHEET

DEFECT	CORRECTIVE ACTION TAKEN	SIGNATURE

UNIT NUMBER: \_\_\_\_\_

LOCATION: \_\_\_\_\_

Time and date OK'd for service: \_\_\_\_\_

Next Air Due Date: \_\_\_\_\_

The above work has been performed, except as noted, and the report is approved.

Signature: \_\_\_\_\_

Foreman: \_\_\_\_\_

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

**UNIT NO.** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. Inspect exhaust manifold, turbo exhaust stack, and silencer for cracks, leaks and carbon tracks with engine under self-load test.		
2. Inspect automatic fueling system adapters, dust caps, and hoses for cracks, broken parts and worn gaskets.		
3. Check operation of low water, crankcase pressure, and low oil pressure engine protective devices.		
4. Check operation of emergency fuel shutoff devices. FRA 229.93		
5. Test air gauges.		
6. Check wire connections at injectors.		
7. Remove and clean eductor tube.		
8. Check fuel gauges (engine/fuel tank) for proper operation.		
9. Drain the retention tank.		
10. Test and lubricate TM blower inlet guide vane assembly.		
11. Record defects and corrective action on MAP 9.		

**SIGNATURE** \_\_\_\_\_

**AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
Includes MAP 6, MAP 8ATS & MAP 9  
RECORD DEFECTS ON MAP 9**

**MECHANICAL**

DESCRIPTION		OK	DEFECT																														
1.	Check coupler wear.																																
2.	Inspect couplers: - Pilots Couplers must be checked for 1 1/4" minimum clearance from bail to top of link. Insure that coupler swivel pin retainers are secure.																																
	<table border="0"> <thead> <tr> <th></th> <th align="center">Front</th> <th align="center">Rear</th> <th align="center" colspan="2">Clearance Limits</th> </tr> </thead> <tbody> <tr> <td>Drawbar height (above rail)</td> <td align="center">_____</td> <td align="center">_____</td> <td>FRA 34-1/2"</td> <td>maximum</td> </tr> <tr> <td></td> <td></td> <td></td> <td>FRA 31-1/2"</td> <td>minimum</td> </tr> <tr> <td>Pilot/snow height (above rail)</td> <td align="center">_____</td> <td align="center">_____</td> <td>FRA 6"</td> <td>maximum</td> </tr> <tr> <td></td> <td></td> <td></td> <td>FRA 3"</td> <td>minimum</td> </tr> <tr> <td>Coupler slack</td> <td align="center">_____</td> <td align="center">_____</td> <td>1/2"</td> <td>maximum</td> </tr> </tbody> </table>		Front	Rear	Clearance Limits		Drawbar height (above rail)	_____	_____	FRA 34-1/2"	maximum				FRA 31-1/2"	minimum	Pilot/snow height (above rail)	_____	_____	FRA 6"	maximum				FRA 3"	minimum	Coupler slack	_____	_____	1/2"	maximum		
	Front	Rear	Clearance Limits																														
Drawbar height (above rail)	_____	_____	FRA 34-1/2"	maximum																													
			FRA 31-1/2"	minimum																													
Pilot/snow height (above rail)	_____	_____	FRA 6"	maximum																													
			FRA 3"	minimum																													
Coupler slack	_____	_____	1/2"	maximum																													
3.	Inspect Trucks:																																
A.	Gauge wheels - record readings. Make sure wheels are in compliance with 49 CFR 229.73 & 229.75.																																
B.	Shock absorbers are properly secured and free of defects.																																
C.	Truck frames must be inspected to insure that there has been no wheel contact with side frame.																																
D.	Truck secondary suspension system must be inspected to determine if any springs are missing or broken.																																
E.	The secondary suspension system must be inspected for any rubbing, abrasion, or fretting cracks in the system.																																
F.	The lateral stops located between spring plank and truck bolster must be inspected to determine if there is any excessive clearance.																																
G.	The total clearance between pedestal liners must not exceed 3/8 inches.																																
H.	The pedestal liners must be inspected to insure wear has not exceeded a thickness of 3/32 of an inch or more.																																
I.	Inspect gearcase and support arms for crack and tightness.																																
J.	Visual inspection of journal bearings.																																



**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT																																																		
4. Inspect truck wear plates clearances.																																																				
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="border-bottom: 1px solid black;">Front</th> <th style="border-bottom: 1px solid black;">Rear</th> <th style="border-bottom: 1px solid black;">Clearance Limits</th> </tr> </thead> <tbody> <tr> <td>Truck Side Bearing</td> <td>LS</td> <td>LS</td> <td>1/4" max 1/16"min per side bearing</td> </tr> <tr> <td>Clearance</td> <td>RS</td> <td>RS</td> <td>1/2" max - total per truck</td> </tr> </tbody> </table>		Front	Rear	Clearance Limits	Truck Side Bearing	LS	LS	1/4" max 1/16"min per side bearing	Clearance	RS	RS	1/2" max - total per truck																																								
	Front	Rear	Clearance Limits																																																	
Truck Side Bearing	LS	LS	1/4" max 1/16"min per side bearing																																																	
Clearance	RS	RS	1/2" max - total per truck																																																	
INSPECTOR: _____																																																				
5.																																																				
<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="border-bottom: 1px solid black;">POS</th> <th style="border-bottom: 1px solid black;">Flng Hgt</th> <th style="border-bottom: 1px solid black;">Flng Thk</th> <th style="border-bottom: 1px solid black;">Rim Thk</th> <th style="border-bottom: 1px solid black;">Tread Wear</th> <th style="border-bottom: 1px solid black;">POS</th> <th style="border-bottom: 1px solid black;">Flng Hgt</th> <th style="border-bottom: 1px solid black;">Flng Thg</th> <th style="border-bottom: 1px solid black;">Rim Thg</th> <th style="border-bottom: 1px solid black;">Tread Wear</th> </tr> </thead> <tbody> <tr> <td>L1</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>R1</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>L2</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>R2</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>L3</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>R3</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> <tr> <td>L4</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>R4</td> <td>_____</td> <td>_____</td> <td>_____</td> <td>_____</td> </tr> </tbody> </table>	POS	Flng Hgt	Flng Thk	Rim Thk	Tread Wear	POS	Flng Hgt	Flng Thg	Rim Thg	Tread Wear	L1	_____	_____	_____	_____	R1	_____	_____	_____	_____	L2	_____	_____	_____	_____	R2	_____	_____	_____	_____	L3	_____	_____	_____	_____	R3	_____	_____	_____	_____	L4	_____	_____	_____	_____	R4	_____	_____	_____	_____		
POS	Flng Hgt	Flng Thk	Rim Thk	Tread Wear	POS	Flng Hgt	Flng Thg	Rim Thg	Tread Wear																																											
L1	_____	_____	_____	_____	R1	_____	_____	_____	_____																																											
L2	_____	_____	_____	_____	R2	_____	_____	_____	_____																																											
L3	_____	_____	_____	_____	R3	_____	_____	_____	_____																																											
L4	_____	_____	_____	_____	R4	_____	_____	_____	_____																																											
Front Truck No.: _____ Rear Truck No.: _____																																																				
Wear Limit Flange Height: 1-3/8" Flange Thickness: 1" Rim Thickness: 1-1/8" Tread Worn Hollow: 0"																																																				
INSPECTOR: _____																																																				

SUPERVISOR IN CHARGE: \_\_\_\_\_

**AMTRAK/CALTRANS**  
**MAINTENANCE ANALYSIS PROGRAM**  
**92-DAY INSPECTION - F-59PHI LOCOMOTIVES**  
**Includes MAP 6, MAP 8ATS & MAP 9**  
**RECORD DEFECTS ON MAP 9**

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. HEP Engine Running:		
A. Check for leaks in cooling, fuel and oil systems.		
B. Check for abnormal noise from engine, turbo, generator.		
C. Check exhaust system for leaks or abnormalities.		
D. Record engine hour meter reading.		
2. Remove and clean lube oil centrifuge spinner assembly. Renew paper element.		
3. Change coolant conditioner element.		
4. Test hot engine temperature devices.		
5. Drain HEP engine sump.		
6. Check operation of engine protection device.		
7. Record defects and corrective action on MAP 9.		

\_\_\_\_\_  
SIGNATURE

**AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
Includes MAP 6, MAP 8ATS & MAP 9  
RECORD DEFECTS ON MAP 9**

**AUXILIARY ENGINE**

INSPECTION AND MAINTENANCE TASKS WILL BE BASED ON CATERPILLAR RECOMMENDATIONS		DESCRIPTION	OK	DEFECT
1.	Renew lubricating oil and filters. Bring lube oil to full mark.			
2.	Renew fuel filters.			
3.	Correct defects recorded on MAP 9.			

\_\_\_\_\_  
SIGNATURE

**MAIN ENGINE**

DESCRIPTION	OK	DEFECT
1. Check cooling level and treatment.		
2. With fuel pumps running and 15 psi. water pressure applied to cooling system, inspect air box, crankcase, liners, piston rings, radiators, hoses, pipe connections, pressure cap for leaks.		
3. Replace all fuel filter elements and clean all strainers.		
4. Clean lube oil separator screen and inner and outer eductor tubes. Inspect and clean stack and stiffener bars.		
5. Change turbo lube oil filter and soak back filter elements.		
6. Inspect and if needed blow dirt from radiators.		
7. Lubricate radiator cooling fan shutter linkages. Check for binding and worn sections.		
8. Clean main generator pit drain aspirator.		
9. Change fiberglass bag type engine air filter elements.		
10. Drain condensate from fuel tank sumps.		
11. Renew brake shoes as required and assure brake shoes are in proper alignment with wheel tread.		
12. Lubricate door hinges, locks, and miscellaneous hardware.		
13. Renew cab air conditioner filters.		

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT																
14. Measure and record manometer readings of air filters at filter test hose stems in cab. (LSM-4)																		
<table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;"></th> <th style="text-align: center;">Inches of Water Reading</th> <th style="text-align: center;">Min</th> <th style="text-align: center;">Max</th> </tr> </thead> <tbody> <tr> <td>A = Air Filters (engine &amp; inertials)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">5"</td> <td style="text-align: center;">14"</td> </tr> <tr> <td>I = Inertial Filters</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">3"</td> <td style="text-align: center;">7"</td> </tr> <tr> <td>E = Engine Filters (A - I)</td> <td style="text-align: center;">_____</td> <td style="text-align: center;">NA</td> <td style="text-align: center;">NA</td> </tr> </tbody> </table>				Inches of Water Reading	Min	Max	A = Air Filters (engine & inertials)	_____	5"	14"	I = Inertial Filters	_____	3"	7"	E = Engine Filters (A - I)	_____	NA	NA
	Inches of Water Reading	Min	Max															
A = Air Filters (engine & inertials)	_____	5"	14"															
I = Inertial Filters	_____	3"	7"															
E = Engine Filters (A - I)	_____	NA	NA															
15. Test air brake and safety control devices. (FRA 229.46)																		
16. Clean locomotive exterior, engine room, engine sumps, and cab.																		
17. Record defects and corrective actions on MAP 9.																		

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 SUPERVISOR IN CHARGE

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

**ELECTRICAL**

DESCRIPTION	OK	DEFECT
1. Check cooling fans and inertial blower for proper rotation and bearing noise. Check fan contactors for blown fuses.		
2. Check VR - 15 module. Output must be 74 - 76 volts. Record output.		
3. Inspect all electrical equipment visible insulation and electrical connections. (FRA rule 229.25) Check communications trainline transition jumper.		
4. Measure the output voltage:  A. PSM 300 _____  B. PSM 310 _____  C. PSM 320 _____		
5. Check low voltage system for grounds. Protect solid state equipment.		
6. Perform functional check of fault indicator lights (annunciator panels overhead and control stand).		
7. Visually inspect all equipment in control cabinets.		
8. Inspect high voltage switch gear (power contactors, reverser, brake transfer switch).		
9. Record defects and corrective actions in MAP 9.		

\_\_\_\_\_  
 SIGNATURE

**AMTRAK/CALTRANS**  
**MAINTENANCE ANALYSIS PROGRAM**  
**92-DAY INSPECTION - F-59PHI LOCOMOTIVES**  
**Includes MAP 6, MAP 8ATS & MAP 9**  
**RECORD DEFECTS ON MAP 9**

**ELECTRICAL**

1.	Check high voltage system for grounds with 1,000 volt megger and record. If reading is above 400,000 ohms, DC leakage test may be used. (MAX 1000 VAC) Check operation of ground relay. Record _____		
2.	Perform self tests at EM 2000 display.		
3.	Perform operational wheel slip test. Perform module self-test on all modules equipped.		
4.	Download event recorder, reset time, make hard copy, analyze, sign and date, attach to MAP forms.		
5.	Test accuracy of speed indicator and locomotive overspeed settings.		
6.	Inspect, clean, and renew worn brushes in dynamic brake blower motor. (MI 4104)		
7.	Inspect AR - 15 slip rings. Replace worn brushes. (MI 3317)		
8.	Inspect AC cabinets.		
9.	Inspect AR - 15 alternator fuses and diodes.		
10.	Check for AC grounds.		
11.	Check fuses in control cabinet/supply spares.		
12.	Inspect HEP alternator fan blades for cracked blades or loose weights.		
13.	Visually inspect HEP wiring for loose connections and signs of overheating.		
14.	Check HEP line voltage.		
15.	Record defects and corrective actions on MAP 9.		
	_____ SIGNATURE		

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT
17. HEP PLANT:		
A. Check operation of all meters, automatic voltage regulators and controls; observe voltmeter for differences in voltage between phases to ensure T.L.C. and power on indicators function.		
B. Check operation of main breaker from right side, left side and both sides together.		
C. Check all 480 volt A.C. trainline receptacles for grounds or shorts.		
D. Check condition of HEP power cables, jumper cables, and receptacles.		
E. Loop 480 Volt HEP receptacles and check for proper operation		
F. Assure that two (2) 480 Volt adaptor jumper cables are furnished and properly stored in the locomotive for the next trip.		
G. Check operation of all engine shutdown protective devices (Governor solenoid, fuel solenoid, overspeed system, and crankcase pressure device). CAT Engine		
18. Test continuity at MU receptacles.		
19. Check battery electrolyte level and specific gravity. Check electrical connections wash batteries and apply NO-OX to terminals. Record specific gravity _____		
20. Inspect all traction motors. Replace worn brushes and felt seals on covers as needed. (MI 3900) Clean string band and brush holder insulators.		
21. Correct defects recorded on MAP 9.		
_____ SIGNATURE		

**AMTRAK/CALTRANS  
MAINTENANCE ANALYSIS PROGRAM  
92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
Includes MAP 6, MAP 8ATS & MAP 9  
RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT
22. Perform load test HEP: (Note : Test optional at this time @ no load box in Oakland)		
A. Load test HEP for 5 minutes.		
SIGNATURE _____		



**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 92-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

DESCRIPTION	OK	DEFECT
23. Perform load test main engine.		
A. Load test main engine for 15 minutes.		
* B. Record Main Generator Voltage _____ v. Record Main Generator Amps _____		
C. Vital Signs: <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <u>Idle</u>            Lube Oil Pressure _____ psi            Engine Temperature _____ F         </div> <div style="text-align: center;"> <u>Notch 8</u>            _____ psi            _____ F         </div> </div>		
* D. Record Cooling Fan Pickup #1 (TA) _____ F #2 (TB) _____ F		
* E. Record horsepower reading _____  _____ SIGNATURE		
24. Power test traction engine in forward and reverse. Check operation of speed recorder when loco is moved.		
25. Assure seals are properly applied to all safety devices as required.		
26. Record defects and corrective actions on MAP 9.		

\_\_\_\_\_  
 SIGNATURE

\* Readings may be obtained from EM2000 computer monitor screen



**AMTRAK/CALTRANS**  
**MAINTENANCE ANALYSIS PROGRAM**  
**186-DAY INSPECTION - F-59PHI LOCOMOTIVES**  
**Includes MAP 6, MAP 8ATS & MAP 9**  
**RECORD DEFECTS ON MAP 9**

UNIT NO. \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. Retorque exhaust manifold base bolts. Tighten top deck cover bolts.		
2. Measure piston to cylinder head clearances and record lead wire measurements on MAP 1170. If higher than .100", renew power assembly. Measure piston ring to land clearance on top compression rings and record all cylinder readings on MAP 1170. If above .025", renew assembly.		
3. Clean air compressor breather. Change air compressor intake filter.		
4. Lubricate truck center bearings. Add one (1) pint		
5. Record defects and corrective action on MAP 9.		
6. Change air dryer 975-075 filter element.		
7. Inspect oil pan, rods and baskets.		
8. Record defects and corrective actions on MAP 9.		
9. Replace Cat Engine crankcase emission absorbers.		

\_\_\_\_\_  
SIGNATURE

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 186-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

**ELECTRICAL**

DESCRIPTION	OK	DEFECT
1. HEP PLANT: Renew starter motor brushes and blow out starter with low pressure air.		
2. Record defects and corrective actions on MAP 9.		
3. Wash batteries with soda.		
4. Blow our AR15 heat sinks and slip ring area with low pressure air, if required.		
5. Inspect and replace (if needed) layover heater motor brushes and blow out motor.		
6. Inspect and replace (if needed) starter motor brushes and blow out motor.		
7. Megger the HEP alternator.		
8. Record defects and corrective actions on MAP 9.		

-----  
**SIGNATURE**

-----  
**SUPERVISOR IN CHARGE**



**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 368-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

UNIT NO. \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. Replace fire extinguishers with properly tagged extinguishers		
2. Remove and inspect air dryer borosilicate coalescing element.		
3. Replace air dryer filter.		
4. Check air dryer regenerative orifice operation.		
5. Inspect radiator air passages and clean.		
6. Clean radiator inlet header screens.		
7. Inspect and lubricate radiator shutter linkages.		
8. Measure pressure drop across carbody internal filters.		
9. Check pressure drop across the main engine after coolers.		
10. Check soakback oil system for proper operation.		
11. Renew main electrical cabinet filters.		
12. Clean and inspect horn and bell.		
13. Remove HEP engine injectors, inspect and replace as needed.		
14. Record defects and corrective actions in MAP 9.		
15. Qualify air compressor by performing orifice test (MI 1144)		

\_\_\_\_\_  
**SIGNATURE**

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 368-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

**AUXILIARY ENGINE**

DESCRIPTION	OK	DEFECT
1. Auxiliary Engine		
A. Check rack setting, injector timing and engine speed.		
B. Auxiliary engine:		
a) Adjust fuel injector control racks.		
b) Adjust engine governor linkage.		
c) Adjust load limit.		
d) Adjust speed limit.		
e) Adjust maximum no load speed.		
f) Record defects and corrective action on MAP 9.		
2. Clean and inspect turbocharger screen.		
3. Retorque head frame to crankcase bolts.		
4. Retorque cylinder crab bolts to 1800 ft. lbs. on conventional crabs. Engines with plate crabs get torqued to 2400 ft. lbs. in two passes 400 ft. lbs. then 2400 ft. lbs.		
5. Check engine generator, air compressor, and turbo base bolts for tightness.		
6. Change air compressor oil. (MI 1144).		
7. Remove, clean, and replace HEP cabinet air filters.		
8. Perform Salem air dryer maintenance per Salem service bulletin #24B.		
9. Clean and inspect orifice of sander relay valves.		
10. Replace air filter automatic drain valve and magnet valve.		
11. Replace main reservoir automatic drain valve and magnetic valve.		
12. Clean and inspect dirt collector chamber of brake pipe branch cutout cock		
13. Replace filter in cutout cock body.		
14. Replace main reservoir safety valve.		
15. Record defects and corrective actions on MAP 9.		

\_\_\_\_\_  
 SIGNATURE

\_\_\_\_\_  
 SUPERVISOR IN CHARGE

**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 368-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

**ELECTRICAL (Preliminary Checks)**

DESCRIPTION	OK	DEFECT
1. Calibrate all electric meters.		
2. Record defects and corrective actions on MAP 9.		
3. Inspect and clean control stand and contacts. Change DB rheostat brush.		
4. Replace HEP engine starter motors.		
5. Replace engine temperature regulators.		
6. Clean HEP turbo lube pump motor commutator surfaces.		
7. Record defects and corrective actions on MAP 9.		

\_\_\_\_\_  
**SIGNATURE**





**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 736-DAY INSPECTION - F-59PHI LOCOMOTIVES  
 Includes MAP 6, MAP 8ATS & MAP 9  
 RECORD DEFECTS ON MAP 9**

UNIT NO. \_\_\_\_\_ LOCATION: \_\_\_\_\_

DATE: \_\_\_\_\_

**MECHANICAL**

DESCRIPTION	OK	DEFECT
1. Renew electronic fuel injectors		
2. Replace fuel preheater mixing valve, if equipped.		
3. Renew all rubber hoses & flexible Aeroquip type hoses in fuel, lube oil and water systems. Renew Marmon and Dresser coupling seals or O-rings.		
4. Remove and clean aftercoolers and inertial filter assemblies.		
5. Perform two year maintenance on Salem air dryer per Salem Air Bulletin #24B.		
6. Check temperature between lube oil and cooling water into engine.		
7. Replace thermostatic valve in fuel preheater.		
8. Replace hot oil shutdown device with new.		
9. Replace engine protector with new or rebuilt.		
10. Record defects and corrective action on MAP 9.		

\_\_\_\_\_  
SIGNATURE

**ELECTRICAL**

DESCRIPTION	OK	DEFECT
1. Clean spike suppressors, alternator slip rings, and windows.		
2. Transpose leads to AR15 slip rings		
3. Record defects and corrosive actions on MAP 9.		

\_\_\_\_\_  
SIGNATURE



**AMTRAK/CALTRANS  
 MAINTENANCE ANALYSIS PROGRAM  
 1084 AIRBRAKE INSPECTION - F-59PHI LOCOMOTIVES  
 Inspect in Compliance with FRA Rule #229**

UNIT NO. \_\_\_\_\_

LOCATION: \_\_\_\_\_

DATE: \_\_\_\_\_

DESCRIPTION	OK	DEFECT
1. Brake cylinder relay valve (J, F or B type).		
2. Main reservoirs safety valves.		
3. Intercooler safety valve.		
4. Brake pipe vent valves.		
5. N-1 reducing valve(s).		
6. Double check valve (16 and 20 pipe).		
7. Distributing or service portion.		
8. Equalizing piston portion.		
9. Brake application portion or P2-A brake application valve.		
10. All relay air valves (H-5, HB-5, HB5D).		
11. MU2A valve.		
12. A-1 charging pilot cut-off valve.		
13. Magnet valves for: <ul style="list-style-type: none"> <li>A. Overspeed</li> <li>B. Air compressor unloader</li> <li>C. Dynamic interlock</li> <li>D. Safety control (alerter)</li> <li>E. Sander</li> <li>F. MHV, MVR, MVSR blended brake</li> </ul>		
14. Check valve between #1 and #2 main reservoir.		
15. Related dirt collectors and filters.		
16. Main reservoir cut-off valve.		
17. All double and reverse double check valves.		
18. One-way check valves.		
19. Change all air brake hoses.		
20. 26 C automatic brake valve(s).		
21. Grease generator rear seals.		

\_\_\_\_\_  
 SIGNATURE



APPENDIX 4  
AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM -  
CAR MAP FORMS

MAINTENANCE CYCLES AND MAP FORM COLORS FOR  
CALIFORNIA CAR

Maintenance Cycle	Map Form Color
Daily	Blue
Pre-Trip (Food Service)	Tan
60 Day (Food Service)	Pink
90 Day *	Canary
120 Day	Green
360 Day *	Golden Rod
1080 Day *	White

\* Air Brake Inspections/Change-outs on Cab Cars

Note: 1080 Day Air Brake inspection on Cars will change to a 1440 Day (4 Year) inspection, pending FRA approval.

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
DAILY TRIP INSPECTION REPORT  
MAP 10 AC  
Include MAP 9**

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**TRIP INSPECTION**

DESCRIPTION	SIGNATURE
1. CHECK MAP 21-A. RECORD OVERDATES AND DEFECTS.	
2. <b>RUNNING GEAR</b> Visually inspect: truck frames, bolsters, spring planks, equalizers, pedestal legs and liners, springs, primary suspension, pedestal, tie straps, ground straps, shock absorbers, piping, wheels, axles, journal bearings. Inspect brake discs, brake shoes/pads for thickness and brake rigging for damage.	
3. <b>COUPLERS</b> Visually inspect couplers and coupler components, i.e., uncoupling bracket mechanism, anti-creep protection, pin protection and pilot lugs for defects. Check uncoupling lever clearance.	
4. <b>VESTIBULES AND END-OF-CAR HARDWARE</b> Visually inspect/check operation of diaphragms, bridge-plates, curtains, safety appliances, doors and panels, handbrake for defects.	
5. <b>INTERIOR HARDWARE</b> Visually inspect emergency tools, first aid kits, seats, carpet, trash receptacles, toilets, sinks, and soap dispensers.  Drain toilet waste retention toilet. Fill toilet hopper water tank  Ensure that fire extinguishers are in place and sealed. Check date tags and pressure gauges. Replace if necessary. SMP 28002.	
6. <b>PERFORM CAR CLEANING ACCORDING TO AMTRAK PROCEDURES.</b> To include: <u>Passenger Area</u> : brush upholstery, wipe tables, arm rests and seat backs, empty magazine pouches, spot clean windows and walls, remove gum, vacuum and spot clean carpet, mop all rubber floor areas. <u>Restrooms</u> : disinfect wash basin, toilet and surrounding affected area, replace toilet paper, spot clean walls, and mop floor.	
7. <b>AIR BRAKE</b> Visually inspect piping, hoses, couplings. Drain reservoir condensate. Test air brakes and applied/release indicators. Check pressure switches for proper operation.	



**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 DAILY TRIP INSPECTION REPORT  
 MAP 10 AC  
 Include MAP 9**

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**TRIP INSPECTION**

DESCRIPTION	SIGNATURE
<p><b>8. AIR CONDITIONING, HEAT, REFRIGERATION</b></p> <p>8.1 REPLACE AIR FILTERS EVERY 92 DAYS OR SOONER IF NECESSARY. NOTE DATE ON MAP 21-A. Check vaporizer units, coils, oil level, freon level, look for signs of leaks.</p> <p>8.2 Check shunt trip circuit.</p> <p>8.3 Check operation of fresh air dampers</p> <p>8.4 Check air conditioning /heating system for proper operation.</p> <p>8.5 Check for debris in condenser coil. Clean with back flow of low velocity air as required.</p> <p>8.6 Check compressor oil in sight glass during operation.</p> <p>8.7 Check freon sight glass for moisture and proper operation.</p> <p>8.8 Check food service temperatures:</p> <p>8.9 Freezers: 0 degrees or below.</p>	
<p><b>9. ELECTRICAL AND EQUIPMENT COMPARTMENTS</b></p> <p>9.1 Visually inspect/check operation of trainline cables, jumpers, receptacles, batteries, battery charger/low voltage power supply, ground cables, wheel slide sensors, antifreeze circuits, wheelslide controller, and protective covers on equipment boxes.</p> <p>9.2 Wheelslide Sensor Clearance: .010"</p>	
<p><b>10. INTERIOR ELECTRICAL</b>          Visually inspect/check operation of electrical locker, circuit breakers, contactors, fuses, switches, relays, lighting, water heater, water cooler, PA, intercom, message displays and lamp signs illumination, indicators, conductors signal.</p>	
<p><b>11. WHEELCHAIR</b>          Cycle wheelchair lift.</p>	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
DAILY TRIP INSPECTION REPORT  
MAP 10 AC  
Include MAP 9**

ITEMS \_\_\_\_\_

ITEMS \_\_\_\_\_

ITEMS \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

\_\_\_\_\_  
**FOREMAN IN CHARGE**

\_\_\_\_\_  
**DATE**



AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 92 DAY AIR BRAKE INSPECTION REPORT  
 FRA PERIODIC INSPECTION  
 MAP 10 AC  
 Include MAP 9

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**TRIP INSPECTION**

DESCRIPTION	SIGNATURE
1. Test air gauges.	
2. Test load meter.	
3. Inspect all electrical equipment and visible insulation per FRA rule 229.25.	
4. Inspect condition of all safety appliances.	
5. Inspect running gear.	
6. Perform single car air brake test.	

ITEMS \_\_\_\_\_

ITEMS \_\_\_\_\_

ITEMS \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

INSPECTED BY \_\_\_\_\_

\_\_\_\_\_  
**FOREMAN IN CHARGE**

\_\_\_\_\_  
**DATE**



**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>1. Battery</b></p> <p>1.1 Check that all vent caps are closed.</p> <p>1.2 Inspect for and remove all corrosion in the battery box. Sec. 2</p> <p>1.3 Wash off dirt using garden hose spray under pressure of 30-40 psi; then blow off excess water with low velocity air at 30 psi max.</p> <p>1.4 Check cell voltages.</p> <p>1.5 Check/refill electrolyte level, if needed. 1.6 Measure specific gravity of electrolyte.</p> <p><b>NOTE: NEVER USE VASELINE OR GREASE ON METALLIC PARTS.</b></p> <p>1.7 Check for battery grounds.</p> <p>1.8 Check temperature compensator for proper resistance.</p>	Vol II	
<p><b>2. Battery Charger:</b></p> <p><b>WARNING:</b> Turn off both external AC circuit breakers and battery circuit breaker.</p> <p>2.1 Remove top and front panels from BC/LVPS and blow off dirt and dust from components (heat sink, circuit boards, etc.) with low velocity air at 30 psi.</p> <p>2.2 Inspect contacts of load shed contactor PSR3 and transfer contactor PSR1. If burned or pitted replace.</p> <p>2.3 Check the charging voltage and current output of charger, adjust when necessary.</p>	Vol II Sec. 2	
<p><b>3. Transformers:</b></p> <p>3.1 Check for burning or overheating.</p> <p>3.2 Check electrical connections for tightness.</p> <p>3.3 Blow off dust and dirt using low velocity air at 30 psi max.</p>		
<p><b>4. Electrical Lockers and Panels:</b></p> <p>4.1 Inspect each panel and its connectors for dirty or corroded contacts. Clean contacts if required.</p> <p>4.2 Blow out dust and dirt using low velocity air at pressure of 30 psi.</p> <p>4.3 Inspect each component for broken, discolored, overheated or loose parts. Replace if required.</p>	Vol II Sec. 5	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
-------------	--------------------------	-----------

<p><b>5. Air Conditioning, Heating and Ventilation:</b></p> <p>5.1 Clean outer covers of air conditioning unit. Renew filter/dryers if required.</p> <p>5.2 Blow condenser and evaporator coils. Wash if necessary.</p> <p>5.3 Check evaporator mounting bolts for security. Check evaporator drain.</p> <p>5.4 Check blower motor, condenser fan motor, compressor motor, ventilation and exhaust blowers and motors for:</p> <ul style="list-style-type: none"> <li>a) Secure mounting of fan to motor shaft.</li> <li>b) Motor and blower mounting bolt tightness.</li> <li>c) Frayed, worn or deteriorated wiring.</li> <li>d) Security of wire supports and terminals.</li> <li>e) Evidence of bearing seal leakage.</li> <li>f) Security of condenser grill safety switch.</li> </ul> <p>5.5 Lubricate blowers and condenser fan motors annually using approved lubricant (Shell Cytrina #3, Class 1 Lithium Base). CAUTION: Over-lubrication will damage the bearings. Never apply more than a single squirt of grease (1/2 oz) to any one fitting.</p> <p>5.6 Inspect freon moisture indicators.</p> <p>5.7 Check all freon components, lines and tubing for secure mounting and signs of leaks.</p> <p>5.8 Check unit chassis shock mounts for deteriorated or failed conditions and mounting bolts for security.</p> <p>5.9 Check overhead panels for security and damage.</p> <p>5.10 Check heater elements and high temperature limit switch for security.</p> <p>5.11 Check heating system wiring for frayed, worn or deteriorated insulation and wire supports for tightness.</p> <p>5.12 Check fresh air damper assembly for loose connections, tighten as necessary.</p> <p>5.13 Receiver tank liquid level.</p> <p>5.14 Compressor oil level.</p> <p>5.15 Inspect (evap) blower wheel (damage, security, rotation, balance).</p> <p>5.16 Inspect (evap) motor (visual/audible)</p> <p>5.17 Clean evaporator coil (clean and rinse, comb fins).</p> <p>5.18 Control panel contactors (contact voltage drop).</p> <p>5.19 Check operation of anti-freeze heaters.</p>	<p>Vol II Sec. 4 &amp; 5</p>	
--	----------------------------------	--

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>6. Manually Operated Doors:</b></p> <p>6.1 Check operation/securement of doors, locks, and handles. Lubricate when necessary.</p> <p>6.2 Check filter function, replace desiccant cartridge.</p> <p>6.3 Check operator cushioning during opening.</p> <p>6.4 Check function of closing lock arm.</p>	Vol III Sec. 6 & 7	
<p><b>7. Inspect seats for mechanical defects.</b></p>		
<p><b>8. Inspect fire extinguishers</b> Record inspection tag dates _____. If inspection date will exceed one year before next 120/180 day inspection, the tag must be redated. SMP 28002 REV 10/82.</p>		
<p><b>9. Car body:</b></p> <p>9.1 Inspect sides and roof for damage or distortion.</p> <p>9.2 Inspect underframe members and equipment brackets. pressure air.</p> <p>9.3 Inspection of interior walls and ceiling.</p> <p>9.4 Inspect ladders, flag holder and grab handles for loose or missing hardware.</p> <p>9.5 Check seals on windows for signs of leaks.</p> <p>9.6 Check operation of panel lock and sash movement.</p>		
<p><b>10. Door Operators and Door Slide Assemblies:</b></p> <p>10.1 Turn air cock handle to the OFF position and check that doors may be manually opened. Return air cock handle to its NORMAL position.</p> <p>10.2 Verify that operator limit switch (DLS) is deactivated when door panel is nearly closed.</p> <p>10.3 Check that pressure regulator is set at 90 psi.</p> <p>10.4 Check clear plastic weather seal; replace switch assembly if seal is broken or missing. Check operation of each press switch assembly.</p>		
<p><b>11. Inside Door Key switches:</b></p> <p>11.1 Check each assembly and tighten mounting hardware, if necessary.</p> <p>11.2 Test door key switch operation in all modes.</p>	Vol III Sec. 6	



**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM**  
**120-DAY INSPECTION REPORT**  
**MAP 120A**  
**Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>12. Interior and Exterior Emergency Switch:</b></p> <p>12.1 Inspect each switch assembly and tighten mounting hardware, if necessary.</p> <p>12.2 With system circuit breaker ON, check the operation of all doors.</p>	<p>Vol III Sec. 6</p>	
<p><b>13. Communications System-Carborne Control Unit</b></p> <p>13.1 Remove cover and check terminals and pins for corrosion. Clean as required.</p> <p>13.2 Remove 27 point electrical connection from trainline connection and inspect pins and connections for corrosion and cleanliness and clean as required. Verify trainline circuits with 27 point test unit.</p> <p>13.3 Check that 2 amp fuse is properly applied.</p> <p>13.4 PA wire L.E.O scanner continuity test. SMP. 11001</p> <p>13.5 Inspect Conductor station selection switch, handset and cord for defect.</p> <p>13.6 Inspect Engineer Station selection switch, handset and cord for defects.</p> <p>13.7 Inspect PA Amplifier housing, wires, connections and hardware for defects.</p> <p>13.8 Inspect External PA speakers, terminal boards, grilles and cones for defects.</p> <p>13.9 Inspect CD player cable connections, wire for defects.</p> <p>13.10 Inspect AM/FM Radio Cassette unit, wire and hardware for defects.</p> <p>13.11 Inspect Passenger Seat Control units for defects.</p> <p>13.12 Inspect Entertainment Amplifier (EA) and cable connections for defects.</p> <p>13.13 Inspect EA power supply and cable connections for defects.</p> <p>13.14 Inspect Communication Control unit and connections for defects.</p> <p>13.15 Inspect Audio Sources power supply and connectors for Defects.</p>	<p>Vol III Sec. 9</p>	
<p><b>14. Lighting System:</b></p> <p>14.1 Check operation of all systems and replace burned out bulbs as needed.</p>		
<p><b>15. Drain and flush water tanks. SMP 47601</b></p>		

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM**  
**120-DAY INSPECTION REPORT**  
**MAP 120A**  
**Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<b>16. Water Raising System:</b> 16.1 Check adjustable reducing valve, cut-out cocks, E-1 Safety valve, and all piping for external damage and air leakage.	Vol III Sec. 11	
<b>17. Lavatories and Waste Treatment System:</b> 17.1 Check spigots, changing tables, signage, wash basins and plumbing systems for defects. 17.2 Drain air filter regulator. 17.3 Verify regulator pressure of 60 PSI. 17.4 Clean air filter regulator. 17.5 Remove obstructions in regulator piping. 17.6 Open strainer on water panel and drain. 17.7 Inspect water lines for defects. 17.8 Inspect toilet flapper and flapper gasket. 17.9 Check flapper and air cylinder operation. 17.10 Inspect air cylinder O rings. 17.11 Inspect air cylinder retainer rings. 17.12 Inspect spray O rings. 17.13 Clean spring ring. 17.14 Inspect macerator boot. 17.15 Clean level sensor.	Vol III Sec. 10	
<b>18. Brakes:</b> 18.1 Conduct single car test. 18.2 Check brake cylinder pressure. (55-57 psi full service, 71-73 psi emergency). 18.3 Inspect handbrake. Clean and lubricate as required. 18.4 Lubricate hanger and brake head bolts (tread brakes). 18.5 Lubricate alemite fitting in head of hanger arm bolt (disc brakes). 18.6 Fill body reservoir with lubricant (tread brakes). 18.7 Clean magnetic pick-up and check for loose locknut (if loose, check gap). 18.8 Perform Decelostat self test. 18.9 Check duplex air gauge.		

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

**CAR NO.:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>19. Brake Control:</b> Drain condensate from combined control and selector volume reservoirs by removing the 1/2 inch NPT drain plug from the bottom of each reservoir.</p> <p>Diaphragms:</p> <p>19.1 Inspect gatke faceplate. Replace if broken or worn. 19.2 Inspect faceplate. Replace diaphragm if bent or twisted. 19.3 Inspect shear mounts. Replace as necessary. 19.4 Inspect diaphragm to car mounting to assure proper weather seal. 19.5 Couple to adjacent car. Spray water on top of diaphragms assure proper weather seal.</p>	<p style="text-align: center;">Vol IV Sec. 12</p>	
<p><b>20. Air Bag System:</b> 20.1 Remove leveling valve and clean screens. 20.2 Remove OB-1 strainer and clean filter.</p>	<p style="text-align: center;">Vol III Sec. 11</p>	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM**  
**120-DAY INSPECTION REPORT**  
**MAP 120A**  
**Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>21. Truck Mechanical:</b></p> <p>21.1 Inspect and gauge wheels. Clean road dirt from wheel plates. Record measurements on MAP # ALL AW.</p> <p>21.2 Inspect crossbars.</p> <p>21.3 Inspect equalizers, equalizer seats, and associated parts for wear.</p> <p>21.4 Inspect pedestal liners for wear, renew as required.</p> <p>21.5 Inspect pedestal tie straps (tighten if necessary).</p> <p>21.6 Inspect bolster anchor rods (if necessary, shim to obtain proper tightness).</p> <p>21.7 (Horizon) Inspect condition of lateral bumpers. Assure proper clearance. 1/8" lateral clearance, 3/8" total lateral play.</p> <p>21.8 Check leveling of car body.</p> <p>21.9 Inspect rubber bushings between links of the vertical and horizontal shock absorbers and respective pivot points.</p> <p>21.10 Check rubber bushings on car body bolster connections at car body bolster and truck bolster.</p> <p>21.11 Check all piping and connections for loose fittings and damaged components.</p> <p>21.12 Check shock absorbers for proper mechanical operation. Repair or renew as needed.</p> <p>21.13 Check the locking center pin which affects securement of the two truck halves (bolster and truck frame) at the center pivot for security.</p> <p>21.14 Check for proper handbrake connection to axle disc of the B-end truck.</p> <p>21.15 Check handbrake cable attachment and handbrake for proper operation. Check for proper operation of brake indicating light.</p>	10	
<p>22. Make visual inspection of yoke, yoke pin, wear strap and radial connector bushings for excessive wear.</p>	Vol IV Sec. 14 & Running Maintenance and Service Manual Pgs 3-40	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
-------------	-----------------------	-----------

<ul style="list-style-type: none"> <li>23.1 Inspect diaphragm phenolic wear plate and elastomeric shear mounts for cracks and breaks.</li> <li>23.2 Inspect faceplate for bends of cracks.</li> <li>23.3 Inspect AR-7 coating for abrasions or cracks.</li> </ul>		
<p><b>24. Draft Gear:</b></p> <ul style="list-style-type: none"> <li>24.1 Check draft for tightness in the pocket.</li> <li>24.2 Inspect Waughmat springs for proper alignment, signs of deterioration, wear, and bent dividers.</li> </ul>	<p align="center">Vol IV Sec. 14 &amp; Running Maintenance and Service Manual Pgs 3-40</p>	
<p><b>25. Coupler:</b></p> <ul style="list-style-type: none"> <li>25.1 Remove dirt and foreign matter from coupler with a dry air blast or other suitable means.</li> <li>25.2 Check that the inside of the coupler head, the coupler operating parts and the machined surfaces of the coupler contour are free from lubricant or paint.</li> <li>25.3 Gauge the following (see reference figures): <ul style="list-style-type: none"> <li>a) Contour - Gauge 31000 (figure 3-3).</li> <li>b) Aligning wing/guard arm-Gauges 32600 (figure 3-4) and 34101-4 (figure 3-5).</li> <li>c) Coupler body interlocking surfaces- Gauge 44250-5 (figure 3-6).</li> <li>d) Contour slack-Gauge 34100-1 (figure 3-7).</li> <li>e) Nose wear and stretch limit-Gauge 34100-2A (figure 3-8).</li> </ul> </li> <li>25.4 Check anticreep protection (figure 3-9).</li> <li>25.5 Make visual inspection of coupler body pin protectors and pivot lugs. Condemn for cracks in pivot lug, pin protector boss, or breaks in pin protector boss.</li> <li>25.6 Check coupler shank wear plate. Check and lubricate coupler carrier assembly.</li> <li>25.7 Check that the carbody is level and at proper height.</li> <li>25.8 Check coupler height per AAR PC Rule # 5 adjust by shimming at the coupler carrier. Check levelness of coupler.</li> <li>25.9 Check that coupler operating rod operates freely. Check clearance between operating rod eye and locklift lever (figure 3-2).</li> <li>25.10 Inspect uncoupling bracket mechanism.</li> </ul>	<p align="center">Vol IV Sec. 14 &amp; Running Maintenance and Service Manual Pgs 3-32 &amp; 3-39</p> <p align="center">Vol IV Sec. 14</p>	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<p><b>26. Trucks-Wheel Slide:</b></p> <p>26.1 Check that input sensor cable assemblies, control cable assemblies for magnetic sensors and power input wires to wheel slide controller as well as output wires to toilet relay and wires and cable assemblies to wheel slip dump valve and reservoir assemblies are secure and are not broken. Replace any if damaged.</p> <p>26.2 Check wheel slide dump valve and reservoir for air leakage.</p> <p>26.3 Record sensor resistance (800-1200 ohms).</p> <p>_____</p>	Vol III	
<p>27. Inspect all exposed 480V cables for nicks, cracks, or deterioration. Record meter readings (must be at least 2 meg).</p> <p>1-2 _____ 1-3 _____ 2-3 _____</p> <p>1-GND _____ 2-GND _____ 3-GND _____</p>	SMP 26601 SMP 48001	
<p>28. Observe safety precautions. Assure that 480V. power is not connected to the car and that the main circuit breaker is open, locked out, and tagged. Then use a non-metallic brush and approved electrical parts cleaner to clean the small control pins in the 480V. receptacles.</p>		
<p><b>29. Trainline Jumpers and Receptacles: HEP</b></p> <p>29.1 Inspect cover spring.</p> <p>29.2 Check jumpers and receptacles for shorted wires.</p> <p>29.3 Inspect all (5) cable support cleat blocks.</p> <p>29.4 Inspect for loose or missing hardware.</p>		

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM**  
**120-DAY INSPECTION REPORT**  
**MAP 120A**  
**Includes #9, 10AC, 60SE**

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	PS MANUAL REF SECTION	SIGNATURE
<b>30. Refrigeration: (30)</b> 30.1 Renew inlet filters on and coffee-maker. 30.2 Check operation of freezer cabinet: hinges, latches, locks, seats, temperature indicators and all cabinet drains. 30.3 Check operation of convection ovens, coffee-makers, faucets and sink drains. 30.4 Test microwave ovens.	SMP 23604	
<b>31. Check for proper operation of convection and microwave ovens and coffee pots.</b>	Vol IV Sec. 16	
<b>32. Wheelchair Lift:</b> 32.1 Inspect main rollers for excessive wear or flat spots. 32.2 Inspect inner frame tube for galling. 32.3 Inspect cylinders for leaks. 32.4 Inspect power unit for leak & test hand pump operation. 32.5 Inspect all hydraulic hoses & fittings for damage & leaks. 32.6 Inspect for loose or missing fasteners or hardware. 32.7 Inspect non-skid surface for wear. 32.8 Inspect power unit filter. 32.9 Lubricate platform hinge.		
<b>33. Check emergency window handles to ensure they are connected to, and will pull out, the rubber bead on emergency sash window. If not, corrected to meet proper specifications.</b>	Vol. I Sec. 1.4	
<b>34. Inspect all non-concealed lights, marker lights, and switches. Replace all burnt out lamps and broken or missing glassware.</b>		

AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
120-DAY INSPECTION REPORT  
MAP 120A  
Includes #9, 10AC, 60SE

CAR NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

**EQUIPMENT ACCEPTANCE FOR SERVICE APPROVALS:**

PM Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

OBS QA Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

Mech. Dept. QC Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

Date car release for service: \_\_\_\_\_ Date: \_\_\_\_\_



**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM**  
**360-DAY INSPECTION REPORT**  
 MAP 360 AC  
 Includes: #9, 120 AC, 60 AC, 60 PTC, 10 AC

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	SIGNATURE
<p><b>1. BATTERIES:</b></p> <ul style="list-style-type: none"> <li>1.1 Check rigid intercell connections.</li> <li>1.2 Check intercrate connections.</li> <li>1.3 Check protective coating on terminals and interconnects.</li> <li>1.3.1 Torque all bolts and jumpers( 14 ft. lbs. )</li> <li>1.3.2 Apply Nife Cota or equivalent to all connector terminals and bolts.</li> </ul>	
<p><b>2. LIGHTING:</b></p> <p><u>FLUORESCENT</u></p> <ul style="list-style-type: none"> <li>2.1 Ensure light assemblies are properly secured.</li> <li>2.2 Check light assembly for breaks and cracks.</li> <li>2.3 Check sockets for breaks and cracks.</li> <li>2.4 Check electrical contacts for corrosion.</li> <li>2.5 Inspect wires.</li> <li>2.6 Check ballast assembly for breaks and cracks.</li> <li>2.7 Clean fluorescent lamps.</li> <li>2.8 Clean light assembly surfaces (inside and outside).</li> <li>2.9 Check and clean dust and residue buildup on light assemblies.</li> <li>2.10 Verify function of lights.</li> <li>2.11 Check wiring for defective insulation and wire terminations for proper physical connections, also check condition of connections and connector pins.</li> <li>2.12 Check ballasts for evidence of overheating, arcing and other visible defects: check ballast wiring leads and make sure ballast are mounted securely.</li> </ul> <p><u>LCD SIGNS</u></p> <ul style="list-style-type: none"> <li>2.13 Ensure LCD signs are secure.</li> <li>2.14 Inspect lamp pins for damage and corrosion.</li> <li>2.15 Inspect sockets for electrical damage and corrosion.</li> <li>2.16 Inspect wire harness for damage and corrosion.</li> <li>2.17 Inspect PWAs and LCD modules for defects.</li> </ul>	
<p><b>3. COMMUNICATIONS:</b></p> <ul style="list-style-type: none"> <li>3.1 Clean unit and replace laser.</li> </ul>	
<p><b>4. HVAC:</b></p> <ul style="list-style-type: none"> <li>4.1 R&amp;R dehydrator.</li> <li>4.2 Check heater resistance and current.</li> </ul>	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
360-DAY INSPECTION REPORT**

MAP 360 AC

Includes: #9, 120 AC, 60 AC, 60 PTC, 10 AC

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	SIGNATURE
-------------	-----------

**5. DOORS:**

END DOORS

- 5.1 Inspect pneumatic door operator.
- 5.2 Check security of spring eyebolt locknuts.
- 5.3 Check cylinder piston rod clearance.
- 5.4 Check and adjust door speeds.
- 5.5 Clean and lubricate door hangers and tracks.

SIDE DOORS:

- 5.6 Check security of system components, wire leads, base plate mounting bolts, operator to car structure nuts, and slide mountings.
- 5.7 Check solenoid valve mounting, slide valve function, and alignment of operator and door centerlines (parallel).
- 5.8 Verify hanger side movement is within specifications.
- 5.9 Check cleanliness and freedom of door hangers and clean door tracks and pockets as needed.
- 5.10 Lubricate door tracks.

GENERAL

- 5.11 Inspect solenoid (air) valve and air cylinder.
- 5.12 Inspect and clean wiring for door control box.
- 5.13 Vacuum or brush all dirt from the operator assembly.
- 5.14 Remove oil and grease from assembly surface using a lint free cloth dampened with clorethene NU or equivalent
- 5.15 Check resistance of varistor assemblies used across magnet valve coils and time-delay relay coil. Ref. Vapor manual: Pgs 5-9.
- 5.16 Verify that all electric wiring is free from mechanical interference; dress and secure if necessary.
- 5.17 Operate each door panel and check each operator for leaks in the piping connections.
- 5.18 Check that door panel opens in 2-1/2 seconds and closes in 3-1/2 seconds. Adjust opening and closing speed fittings, if necessary. Tighten speed setting jamnuts after each adjustment.
- 5.19 Open door panel and check that it remains open for 15 seconds.
- 5.20 Check that miniature control valve is activated when the door panel is closed.
- 5.21 Inspect each press switch assembly and tighten mounting hardware if necessary.
- 5.22 Check sensitive edge and sensitive edge switch for security.
- 5.23 Check each door slide assembly and tighten mounting hardware if necessary.
- 5.24 Verify that each door slide is mounted parallel to its door edge.
- 5.25 Check that sensitive edge switch is securely mounted to the door slide plate.
- 5.26 Verify that the switch wiring and PVC tubing are free from mechanical

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
360-DAY INSPECTION REPORT  
MAP 360 AC**

Includes: #9, 120 AC, 60 AC, 60 PTC, 10 AC

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	SIGNATURE
<p><b>6. INTERIOR:</b> 6.1 Remove drapes for dry cleaning.</p>	
<p><b>7. BRAKES:</b> 7.1 Clean and inspect OB-4 Type strainer and replace strainer material. 7.2 Clean and inspect H type sir filter and replace filter cartridge.</p> <p><u>BRAKES (AIR):</u> 7.3 Check for proper hand brake connection to axle disc of the 3-end truck. 7.4 Check hand brake cable attachment and hand brake for proper operation. Check for proper operation of brake indicating light. 7.5 Clean and inspect C-1 Strainer and check valve. 7.6 Clean and inspect orifice of sander relay valves. 7.7 Replace air filter automatic drain valve and magnetic valve. 7.8 Replace main reservoir automatic drain valve and magnetic valve. 7.9 Clean and inspect dirt collector chamber of brake pipe branch cutout cock. 7.10 Replace filter in cutout cock body. 7.11 Clean out sump and replace paper filter in dirt collector/cut out cock. 7.12 Replace main reservoir strainer.</p>	

**EQUIPMENT-ACCEPTANCE FOR SERVICE APPROVALS:**

PM Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

OBS QA Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

Mech. Dept. QC Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

Date car released for service: \_\_\_\_\_

APPENDIX 5  
AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM -  
FOOD SERVICE CAR MAP FORMS

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 FOOD SERVICE CARS  
 PRE-TRIP CLEANING REPORT  
 MAP 110PTC/60SPT  
 Includes #9, 10AC**

**UNIT NO.:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

DESCRIPTION	REFERENCE	SIGNATURE
<ul style="list-style-type: none"> <li>• Rodents must not be sighted, rodent droppings or other evidence of rodents must not be found, if found, SHOP CAR for VIKANE treatment. (ALL CARS)</li> </ul>		
<ul style="list-style-type: none"> <li>• Insects/pests must not be sighted or evidence of insects/pests must not be found, if so, SHOP CAR for VIKANE treatment. (ALL CARS)</li> </ul>		
<ol style="list-style-type: none"> <li>1. Remove all trash from car body, including all food preparation areas. Keep all trash in approved containers at all times.</li> </ol>	MCC-004 Page-36	
<ol style="list-style-type: none"> <li>2. Scrub and wipe with disinfecting cleaner: kitchen food service area ceiling, walls, trash containers, inside of trash container cabinets, and booth tables.</li> </ol>	MCC-004 Page-59	
<ol style="list-style-type: none"> <li>3. Scrub and wipe with approved cleaner: all fresh air gills, light lenses, including the lens under the cabinets.</li> </ol> <p>_____ Signature</p>		
<ol style="list-style-type: none"> <li>4. Clean the following with an approved disinfecting cleaner: All freezers inside and out, including freezer door gaskets.</li> <li>4.2 All sinks and ice well.</li> <li>4.3 All food service counter tops.</li> </ol>	MCC-004 Page-424.1	
<ol style="list-style-type: none"> <li>5. Clean with an approved cleaner: microwave ovens, convection ovens, coffee-makers, and coffee warming plates.</li> </ol>	MCC-004 Page 18	
<ol style="list-style-type: none"> <li>6. Scrub and wipe the inside of all microwave and convection oven enclosure cabinets, and coffee maker restraint brackets.</li> </ol>		
<ol style="list-style-type: none"> <li>7. Hot Food Servers: Remove and clean trays and drawer slides. Clean underneath, inside and out.</li> </ol>	MM V-4 Sec. 16	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
FOOD SERVICE CARS  
PRE-TRIP CLEANING REPORT  
MAP 110PTC/60SPT  
Includes #9, 10AC**

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	REFERENCE	SIGNATURE
8. Elevator: Scrub and wipe interior and floor of shaft.		
9. Remove floor mats in kitchen area and scrub floor with an approved germicidal cleaner, steam clean the floor mats and/or apply new floor matting.	MCC-004 Page-18	
10. Inspect and clean out all areas under cabinets and sinks that may be open to food/debris/rodent buildup.		
11. Review MAP 21A, clean all cleaning related defects. (ALL CARS).		

**REFRIGERATION / MECHANICAL**

DESCRIPTION	SIGNATURE
<p>1. Check all refrigeration and freezers for proper operation and cooling temperatures.</p> <ul style="list-style-type: none"> <li>* Freezer temperature 0 degrees F. or below.</li> <li>* Refrigeration temperature 40 degrees F. or below.</li> <li>* Refrigeration temperature 33 degrees F. or above.</li> <li>* Thermometer accurate to +/- 3 degree.</li> </ul>	
<p>2. Ensure toilets are working properly. If a car has an inoperative toilet, it must be repaired, or the car is to be shopped prior to dispatchment. (ALL CARS)</p>	
<p>3. Check hand washing facilities for proper operation. If car has an inoperative wash basin, they must be repaired or the car is to be shopped prior to dispatchment. (ALL CARS)</p> <ul style="list-style-type: none"> <li>* Cold and hot (110-140 degrees) water available.</li> <li>* Metering faucet (if present) hold for at least 15 sec.</li> </ul>	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
FOOD SERVICE CARS  
PRE-TRIP CLEANING REPORT  
MAP 110PTC/60SPT  
Includes #9, 10AC**

**UNIT NO.:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**EQUIPMENT ACCEPTANCE FOR SERVICE APPROVALS:**

**Cleaning Supervisor:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**OBS:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Mechanical:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**MAINTENANCE REFERENCES**

Amtrak Car Cleaning Standards ..... MCC-004

FDA Food Service Manual ..... DHEW Pub. No. (FDA) 78-2081

\*NOTE: STANDARDIZED MECHANICAL/PASSENGER SERVICES JOINT REQUIREMENTS

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 FOOD SERVICE CARS  
 60-DAY CLEANING REPORT  
 MAP 60AC  
 Includes: #9, 10AC**

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	REFERENCE	SIGNATURE
1. Blow interior of car with compressed air including: <ul style="list-style-type: none"> <li>1.0 Remove all large trash from car body area.</li> <li>1.1 Remove seat cushions and partially turn seats to blow between seat frame and wall, open all access and locker doors, blow areas out with compressed air.</li> <li>1.2 Blow under heat guards.</li> <li>1.3 Blow all seat frames and blow all carpeting on floor and walls.</li> <li>1.4 Drop all ceiling panels. Wipe complete interior duct area of car with approved cleaner.</li> <li>1.5 Drop door access panels and blow interior area with low pressure air (30 PSI).</li> </ul>	MCC-004 Page 38	
2. Scrub and wipe: (with approved cleaner) ceiling, walls, bulkheads, luggage racks, seat frames, tray tables, intercar vestibule, window sills, return/fresh air grills and light fixture shades.	MCC-004 Page 59	
3. Scrub and wipe, with approved cleaner toilet rooms including ceiling receptacles. Polish brightly all stainless steel hardware, including toilet enclosure lid, with approved stainless steel polish.	MCC-004 Page 43	
4. Remove stains, gum and adhesive from carpet upholstery and floor tile.	MCC-004 Page 45	
5. Remove all graffiti from toilet walls, vestibule area.		
6. Clean all glass work, windows, mirrors and dividers with a clean soft damp cloth and approved cleaner. NOTE: Any dirt or grit in a cloth will scratch Lexan window surfaces.	MCC-004 Page 32	
7. Clean vinyl and cloth seat or booth cushions with an approved cleaner.		
8. Vacuum all carpeted areas.		



**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 FOOD SERVICE CARS  
 60-DAY CLEANING REPORT  
 MAP 60AC  
 Includes: #9, 10AC**

UNIT NO.: \_\_\_\_\_ LOCATION: \_\_\_\_\_ DATE: \_\_\_\_\_

DESCRIPTION	REFERENCE	SIGNATURE
9. Shampoo ceiling and floor carpeting. Using extractor system, dry with blowers. Use pre-spot cleaner in heavily soiled areas.	MCC-004 Page 5	
10. Drain, flush, and sterilize with chlorine all water coolers and water storage tanks according to Amtrak SMP 47601.	SMP 47601	
11. Scrub and clean vestibules including diaphragm curtains, doors, appliances and steps with an approved exterior cleaner.	MCC-004 Page 29	

**EXTERIOR**

12. Clean exterior of car including car ends, and utility rooms with an approved cleaner.	MCC-004 Page 17	
13. Vikane car for rodents and vacuum up all rodent droppings. Record Vikane date in electric locker.	MCC-004 Page 57	
14. Update entries on periodic maintenance forms in electric locker and on MAP 21.		

**FDA CLEANING REQUIREMENTS - FOOD SERVICE CARS - DINER-LOUNGE-SNACK**

DESCRIPTION	REFERENCE	SIGNATURE
1. Empty and wash all trash containers and trash container enclosures.	MCC-004 Page 28	
2. Remove and clean the following with an approved germicidal cleaner: microwave ovens, convection ovens, coffee makers and coffee warming plates, and griddle areas.	MCC-004 Page 18	
3. Clean the following with an approved germicidal cleaner: all food surface, preparation areas the exterior walls of all counters and interior of all oven holding cabinets.	FDA Pub 78-2081 5-101	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
 FOOD SERVICE CARS  
 60-DAY CLEANING REPORT  
 MAP 60AC  
 Includes: #9, 10AC**

**UNIT NO.:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

DESCRIPTION	REFERENCE	SIGNATURE
4. Elevators-Scrub and clean interior and floor of elevator shaft.	Sec. 15.1	
5. Hot Food Servers-Remove and clean trays and drawer slides. Clean underneath, inside and out.	MM V-4 Sec. 16	
6. Toasters-If equipped, wipe clean with germicidal cleaner. Remove and clean crumb tray.		
7. Scrub and wipe the following with approved germicidal cleaner:  7.1 All storage cabinets inside and out. 7.2 All sinks and ice storage chests. 7.3 All booth table tops, and booth seats.	MCC-004 Page 42	
8. Remove floor mats behind the bar area and scrub floor, steam clean the floor mats and/or apply new floor matting.	MCC-004 Page 18	
9. Inspect and clean out all areas under cabinets and sinks that may be open.  Date car released for service: _____		
10. Scrub and wipe clean with germicidal cleaner all cabinets, drawers, bins, lockers, counter and work surfaces.	MCC-004 Page 18	

**AMTRAK/CALTRANS MAINTENANCE ANALYSIS PROGRAM  
FOOD SERVICE CARS  
60-DAY CLEANING REPORT  
MAP 60AC  
Includes: #9, 10AC**

**UNIT NO.:** \_\_\_\_\_ **LOCATION:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**EQUIPMENT-ACCEPTANCE FOR SERVICE APPROVALS:**

**PM Supervisor:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**OBS QA Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Mech. Dept. QC Inspector:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Date car released for service:** \_\_\_\_\_

**MAINTENANCE REFERENCES:**

Amtrak Car Cleaning Standards ..... MC-004  
FDA Food Service Manual ..... DHEW Pub. No. (FDA) 78-2081  
Mech. Dept. SMP Manual  
Superliner Maintenance Manuals

APPENDIX 6  
MATERIAL ACCOUNTING STATEMENT

MAINTENANCE AGREEMENT

MAINTENANCE AGREEMENT  
APPENDIX 6

SPARE PARTS INVOICE FORMAT

Spare Parts Invoice for the month of \_\_\_\_\_

**Consumable parts Purchased**

Description	Part No	Quantity	Price	Total
Total				_____

**Spare parts Purchased**

Description	Part No	Quantity	Price	Total
Total				_____

Total Spare Parts Purchased \_\_\_\_\_

Inventory Control Labor (1 PY) \_\_\_\_\_ (2) \_\_\_\_\_

TOTAL \_\_\_\_\_

**Consumable parts Used (1)**

Description	Part No	Quantity	Price	Total
Total				_____

**Spare parts Used (1)**

Vehicle No	Work Order No	Description	Part No	Quantity	Price	Total
Total						_____

Total Spare Parts Used \_\_\_\_\_

**NOTES**

1. Only Spare parts purchased are invoiced to Caltrans each month, spare parts used will determine usage patterns and provide a true cost of running State Provided Equipment.
2. Inventory control labor not to exceed one Person Year (PY), annual salary and benefits up to \$44,000.

APPENDIX 7  
FORM OF BUDGET

MAINTENANCE AGREEMENT  
APPENDIX 7

FORM OF BUDGET  
(Supporting Documentation for Transfer Agreement Section 5, Budgeting Process)

Fiscal Year: \_\_\_\_\_

Scheduled Maintenance Costs  
Labor Only

	Projected vehicle Months	Man-hours per vehicle per Month	Total Cost
Cab Cars			
Trailer Cars			
Food Service Cars			
Baggage Cars			
F59 PHI			
Dash-8			

Vehicle Repair Costs  
Labor only

	Projected vehicle Months	Man-hours per Vehicle per Month	Total Cost
Cab Cars			
Trailer Cars			
Food Service Cars			
Baggage Cars			
F59 PHI			
Dash-8			

Total Labor Costs \_\_\_\_\_  
For year

Spare Parts - Consumables

	Projected vehicle Months	Consumables per vehicle per Month	Total Cost
Cab Cars			
Trailer Cars			
Food Service Cars			
Baggage Cars			
F59 PHI			
Dash-8			

Spare Parts - Other

MAINTENANCE AGREEMENT

---

	Projected vehicle Months	Spares cost per vehicle per Month	Total Cost
Cab Cars			
Trailer Cars			
Food Service Cars			
Baggage Cars			
F59 PHI			
Dash-8			

Total Spares Costs \_\_\_\_\_  
For year

Maintenance Labor Costs	
Management overhead for Labor	
Spare Parts Costs	
Inventory Control Personnel (4)	
Other Costs(3)	

**Total Maintenance Cost For State  
Provided Equipment** \_\_\_\_\_

**NOTES**

1. Scheduled maintenance includes all work included on MAP forms including car/locomotive cleaning
2. Consumable spare parts includes lamps, brake shoes and lubrication oils etc. which are changed on a regular basis due to normal wear and tear.
3. Other costs must be supported by additional information on the requirements.
4. Inventory Control Personnel shall be limited to one (1) Person Year (PY) with annual salary plus benefits not to exceed \$44,000/year.





NATIONAL RAILROAD PASSENGER CORPORATION  
and  
THE STATE OF CALIFORNIA

AGREEMENT FOR THE PROVISION OF RAIL  
PASSENGER SERVICE PURSUANT TO  
TITLE 49 U.S.C. § 24107

*THIS AGREEMENT* made as of the first day of October 1997, by and between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia and having its principal office and place of business in Washington, D. C. (hereinafter referred to as "Amtrak") and the State of California, acting by and through its Department of Transportation (hereinafter referred to as "the State").

*WHEREAS*, the Rail Passenger Service Act as amended, Title 49 U.S.C. § 24101 et. seq. (hereinafter referred to as "the Act") provides, in Section 24704, that any state, regional or local agency may request of Amtrak the institution of rail passenger service or the retention of a route, train or service, and that Amtrak may enter into an agreement for the institution or retention of such service if such state, regional or local agency agrees to reimburse Amtrak for certain proportions of the loss and of the associated capital costs of such service, as more specifically defined herein; and

WHEREAS, Section 24704 of the Act further provides that Amtrak shall institute such service if the state, regional or local agency has provided to Amtrak adequate assurance that it has sufficient resources to meet its share of the costs and that it has conducted a market analysis acceptable to Amtrak to ensure that there is adequate demand to warrant such service; and

WHEREAS, the State has requested of Amtrak rail passenger service beyond that included in the basic system as aforesaid for the benefit of persons traveling to, from and within the State and has provided to Amtrak adequate assurances as to the State's resources; and

WHEREAS, the State is authorized by applicable state law to enter into an agreement with Amtrak pursuant to the Act and on the terms and conditions hereinafter set forth and funds for this purpose have been made available by the State as set forth herein; and

WHEREAS, the parties wish to provide for daily bus service between statewide points to connect with the aforesaid rail passenger service, the cost of which will be borne by the State; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1 - SERVICE TO BE PROVIDED

(a) Amtrak shall provide rail passenger service over the route(s) set forth in Appendix I hereto and substantially in accordance with the schedules prescribed therein. Amtrak shall not be required to increase the frequency of any of the said schedules except pursuant to a mutually agreed and amended Appendix I made pursuant to Section 8(a) or Section 10 hereof; provided, however, that this shall not preclude Amtrak from providing such increased scheduled service at its own cost and expense.

(b) Amtrak shall not be required to provide rail passenger service on any route additional to the route(s) set forth in Appendix I hereto except pursuant to a duly executed and supplemental Appendix I. Each such supplemental Appendix I shall be supported by a market analysis conducted by the State and acceptable to Amtrak. The parties agree to collaborate and to develop promptly a mutually agreed type and form of market analysis which shall thereafter be deemed acceptable to Amtrak as to type and form; provided, however, that such type and form may, in the light of future experience, be modified from time to time by mutual agreement between the parties. Consideration of marketing studies by Amtrak will not be unreasonably delayed.

- c) Amtrak shall exercise its best efforts to provide rail passenger service of high quality and the parties shall cooperate in efforts to improve the said service, as may be appropriate. Unless expressly agreed in writing between the parties, the said service shall be at least equal in quality to that of Amtrak's basic system services.
- (d) In the event that the said rail passenger service may, from time to time, be fully utilized by the traveling public, Amtrak shall exercise reasonable efforts to provide additional rail passenger service equipment from its available resources or, by mutual agreement of the parties, confirmed in writing, to employ such additional compatible equipment as the State may, in its discretion, make available for use in the said service on a route provided for herein, as designated by the State.
- (e) The parties shall cooperate for the purpose of effecting the continuing existence and use of the rail passenger service herein and shall take such other action as they may mutually agree is conducive to the establishment and provision of the said service on a regular, efficient and economic basis. To that end Amtrak may incorporate the said service in its general advertising and promotional programs as it may deem appropriate to the area in which the said service is provided. By mutual agreement between the parties, confirmed in writing, Amtrak shall, in consultation with the

State, arrange for additional/alternative advertising directed specifically to the said service. Such additional advertising shall be subject to the availability of Amtrak advertising funds and shall be deemed a loss as hereinafter defined.

- (f) Amtrak agrees to insert, in all published timetables and advertising related to the rail passenger service herein, the following statement:

"This service is financed in part through funds made available by the State of California, Department of Transportation."

- (g) In order to enhance the operation of a service set forth in Appendix I, Amtrak and the State may, from time to time, identify minor capital projects to improve facilities used on the routes identified in Appendix I. Minor capital projects are understood as: maintenance, physical improvements alteration or repair work done for facilities related to rail or feeder bus service, which facilities include, but are not limited to, track, rail equipment, and stations (landscaping, pavement, parking lots, signage, P.A. systems, baggage rooms, lighting, bus loading and layover area). Such projects may, at the written request of the State, be undertaken by Amtrak using a portion of the funds set forth in Appendix III. In order to implement a specific project, the State will provide Amtrak with a written authorization to proceed with the project, including a project

description, any prior written approval of the plans and specifications for the project and the total estimated cost such project. Such authorization shall specify the maximum amount of money that is allocated to the specific project being authorized. Amtrak shall respond to the State's authorization within sixty (60) days, providing concurrence in or rejection of the project description and budget. If Amtrak provides concurrence, its response shall advise of the project's estimated schedule, including start and completion dates; if Amtrak provides rejection, its response shall specify the reason(s) therefor.

- (h) Amtrak shall contract with a bus operator or operators for the provision of connecting bus service between an Amtrak station or stations and other points, over such route(s) and in accordance with service levels as may be more particularly set forth in Appendix A attached hereto and made part hereof. Only passengers in possession of valid Amtrak tickets, vouchers or passes for transportation to, from, or through the aforesaid Amtrak station or stations shall be accepted for carriage. No checked baggage shall be carried, except between such specific points as may hereafter be agreed to by Amtrak and the State. Changes in the aforesaid schedule(s) may be made, as necessary to coordinate with changes in applicable schedules of Amtrak's rail passenger service.

- (i) By January 1, 1998, Amtrak and State shall endeavor to develop a mechanism to measure and report on service performance and customer satisfaction to be included in future agreements.
  
- (j) Amtrak shall procure and maintain for the duration of this Agreement, at the fully reimbursable cost and expense of the State, property insurance covering States rolling stock (locomotives and rail cars) against all risks of physical damage usually covered under a railroad Property insurance policy, except for the peril of earthquake unless Amtrak is specifically authorized to include Earthquake coverage by the State. Amtrak's Property insurance, hereto, shall be written on a replacement cost basis and shall carry limits of \$10 million per occurrence with a deductible not to exceed \$100,000 per occurrence. The State shall be named both as an additional insured and to the loss payee as respects its interest in the State rolling stock in Amtrak's care, custody, and control. Amtrak shall cause its property insurer to waive all rights of subrogation against the State.

SECTION 2 - DECISIONS AFFECTING SERVICE

Amtrak shall give to the State not less than thirty (30) days prior notice in writing of implementation of any decision which



is likely to have a significant effect on the scheduling, marketing (including fares and ticketing), or operations of the rail passenger service provided pursuant to this Agreement. Such notice shall contain information in sufficient detail to support and justify such decision. The State hereby recognizes Amtrak's statutory obligation to act in a manner consistent with prudent management in providing rail passenger service beyond that included in the basic system. Accordingly, the parties shall exercise their best efforts to reach mutual accord on any such decision as aforesaid pursuant to the following procedure:

- (a) If any proposed decision as aforesaid relates only to the train and bus services provided pursuant to this Agreement, and if it can be implemented without affecting Amtrak's basic system, Amtrak shall obtain the State's concurrence therein prior to such implementation. The State shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs, or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence within the period of the said notice; provided, however, that the State shall not unreasonably withhold its concurrence. Amtrak shall endeavor to include State in discussions or negotiations with Railroads or appropriate Regional Rail authorities regarding schedule changes which impact State-supported service.

- (b) If, in the judgment of Amtrak, any proposed decision as aforesaid will affect Amtrak's basic system, Amtrak shall solicit the State's concurrence therein prior to implementation. The State shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence with the period of the said notice; provided, however, that if the parties fail to agree, Amtrak may implement such proposed decision upon the expiration of the said period.
- (c) If, under Subsections (a) or (b) of this Section 2, the State fails to respond in writing to notice from Amtrak as aforesaid within fifteen (15) days, the State shall be deemed to have concurred in the proposed decision set forth therein.
- (d) Notwithstanding the notice procedures contained in this Section 2, if access to or over rail lines on any route provided herein shall be unavailable by reason of obstruction or otherwise, Amtrak may suspend or reroute any part of the service provided pursuant to this Agreement for

so long as such access shall be unavailable. Amtrak shall promptly notify the State of any such suspension or rerouting and the parties shall cooperate to restore the rail service provided for herein.

- (e) Schedule and bus level corrections or revisions, agreed to by Amtrak and State, not affecting the dollar amount of this Agreement, will be confirmed by letter signed by Amtrak's duly authorized representative and forwarded to State according to Section 9, Notices of the Agreement.
  
- (f) By means of its standard form of Amtrak Purchase Order, Amtrak shall contract with a bus operator or operators for connecting bus service(s), as set forth in Section 1(h) and Appendix A of this agreement and also provide State with a copy of each Purchase Order or amendment thereto. Each such service shall commence on the applicable commencement date set forth in Appendix A hereto and shall terminate without further notice on the applicable termination date set forth therein; provided, however, that any such service may be terminated by Amtrak (with the concurrence of the State) or the bus operator on sixty (60) days' prior written notice; provided, further, that termination hereunder shall not relieve either party hereto of financial obligations incurred prior to termination.

(g) Each bus operator will invoice Amtrak monthly for the cost of the applicable service hereunder. In the event additional bus miles are operated on a trip-by-trip basis as a result of a natural disaster or man-made road closure (or any other reason mutually agreed to by State and Amtrak and confirmed in writing in advance), said additional service shall be paid for at the established rate and will be incorporated in the monthly invoice to Amtrak, accompanied by a written explanation documenting the date, time and necessity for the additional miles operated.

i) Rates for Short Nonestablished Route Segments

Extra buses are sometimes required for segments of existing routes for which there is no agreed-to price in Appendix A of this Agreement or in Amtrak's purchase order agreement with the bus operator ("Contract Bus Operator"). Amtrak may pay for such extra bus segments in any of the following three ways:

a) Amtrak may pay the Contract Bus Operator at the rate provided by the purchase order for the shortest route segment that includes the segment to be covered by the extra bus. Amtrak will notify the State of the rate to be paid for such extra bus segments by providing the State with a provision of notice of such a standing rate which will be signed by Amtrak's manager of bus operations or other Amtrak officer; or

b) if Amtrak is able to negotiate with the Contract Bus Operator a limited time rate for such a short extra bus segment that will lower the cost of such extra bus segments (as compared to the cost under subsection 2(g)(i)(a) above), Amtrak may pay the bus operator for such extra segments based on that standing rate. Amtrak will notify the State of such a limited time rate with a provision of notice to the State of such a standing rate including charges, based on that rate, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer, or

c) if Amtrak is able to negotiate with the bus operator a standing rate for such an extra bus segment that will lower the cost of such extra bus segments (as compared to the cost under subsection 2(g)(i)(a) above), Amtrak may pay the bus operator for such extra segments based on that standing rate. Amtrak will notify the State of such a standing rate with a provision of notice to the State of such a standing rate, based on that rate, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer.

d) Amtrak may negotiate such rates under the preceding Subsections 2 (g)(i) (b) and (c) on the basis of multiple trips, daily usage, flat mileage, the cost of upgrading to a larger capacity bus, or any other reasonable basis.

ii) Rates for Temporary and Long-term Special Service due to Service Disruptions

a) If natural disasters or other events cause bus service to be temporarily detoured or otherwise disrupted (30 days or less), Amtrak may secure special bus service from a Contract Bus Operator at the lowest available rate that provides service acceptable to Amtrak. If Amtrak determines that the Contract Bus Operator cannot provide any or all of the special service sought at a rate acceptable to Amtrak, Amtrak may secure such special bus service from one or more non-contract transportation providers (including taxi or van service providers) at the lowest available rate that provides service acceptable to Amtrak. Amtrak will notify the State of such special rates with any Contract Bus Operator and non-contract transportation providers by providing the State with a provision of notice of such a standing rate, incorporating such rates, which invoices will be signed by Amtrak's manager of bus operations or other Amtrak officer.

b) If natural disasters or other events cause long-term (expected to exceed 30 days) disruptions to bus service, and Amtrak and the State agree upon the basic level of service to be provided during such disruptions, Amtrak may negotiate with a Contract Bus Operator for continuing special bus service at the lowest available rate that provides service acceptable to Amtrak. Amtrak will also obtain the States concurrence with such special long term service arrangements prior to confirmation to the

Contract Bus Operator. Such rates may cover additional route miles, extra equipment needed to provide service, driver housing, and any other additional elements involved in providing the special bus service. Amtrak will notify the State of such continuing special rates with a provision of notice to the State of such a standing rate, including charges based on such rates, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer.

iii) Rates for Short-Notice Bus Service from Non-Contract Bus Operators

a) When a Contract Bus Operator is unable to meet a request for extra bus service, made on less than three hours notice of need (or less than the call-time stated, if any, in the operator's purchase order agreement with Amtrak), Amtrak may secure such extra bus service from a non-contract transportation provider (including taxi or van service provider) at the lowest available rate providing service acceptable to Amtrak. Amtrak will notify the State of such special rates with any non-contract transportation providers by providing the State with a provision of notice incorporating such rates, which will be signed by Amtrak's manager of bus operations or other Amtrak officer.

b) Where Amtrak anticipates a future need to secure such short-notice extra bus service from a non-contract transportation provider, Amtrak may negotiate a standing rate for such service.

Amtrak's provision of notice to the State of such a standing rate, signed by Amtrak's manager of bus operations or other Amtrak officer, will satisfy the notice requirement under the preceding Section 2(g)(iii)(a).

iv) State Payment of Short-Segment, Disruption-Service and Short-Notice Rates

The State will reimburse Amtrak in full under this Agreement based on any rates obtained by Amtrak (with notice to the State) under the preceding Subsections 2(g)(i), (ii) and (iii).

v) Cost Allocation of Extra Buses Required by Late Trains

a) When an extra bus must be ordered solely because of a late connecting 403(b) train, Amtrak will charge the cost of the extra bus to the late 403(b) train's operations rather than to the bus service.

b) The parties will attempt in good faith to negotiate one or more separate agreements (which will take the form of a letter of understanding), providing that where a train frequently operates late for reasons not within Amtrak's direct control, and in consideration of the bus schedule or other factors Amtrak holds the bus for less than an hour, Subsection (g)(v)(a) would not apply and the cost of any extra bus required by the late connecting train would be charged to the bus service rather than to the late train's operations.



c) When a train connecting to bus service is late, Amtrak will attempt to minimize the overall costs resulting from the late train by holding scheduled buses for a limited period of time, recognizing after a certain period of time, continuing to hold a bus will increase, rather than decrease, costs. In determining how long to hold a connecting bus, Amtrak will consider the bus driver's hours-of-service limitation, safety-related conditions, the needs of customers other than those on the late-arriving train to reach their destinations or to make other connections, among other relevant factors.

(h) The State may, upon sixty (60) days written notice, request Amtrak to terminate any portion of the service provided in Appendix A; provided that any such termination shall not relieve the State of financial obligations incurred prior to the date of such termination.

### SECTION 3 - AMOUNT OF REIMBURSEMENT BY THE STATE

(a) Pursuant to Section 24704(e) of the Act, the Board of Directors of Amtrak is required to establish the basis for determining the loss, cost, revenues, and associated capital costs of the service provided pursuant to this Agreement. Accordingly, the said basis for determining the aforesaid cost and revenue is set forth in Appendix II hereto. If the said Appendix II is amended by Amtrak's Board of Directors,

any such amendment shall take effect only on an anniversary date of this Agreement, except as may be otherwise agreed between the parties hereto. If the State desires to change a service element in this contract it will give Amtrak written notice. The parties agree that within two weeks of receipt of such written notice they will meet to negotiate the desired changes. If the parties agree to change a service element, Appendix II will be amended as required by the service change.

- (b) The costs, as determined pursuant to Subsection (a) of this Section, are based on the provision by Amtrak of available rail passenger equipment. In the event that the State specifies that a particular type or types of rail passenger equipment be provided by Amtrak and Amtrak agrees to provide for such equipment, the State shall reimburse Amtrak for the additional costs of providing and operating such particular equipment on the basis provided in Appendix II.
- (c) The total amount of the State's financial obligation to Amtrak under this Agreement for services to be rendered by Amtrak pursuant thereto shall not exceed the amount(s) set forth in Appendix III hereto; provided, however, that Amtrak shall not be required to provide any of the said services or any services whatsoever for which the State is not bound

hereunder or for which the cost to the State, as determined hereunder, exceeds the aforesaid amount(s); provided, further, that the State may increase the amount of its financial obligation hereunder through transfers or additional appropriations. Amtrak's obligation to provide the said services shall not cease until ninety (90) days after Amtrak has notified the State in writing that Amtrak's cost projections indicate that the maximum financial obligation of the State, as provided herein, is insufficient to meet the State's share of the costs.

(d) The State hereby agrees to pay up to 100% of the costs of projects undertaken in accordance with Subsection (g) of Section 1 of this Agreement. Amtrak and State agree that "Cost Principles for Section 24107 Capital Contract between National Railroad Passenger Corporation and State of California Department of Transportation" is the document that governs this Agreement with respect to minor capital projects cost principles.

(e) With respect to each connecting bus service hereunder, Amtrak hereby agrees that, subject to the terms of its standard form of Amtrak Purchase Order(s), it will pay all the monthly invoices; provided, however, that Amtrak shall have no obligation to contract with any bus operator or to issue any Purchase Order as aforesaid unless and until the State shall have endorsed such Purchase Order as evidence of

the State's acceptance of the terms thereof.

(f) With respect to each connecting bus service hereunder, the State hereby agrees that it will reimburse Amtrak for the amount of all said monthly invoices up to the maximum Financial Obligation of the State set forth in Appendix A. The aggregate amount of funding provided in Appendix III includes funding for all services in Appendix A.

i) Amtrak agrees to provide the State with a monthly billing from the bus operator as soon as practicable after receipt of the said billing, and will use its best efforts to provide same to the State not later than sixty (60) days after the end of that month. Amtrak further agrees that insofar as practicable, each monthly invoice submitted to the State for monthly advance payment shall be adjusted to reflect actual costs of service previously billed by the bus operator less any applicable revenue credit.

ii) After completion of each period of bus service contracted for pursuant to Section 1(h) of this Agreement, Amtrak will provide the State with a final accounting setting forth the total amount of billings received from the bus operator for the service provided hereunder, and the

total amount of monthly advance payments received from the State. If total payments received from the State are insufficient to reimburse Amtrak fully for the costs of service hereunder, the State agrees to remit promptly to Amtrak the additional amount necessary to provide full reimbursement for the said cost of service up to the maximum financial obligation of the State set forth in Appendix A hereto. If total payments received from the State are greater than the amount required to reimburse Amtrak fully for the costs of service incurred hereunder by Amtrak, Amtrak agrees to refund to the State promptly the amount of the said overpayment; provided, however, that if this Agreement is renewed, the amount of any such underpayment or overpayment may be added to or subtracted from the first monthly advance payment due pursuant to Section 3(g) of this Agreement as so renewed.

iii) The State also hereby agrees that it will, in addition and in a like manner, reimburse Amtrak for the direct cost of employee time, as described and in the amounts specified in Appendix A hereto.

- (g) Amtrak will provide the State with the Monthly Ridership Tape origin-destination data for all tickets collected on the feeder bus network.

SECTION 4 - MANNER OF REIMBURSEMENT

- (a) On or before the fifteenth day of each month from the first through the third months, inclusive, of the fiscal year specified in Appendix III hereto, the State shall remit to Amtrak, in response to an invoice rendered by Amtrak, one-twelfth of the amount allocated therein to each route or one-twelfth of the aggregate amount allocated therein if there shall be only one route. For the fourth through the twelfth months, the State shall remit to Amtrak an amount adjusted to be the average of the actual billings for all previous months. Invoices shall be rendered not less than forty-five (45) days prior to due date and shall specify the address to which the said remittance shall be made. Any such advance then due shall not be remitted if the adjusted monthly invoices due from Amtrak are submitted to State later than ninety (90) days after the end of that month but no longer than the period the bill is delayed beyond ninety (90) days.

(b) As of the last day of the eighth month of the said fiscal year the amount specified in Appendix III hereto shall be recomputed on the basis of the actual costs incurred (as defined in Section 3(a) hereof) during the immediately preceding eight months; provided, however, that such recomputation may be made as of the last day of any preceding month if it appears that actual costs for the said fiscal year may tend to exceed the said specified amount. If the amount so recomputed is not greater than the amount specified in Appendix III hereto, Amtrak shall issue invoices for months nine through twelve of said contract period for amounts that approximate an average of previous charges for the fiscal year. If the amount so recomputed is greater than the amount specified in Appendix III hereto, the State shall take immediate action to increase the amount so specified to equal the amount as herein recomputed and the parties shall promptly execute a new Appendix III, amended accordingly; provided, however, that if the State shall fail to execute the said amended Appendix III within thirty (30) days from the date of computation pursuant to this subsection, Amtrak may, in accordance with the provisions of Subsection (c) of Section 3 hereof, discontinue services provided hereunder. In respect to each route therein, the difference between the amount as herein recomputed and the sum of the payments made pursuant to Subsection (a) of this Section shall be remitted by the State to Amtrak in four equal monthly payments on

or before the fifteenth day of the ninth through the twelfth months, inclusive, of the fiscal year specified in Appendix III hereto.

- (c) Amtrak shall render adjusted invoices monthly to the State for the State's share of the costs as set forth and defined in Section 3 hereof. Such invoices shall be rendered as soon as practicable but in any event not more than ninety (90) days after the end of each month and shall separately record the following information for each route:
- (i) Revenues attributed to the rail passenger service set forth in Section 1 hereof;
  - (ii) Costs of said service (including any incentive or penalty payments made to or by an operating railroad) by item or category, as applicable.
  - (iii) Associated capital costs of the said service.

Any difference between the aggregate of the monthly remittance made by the State pursuant to the provisions of this Section and the aggregate of the costs contained in the aforesaid monthly invoices shall be adjusted between the parties in the manner prescribed in Subsection (d) of this Section.



- (d) If the aggregate amount of the aforesaid invoices exceeds the aggregate amount of the aforesaid remittances for the entirety of the fiscal year herein, the State shall pay to Amtrak an amount equal to the difference. If the aggregate amount of the said remittances exceeds the aggregate amount of the said invoice for the entirety of the fiscal year herein, Amtrak shall pay to the State an amount equal to the difference. In either case, such payment shall be made within forty-five (45) days of receipt of the invoice for the last month of the said fiscal year; provided, however, that if this Agreement is renewed pursuant to the provisions of Section 8 hereof, the amount of any such difference may be subtracted from or added to the first monthly remittance due pursuant to Section 4(a) of this Agreement as so renewed.
- (e) In the event that the State shall fail to remit payment in full, as provided in this Section, Amtrak may discontinue the applicable portion or portions of the rail passenger service provided for herein on ten (10) days prior notice in writing to the State of intended discontinuance. If the State fails to remit payment in full within the period of the said notice, Amtrak shall, upon thirty(30) days public notice, discontinue the portion or portions of the said service referred to therein; provided, however, that such discontinuance shall not constitute or be construed as a

waiver by Amtrak of any such payment; provided, further, that any such discontinuance shall be without prejudice to the continued operation of any remaining portion or portions of the said service.

- (f) If any minor capital projects are implemented in accordance with Subsection (g) of Section 1 above, Amtrak shall render separate invoices for the State's share of each project. Such invoices shall be rendered as soon as practicable after the completion of the project, but in any event not more than sixty (60) days after completion. The aggregate of all such invoices shall be included in the year-end reconciliation prescribed in Subsection (d) of this Section.
- (g) Notwithstanding the expiration date of this Agreement, State will pay Amtrak for legitimate costs for services performed during the term of the Agreement and for the allowable costs of Minor Capital Projects authorized and begun during the term of this Agreement but invoiced after the expiration date of this Agreement.
- (h) Amtrak will review the monthly invoices from each bus operator hereunder. If, in the opinion of Amtrak, it appears likely that the contribution of the State hereunder will be insufficient to pay the cost of the service provided for hereunder, Amtrak shall so advise the State in writing.

Amtrak shall terminate the said service by giving sixty (60) days' notice prior in writing to the bus operator and the State unless the State promptly agrees in writing to reimburse Amtrak for the full amount of all such excess cost. Such notice shall be timed to ensure that the cost of the said service shall not exceed the maximum financial obligation of the State hereunder.

- (i) Not later than ninety (90) days following the termination of the said service as provided in Sections 2 or 4 hereof, each party hereto shall remit to the other the full balance due in respect of underpayment or overpayment, if any, relating to the obligations of each party to the other pursuant to the terms of this Agreement.
  
- (j) In the event that Amtrak fails to perform the services as required by this Agreement, or an invoiced amount is disputed by the State, the provisions of this item shall apply.

(i) Withholding Payment Due to Failure to Comply

In the event Amtrak does not comply with the requirements of this Agreement as they relate to State Provided Equipment and train and bus service operations for the Federal Fiscal Year 1998, State shall compute the value of the perceived failure and

notify Amtrak in writing that a corresponding amount will be withheld from the monthly advance payment following the next monthly payment if the perceived failure has not been resolved to State satisfaction. State shall detail the reason for the proposed withholding of payment and the actions State considers necessary to resolve the perceived failure.

Once resolution of the failure to comply is achieved between State and Amtrak, the notice to withhold will be withdrawn, or the monthly payment withheld will be remitted with the next monthly advanced payment. Should resolution of the non-compliance not be achieved through negotiation or the provisions of Section 10, "Dispute Resolution" of the Transfer Agreement as amended to this Agreement in Section 10-Agreement Content, Item(b), the withheld amount will be paid under protest once the invoice for that month is presented. Such payment shall not be considered as resolution of the dispute and the process outlined in Section 10, "Dispute Resolution" of the Transfer Agreement, shall be carried to its conclusion. Should the resolution of the dispute result in a refund to State, said refund shall be applied as a credit to the next monthly advanced payment, and shall be expressly accounted for therein.

(ii) Withholding Payment Due to Invoice Dispute

In the event State disputes a charge detailed in the monthly invoice, and Amtrak cannot provide an acceptable explanation of said charge, State shall have the right, at its sole discretion, to withhold the disputed invoice amount. State shall advise Amtrak of the amount of disputed charges withheld, detail reasons for the withholding, and the actions that State considers necessary to resolve the disputed invoice amount. State shall advise Amtrak of the amount of disputed charges withheld, detail reasons for the withholding, and the actions that State considers necessary to resolve the disputed invoice amount. State shall notify Amtrak in writing one month in advance of its intention to withhold the payment of an invoice amount. In the event that resolution of the disputed invoice amount is not achieved within the notice period, State shall withhold the disputed invoice amount from the next invoice payment due after the notice period has expired.

If resolution of the disputed invoiced amount is achieved between State and Amtrak after the amount has been withheld, the withheld amount will be remitted with the next invoice payment. Should resolution of the disputed invoice amount not be achieved through negotiation of the provisions of Section 10, "Dispute Resolution" of the Transfer Agreement, the withheld amount will be paid under protest after three calendar months of withholding. Such payment shall not be considered as resolution of the dispute and the

process outlined in Section 10, "Dispute Resolution" of the Transfer Agreement, shall be carried to its conclusion.

SECTION 5 - DEFENSE OF CLAIMS

Subject to the provisions of Section 3 hereof, Amtrak shall bear the expense of prosecuting the settlement and defense of, and shall pay any settlement or final judgment disposing of any claim, action or proceeding involving injury to or death of any person or damage to or loss of any property arising from the operation of the rail passenger and bus feeder service provided for hereunder.

If any claim, action or proceeding shall at any time be brought against the State asserting a liability for such injury, death, damage or loss, the State shall promptly give notice to Amtrak of such claim, action or proceeding and shall thereafter provide all such information as Amtrak may from time to time request.

SECTION 6 - INSPECTION AND AUDIT

- (a) The State may, at any time, inspect the rail passenger and bus feeder service provided hereunder; provided, however, that such inspection shall not hinder or delay the operation of the said service. Upon reasonable notice, Amtrak shall permit auditors or any other duly authorized agent of the

State to inspect all books, records and accounts relating to the said service, including supporting documentation provided to Amtrak by operating railroads in connection therewith and further including all records and documents relating to the determination and allocation of the costs and revenues of the said service. All such books, records, accounts and documents shall be maintained by Amtrak in accordance with generally accepted accounting principles and be accessible to the State for a period of three years following the expiration of each contract period as defined in Appendix III hereto.

- (b) Amtrak shall, without cost to the State, make available such financial, operating and ridership data relating to the service provided hereunder as may be available in Amtrak's information retrieval system. Operating and ridership data shall be supplied for each train hereunder and shall include numbers of (i) passengers carried, (ii) passenger miles, (iii) car miles. Such data shall be computed on a monthly basis and shall be furnished periodically, as may be agreed between the parties. Furthermore, Amtrak will exercise its best efforts to provide such supplemental data relating to the said service as may be reasonably requested by the State.

SECTION 7 - FORCE MAJEURE

The obligations of Amtrak hereunder shall be subject to force majeure. Amtrak shall not be liable for any failure to perform, or for any delay or cancellation in connection with the performance of any obligation hereunder if such failure, delay or cancellation is due or in any manner caused by the laws, regulations, acts, demands, orders or interpositions of any federal, state or local government agency having jurisdiction thereof, or by Acts of God, strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection or terrorism, or any other cause beyond Amtrak's control.

SECTION 8 - RENEWAL AND TERMINATION

- (a) This Agreement may be renewed for successive terms of twelve (12) months each upon compliance with the following conditions:
- (i) Not less than ninety (90) days prior to the first and each succeeding anniversary date hereof the parties shall review the rail passenger and bus feeder service to be provided during the next succeeding twelve (12) month term and may mutually agree in writing to continue unchanged or to amend Appendix A, Appendix I or Appendix III hereto. Appendix A, Appendix I and Appendix III, as continued or amended, shall each contain an express



statement of the fiscal year or part thereof to which they apply. Concurrently, with such review, and prior to agreement as aforesaid, Amtrak shall confirm to the State in writing the estimated total amount of the State's financial obligation to Amtrak for the rail passenger and feeder bus services to be provided during the next succeeding twelve (12) month term.

(ii) Not less than sixty (60) days prior to the first and each succeeding anniversary date hereof, the State shall confirm to Amtrak in writing that funds as aforesaid have been made available to the State or, in the alternative, that the State has requested and reasonably expects the said funds to be made available. If the former, the parties shall forthwith execute a new Appendix A, Appendix I and Appendix III as provided in Subsection (a) (i) of this Section.

(iii) If, pursuant to Subsection (a) (ii) of this Section, the State has confirmed that it has requested and reasonably expects the said funds to be made available, the parties shall forthwith execute a new Appendix A, Appendix I and Appendix III as provided in Subsection (a) (i) of this Section, which execution shall be subject to the said funds being made available to the State. Immediately upon the said funds being made available or immediately upon the said funds being denied, as the case may be,

the State shall so advise Amtrak by Facsimile Transmission with confirmed delivery. If the said funds are denied, Amtrak shall, notwithstanding any other provision hereof forthwith discontinue any service to which the said funds apply.

- (b) In the absence of mutual agreement and the execution of a new Appendix A, Appendix I and Appendix III as aforesaid, this Agreement and any renewal thereof shall terminate on the applicable anniversary date, or subject to the provisions of Section 3(c), when the funds set forth therein are exhausted and not renewed or otherwise cease to be available for the service provided for herein, whichever is earlier.
- (c) Notwithstanding the provisions of Subsections (a) and (b) of this Section, this Agreement and any renewal thereof may be terminated upon ninety (90) days prior notice in writing from the State to Amtrak.
- (d) Termination pursuant to this Section shall be without prejudice to Amtrak's right to receive reimbursement pursuant to the provisions of Sections 3 and 4 hereof for service provided until and including the date of termination.

SECTION 9 - NOTICES

Except as otherwise provided in Section 4(a) hereof, any notices required by this Agreement or related to the service provided for under this Agreement by either party shall be in writing and shall be directed to the officials identified herein by personal delivery or by deposit in the United States mail via first class mail, postage prepaid.

For Amtrak: Chief Administrative & Operating Officer  
Amtrak West  
National Railroad Passenger Corporation  
530 Water Street, 5th Floor  
Oakland, California 94607

For the State: Manager, Rail Program  
California Department of Transportation  
PO Box 942874  
Sacramento, California 94274-0001

The addresses set forth herein may be changed at any time by either party hereto by notice in writing to the other.

SECTION 10 - AGREEMENT CONTENT

(a) This Agreement constitutes the entire agreement between the parties. There are no agreements, whether express or implied except as may be expressly set forth herein. All prior agreements and understandings between them with respect to the provision of service herein on and after the effective date of this Agreement or any renewal thereof are subsumed within this

Agreement and any renewal thereof. No change or modification in or to this Agreement, excepting only those changes provided for in Appendix I and Appendix III, and Appendix A shall be of any force or effect unless in writing, dated and executed by duly authorized representatives of the parties.

(b) The two executed documents, and any subsequent amendments to the documents, entitled: "TRANSFER AGREEMENT" FOR THE TRANSFER AND OPERATION OF STATE PROVIDED RAIL EQUIPMENT, Dated November 20, 1994; and "MAINTENANCE AGREEMENT" FOR THE MAINTENANCE OF STATE PROVIDED EQUIPMENT, Dated November 20, 1994, are hereby referenced and incorporated into this Agreement. All documents referenced are available to Amtrak and the State at their respective business sites, for Amtrak - Amtrak West; and for State-Department of Transportation, Rail Program. (See SECTION 9, NOTICES for complete addresses).

#### SECTION 11 - CONSTRUCTION

The Section headings used in this Agreement are for convenience only and shall not affect the construction of any of the terms hereof. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the District of Columbia pursuant to the provisions of Section 24301(f) of Title 49 of the United States Code.

SECTION 12 - SEVERABILITY

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

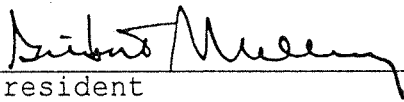
SECTION 13 - FAIR EMPLOYMENT PRACTICES

Amtrak shall observe the terms and conditions set forth in Appendix IV, titled FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto. In said addendum, the term "Contractor" shall be deemed to read "Amtrak".

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION

DATE: 9/9/97

BY:   
President  
Amtrak West

and

THE STATE OF CALIFORNIA

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Departmental Contract Officer  
Department of Transportation

APPENDIX I

NATIONAL RAILROAD PASSENGER CORPORATION

and

THE STATE OF CALIFORNIA

AGREEMENT DATED 1 OCTOBER 1997  
FOR THE PROVISION OF RAIL  
PASSENGER SERVICE PURSUANT TO  
TITLE 49 U.S.C., SECTION 24107

FISCAL YEAR 1998  
October 1, 1997 - September 30, 1998

Pursuant to Section 1 of the aforesaid Agreement and subject to compliance by the State with the provision of Section 8 thereof, Amtrak shall provide rail passenger service during fiscal year 1998 over the route(s) set forth below, substantially in accordance with the schedule(s) attached. The said service shall commence on the October 1, 1997, and shall terminate September 30, 1998.

ROUTE(S)

San Luis Obispo/Santa Barbara to Los Angeles to San Diego

Oakland to Bakersfield

San Jose to Sacramento to Roseville

This Appendix I constitutes an integral part of the aforesaid Agreement. No change, modification or amendment hereto shall be of any force or effect unless evidenced by a revised Appendix I dated and executed by Amtrak and the State; provided, however, that notwithstanding the foregoing, changes in the schedule(s) listed herein will be revised and implemented by letter pursuant to Section 2 of the aforesaid agreement.

NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 9/9/97

By: *Dick Malley*  
President  
Amtrak West

and

STATE OF CALIFORNIA

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Departmental Contract Officer  
Department of Transportation



**SAN DIEGANS October 1, 1997 - PUBLIC - West bound**

Departure Times	Train	A769	A571	A773	A775	A577	A779	A781	A593	A583	A585
	Notes	S/S/H	M-F x H	M-F x H	DAILY	DAILY	DAILY	DAILY	S/S/H	M-F x H	DAILY
		a.m.	a.m.	a.m.	a.m.	a.m.	p.m.	p.m.	p.m.	p.m.	p.m.
SAN DIEGO		L6:00	L6:15	L7:10	L8:45	L10:20	L12:25	L3:00	L5:20	L5:30	L7:45
SOLANA BEACH		s6:33	s6:47	s7:43	s9:19	s10:59	s12:58	s3:33	s5:55	s6:23	s8:18
OCEANSIDE		s6:47	s7:02	s7:56	s9:34	s11:15	s1:12	s3:49	s6:09	s6:37	s8:32
SAN CLEMENTE		↓	↓	↓	↓	↓	↓	s4:11	↓	↓	↓
SAN JUAN CAPISTRANO		s7:18		s8:23	s10:09	s11:45	s1:42	s4:27	s6:45	s7:28	s9:03
IRVINE		s7:32	↓	↓	s10:23	s11:59	s1:56	s4:41	s7:04	s7:42	s9:17
SANTA ANA		s7:44	s7:50	s8:46	s10:34	s12:11	s2:07	s4:52	s7:15	s7:53	s9:28
ANAHEIM		s7:54	↓	s8:53	s10:43	s12:20	s2:16	s5:01	s7:24	s8:02	s9:37
FULLERTON		s8:03	s8:05	s9:01	s10:52	s12:29	s2:26	s5:14	s7:33	s8:11	s9:46
COMMERCE		↓	↓	↓	↓	s12:46	↓	↓	s7:50	s8:28	↓
LOS ANGELES S		a8:35	A8:40	a9:35	a11:25	A1:10	a3:10	a5:55	A8:15	A8:45	A10:35
LOS ANGELES N		d9:10		d9:55	d11:40		d3:20	d6:05			
GLENDALE		s9:23		s10:08	s11:53		s3:33	s6:18			
BURBANK AIRPORT		s9:35		s10:20	s12:05		s3:45	s6:30			
VAN NUYS		s9:43		s10:28	s12:13		s3:52	s6:38			
CHATSWORTH		s9:56		↓	s12:26		↓	s6:51			
SIMI VALLEY		s10:10		s10:53	s12:40		s4:20	s7:05			
MOORPARK		s10:25		s11:08	s12:55		↓	s7:20			
CAMARILLO		↓		s11:20	s1:07		↓	↓			
OXNARD		s10:47		s11:32	s1:19		s4:57	s7:41			
VENTURA		s11:01		s11:46	s1:33		s5:11	s7:55			
CARPINTERIA		s11:21		s12:06	↓		↓	s8:15			
SANTA BARBARA		A11:50		A12:30	A2:15		s6:03	A8:50			
GOLETA Future stop							↓				
SURF Future stop							↓				
GUADALUPE Future							↓				
GROVER BEACH							s8:00				
SAN LUIS OBISPO							A8:50				

**SAN DIEGANS October 1, 1997 - PUBLIC - East bound**

Departure Times	Tran										
	Notes										
	A570	A572	A774	A776	A578	A580	A782	A792	A784	A511	
	DAILY	DAILY	DAILY	DAILY	DAILY	M-F x H	M-F x H	SSH	DAILY	DAILY	
	a.m.	a.m.	a.m.	a.m.	p.m.	p.m.	p.m.	p.m.	p.m.	p.m.	
SAN LUIS OBISPO				L7:00							
GROVER BEACH				s7:21							
GUADALUPE Future				↓							
SURF Future stop				8:07							
GOLETA Future stop				9:08							
SANTA BARBARA			L7:20	s9:25		L2:05	L2:05	L4:00			
CARPINTERIA			s7:36	↓		↓	↓	s4:16			
VENTURA			s7:56	s10:01		s2:41	s2:41	s4:36			
OXNARD			s8:10	s10:15		s2:55	s2:55	s4:50			
CAMARILLO			s8:21	↓		s3:07	s3:07	↓			
MOORPARK			s8:33	↓		s3:19	s3:19	↓			
SIMI VALLEY			s8:48	s10:58		s3:34	s3:34	s5:36			
CHATSWORTH			s9:04	s11:12		↓	↓	↓			
VAN NUYS			s9:19	s11:25		s4:01	s4:01	s6:01			
BURBANK AIRPORT			s9:28	s11:33		s4:09	s4:09	s6:09			
GLENDALE			s9:40	s11:45		e4:21	e4:21	s6:21			
LOS ANGELES N			a9:55	a12:10		a4:55	a4:55	a6:50			
LOS ANGELES S	L6:20	L8:30	d10:15	d12:30	L2:30	L4:15	d5:10	d5:10	d7:15	L9:35	
COMMERCE	↓	↓	s10:32	↓	↓	↓	↓	↓	s7:32	↓	
FULLERTON	s6:58	s9:12	s10:49	s1:03	s3:02	s4:46	s5:41	s5:41	s7:49	s10:08	
ANAHEIM	s7:08	s9:21	s10:58	s1:13	s3:11	↓	↓	s5:50	s7:58	s10:17	
SANTA ANA	s7:18	s9:30	s11:07	s1:23	s3:20	s5:01	s5:56	s5:59	s8:07	s10:26	
IRVINE	s7:32	s9:41	s11:18	s1:35	s3:31	↓	↓	s6:10	s8:18	s10:37	
SAN JUAN CAPISTRANO	s7:48	s9:55	s11:32	s1:49	s3:45	↓	↓	s6:24	s8:32	s10:48	
SAN CLEMENTE	↓		s11:46	↓	↓	↓	↓	↓	↓	↓	
OCEANSIDE	s8:27	s10:33	s12:13	s2:24	s4:21	s5:53	s6:45	s6:55	s9:03	s11:18	
SOLANA BEACH	s8:42	s10:47	s12:27	s2:37	s4:35	s6:16	s6:59	s7:09	s9:17	s11:31	
SAN DIEGO	A9:15	A11:25	A1:05	A3:25	A5:20	A6:45	A7:35	A7:50	A10:00	A12:15	

ATTACHMENT SCHEDULE  
 Sheet 3 of 6

**SAN JOAQUINS October 1, 1997 - PUBLIC - Westbound**

Departure Times	711		713		715		717	
	Daily	a.m.	Daily	a.m.	Daily	p.m.	Daily	p.m.
BAKERSFIELD	L5:00	L9:30	L12:25	L3:55				
WASCO	S5:22	S9:54	S12:48	S4:20				
CORCORAN	S5:55	S10:26	S1:23	S4:55				
HANFORD	S6:15	S10:44	S1:43	S5:15				
FRESNO S	A6:46	A11:26	A2:22	A5:50				
FRESNO N	D6:50	D11:30	D2:26	D5:55				
MADERA	S7:11	S11:53	S2:47	S6:18				
MERCED	S7:45	S12:30	S3:25	S6:58				
DENAIR	S8:06	S12:51	S3:47	S7:20				
RIVERBANK	S8:25	S1:12	S4:05	S7:40				
STOCKTON S	A8:49	A1:41	A4:36	A8:09				
STOCKTON N	D8:53	D1:45	D4:40	D8:14				
ANTIOCH	S9:25	S2:15	S5:10	S8:44				
MARTINEZ	S9:52	S2:42	S5:37	S9:12				
RICHMOND	S10:26	S3:16	S6:13	S9:48				
BERKELEY	S10:33	S3:23	S6:20	S9:55				
EMERYVILLE N								
EMERYVILLE S	D10:59	D3:44	D6:44	D10:19				
OAKLAND JLS N	A11:15	A4:00	A7:00	A10:35				

Train  
 Notes  
 Train Crew

**SAN JOAQUINS October 1, 1997 - PUBLIC - Eastbound**

Departure Times	Train Notes Train Crew	7:12		7:14		7:16		7:18	
		Daily	3 m	Daily	3 m	Daily	3 m	Daily	3 m
OAKLAND JLS N		L7:05	L10:00	L1:55	L5:30				
EMERYVILLE S		a7:21	a10:16	a2:11	a5:46				
EMERYVILLE N		d7:23	d10:18	d2:13	d5:48				
BERKELEY		s7:27	s10:22	s2:17	s5:52				
RICHMOND		s7:35	s10:30	s2:25	s6:00				
MARTINEZ		s8:16	s11:11	s3:06	s6:41				
ANTIOCH		s8:40	s11:35	s3:30	s7:05				
STOCKTON N		a9:15	a12:09	a4:05	a7:39				
STOCKTON S		d9:20	d12:13	d4:09	d7:43				
RIVERBANK		s9:48	s12:40	s4:40	s8:10				
DENAIR		s10:05	s1:00	s4:57	s8:25				
MERCED		s10:35	s1:28	s5:22	s8:50				
MADERA		s11:07	s2:00	s5:53	s9:20				
FRESNO N		a11:30	a2:26	a6:18	a9:44				
FRESNO S		d11:35	d2:30	d6:22	d9:48				
HANFORD		s12:10	s3:04	s6:56	s10:21				
CORCORAN		s12:29	s3:21	s7:13	s10:37				
WASCO		s1:05	s3:53	s7:48	s11:08				
BAKERSFIELD		A1:45	A4:32	A8:22	A11:45				

ATTACHMENT SCHEDULE  
 Sheet 4 of 6

ATTACHMENT SCHEDULE  
 Sheet 5 of 6

**CAPITOLS October 1, 1997 - PUBLIC - Westbound**

Departure Times	Train Notes Train Crew	721	723	733	725	727
		M-F+H a.m.	Daily a.m.	SSMOU a.m.	Daily p.m.	Daily p.m.
COLFAX Future stop						
AUBURN Future stop						
ROCKLIN Future stop						
ROSEVILLE			L7:15 a7:42			
SACRAMENTO N			d7:45	L9:20	L12:30	L5:45
SACRAMENTO S		L5:15	s8:01	s9:36	s12:46	s6:01
DAVIS		s5:31	s8:32	s10:07	s1:17	s6:32
SUISUN FAIRFIELD		s6:02				
MARTINEZ		s6:27	s8:57	s10:32	s1:42	s6:57
RICHMOND		s7:01	s9:31	s11:06	s2:18	s7:31
BERKELEY		s7:08	s9:38	s11:13	s2:26	s7:38
EMERYVILLE N			9:48		a2:36	a7:48
EMERYVILLE S		D7:20	d9:50	D11:29	d2:38	d7:50
OAKLAND JLS N		A7:45	a10:06	A11:45	a2:54	a8:06
OAKLAND JLS S			d10:08		d2:56	d8:08
HAYWARD			s10:24		s3:12	s8:24
FREMONT			s10:37		s3:25	s8:37
GREAT AMERICA			s10:52		s3:39	s8:52
SAN JOSE			A11:13		A4:10	A9:15

**CAPITOLS October 1, 1997 - PUBLIC - Eastbound**

Departure Times	722		724		726		736		728		738	
	Daily	a.m.	Daily	p.m.	M.F.T.H	p.m.	S/S/HOL	p.m.	M.F.T.H	p.m.	S/S/HOL	p.m.
Train	Notes	Train	Crew									
SAN JOSE	L6:20	L12:40							L5:35	L6:35		
GREAT AMERICA	s6:32	s12:52							s5:47	s6:47		
FREMONT	s6:47	s1:07							s6:02	s7:02		
HAYWARD	s6:58	s1:18							s6:24	s7:24		
OAKLAND JLS S	a7:16	a1:36							a6:31	a7:31		
OAKLAND JLS N	d7:18	d1:38			L5:20	L6:20			d6:33	d7:33		
EMERYVILLE S	a7:34	a1:54			a5:36	a6:36			a6:49	a7:49		
EMERYVILLE N	d7:36	d1:56			d5:38	d6:38			d6:51	d7:51		
BERKELEY	s7:40	s2:00			s5:42	s6:42			s6:55	s7:55		
RICHMOND	s7:48	s2:08			s5:50	s6:50			s7:03	s8:03		
MARTINEZ	s8:26	s2:51			s6:28	s7:28			s7:41	s8:41		
SUISUN FAIRFIELD	s8:48	s3:13			s6:50	s7:50			s8:03	s9:03		
DAVIS	s9:18	s3:43			s7:20	s8:20			s8:33	9:33		
SACRAMENTO S	A9:50	A4:20			a7:44	8:44			A9:05	A10:05		
SACRAMENTO N					d7:47	8:47						
ROSEVILLE					A8:20	A9:20						
ROCKLIN Future stop												
AUBURN Future stop												
COLFAX Future stop												

ATTACHMENT SCHEDULE  
 Sheet 6 of 6

APPENDIX II

NATIONAL RAILROAD PASSENGER CORPORATION  
and  
THE STATE OF CALIFORNIA

AGREEMENT DATED OCTOBER 1, 1997  
FOR THE PROVISION OF RAIL PASSENGER SERVICE  
PURSUANT TO TITLE 49 U.S.C. §24704

\* \* \* \* \*

Basis for Determining Fully Allocated Loss  
and Associated Capital Costs of Service

Attached is the basis for determining the fully allocated operating costs, associated capital costs, and total revenues for services operated pursuant to 49 U.S.C. Section 24704 as amended.

This Appendix II constitutes an integral part of the aforesaid Agreement and any renewals thereof and shall not be amended except pursuant to the provisions of Section 3(a) of the said Agreement.

Contract No. 75A0018  
Sheet \_\_\_\_\_ of \_\_\_\_\_

SECTION 24704 BILLING PROCESS  
Revenue Definitions

<u>Revenue Item</u>	<u>Items Included</u>	<u>Comments</u>
Local	Transportation (coach, first class, USA Rail) Food & Beverage Mail Baggage Express	Revenue generated by the Section 24704 portion of a route (64% for San Diegans)
Connecting	Not Included	Revenue generated on non-24704 trains by 24704 paxs beginning or ending their trip on non-24704 Amtrak trains.
Through	Includes same line items as local. Includes routes where non-24704 trains operate on the same route.	Revenue earned from the non-24704 portion of a route but generated by the 24704 segment.  Note: Through revenue credited to the state as long as state pays for any through car operating costs.



SECTION 24704 BILLING PROCESS  
Fully Allocated Cost Definitions

SECTION 1 - FULLY ALLOCATED COST EXPENSE BASIS

Amtrak's Route Profitability System (RPS) shall be the basis for determining the Section 24704 fully allocated loss. The parties may agree to exceptions to this general basis, to be detailed in this Appendix II, when the State desires to deviate from the standard service contract. Furthermore, it is understood that from time to time, the RPS allocated results will require certain manual adjustments to more appropriately reflect the specific operating traits of a Section 24704 train.

SECTION 2 - MAJOR ACCOUNTS

For billing purposes the RPS Expense Lines, as defined in Section 3 below, will be grouped into major accounts and be billed to the State in the following percentages:

<u>Major Account</u>	<u>RPS LINES</u>	<u>ROUTE 37</u>	<u>ROUTE 39</u>	<u>ROUTE 35</u>
Train & Engine Crews	045 - 050	100%	100%	64%
Train Fuel & Power	055 - 060	100%	100%	64%
On-Board Service Labor	065 - 075	100%	100%	64%
On-Board Service Supplies	080 - 90	100%	100%	64%
Rolling Stock Rent	095 - 100	100%	100%	64%
Station Services	105 - 115, 120 - 150, 475	100%	100%	64%
Transportation	155 - 182, 190, 195, 480, 485	80%	80%	51.2%
Maintenance of Equipment	200 - 388, 465	100%	100%	54.4%
Maintenance of Way	390 - 460, 468, 469, 470	100%	100%	64%
Other Railroad	520 - 540	100%	100%	64%
Railroad Performance Payments	545	100%	100%	64%
Commissary	510	100%	100%	64%
Crew Base	515	95%	95%	60.8%
SBU Advertising	497	50%	50%	32%
Commissions	500	100%	100%	64%
Sales*	505	\$60,000	\$95,000	\$150,000
Information/Reservations*	490	\$300,000	\$300,000	\$500,000
General Support	550 -552, 555 -570	45%	45%	12.8%
Insurance	670, 675	100%	100%	64%
Depreciation	575, 580, 611, 660	95%	95%	60.8%
Interest & Taxes	677, 665	65%	65%	41.6%
General & Administration	674, 676	10%	10%	6.4%

\*Annual fixed price, to be billed in twelve equal installments.

SECTION 3 - RPS COST DEFINITIONS

The allocation rules, cost pools, RPS expense line descriptions, and the corresponding Amtrak Financial Information System (General Ledger) expense categories used by RPS to allocate expenses to trains are delineated in Exhibit 1 below. Any RPS allocation changes made during the duration of this contract period will be made on a system wide basis and not be done solely for California charges. Amtrak will exercise due diligence to inform California of any changes that will have significant impact on billings under this contract.

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 4 OF 17

Contract No. 75A0018  
Sheet \_\_\_\_\_ of \_\_\_\_\_

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
45	Trainmen	1616 1631 1635 1643	Extra Board Guarantee Train Operations Trainmen Operations Qualifying Trainmen	Road Crews	TLH - Trainmen Labor Hours Monthly hours worked aboard the trains by crew base as reported in the Labor Collection System. For Railroad crews, train miles on the railroad (per whitebills for certain triweekly service).	Actual (500010 & 500014)/ Local Crew Base	Train
50	Enginemen	1615 1631 1633 1642	Extra Board Guarantee Train Operations Enginemen Operations Qualifying Enginemen	Road Crews	ELH - Enginemen Labor Hours Same as Line 45	Actual (500010 & 500014)/ Local Crew Base	Train
55	Train Fuel	1181 1631	Insurance and Taxes Train Operations	Corp Common Fueling Locations	Expenses from some fueling locations are split between short-distance train cost pool and long-distance cost pool based on percents provided by the field personnel. The cost pools are then allocated to the respective trains using GLC (Gallons Consumed). GLC has factors by equipment type (efficiency) and number of locos and Cars operated.	Local Fueling Location	Train
60	Power (Electric)	1631	Train Operations	Propulsion Power NEC Commuter Credits	ECM - Electric Car Miles. Electric powered Car Miles. Car miles are weighted for type of Propulsion unit used.	Local NEC	Train
65	Dining and Snack Car Labor	1321	On-Board Services - Dining and Snack Car	Sr. Director OBS & Stations Crew Bases	DLH - Dining Labor Hours Monthly hours worked aboard train as reported in the Labor Management System for each crew base. OLH - All trains based on hours worked aboard the train as reported in Labor Collection System.	Actual (500010 & 500014)/ Local Crew Base	Train
70	Coach Service Labor	1341	On-Board Services - Coach Service	Crew Bases	Same as Line 65.	Actual (500010 & 500014)/ Local Crew Base	Train
75	Sleeping Car Labor	1331	On-Board Services - Sleeping Car	Crew Bases	Same as Line 65	Local Crew Base	Train
80	Food	1321	On-Board Services -	Sr. Director Planning for	DRV Dining car revenue for trains stocked	Local	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 5 OF 17

Contract No. 73A0013  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (Res/Cens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
		A/C 540304 540342 540343 540344	Dining and Snack Car	Programs Standards Commissaries Crew Bases	at a location.	Commissary	
85	Liquor and Tobacco	1321 A/C 540308	On-Board Services - Dining and Snack Car	Sr. Director Planning for Programs Standards Commissaries Crew Bases	Same as Line 80	Local Commissary	Train
90	Non-Consumables	1321 1331 1341	On-Board Services - Dining and Snack Car On-Board Services - Sleeping Car On-Board Services - Coach Services	Commissaries Crew Bases	Same as Line 80.	Local Commissary	Train
95	Rents - Locomotive	1661	Rolling Stock Rental	Railroads	LUM Locomotive unit miles operated by each railroad.	Railroad Freight RR	Train
100	Rents - Cars	1661	Rolling Stock Rental	Railroads	TCM Car miles operated by each railroad.	Railroad Freight RR	Train
105	Route Stations Ticketing and Supervisory	1231 1241 1266	Station Services - Ticketing Station Services - Managerial & Supervisory Station Services - Stationmasters & Ushers	Station Services	TBD Total boards and debords at each station.	Local Station	Route
110	Route Stations Operating and Passenger Services	1251 1261 1271 1275 1286	Station Services - Red Caps & Porters Station Services - Baggage & Express Station Services - Station Operations Station Services - FDA Direct Costs Station Services - FDA Indirect Costs	Station Services	Same as 105	Local Station	Route
115	Route Stations Cleaning and Maintenance	1231	Station Services - Ticketing	Station Services	Same as 105	Local Station	Route
120	Shared Stations Ticketing	1231	Station Services - Ticketing	Station Services	Same as 105	Local Station	Route
125	Shared Stations	1266	Station Services - Stationmasters &	Station Services	Same as 105	Local	Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 6 OF 17

Contract No. 75A0018  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
	Stationmasters and Ushers		Ushers			Station	
130	Red Caps/Porters	1251	Station Services - Red Caps & Porters	Station Services	Same as 105.	Local Station	Route
135	Baggage and Express	1261	Station Services - Baggage & Express	Station Services	BCM Baggage car miles.	Local Station	Route
140	Mail Handling	1262	Station Services - Mail	Station Services	MRV Mail Revenue	Local Station	Route
145	Operations	1241 1242 1271 1275	Station Services - Managerial & Supervisory Station Services - First Class Lounge Station Services - Station Operations Station Services - FDA Direct Costs	Station Services	Same as 105	Local Station	Route
150	Cleaning and Maintenance	1721	Railroad - Facility and Other Maintenance	Railroads	TCM Car miles operated by each railroad.	Local Station	Route
155	Train Dispatching - Amtrak	1632	Train Dispatching	Transportation Movement Offices Blocks	FTT Trip frequency through each NEC transportation division.	Regional NEC	Route
160	Signal/Interlocker Operations - Amtrak	1634	Signal and Interlocker Operation	Supervisor Signals Blocks	Same as line 155.	Regional NEC	Route
165	Qualifying - Amtrak	1637	Qualifying - Block and Tower Operations	Blocks Terminal Superintendent	Same as line 155.	Regional NEC	Train
170	Drawbridge Operations - Amtrak	1636	Bridge Operation	Drawbridge Operations Supervisor Structures	TUT Total unit trips through a maintenance-of-way division/geographic area.	Regional NEC	Route
175	Cleaning Wrecks - Amtrak	1639	Cleaning Wrecks	Supervisor Structures Track Supervisor	Same as line 170.	Regional NEC	Train
180	Transportation Operations - Railroads	1600 1617 1641	Budget Adjustment - Transportation Train and Enginemen Overhead Other Transportation - Misc	General Superintendent Railroads Connecting Bus Services	Train miles operated by a railroad - TTM Total unit trips - TUT	Railroad	Train
181	Connecting Bus Transportation	1601 1641	Transportation - Managerial and Supervisory Other Transportation	Assist. Trans. Superintendent Road Crews General Superintendent	FTT - Train Frequency	Local Train groups set up for each bus service.	Train

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description (Miscellaneous)	FIS Expense Category (ResCens) Superintendent	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
182	Trucked Mail Operations	1201	Sales	Manager - Mail & Express Sales	MRV- Mail revenue	Trains with Trucked Mail	Train
190	Yard Operations	1616 1621 1622 1623 1626 1633 1635 1642 1643 1685	Extra Board Guarantee - Trainmen Yardmasters and Clerks Yard - Engine Crew Operations Yard - Trainmen Operations Engine Attendants Passenger Train - Enginemen Operations Passenger Train - Trainmen Operations Qualifying - Enginemen Qualifying - Trainmen Train Operations - FDA Direct Costs	GM Comm. Svs. Trans. Block Operators Yardmaster Yard Crews Road Crews Movement Off. Work Wire Wreck Flags Extra Board Terminal Supervisor	TUT Total trains at a location based on total unit trips.	Local Yard	Train
195	Passenger Inconvenience	1291	Passenger Inconvenience	Director Customer Comm Sr. Director OBS Stations Station Services	TBD Total boards and deboards at a station.	Local Station	Train
FOR MAINTENANCE OF EQUIPMENT LINES SEE THE ATTACHED CHART AT THE END							
226	Locomotive Turnaround Svcing	1821	Locomotive Turnaround Svcing	MOE Facilities	LUT Locomotive Unit Trips	Local	Train
230	Locomotive Servicing Railroad	No expense in FY 96	No expense in FY 96	Railroads	LUM Locomotive unit miles on the RR.	Local	Train
370	Exterior Car Cleaning	1880 1884 1981	Maintenance of Equipment- FDA Direct Costs Maintenance of Equipment- FDA Indirect Costs Passenger Common - Exterior Car Cleaning	MOE Facilities	TCM Total car miles	Local	Train
375	Train Riders	1988	Passenger Common - Train Riders	MOE Facilities	Same as line 370	Local	Train
385	Cars Servicing Railroad	1911	Maintenance of Equipment- Railroad Car Running Maintenance	Railroads	Same as line 370	Local	Train

Contract No. 75A0018  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
386	M of E Vacation	1814	Maintenance of Equipment - Shop Overhead - Miscellaneous	MOE Facilities	TUD - Total Units Demanded	Local	Train
387	M of E Inventory Loss	1992	Maintenance of Equipment - Inventory Adjustment	MOE Facilities	TUM - Total unit miles	SBU level	Train
388	Car Turnaround Servicing	1828	Car Turnaround Servicing	MOE Facilities	CUT - Car unit trips	Local	Train
390	Roadway Maintenance	1702	Roadway Maintenance	Supervisor Structures Track Supervisor Equipment Engineer	TUM Total unit miles through designated maintenance of way division/locations (RPS uses total unit trips where all mileage in a division is the same) ie New York	Regional M/W Region	Route
395	Track and Public Right of Way	1703 1704 1708 1741 1776	Track Maintenance Public right-of-way Maintenance Track Surfacing Wrecks, Storms, and Other Track Repair Maintenance of Way - Manufacture & Repair - Materials	Facility Design Track Laying System High Speed Surfacing Track Engineer M/W District Engineer Division Engineer Track Supervisors	Same as line 390	Regional M/W Region	Route
400	Snow and Ice Removal	1285 1748	Station Services - Snow and Ice Removal Snow and Ice Removal	Station Services Track Supervisor Supervisor Structures Utilities	Same as line 390	Regional M/W Region	Route
405	Tunnels Maintenance	1722 1746	Tunnel Maintenance Wrecks, Storms, and Other Tunnel Repair	Supervisor Structures Supervisor Electric Traction Utilities	Same as line 390	Regional M/W Region	Route
410	Bridges, Trestles, and Culverts	1723 1725 1744	Undergrade Bridge, Trestle, and Culvert Maintenance Overhead Highway Bridge Maint. Wrecks, Storms, and Other	Asst. Chief Engineer - Track - NEC Supervisor Structures Track Supervisor	Same as line 390	Regional M/W Region	Route
415	Signs and Fences	1731	Signs and Fence Maintenance	Supervisor Structures	Same as line 390	Regional M/W Region	Route
420	Track and Roadway Railroad	1711	Railroad - Track and Roadway Maintenance	Railroads	TTM Train miles for each train operated by a given railroad. (Railroads which bill Amtrak on basis of gross ton miles have costs allocated on total unit miles on that RR).	Regional M/W Region	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 9 OF 17

Contract No. 75A0018  
Sheet \_\_\_\_ of \_\_\_\_

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
425	Signal and Interlocker - Amtrak	1713 1742 1776	Signal and Interlocker Systems and Facilities Maintenance Wrecks, Storms, and Other Signal Repair Maintenance of Way - Manufacture and Repair - Materials	Washington Radio Shop ADE Communications & Signal M of W - New Orleans District Engineer Track Supervisor Supervisor Communications & Signals Supervisor Signals CETC - Phila. Supervisor Structures Communications & Signal Repair	Same as line 390.	Regional M/W Region	Route
430	Communications System - Amtrak	1712 1743	Communications Systems Maintenance Wrecks, Storms and Other Communications Line Repair	Radio Shop Supervisor - Communications & Signals Supervisor Communications Supervisor Signals Electric Technicians Phila Communications Mgr. Comm. Engineering Utilities Work Wire Wreck Flag Summary Stations	Same as line 390	Regional M/W Region	Route
435	Power Transmission System - Amtrak	1718 1719 1747	Power transmission Systems Maintenance Power Transmission Systems Operation Wrecks, Storms and Other Electric Traction Repair	Supervisor Electric Traction Power Dir. & Load Dispatch Spr. Electric Traction Electric Traction Spr. Communic. & Signals ET Construction Work Wire Wreck Flag	Same as line 390.	Regional M/W Region	Route
440	Roadway Buildings Maintenance - Amtrak	1726 1745 1776	Roadway Building Maintenance Wrecks, Storms and Other Building Repair Maintenance of Way - Manufacture and Repair - Materials	District Engineer Track Supervisor Supervisor Structures Supervisor B&B Facilities	Same as line 390	Regional M/W Region	Route
445	Station Building Maintenance - Amtrak	1281 1785 1786	Station Services - Building Maintenance Maintenance of Way - FDA Direct Costs Maintenance of Way - FDA Indirect Costs	Station Services Unmanned Stations Track Supervisor Supervisor Structures Supervisor Communic & Signals Supervisor B&B Facilities Railroads	TBD Total Boards/deboards for each train at a given station	Local M/W Region	Route
450	Roadway Machines - Amtrak	1733 1734 1753 1776	Roadway Machine Maintenance Work Equipment Maintenance Maintenance of Way - Equipment Maintenance of Way - Manufacture and Repair - Materials	Rail Gang Track Laying System High Speed Surfacing Panel Renewal System Tie Gang	Same as line 390.	Regional M/W Region	Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

Contract No. 75A0618  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (Res/Cans)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
455	Maintenance of Way Other - Amtrak	1724 1727 1739	Power Plant and Substation Maintenance Office Building Maintenance Dismantling Retired Road Property	District Engineer Track Supervisor M of W Equip. Shop Production Gangs and Misc. Equipment Engineer Bear Sys. Equip. Shop Bear Complex Bear Material Reclamation	Same as line 390.	Regional M/W Region	Route
460	Maintenance of Way Facility and Other Railroad	1721	Railroad - Facility and Other Maintenance	Terminal Engineer M of W - NOUPT Supervisor Structures Supervisor Electric Traction Track Supervisor Utilities Summary Stations	TUM Total unit miles for each train operated by a given railroad.	Railroad	Train
468	M of W Vacation	1751	Maintenance of Way - Overhead	MOW Facilities	TUT - Total unit trips & TUM - Total unit miles	Regional & Local	Route
469	M of W Inventory Loss	1792	Maintenance of Way - Inventory Adjustment	Corporate Common	TUM - Total unit miles	SBU Level	Route
470	Maintenance of Way Supervisory	1700 1701 1705 1710 1751 1776 1787 1796 1721	Maintenance of Way - Budget Adjustment Managerial Industrial Engineering Training Overhead Manufacture and Repair - Materials FDA Training Costs Material Control Railroad - Facility and Other Maintenance	Technical Training VP Engineering Facility Design VP and Chief Engineer Assistant Chief Engineer Sr. Engineer Clearance & Testing Sr. Dir. Engineering Support Rail Gang Track Laying System High Speed Surfacing Panel Renewal System Tie Gang Director Zone Projects Radio Shop Track Engineer M of W ADE Communications & Signals Division Engineer Engineer Facility Maintenance Terminal Engineer District Engineer Track Supervisor	TUT Total Unit Trips TUM Total unit miles for trains traveling through specific geographic division/locations. Train miles on a RR for railroad incurred costs.	Mixed	Route



Contract No. 75A0018  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
475	Station Services Supervisory	1231 1240 1241 1251 1261 1266 1271 1286 1287	Station Services - Ticketing Training Managerial & Supervisory Red Caps & Porters Baggage & Express Stationmasters & Ushers Station Operations FDA Indirect Costs FDA Training Costs	M of W Equipment Shop Supervisor Structures Supervisor Electric Traction Electric Traction Supervisor Communications & Signals Supervisor Communications Supervisor Signals CETC Supervisor B&B Facilities Regional Engineer Production Gangs and Misc. Vehicle and Equipment Shop Equipment Engineer Communications and Signal Repair ET Construction Sr Dir. C&S Construction Bear Sr. Dir. Equipment & Veh. Bear Sys. Equip. Shop Bear Material Complex Bear Material Reclamation Dir. Subcontract Admin. Material Control General Supervisor Utilities		Local	
480	Transportation Supervisory	1601 1610 1617 1631 1641 1666 1669	Transportation - Managerial and Supervisory Transportation - Training Train and Enginemen Overhead Train Operations Other Transportation - Misc. Vehicle Shop - Direct Vehicle Shop - Overhead	Mgr. Safety & Env. Control Vehicle Maintenance Shop Vehicle and Equip. Shop VP - Transportation Superintendent Crew Mgmt. Svcs Operations Transportation Superintendent Transportation Trainmaster Movement Office Stationmaster Yard Crews General Superintendent Train Fuel Work Wire Wreck Flag Road Crews	TBD Total Boards/deboards for a given train operating through stations.  A variety of techniques depending on source of expenses. For Amtrak, T&E res/focs, hours from LPS are used. Other techniques include frequency, total unit trips, and total unit miles for groupings of trains (ALL, NEC, TTX, R/X, NON, etc.) plus train miles on a railroad.	Mixed	Route

Contract No. 75A0018  
Sheet \_\_\_\_ of \_\_\_\_

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
485	Joint Terminal Facilities	1631 1651	Train Operations Joint Terminal Facility	Extra Board Auto Train Terminal Terminal Superintendent District Superintendent Assistant Transportation Superintendent Railroads	TUT & FTT All Amtrak sites, total unit trips through a location or frequency Total unit trips for railroad incurred costs.	Local Terminal	Route
490	Information & Reservations	1210 1219 1220 1221	Marketing and Sales - Training Reservations - Special Services Reservations - Managerial/ Administration Reservations	Sr. Dir. Reservation Sales & Services Dir. Reservations Sales Office Network Services & RSO Support	RSO Monthly survey of customer calling patterns.	National	Train
495	Marketing	1210	Marketing and Sales - Training	Sales and Marketing	TBD Total Passenger boards/deboards system-wide.	National	Train
497	SBU Advertising	1211	Advertising	Marketing R/C: 1014 1035 1042 1044 1045 1046 1047 1048 1169 2302	TBD	Local	Train
500	Commissions	1201	Sales	Corporate Common	TRV Total train transportation revenue.	SBU Level	Train
505	Sales	1200 1201 1210 1223 1224 1225	Budget Adjustment - Marketing Sales Marketing and Sales - Training Ticketing - City Ticket Offices & Tickets by Mail Ticketing - City Ticket Office Counter Marketing Support	Corporate Common Sales and Marketing	TAS Gross sales reported by travel agencies.	National	Train
510	Commissary Supervisory	1311 1387	Commissary On-Board Services - FDA Training Costs	Commissary Station Services Utilities	DRV Trains at a location based on dining car revenue.	Local	Train
515	Crew Support Supervisory	1300 1301 1310	On-Board Services - Budget Adjustment - Managerial and Supervisory Training	Dir. Food & Quality Assurance Crew Mgmt Center Commissary Crew Base	OLH All trains based on hours worked aboard the train as reported in Labor Collection System	Local	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
		1385 1386 1387	FDA Direct Costs FDA Indirect Costs FDA Training Costs	District Manager Station Services	2704		
520	Railroad Tax Accrual	1161 Acct # 570817	Railroad - Unallocated	Railroads	TTM Train miles for trains operated by each railroad.	Railroad	Train
525	Railroad Administration	1161 Acct # 570801	Railroad - Unallocated	Railroads	Same as line 520.	Railroad	Train
530	Railroad H & W Benefits and Pensions	1161 Acct # 570803	Railroad - Unallocated	Railroads	Same as line 520	Railroad	Train
535	Railroad Contract Avoidable	1691 Acct # 570896	Railroad Incentives and Avoidable Costs	Railroads	Same as line 520	Railroad	Train
540	Railroad Assumption of Liability	1691 Acct # 570897	Railroad Incentives and Avoidable Costs	Railroads	Same as line 520.	Railroad	Train
545	Railroad Performance Payments	1691	Railroad Incentives and Avoidable Costs	Railroads	Train level dollars as booked in FIS from railroad invoice (Whitebills)	Actual	Train
550	General Support	1011 1121 1132 1151 1181 1266 1271 1387 6881 6891 6897	Budget Adjustment - General Corporate Services Leadership & Management Unallocated Insurance and Taxes Station Services - Stationmasters and Ushers Station Services - Station Operations On-Board Services - FDA Training Costs Transfers - Miscellaneous Transfers - Overhead Transfers - Core/Commercial Development	Corporate Common Employee Benefits COI Office Of IG General Counsel Claims Services Office of Disciplinary Investing. Dir. Customer Communications Minority Business Dev. Office Corp Svcs. Headquarters Office Services Dir. Admin East Office Services Relocation Dir. Graphics Records Mgmt Reprographic Services Micrographics Passenger and Sales Physical Operations Executive Vice President Sales and Marketing Occupational Health Nurses	Two principal techniques: (1) systemwide car miles TCM (2) frequency FTT	Mixed	System

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 14 OF 17

Contract No. 75A008  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
551	GM Mail Operations Administration	1121 1201	Corporate Services Sales	Human Resources Passenger Services Commissary Regional Dir & District Mgr. - Passenger Svcs. Safety and Environmental Control Labor Relations Engineering Materials Management Transportation	MRV - Mail Revenue	Mail trains	System
552	Product Line Mgmt & Support	1123	Product line mgmt & support	Product line R/C's Sales	FTT, BDS, TUT	Regional	System
555	Training	1131 1133 1287 1611 1687	Training - Safety Station Services - FDA Training Costs Transportation Training - Engineer Train Operations - FDA Training Costs	Passenger & Sales - Rev. Acct. Personnel Operations Human Resources Field Oper. Leadership Development Safety Educ. Continuous Quality Improvement Training Passenger Services Training Technical Training Gen. Superintendent, Transp.	Most used technique is trip frequency systemwide. Others include frequency for train groupings, boards and deboards, total unit miles and total unit trips.	Mixed	System
560	Procurement - Purchasing	1121	Corporate Services	Materials Management	Frequency for trains assigned to a specific location	Mixed	Route
565	Police and Security	1121 1675	Corporate Services Safety Operations	Police Department	TUT Total unit trips for trains assigned to specific locations. FTT Train Frequency	Mixed	Route
570	Computer Systems	1121	Corporate Services	Information Systems Department	Total unit miles systemwide.	Mixed	Route
575	Road Depreciation	1171	Depreciation	Corporate Common	TUM Total unit miles, systemwide NEC	Regional NEC	Route
580	Shop, Power Plant Machinery & Other Equipment Depreciation	1171	Depreciation	Corporate Common	TUM Total unit miles systemwide.	Mixed	Route
611	Diesel Switcher	1172	Unit Depreciation	Corporate Common	IUD - Total Units Demandert	SRU Level	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

Contract No. 75A0318  
Sheet      of     

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
660	Inactive Equipment	1171	Depreciation	Corporate Common	Total locomotive unit miles or total car miles systemwide.	SBU Level	Train
665	Taxes	1181	Insurance and Taxes	Corporate Common	Total car miles systemwide.	National	Route
670	Purchased Insurance	1181	Insurance and Taxes	Corporate Common Treasury	Weighted car miles passenger carrying cars are allocated more costs than baggage cars and auto carriers). Passenger miles.	National	Train
674	SBU General and Administrative	1002	General & Administrative	Various SBU R/C's	TTE - Total month to date train expenses	Local	System
675	Self Insurance	1181	Insurance and Taxes	Corporate Common Stations	Same as 670.	National	Train
676	General and Administrative	1001	Presidents Employee Communications Inspector General Government Affairs Law Finance and Administration Corp. Planning & Development Human Resources Labor Relations Restructuring Charges Accrued Restructuring Expense Budget Adjustment - Administrative General & Administrative - FDA Indirect General & Administrative - Special Projects Transfers - General & Administrative Transfers - Interest	Corporate Common	Allocated to all trains based on TTE - Total Train Expenditure MTD Exp	National	System
677	Interest	1191	Finance - Banking Charge	Corporate Common	TCM by equipment type.	SBU Level	Route

EXHIBIT I

**Maintenance of Equipment**  
FIS transition in to RPS Lines and the allocations formulas for the Localized MIE Cost Pool

Maintenance Category	Item Number	Allocation	Route
MIE Overhead	1801	100% on Locomotive Unit Trips LUT at a location	Route
	1802	100% on Car Unit Trips CLUT at a location	Route
	1803	34% on Diesel Unit Miles DUM, 66% on Diesel Locomotive Units DLU	Route
	1804	100% on California Car Miles TCM-OY	Route
	1805	36% on Electric Unit Miles EUM, 64% on Electric Locomotive Units ELU	Route
	1806	61% on Amfleet Car Miles TCM-AX, 39% on Amfleet Units AMU	Route
	1807	61% on Cab Car Miles TCM-CB, 39% on Cab Car Units PPU	Route
	1808	73% on Heritage Car Miles TCM-CX, 27% on Heritage Cars Units CLU	Route
	1809	73% on Auto Carrier Miles TCM-LX, 27% on Auto Carrier Units ACU	Route
	1810	61% on Horizon Car Miles TCM-HY, 39% on Horizon Car Units HZU	Route
	1811	63% on Superliner Car Miles TCM-SX, 37% on Superliner Units SLU	Route
	1812	40% on Turbo Car Miles TCM-TX, 60% on Turbo Car Units TBU	Route
	1813	73% on Viewliner Car Miles TCM-VX, 27% on Viewliner Units VLU	Route
	1814	73% on Baggage Car Miles BCM, 27% on Baggage Car Units BCU	Route
	1815	100% on California Car Miles TCM-OY	Route
	1816	48% on Diesel Unit Miles DUM, 52% on Diesel Locomotive Units DLU	Route
	1817	37% on Electric Unit Miles EUM, 63% on Electric Locomotive Units ELU	Route
	1818	55% on Amfleet Car Miles TCM-AX, 45% on Amfleet Units AMU	Route
1819	55% on Cab Car Miles TCM-CB, 45% on Cab Car Units PPU	Route	
1820	42% on Heritage Car Miles TCM-CX, 58% on Heritage Cars Units CLU	Route	
1821	51% on Auto Carrier Miles ACM, 49% on Auto Carrier Units ACU	Route	
1822	55% on Horizon Car Miles TCM-HY, 45% on Horizon Car Units HZU	Route	
1823	55% on Superliner Car Miles TCM-SX, 45% on Superliner Units SLU	Route	
1824	47% on Turbo Car Miles TCM-TX, 53% on Turbo Car Units TBU	Route	
1825	42% on Viewliner Car Miles TCM-VX, 58% on Viewliner Units VLU	Route	
1826	42% on Baggage Car Miles BCM, 58% on Baggage Car Units BCU	Route	
1827	100% on California Car Miles TCM-OY	Route	
1828	100% on Diesel Unit Miles DUM	Route	
1829	100% on California Car Miles TCM-OY	Route	
1830	100% on Electric Unit Miles EUM	Route	
1831	100% on Amfleet Car Miles TCM-AX	Route	
1832	100% on Cab Car Miles TCM-CB	Route	
1833	100% on Heritage Car Miles TCM-CX	Route	
1834	100% on Auto Carrier Miles ACM	Route	
1835	100% on Horizon Car Miles TCM-HY	Route	
1836	100% on Superliner Car Miles TCM-SX	Route	
1837	100% on Turbo Car Miles TCM-TX	Route	
1838	100% on Viewliner Car Miles TCM-VX	Route	
1839	100% on Baggage Car Miles BCM	Route	
1840	100% on California Car Miles TCM-OY	Route	
1841	100% on Diesel Locomotives	Route	
1842	100% on CA Diesel Locomotives	Route	
1843	100% on Electric Locomotives	Route	
1844	100% on Amfleet Cars	Route	
1845	100% on Cab Cars	Route	
1846	100% on Heritage Cars	Route	
1847	100% on LX Auto Carriers	Route	
1848	100% on HY Horizon Cars	Route	
1849	100% on SX Superliner Cars	Route	
1850	100% on SY Superliner II Cars	Route	
1851	100% on TX Turboliner Cars	Route	
1852	100% on VX Viewliner Cars	Route	
1853	100% on CX Baggage Cars	Route	
1854	100% on OY California Cars	Route	
1855	100% on Diesel Locomotives	Route	
1856	100% on CA Diesel Locomotives	Route	
1857	100% on Electric Locomotives	Route	
1858	100% on Amfleet Cars	Route	
1859	100% on Cab Cars	Route	
1860	100% on Heritage Cars	Route	
1861	100% on LX Auto Carriers	Route	
1862	100% on HY Horizon Cars	Route	
1863	100% on SX Superliner Cars	Route	
1864	100% on SY Superliner II Cars	Route	
1865	100% on TX Turboliner Cars	Route	
1866	100% on VX Viewliner Cars	Route	
1867	100% on CX Baggage Cars	Route	
1868	100% on OY California Cars	Route	
1869	100% on Diesel Locomotives	Route	
1870	100% on CA Diesel Locomotives	Route	
1871	100% on Electric Locomotives	Route	
1872	100% on Amfleet Cars	Route	
1873	100% on Cab Cars	Route	
1874	100% on Heritage Cars	Route	
1875	100% on LX Auto Carriers	Route	
1876	100% on HY Horizon Cars	Route	
1877	100% on SX Superliner Cars	Route	
1878	100% on SY Superliner II Cars	Route	
1879	100% on TX Turboliner Cars	Route	
1880	100% on VX Viewliner Cars	Route	
1881	100% on CX Baggage Cars	Route	
1882	100% on OY California Cars	Route	
1883	100% on Diesel Locomotives	Route	
1884	100% on CA Diesel Locomotives	Route	
1885	100% on Electric Locomotives	Route	
1886	100% on Amfleet Cars	Route	
1887	100% on Cab Cars	Route	
1888	100% on Heritage Cars	Route	
1889	100% on LX Auto Carriers	Route	
1890	100% on HY Horizon Cars	Route	
1891	100% on SX Superliner Cars	Route	
1892	100% on SY Superliner II Cars	Route	
1893	100% on TX Turboliner Cars	Route	
1894	100% on VX Viewliner Cars	Route	
1895	100% on CX Baggage Cars	Route	
1896	100% on OY California Cars	Route	
1897	100% on Diesel Locomotives	Route	
1898	100% on CA Diesel Locomotives	Route	
1899	100% on Electric Locomotives	Route	
1900	100% on Amfleet Cars	Route	
1901	100% on Cab Cars	Route	
1902	100% on Heritage Cars	Route	
1903	100% on LX Auto Carriers	Route	
1904	100% on HY Horizon Cars	Route	
1905	100% on SX Superliner Cars	Route	
1906	100% on SY Superliner II Cars	Route	
1907	100% on TX Turboliner Cars	Route	
1908	100% on VX Viewliner Cars	Route	
1909	100% on CX Baggage Cars	Route	
1910	100% on OY California Cars	Route	
1911	100% on Diesel Locomotives	Route	
1912	100% on CA Diesel Locomotives	Route	
1913	100% on Electric Locomotives	Route	
1914	100% on Amfleet Cars	Route	
1915	100% on Cab Cars	Route	
1916	100% on Heritage Cars	Route	
1917	100% on LX Auto Carriers	Route	
1918	100% on HY Horizon Cars	Route	
1919	100% on SX Superliner Cars	Route	
1920	100% on SY Superliner II Cars	Route	
1921	100% on TX Turboliner Cars	Route	
1922	100% on VX Viewliner Cars	Route	
1923	100% on CX Baggage Cars	Route	
1924	100% on OY California Cars	Route	
1925	100% on Diesel Locomotives	Route	
1926	100% on CA Diesel Locomotives	Route	
1927	100% on Electric Locomotives	Route	
1928	100% on Amfleet Cars	Route	
1929	100% on Cab Cars	Route	
1930	100% on Heritage Cars	Route	
1931	100% on LX Auto Carriers	Route	
1932	100% on HY Horizon Cars	Route	
1933	100% on SX Superliner Cars	Route	
1934	100% on SY Superliner II Cars	Route	
1935	100% on TX Turboliner Cars	Route	
1936	100% on VX Viewliner Cars	Route	
1937	100% on CX Baggage Cars	Route	
1938	100% on OY California Cars	Route	
1939	100% on Diesel Locomotives	Route	
1940	100% on CA Diesel Locomotives	Route	
1941	100% on Electric Locomotives	Route	
1942	100% on Amfleet Cars	Route	
1943	100% on Cab Cars	Route	
1944	100% on Heritage Cars	Route	
1945	100% on LX Auto Carriers	Route	
1946	100% on HY Horizon Cars	Route	
1947	100% on SX Superliner Cars	Route	
1948	100% on SY Superliner II Cars	Route	
1949	100% on TX Turboliner Cars	Route	
1950	100% on VX Viewliner Cars	Route	
1951	100% on CX Baggage Cars	Route	
1952	100% on OY California Cars	Route	
1953	100% on Diesel Locomotives	Route	
1954	100% on CA Diesel Locomotives	Route	
1955	100% on Electric Locomotives	Route	
1956	100% on Amfleet Cars	Route	
1957	100% on Cab Cars	Route	
1958	100% on Heritage Cars	Route	
1959	100% on LX Auto Carriers	Route	
1960	100% on HY Horizon Cars	Route	
1961	100% on SX Superliner Cars	Route	
1962	100% on SY Superliner II Cars	Route	
1963	100% on TX Turboliner Cars	Route	
1964	100% on VX Viewliner Cars	Route	
1965	100% on CX Baggage Cars	Route	
1966	100% on OY California Cars	Route	
1967	100% on Diesel Locomotives	Route	
1968	100% on CA Diesel Locomotives	Route	
1969	100% on Electric Locomotives	Route	
1970	100% on Amfleet Cars	Route	
1971	100% on Cab Cars	Route	
1972	100% on Heritage Cars	Route	
1973	100% on LX Auto Carriers	Route	
1974	100% on HY Horizon Cars	Route	
1975	100% on SX Superliner Cars	Route	
1976	100% on SY Superliner II Cars	Route	
1977	100% on TX Turboliner Cars	Route	
1978	100% on VX Viewliner Cars	Route	
1979	100% on CX Baggage Cars	Route	
1980	100% on OY California Cars	Route	
1981	100% on Diesel Locomotives	Route	
1982	100% on CA Diesel Locomotives	Route	
1983	100% on Electric Locomotives	Route	
1984	100% on Amfleet Cars	Route	
1985	100% on Cab Cars	Route	
1986	100% on Heritage Cars	Route	
1987	100% on LX Auto Carriers	Route	
1988	100% on HY Horizon Cars	Route	
1989	100% on SX Superliner Cars	Route	
1990	100% on SY Superliner II Cars	Route	
1991	100% on TX Turboliner Cars	Route	
1992	100% on VX Viewliner Cars	Route	
1993	100% on CX Baggage Cars	Route	
1994	100% on OY California Cars	Route	
1995	100% on Diesel Locomotives	Route	
1996	100% on CA Diesel Locomotives	Route	
1997	100% on Electric Locomotives	Route	
1998	100% on Amfleet Cars	Route	
1999	100% on Cab Cars	Route	
2000	100% on Heritage Cars	Route	
2001	100% on LX Auto Carriers	Route	
2002	100% on HY Horizon Cars	Route	
2003	100% on SX Superliner Cars	Route	
2004	100% on SY Superliner II Cars	Route	
2005	100% on TX Turboliner Cars	Route	
2006	100% on VX Viewliner Cars	Route	
2007	100% on CX Baggage Cars	Route	
2008	100% on OY California Cars	Route	
2009	100% on Diesel Locomotives	Route	
2010	100% on CA Diesel Locomotives	Route	
2011	100% on Electric Locomotives	Route	
2012	100% on Amfleet Cars	Route	
2013	100% on Cab Cars	Route	
2014	100% on Heritage Cars	Route	
2015	100% on LX Auto Carriers	Route	
2016	100% on HY Horizon Cars	Route	
2017	100% on SX Superliner Cars	Route	
2018	100% on SY Superliner II Cars	Route	
2019	100% on TX Turboliner Cars	Route	
2020	100% on VX Viewliner Cars	Route	
2021	100% on CX Baggage Cars	Route	
2022	100% on OY California Cars	Route	
2023	100% on Diesel Locomotives	Route	
2024	100% on CA Diesel Locomotives	Route	
2025	100% on Electric Locomotives	Route	
2026	100% on Amfleet Cars	Route	
2027	100% on Cab Cars	Route	
2028	100% on Heritage Cars	Route	
2029	100% on LX Auto Carriers	Route	
2030	100% on HY Horizon Cars	Route	
2031	100% on SX Superliner Cars	Route	
2032	100% on SY Superliner II Cars	Route	
2033	100% on TX Turboliner Cars	Route	
2034	100% on VX Viewliner Cars	Route	
2035	100% on CX Baggage Cars	Route	
2036	100% on OY California Cars	Route	
2037	100% on Diesel Locomotives	Route	
2038	100% on CA Diesel Locomotives	Route	
2039	100% on Electric Locomotives	Route	
2040	100% on Amfleet Cars	Route	
2041	100% on Cab Cars	Route	
2042	100% on Heritage Cars	Route	
2043	100% on LX Auto Carriers	Route	
2044	100% on HY Horizon Cars	Route	
2045	100% on SX Superliner Cars	Route	
2046	100% on SY Superliner II Cars	Route	
2047	100% on TX Turboliner Cars	Route	
2048	100% on VX Viewliner Cars	Route	
2049	100% on CX Baggage Cars	Route	
2050	100% on OY California Cars	Route	
2051	100% on Diesel Locomotives	Route	
2052	100% on CA Diesel Locomotives	Route	
2053	100% on Electric Locomotives	Route	
2054	100% on Amfleet Cars	Route	
2055	100% on Cab Cars	Route	
2056	100% on Heritage Cars	Route	
2057	100% on LX Auto Carriers	Route	
2058	100% on HY Horizon Cars	Route	
2059	100% on SX Superliner Cars	Route	
2060	100% on SY Superliner II Cars	Route	
2061	100% on TX Turboliner Cars	Route	
2062	100% on VX Viewliner Cars	Route	
2063	100% on CX Baggage Cars	Route	
2064	100% on OY California Cars	Route	
2065	100% on Diesel Locomotives	Route	
2066	100% on CA Diesel Locomotives	Route	
2067	100% on Electric Locomotives	Route	
2068	100% on Amfleet Cars	Route	
2069	100% on Cab Cars	Route	
2070	100% on Heritage Cars	Route	
2071	100% on LX Auto Carriers	Route	
2072	100% on HY Horizon Cars	Route	
2073	100% on SX Superliner Cars	Route	
2074	100% on SY Superliner II Cars	Route	
2075	100% on TX Turboliner Cars	Route	
2076	100% on VX Viewliner Cars	Route	
2077	100% on CX Baggage Cars	Route	
2078	100% on OY California Cars	Route	
2079	100% on Diesel Locomotives	Route	
2080	100% on CA Diesel Locomotives	Route	
2081	100% on Electric Locomotives	Route	
2082	100% on Amfleet Cars	Route	
2083	100% on Cab Cars	Route	
2084	100% on Heritage Cars	Route	
2085	100% on LX Auto Carriers	Route	
2086	100% on HY Horizon Cars	Route	
2087	100% on SX Superliner Cars	Route	
2088	100% on SY Superliner II Cars	Route	
2089	100% on TX Turboliner Cars	Route	
2090	100% on VX Viewliner Cars	Route	
2091	100% on CX Baggage Cars	Route	
2092	100% on OY California Cars	Route	
2093	100% on Diesel Locomotives	Route	
2094	100% on CA Diesel Locomotives	Route	
2095	100% on Electric Locomotives	Route	
2096	100% on Amfleet Cars	Route	
2097	100% on Cab Cars	Route	
2098	100% on Heritage Cars	Route	
2099	100% on LX Auto Carriers	Route	
2100	100% on HY Horizon Cars	Route	
2101	100% on SX Superliner Cars		

SECTION 24704 BILLING PROCESS  
Definition of Capital Charges

<u>Capital Item</u>	<u>Items Included</u>	<u>Comments</u>
Facilities	Newly required facilities to operate 24704 service such as track, signals, stations and facilities, etc.	No charge is made for use of existing capital items. Reimbursement for capital charges are determined by separate agreement.
Equipment	Actual number of Amtrak cars and locomotives used, including protect.	The equipment capital charge includes a pro forma charge for depreciation and interest which is calculated as follows:  <u>Depreciation:</u> ICC depreciation expense for equipment utilized in 403(b) service as reported in Amtrak's Financial Information System (FIS).  <u>Interest:</u> Debt service interest for equipment utilized in 403(b) service, as reported in FIS.
		The State's share of equipment capital charges for Amtrak provided equipment on all routes shall be 100%, except for the San Diegan Route (which is only 64% funded by the State), the State will pay 64% of full charges. Also, the State will receive a 36% credit of full charges for use of State-owned cars and locomotives on Amtrak's 36% funded portion of the route.





**APPENDIX K**  
**FUNCTIONS ASSUMED BY THE AUTHORITY**  
**Interagency Transfer Agreement**  
**Capitol Corridor Joint Powers Authority**

**Capitol Corridor Service**  
**(Colfax-Sacramento-Suisun City-Oakland/San Francisco-San Jose)**

<u>Functions</u>	<u>Responsibilities</u>
Management	<ul style="list-style-type: none"><li>- Manage and direct Capitol Corridor Service.</li><li>- Oversee administration of service (operations, maintenance, marketing, etc.).</li><li>- Lead or provide support in all negotiations related to service.</li><li>- Develop all proposed policies, plans, and programs for the Service for review by the CCJPB.</li><li>- Coordinate Interagency Transfer Agreement with the State.</li></ul>
Administration	<ul style="list-style-type: none"><li>- Provide administrative support to the Capitol Corridor core staff.</li><li>- Prepare materials for distribution to CCJPB.</li><li>- Handle CCJPB administrative requests.</li></ul>
Operations	<ul style="list-style-type: none"><li>- Develop operational plans in conjunction with affected agencies.</li><li>- Administer, review, and evaluate operator and other contracted services.</li><li>- Oversee and coordinate fare collection, schedules, station maintenance, and security with affected jurisdictions and agencies.</li><li>- Monitor and manage contractors' service productivity, on-time performance, and other performance standards and objectives.</li><li>- Review train dispatching (including priorities) and control procedures.</li><li>- Conduct incident investigations and on-site field audits.</li><li>- Oversee food service cars and other service amenities.</li></ul>
Equipment	<ul style="list-style-type: none"><li>- Manage and administer equipment assignments, and monitor (and manage and administer once maintenance supervision responsibility has been transferred to the Authority in accordance with the Equipment Lease) maintenance and repair contracts for all rolling stock assigned to the Authority.</li><li>- Monitor compliance with operating and safety regulations.</li><li>- Develop maintenance and reliability programs.</li><li>- Conduct on-site field audits of equipment maintenance activities.</li><li>- Review plans, schedules and procedures for maintenance of equipment, including support of any State warranty programs, and assess need for new equipment.</li></ul>
Facilities	<ul style="list-style-type: none"><li>- Review and assess existing structures and facilities and identify capital needs.</li><li>- Monitor and coordinate station development plans and programs.</li><li>- Manage and coordinate railroad facility programs with service.</li></ul>

- Finance
  - Perform management analysis of financial and performance efficiency.
  - Monitor fare collection and revenue analysis.
  - Develop financial standards for contracted entities.
  - Develop and oversee funding agreements, financial reporting, and operating and capital budgets.
  - Approve and process payment of bills and invoices.
  
- Contracts
  - Develop and coordinate procurement of contracts.
  - Monitor contracts according to procurement requirements.
  - Manage contracts for compliance.
  - Direct and coordinate audits for Authority contracts.
  - Develop and coordinate contract modifications, negotiations, and procurement documents.
  
- Passenger Services
  - Manage and administer passenger service activities.
  - Coordinate customer relations and interface with public, including preparing responses to letters and inquiries.
  - Review and present passenger publications and promotional materials.
  - Prepare, publish, and distribute timetables and set guidelines for coordination of timetables.
  
- Legislative Outreach
  - Maintain and develop relations with all stakeholders and interests.
  - Advise on federal and state legislative issues affecting service.
  - Oversee developments influencing funding of service.
  
- Service Planning
  - Develop short-term and long-term service planning.
  - Prepare and maintain annual Business Plan.
  - Direct the development of joint-ticketing program.
  - Coordinate and integrate service with local and regional transit agencies and intercity rail corridors.
  - Strategic planning to advance goals and objectives.
  
- Capital Development
  - Develop capital program and budget for service.
  - Oversees various capital projects and programs in corridor.
  - Prepares and coordinates grant proposals.
  - Request programming through appropriate procedures.
  
- Marketing
  - Develop, implement, and update, as required, marketing program.
  - Oversee and report on marketing contractor.
  - Manage and administer market research efforts.
  - Direct and coordinate advertising media, community outreach, and public information.
  
- Attorney
  - Provide legal advice.
  - Support in developing legal and institutional arrangements and other issues.



**INTERCITY PASSENGER RAIL ACT OF 1996**

**UNIFORM PERFORMANCE  
STANDARDS  
ADOPTED**

By

**SECRETARY, BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

**December 31, 1997**

I.  
INTRODUCTION

Pursuant to Government Code section 14031.8(f), the Secretary of the Business, Transportation and Housing Agency respectfully provides this report concerning the establishment and adoption of a set of uniform performance standards for all corridors and operators to control cost and improve efficiency.

II.  
PRIMARY UNIFORM PERFORMANCE STANDARDS

Section 14031.8(f) of the Government Code: "Not later than December 31, 1997, the secretary shall establish a set of uniform performance standards for all corridors and operators to control cost and improve efficiency."

Three primary uniform performance standards and separate targets for each standard with respect to each of the corridors have been developed for Federal Fiscal Years 1997-98, 1998-99, and 1999-2000. Actual data is provided for State Fiscal Years 1995-96 and 1996-97 for purposes of comparison. These standards represent the three categories suggested by the Legislative Analyst's Office in their report on the 1997 Governor's Budget: usage, cost efficiency, and service quality.

Generally the performance targets established for each corridor for 1997-98 and 1998-99 are based on the revenue, cost, loss and ridership projections embedded in the Amtrak contract and cost estimate for these years. The performance targets for 1999-2000 are based on the Caltrans estimate that, on all corridors, ridership and revenue will increase by 5 percent, and costs by 3 percent.

However, the farebox ratios for 1997-98 to 1999-2000, reflect targets that are slightly higher than the Amtrak projections or Caltrans projection for 1999-2000 because aggressive marketing, rigorous cost control management, and stringent operations management can produce better results.

Table 1 (following) shows actual State fiscal year 1996-97 performance and performance targets for Federal fiscal years 1997-98, 1998-99 and 1999-2000 for each corridor for the following performance standards: Route Ridership (usage), Farebox Return (cost efficiency), and On-Time Performance (service quality).

**TABLE 1**

PRIMARY PERFORMANCE STANDARDS AND TARGETS FOR THREE CALIFORNIA INTERCITY RAIL-PASSENGER SERVICE CORRIDORS				
	<u>Actual SFY</u> <u>96/7</u>	<u>FFY 97/8</u>	<u>FFY 98/9</u>	<u>FFY 99/00</u>
<b><u>CAPITOL CORRIDOR</u></b>				
Route Ridership (000)	497	536	716	752
Farebox Return	28.9%	30.0%	31.0%	32.0%
On-Time Performance	70%	80%	90%	90%
<b><u>SAN JOAQUIN CORRIDOR</u></b>				
Route Ridership (000)	653	691	799	839
Farebox Return	40.0%	41.0%	42.0%	43.0%
On-Time Performance	58%	75%	80%	85%
<b><u>SAN DIEGAN CORRIDOR **</u></b>				
Route Ridership (000)	1,618	1,793	1,844	1,936
Farebox Return	37.4%	38.0%	41.4%	42.2%
On-Time Performance	75%	78%	80%	90%

\*\* - State portion only, 67% from November 1997 forward

**III.  
EXPLANATION**

The most significant influence on corridor ridership is additional service. On the San Diegans, new service was added in 1997-98, with a projected 16 percent ridership increase. On the San Joaquins, the fifth round trip (Bakersfield-Sacramento) is projected to be added in 1998-99, with a projected 15.6 percent ridership increase. On the Capitols the fifth and sixth trains are projected to be added in 1998-99, with a 33.6 percent ridership increase.

The most significant influence on the farebox return (total train and bus revenue divided by total train and bus cost) was the change in the cost basis in 1996-97. In 1995-96 Amtrak charged the State based on long-term avoidable loss. In 1996-97 and thereafter Amtrak changed the cost basis to fully allocated loss. This change charges the State for more of the costs attributed to a route's operation than was previously the case. All of the Farebox Return targets shown above are based on fully allocated costs. (See attached Caltrans Report for more detail on cost bases.)

On-time performance is directly related to the major capital improvement projects on each corridor. On the San Joaquins, the major track and signal project between Stockton and Bakersfield is just nearing completion. This will allow the on-time performance to jump from 58 percent in 1996-97 to 75 percent in 1997-98. On the Capitols, the contract for the major track and signal project to be completed in early 1999 calls for 90 percent on time performance upon the completion of the project. On the San Diegans, a major track and signal project is just commencing on the north end of the route which is projected to significantly improve on time performance by 1999-2000.

#### IV. CORRIDOR VARIATIONS

Variations in the performance targets relate to a number of characteristics including: the length of the route, the number of train frequencies, the number of years the route has been in operation, the demographics of the population in the region served, the demographics of the route's train riders, and the existence of commuter rail and other transportation competition. Additionally, a number of operational characteristics affect a route's performance: the track and station platform quality and resulting train speed, station operational costs, and the fleet of equipment used.

Generally, the longer the route the lower the cost per mile. Also, in order to keep the train ticket on a longer route at a reasonable cost, longer routes usually have lower revenue per mile. For example, the San Joaquins' cost per mile is lower than that of the San Diegans or Capitols; however, the San Diegans' revenue per mile is higher than that of the San Joaquins. Additionally, more train frequencies on a route can result in increased efficiencies and lower costs per mile.

The sensitivity of train riders to ticket price will also affect the revenue that can be derived per train mile. For example, on the San Diegans, many higher income business travelers use the train, while on the San Joaquins, more moderate income persons use the train for occasional trips.

Both the San Joaquins and the San Diegans have been in operation for many years, and riders and potential riders have established their travel patterns. Thus, it is more difficult to achieve dramatic increases in ridership; -- particularly, on the San Diegans where there is significant competition from the local rail commuter services. On the other hand, more dramatic ridership increases are possible on the Capitols as frequencies are added and the service will better fill the demand for business travel on the I-80 corridor.

Because of the significant variations in each routes' characteristics and resulting performance, it is not practical or useful to develop identical performance targets for each route. Therefore, a different set of performance targets, which account for the historical performance of each route and Amtrak cost estimates (as discussed in the section above) have been developed.

V.  
ADDITIONAL PERFORMANCE STANDARDS

The three Primary Performance Standards have been selected from a group of 17 measures that are regularly utilized in the short-term management of these services. The 17 measures are shown in the attached Caltrans Report, along with background description of how performance measures were developed, the basis for Amtrak costs, etc.

VI.  
ADOPTION

The Business, Transportation and Housing Agency is committed to implementing the Intercity Passenger Rail Act of 1996 and in doing so adopts the Primary Uniform Performance Standards outlined in this report.

Respectfully,

DEAN R. DUNPHY  
Secretary

Attachment



## CALTRANS REPORT ON PERFORMANCE STANDARDS FOR INTERCITY RAIL PASSENGER SERVICE

Caltrans has developed a total of 17 performance standards for Federal Fiscal Years 1997-98, 1998-99, and 1999-2000. Actual data is provided for State Fiscal Years 1995-96 and 1996-97 for purposes of comparison. The standards are grouped in the three categories suggested by the Legislative Analyst's Office in their report on the 1997 Governor's Budget: usage, cost efficiency and service quality.

Generally, the performance standards for 1997-98 and 1998-99 are based on the revenue, cost, loss and ridership projections embedded in the Amtrak contract and cost estimate for these years. The performance standards for 1999-2000 are based on the Caltrans estimate that, on all routes, ridership and revenue will increase by 5 percent, and costs by 3 percent.

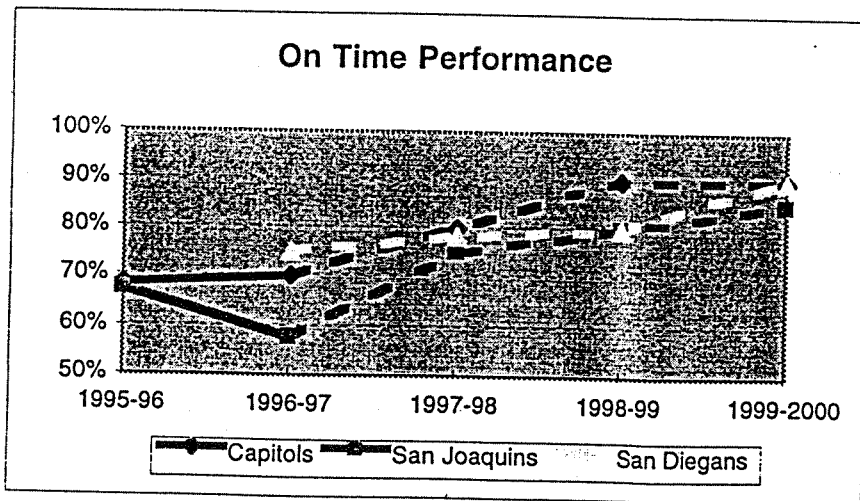
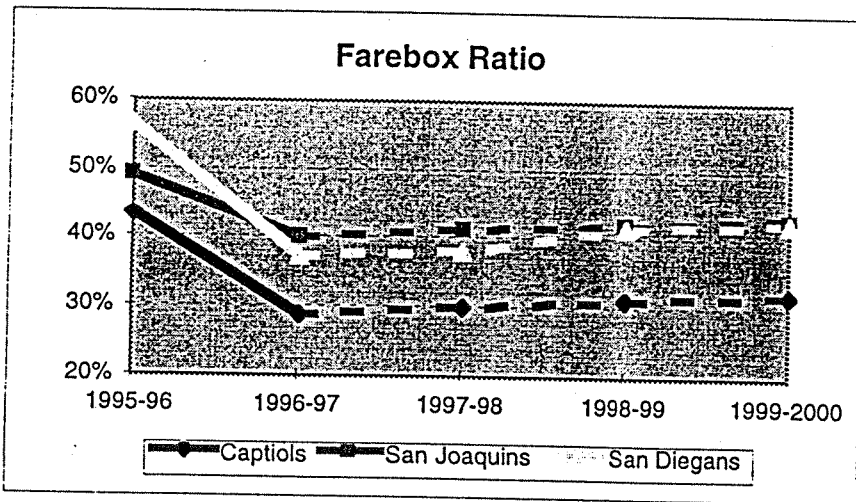
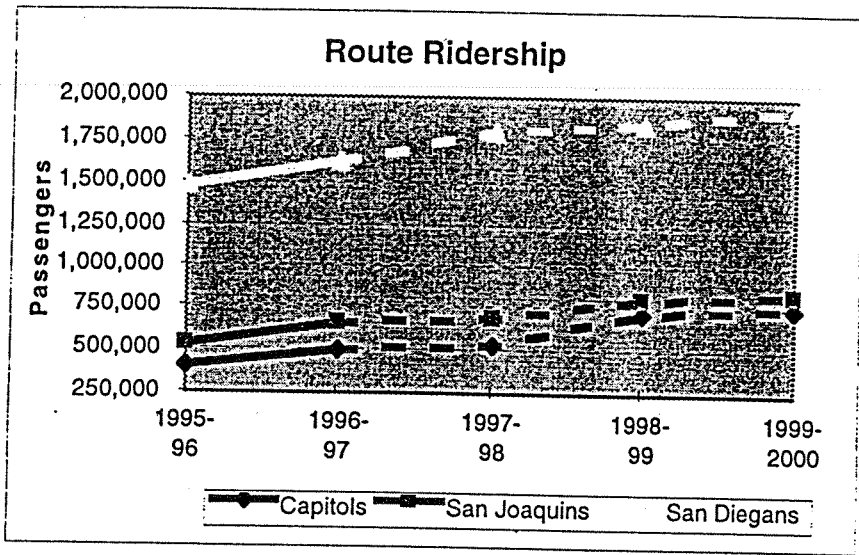
However, for the farebox ratio for 1997-98 - 1999-2000, Caltrans has developed a standard that is slightly higher than the Amtrak projections or the Caltrans projection for 1999-2000 (which is consistent with the prior year Amtrak projections). This is because Caltrans believes with its aggressive marketing, careful monitoring of Amtrak costs, and stringent operations monitoring, the Amtrak projections for farebox ratio can be surpassed. Caltrans is projecting a one percent annual increase in the farebox ratio on the Capitols and San Joaquins between 1996-97 and 1999-2000. On the San Diegans, Amtrak is projecting a total increase of 4.8 percent in the farebox ratio over the same period. Caltrans believes this standard is aggressive, and thus has made no modifications.

### 1. KEY PERFORMANCE STANDARDS

Table 1 graphs, for each route, a key standard under each category: usage - Route Ridership; cost efficiency - Farebox Ratio; and service quality - On-time Performance.

All three key standards are projected to improve between 1997-98 and 1999-2000. Route ridership increases are mostly influenced by service additions. The farebox ratio on all three routes is projected to increase slightly as discussed above. On time performance on all three routes is projected to significantly improve, primarily resulting from the completion of major capital projects.

**TABLE 1**  
**Key Performance Standards - Intercity Rail Routes**



Straight line actuals - Dashed line standards

## 2. DETAILED PERFORMANCE MEASURES

Table 2 charts, for each route, all 17 performance standards under the three categories of usage, cost efficiency and quality:

- Usage is measured by total route ridership, and the percentage change in various factors, including bus and train ridership, train revenue, train passenger miles, and train miles. Usage is also indicated by passenger miles per train miles, which is a measure of the average load on a train over its entire run. Equipment usage is measured by the percent of available state-owned California Car equipment that is in service. On the San Diegans both total and state-only route ridership are charted.
- Cost efficiency is measured by a number of factors, including farebox ratio, yield (total train revenue divided by train passenger miles), and other factors that relate train revenue, train cost, and train loss (cost minus revenue) to the number of train miles or rail passenger miles. Also, the ratio of direct route marketing costs to route revenue is measured.
- Quality is measured by on-time performance as reported by Amtrak, and customer satisfaction as measured by Amtrak's customer satisfaction tracking system based on monthly survey data mailed to passengers.

Table 2 allows the tracking of a route's actual and projected performance between 1995-96 and 1999-2000. Additionally, the variations in performance between routes can be tracked. Table 3 provides the data (consistent with Amtrak and Caltrans projections) used to develop the standards.

**TABLE 2**  
**Performance Standards - Intercity Rail Routes**  
**CAPITOL ROUTE**

PERFORMANCE STANDARD	ACTUAL	ACTUAL	STANDARD	STANDARD	STANDARD
	SFY 1995-96	SFY 1996-97	FFY 1997-98	FFY 1998-99	FFY 1999-00
DAILY NUMBER OF ROUND TRIPS	3/4	4	4	6	6
USAGE					
Route Ridership	403,050	496,586	536,000	716,000	752,000
Percent Change in Train Ridership	15.5%	22.7%	7.9%	33.6%	5.0%
Percent Change in Bus Ridership	0	32.2%	7.9%	33.6%	5.0%
Percent Change in Train Revenue	27.9%	23.6%	11.2%	36.6%	5.0%
Percent Change in Train Passenger Miles	10.6%	23.3%	7.9%	33.6%	5.0%
Percent Change in Train Miles	0.4%	24.0%	4.6%	52.6%	0.0%
Passenger Miles per Train Mile	111.9	111.3	114.8	100.5	105.5
Percent of California Car Fleet Available	0	87.6%	80.0%	80.0%	80.0%
COST EFFICIENCY					
Farebox Ratio (Train and Bus Service) ①	43.4%	28.9%	30.0%	31.0%	32.0%
Train Operating Revenue per Train Mile	\$ 12.49	\$ 12.75	\$ 13.55	\$ 12.13	\$ 12.73
Train Operating Cost per Train Mile	\$ 29.12	\$ 48.00	\$ 52.79	\$ 47.14	\$ 48.56
Train Operating Loss per Train Mile	\$ 16.63	\$ 35.24	\$ 39.24	\$ 35.02	\$ 35.82
Train Revenue per Passenger Mile (Yield)	\$ 0.11	\$ 0.12	\$ 0.12	\$ 0.12	\$ 0.12
Train Operating Loss per Passenger Mile	\$ 0.15	\$ 0.32	\$ 0.46	\$ 0.47	\$ 0.46
State Cost of Train Service Per Passenger Mile	\$ 0.14	\$ 0.20	\$ 0.26	\$ 0.29	\$ 0.28
Percent Marketing Cost to Revenue	29.6%	22.7%	18.2%	13.6%	12.9%
SERVICE QUALITY					
On Time Performance	68%	70%	80%	90%	90%
Customer Satisfaction	0	87%	87%	87%	87%

**SAN JOAQUIN ROUTE**

PERFORMANCE STANDARD	ACTUAL	ACTUAL	STANDARD	STANDARD	STANDARD
	SFY 1995-96	SFY 1996-97	FFY 1997-98	FFY 1998-99	FFY 1999-00
DAILY NUMBER OF ROUND TRIPS	4	4	4	5	5
USAGE					
Route Ridership	526,088	652,544	691,000	799,000	839,000
Percent Change in Train Ridership	0.3%	24.0%	5.9%	15.6%	5.0%
Percent Change in Bus Ridership	0	31.3%	5.9%	15.6%	5.0%
Percent Change in Train Revenue	1.9%	10.7%	11.8%	22.1%	5.0%
Percent Change in Train Passenger Miles	-2.2%	23.8%	5.9%	15.6%	5.0%
Percent Change in Train Miles	0.3%	1.0%	0.0%	22.4%	0.0%
Passenger Miles per Train Mile	86.6	106.1	112.4	106.2	111.5
Percent of California Car Fleet Available	0	87.6%	80.0%	80.0%	80.0%
COST EFFICIENCY					
Farebox Ratio (Train and Bus Service) ①	49.2%	40.0%	41.0%	42.0%	43.0%
Train Operating Revenue per Train Mile	\$ 10.64	\$ 10.93	\$ 12.21	\$ 12.18	\$ 12.79
Train Operating Cost per Train Mile	\$ 20.91	\$ 30.68	\$ 33.69	\$ 34.58	\$ 35.62
Train Operating Loss per Train Mile	\$ 10.25	\$ 19.75	\$ 21.48	\$ 22.40	\$ 22.83
Train Revenue per Passenger Mile (Yield)	\$ 0.12	\$ 0.10	\$ 0.11	\$ 0.11	\$ 0.11
Train Operating Loss per Passenger Mile	\$ 0.12	\$ 0.19	\$ 0.30	\$ 0.33	\$ 0.32
State Cost of Train Service Per Passenger Mile	\$ 0.11	\$ 0.13	\$ 0.20	\$ 0.22	\$ 0.21
Percent Marketing Cost to Revenue	12.1%	11.7%	9.8%	8.1%	7.7%
SERVICE QUALITY					
On Time Performance	67%	58%	75%	80%	85%
Customer Satisfaction	0	87%	87%	87%	87%

**SAN DIEGAN ROUTE (State Portion except for Ridership)**

PERFORMANCE STANDARD	ACTUAL	ACTUAL	STANDARD	STANDARD	STANDARD
	SFY 1995-96	SFY 1996-97	FFY 1997-98	FFY 1998-99	FFY 1999-00
DAILY NUMBER OF TOTAL ROUND TRIPS:					
Los Angeles-San Diego	8.5	8.5	10	10	10
Los Angeles-Santa Barbara/San Luis Obispo	4/1	4/1	4/1	4/1	4/1
USAGE					
Total Route Ridership	1,480,674	1,617,641	1,793,200	1,844,200	1,935,821
Route Ridership - State Portion	912,905	1,035,290	1,201,444	1,235,614	1,297,000
Percent Change in Train Ridership	15.4%	13.4%	16.0%	2.8%	5.0%
Percent Change in Bus Ridership	0	-13.7%	16.0%	2.8%	5.0%
Percent Change in Train Revenue	16.7%	10.7%	21.8%	2.6%	5.0%
Percent Change in Train Passenger Miles	26.0%	13.9%	16.1%	2.8%	5.0%
Percent Change in Train Miles	14.4%	8.6%	20.1%	0.0%	0.0%
Passenger Miles per Train Mile	127.5	133.6	129.1	132.8	139.4
Percent of California Car Fleet Available	0	87.6%	80.0%	80.0%	80.0%
COST EFFICIENCY					
Farebox Ratio (Train and Bus Service) ①	56.5%	37.4%	38.0%	41.4%	42.2%
Train Operating Revenue per Train Mile	\$ 19.03	\$ 19.40	\$ 19.67	\$ 20.18	\$ 21.19
Train Operating Cost per Train Mile	\$ 33.56	\$ 51.99	\$ 52.00	\$ 48.89	\$ 50.36
Train Operating Loss per Train Mile	\$ 14.53	\$ 32.59	\$ 32.32	\$ 28.71	\$ 29.17
Train Revenue per Passenger Mile (Yield)	\$ 0.15	\$ 0.15	\$ 0.15	\$ 0.15	\$ 0.15
Train Operating Loss per Passenger Mile	\$ 0.26	\$ 0.39	\$ 0.40	\$ 0.37	\$ 0.36
State Cost of Train Service Per Passenger Mile	\$ 0.11	\$ 0.24	\$ 0.25	\$ 0.22	\$ 0.21
Percent Marketing Cost to Revenue	13.1%	12.2%	9.3%	9.2%	8.7%
SERVICE QUALITY					
On Time Performance	0	75%	78%	80%	90%
Customer Satisfaction	0	86%	87%	87%	87%

**NOTES FOR TABLE 2:**

For 1995-96 and 1996-97, the actual data is for the State Fiscal Year (SFY) (July 1-June 30). For 1997-98 through 1999-2000, projections are based on Amtrak and Caltrans estimates for the Federal Fiscal Year (FFY) (October 1-September 30).

Most data is for train service only because complete data on bus miles and passenger bus miles is not available.

Financial and ridership standards (except for farebox ratio) for 1997-98 and 1998-99 reflect Amtrak estimates for operating contract costs and preliminary cost estimates respectively. For 1999-00, ridership and revenue is assumed to increase by 5% and cost by 3%. For farebox ratio, see note ① below.

Passenger miles are based on passengers times the average trip length. For all routes, the average trip length was assumed to continue at the 1996-97 level. (*Capitols* 83.3 miles, *San Joaquins* 149.2 miles, and *San Diegans* 95.9 miles.)

① - The farebox ratio on the *Capitols* and *San Joaquins* for 1997-98 and 1998-99 is above Amtrak projections and above the Caltrans base projections for 1999-00. This is because Caltrans believes with aggressive route management the higher farebox ratios can be achieved.

② - Complete bus data not available for this year.

③ - This standard is only for state-owned equipment. California Car equipment availability only tracked since January 1997; Data for 1997-98 for 9 months only (January through September). Fleet availability was unusually high (87.6%) in 1997-98 as cars were new, and little maintenance was required. Standard of 80% is appropriate in 1997-98 and future years due to required ongoing maintenance program.

④ - Data not available for this year as Amtrak started conducting customer satisfaction surveys in 1996-97.

⑤ - Service on one round trip projected to be extended to Colfax starting in January 1998.

⑥ - Prior to October 1995, all data on *San Diegan* Route reflects the specific trains supported by the state. From October 1995 through October 1996, state supports 64% of all *San Diegan* Route trains. Beginning in November 1997 the state support increased to 67%. The data is calculated accordingly.

⑦ - Complete route data not available for this year.

**TABLE 3**  
**Supporting Data: Performance Standards - Intercity Rail Routes**

**CAPITOL ROUTE**

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Ridership		403,050	496,586	536,000	716,000	752,000
Train Rev		\$ 3,746,297	\$ 4,741,260	\$ 5,271,000	\$ 7,200,000	\$ 7,560,000
Train Exp		\$ 8,732,253	\$ 17,845,126	\$ 20,537,000	\$ 27,990,000	\$ 28,830,000
Train Loss		\$ 4,985,956	\$ 13,103,866	\$ 15,266,000	\$ 20,790,000	\$ 21,270,000
Bus Rev		\$ 1,058,775	\$ 1,196,812	\$ 1,180,000	\$ 1,459,000	\$ 1,576,000
Bus Exp		\$ 2,345,232	\$ 2,686,839	\$ 2,392,000	\$ 3,082,000	\$ 3,174,000
Bus Loss		\$ 1,286,457	\$ 1,490,027	\$ 1,212,000	\$ 1,623,000	\$ 1,598,000
T&B Rev		\$ 4,805,072	\$ 5,938,072	\$ 6,451,000	\$ 8,659,000	\$ 9,136,000
T&B Exp		\$ 11,077,485	\$ 20,531,965	\$ 22,929,000	\$ 31,072,000	\$ 32,004,000
T&B Loss		\$ 6,272,413	\$ 14,593,893	\$ 16,478,000	\$ 22,413,000	\$ 22,868,000
State Cost		\$ 6,434,940	\$ 9,722,548	\$ 11,518,000	\$ 17,163,000	\$ 17,511,421
PM		33,559,217	41,377,857	44,648,800	59,642,800	62,641,600
TM	298,500	299,841	371,811	389,039	593,731	593,731
Avg Trip Lqth		83.3	83.3	83.3	83.3	83.3
Mkt Cost		\$ 1,420,000	\$ 1,350,000	\$ 1,174,000	\$ 1,174,000	\$ 1,174,000
Bus Riders		150,142	198,508			

**SAN JOAQUIN ROUTE**

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Ridership		526,088	652,544	691,000	799,000	839,000
Train Rev		\$ 9,659,719	\$ 10,020,214	\$ 11,200,000	\$ 13,675,000	\$ 14,359,000
Train Exp		\$ 18,976,304	\$ 28,139,916	\$ 30,900,000	\$ 38,824,000	\$ 39,989,000
Train Loss		\$ 9,316,585	\$ 18,119,702	\$ 19,700,000	\$ 25,149,000	\$ 25,630,000
Bus Rev		\$ 2,817,778	\$ 3,797,467	\$ 3,910,000	\$ 4,615,000	\$ 4,984,000
Bus Exp		\$ 6,409,795	\$ 6,423,743	\$ 7,418,000	\$ 9,035,000	\$ 9,306,000
Bus Loss		\$ 3,592,017	\$ 2,626,276	\$ 3,508,000	\$ 4,420,000	\$ 4,322,000
T&B Rev		\$ 12,477,497	\$ 13,817,681	\$ 15,110,000	\$ 18,290,000	\$ 19,343,000
T&B Exp		\$ 25,386,099	\$ 34,563,659	\$ 38,318,000	\$ 47,859,000	\$ 49,295,000
T&B Loss		\$ 12,908,602	\$ 20,745,978	\$ 23,208,000	\$ 29,569,000	\$ 29,952,000
State Cost		\$ 14,483,048	\$ 16,928,985	\$ 20,479,000	\$ 25,730,000	\$ 26,063,274
PM		78,634,039	97,327,242	103,097,200	119,210,800	125,178,800
TM	905,200	907,680	917,160	917,160	1,122,728	1,122,728
Avg Trip Lqth		149.5	149.2	149.2	149.2	149.2
Mkt Cost		\$ 1,510,000	\$ 1,610,000	\$ 1,486,000	\$ 1,486,000	\$ 1,486,000
Bus Riders		308,899	405,585			

**SAN DIEGAN ROUTE (State Portion)**

	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Total Ridership	1,464,577	1,480,674	1,617,641	1,793,200	1,844,200	1,935,821
State Ridership	790,781	912,905	1,035,290	1,201,444	1,235,614	1,297,000
Train Rev	\$ 11,155,366	\$ 13,019,249	\$ 14,411,333	\$ 17,555,000	\$ 18,006,000	\$ 18,908,000
Train Exp	\$ 14,847,123	\$ 22,957,280	\$ 38,786,740	\$ 46,400,000	\$ 43,627,000	\$ 44,936,000
Train Loss	\$ 3,691,757	\$ 9,938,031	\$ 24,375,407	\$ 28,845,000	\$ 25,621,000	\$ 26,030,000
Bus Rev	\$ 650,493	\$ 534,304	\$ 393,022	\$ 619,000	\$ 445,000	\$ 481,000
Bus Exp	\$ 1,214,726	\$ 1,025,746	\$ 785,942	\$ 1,393,000	\$ 960,000	\$ 989,000
Bus Loss	\$ 564,233	\$ 491,442	\$ 392,920	\$ 774,000	\$ 515,000	\$ 508,000
T&B Rev	\$ 11,805,859	\$ 13,553,553	\$ 14,804,355	\$ 18,174,000	\$ 18,451,000	\$ 19,387,000
T&B Exp	\$ 16,061,849	\$ 23,983,026	\$ 39,572,682	\$ 47,793,000	\$ 44,587,000	\$ 45,925,000
T&B Loss	\$ 4,255,990	\$ 10,429,473	\$ 24,768,327	\$ 29,619,000	\$ 26,136,000	\$ 26,538,000
State Cost	\$ 3,642,588	\$ 11,107,071	\$ 16,197,727	\$ 18,806,000	\$ 19,616,000	\$ 19,917,715
PM	69,192,838	87,201,003	99,279,798	115,218,480	118,495,383	124,382,300
TM	597,735	684,040	742,860	892,373	892,373	892,373
Avg Trip Lqth	87.5	95.5	95.9	95.9	95.9	95.9
Mkt Cost		\$ 1,770,000	\$ 1,800,000	\$ 1,695,000	\$ 1,695,000	\$ 1,695,000
Bus Riders		46,547	40,153			

### 3. BACKGROUND TO DEVELOPMENT OF PERFORMANCE STANDARDS

#### A. Amtrak Cost Estimates

Caltrans has an operating contract with Amtrak for the current year, 1997-1998. For 1998-99 Amtrak has provided Caltrans operating contract cost projections. Caltrans has based the 1998-99 Budget Change Proposal (BCP) on these projections. Amtrak will provide final cost projections in April 1998 which will become the basis of the 1998-99 State budget and operating contract between the State and Amtrak.

The performance standards for 1997-98 and 1998-99 are based on the revenue, cost, loss and ridership projections embedded in the Amtrak contract and cost estimate for these years. However, the performance standards for 1998-99 and 1999-2000 may need to be revised if the final Amtrak cost projections differ from the current estimate. While Caltrans and Amtrak may have some differences in opinion on the revenue, cost, loss and ridership projections for 1998-99, for purposes of consistency Caltrans has used Amtrak projection data in developing the performance standards.

The performance standards for 1999-2000 are based on the Caltrans estimate that, on all routes, ridership and revenue will increase by 5 percent, and costs by 3 percent. These projections were developed to generally follow the same trend as the earlier Amtrak projections.

#### B. Farebox Ratio Standard

For the farebox ratio for 1997-98 - 1999-2000, Caltrans has developed a standard that is slightly higher than the Amtrak projections or the Caltrans projection for 1999-2000 (which is consistent with the prior year Amtrak projections). This is because Caltrans believes with its aggressive marketing, careful monitoring of Amtrak costs, and stringent operations monitoring, the Amtrak projections for farebox ratio can be surpassed.

#### C. Train Service Levels

Capitols: The extension of one round-trip to Colfax is scheduled to start in late January 1998. Caltrans has submitted a BCP for operating funding for fifth and sixth Capitol trains for a full year of service in 1998-99. The performance standards reflect these service additions. No new Capitol trains are projected for 1999-2000.

San Joaquins: Caltrans has submitted a BCP for operating funding for a fifth San Joaquin train from Bakersfield to Sacramento for a full year of service in 1998-99. The performance standards reflect this service addition. No new San Joaquin trains are projected for 1999-2000.

San Diegans: In 1997-98 additional trains were added on the San Diegans. From Los Angeles to San Diego service was increased from eight and one-half round-trips to ten daily round trips, and on the north end through San Diegan - Chatsworth service was added. This service level is projected to continue through 1999-2000, and is reflected in the performance standards.

**D. Amtrak Cost Basis**

In FFY 1996-97 Amtrak began moving toward charging states based on Fully Allocated costs which include all of the direct and indirect costs of running a route. Fully Allocated costs are made up of: 100 percent of the direct cost of train operations, 100 percent of direct product line support, 100 percent of the route's share of Amtrak's Western Business Unit support costs, and 100 percent of the route's share of Amtrak general support and administration. Amtrak intends to eventually charge the states all components of Fully Allocated costs except the route's share of Amtrak general support and administration, as this is not an avoidable cost. See Table 4 for a summary of costs charged the State from 1995-96 through 1999-2000.

Table 4 also shows the cost basis that from 1995-96 through 1999-2000 is used to calculate the farebox ratio. Starting in 1996-97, the Fully Allocated cost basis is used. Thus the farebox ratios from 1996-97 onward are directly comparable. However, the Table shows (as discussed above) that the State billings in those years are not comparable.

	Basis for Farebox Ratio	Costs Included in Calculation of State Share of Loss
FY 1995-96	100% of Long Term Avoidable (LTA) Costs	100% of LTA Costs
FY 1996-97	100% of Fully Allocated Costs (100% direct cost of train operations, 100% direct product line support, 100% of route's share of Amtrak's Western Business Unit [WBU] support costs, and 100% of route's share of general support and administration)	100% of LTA costs plus 20% of the difference between LTA and Fully Allocated Costs. Equivalent to 55% of Fully Allocated loss for <i>Capitols</i> and <i>San Diegans</i> , and 65% for <i>San Joaquins</i> .
FY 1997-98	100% of Fully Allocated Costs	100% of direct cost of train operations plus approximately 75% of direct product line support costs. Roughly equal to 65% of Fully Allocated loss for <i>Capitols</i> and <i>San Diegans</i> , and 75% for <i>San Joaquins</i> .
FY 1998-99	100% of Fully Allocated Costs	100% of direct cost of train operations, plus 100% direct product line support and a portion of the route's share of Amtrak's WBU support costs. These costs are roughly 10% to 15% higher than the prior year.
FY 1999-2000	100% of Fully Allocated Costs	Projected to be the same as FFY 1998-99, although the portion of WBU costs might increase.



In FFY 1995-96 the state was required to pay 100 percent of Long Term Avoidable (LTA) loss, instead of 65 or 70 percent of Short Term Avoidable (STA) loss or LTA loss as in previous years. In FFY 1996-97 Amtrak charged the state 100 percent of LTA loss, plus one-fifth of the difference between this amount and 100 percent of the Fully Allocated loss. This is the equivalent of 55 percent of Fully Allocated loss on the San Diegans and Capitols, and 65 percent of Fully Allocated loss on the San Joaquins.

In FFY 1997-98 the state share is 100 percent of the direct cost of train operations, plus approximately 75 percent of the direct product line support costs. This is roughly equal to 65 percent of Fully Allocated loss on the San Diegans and Capitols, and 65 percent of Fully Allocated loss on the San Joaquins.

In FFY 1998-99, and subsequent years, Amtrak plans to charge states based on 100 percent of the direct cost of train operations and direct product line support costs, plus a portion of the route's share of Western Amtrak Business Unit support costs. This change should increase the loss by between ten and 15 percent over FFY 1997-98. For 1999-00 Amtrak may charge California a larger portion of the route's share of WBU support costs.

Amtrak in July provided preliminary cost estimates to Caltrans for the increased costs of existing and new service in 1998-99. Final Amtrak contract costs will be provided by Amtrak in March, 1998.

#### **E. Threshold Standards Vs. Goals**

Historically, the primary performance standard that has been used on California intercity passenger rail service has been the 55 percent farebox ratio standard. This standard was deleted under SB 457. For much of the history of state-supported intercity rail service in California, this standard was easily met. The law required the standard to function as an indication to policy makers of when a service may no longer be viable and should be considered for elimination. However, when Amtrak began to charge states for a higher percent of costs, the farebox ratio fell, regardless of the actual financial performance of the routes, and the standard could no longer be used for its intended purpose.

Performance standards can also function as goals rather than threshold standards. Performance goals set the standard for a route's improvement, rather than threshold standards which set standards for possible route elimination. Because SB 457's goal is the improvement and expansion of the intercity rail system, performance standards that function as goals rather than threshold standards have been established in this Report. These measures will be the most useful in challenging Caltrans and any Joint Powers Board that is authorized to operate intercity rail service to improve the service's performance.

#### F. Variations in Route's Characteristics and Performance

As one can see from the performance standard chart (Table 2), each route demonstrates variations in performance. These variations relate to a number of route characteristics including: the length of the route, the number of frequencies, the number of years the route has been in operation, the demographics of the population in the region served, the demographics of the route's train riders, and the existence of commuter rail and other transportation competition. Additionally, a number of operational characteristics affect a route's performance: the track and station platform quality and resulting train speed, station operational costs, and the fleet of equipment used.

Generally, the longer the route the lower the cost per mile. Also, in order to keep the train ticket on a longer route at a reasonable cost, longer routes usually have lower revenue per mile. For example, the San Joaquins' cost per mile is lower than that of the San Diegans or Capitols; however the San Diegans' revenue per mile is higher than that of the San Joaquins. Additionally, more frequencies on a route can result in increased efficiencies and lower costs per mile.

The sensitivity of train riders to ticket price will also affect the revenue that can be derived per train mile. For example, on the San Diegans many higher income business travelers use the train, while on the San Joaquins, more moderate income persons use the train for occasional trips.

Both the San Joaquins and the San Diegans have been in operation for many years, and riders and potential riders have established their travel patterns. Thus it is more difficult to achieve dramatic increases in ridership - particularly on the San Diegans, where there is significant competition from the local rail commuter services. On the other hand, more dramatic ridership increases are possible on the Capitols as frequencies are added and the service will better fill the demand for business travel on the I-80 corridor.

Because of the significant variations in each routes' characteristics and resulting performance, it is not practical or useful to develop identical performance standards for each route. Therefore, a different set of performance standards, which account for the historical performance of each route and Amtrak cost estimates (as discussed in the section above) have been developed.



# Capitol Corridor Joint Powers Authority

## General Liability Insurance

**Named Insured:** Capitol Corridor Joint Powers Authority  
Its Member Agencies  
National Railroad Passenger Corporation  
State of California Department of Transportation  
State of California Business, Transportation and  
Housing Agency

**Limit of Liability:** \$10,000,000. Per Occurrence  
\$10,000,000. Annual Aggregate

**Deductible:** \$10,000. Each Claim

**Premium:** \$42,750.00  
\$ 1,282.50 State Tax  
\$ 149.63 Stamping Fee  
\$44,182.13 Total







3. the underground property damage hazard as defined in this policy:
- S.
1. to any liability for property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury, at any time arising out of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
  2. to any obligation of the Insured to indemnify any party because of damages arising out of such property damage, bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish or mental injury at any time as a result of the manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust; or
  3. to any obligation to defend any suit or claim against the Insured alleging bodily injury, sickness, disease, occupational disease, disability, shock, death, mental anguish, mental injury or property damage resulting from or contributed to, by any and all manufacture of, mining of, use of, sale of, installation of, removal of, distribution of, or exposure to asbestos, asbestos products, asbestos fibers or asbestos dust.
- T. to bodily injury or property damage
1. with respect to which an Insured is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limits of liability; or resulting from the hazardous properties of nuclear material and with respect to which (a) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
  2. under any liability coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
    - a. the nuclear material (i) is at any nuclear facility owned by the Insured or operated by the Insured or on the Insured's behalf, or (ii) has been discharged or dispersed therefrom;
    - b. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by the Insured or on the Insured's behalf; or
    3. the injury, sickness, disease, death or destruction arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to property damage to such nuclear facility and any property thereat.
  3. As used in this exclusion:
    - a. hazardous properties includes radioactive, toxic or explosive properties;
    - b. nuclear material means source material, special nuclear material or by-product material;
    - c. source material, special nuclear material and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
    - d. spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

**SPERMEN**







completed operations hazard includes bodily injury and property damage arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the Named Insured. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- A. when all operations to be performed by or on behalf of the Named Insured under the contract have been completed, or
- B. when all operations to be performed by or on behalf of the Named Insured at the site of the operations have been completed, or
- C. when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency but which are otherwise complete shall be deemed completed.

The completed operations hazard does not include bodily injury or property damage arising out of:

1. operations in connection with the transportation of property, unless the bodily injury or property damage arises out of a condition in or on a vehicle created by the loading or unloading thereof;
2. the existence of tools, uninstalled equipment or abandoned or unused materials;

explosion hazard includes property damage arising out of blasting or explosion. The explosion hazard does not include property damage (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for the Named Insured by independent contractors, or (3) included within the completed operations hazard or the underground property damage hazard, or (4) for which liability is assumed by the Insured under an incidental contract;

impaired property means tangible property, other than the Named Insured's products or completed operations, that cannot be used or is less useful because: (1) it incorporates the Named Insured's products or completed operations that are known or thought to be defective, deficient, inadequate or dangerous; or (2) the Named Insured has failed to fulfill the terms of a contract or agreement; if such property can be restored to use by: the repair, replacement, adjustment or approval of the Named Insured's products or completed operations, or the Named Insured's products or complete operations, or the Named Insured's fulfilling the terms of the contract or agreement;

incidental contract means any written (1) lease of premises, (2) easement agreement, except in connection with construction or demolition operations on or adjacent to a railroad, (3) undertaking to indemnify a municipality required by municipal ordinance, except in connection with work for the municipality, (4) sidetrack agreement, or (5) elevator maintenance agreement;

Insured means any person or organization qualifying as an Insured in the Persons Insured provision of this policy. The insurance afforded applies separately to each Insured against whom claim is made or suit is brought except with respect to the limits of the Company's liability;

mobile equipment means a land vehicle (including any machinery or apparatus attached thereto), whether or not self-propelled. (1) not subject to motor vehicle registration, or (2) maintained for use exclusively on premises owned by or rented to the Named Insured, including the ways immediately adjoining, or (3) designed for use principally off public roads, or (4) designed or maintained for the sole purpose of affording mobility to equipment of the following types forming an integral part of or permanently attached to such vehicle: power cranes, shovels, loaders, diggers and drills; concrete mixers (other than the mix-in transit type); graders, scrapers, rollers and other road construction or repair equipment; air-compressors, pumps

and generators, including spraying, welding and building cleaning equipment; and geophysical exploration and well servicing equipment;

**Named Insured** means the person or organization named in Item 1. of the Declarations of this policy;

**Named Insured's products** means goods or products manufactured, sold, handled or distributed by the **Named Insured** or by others trading under his name, including any container thereof (other than a vehicle), but **Named Insured's products** shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold;

**Named Insured's work**

- A. work or operations performed by or on behalf of the **Named Insured**; and
- B. materials, parts or equipment furnished in connection with such work or operations.

**Named Insured's work includes:**

- 1. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **Named Insured's work**; and
- 2. the providing of or failure to provide warnings or instructions;

**occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions;

**policy territory** means:

- A. the United States of America, its territories or possessions, or Canada, or
- B. international waters or air space, provided the bodily injury or property damage does not occur in the course of travel or transportation to or from any other country, state or nation, or
- C. anywhere in the world with respect to damages because of bodily injury or property damage arising out of a product which was sold for use or consumption within the territory described in Paragraph A above, provided the original suit for such damages is brought within such territory;

**products hazard** includes bodily injury and property damage arising out of the **Named Insured's** products or reliance upon a representation or warranty made at any time with respect thereto, but only if the bodily injury or property damage occurs away from the premises owned by or rented to the **Named Insured** and after physical possession of such products has been relinquished to others;

**ultimate net loss** means the total sum which the Insured, or the Company, or the Insurer, or both, become legally obligated to pay by reason of damages covered by this policy, either through adjudication or compromise (with the written consent of the Company) and shall also include all sums included within the Defense and Related Payments provision and all hospital, medical and funeral charges and all sums paid or payable as salaries, wages, compensation, fees, charges, interest, or expenses for doctors, nurses, and investigators and other persons, and for settlement, adjustment, investigation and defense of claims and excluding only the Insured's salaries or the salaries of any of the Company's permanent employees;

**property damage** means (1) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period;

**underground property damage hazard** includes underground property damage as defined herein and property damage to any other property at any time resulting therefrom. **Underground property damage** means property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection therewith, beneath the surface of the ground or water, caused by and occurring

during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, back-filling, or pile driving. The underground property damage hazard does not include property damage (1) arising out of operations performed for the Named Insured by independent contractors, or (2) included within the completed operations hazard, or (3) for which liability is assumed by the Insured under an incidental contract.

When used as a premium basis:

**admissions** means the total number of persons, other than employees of the Named Insured, admitted to the event insured or to events conducted on the premises whether on paid admission tickets, complimentary tickets or passes;

**costs** means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions made, paid or due;

**receipts** means the gross amount of money charged by the Named Insured for such operations by the Named Insured or by others during the policy period as are rated on a receipts basis other than receipts from telecasting, broadcasting or motion pictures, and includes taxes, other than taxes which the Named Insured collects as a separate item and remits directly to a governmental division;

**remuneration** means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured, other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation of remuneration rule applicable in accordance with the rules and rates in use by the Company;

**sales** means the gross amount of money charged by the Named Insured or by others trading under his name for all goods and products sold or distributed during the policy period and charged during the policy period for installation, servicing or repair, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

## VI. DEFENSE AND RELATED PAYMENTS

The Company will pay, as part of and not in addition to the applicable limit of liability:

- A. all expenses incurred by the Company in any suit defended by the Company, all costs taxed against the Insured in such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- B. premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, and the cost of bail bonds required of the Insured because of accident or traffic law violation arising out of the use of any vehicle to which this policy applies, not to exceed two hundred and fifty (250) dollars per bail bond, but the Company shall have no obligation to apply for or furnish any such bonds;
- C. expenses incurred by the Insured for first aid to others at the time of an accident, for bodily injury to which this policy applies;
- D. reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed one hundred (100) dollars per day.

## VII. CONDITIONS

- A. **Premium.** All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.



procedure for the period this policy is in effect, applied to the premium developed in accordance with the Premium Condition of this policy, subject to the short rate amount of the Minimum Annual Premium stated in this policy but in no event shall the earned premium be less than the Minimum Earned Premium stated in this policy. If the Company cancels, earned premium shall be computed pro rata of the premium developed in accordance with the Premium Condition of this policy subject to the pro rata amount of the Minimum Annual Premium stated in this policy; provided, however, if the Company cancels for non-payment of premium, the premium shall be computed on the same basis as if the Named Insured cancels.

Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter. The check of the Company mailed or delivered, shall be sufficient tender of any refund due the Named Insured.

If this policy insures more than one Named Insured, cancellation may be effected by the one first named for the account of all Insureds. Notice of cancellation by the Company to such first Named Insured shall be notice to all Insureds. Payment of any unearned premium to such first Named Insured shall be for the account of all Insureds.

H. **Declarations.** By acceptance of this policy, the Named Insured agrees that the statements in the Declarations are his agreements and representations, that these representations are accurate and complete, and that this policy is issued in reliance upon these representations.

I. **Insured's Duties in the Event of Occurrence or Suit:**

1. If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

2. The Insured shall cooperate with the Company, and upon the Company's request, assist in making settlements in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the Insured because of injury or damage with respect to which insurance is afforded under this policy; and the Insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. Insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.

J. **Service of Suit.** In the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 200 State Street, Boston, Massachusetts, 02109 or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

K. **Arbitration.** Notwithstanding the Service of Suit clause above, in the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding







**ENDORSEMENT**

This endorsement, effective 12:01 AM

Forms a part of policy no.:

Issued to:

By:

**SECURITIES AND FINANCIAL INTEREST EXCLUSION**

In consideration of the premium charged, it is understood and agreed that the Insurer shall have no obligation to defend or indemnify with respect to any claim alleging or asserting in any respect loss, injury or damage in connection with the purchase or sale, the offer, solicitation, or advertising for the purchase or sale, or the depreciation or decline in price or value, of any security, debt, bank deposit, or financial interest or instrument.

**SPECIMEN COPY**

---

Authorized Representative





This endorsement, effective 12:01 AM ##/##/##

Forms a part of policy no.: #####

Issued to: #####

By: #####

### INVERSE CONDEMNATION EXCLUSION

It is agreed that this policy shall not apply to any liability arising out of or in any way connected with the operation of the principles of eminent domain, condemnation proceedings, or inverse condemnation, by whatever name called, whether such liability accrues directly against the Insured or by virtue of any agreement entered into by or on behalf of the Insured.

# SPECIMEN COPY

\_\_\_\_\_  
Authorized Representative

##/##/##  
LEXOCC122(Ed.03/86)  
LX0349



# Capitol Corridor Joint Powers Authority

## Excess Liability Insurance

**Named Insured:** Capitol Corridor Joint Powers Authority  
Its Member Agencies  
National Railroad Passenger Corporation  
State of California Department of Transportation  
State of California Business, Transportation and  
Housing Agency

**Limit of Liability:** \$190,000,000 Per Occurrence  
\$190,000,000 Annual Aggregate

Composed of:

Lloyd's & London Companies  
\$40,000,000. Per Occurrence  
\$40,000,000. Annual Aggregate

Starr Excess Liability Insurance Company, Ltd.  
\$100,000,000 Per Occurrence  
\$100,000,000 Annual Aggregate

A.C.E. Insurance Company, Ltd.  
\$50,000,000 Per Occurrence  
\$50,000,000 Annual Aggregate

**Lloyd's & London Companies**  
**\$40,000,000. Per Occurrence**  
**\$40,000,000. Annual Aggregate**



# EXCESS LIABILITY CLAIMS MADE POLICY

THIS IS AN EXCESS LIABILITY CLAIMS MADE POLICY WHICH IS NOT SUBJECT TO THE TERMS AND CONDITIONS OF ANY OTHER INSURANCE AND CONTAINS PROVISIONS WHICH MAY BE DIFFERENT FROM THOSE OF ANY OTHER INSURANCE. IT SHOULD BE READ CAREFULLY BY THE INSURED.

UNDERWRITERS DO NOT HAVE ANY DUTY TO DEFEND. DEFENSE EXPENSES COVERED BY THIS POLICY SHALL BE INCLUDED WITHIN AND ARE NOT IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY.

## I. INSURING AGREEMENTS

In consideration of the payment of the premium set out in Item 9 of the Declarations and in reliance upon the statements in the Proposal referred to in Item 12 of the Declarations and any supplementary information pertaining thereto, which shall be deemed incorporated herein, being representations which, if inaccurate, will render this Policy null and void and relieve Underwriters from all liability:

### 1. COVERAGE

Underwriters agree subject to the Insuring Agreements, Exclusions, Conditions, Definitions and Declarations contained in this Policy, to indemnify the Insured in respect of their operations anywhere in the World, for Ultimate Net Loss by reason of the liability imposed upon the Insured by law or assumed under contract, for damages in respect of a Claim which is first made in writing against the Insured during the period of this Policy set out in Item 5 of the Declarations and which arises solely by reason of:

- a) Bodily Injury
- b) Personal Injury
- c) Property Damage
- d) Advertising Injury

resulting from an Accident.

### 2. EACH ACCIDENT RETENTION

Regardless of the number of Claims made against the Insured, the Insured shall always be liable for the amount of the each Accident retention set out in Item 2 of the Declarations in respect of each and every Accident. Only Ultimate Net Loss, but exclusive of Defense Expenses, shall constitute the amount of that each Accident retention and the Insured shall bear, in addition to the amount of that each Accident retention, all Defense Expenses in relation to that each Accident retention.

MA  
LIRI  
P

This each Accident retention shall be subject to no aggregate limitation regardless of the number of Accidents.

### **3. UNDERLYING AMOUNT(S)**

The underlying amount set out in Item 3 of the Declarations shall be excess of the each Accident retention set out in Item 2 of the Declarations.

Regardless of the number of Claims made against the Insured, the underlying amount in respect of each Accident shall be comprised of the amount of Ultimate Net Loss set out in Item 3 a) of the Declarations, subject always to a limit in the aggregate for all Accidents as stated in Item 3 b) of the Declarations.

Only Claims which, except for the amount thereof, would otherwise have been indemnifiable by this Policy, shall deplete the each Accident retention set out in Item 2 of the Declarations and the underlying amount(s) set out in Item 3 of the Declarations.

The Insured shall have the right to insure all or part of the each Accident retention set out in Item 2 of the Declarations and/or the underlying amount(s) set out in Item 3 of the Declarations.

### **4. LIMITS OF LIABILITY**

Underwriters shall only be liable for Ultimate Net Loss in excess of the underlying amount(s) set out in Item 3 of the Declarations, which are in turn excess of the each Accident retention set out in Item 2 of the Declarations.

Regardless of the number of Claims made against the Insured, Underwriters' total limits of liability in respect of each Accident shall not exceed the amount of Ultimate Net Loss set out in Item 4 a) of the Declarations, subject always to a limit in the aggregate for all Accidents set out in Item 4 b) of the Declarations.

Nothing contained in this Policy shall make this Policy subject to the terms and conditions of any other insurance.

## **II. EXCLUSIONS**

This Policy shall not apply:

1. to any Claim or Accident in respect of which the Insured either has given written notice to the insurers of any other insurance before the inception date set out in Item 5 of the Declarations or gives written notice of potential Claims where such notice is treated by any insurers as received by such insurers before the inception date set out in Item 5 of the Declarations;

2. to any Claim resulting from an event which commences prior to the retroactive date set out in Item 6 of the Declarations and which results in Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury;
3. to Bodily Injury, Personal Injury, Property Damage and/or Advertising Injury which the Insured intended or expected or reasonably could have expected;
4.
  - a) to employers liability or employers liability as respects occupational disease or to any workers' compensation, unemployment compensation or disability benefits law or statutes;
  - b) to any liability which any Insured may have to any employee of the same Insured or any other Insured arising out of the employment of that employee;
5. to any liability arising out of the activities of any partnership or joint venture of which the Insured is a partner or member;
6. to discrimination or humiliation;
7. to Property Damage to property owned, leased or rented by the Insured;
8. to Property Damage to the Insured's Products arising out of such products or any part of such products;
9. to Property Damage to property being worked on by or on behalf of the Insured arising out of such work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;
10. to the withdrawal, recall, return, inspection, repair, replacement, or loss of use of the Insured's Products or work completed by or for the Insured or of any property of which such products or work form a part;
11. to fines, penalties, punitive damages, exemplary damages, or any additional damages resulting from the multiplication of compensatory damages;
12. to Advertising Injury arising out of:
  - a) failure to perform under any contract,
  - b) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale, or advertised,
  - c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;

LIF

13. to Bodily Injury or Personal Injury or loss of, damage to or loss of use of property directly or indirectly caused by seepage into or onto and/or pollution of and/or contamination of air, land, water and/or any other property, however caused and whenever happening;

the words 'loss of, damage to or loss of use of property' as used in this exclusion include, but shall not be limited to:

- a) the cost of evaluating and/or monitoring and/or controlling and/or removing and/or nullifying and/or cleaning-up seeping and/or polluting and/or contaminating substances;
  - b) loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured;
  - c) removal of, loss of or damage to sub-surface oil, gas or any other substance;
14. except in respect of Accidents taking place in the United States of America, its territories or possessions, or Canada, to any liability of the Insured directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
15. to any liability, not excluded by 14. above, as a result of the use of the Insured's Products insofar as they are used in connection with war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property;
16. to any liability arising out of Watercraft;
17. to any liability arising out of Aircraft;
18. to any liability arising out of Aviation Products;
19. to any liability arising out of any Nuclear Incident in accordance with the exclusions attached to this Policy.

### III. CONDITIONS

This Policy is subject to the following conditions:

#### 1. **INSOLVENCY**

The insolvency, bankruptcy, receivership or any refusal or inability to pay of the Insured and/or any insurer and/or any Underwriter shall not operate to:

- a) deplete the each Accident retention set out in Item 2 of the Declarations;
- b) deplete the underlying amount(s) set out in Item 3 of the Declarations;
- c) increase Underwriters' liability under this Policy;
- d) increase any Underwriters' share of liability under this Policy.

In no event shall the Underwriters of this Policy assume the responsibilities and/or obligations of the Insured and/or any insurer and/or any other Underwriter.

#### 2. **OTHER INSURANCE**

Where the Insured is, irrespective of this Policy, entitled to be indemnified in whole or in part by any other insurance in respect of any Claim which would otherwise have been indemnified in whole or in part by the Underwriters of this Policy, there shall be no contribution or participation by the Underwriters of this Policy on the basis of contributing, deficiency, concurrent or double insurance for such Claim or that part of such Claim for which the Insured is entitled to be indemnified by such other insurance.

#### 3. **NOTICE OF CLAIM**

Immediate notice must be given to Underwriters whenever the Insured has information from which the Insured should reasonably conclude that a Claim, alone or in combination with any other Claims, may deplete the each Accident retention and any remaining underlying amount, by 50% or more.

For the purpose of this Condition 3 the Insured will notify Underwriters on the assumption that the Insured is liable and further is liable for any amount claimed.



#### 4. NOTICE OF POTENTIAL CLAIMS

If Underwriters receive notification during the period set out in Item 5 of the Declarations and up to 15 days thereafter, of an Accident which first commences prior to the expiry date set out in Item 5 of the Declarations,

- a) of the type described in and notified in accordance with Definition 1.a), then Underwriters will treat all Claims arising out of the notified Accident made against the Insured within 60 months from the date of such notification as made on the date on which the notification was received by Underwriters or the expiry date of this Policy, whichever is the earlier, or
- b) of the type described in Definition 1.b) but only where the Insured has identified the individual injured person or entity and in such notification states the name of the individual injured person or entity, then Underwriters will treat any Claim made against the Insured by the individual injured person or entity within 60 months from the date of such notification as made on the date on which the notification was received by Underwriters or the expiry date of this Policy, whichever is the earlier.

In no event shall the liability of Underwriters exceed the relevant limits of liability set out in Item 4 of the Declarations; such limits of liability shall apply to the period of this Policy set out in Item 5 of the Declarations combined with the 60 month periods set out above.

#### 5. PREVENTION OF FURTHER CLAIMS

As soon as the Insured becomes aware of an Accident or receives a Claim, the Insured shall promptly, and at its own expense, take all reasonable steps to prevent further Bodily Injury, Personal Injury, Property Damage or Advertising Injury resulting from the same Accident or conditions which may give rise to a similar Accident.

#### 6. ATTACHMENT OF LIABILITY

Liability to pay under this Policy shall not attach unless and until the Insured has, with Underwriters' prior written consent, paid an amount of Ultimate Net Loss which exceeds the each Accident retention set out in Item 2 of the Declarations and any remaining underlying amount set out in Item 3 of the Declarations.

#### 7. DEFENSE

Underwriters shall not be called upon to assume the handling or control of the defense or settlement of any Claim made against the Insured but Underwriters shall have the right, but not the duty, to participate with the Insured in the defense and control of any Claim which may be indemnifiable in whole or in part by this Policy.

Underwriters shall not be called upon to pay any Defense Expenses in relation to any Claim until after the final resolution of such Claim.

## 11. SUBROGATION

Where an amount is paid under this Policy, the Insured's rights of recovery against any other person or entity in respect of such amount shall be exclusively subrogated to Underwriters. At Underwriters' request the Insured will assist and co-operate in the exercise of Underwriters' rights of subrogation.

## 12. APPLICATION OF RECOVERIES

All recoveries or payments recovered or received subsequent to a loss settlement under this Policy, after deduction of all recovery expenses, shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall then be made between the Insured and Underwriters.

## 13. WAIVER OR CHANGE

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this Policy or estop Underwriters from asserting any right under this Policy; nor shall any part of this Policy be waived or changed, except by endorsement issued to form a part hereof, signed by Underwriters.

## 14. ASSIGNMENT

Assignment of interest under this Policy shall not bind Underwriters unless and until their consent is endorsed hereon.

## 15. CANCELLATION

Cancellation of this Policy may be effected either:

- a) by the First Designated Named Insured set out in Item 1 of the Declarations, on behalf of the Insured, or
- b) by Underwriters or their representatives,

sending by registered mail, notice to the other party in a) or b) above stating when, not less than thirty days thereafter, cancellation shall be effective. The mailing of notice as aforesaid by Underwriters or their representatives to the First Designated Named Insured at the address shown in Item 1 of the Declarations shall be sufficient proof of notice and the coverage under this Policy with respect to the Insured shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the First Designated Named Insured or by Underwriters or their representatives shall be equivalent to sending by registered mail.

If this Policy shall be cancelled by the First Designated Named Insured Underwriters shall retain the short rate proportion of the premium for the period this Policy has been in force, calculated in accordance with the attached Short Rate Cancellation Table. If this Policy shall be cancelled by Underwriters they shall retain the pro rata proportion

LIP  
F  
MR  
VE

of the premium for the period this Policy has been in force. Notice of cancellation by Underwriters shall be effective whether or not Underwriters have returned or tendered the return of any premium with such notice.

## 16. EXTENDED CLAIMS MADE PERIOD

If Underwriters shall:

- a) refuse to renew this Policy for reasons other than the Insured's non-payment of premium or non-compliance with the terms and conditions of this Policy, or
- b) cancel this Policy for reasons other than the Insured's non-payment of premium or non-compliance with the terms and conditions of this Policy, or
- c) on renewal require an exclusion of a product or products, or
- d) on renewal require an exclusion of any Accident, or
- e) on renewal require an exclusion in respect of activities other than as provided for in c) and d) above,

then the Insured, upon payment of an additional premium calculated at the percentage, set out in Item 7 of the Declarations, of the premium set out in Item 9 of the Declarations, shall have the right to extend the period in which a Claim made against the Insured after the expiry date of this Policy is treated by Underwriters as made on the expiry date of this Policy:

- i) in respect of a) or b) above: for a period of 12 months,
- ii) in respect of c) above: for a period of 60 months in respect of the excluded product or products but only if the Insured ceases for that period of 60 months to manufacture, sell, handle and/or distribute the excluded product or products,
- iii) in respect of d) above: for a period of 60 months in respect of the excluded Accident,
- iv) in respect of e) above: for a period of 60 months in respect of the excluded activities but only if the Insured ceases for that period of 60 months the activities which are the subject of the exclusion,

PROVIDED always that such Claim results from an Accident which first commences prior to the date on which the extended claims made period began.

The Insured agrees that a change in premium, terms or conditions does not constitute a refusal to renew.

This right of extension must be exercised by the First Designated Named Insured giving written notice which must be received by Underwriters within 15 days after the



Underwriters shall be permitted to investigate any Accident notified to Underwriters or Claim made against the Insured.

Underwriters may examine and audit the Insured's books and records at any time as far as they relate to the subject matter of this Policy.

## 20. CROSS LIABILITY

In the event of Claims being made by reason of Bodily Injury suffered by any employee of one Insured which does not arise out of the injured employee's employment, for which another Insured is liable, then this Policy shall cover the Insured against whom such Claim is made in the same manner as if separate Policies had been issued to each Insured.

In the event of Claims being made by reason of Property Damage to property belonging to any Insured for which another Insured is liable, then this Policy shall cover such Insured against whom such Claim is made in the same manner as if separate Policies had been issued to each Insured.

Nothing contained in this Condition 20 shall operate:

- a) to increase Underwriters' limits of liability as set out in Item 4 of the Declarations;
- b) to include coverage for an Insured who sustains Property Damage as a consequence of its own employees' acts.

## IV. DEFINITIONS

This Policy is subject to the following definitions:

### 1. ACCIDENT

The word 'Accident', wherever used in this Policy, shall mean either:

- a) an event which first commences at a specific time after the retroactive date set out in Item 6 of the Declarations and of which written notification is received by Underwriters within 15 days of such specific time, which results in Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury, in which case all the Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury shall be treated as resulting from one Accident, or
- b) any other event which first commences after the retroactive date set out in Item 6 of the Declarations and which results in Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury, in which case the Bodily



## 8. CLAIM

The word 'Claim', wherever used in this Policy, shall mean that part of any written demand received by the Insured for damages covered by this Policy, including the service of suit or institution of arbitration proceedings.

## 9. COMPLETED OPERATIONS LIABILITY

The words 'Completed Operations Liability', wherever used in this Policy, shall mean liability for Bodily Injury or Property Damage arising out of the Insured's operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the Bodily Injury or Property Damage happens after such operations have been completed or abandoned and happens away from premises owned, leased or rented by the Insured.

'Operations' include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- a) when all operations to be performed by or on behalf of the Insured under the contract have been completed, or
- b) when all operations to be performed by or on behalf of the Insured at the site of the operations have been completed, or
- c) when that portion of the work out of which the Bodily Injury or Property Damage arises has been put to its intended use by any person or organization other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

Operations which require service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be treated as completed.

Completed Operations Liability does not include liability for Bodily Injury or Property Damage arising out of:

- a) operations in connection with the transportation of property, unless the Bodily Injury or Property Damage arises out of a condition in or on an Automobile created by the loading or unloading thereof,
- b) the existence of tools, uninstalled equipment or abandoned or unused materials.

## 10. DEFENSE EXPENSES

The words 'Defense Expenses', wherever used in this Policy, shall mean investigation, adjustment, appraisal, defense and appeal costs and expenses and pre and post judgment interest, paid or incurred by or on behalf of the Insured.

MA  
PF

## 11. INSURED

Only the following are included in the definition of the 'Insured' under this Policy:

- a) the Named Insured, as set forth in Item 1. b) of the Declarations,
- b) the Named Insured's subsidiaries, owned or controlled companies which have been declared and accepted by Underwriters at the inception date of this Policy,
- c) the Named Insured's subsidiaries, owned or controlled companies which have been acquired or formed after the inception date set out in Item 5 of the Declarations, but only after the Named Insured obtains Underwriters' prior written acceptance,
- d) any person or entity to whom the Insured is obligated by virtue of a contract to provide insurance such as is afforded by this Policy, unless such contract is outside the normal course of the Insured's operations. Said person or entity shall be covered only to the extent of such obligation of the Insured and then only in respect of operations by or on behalf of the Insured or of facilities of the Insured or of facilities used by the Insured,
- e) additional Insureds, other than as provided for in b) and c) above, but only:
  - i) those entities declared and accepted by Underwriters at the inception date of this Policy,
  - ii) those entities for whom the Insured requires coverage subsequent to the inception date of this Policy, but only after the Named Insured obtains Underwriters' prior written acceptance,
- f) the Insured's employees but only for acts within the scope of their employment by the Insured.

## 12. INSURED'S PRODUCTS

The words 'Insured's Products', wherever used in this Policy, shall mean goods or products manufactured, sold, handled or distributed by the Insured or by others trading under the name of the Insured including any container thereof (other than an Automobile); but 'Insured's Products' shall not include a vending machine or any property other than such container, rented to or located for use of others but not sold.

### 13. PERSONAL INJURY

The words 'Personal Injury', wherever used in this Policy, shall mean:

- a) false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution of any person,
- b) libel, slander, defamation of character or invasion of right of privacy of any person, unless arising out of any advertising activities,
- c) mental injury, anguish or shock to such person which results from a) and/or b) above.

### 14. PRODUCTS LIABILITY

The words 'Products Liability', wherever used in this Policy, shall mean liability for Bodily Injury or Property Damage arising out of the Insured's Products or reliance upon a representation or warranty made at any time with respect thereto, but only if the Bodily Injury or Property Damage happens after physical possession of such products has been relinquished to others and happens away from premises owned, leased or rented by the Insured.

### 15. PROPERTY DAMAGE

The words 'Property Damage', wherever used in this Policy, shall mean physical injury to or destruction of tangible property, including loss of use of the tangible property so injured or destroyed.

### 16. ULTIMATE NET LOSS

The words 'Ultimate Net Loss', wherever used in this Policy, shall mean the total sum the Insured is obligated to pay through judgment or settlement, as damages resulting from a Claim including, in respect of such Claim, all Defense Expenses.

The salaries, expenses or administrative costs of the Insured or the Insureds' employees or any insurer shall not be included within the meaning of Ultimate Net Loss.

### 17. WATERCRAFT

The word 'Watercraft', wherever used in this Policy, shall mean any craft designed to float or travel in, on or under water.



ATTACHING TO AND FORMING PART OF POLICY NO. 551/U6R0058

ENDORSEMENT NO. 1

### **ANNUAL PERIOD DEFINITION**

It is hereby understood and agreed that Definition 18. of this Policy is incorporated herein, as follows:-

#### **18. ANNUAL PERIOD**

The words 'Annual Period', wherever used in this Policy shall mean each consecutive period of one year commencing from the inception date of this Policy.

All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 2

**AMENDED ITEM 4 OF THE DECLARATIONS**

It is hereby understood and agreed that Item 4 of the Declarations is amended to read as follows:

**DECLARATIONS**

Item 4. Limits of Liability

- |    |   |               |
|----|---|---------------|
| a) | Limit in respect of each Accident:  | \$40,000,000  |
| b) | Limit in the aggregate for each Annual Period in respect of all coverages combined (except Automobile Liability which is not subject to any aggregate Limit): | \$40,000,000. |

All other terms and conditions of this Policy remain unchanged.

MA

ENDORSEMENT NO. 3

**AMENDED INSURING AGREEMENT 1**

It is hereby understood and agreed that Insuring Agreement 1 is amended to read as follows:

**I. INSURING AGREEMENTS**

1. **COVERAGE**

Underwriters agree subject to the Insuring Agreements, Exclusions, Conditions, Definitions and Declarations contained in this Policy, to indemnify the Insured in respect of their operations:

- (i) anywhere in the United States of America, except as stated in (ii) below,
- (ii) anywhere in the United States of America and Argentina, but only with respect to technical assistance provided by the Insured on various phases of the TRAINMET concession,

for Ultimate Net Loss by reason of the liability imposed upon the Insured by law or assumed under contract, for damages in respect of a Claim which is first made in writing against the Insured during the period of this Policy set out in Item 5 of the Declarations and which arises solely by reason of:

- a) Bodily Injury
- b) Personal Injury
- c) Property Damage
- d) Advertising Injury

resulting from an Accident.

All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 4

**AMENDED CONDITION 4**

It is hereby understood and agreed that Condition 4 is amended to read as follows:

**III. CONDITIONS**

**4. NOTICE OF POTENTIAL CLAIMS**

If Underwriters receive notification of an Accident which first commences prior to the expiry date set out in Item 5 of the Declarations,

- a) of the type described in and notified in accordance with Definition 1.a), during the period set out in Item 5 of the Declarations and up to 60 days thereafter, then Underwriters will treat all Claims arising out of the notified Accident made against the Insured within 60 months from the date of such notification as made on the date on which the notification was received by Underwriters or the expiry date of this Policy, whichever is the earlier, or
- b) of the type described in Definition 1.b) and of which the Insured's Risk Management Department first becomes aware during the period set out in Item 5 of the Declarations and up to 60 days thereafter but only where the Insured has identified the individual injured person or entity and in such notification states the name of the individual injured person or entity, then Underwriters will treat any Claim made against the Insured by the individual injured person or entity within 60 months from the date on which the Insured's Risk Management Department was first aware of the Accident as made on the date on which the Insured's Risk Management Department was first made aware of the Accident or the expiry date of this Policy, whichever is the earlier.

It is further agreed that the Insured shall notify Underwriters of only those Accidents of the type described in Definition 1.b) which may be reasonably valued at \$500,000 or greater based upon the claimed injuries and/or property damage and the probable liability of the Insured. If, at any time, a value of \$500,000 or greater is established, then the Insured shall notify Underwriters of such Accident within 60 days of such value being established.

In no event shall the liability of Underwriters exceed the relevant limits of liability set out in Item 4 of the Declarations; such limits of liability shall apply to the period of this Policy set out in Item 5 of the Declarations combined with the 60 month periods set out above.

All other terms and conditions of this Policy remain unchanged.



ENDORSEMENT NO. 5

**AMENDED CONDITION 15**

It is hereby understood and agreed that Condition 15 is amended to read as follows:

**III. CONDITIONS**

**15. CANCELLATION**

Cancellation of this Policy may be effected either:

- a) by the first Designated Named Insured set out in Item 1 of the Declarations, on behalf of the Insured, or
- b) by Underwriters or their representatives,

sending by registered mail, notice to the other party in a) or b) above stating when, not less than ninety days thereafter, cancellation shall be effective. The mailing of notice as aforesaid by Underwriters or their representatives to the First Designated Named Insured at the address shown in Item 1 of the Declarations shall be sufficient proof of notice and the coverage under this Policy with respect to the Insured shall end on the effective date and hour of cancellation stated in the notice. Delivery of such written notice either by the First Designated Named Insured or by Underwriters or their representatives shall be equivalent to sending by registered mail.

If this Policy shall be cancelled by the First Designated Named Insured Underwriters shall retain the short rate proportion of the premium for the period this Policy has been in force, calculated in accordance with the attached Short Rate Cancellation Table. If this Policy shall be cancelled by Underwriters they shall retain the pro rata proportion of the premium for the period this Policy has been in force. Notice of cancellation by Underwriters shall be effective whether or not Underwriters have returned or tendered the return of any premium with such notice.

All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 6

**AMENDED CONDITION 16**

It is hereby understood and agreed that Condition 16 is amended to read as follows:

**III. CONDITIONS**

**16. EXTENDED CLAIMS MADE PERIOD**

If Underwriters shall:

- a) refuse to renew this Policy for reasons other than the Insured's non-payment of premium or non-compliance with the terms and conditions of this Policy, or
- b) cancel this Policy for reasons other than the Insured's non-payment of premium or non-compliance with the terms and conditions of this Policy, or
- c) on renewal require an exclusion of any Accident,

then the Insured, upon payment of an additional premium calculated at the percentage, set out in Item 7 of the Declarations, of the premium set out in Item 9 of the Declarations, shall have the right to extend the period in which a Claim made against the Insured after the expiry date of this Policy is treated by Underwriters as made on the expiry date of this Policy:

- i) in respect of a) or b) above: for a period of 24 months,
- ii) in respect of c) above: for a period of 24 months in respect of the excluded accident,

PROVIDED always that such Claim results from an Accident which first commences prior to the date on which the extended claims made period began.

The Insured agrees that a change in premium, terms or conditions does not constitute a refusal to renew.



This right of extension must be exercised by the First Designated Named Insured giving written notice which must be received by Underwriters within 15 days after the date the refusal to renew, cancellation or exclusion referred to above takes effect and paying the applicable premium to the person or entity set out in Item 10 of the Declarations within 30 days after such notice has been received by Underwriters. If the notice is not received by Underwriters within such 15 days the Insured shall not at a later date be able to give such notice. If the First Designated Named Insured fails to pay the applicable premium to the person or entity set out in Item 10 of the Declarations within 30 days after such notice has been received by Underwriters, the Insured's rights under the extended claims made period shall be rendered null and void and Underwriters shall be relieved of all liability under the extended claims made period.

In no event shall the liability of Underwriters exceed the relevant limits of liability set out in Item 4 of the Declarations; such limits of liability shall apply to the period of this Policy set out in Item 5 of the Declarations combined with the extended claims made periods set out above.

If the Insured extends the claims made period in accordance with the above, Underwriters shall not be able to cancel the extension; nor shall the Insured be entitled to any return of all or any part of the additional premium paid in the event that the Insured should cancel this extension.

All other terms and conditions of this Policy remain unchanged.

MA  
F  
LIF

ENDORSEMENT NO. 7

**AMENDED DEFINITION 1**

It is hereby understood and agreed that Definition 1 is amended to read as follows:

**IV. DEFINITIONS**

**1. ACCIDENT**

The word 'Accident' wherever used in this Policy shall mean either:

- a) an event which first commences at a specific time after the retroactive date set out in Item 6 of the Declarations and of which written notification is received by Underwriters within 60 days of such specific time, which results in Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury; in which case all the Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury shall be treated as resulting from one Accident, or
- b) any other event which first commences after the retroactive date set out in Item 6 of the Declarations and which results in Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury; in which case the Bodily Injury and/or Personal Injury and/or Property Damage and/or Advertising Injury suffered by each individual person or each individual entity shall be treated as resulting from a separate Accident.

All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 8

**AMENDED DEFINITION 11**

It is hereby understood and agreed that Definition 11 is amended to read as follows:

**IV. DEFINITIONS**

**11. INSURED**

Only the following are included in the definition of the 'Insured' under this Policy:

- a) the Named Insured, as set forth in Item 1. b) of the Declarations,
- b) the Named Insured's subsidiaries, owned or controlled companies which have been declared and accepted by Underwriters at the inception date of this Policy,
- c) the Named Insured's subsidiaries, owned or controlled companies which have been acquired or formed after the inception date set out in Item 5 of the Declarations, but only after the Named Insured obtains Underwriters' prior written acceptance,
- d) any person or entity to whom the Insured is obligated by virtue of a contract to provide insurance such as is afforded by this Policy, unless such contract is outside the normal course of the Insured's operations. Said person or entity shall be covered only to the extent of such obligation of the Insured and then only in respect of operations by or on behalf of the Insured or of facilities of the Insured or of facilities used by the Insured,
- e) additional Insureds, other than as provided for in b) and c) above, but only:
  - i) those entities declared and accepted by Underwriters at the inception date of this Policy,
  - ii) those entities for whom the Insured requires coverage subsequent to the inception date of this Policy, but only after the Named Insured obtains Underwriters' prior written acceptance,
- f) the Insured's employees and Public Officials but only for acts within the scope of their employment by the Insured



All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 9

**EMPLOYERS' LIABILITY COVERAGE ENDORSEMENT**

In consideration of an additional premium of \$ (included), it is understood and agreed that Exclusion 4 of this Policy is deleted and replaced by the following:

- "4. a) to employers liability as respects occupational disease or to any workers' compensation, unemployment compensation or disability benefits law or statutes;
- b) to any liability which any Insured may have to any employee of any other Insured arising out of the employment of that employee;".

All other terms and conditions of this Policy remain unchanged.

WCA  
PF

ATTACHING TO AND FORMING PART OF POLICY NO. 551/U6R0058

ENDORSEMENT NO. 10

**ABSOLUTE ASBESTOS EXCLUSION**

Notwithstanding anything to the contrary contained in this Policy, it is hereby understood and agreed that this Policy shall not apply to:

Bodily Injury or Personal Injury or loss of, damage to or loss of use of property directly or indirectly caused by asbestos.

All other terms and conditions of this Policy remain unchanged.

3/16/88  
PF

ENDORSEMENT NO. 11

**OWNER-CONTROLLED INSURANCE PROGRAM EXCLUSION**

Notwithstanding anything to the contrary contained in this Policy, it is hereby understood and agreed that this Policy shall not apply to:

any liability arising out of any project insured under a program of insurance covering a specified project and insuring the owner and one or more contractors (commonly called an owner-controlled insurance program).

All other terms and conditions of this Policy remain unchanged.





ENDORSEMENT NO. 12

**LIMITED SEEPAGE, POLLUTION AND CONTAMINATION COVERAGE  
ENDORSEMENT FOR RAILROAD OPERATIONS**

In consideration of an additional premium of \$ (included), it is understood and agreed that Exclusion No. 13 of this Policy shall not apply to the liability of the Insured, resulting from seepage and/or pollution and/or contamination caused solely by:

- a) unintended fire, lightning or explosion; or
- b) a collision or overturning of a road vehicle; or
- c) a collision or overturning or derailment of a train.

Notwithstanding the foregoing it is agreed that the coverage provided by this Endorsement shall not apply to:

1. loss of, damage to or loss of use of property directly or indirectly resulting from sub-surface operations of the Insured, and/or removal of, loss of or damage to sub-surface oil, gas or any other substance;
2. any site or location used in whole or in part for the handling, processing, treatment, storage, disposal, or dumping of any waste materials or substances;
3. the cost of evaluating and/or monitoring and/or controlling seeping and/or polluting and/or contaminating substances;
4. the cost of removing and/or nullifying and/or cleaning up seeping and/or polluting and/or contaminating substances on property at any time owned and/or leased and/or rented by the Insured and/or under the control of the Insured.

Notwithstanding the foregoing, Item 1 does not apply to tunnels through which the Insured's trains operate.

All other terms and conditions of this Policy remain unchanged.

ENDORSEMENT NO. 13

**AGGREGATE REINSTATEMENT ENDORSEMENT**

In consideration of an additional premium of \$ (included) it is understood and agreed that when a payment is made by the Underwriters on this Policy, in respect of an Accident notified in accordance with Condition 4a) of this Policy which reduces the annual aggregate limit set out in Item 4b) of the Declarations, the Underwriters will reinstate such annual aggregate limit to its full amount in respect of other Accidents notified in accordance with Condition 4a) of this Policy, but subject always to a maximum amount for all payment under this Policy of \$80,000,000 for each Annual Period.

All other terms and conditions of this Policy remain unchanged.

**Item 5. Policy Period (both dates inclusive)**

- a) inception date: 1st July, 1996
- b) expiry date (subject to any date of cancellation): 30th June, 1998

**Item 6. Retroactive Date**

1st July, 1986

**Item 7. Extended Claims Made Period percentage**

25 %

**Item 8. Currency**

- a) premium: United States Dollars
- b) claims: United States Dollars

**Item 9. Premium**

\$ 1,800,000.00

Payable as follows:-

- i) 1st July, 1996 \$ 900,000.00
- ii) 1st July, 1997 \$ 900,000.00

**Item 10. Payment of Premium to**

Sedgwick James of California, Inc.  
P.O. Box 7601  
San Francisco  
California 94120-7601, U.S.A.

LIR  
P

**Item 11. Service of Suit upon**

Toplis & Harding  
160 Pine Street  
Suite 300  
San Francisco  
California 94111  
U.S.A..

OR

Mendes & Mount  
727 South Figueroa Street  
Los Angeles  
California 90017  
U.S.A

and/or the nominees of either of them as Attorney-In-Fact

**Item 12. Proposal dated**

27th June, 1996

**Starr Excess Liability Insurance Company, Ltd.**


**\$100,000,000 Per Occurrence**

**\$100,000,000 Annual Aggregate**

# **STARR EXCESS**

**Liability Insurance Company, Ltd.**

29 Richmond Road, Pembroke HM08, Bermuda  
Telephone: 441-295-7827  
Facsimile: 441-292-8099  
Facsimile: 441-296-3750 (For Claim Matters Only)

551/U7R0068 

**DECLARATIONS - attaching to and forming part of Policy No. 200853**


- Item 1** (a) **Named Insured:** San Francisco Bay Area Rapid Transit District  
(b) **Address:** 800 Madison Street  
Oakland, CA 94607 USA
  
- Item 2** **Limits of Liability:**  
(a) **Per Occurrence:** US\$100,000,000  
(b) **Annual Period Aggregate:** US\$100,000,000
  
- Item 3** **Retention: Per Occurrence:** US\$50,000,000
  
- Item 4** **Inception Date:** July 1, 1995  
**at 12:01 A.M. at the address of the Named Insured listed in Item 1(b) above.**
  
- Item 5** **Retroactive Date:** July 1, 1986
  
- Item 6** (a) **Representative of Named Insured:** Sedgwick North America  
(b) **Address:** Sedgwick House  
The Sedgwick Centre  
London E1 8DX UK
  
- Item 7** **Premium For Period July 1, 1997 to July 1, 1999:** Per Endorsement No. 2 [02]
  
- Item 8** **Notices to the Company:**  
(a) **All notices of Occurrence or Claim: Claims Department.**  
(b) **All other notices: Underwriting Department.**  
(c) **At the address and numbers shown at the top of the Declarations page.**
  
- Item 9** **Application Date For Period July 1, 1997 to July 1, 1998:**  
Per Endorsement No. 2 [02]

**STARR EXCESS**  
**Liability Insurance Company, Ltd.**

29 Richmond Road, Pembroke HM08, Bermuda  
Telephone: 441-295-7827  
Facsimile: 441-292-8099  
Facsimile: 441-296-3750 (For Claim Matters Only)

**DECLARATIONS - attaching to and forming part of Policy No. 200853**

**Item 10**      **Policy Form:**      **SELIC IO-02**  
**Endorsements:**      **1[02] to 3 [02]**

  
David W. Mitchell  
**Authorized Representative**

**STARR EXCESS**  
Liability Insurance Company, Ltd.

**TABLE OF CONTENTS**

**THIS TABLE OF CONTENTS IS FOR REFERENCE PURPOSES ONLY. IT IS NOT PART OF THE TERMS, CONDITIONS OR EXCLUSIONS OF THIS POLICY, AND IS NOT INTENDED TO AFFECT THE MEANING OF SUCH TERMS, CONDITIONS OR EXCLUSIONS.**

	Page
TABLE OF CONTENTS .....	i
NOTICE .....	iv
SECTION I COVERAGE.....	1
SECTION II LIMITS OF LIABILITY AND RETENTION .....	3
SECTION III EXCLUSIONS	
A. Previously Notified Occurrences or Claims.....	5
B. Worker's Compensation.....	5
C. Professional Services .....	5
D. Owned Property .....	5
E. Failure of Insured's Products or Work .....	6
F. War.....	6
G. Toxic Substances .....	6
H. Aircraft.....	7
I. Watercraft.....	8
J. Pollution.....	9
K. Nuclear.....	10
L. Radioactive Contamination (Outside the United States) .....	12
M. Employee Retirement Income Security Act of 1974 .....	12
N. Securities, Antitrust, Etc. ....	13
O. Known Occurrences .....	14
P. Occurrences after Notice of Integrated Occurrence .....	14
Q. Occurrences Excluded from Integrated Occurrence .....	14
R. Exclusions Applicable to Advertising Liability .....	14
S. Certain Contractual Liability .....	15
SECTION IV CONDITIONS	
A. Appeals .....	16
B. Arbitration.....	16
C. Assignment .....	17
D. Assistance and Cooperation.....	18
E. Cancellation .....	18
F. Changes.....	19



G.	Consent to Jurisdiction.....	19
H.	Cross Liability.....	20
I.	Currency.....	20
J.	Dates and Times.....	20
K.	Discovery Period.....	20
L.	Former Subsidiaries, Affiliates and Associated Companies.....	21
M.	Governing Law and Interpretation.....	21
N.	Headings.....	21
O.	Inspection.....	22
P.	Liability of the Company.....	22
Q.	Loss Payable.....	22
R.	Notice.....	23
S.	Other Insurance.....	23
T.	Policy Extension.....	23
U.	Premium.....	23
V.	Reinstatement.....	23
W.	Representation.....	25
X.	Subrogation.....	25

SECTION V

NOTICE OF OCCURRENCE AND CLAIM

A.	Mandatory Notice.....	26
B.	Permissive Notice of Integrated Occurrence.....	26
C.	Notice Requirements.....	26

SECTION VI

DEFINITIONS

A.	Advertising Liability.....	29
B.	Aircraft.....	29
C.	Annual Period.....	29
D.	Automobile.....	29
E.	Bodily Injury.....	29
F.	Claim.....	29
G.	Completed Operations.....	30
H.	Covered Pollution Peril.....	30
I.	Damages.....	30
J.	Defense Costs.....	30
K.	Discharge.....	31
L.	Discovery Period.....	31
M.	Employment Liability.....	31
N.	Executive Officer.....	31
O.	Hostile Fire.....	31
P.	Inception Date.....	31
Q.	Incidental Watercraft Use.....	31
R.	Industrial Aid Aircraft.....	32
S.	Industrial Aid Aircraft Use.....	32
T.	the Insured.....	32
U.	Insured's Products.....	35
V.	Integrated Occurrence.....	35
W.	Joint Venture.....	35

X.	Named Insured .....	35
Y.	Notice of Integrated Occurrence .....	35
Z.	Occurrence .....	35
AA.	Personal Injury .....	37
AB.	Policy Period .....	37
AC.	Pollutant .....	37
AD.	Product Pollution Liability .....	37
AE.	Property Damage. ....	37
AF.	Retroactive Date .....	38
AG.	Termination or Termination Date. ....	38
AH.	Ultimate Net Loss .....	38
AI.	Waste .....	38
AJ.	Watercraft .....	38

SCHEDULE A	Additional Insureds
SCHEDULE B	Underlying Insurance
SCHEDULE C	Watercraft
SCHEDULE D	Coverage B Annual Period Premium Charge

# **STARR EXCESS**

**Liability Insurance Company, Ltd.**

(Hereinafter, the "Company")  
29 Richmond Road, Pembroke HM08, Bermuda

## **NOTICE**

THIS IS A STAND-ALONE LIABILITY POLICY WHICH IS NOT SUBJECT TO THE TERMS AND CONDITIONS OF ANY OTHER INSURANCE AND CONTAINS PROVISIONS WHICH MAY BE DIFFERENT FROM THOSE OF ANY OTHER INSURANCE. IT SHOULD BE READ CAREFULLY BY THE INSURED.

COVERAGE APPLIES, SUBJECT TO THE TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY, ONLY IF NOTICE OF OCCURRENCE, OR OF A CLAIM ARISING THEREFROM, IS FIRST GIVEN DURING THE POLICY PERIOD OR, IF PURCHASED, THE DISCOVERY PERIOD. THE DATE SUCH NOTICE IS FIRST GIVEN IS THE DATE FOR DETERMINATION OF THE APPLICABLE LIMITS, RETENTIONS, TERMS, CONDITIONS AND EXCLUSIONS OF THIS POLICY.

THE COMPANY DOES NOT HAVE ANY DUTY TO DEFEND. DEFENSE COSTS COVERED BY THIS POLICY ARE INCLUDED WITHIN AND ARE NOT IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY.

# **STARR EXCESS**

**Liability Insurance Company, Ltd.**

(Hereinafter, the "Company")  
29 Richmond Road, Pembroke HM08, Bermuda

In consideration of the payment of the premium set forth in Item 7 of the Declarations and in reliance upon the statements in the Application and Schedules referred to in Item 9 of the Declarations and any Renewal or Supplemental application(s) and any supplementary information pertaining to any such application(s), which are hereby incorporated by reference as if physically attached to this Policy, the Company agrees as follows:

## **SECTION I - COVERAGE**

**A.** To indemnify **the Insured** for **Ultimate Net Loss** which **the Insured** becomes obligated to pay by reason of liability:

- (1) imposed by law, or
- (2) assumed by **the Insured** under contract or agreement,

for **Damages** on account of:

- (a) **Personal Injury,**
- (b) **Property Damage,** or
- (c) **Advertising Liability**

caused by an **Occurrence**; provided,

**COVERAGE A:** Notice of the **Occurrence**, or of a **Claim** arising therefrom, shall have been first given by **the Insured** during the **Policy Period** in accordance with Section V of this Policy, or

**COVERAGE B:** Notice of the **Occurrence**, or of a **Claim** arising therefrom, shall have been first given by **the Insured** during the **Discovery Period** in accordance with Section V of this Policy, but only if the **Discovery Period** option has been purchased in accordance with Section IV, Condition K. of this Policy or applies pursuant to Section IV, Condition L. of this Policy.

**B.** (1) Except for an **Integrated Occurrence**, the applicable limits of liability, retention, terms, conditions and exclusions shall be determined under the Policy in effect on the date when **Notice of Occurrence**, or of a **Claim** arising therefrom, is first given in accordance with the provisions of that Policy.

- (2) With respect to an **Integrated Occurrence**, the applicable limits of liability, retention, terms, conditions and exclusions of the Policy applicable to such **Personal Injury, Property Damage or Advertising Liability** shall be determined under the Policy in effect on the date in the **Annual Period** when **Notice of Integrated Occurrence** is first given in accordance with the provisions of that Policy; or, if **Notice of Integrated Occurrence** is given during the **Discovery Period**, the Policy in effect on the last day of the **Annual Period** of Coverage A preceding the **Discovery Period**.

## SECTION II - LIMITS OF LIABILITY AND RETENTION

- A. Regardless of the number of **Insureds** under this Policy, the Company shall be liable only for that amount of **Ultimate Net Loss** for each **Occurrence** covered under this Policy, which is in excess of the greater of:
- (1) the amounts indicated as the limits of the applicable underlying insurances, including any reinstatements thereof, and self-insured retentions listed on the present or any prior Schedule B annexed to this Policy and any other underlying insurance and self-insured retentions, but only to the extent they:
    - (a) afford coverage for such **Occurrence**, and
    - (b) have not been reduced or exhausted solely by the actual payment of **Damages** covered under such underlying insurances and self-insured retentions, andregardless of whether such limits are collectible; or
  - (2) the per **Occurrence** Retention amount listed in Item 3 of the Declarations, provided; however, for each **Occurrence** arising out of **Industrial Aid Aircraft Use**, the per **Occurrence** retention shall not be less than One Hundred Million United States Dollars (US\$100,000,000.00).
- B. Subject to Paragraph A. of this Section II and regardless of the number of **Insureds** under this Policy, the total liability of the Company for all **Ultimate Net Loss** from each **Occurrence** covered hereunder shall not exceed the per **Occurrence** limit of liability stated in Item 2 (a) of the Declarations, and is further subject to the aggregate limits of liability stated in Item 2 (b) of the Declarations for all **Ultimate Net Loss** for all **Occurrences** covered in each **Annual Period** of Coverage A.
- C. (1) Subject to Section III, Exclusions P. and Q., all **Personal Injury, Property Damage** or **Advertising Liability** arising from an **Integrated Occurrence** shall be added together and treated as one **Occurrence**, irrespective of the number of persons or organizations injured or properties damaged.
- (2) Subject to Section III, Exclusion Q., if notice of an **Occurrence** has been given during a prior **Annual Period**, and such **Occurrence** is included in a **Notice of Integrated Occurrence** given during a subsequent **Annual Period**, all **Ultimate Net Loss** arising from such **Occurrence** shall be included in the **Ultimate Net Loss** arising from such **Integrated Occurrence**. Any payments of **Ultimate Net Loss** on account of such earlier notified **Occurrence** shall be deemed to have been made under the **Annual Period** in which the Company first received **Notice of Integrated Occurrence**. Appropriate adjustments shall be made to the applicable limits of liability in the respective **Annual Periods** of this Policy to reflect such transfer of **Ultimate Net Loss** payments from the prior **Annual Period** to the **Annual Period** in which **Notice of Integrated Occurrence** was given.

- D. The applicable per **Occurrence** Retention described in Paragraph A. (2) of this Section II shall be reduced or exhausted solely by the actual payment of **Damages** covered under this Policy. This Policy shall not be subject to or follow the form of any underlying insurances or self-insured retentions, but shall apply in accordance with its own terms, conditions and exclusions.
- E. (1) With respect to any liability of an **Insured** which arises in any manner whatsoever out of operations or the existence of any **Joint Venture** in which such **Insured** has an interest, the liability of the Company under this Policy shall be limited to the **Insured's** liability arising out of such **Joint Venture**.
- (2) (a) The limits of liability of the Company applicable to the **Insured's** liability arising out of a **Joint Venture** shall be those described in Section II of this Policy.
- (b) Notwithstanding the foregoing, the cumulative liability of the Company from any one **Occurrence** arising out of the operations or existence of any **Joint Venture**, or arising in any manner out of the **Insured's** interest in any **Joint Venture**, involving more than one policyholder of the Company shall not exceed twice the largest applicable per **Occurrence** limit of liability for any such policyholder.
- (c) Such cumulative liability of the Company shall be prorated among such policyholders in proportion to the amounts which otherwise would be payable to such policyholders if there were no cumulative limit of liability established pursuant to Subparagraph (2) (b) of this Paragraph E.; provided, however, that any such policyholder which shall have a Scaled Joint Venture Coverage Endorsement shall be entitled to payment in full of the Company's obligations there under, leaving the balance of the cumulative limit to be so prorated. In the event it appears to the Company that the cumulative limit of liability may be reached, the Company in its discretion may pay any **Ultimate Net Loss** as it becomes due under this Policy and any other such policy into a fund to be established with any Court sitting in Bermuda for the benefit of all policyholders involved with the **Joint Venture** under all such policies. When the total of **Ultimate Net Loss** paid under all such policies (whether paid to policyholders or into such a fund) reaches the cumulative limit of liability established pursuant to Subparagraph (2) (b) of this Paragraph E., the obligations and liability of the Company under this Policy and all other such policies in respect of such **Occurrence** shall be discharged and shall cease.

## SECTION III - EXCLUSIONS

### THIS POLICY DOES NOT APPLY TO:

#### A. PREVIOUSLY NOTIFIED OCCURRENCES OR CLAIMS

Any **Occurrence**, including any "Batch Occurrence", "Integrated Occurrence" or similar term as defined under any other Policy, **Personal Injury, Property Damage or Advertising Liability** or any **Claim** or potential **Claim** arising therefrom, notice of which has been given or deemed to have been given under any other policy prior to the **Inception Date** of this Policy.

#### B. WORKERS' COMPENSATION

Any obligation for which **the Insured** or any company as its insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law or similar law; provided, however, that this exclusion does not apply to liability arising under the Federal Employers Liability Act, the Jones Act or, in the case of any **Insured** which is an authorized self-insurer, under the Longshoremen's and Harbor Workers' Compensation Act.

#### C. PROFESSIONAL SERVICES

Any liability for **Property Damage** arising out of any act, error or omission in the rendering or failure to render professional services, other than architectural and engineering services, including but not limited to the rendering of legal, accounting, data processing, consulting, or investment advisory services.

#### D. OWNED PROPERTY

**Property Damage** to:

- (1) property owned or occupied by or rented to **the Insured**;
- (2) property loaned to **the Insured**;
- (3) personal property in the care, custody or control of **the Insured**; or
- (4) that particular part of real property or fixtures on which **the Insured** or any contractors or subcontractors working directly or indirectly on behalf of **the Insured** are performing operations, if such **Property Damage** arises out of such operations;

provided, however, that Paragraphs (2), (3) and (4) of this Exclusion D. do not apply to liability assumed under a sidetrack agreement; and further provided that Paragraphs (1) and (3) of this Exclusion D. do not apply to **Property Damage** to property of an **Insured** which is an **Insured** solely by virtue of Section VI, Definition T. (4) but only if such property is not owned, occupied by, rented to or in the care custody or control of an **Insured** which is an **Insured** other than by virtue of Definition T. (4).



## E. FAILURE OF INSURED'S PRODUCTS OR WORK

Any liability of the Insured:

- (1) arising out of the failure of the **Insured's Products** or of work, including architectural or engineering services, by or on behalf of the **Insured** to meet any warranty or representation by the **Insured** as to the level of performance, quality, fitness or durability or to perform their function or serve their purpose, to the extent that such liability is for the diminished value or economic utility of the **Insured's Products** or work by or on behalf of the **Insured**;
- (2) arising out of **Property Damage** to any part of the **Insured's Products** or of work, including architectural or engineering services, performed by or on behalf of the **Insured**, if such **Property Damage** arises out of that particular part of such products or work, or out of materials, parts or equipment furnished in connection therewith;
- (3) for the costs incurred by the **Insured** or others for the withdrawal, inspection, repair, recall, return, replacement or disposal by the **Insured** or others, or, in connection with any of the foregoing, loss of use of the **Insured's Products** or work, including architectural or engineering services, by or on behalf of the **Insured** or of any property or products of others of which the **Insured's Products** or work form a part; provided that, except with respect to **Automobiles** or products used in or on **Automobiles** of which the **Insured's Products** or work form a part, this Exclusion E. (3) does not apply to costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of products or work of a party other than an **Insured** of which the **Insured's Products** or work form a part;
- (4) arising out of a decline in value of real or personal property but only to the extent such decline in value is attributable not to physical damage or destruction thereof but to proximity to operations, activities, equipment, or conditions which limit the use of such property, or make occupation of such property by people less feasible or desirable.

## F. WAR

**Personal Injury, Property Damage or Advertising Liability** directly or indirectly occasioned by, happening through or in consequence of war, invasion, hostile action of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, however, that this exclusion shall not apply to **Personal Injury, Property Damage or Advertising Liability** taking place in and caused by the foregoing events in the land area of the United States of America, its territories or possessions, Puerto Rico or Canada.

## G. TOXIC SUBSTANCES

**Personal Injury, Property Damage or Advertising Liability** arising out of the manufacture, distribution, sale, installation, removal, utilization, ingestion or inhalation of,

presence of or exposure to, as the case may be:

- (1) asbestos or any asbestos-containing materials; however this Exclusion G. (1) shall not apply to **Property Damage** arising out of asbestos or asbestos containing materials not incorporated in the **Insured's Products** or **Completed Operations** if such **Property Damage** results from an explosion, **Hostile Fire** or lightning;
- (2) tobacco or any tobacco products, or any component part or ingredient thereof;
- (3) 2,4,5 trichlorophenoxyacetic ("2,4,5 - T"), or 2, 3, 7, 8 - TCDD;
- (4) asbestiform talc;
- (5) diethylstilbestrol ("DES");
- (6) any intra-uterine device ("IUD"); or
- (7) any product containing silicone which is in any form implanted or injected in the body;

provided, however, that this exclusion shall not apply to **Personal Injury** or **Property Damage** where such **Personal Injury** or **Property Damage** is not related to the:

- (a) asbestos;
- (b) tobacco or any tobacco products, or any component part or ingredient thereof ingested or inhaled;
- (c) 2,4,5 - T or 2,3,7,8 - TCDD
- (d) asbestiform talc;
- (e) DES;
- (f) IUD; or
- (g) silicone,

content of goods, materials, products or **Completed Operations**.

## H. AIRCRAFT

Any liability arising out of the design, testing, manufacture, construction, maintenance, service, use or operation of any **Aircraft** or any component part or equipment thereof, or any aviation - related equipment or service, including liability arising from a crash or hijacking; but this exclusion shall not apply to:

- (1) **Personal Injury** or **Property Damage** taking place during and arising from fueling and related operations while the **Aircraft** is on the ground and motionless;
- (2) **Personal Injury** or **Property Damage** arising from the manufacture of an **Aircraft** or any component part or equipment thereof where all such **Personal Injury** or **Property Damage** takes place at a manufacturing or associated storage facility and does not arise from a crash or hijacking of an **Aircraft**;

- (3) **Personal Injury** or physical damage to other **Aircraft** or tangible property arising from **the Insured's Industrial Aid Aircraft Use**, provided such physical damage results from such **Industrial Aid Aircraft Use** and the physical impact of such **Industrial Aid Aircraft** or the debris thereof with other **Aircraft**, whether or not on the ground, or with tangible property on the ground;
- (4) **Personal Injury** or **Property Damage** arising from a component part or equipment of an **Aircraft** which:
  - (a) has not yet been incorporated into an **Aircraft**; or
  - (b) has been incorporated into an incomplete **Aircraft** during the manufacturing process and the **Aircraft** has never been used for self-propelled movement on the ground or in the air;

provided such **Personal Injury** or **Property Damage** does not arise from a crash or hijacking of an **Aircraft**;

- (5) **Personal Injury** or **Property Damage** caused by the **Insured's Products** which comprise or are incorporated into cabin furnishings, food service equipment, or other equipment used solely in the interior of an **Aircraft** and which are not necessary to or integrally related with takeoff, flight, landing or navigation of an **Aircraft**; or
- (6) **Personal Injury** or **Property Damage** caused by the **Insured's Products** which are of a type or grade sold principally for purposes other than use in **Aircraft**.

## I. WATERCRAFT

Any liability arising out of the design, testing, manufacture, construction, maintenance, sale, service, use or operation of any **Watercraft**; but this exclusion shall not apply to:

- (1) **Watercraft** or risks listed on Schedule C hereto and any additional **Watercraft** acquired in the ordinary course of business during the **Policy Period**, which are of a similar type and use as the vessels listed on Schedule C; provided, the aggregate gross registered tonnage of all such additional **Watercraft** shall not exceed twenty percent (20%) of the gross registered tonnage of vessels listed on Schedule C;
- (2) loading or unloading of any **Watercraft** at premises owned, leased or controlled by **the Insured**;
- (3) liability for **Personal Injury** or **Property Damage** arising out of **Incidental Watercraft Use**, other than damage to any part of a **Watercraft** leased or chartered by **the Insured** or to its cargo or other contents;
- (4) liability for **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the design, testing, manufacture, construction, maintenance, sale, service, use or operation by **the Insured** of any **Watercraft** less than seventy-five (75) feet in length; or

- (5) liability for **Personal Injury, Property Damage or Advertising Liability** arising out of the design, testing, manufacture, construction, maintenance, sale, service, use or operation by **the Insured** of any component part or equipment of any **Watercraft**.

## J. POLLUTION

- (1) (a) any liability for **Personal Injury, Property Damage or Advertising Liability** arising out of the **Discharge of Pollutants** into or upon land or the atmosphere, groundwater or aquifer, or any other watercourse or body of water whether above or below ground; or into the interior of any building or structure except to the extent such **Discharge of Pollutants** originates and remains confined within such building or structure; or
- (b) any liability, loss, cost or expense of **the Insured** or others arising out of any direction or request, whether governmental or otherwise, that **the Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

This exclusion applies whether or not such **Discharge** of such **Pollutants**:

- (i) results from **the Insured's** activities or the activities of any other person or entity;
- (ii) is sudden, abrupt, gradual, accidental, unexpected or unintended; or
- (iii) arises out of or relates to industrial operations or the **Waste** or by-products thereof.
- (2) Paragraph (1) of this exclusion does not apply to:
- (a) **Product Pollution Liability**;
- (b) liability of **the Insured** for **Personal Injury or Property Damage** caused by an unexpected and unintended **Discharge of Pollutants**, but only if such **Discharge** results solely from a **Covered Pollution Peril** which commences on or after the **Inception Date**; or
- (c) (i) liability of **the Insured** for **Personal Injury or Property Damage** caused by an intentional **Discharge of Pollutants** solely for the purpose of mitigating or avoiding imminent **Personal Injury or Property Damage** which would be covered by this Policy; or
- (ii) liability of **the Insured** for **Personal Injury or Property Damage** caused by an unintended and unexpected **Discharge of Pollutants**, other than one encompassed by (2)(b) above, but only if **the Insured** becomes aware of the commencement of such **Discharge** within twenty (20) days of such commencement;

provided **the Insured** gives the Company written notice of such commencement of the **Discharge** under Paragraphs (2)(c)(i) or (ii) of this Exclusion J. within

eighty (80) days of such commencement. Such notice must be provided irrespective of whether Mandatory Notice otherwise would be required pursuant to Section V, A. of this Policy. The notice provided under this Paragraph (2)(c) shall not be rendered invalid if any part of the eighty (80) day period in which to provide such notice extends beyond the end of the **Policy Period**. Written notice of commencement of the **Discharge** shall be deemed to have been given during the **Annual Period** in which such **Discharge** commenced.

Such notice shall specify, to the extent such information is available:

- (i) where such **Discharge** took place;
- (ii) when such **Discharge** commenced;
- (iii) the nature and approximate quantity of the **Pollutants** or other substance **Discharged**;
- (iv) when and the circumstances under which **the Insured** became aware of such **Discharge**; and
- (v) all other information required under Paragraph C. of Section V.

## K. NUCLEAR

Any liability for:

- (1) **Personal Injury, Property Damage or Advertising Liability** in the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States);
  - (a) with respect to which an **Insured** under this Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability; or
  - (b) resulting from the hazardous properties of nuclear material and with respect to which
    - (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
    - (ii) **the Insured** is or, had this Policy not been issued, would be entitled to indemnity from the United States of America or any agency thereof under any agreement entered into by the United States of America or any agency thereof with any person or organization;
- (2) medical or surgical relief or expenses incurred with respect to **Bodily Injury**, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization in

the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States);

- (3) injury, sickness, disease, death or destruction resulting from hazardous properties of nuclear material, if:
  - (a) the nuclear material
    - (i) is at any nuclear facility owned by or operated by or on behalf of an **Insured** in the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States), or
    - (ii) has been discharged or dispersed therefrom; or
  - (b) such nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed by or on behalf of an **Insured** in the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States); or
  - (c) the injury arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of a nuclear facility, but if such facility is located within the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States), this subparagraph (c) applies only to injury to or destruction of property at such nuclear facility.

As used in this exclusion, the following definitions apply:

- (a) "hazardous properties" include radioactive, toxic or explosive properties;
- (b) "nuclear material" means source material, special nuclear material or by-product material;
- (c) "source material," "special nuclear material" and "by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in law amendatory thereof;
- (d) "spent fuel" means any fuel element or fuel component, solid or liquid which has been used or exposed to radiation in a nuclear reactor;
- (e) "waste" means any waste material:
  - (i) containing by-product materials; and
  - (ii) resulting from the operation by a person or organization of a nuclear facility included within the definition of nuclear facility under clauses (i) or (ii) of subparagraph (f) below;

- (f) "nuclear facility" means:
  - (i) any nuclear reactor;
  - (ii) any equipment or device designed or used for (x) separating the isotopes of uranium or plutonium, (y) processing or utilizing spent fuel, or (z) handling, processing or packaging waste;
  - (iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of **the Insured** at such premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or combination thereof or more than 250 grams of uranium 235; or
  - (iv) any structure, basin, excavation, premises or place prepared for storage or disposal of waste;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (g) "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (h) with respect to injury or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property or loss of the use thereof.

**L. RADIOACTIVE CONTAMINATION (Outside the United States)**

Any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity outside the United States, its territories or possessions, Puerto Rico or the Canal Zone (while under legal possession and control of the United States) from any nuclear fuel or from any nuclear waste from the combustion, fission or fusion of nuclear fuel.

**M. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974**

Any liability arising out of any negligent act, error or omission of **the Insured**, or any other person for whose acts **the Insured** is legally liable, in the Administration of **the Insured's** Employee Benefits Programs, including, without limitation, liability or alleged liability under the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of state statutory law or common law or any other law.

As used in this exclusion, the following definitions apply:

- (1) "Employee Benefits Programs" means group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social benefits, disability benefits, and any other similar employee benefits.

- (2) "Administration" means:
- (a) giving counsel to employees with respect to the Employee Benefits Programs;
  - (b) interpreting the Employee Benefits Programs;
  - (c) handling of records in connection with the Employee Benefits Programs; or
  - (d) effecting enrollment, termination or cancellation of employees under the Employee Benefits Programs.

**N. SECURITIES, ANTITRUST, ETC.**

Any liability arising under any statute, law, ordinance, rule or regulation, whether established pursuant to legislative, administrative, judicial, executive or other authority, of any nation or federal, state, local or other governmental or political body or subdivision thereof relating to:

- (1) the purchase, sale or distribution of securities or offers to purchase or sell securities, or investment counseling or management, including liability under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the so-called "blue-sky" laws of the various states or other jurisdictions;
- (2) antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitation, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Lanham Act and the Hart-Scott-Rodino Antitrust Improvements Act;
- (3) fraud or breach of fiduciary duty;
- (4) criminal penalties;
- (5) the failure to pay when due any governmental tax including income, excise, property, value added and sales tax, or tariff, license fee or other governmental fee which is incidental to the conduct of business, or any assessment, fine, or penalty related thereto;
- (6) copyright, patent or trademark infringement other than **Advertising Liability** with respect to copyrights, titles or slogans;
- (7) any defect in or impairment to title to real property, including fixtures, whether or not owned by an **Insured**;
- (8) disclosure relating to, or other regulation of sales of or offers to sell, real property;
- (9) employee, officer or director dishonesty; or
- (10) any liability of an employee, officer or director of an **Insured** to such **Insured**.



**O. KNOWN OCCURRENCES**

Any liability arising from any **Occurrence** of which any **Executive Officer** or any manager or equivalent-level employee in **the Insured's Risk Management, Insurance or Law Department** was aware prior to the **Inception Date**, irrespective of whether such person believed or expected such **Occurrence** would involve this Policy.

**P. OCCURRENCES AFTER NOTICE OF INTEGRATED OCCURRENCE**

Except as provided in Section IV, Condition K. (4), any **Occurrence** which is included in an **Integrated Occurrence**, and which takes place after **the Insured** has given **Notice of Integrated Occurrence**; however, this exclusion shall not apply to **Occurrences** which take place after **Notice of Integrated Occurrence** and which arise from:

(1) the **Insured's Products** over which **the Insured** has relinquished possession by selling, distributing, giving away or abandoning such **Insured's Products**; , or

(2) **Completed Operations** which are deemed completed

prior to **Notice of Integrated Occurrence**.

**Q. OCCURRENCES EXCLUDED FROM INTEGRATED OCCURRENCE**

Subject to Section III, Exclusion O. and except as provided in Section IV, Condition K. (4), any **Occurrence**:

(1) which is included in an **Integrated Occurrence**; and

(2) of which any **Executive Officer** or any manager or equivalent-level employee in **the Insured's Risk Management, Insurance or Law Department** first became aware more than five (5) years prior to **Notice of Integrated Occurrence**.

**R. EXCLUSIONS APPLICABLE TO ADVERTISING LIABILITY**

**Advertising Liability** arising out of:

(1) breach of contract, other than misappropriation of advertising ideas under an implied contract;

(2) infringement of registered trademarks, service marks or trade name by use thereof, but this exclusion shall not apply to titles or slogans;

(3) the failure of goods, products or services to conform with advertised quality or performance;

(4) the wrong description of the price of goods, products or services; or

(5) an offense committed by an **Insured** whose business is advertising, broadcasting, publishing or telecasting.

**S. CERTAIN CONTRACTUAL LIABILITY**

Any liability assumed by **the Insured** under contract or agreement if such assumption takes place after the commencement of the **Occurrence** giving rise to such liability. This exclusion does not apply to liability of **the Insured** with respect to a former subsidiary, affiliate or associated company which was **an Insured** under this Policy and which **the Insured** has sold, transferred or otherwise divested after the **Inception Date**.

## SECTION IV - CONDITIONS

### A. APPEALS

In the event **the Insured** or **the Insured's** underlying insurers elect not to appeal a judgment in excess of the retention, or the underlying limits and self-insured retentions, as the case may be, the Company may elect to make such appeal at its own cost and expense and shall be liable for the taxable costs and disbursements of such appeal and post-judgment interest on the judgment appealed from accruing during such an appeal. In no event, however, shall liability of the Company for **Ultimate Net Loss** exceed the applicable limit of liability set forth in Item 2 of the Declarations plus the costs and expenses of such appeal.

### B. ARBITRATION

- (1) (a) Any and all disputes arising under or relating to this Policy, including its formation and validity, and whether between the Company and **the Insured** or any person or entity deriving rights through or asserting rights on behalf of **the Insured**, shall be finally and fully determined in Bermuda under the provisions of The Bermuda International Conciliation and Arbitration Act 1993 (exclusive of the Conciliation Part of such Act), as may be amended and supplemented, by a Board composed of three arbitrators to be selected for each controversy as follows:
  - (b) Any party to the dispute may, once a claim or demand on his part has been denied or remains unsatisfied for a period of twenty (20) calendar days by any other, notify the others in writing of its demand for arbitration of the matter in dispute, and at the time of such notification the party demanding arbitration shall notify any other party or parties of the name of the arbitrator selected by it. Any party or parties who have been notified shall within thirty (30) calendar days thereafter select an arbitrator and notify the party demanding arbitration of the name of such second arbitrator. If the party or parties notified of a demand for arbitration shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the party who first served notice of a demand for arbitration may, within an additional period of thirty (30) calendar days, apply to a judge of a court of competent jurisdiction in Bermuda for the appointment of a second arbitrator and in such a case the arbitrator appointed by such a judge shall be deemed to have been nominated by the party or parties who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within thirty (30) calendar days after the appointment of the second arbitrator choose a third arbitrator. In the event of the failure of the first two arbitrators to agree on a third arbitrator within said thirty (30) calendar day period, any of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, apply to a judge of a court of competent jurisdiction in Bermuda for the appointment of a third arbitrator, and in such case the person so appointed shall be deemed and shall act as the third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Board

of Arbitration for the controversy in question shall be deemed fixed. All claims, demands, denials of claims and notices pursuant to this Condition B. shall be given in accordance with Condition R. of this Section IV.

- (2) The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable time and place for the arbitration hearing and may in such written notice or at the time of the commencement of the hearing, prescribe reasonable rules and regulations governing the course and conduct of the hearing including without limitation, document and deposition discovery by the parties.
- (3) The Board shall, within ninety (90) calendar days following the conclusion of the hearing, render its written decision on the matter or matters in controversy and shall cause a copy thereof to be served on all the parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board, and the same shall be final and binding on the parties thereto. Such decision shall be a complete defense to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Judgment upon the arbitration award may be entered in any court of competent jurisdiction.
- (4) Each party shall bear the costs of its own arbitrator, and all costs of the third arbitrator and of the arbitration shall be borne equally by the parties.
- (5) The Company and **the Insured** agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the Company by any of **the Insured's** other insurers in any jurisdiction or forum other than that set forth in this Condition B., **the Insured** will in good faith take all reasonable steps requested by the Company to assist the Company in obtaining a dismissal of these claims (other than on the merits) and will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the Company would have been liable to such insurers for indemnity or contribution pursuant to this Policy. **The Insured** shall be entitled to assert claims against the Company for coverage under this Policy, including, without limitation, for amounts by which **the Insured** reduced its judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the Company and **the Insured** pursuant to this Condition B.; provided, however, that the Company in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this Policy and any other defenses, other than jurisdiction defenses, as it would have been entitled to raise in the action or proceeding with such insurers.

### C. ASSIGNMENT

Assignment of interest under this Policy shall not bind the Company unless and until its consent is endorsed hereon.

#### D. ASSISTANCE AND COOPERATION

- (1) The Company shall not be called upon to assume charge of the settlement or defense of any **Claim** made or suit brought or proceeding instituted against an **Insured**, but the Company shall have the right and shall be given the opportunity to associate with **the Insured** or **the Insured's** underlying insurers or both in the defense and control of any **Claim**, suit or proceeding relative to any **Occurrence** where the **Claim** or suit involves, or appears reasonably likely to involve, the Company, in which event **the Insured** and the Company shall cooperate in all things in the defense of such **Claim**, suit or proceeding.
- (2) **The Insured** shall furnish promptly all information reasonably requested by the Company with respect to any **Occurrence**, both with respect to any **Claim**, suit or proceeding against **the Insured** and pertaining to coverage under this Policy.
- (3) Those expenses incurred by the Company on its own behalf in connection with claims representation pursuant to Paragraph (1) of this Condition D. shall be at its own expense and shall not be part of **Ultimate Net Loss**.

#### E. CANCELLATION

- (1) Coverage A under this Policy may be cancelled:
  - (a) on the basis of a return premium of ninety percent (90%) of the unearned pro rata premium, at any time by the **Named Insured** by delivering written notice to the party listed in Item 8(b) of the Declarations stating when, but in no event prior to the date such notice is received, cancellation shall be effective; or
  - (b) on a pro rata return premium basis, at any time by the Company by delivering written notice to the **Named Insured** stating when, not less than ninety (90) days from the date the notice is received, cancellation shall be effective.
- (2) Coverage A will be cancelled:
  - (a) automatically retroactive to the anniversary date of the **Annual Period**, if the premium or proof of payment thereof is not received by the Company within five (5) days of the commencement of such **Annual Period**; or
  - (b) on a pro rata return premium basis, effective fifteen (15) days after delivering written notice to the **Named Insured**, if any payment of premium, other than payment of premium due and payable at the anniversary date of the **Annual Period**, or premium due under Condition K. of this Section IV, is not made when due and payable.
- (3) Subject to Paragraph (4) below, Coverage B may not be cancelled by either the **Named Insured** or the Company, except Coverage B will be automatically cancelled as of its anniversary date if any payment of Coverage B premium is not made by such date.
- (4) Coverage A and B may be cancelled by the Company on a pro rata return premium

basis effective not less than five (5) days after delivering written notice to the **Named Insured**, if any **Insured** files or commences a suit or proceeding against the Company other than as provided in Condition B., of this Section IV, except for the purpose of effectuating arbitration or enforcing an arbitration award returned pursuant to Condition B.

#### F. CHANGES

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy. The terms of this Policy may not be waived or changed, except by written endorsement issued to form a part hereof and signed by an authorized representative of the Company.

#### G. CONSENT TO JURISDICTION

Solely for the purpose of effectuating arbitration under Condition B. of this Section IV, including the enforcement of any award entered in such arbitration, the Company agrees as follows:

- (1) The Company, at the request of **the Insured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any Court of competent jurisdiction of the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon the party named in Item 8(a) of the Declarations and that in any suit instituted against it to effectuate arbitration or to enforce any award entered in such arbitration, the Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal;
- (2) The party named in Item 8(a) of the Declarations is authorized and directed to accept service of process on behalf of the Company in any suit or action within the scope of this Condition G. or upon the request of **the Insured** to give a written undertaking to **the Insured** that such party will enter a general appearance on the Company's behalf in the event such a suit shall be instituted;
- (3) Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any suit or action by **the Insured** within the scope of this Condition G., and hereby designates the party named in Item 8(a) of the Declarations as the person to whom the said officer is authorized to mail such process or a true copy thereof.

## H. CROSS LIABILITY

In the event of a **Claim** made by reason of **Personal Injury** sustained by an employee of one **Insured** hereunder for which another **Insured** hereunder is or may be liable, this Policy shall cover such **Insured** against whom a **Claim** is made in the same manner as if separate policies had been issued to each **Insured** hereunder. Nothing contained herein shall operate to increase the Company's limits of liability as set forth in Item 2 of the Declarations.

## I. CURRENCY

The **Ultimate Net Loss** and premiums under this Policy are payable in the respective currency(ies) set forth in Items 2 and 7 of the Declarations. Unless otherwise specified, such currency shall be United States Dollars.

## J. DATES AND TIMES

All dates and times referred to in this policy shall be governed by the prevailing date and time at the address of the **Named Insured** shown in Item 1(b) of the Declarations.

## K. DISCOVERY PERIOD

- (1) In the event of **Termination** of Coverage A, other than pursuant to Condition E., (2) or (4) of this Section IV, the **Named Insured**, prior to the **Termination Date** of such Coverage A, may purchase Coverage B for the following **Annual Period** for such **Insureds** as the **Named Insured** shall designate, by giving the Company written notice of such purchase and by paying to the Company the **Annual Period** premium set forth in the attached Schedule D no later than the date of commencement of such **Annual Period**.
- (2) In the event that the **Named Insured** purchases Coverage B pursuant to Paragraph (1) of this Condition K., the **Named Insured** may elect to purchase such Coverage B for any number of additional **Annual Periods** by giving the Company written notice of each purchase for a subsequent **Annual Period** and paying to the Company the corresponding **Annual Period** premium set forth in the attached Schedule D, no later than the end of the **Annual Period** for which such Coverage B was previously purchased. If the **Named Insured** shall fail to purchase Coverage B for any **Insured** for any **Annual Period**, it may not purchase Coverage B for any **Insured** for any subsequent **Annual Period**.
- (3) Except as provided in Section I, B. (2) and Paragraph (4) of this Condition K., for the purpose of determining the applicable limits of liability, retention, terms, conditions and exclusions of Coverage B, notice of an **Occurrence** or **Claim** given during the **Annual Period** of Coverage B shall be deemed to have been given on the last day of the final **Annual Period** in the **Policy Period**. The aggregate limit of liability shall not be reinstated for the **Discovery Period**.
- (4) If the **Named Insured** gives **Notice of Integrated Occurrence** during the **Discovery Period**, only those **Occurrences** which otherwise fall within the definition of **Integrated Occurrence** and which commenced before the **Termination Date** of

Coverage A shall be included in an **Integrated Occurrence** for all purposes under this Policy.

#### L. **FORMER SUBSIDIARIES, AFFILIATES AND ASSOCIATED COMPANIES**

If any subsidiary, affiliate or associated company of the **Named Insured** which is an **Insured** hereunder shall cease to be such a subsidiary, affiliate or associated company of the **Named Insured**, then at such time Coverage A shall automatically terminate as to such former subsidiary, affiliate or associated company. Coverage A shall continue with respect to the **Named Insured** and any other entity which remains an **Insured** for its own liability, if any, arising out of its prior ownership of or affiliation or association with the former subsidiary, affiliate or associated company. At the time of such automatic **Termination** of Coverage A, Coverage B shall, unless the **Named Insured** otherwise specifies, automatically incept as to such former subsidiary, affiliate or associated company and continue in force for the balance of the **Annual Period**, without additional payment or return of any premium. Prior to the end of such **Annual Period**, such former subsidiary, affiliate or associated company may, provided the **Named Insured** gives written consent to the Company, elect to continue Coverage B beyond the end of such **Annual Period** for such terms and conditions and additional premium as may be agreed with the Company.

#### M. **GOVERNING LAW AND INTERPRETATION**

- (1) This Policy shall be construed in accordance with the substantive laws of the State of New York, except insofar as such laws:
  - (a) may prohibit payment in respect of punitive damages covered hereunder;
  - (b) pertain to regulation under the New York Insurance Law, or regulations issued by the Insurance Department of the State of New York, pursuant thereto, applying to insurers doing insurance business or of issuance or delivery of policies of insurance within the State of New York; or
  - (c) are inconsistent with any express provision of this Policy.
- (2) The terms, conditions and exclusions of this Policy are to be construed in an evenhanded fashion as between **the Insured** and the Company. Without limitation, where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms, conditions and exclusions of this Policy, without regard to authorship of the language; without any presumption, arbitrary interpretation, construction in favor of either **the Insured** or the Company or reference to the "reasonable expectations" of either party; and without reference to parol or other extrinsic evidence.

#### N. **HEADINGS**

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.



## O. INSPECTION

The Company shall be permitted but not obligated to inspect **the Insured's** property, operations, books, records and files at any time. Neither the Company's right to make inspections nor the making thereof or of a report thereon shall constitute an undertaking on behalf of or for the benefit of **the Insured** or others to determine or warrant that such property or operations are safe or are in compliance with any statute, law, ordinance, rule or regulation.

## P. LIABILITY OF THE COMPANY

The **Named Insured** and **the Insured** agree that the liability and obligations of the Company hereunder shall be satisfied from the funds of the Company alone and that the individual shareholders of the Company shall have no liability hereunder to the **Named Insured** or **the Insured**.

## Q. LOSS PAYABLE

- (1) Liability under this Policy for **Ultimate Net Loss** with respect to any **Occurrence** shall not attach unless and until:
  - (a) **the Insured's** underlying insurer(s) or **the Insured** shall have paid the greater of the amount of any applicable underlying limits and self-insured retentions described in Section II, A. (1) or the applicable retention described in Section II, A. (2); and
  - (b) **the Insured's** liability covered hereunder shall have been fixed and rendered certain either by final judgment against **the Insured** after actual trial or by settlement approved in writing by the Company, and the **Insured** shall have paid such judgment or settlement.
- (2) **The Insured** shall make a definite demand for payment for any amount of the **Ultimate Net Loss** for which the Company may be liable under this Policy within twelve (12) months after **the Insured** shall have paid such amount. If any subsequent payments shall be made by **the Insured** on account of the same **Occurrence** or **Claim**, additional demands for payment shall be made similarly from time to time. Such losses shall be due and payable by the Company within thirty (30) days after they are respectively demanded and proven in conformity with this Policy. If judgment is rendered, settlement is denominated or another element of **Damages** is stated in a currency other than the applicable currency under Condition I. of this Section IV, payment under this Policy shall be made in such applicable currency at the rate of exchange governing **the Insured's** payment of **Ultimate Net Loss**, or, if no such rate is specified, the rate prevailing on the date **the Insured** makes payment of **Ultimate Net Loss**.
- (3) Payment of any judgment or settlement by **the Insured** or any underlying insurer of any amounts within the per **Occurrence** Retention or underlying insurance in a currency other than the applicable currency under Condition I. of this Section IV shall be deemed to have been made in such applicable currency at the rate of

exchange governing such payment, or if no such rate is specified, at the rate prevailing on the date **the Insured** or any underlying insurer makes such payment.

#### R. NOTICE

All notices under any provision of this Policy shall be in writing and given by hand, prepaid express courier, airmail or telecopier properly addressed to the appropriate party. Notice to any **Insured** may be given to the **Named Insured** at the address shown in Item 1(b) of the Declarations or to such other person as the **Named Insured** shall designate in Item 6 of the Declarations. Notice to the Company shall be given to the party indicated in Item 8(a) or (b), as applicable, of the Declarations. Notice given as above shall be effective only upon actual receipt by the respective party designated in the Declarations.

#### S. OTHER INSURANCE

- (1) Subject to Section III, Exclusion A., if other valid and collectible insurance with any other insurer, whether issued prior hereto, simultaneously herewith or subsequent hereto, is available to **the Insured** for **Ultimate Net Loss** covered by this Policy, other than insurance which is expressly and specifically in excess of the limits of, or quota share on the same layer as this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance.
- (2) If this Policy shall be deemed or required to contribute to **Ultimate Net Loss** with other insurance and such contribution arises in whole or in part from the failure of the **Named Insured** to list such other insurance on Schedule B hereto in accordance with the instructions for such Schedule B, then the **Named Insured** shall indemnify the Company for the amount of any such contribution, and this Policy shall apply as if such other insurance had been so listed.

#### T. POLICY EXTENSION

Subject to Condition E. (2)(a) of this Section IV, Coverage A of this Policy may be extended at the end of each **Annual Period** for another **Annual Period**, subject only to agreement between the Company and the **Named Insured** before such date as to the applicable premium and such other terms and conditions as the Company and the **Named Insured** may mutually deem appropriate.

#### U. PREMIUM

The premium for this Policy is a flat premium and is not subject to adjustment except as specifically provided herein. The premium shall be paid to the Company.

#### V. REINSTATEMENT

- (1) At the time of each annual Policy extension of Coverage A, the aggregate limit of liability set forth in Item 2(b) of the Declarations shall, unless otherwise agreed by the **Named Insured** and the Company, automatically be reinstated with respect to covered **Occurrences** of which notice is first given during the following **Annual Period**. There shall be no separate premium charged for this automatic reinstatement in addition to that provided for in Condition T. of this Section IV.

- (2) If during any **Annual Period** of Coverage A, the aggregate limit of liability set forth in Item 2(b) ("Original Aggregate Limit") of the Declarations is or may be impaired by virtue of **Occurrence(s)** of which notice has been given previously during such **Annual Period**, then the **Named Insured** shall be entitled to one reinstatement of all or any portion of such aggregate limit, based on the following terms and conditions:
- (a) Reinstatement must be elected in writing by the **Named Insured**, which election shall specify the amount being reinstated ("Reinstatement Amount"), not to exceed an amount equal to the Original Aggregate Limit. Such reinstatement shall not be effective until the reinstatement premium described in Paragraph (3) of this Condition V. has been paid to the Company. The effective date of reinstatement ("Reinstatement Date") shall be the date the Company receives such reinstatement premium.
  - (b) All **Occurrences** of which
    - (i) **the Insured** is aware prior to the Reinstatement Date, and
    - (ii) notice is first given to the Company:
      - x. during that portion of the **Annual Period** of Coverage A prior to the Reinstatement Date, (and during any applicable **Discovery Period**) and
      - y. during that portion of the **Annual Period** of Coverage A (and during any applicable **Discovery Period**) on or after the Reinstatement Date,shall be subject to the Original Aggregate Limit;
  - (c) Only those **Occurrences** of which
    - (i) **the Insured** is not aware prior to the Reinstatement Date, and
    - (ii) notice is first given to the Company during that portion of the **Annual Period** of Coverage A on or after the Reinstatement Date (and during any applicable **Discovery Period**)shall be subject to Reinstatement Amount.
  - (d) For purposes of Subparagraphs (b) and (c) of this Paragraph (2), **the Insured** shall be deemed to have been aware of an **Occurrence** if an **Executive Officer** or manager or equivalent-level employee in **the Insured's** Risk Management Insurance or Law Department was aware of such **Occurrence** irrespective of whether such person believed or expected such **Occurrence** was likely to involve this Policy.
  - (e) The aggregate limit of liability for all **Occurrences** described in Subparagraph (c) of this Paragraph (2) shall be the sum of:
    - (i) any unused portion of the Original Aggregate Limit and

(ii) the Reinstatement Amount.

In no event shall the aggregate limit of liability under this Subparagraph (2)(e) exceed the Original Aggregate Limit.

- (f) In no event shall the aggregate limit of liability of the Company in respect of all **Occurrences** of which notice is first given to the Company during any **Annual Period** exceed the sum of the Original Aggregate Limit and the Reinstatement Amount for that **Annual Period**.
- (3) The reinstatement premium shall be an amount determined by the Company, but in no event shall this exceed one hundred and twenty-five percent (125%) of the greater of:
- (a) the twelve (12) month premium for the **Annual Period** in which the reinstatement takes place; or
  - (b) the total premium for the **Annual Period** in which the reinstatement takes place.
- (4) The election of a **Discovery Period** pursuant to Condition K. of this Section IV shall not reinstate the aggregate limit otherwise applicable under this Policy.

#### W. REPRESENTATION

The **Named Insured** or such other person as it shall designate in Item 6 of the Declarations shall represent and have authority to bind the **Named Insured** and any and all **Insureds** hereunder in all matters under this Policy, including, without limitation, payment of premium, negotiation of the terms of renewal or reinstatement and the adjustment, settlement and payment of **Claims**. The **Named Insured**, by notice to the Company in writing, may designate a substitute representative, which representative shall be deemed to be designated in Item 6 of the Declarations, effective as of the date such notice is received by the Company or as of such date as otherwise agreed with the Company.

#### X. SUBROGATION

In the event of any payment hereunder, the Company shall be entitled to exercise rights of subrogation and **the Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. In such case, the Company will act in concert with all other interested parties, including **the Insured**, concerned in the exercise of rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any parties, including **the Insured**, that shall have paid an amount over and above any payment hereunder shall first be reimbursed up to the amount paid by them. The Company is then to be reimbursed out of any balance then remaining up to the amount paid by it. Lastly, the parties of whose interests this coverage is in excess, including **the Insured**, are entitled to claim the residue, if any. Expenses incurred in obtaining recoveries shall be apportioned among the interests sharing in such recovery in accordance with each such interest's proportionate share of the recovery.

## SECTION V - NOTICE OF OCCURRENCE AND CLAIM

### A. MANDATORY NOTICE

- (1) If an **Executive Officer**, or a manager or equivalent-level employee of **the Insured's** Risk Management, Insurance or Law Department shall become aware of an **Occurrence** or **Claim** likely to involve this Policy, **the Insured** shall, as a condition precedent to the rights of any **Insured** under this Policy, give written notice thereof to the Company providing the information and documents specified in Paragraph C. of this Section V.
- (2) Such notice must be given as soon as practicable and, in any event, during the **Policy Period** or the **Discovery Period**, if applicable, or in accordance with Section III, Exclusion J. (2)(c), if applicable. Failure to provide written notice as prescribed above shall result in a forfeiture of any rights to coverage hereunder in respect of such **Occurrence** or **Claim**.

### B. PERMISSIVE NOTICE OF INTEGRATED OCCURRENCE

Subject to Paragraph A. of this Section V, **the Insured** may at its option give written notice to the Company of any **Occurrence** or **Claim** as an **Integrated Occurrence**. Such notice must be designated, in writing, as a **Notice of Integrated Occurrence**. Subject to Section III, Exclusions P. and Q., once **the Insured** gives **Notice of Integrated Occurrence**, all **Occurrences** that are the subject of such **Notice of Integrated Occurrence** and that fall within the definition of **Integrated Occurrence** shall be treated as such for all purposes under this Policy irrespective of whether this Policy has been terminated after **the Insured** has given **Notice of Integrated Occurrence** or whether **Notice of Integrated Occurrence** is given in any **Discovery Period**. The limit of liability applicable to such **Integrated Occurrence** shall be the limit described in Section II of this Policy.

### C. NOTICE REQUIREMENTS

- (1) Notice of **Occurrence**, to be effective, must be specifically designated in writing as such, and must specify with reasonable particularity, to the extent such information is available:
  - (a) in the case of an **Occurrence** under Section VI, Definition Z. (1), the nature of the event, exposure to conditions, or acts or omissions, or offense, as the case may be, and when such event, exposure to conditions, or acts or omissions, or offense actually or allegedly commenced;
  - (b) in the case of an **Occurrence** under Section VI, Definition Z. (2):
    - (i) a description of the **Insured's Products** involved and the characteristic thereof actually or allegedly giving rise to the **Occurrence**;
    - (ii) the period during which such **Insured's Products** were sold or otherwise distributed by **the Insured**; and

- (iii) the date when **the Insured** first learned of the actual or alleged **Personal Injury or Property Damage** arising out of the **Occurrence** and the circumstances by which **the Insured** came to such knowledge;
- (c) in the case of **Notice of Integrated Occurrence**, the date when and the circumstances by which **the Insured** first learned of:
- (i) with respect to Section VI, Definition V. (1), the same cause, hazard, defect, failure to warn or instruct or any combination thereof;
  - (ii) with respect to Section VI, Definition V. (2), the continuous, intermittent or repeated exposure to the same general harmful conditions or acts or omissions of another over a period longer than thirty (30) consecutive days; or
  - (iii) with respect to Section VI, Definition V. (3) the multiple or repeated broadcasts or publications of the same or substantially similar material which resulted in actual or alleged **Personal Injury, Property Damage or Advertising Liability**;
- (d) with respect to all **Occurrences**:
- (i) the nature of the actual or alleged **Personal Injury, Property Damage or Advertising Liability** involved;
  - (ii) the identity of parties who actually or allegedly suffered such **Personal Injury, Property Damage or injury from Advertising Liability**;
  - (iii) the dates when or period(s) over which such parties actually or allegedly suffered such **Personal Injury, Property Damage or injury from Advertising Liability**; and
  - (iv) a description of parties who may in the future suffer **Personal Injury, Property Damage or injury from Advertising Liability** arising out of the **Occurrence**, and a description of any efforts undertaken or contemplated to prevent or mitigate such **Personal Injury, Property Damage or injury from Advertising Liability**.
- (2) **Notice of Claim**, to be effective, must be specifically designated in writing as such and must include to the extent such information is available:
- (a) all information required in Paragraph C. (1) of this Section V with respect to notice of **Occurrence**, except to the extent previously provided in a notice of **Occurrence or Claim** to the Company;
  - (b) copies of any written **Claim**, demand, notice, summons, complaint or other process received by **the Insured** or its representatives or agents; and

- (c) the identity of all parties asserting **Claims** arising out of the same **Occurrence**, except to the extent that such information has been previously provided in a notice of **Occurrence** or **Claim** to the Company.
- (3) Information submitted to the Company's underwriter(s), including applications, whether new, renewal or supplemental, shall not constitute notice of **Occurrence** or **Claim** under this Section V.

## SECTION VI - DEFINITIONS

- A. **Advertising Liability** means liability on account of one or more of the following offenses:
- (1) libel, slander or defamation;
  - (2) any infringement of copyright or of title or of slogan;
  - (3) piracy or misappropriation of ideas under an implied contract;
  - (4) any invasion of right of privacy;
- committed in any advertisement, publicity article, broadcast or telecast and arising out of **the Insured's** advertising activities.
- B. **Aircraft** means any heavier than air or lighter than air aircraft, missile or spacecraft.
- C. **Annual Period** means:
- (1) with respect to Coverage A:
    - (a) except as provided in (1)(b) below, the twelve (12) month period commencing on the **Inception Date** and on each anniversary thereof; and
    - (b) for any **Insured** which becomes an **Insured** after the **Inception Date** stated in Item 4 of the Declarations, the first **Annual Period** shall run from the date such **Insured** becomes an **Insured**, until the anniversary of the Coverage A **Annual Period** in which it became an **Insured**; thereafter, the **Annual Period** shall be the twelve (12) month period commencing on each anniversary thereof.
  - (2) with respect to Coverage B:
    - (a) except as provided in (2)(b) below, the twelve (12) month period commencing on the **Termination Date** of Coverage A and on each anniversary thereof;
    - (b) for an **Insured** which ceases to be an **Insured** as provided in Section IV, Condition L., the first **Annual Period** shall run from the date such **Insured** ceases to be an **Insured** until the next anniversary date or earlier **Termination Date** of the Coverage A **Annual Period** in which it ceased to be an **Insured**; thereafter, the **Annual Period** shall be the twelve (12) month period commencing on each anniversary thereof.
- D. **Automobile** means a land motor vehicle, trailer or semi-trailer.
- E. **Bodily Injury** means physical injury to the body of a person including death at any time resulting therefrom.
- F. **Claim** means an oral or written demand against an **Insured** for **Damages** covered by this Policy, and includes the threat or initiation of any suit or arbitration proceeding or a request for a tolling agreement.



**G. Completed Operations** means the **Insured's** "operations" which have been completed. "Operations" include materials, parts or equipment furnished in connection therewith.

(1) "Operations" shall be deemed completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of **the Insured** under the contract have been completed;
- (b) when all operations to be performed by or on behalf of **the Insured** at the site of the operations have been completed;
- (c) when the portion of the work out of which the **Personal Injury** or **Property Damage** arises has been put to its intended use by any person or organization other than another contractor or sub-contractor engaged in performing operations for a principal as a part of the same project.

(2) Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise completed, shall be deemed completed.

(3) "Operations" does not include:

- (a) operations in connection with the transportation of property, unless the **Personal Injury** or **Property Damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof; or
- (b) the existence of tools, uninstalled equipment or abandoned or unused materials.

**H. Covered Pollution Peril** means **Hostile Fire**, lightning or windstorm; the collision of an **Aircraft** with a building, another ground-based fixed structure or **Watercraft**; the upset, overturn or collision of an **Automobile** or rail vehicle; or, solely with respect to an aboveground structure, explosion, implosion or structural collapse.

**I. Damages** means all forms of compensatory damages, monetary damages and statutory damages; punitive or exemplary damages; and costs of compliance with equitable relief, which **the Insured** shall be obligated to pay, and has paid, by reason of judgment or settlement for liability on account of **Personal Injury**, **Property Damage** and **Advertising Liability**, and shall include **Defense Costs**. **Damages** does not include civil or criminal fines or penalties.

Any consideration paid by **the Insured**, or by **the Insured's** underlying insurers, other than in legal currency shall be valued at the lower of market value or **the Insured's** cost, without regard to **the Insured's** profit or other benefit inuring to **the Insured**.

**J. Defense Costs** means reasonable and necessary legal costs and other expenses incurred by or on behalf of **the Insured** in connection with the defense of any **Claim** for which indemnity is sought under this Policy, including attorneys' fees and disbursements, law costs, premiums on attachment or appeal bonds, post-judgment interest, expenses for experts and for investigation, adjustment, appraisal and settlement, excluding the salaries, wages and benefits of **the Insured's** employees and **the Insured's** administrative expenses.

- K. Discharge** means discharge, emission, dispersal, migration, release or escape.
- L. Discovery Period** means:
- (1) except as provided in Paragraph (2) of this Definition, the twelve (12) month period, commencing upon the **Termination Date** of Coverage A of this Policy and ending:
    - (a) on the expiration of the last **Annual Period** for which Coverage B is purchased as provided in Section IV, Condition K., or
    - (b) the **Termination Date** of Coverage B pursuant to Section IV, Condition E. (4).
  - (2) with respect to an **Insured** which ceases to be an **Insured**, the Coverage B period as provided in Section IV, Condition L.
- M. Employment Liability** means any liability, other than liability for **Bodily Injury** or **Property Damage**, arising from or in any way in connection with the actual, alleged, potential or attempted employer-employee relationship.
- N. Executive Officer** means the Chairman of the Board, President, Chief Executive, Operating, Financial and Administrative Officers, Managing Director, or any Executive or Senior Vice President of the **Insured**. Where any such title is inapplicable, the equivalent level of personnel shall be substituted.
- O. Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- P. Inception Date** means the Inception Date set forth in Item 4 of the Declarations; provided, however, that with respect to any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Inception Date** for that **Insured** shall be the date such person or entity became an **Insured** under this Policy, or such other date as may be agreed in writing between the **Named Insured** and the Company.
- Q. Incidental Watercraft Use** means use by the **Insured** of any owned, non-owned, leased or chartered **Watercraft** less than seventy five (75) feet in length but shall not include use of **Watercraft**:
- (1) for the commercial carriage for a fee of passengers or cargo for parties other than the **Insured**;
  - (2) in connection with the commercial provision of marine services to others for a fee;
  - (3) held in inventory or otherwise for lease or charter to another person by an **Insured** in the business of lease or charter of **Watercraft**; or
  - (4) owned by a party other than the **Insured** which is being serviced, maintained, fueled, or tested or otherwise is in the temporary care, custody or control of the **Insured** in connection with any business operations of the **Insured** relating to **Watercraft** servicing, maintenance, fueling, testing, storage or associated or similar matters.

- K. **Discharge** means discharge, emission, dispersal, migration, release or escape.
- L. **Discovery Period** means:
- (1) except as provided in Paragraph (2) of this Definition, the twelve (12) month period, commencing upon the **Termination Date** of Coverage A of this Policy and ending:
    - (a) on the expiration of the last **Annual Period** for which Coverage B is purchased as provided in Section IV, Condition K., or
    - (b) the **Termination Date** of Coverage B pursuant to Section IV, Condition E. (4).
  - (2) with respect to an **Insured** which ceases to be an **Insured**, the Coverage B period as provided in Section IV, Condition L.
- M. **Employment Liability** means any liability, other than liability for **Bodily Injury** or **Property Damage**, arising from or in any way in connection with the actual, alleged, potential or attempted employer-employee relationship.
- N. **Executive Officer** means the Chairman of the Board, President, Chief Executive, Operating, Financial and Administrative Officers, Managing Director, or any Executive or Senior Vice President of the **Insured**. Where any such title is inapplicable, the equivalent level of personnel shall be substituted.
- O. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.
- P. **Inception Date** means the Inception Date set forth in Item 4 of the Declarations; provided, however, that with respect to any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Inception Date** for that **Insured** shall be the date such person or entity became an **Insured** under this Policy, or such other date as may be agreed in writing between the **Named Insured** and the Company.
- Q. **Incidental Watercraft Use** means use by the **Insured** of any owned, non-owned, leased or chartered **Watercraft** less than seventy five (75) feet in length but shall not include use of **Watercraft**:
- (1) for the commercial carriage for a fee of passengers or cargo for parties other than the **Insured**;
  - (2) in connection with the commercial provision of marine services to others for a fee;
  - (3) held in inventory or otherwise for lease or charter to another person by an **Insured** in the business of lease or charter of **Watercraft**; or
  - (4) owned by a party other than the **Insured** which is being serviced, maintained, fueled, or tested or otherwise is in the temporary care, custody or control of the **Insured** in connection with any business operations of the **Insured** relating to **Watercraft** servicing, maintenance, fueling, testing, storage or associated or similar matters.

- R. **Industrial Aid Aircraft** means an Aircraft owned, leased, chartered or used by the Insured.
- S. **Industrial Aid Aircraft Use** means use by the Insured of any Industrial Aid Aircraft principally for the transportation of officers, employees and invited guests of the Insured, and having a seating capacity, exclusive of cockpit crew but inclusive of cabin crew, of no more than twenty (20) persons, but shall not include use of any Aircraft:
- (1) for commercial, charter or rental operations, flight school or aviation training; or any other operations where, for compensation, the Insured makes Aircraft available for operations or use by others;
  - (2) held in inventory or otherwise for sale, lease, charter or delivery to another person by an Insured in the business of manufacture, sale, lease or charter of Aircraft;
  - (3) for product testing or demonstration purposes;
  - (4) owned by a party other than the Insured which is being serviced, maintained, fueled or tested or otherwise is in the temporary care, custody or control of the Insured in connection with any business operations of the Insured relating to Aircraft servicing, maintenance, fueling, testing, storage or associated or similar matters; or
  - (5) giving rise to liability of the Insured arising out of the Insured's Products.
- T. **the Insured** means, except as specifically stated otherwise in this Policy, all Insureds which meet a definition in Paragraphs (1) through (7) below during an Annual Period of Coverage A:
- (1) the Named Insured and, if the Named Insured is designated in Item 1(a) of the Declarations as a partnership or Joint Venture, the partnership or Joint Venture so designated and each partner or member thereof but only with respect to his or its liability as such;
  - (2) (a) any subsidiary, affiliate or associated company of the Named Insured for any Annual Period whose accounts as of the date of the financial statements of the Named Insured most recently submitted to the Company prior to the rating of the premium for such Annual Period:
    - (i) are consolidated in the financial statements of the Named Insured in accordance with generally accepted accounting principles in the United States of America;
    - (ii) in the case of any foreign Named Insured, would be consolidated in the financial statements of such Named Insured if such accounts would have been consolidated in accordance with generally accepted accounting principles in the United States of America; or
    - (iii) were eligible for such consolidation and whose financial statements were submitted to the Company with such financial statements of the Named Insured as of such date;

- (b) any subsidiary, affiliate or associated company of the **Named Insured** listed on Schedule A hereto;
- (3) any present or former officer, director, stockholder or employee of any person or entity described in Paragraph (1), (2) or (6) of this Definition T., but only while acting within the scope of his duties as such, and any person or organization with respect to liability for providing real estate management for any such person or entity described in such Paragraphs;
- (4) any person, organization, trustee or estate to whom any person or entity described in Paragraph (1), (2) or (6) of this Definition T. is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this Policy, but only to the extent of such obligation and only in respect of operations (other than commercial insurance operations) by or on behalf of such person or entity described in such Paragraphs, or of facilities owned or used by such person or entity described in such Paragraphs;
- (5) with respect to any **Automobile** owned by any person or entity described in Paragraph (1), (2), (3) or (6) below of this Definition T. or hired for use on behalf of any such person or entity, any person or organization legally responsible for the use thereof, provided the actual use of the **Automobile** is with the permission of such person or entity;
- (6) any **Joint Venture** in which the **Insured** has an interest, but only if, as of or prior to the **Inception Date**:
  - (a) the **Insured** has sole responsibility for the **Joint Venture**; or
  - (b) the **Insured** is obligated to provide insurance for the **Joint Venture** in its entirety such as is afforded by this Policy;

It is agreed to include automatically as an **Insured** any **Joint Venture** which, after the **Inception Date**, meets the requirement in Paragraph 6 (a) or (b) of this Definition T., provided that:

- (i) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all participants in the **Joint Venture** thereof does not exceed five percent (5%) of the total assets of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies; or
- (ii) the incremental annual gross revenues attributable to such **Joint Venture** do not exceed five percent (5%) of the total annual gross revenues of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies  
  
as most recently reported to the Company for rating purposes prior to the **Annual Period** in which such **Joint Venture** becomes an **Insured**; or
- (iii) the operations of the **Joint Venture** are not materially different from those

of the **Insured** prior to the date such **Insured** becomes eligible to be an **Insured** under this policy.

Subject to Definition T. (6) (i), (ii), and (iii), the date such **Joint Venture** becomes an **Insured** under this Policy shall be the date such **Joint Venture** meets the requirements in Paragraph 6(a) or (b) of this Definition T.

Unless notice to the Company shall have been given and additional premium, if any, shall have been paid in respect of the **Joint Venture** not meeting the criteria set forth herein, such **Joint Venture** shall not be an **Insured** hereunder.

(7) any entity acquired or formed by or merged with an **Insured** (a "Potential Additional Insured") during an **Annual Period** provided that:

- (a) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all **Insureds** for any such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers does not exceed five percent (5%) of the total assets of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies, or
- (b) the incremental annual gross revenues attributable to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers do not exceed five percent (5%) of the total annual gross revenues of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies,

as most recently reported to the Company for rating purposes prior to the **Annual Period** in which such entity becomes an **Insured**; or

- (c) the operations of the Potential Additional Insured prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers nor the resultant combined or consolidated operations of the **Insured** and the Potential Additional Insured subsequent to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers are not materially different from those of the **Insured** prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers.

The date the Potential Additional Insured becomes an **Insured** under this policy shall be the effective date of merger, acquisition or formation of that **Insured**. The **Insured's** acquisition of a business division or other operations by asset acquisition, shall be considered an acquisition for purposes of this Paragraph (7).

Unless notice to the Company shall have been given and additional premium, if any, shall have been paid in respect of the acquisition or formation of or merger with any Potential Additional Insured not meeting the criteria set forth herein, such Potential Additional Insured shall not be an **Insured** hereunder and liability assumed by the **Insured** in connection with such acquisition, formation or merger shall not be covered hereunder.

U. **Insured's Products** means goods or products manufactured, sold, tested, handled or distributed by the **Insured** or others trading under its name, or tools, uninstalled equipment or abandoned or unused materials that were the subject of **Completed Operations** performed for others by the **Insured**.

V. **Integrated Occurrence** means:

- (1) with respect to the **Insured's Products, Personal Injury** or **Property Damage** which takes place on or after the **Inception Date** or **Retroactive Date**, if applicable, and arises from two (2) or more discrete units of the same or substantially similar **Insured's Products**, but only if all such **Personal Injury** or **Property Damage** results from the same cause, hazard, defect, failure to warn or instruct or any combination thereof;
- (2) with respect to other than (a) **Employment Liability**, (b) the **Insured's Products** and (c) **Advertising Liability, Personal Injury** to two (2) or more persons, or **Property Damage** to two (2) or more properties or residential or office units within a building, if such **Personal Injury** or **Property Damage** arises from continuous, intermittent or repeated exposure to the same general harmful conditions or acts or omissions of another over a period longer than thirty (30) consecutive days;
- (3) with respect to **Advertising Liability**, multiple or repeated advertisements, telecasts, broadcasts or publications of the same or substantially similar material causing injury to two (2) or more persons or organizations;

but only if all such **Personal Injury, Property Damage** or **Advertising Liability** has been identified as an **Integrated Occurrence** in a **Notice of Integrated Occurrence**.

W. **Joint Venture** means any joint venture, co-venture, joint lease, joint operating agreement or partnership.

X. **Named Insured** means the entity first named in Item 1(a) of the Declarations.

Y. **Notice of Integrated Occurrence** means a notice given in accordance with Section V, B. and C.

Z. **Occurrence** means:

(1) except with respect to the **Insured's Products**:

- (a) (i) an event;
- (ii) continuous, intermittent or repeated exposure to harmful conditions or acts or omissions; or
- (iii) with respect to **Advertising Liability**, an offense

which commences on or after the **Inception Date**, or the **Retroactive Date**, if applicable, and before the **Termination Date** of Coverage A, and which causes, allegedly causes or is deemed to cause **Personal Injury, Property Damage** or injury from **Advertising Liability** which is neither expected nor intended from the standpoint of the **Insured**;

- (b) Except with respect to an **Integrated Occurrence**, **Personal Injury** to each person arising from continuous, intermittent or repeated exposure to substantially the same general harmful conditions or act or omission of another over a period longer than thirty (30) days shall be deemed to arise out of a separate **Occurrence** from which **Personal Injury** to any other person arises;
- (c) Except with respect to an **Integrated Occurrence**, **Property Damage** to each piece of property or each residential or office unit within a building arising out of continuous, intermittent or repeated exposure to substantially the same general harmful conditions or acts or omissions of another over a period longer than thirty (30) days shall be deemed to arise out of a separate **Occurrence** from which **Property Damage** to any other piece of property or residential or office unit within a building; or
- (d) Except with respect to an **Integrated Occurrence**, injury to each person or organization arising from a single advertisement, telecast, broadcast or publication or multiple or repeated advertisements, telecasts, broadcasts or publications of the same or substantially similar material shall be deemed to arise out of a separate **Occurrence** from which injury to any other person or organization arises.

Subparagraphs (b) and (c) of this Definition Z. (1) shall not apply to **Personal Injury** or **Property Damage** arising out of the **Discharge of Pollutants** otherwise covered under this Policy.

- (2) with respect to the **Insured's Products**, actual or alleged **Personal Injury** or **Property Damage** which takes place on or after the **Inception Date**, or the **Retroactive Date**, if applicable, and except with respect to an **Integrated Occurrence**, before the **Termination Date** of Coverage A, if such **Personal Injury** or **Property Damage** arises from use of the **Insured's Products** and is neither expected nor intended from the standpoint of the **Insured**.

With respect to **Personal Injury** or **Property Damage** which takes place on or after the **Inception Date** or the **Retroactive Date**, if applicable, but which also commenced prior to the **Inception Date**, or **Retroactive Date**, if applicable, or continues after the **Termination Date** of Coverage A, the Company shall be liable only for that fraction of the entire period of **Personal Injury** or **Property Damage** for which:

- (a) except with respect to an **Integrated Occurrence**,
  - (i) the numerator is the time period of **Personal Injury** or **Property Damage** on or after the **Inception Date** or **Retroactive Date**, if applicable, and before the **Termination Date** of Coverage A; and
  - (ii) the denominator is the total time period over which **Personal Injury** or **Property Damage** took place.
- (b) with respect to an **Integrated Occurrence**,



- (i) the numerator is the time period of **Personal Injury** or **Property Damage** on or after the **Inception Date**, or **Retroactive Date**, if applicable, and
- (ii) the denominator is the total time period over which **Personal Injury** or **Property Damage** took place.

Unless included in a **Notice of Integrated Occurrence**, any **Occurrence** arising out of a discrete unit of the **Insured's Products** shall be deemed a separate **Occurrence** from any other **Occurrence** arising from another discrete unit of the **Insured's Products**.

**AA. Personal Injury** means **Bodily Injury**, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, and libel, slander or defamation of character or invasion of rights of privacy. **Personal Injury** does not include any liability resulting from any act, error or omission:

- (1) committed in any advertisement, publicity article, broadcast, or telecast; and
- (2) arising out of the **Insured's** advertising activities.

**AB. Policy Period** means the period commencing with the **Inception Date** and ending with the **Termination Date** of Coverage A.

**AC. Pollutant** means any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **Waste**, which may, does, or is alleged to affect adversely the environment, property, persons or animals.

**AD. Product Pollution Liability** means liability for **Personal Injury** or **Property Damage** arising out of the **Discharge** of **Pollutants**, but only if such **Personal Injury** or **Property Damage**:

- (1) arises out of the end-use of the **Insured's Products**, other than **Insured Products** which are **Waste**, and
- (2) such use occurs after possession of such goods or products has been relinquished to others by **the Insured** or by others trading under its name and such use occurs away from premises owned, rented or controlled by **the Insured**.

Such goods or products shall be deemed to include any container thereof other than an **Automobile, Watercraft** or **Aircraft**.

**AE. Property Damage** means:

- (1) physical injury to or destruction of tangible property, including the loss of use thereof at any time resulting therefrom;
- (2) loss of use of tangible property which has not been physically injured or destroyed, arising from physical damage to or destruction of other tangible property; or

(3) losses consequent upon evacuation arising from actual or threatened **Bodily Injury** or destruction of tangible property.

**AF. Retroactive Date** means the date, if any, set forth in Item 5 of the Declarations; provided, however, that with respect to coverage for any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Retroactive Date** shall be the date such person or entity became an **Insured** under this Policy, or such other date as may endorsed to this Policy.

**AG. Termination or Termination Date** means:

(1) for Coverage A:

- (a) except as provided in Subparagraph (1)(b) below, the earlier of the effective date of cancellation of Coverage A, or the end of an **Annual Period** if not extended; or
- (b) with respect to a former subsidiary, affiliate or associated company of the **Named Insured**, the date it ceased to be such.

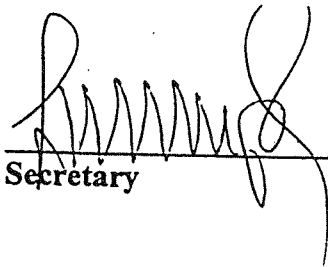
(2) for Coverage B, the end of the **Discovery Period**.

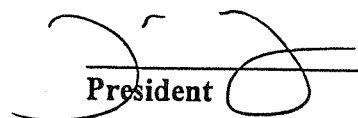
**AH. Ultimate Net Loss** means the total sum which the **Insured** shall become obligated to pay for **Damages** on account of **Personal Injury**, **Property Damage** or **Advertising Liability** covered under this Policy, either through adjudication or compromise, less any salvage or other recoveries.

**AI. Waste** means all waste and includes, without limitation, materials to be discarded, stored pending final disposal, recycled, reconditioned or reclaimed.

**AJ. Watercraft** means any ship or vessel of whatever type, designed principally for travel on water, including but not limited to, cargo vessels, passenger vessels, other vessels used for transport, towboats and barges, vessels used in the construction of pipelines, platforms or other facilities, storage vessels, tanker vessels, drill ships, drilling rigs and barges (including, without limitation, submersible drill rigs and barges, semi-submersible drill rigs and barges and self-elevating drill rigs and barges), floating production storage units, floating storage units and all other vessels of whatever nature and description, all whether or not self-propelled. **Watercraft** shall not include an offshore oil or gas platform secured in place for drilling or producing operations.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed by its President and a Secretary.

  
Secretary

  
President

**STARR EXCESS**  
**Liability Insurance Company, Ltd.**

Endorsement No: 2 [02]  
This endorsement, effective: July 1, 1997  
(at 12:01 A.M. prevailing time at the address of the Named Insured as shown in item 1(b) of the Declarations)  
forms a part of Policy No. 200853  
Issued to: San Francisco Bay Area Rapid Transit District  
by: Starr Excess Liability Insurance Company, Ltd.

**ANNIVERSARY ENDORSEMENT**

Anniversary Premium: US\$685,000 Per Endorsement No.3 [02]  
Anniversary Date: July 1, 1997  
Anniversary Application Dated: July 7, 1997

Schedule	Date Signed
A:	July 7, 1997
B:	July 7, 1997
C:	July 7, 1997

This Policy is amended as follows:

1. In consideration of the Anniversary Premium stated above, it is hereby agreed that Coverage A of this Policy is extended for another two **Annual Periods** commencing on the Anniversary Date listed above.
2. Schedules A, B and C listed above now apply and are hereby incorporated by reference as if physically attached to this Policy.
3. The Limits of Liability shown in Items 2(a) and 2(b) of the Declarations SELIC IO-02 apply as of the Anniversary Date shown above.

If prior to the Anniversary Date, any **Executive Officer** or any manager or equivalent-level employee of the **Insured's** Risk Management, Insurance or Law Department had knowledge of an **Occurrence**, irrespective of whether that person believed or expected such **Occurrence** was likely to involve this Policy, the Limits of Liability in effect when such person first became aware of such **Occurrence** shall apply to such **Occurrence**, but only to the extent the Limits of Liability shown above exceed the Limits of Liability in the **Annual Period** in which such person first became aware of such **Occurrence** and which are applicable to such **Occurrence**.

Endorsement No: 2 [02]

**ANNIVERSARY ENDORSEMENT (Contd.)**

4. Paragraph (2)(b) of Exclusion J. of Section III, Exclusions, is deleted and replaced in its entirety by the following:

[J.

(2) Paragraph (1) of this Exclusion does not apply to:]

(b) liability of **the Insured for Personal Injury or Property Damage** caused by an unexpected and unintended **Discharge of Pollutants**, but only if such **Discharge** results solely from a **Covered Pollution Peril** which commences on or after July 1, 1997.

5. Subject to Paragraph 6. of Endorsement No. 1 [02], "SELIC IO Policy Form Substitution Endorsement," effective on the Anniversary Date listed above, any Endorsement issued with an Effective Date on or after the **Inception Date** and prior to the Effective Date of the New Form (SELIC IO-02) shall apply to the Old Form (SELIC IO-01).

6. Subject to Paragraph 7. of this Endorsement No. 2 [02], any Endorsement issued with an Effective Date on or after the Effective Date of the New Form (SELIC IO-02) shall apply to the New Form.

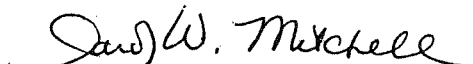
7. Any Endorsement, affording Coverage B when such Coverage B is both:

(a) in respect of a Coverage A **Annual Period** which commenced prior to the Effective Date of the New Form (SELIC IO-02); and

(b) purchased or continued on or after the Effective Date of the New Form (SELIC IO-02);

shall apply to the Old Form (SELIC IO-01). Such Endorsement may also apply to the New Form (SELIC IO-02), but only to the extent specifically indicated thereon.

All other terms and conditions of this Policy remain unchanged.

  
\_\_\_\_\_  
Authorized Representative

# **STARR EXCESS**

**Liability Insurance Company, Ltd.**

**Endorsement No:** 3 [02]  
**This endorsement, effective:** July 1, 1997  
(at 12:01 A.M. prevailing time at the address of the Named Insured as shown in item 1(b) of the Declarations)  
**forms a part of Policy No:** 200853  
**Issued to:** San Francisco Bay Area Rapid Transit District  
**by:** Starr Excess Liability Insurance Company, Ltd.

## **MULTI-YEAR POLICY PERIOD ENDORSEMENT (ANNUAL PERIOD AGGREGATES AND ANNUAL PERIOD INSTALLMENTS)**

<b>Effective Date:</b>	July 1, 1997	<b>Expiration Date:</b>	July 1, 1999
<b>Multi-Year Premium:</b>	US\$685,000	<b>Annual Period Premium:</b>	US\$342,500
<b>Due and Payable:</b>	July 1, 1997 US\$342,500		
	July 1, 1998 US\$342,500		

### **(1) Policy Period**

It is agreed that the **Policy Period** shall include the Two **Annual Periods** ("first" and "second" **Annual Periods**) comprising the Two-Year Period commencing with the Effective Date listed above and continuing until the Expiration Date listed above ("Two-Year Period"), upon the terms and conditions set forth below. No changes shall be made to the terms, conditions, exclusions, limits or retentions of this Policy during the Two-Year Period except by mutual agreement of the **Named Insured** and the Company.

### **(2) Premium**

The Two-Year Premium, is due and payable on the dates indicated above, and is payment in full in respect of the Two -Year Period and is not subject to adjustment, except in the event of Reinstatement under Condition V. of Section IV, Conditions, or in any instance where one of the following occurs during the Two -Year Period:

- (a) the Company shall have made payment or established a reserve in respect of an **Occurrence** under this Policy (whether or not in respect of an **Occurrence** first notified during the Two-Year Period);

Endorsement No: 3 [02]

**MULTI-YEAR POLICY PERIOD ENDORSEMENT  
(ANNUAL PERIOD AGGREGATES  
AND ANNUAL PERIOD INSTALLMENTS) (Contd.)**

- (b) annual gross revenues or gross assets of the **Named Insured** (and all consolidated subsidiaries and affiliates to which Subparagraph (c) below of this Paragraph (2) does not apply) increase by more than fifteen percent (15%) compared to the immediately preceding accounting year or year-end, as the case may be;
- (c) any **Insured**, as described in Subparagraph (4)(b) of this Endorsement which becomes an **Insured** after the Effective Date of this Endorsement during the Two-Year Period has annual gross revenues exceeding five percent (5%) of the Annual Gross Revenues of the **Named Insured** and its consolidated subsidiaries and affiliates as most recently reported to the Company for rating purposes prior to the **Annual Period** in which such **Insured** becomes an **Insured**.
- (d) annual gross revenues or gross assets of the **Named Insured** (and all consolidated subsidiaries and affiliates) decrease by more than fifteen percent (15%) compared to the immediately preceding accounting year or year-end, as the case may be.

In each instance, the Company in its sole discretion may (i) in the case of clauses (a), (b) or (c) in this Paragraph (2), impose a one-time additional premium of not more than twenty percent (20%) of the **Annual Period** Premium for the period during which such event takes place and each subsequent **Annual Period** listed above, or (ii) in the case of clause (d) of this Paragraph (2), declare a one-time return premium in an amount not to exceed twenty percent (20%) of the **Annual Period** Premium for the period during which such event takes place and each subsequent **Annual Period** listed above. Any such additional premium or return premium for the **Annual Period** during which such event takes place shall be due at the next Anniversary date of the Effective Date listed above. Any applicable additional or return premium for subsequent **Annual Periods** will be incorporated into the premium due and payable for such **Annual Periods**.

The **Named Insured** agrees to notify the Company in writing within thirty (30) days of the happening of any event described in clauses (b), (c) or (d) of this Paragraph (2) above.

Endorsement No: 3 [02]

**MULTI-YEAR POLICY PERIOD ENDORSEMENT  
(ANNUAL PERIOD AGGREGATES  
AND ANNUAL PERIOD INSTALLMENTS) (Contd.)**

(3) **Cancellation**

- (a) The following Subparagraph (c) is added to Paragraph (2) of Condition E. of Section IV, Conditions:

**[E. CANCELLATION**

- (2) Coverage A under this Policy will be cancelled:.....]

(c) on a pro rata return premium basis automatically as of the date of acquisition or merger, if the **Named Insured** acquires another entity or group of entities whose gross assets or annual gross revenues exceed thirty five percent (35%) of those of the **Named Insured** (including consolidated subsidiaries and affiliates) or is merged with another entity and the surviving entity has gross assets or gross annual revenues in excess of one hundred and thirty five percent (135%) of those of the **Named Insured** (including consolidated subsidiaries and affiliates) as of the most recent available financial statements prior to such acquisition or merger.

- (b) In determining the "pro rata basis" in Condition E. of Section IV, Conditions, (i) the **Annual Period** Premium listed in this Endorsement shall apply evenly across the **Annual Period**, and (ii) additional and/or return premium(s), if any, shall apply evenly from the date(s) payment thereof was due to the end of the **Annual Period**.

(4) **Acquired, Formed or Merged Entities**

- (a) Paragraphs (7) of Definition T. the **Insured** of Condition VI, Definitions is deleted.

Endorsement No: 3 [02]

**MULTI-YEAR POLICY PERIOD ENDORSEMENT  
(ANNUAL PERIOD AGGREGATES  
AND ANNUAL PERIOD INSTALLMENTS) (Contd.)**

- (b) As respects this Endorsement **the Insured** shall include any entity acquired or formed by or merged with an **Insured** (a "Potential Additional Insured") during the Two -Year Period provided that the **Named Insured** agrees to notify the Company within thirty (30) days of any acquisition or any formation of any merger if:
- (i) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all **Insureds** for any such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers exceeds five percent (5%) of the total assets of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies, or
  - (ii) the incremental annual gross revenues attributable to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers exceeds five percent (5%) of the total annual gross revenues of the **Named Insured** and its consolidated subsidiaries, affiliates and associated companies, as most recently reported to the Company for rating purposes prior to the **Annual Period** in which such entity becomes an **Insured**; or
  - (iii) the operations prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers nor the resultant combined or consolidated operations of **the Insured** and the Potential Additional Insured subsequent to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers are materially different from those of **the Insured** prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers.

The date the Potential Additional Insured becomes an **Insured** under this policy shall be the effective date of merger, acquisition or formation of that **Insured**. **The Insured's** acquisition of a business division or other operations by asset acquisition,



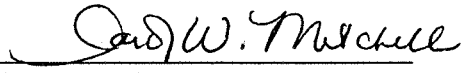
Endorsement No: 3 [02]

**MULTI-YEAR POLICY PERIOD ENDORSEMENT  
(ANNUAL PERIOD AGGREGATES  
AND ANNUAL PERIOD INSTALLMENTS) (Contd.)**

shall be considered an acquisition for purposes of this Subparagraph (b).

Unless notice to the Company shall have been given and additional premium, if any, shall have been paid, as provided in Paragraph (2) of this Endorsement No. 3 [02], in respect of the acquisition or formation of or merger with any Potential Additional Insured meeting the criteria set forth herein, such Potential Additional Insured shall not be an **Insured** hereunder and liability assumed by **the Insured** in connection with such acquisition, formation or merger shall not be covered hereunder.

All other terms and conditions of this Policy remain unchanged.

  
\_\_\_\_\_  
Authorized Representative

**A.C.E. Insurance Company, Ltd.**

**\$50,000,000 Per Occurrence**

**\$50,000,000 Annual Aggregate**

Policy No. SFBAR - 796/5  
Date 10th October, 1996

### EXCESS LIABILITY INDEMNITY POLICY INSURANCE DECLARATIONS

Item 1 (a) **Named Insured:** San Francisco Bay Area Rapid Transit District  
(b) **Address of Named Insured:** 800 Madison Street, Oakland, California 94607.

Item 2 **Limits of Liability:**

(a) **Per Occurrence** ~~\$25,000,000~~ *SEE ENDP. #4*  
(b) **Annual Aggregate** ~~\$25,000,000~~  
(c) **Integrated Occurrence Sublimit** ~~\$25,000,000~~

Item 3 **Retention: Per Occurrence** See Per Occurrence Retention Schedule

Item 4 **Policy Inception Date: \*** 1st July, 1996 and as per  
Endorsement No. 1 Policy Form Substitution

**First Annual Period Expiration Date: \*** 1st July, 1997

\*At 12:01 A.M. at the address of the **Named Insured** listed in Item 1(b) above.

Item 5 **Representative of Named Insured:** Price Forbes Limited

Item 6 **Currency:** United States Dollars (\$)

Item 7 **Premium:** \$95,000

Item 8 **The Insurer:** A.C.E. Insurance Company, Ltd.

(a) **All Notices of Occurrence:**  
Claims Department  
A.C.E. Insurance Company, Ltd.  
The ACE Building  
30 Woodbourne Avenue  
Hamilton HM 08, BERMUDA  
Telecopier: (441) 292-2456

(b) **All other Notices:**  
Underwriting Department  
A.C.E. Insurance Company, Ltd.  
The ACE Building  
30 Woodbourne Avenue  
Hamilton HM 08, BERMUDA  
Telecopier: (441) 295-5221

Item 9 **Application Date :** 1st July, 1996

## TABLE OF CONTENTS

**NOTICE: THIS TABLE OF CONTENTS IS FOR REFERENCE PURPOSES ONLY. IT IS NOT PART OF THE TERMS, CONDITIONS OR EXCLUSIONS OF THIS POLICY AND IS NOT INTENDED TO AFFECT THE MEANING OF SUCH TERMS, CONDITIONS OR EXCLUSIONS.**

		<u>Page</u>
Article I	COVERAGE .....	1
Article II	LIMITS OF LIABILITY .....	1
Article III	DEFINITIONS .....	3
	A. Advertising Liability .....	3
	B. Aircraft .....	3
	C. Annual Period .....	3
	D. Automobile .....	3
	E. Bodily Injury .....	3
	F. Claim .....	3
	G. Commercial Aviation Operations .....	3
	H. Damages .....	3
	I. Defense Costs .....	3
	J. Discharge .....	4
	K. Discovery Period .....	4
	L. Executive Officer .....	4
	M. Expected or Intended .....	4
	(1) Nature of Expectation or Intent .....	4
	(2) Timing of Determination .....	4
	(3) Commercial Risk .....	5
	N. Inception Date .....	5
	O. Incidental Watercraft Use .....	5
	P. Insured .....	5
	Q. Insured's Products .....	7
	R. Integrated Occurrence .....	7
	S. Joint Venture .....	7
	T. Named Insured .....	7
	U. Notice of Integrated Occurrence .....	7
	V. Occurrence .....	7
	W. Personal Injury .....	8
	X. Policy Period .....	8
	Y. Pollutant .....	8
	Z. Product Pollution Liability .....	8
	AA. Property Damage .....	8
	AB. Termination or Termination Date .....	9
	AC. Ultimate Net Loss .....	9
	AD. Waste .....	9
	AE. Watercraft .....	9
Article IV	EXCLUSIONS .....	9
	A. Prior to Inception Date .....	9
	B. Unemployment Compensation, Etc. ....	9
	C. Professional Services .....	9
	D. Owned Property; Care, Custody or Control, Etc. ....	10
	E. Efficacy, Loss of Use, Etc. ....	10
	F. Advertising .....	11
	G. War .....	11

	H.	Toxic Substances .....	11
	I.	Aircraft .....	12
	J.	Watercraft .....	12
	K.	Pollution .....	13
	L.	Nuclear .....	14
	M.	Radioactive Contamination (Outside U.S.) .....	15
	N.	ERISA .....	15
	O.	Repetitive Stress .....	16
	P.	Securities, Antitrust, Etc. ....	16
Article V		NOTICE OF OCCURRENCE .....	16
	A.	Notice as Soon as Practicable .....	16
	B.	Permissive Notice .....	17
	C.	Permissive Notice of Integrated Occurrence .....	17
	D.	Manner of Notice .....	17
Article VI		CONDITIONS .....	17
	A.	Premium .....	17
	B.	Inspection .....	17
	C.	Cross Liability .....	17
	D.	Assistance and Cooperation .....	18
	E.	Appeals .....	18
	F.	Loss Payable .....	18
	G.	Representation .....	19
	H.	Other Insurance .....	19
	I.	Subrogation .....	19
	J.	Changes .....	19
	K.	Assignment .....	19
	L.	Cancellation .....	20
	M.	Currency .....	20
	N.	Arbitration .....	20
	O.	Law of Construction and Interpretation .....	22
	P.	Liability of the Insurer .....	22
	Q.	Policy Extension .....	22
	R.	Reinstatement .....	22
	S.	Discovery Period .....	24
	T.	Former Subsidiaries, Affiliates and Associated Companies .....	24
	U.	Notice .....	24
	V.	Headings .....	24
Schedule A		Other Insureds	
Schedule B		Underlying Insurance	
Schedule C		Watercraft	
Schedule D		Coverage B Annual Premium Charge	

## INSURING AGREEMENTS

### I. COVERAGE

A.C.E. Insurance Company, Ltd. (the "**Insurer**") shall, subject to the limitations, terms, conditions and exclusions below, indemnify the **Insured** for **Ultimate Net Loss** the **Insured** pays by reason of liability:

- (a) imposed by law, or
- (b) of a person or party who is not an **Insured** assumed by the **Insured** under contract or agreement,

for **Damages** on account of:

- (i) **Personal Injury**
- (ii) **Property Damage**
- (iii) **Advertising Liability**

encompassed by an **Occurrence**, provided:

**COVERAGE A:** notice of the **Occurrence** shall have been first given by the **Insured** in an **Annual Period** during the **Policy Period** in accordance with Article V of this Policy, or

**COVERAGE B:** notice of the **Occurrence** shall have been first given during the **Discovery Period** in accordance with Article V of this Policy, but only if the **Discovery Period** option has been elected in accordance with the provisions of this Policy.

### II. LIMITS OF LIABILITY

A. Regardless of the number of **Insureds** under this Policy, the **Insurer** shall be liable only for that amount of **Ultimate Net Loss** for each **Occurrence** covered under this Policy which is in excess of the greater of:

(1) the amounts indicated as the limits (including, without limitation, any reinstatements thereof, where applicable) of the underlying insurances and any self-insured retentions listed, or which should have been listed, on the present or any prior Schedule B annexed to this Policy and any other underlying insurance, as to which the **Insurer** and the **Named Insured** expressly agree that the insurance provided by this Policy shall:

- (a) be in excess in respect of such **Occurrences** or **Claims** and **Ultimate Net Loss** as are covered by said underlying insurances (it being understood that this Policy shall in no way be subject to, or affected by, the terms, conditions or exclusions of said underlying insurances), and
- (b) apply only as if such underlying insurances were fully available and collectable (except to the extent that any aggregate limits thereof are reduced or exhausted by actual payment of claims) for all occurrences or claims covered thereunder,

or

(2) the per **Occurrence** retention amount listed in Item 3 of the Declarations (which may be satisfied only by **Ultimate Net Loss** as defined herein),

and then only up to the per **Occurrence** limit of liability stated in Item 2(a) of the Declarations for each **Occurrence** covered hereunder, and further subject to the aggregate limit of liability stated in Item 2(b) of the Declarations for all **Occurrences** covered hereunder of which notice is first given during each **Annual Period** (or during the **Discovery Period** with respect to the

immediately preceding **Annual Period** or portion thereof); provided, however, that for all **Insureds** the applicable aggregate limit of liability, per **Occurrence** limit of liability, per **Occurrence** retention, and the terms, conditions and exclusions of coverage shall be determined under the Policy as in effect at the time notice of the **Occurrence** or **Notice of Integrated Occurrence** for which coverage is asserted is first given pursuant to Article V of this Policy by any **Insured**. This Policy shall not be subject to or follow the form of any underlying insurances but shall apply in accordance with its own terms, conditions and exclusions.

- B. (1) All **Personal Injury** or **Property Damage** covered hereunder encompassed by an **Integrated Occurrence** shall be added together and treated as included within one **Occurrence**. If notice of an **Occurrence** (which was not a **Notice of Integrated Occurrence**) was given during a prior **Annual Period**, and if **Personal Injury** or **Property Damage** which is included in such **Occurrence** is included in an **Integrated Occurrence** of which **Notice of Integrated Occurrence** is first given during a subsequent **Annual Period**, all **Ultimate Net Loss** arising from such earlier notified **Occurrence** shall be included in the **Ultimate Net Loss** arising from such **Integrated Occurrence**, subject to paragraph (2) below.
- (2) Notwithstanding paragraph (1) above, in any instance in which first notice of an **Occurrence** (which is not a **Notice of Integrated Occurrence**) ("**Original Occurrence**") is given where **Personal Injury** and/or **Property Damage** included in such **Original Occurrence** is included in an **Integrated Occurrence** of which **Notice of Integrated Occurrence** is first given at a later time, if the **Ultimate Net Loss** attributable to the **Original Occurrence** (as finally determined) exceeds the per **Occurrence** retention for the **Annual Period** in which notice of the **Original Occurrence** was first given, then **Ultimate Net Loss** arising from such **Original Occurrence** shall not be transferred to the later **Annual Period** in which the **Insurer** received first notice of the **Integrated Occurrence**; the **Insurer** shall pay such **Ultimate Net Loss** in excess of per **Occurrence** retention amount, which shall be subject to and erode the aggregate limit of liability (Item 2(b) of the Declarations) for the **Annual Period** in which notice of the **Original Occurrence** was first given. Nonetheless, the **Ultimate Net Loss** arising from the **Original Occurrence** shall apply as respects erosion of the per **Occurrence** retention (Item 3 of the Declarations) and per **Occurrence** limit of liability (Item 2(a) of the Declarations) and the aggregate sublimit as respects such **Integrated Occurrence** (Item 2(c) of the Declarations) in the **Annual Period** in which **Notice of Integrated Occurrence** in respect thereof was first given; provided, however, that any **Ultimate Net Loss** indemnified by the **Insurer** in respect of the **Original Occurrence** shall not erode the annual aggregate limit of liability (Item 2(b) of the Declarations) in the **Annual Period** in which **Notice of Integrated Occurrence** is first given.
- C. Notwithstanding any other provision of this Policy, it is hereby agreed that there shall be an aggregate sublimit equal to the amount stated in Item 2(c) of the Declarations with respect to all **Integrated Occurrences**, collectively, of which notice is first given to the **Insurer** in any **Annual Period**. The maximum aggregate sublimit with respect to any single **Integrated Occurrence** or any combination of such **Integrated Occurrences** shall be the amount stated in Item 2(c) of the Declarations. Such sublimit shall be included within and shall not increase the annual aggregate limit for all covered **Occurrences** and **Claims** (including, without limitation, **Integrated Occurrences**) set forth in Item 2(b) of the Declarations. Such sublimit shall not be subject to elective reinstatement pursuant to paragraph (2) of Section R of Article VI, unless otherwise agreed in writing by the **Insurer**.
- D. (1) With respect to any liability of an **Insured** which arises in any manner whatsoever out of operations or the existence of any **Joint Venture** in which such **Insured** has an interest, the liability of the **Insurer** under this Policy shall be limited to the **Insured's** liability arising out of such **Joint Venture** and the full available limit of liability under this Policy shall apply with respect thereto.
- (2) The liability of the **Insurer** under this Policy shall be excess of (i) the sum specified in Item 3 of the Declarations with respect to the **Insured's** liability arising out of such **Joint**

**Venture** or (ii) the limits of the underlying insurance(s) (as reduced by any special provisions relating to **Joint Ventures**, if applicable), whichever is the greater.

- E. The inclusion or addition hereunder of more than one **Insured** shall not operate to increase the **Insurer's** limits of liability beyond those set forth herein.

### III. DEFINITIONS

- A. "**Advertising Liability**" means liability for **Damages** on account of:

- (1) libel, slander or defamation,
- (2) any infringement of copyright or of title or of slogan,
- (3) piracy or misappropriation of ideas under an implied contract, or
- (4) any invasion of right of privacy,

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the **Insured's** advertising activities.

- B. "**Aircraft**" means any aircraft, missile or spacecraft.

- C. "**Annual Period**" means:

- (1) with respect to the first **Annual Period**, the period commencing at the **Inception Date** and expiring on the **First Annual Period Expiration Date** set forth in Item 4 of the **Declarations**;
- (2) with respect to any subsequent **Annual Period** in Coverage A, the one (1) year period commencing at the **First Annual Period Expiration Date** or each anniversary thereof; or
- (3) with respect to Coverage B, the one (1) year period commencing at the expiration of Coverage A or each anniversary date and time of such expiration.

- D. "**Automobile**" means a land motor vehicle, trailer or semi-trailer.

- E. "**Bodily Injury**" means physical injury to the body of a person including death at any time resulting therefrom.

- F. "**Claim**" means an oral or written demand against an **Insured** for **Damages** and includes the threat or initiation of any civil suit or arbitration proceeding or a request for a tolling agreement.

- G. "**Commercial Aviation Operations**" means any commercial or charter passenger and/or cargo airline, any other **Aircraft** charter operation, any flight school or aviation training business or any other operations by which the **Insured** for compensation (other than cost reimbursement) makes available **Aircraft** owned, operated or used by it or aviation transportation services to others.

- H. "**Damages**" means all forms of compensatory damages, monetary damages and statutory damages, punitive or exemplary damages and costs of compliance with equitable relief, other than governmental (civil or criminal) fines or penalties, which the **Insured** shall be obligated to pay by reason of judgment or settlement for liability on account of **Personal Injury, Property Damage** and/or **Advertising Liability** covered by this Policy, and shall include **Defense Costs**.

- I. "**Defense Costs**" means reasonable legal costs and other expenses incurred by or on behalf of the **Insured** in connection with the defense of any actual or anticipated **Claim**, including attorneys' fees and disbursements, law costs, premiums on attachment or appeal bonds, pre-judgment and



post-judgment interest, expenses for experts and for investigation, adjustment, appraisal and settlement, excluding the salaries, wages and benefits of the **Insured's** employees and the **Insured's** administrative expenses.

- J. **"Discharge"** means discharge, emission, dispersal, migration, release or escape (or any series of such of a similar nature at the same site) but does not include any discharge, emission, dispersal, migration, release or escape to the extent that the **Pollutants** involved remain confined within the building or other man-made structure in which they initially were located.
- K. **"Discovery Period"** means the period, if applicable, commencing upon the **Termination Date** of Coverage A of this Policy and ending on the earlier of expiration of the last **Annual Period** for which Coverage B is elected as provided in Condition S hereof or the effectiveness of cancellation pursuant to Condition L hereof.
- L. **"Executive Officer"** means the Chairman of the Board, Chief Executive, Operating, Financial and Administrative Officers, Managing Director, and any Vice President (including, without limitation, Executive and Senior levels) and any manager in the Risk Management or Law Department of an **Insured**; if any of such designations are not applicable, the equivalent level personnel shall be substituted.
- M. (1) **Nature of Expectation or Intent**

**Personal Injury, Property Damage or Advertising Liability** shall be **"Expected or Intended"** where:

- (a) actual or alleged **Personal Injury, Property Damage or Advertising Liability** is expected or intended by an **Insured**;
- (b) as respects an **Integrated Occurrence**, an **Insured** has historically experienced a level or rate of actual or alleged **Personal Injury or Property Damage**; or
- (c) as respects an **Integrated Occurrence**, an **Insured** expects or intends a level or rate of actual or alleged **Personal Injury or Property Damage** (irrespective of whether or not the **Insured** expects or intends **Personal Injury** to any specific individual or **Property Damage** to any specific property);

provided, however, that in the case of subparagraph (b) and/or (c) above, if actual or alleged **Personal Injury or Property Damage** fundamentally different in nature or at a level or rate vastly greater in order of magnitude occurs, all such actual or alleged fundamentally different or vastly greater **Personal Injury or Property Damage** shall not be deemed **"Expected or Intended"** (subject to paragraph 3 below).

(2) **Timing of Determination**

**"Expected or Intended"** is determined with reference to what is **Expected or Intended** (as set forth in paragraph 1 above):

- (a) at the time of any action (or inaction) by any person so acting (or failing to act) on behalf of an **Insured** (including, without limitation, the sale by an **Insured** of any **Insured's Products**) concerning the consequences thereof; the expectation or intent of any individual person shall be attributed to an entity **Insured** only if and to the extent that such person is acting (or failing to act) within the scope of their duties on behalf of such entity,
- (b) at the **Inception Date** by any **Executive Officer**, and/or

(c) as respects any liability of a person or party who is not an **Insured** assumed by an **Insured** under a contract or agreement, by an **Insured** at the time of such assumption.

(3) **Commercial Risk**

As respects any **Integrated Occurrence** arising out of the **Insured's Products**, actual or alleged **Personal Injury** or **Property Damage** similar to, and not vastly greater in order of magnitude than, that included in such **Integrated Occurrence** arising out of sales, if any, of such products by the **Insured** after the date of the **Notice of Integrated Occurrence** shall be deemed **Expected or Intended**. No inference shall be drawn from the giving of a **Notice of Integrated Occurrence** or from this paragraph (3) that actual or alleged **Personal Injury** or **Property Damage** arising out of sales of such products by the **Insured** prior to the date of such **Notice of Integrated Occurrence** either was or was not **Expected or Intended**.

N. "**Inception Date**" means the date set forth in Item 4 of the Declarations; provided, however, that with respect to any **Insured** which becomes an **Insured** subsequent to the **Inception Date**, the **Inception Date** for that **Insured** shall be the date such person or entity became an **Insured** under this Policy or such other date as may be agreed in writing between the **Named Insured** and the **Insurer**; provided further that as respects any layer of coverage not set forth in Items 2 and 3 of the original Declarations which is added by Endorsement, the **Inception Date** shall be the effective date of such Endorsement unless otherwise agreed in writing between the **Named Insured** and the **Insurer**.

O. "**Incidental Watercraft Use**" means use by the **Insured** of any owned, leased or chartered **Watercraft** less than 75 feet in length but shall not include:

- (1) use of **Watercraft** for the commercial carriage for a fee of passengers or cargo for parties other than the **Insured** in exchange for a fee;
- (2) use of **Watercraft** in connection with the commercial provision of marine services to others for a fee;
- (3) use of any **Watercraft** held in inventory or otherwise for lease or charter to another person by an **Insured** in the business of lease or charter of **Watercraft**; or
- (4) use of **Watercraft** owned by a party other than the **Insured** which is being serviced, maintained, fueled, or tested or otherwise is in the temporary care, custody or control of the **Insured** in connection with any business operations of the **Insured** relating to **Watercraft** servicing, maintenance, fueling, testing, storage or associated or similar matters.

P. The "**Insured**" means, except as specifically stated otherwise in this Policy, all **Insureds** as defined below:

- (1) the **Named Insured** and, if the **Named Insured** is designated in Item 1(a) of the Declarations as a partnership or **Joint Venture**, the partnership or **Joint Venture** so designated and each partner or member thereof but only with respect to his or its liability as such;
- (2) (a) any subsidiary or affiliate of the **Named Insured** for any **Annual Period** whose accounts as of the date of the financial statements of the **Named Insured** submitted to the **Insurer** most recently prior to the rating of the premium for such **Annual Period** (i) are consolidated in the financial statements of the **Named Insured** in accordance with generally accepted accounting principles in the United States of America, or (ii) were eligible for such consolidation (or in the case of a non-United States **Named Insured** would have been consolidated or

eligible for consolidation if United States generally accepted accounting principles applied) and whose financial statements were submitted to the **Insurer** with such financial statements of the **Named Insured** as of such date;

- (b) any subsidiary, affiliate or associated company of the **Named Insured** listed on Schedule A hereto;
- (3) any present or former officer, director, stockholder or employee of any person or entity named in paragraph (1) or (2) above or (6) below, but only while acting within the scope of his or her duties as such, and any person or organization with respect to liability for providing real estate management for any such person or entity named in paragraph (1) or (2) above or (6) below;
  - (4) any person, organization, trustee or estate to whom any person or entity named in paragraph (1) or (2) above or (6) below is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this Policy, but only to the extent of such obligation and only in respect of operations (other than commercial insurance operations) by or on behalf of such person or entity named in paragraph (1) or (2) above or (6) below or of facilities owned or used by such person or entity named in paragraph (1) or (2) above or (6) below;
  - (5) with respect to any **Automobile** owned by any person or entity named in paragraph (1), (2) or (3) above or (6) below or hired for use on behalf of any such person or entity, any person or organization legally responsible for the use thereof, provided the actual use of the **Automobile** is with the permission of such person or entity;
  - (6) any **Joint Venture** in which any entity listed in paragraph (1) or (2) above has an interest, but only:
    - (a) if, and only to the extent that, the **Insured** is obligated to provide insurance for the **Joint Venture** in its entirety such as is afforded by this Policy, or
    - (b) if the **Joint Venture** is listed on Schedule A hereto.
  - (7) It is agreed automatically to include as an **Insured** without listing on Schedule A hereto or adjustment of premium under this Policy for any **Annual Period** any entity acquired or formed by or merged with an **Insured** (a "Potential Additional Insured") during such **Annual Period** provided that:
    - (a) the fair value of the sum of all cash, securities, assumed indebtedness and other consideration expended by all **Insureds** for any such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers does not exceed 5% of the total assets of the **Named Insured** and its consolidated subsidiaries and affiliates as most recently reported to the **Insurer** for rating purposes prior to such **Annual Period**;
    - (b) the incremental annual gross revenues attributable to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers do not exceed 5% of the total annual gross revenues of the **Named Insured** and its consolidated subsidiaries and affiliates as most recently reported to the **Insurer** for rating purposes prior to such **Annual Period**; and
    - (c) neither the operations of the Potential Additional Insured prior to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers nor the resultant combined or consolidated operations of the **Insured** and the Potential Additional Insured subsequent to such acquisition, formation or merger or any series of interrelated acquisitions, formations or mergers are

materially different from those of such **Insured** prior to such acquisition, formation or merger or series of interrelated acquisitions, formations or mergers.

Unless notice to the **Insurer** shall have been given and additional premium, if any, shall have been paid in respect of any acquisition, formation or merger (or series thereof) not meeting the criteria set forth herein, such Potential Additional Insured shall not be an **Insured** hereunder and any liability assumed by an **Insured** in connection with such acquisition, formation or merger (or series thereof) shall not be indemnified hereunder.

With respect to any **Occurrence** giving rise to liability of any Potential Additional Insured that qualifies as an **Insured** hereunder, the **Inception Date** shall be the date of merger with or acquisition or formation of the Potential Additional Insured by an **Insured** or such other date as may be agreed in writing between the **Named Insured** and the **Insurer**. If during any **Annual Period** an **Insured** acquires a business, division or other operations by asset acquisition, such asset acquisition shall be considered an acquisition of an entity for purposes of this paragraph (7).

- Q. **"Insured's Products"** means goods or products manufactured, sold, tested, handled or distributed by the **Insured** or others trading under its name, or tools, uninstalled equipment or abandoned or unused materials that were the subject of completed operations performed for others by the **Insured**.
- R. **"Integrated Occurrence"** means an **Occurrence** encompassing actual or alleged **Personal Injury, Property Damage** and/or **Advertising Liability** to two or more persons or properties which commences over a period longer than thirty (30) consecutive days which is attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such; provided, however, that such **Occurrence** must be identified in a notice pursuant to Section C of Article V as an **"Integrated Occurrence"** and is subject to all provisions of paragraphs (1) and (2) of Definition V.
- S. **"Joint Venture"** means any joint venture, co-venture, joint lease, joint operating agreement or partnership, which in each case is neither incorporated nor otherwise affords limited liability to an **Insured** having an interest therein.
- T. **"Named Insured"** means the entity first named in Item 1(a) of the Declarations.
- U. **"Notice of Integrated Occurrence"** means a notice pursuant to Definition R, given in accordance with the provisions of Article V, Sections C and D.
- V. (1) An **"Occurrence"** exists if, and only if:
- (a) except with respect to actual or alleged **Personal Injury** or **Property Damage** arising from the **Insured's Products**, there is an event or continuous, intermittent or repeated exposure to conditions which event or conditions commence on or subsequent to the **Inception Date** and before the **Termination Date** of Coverage A, and which cause actual or alleged **Personal Injury, Property Damage** or **Advertising Liability**;
  - (b) actual or alleged **Personal Injury** to any individual person, or actual or alleged **Property Damage** to any specific property, arising from the **Insured's Products** takes place on or subsequent to the **Inception Date** and before the **Termination Date** of Coverage A;
- (2) Except as provided in paragraph (3) below, where an **Occurrence** exists and a series of and/or several actual or alleged **Personal Injuries, Property Damages** and/or **Advertising Liabilities** occur which are attributable directly, indirectly or allegedly to the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such, all such actual or alleged **Personal Injuries, Property Damages** and/or

**Advertising Liabilities** shall be added together and treated as one **Occurrence** irrespective of the period (but without limiting the effect of Exclusion IV.A ) or area over which the actual or alleged **Personal Injuries, Property Damages and/or Advertising Liabilities** occur or the number of such actual or alleged **Personal Injuries, Property Damages and/or Advertising Liabilities**; provided, however, that any actual or alleged **Personal Injury, Property Damage or Advertising Liability** which is **Expected or Intended** by any **Insured** shall not be included in any **Occurrence**. So far as **Personal Injuries, Property Damages and/or Advertising Liabilities** resulting or alleged to result from the design, formulation, manufacture, distribution, use, operation, maintenance and/or repair of an **Insured's Product**, and/or the failure to warn as to the use, operation, maintenance and/or repair of an **Insured's Product**, the term "the same actual or alleged event, condition, cause, defect, hazard and/or failure to warn of such" means any such design, formulation, manufacture, distribution, use, operation, maintenance, repair and/or failure to warn, as the case may be, as to which such losses, injuries or damages are directly, indirectly or allegedly attributable. As respects **Advertising Liability**, multiple or repeated broadcasts or publications of the same or similar materials shall constitute "the same actual or alleged event, condition, cause or defect."

- (3) Notwithstanding paragraphs (1) and (2) above, if an **Occurrence** is not identified in the notice thereof as an "**Integrated Occurrence**," then actual or alleged **Personal Injury** to each person, **Property Damage** to each piece of property and/or **Advertising Liability** which commences at any time shall be deemed to be encompassed within a separate **Occurrence** from which **Personal Injury** to any other person, **Property Damage** to any other piece of property and/or **Advertising Liability** which commences more than thirty (30) days prior or later thereto is encompassed; provided, however, that notwithstanding the foregoing, where separate **Occurrences** pursuant to this paragraph (3), except for the thirty (30) day limitation, would otherwise be a single **Occurrence** under paragraph (2) above, then all such separate **Occurrences**, combined, shall be subject to a limit of liability equal to the largest aggregate limit of liability stated in Item 2(b) of the Declarations in effect at the time of first notice of any such separate **Occurrence** pursuant to Article V of this Policy by any **Insured**.
- W. "**Personal Injury**" means **Bodily Injury**, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, and libel, slander or defamation of character or invasion of rights of privacy.
- X. "**Policy Period**" means the period commencing with the **Inception Date** and ending with the **Termination Date** of Coverage A.
- Y. "**Pollutant**" means any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance which may, does, or is alleged to affect adversely the environment, property, persons or animals, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and **Waste**.
- Z. "**Product Pollution Liability**" means liability or alleged liability for **Personal Injury** or **Property Damage** arising out of the end-use of the **Insured's Products**, if such use occurs after possession of such goods or products has been relinquished to others by the **Insured** or by others trading under its name and if such use occurs away from premises owned, rented or controlled by the **Insured**; such goods or products shall be deemed to include any container thereof other than an **Automobile, Watercraft or Aircraft**.
- AA. "**Property Damage**" means:
- (1) physical damage or destruction of tangible property, including the loss of use thereof at any time resulting therefrom;

- (2) loss of use of tangible property which has not been physically damaged or destroyed arising from physical damage to or destruction of other tangible property; or
- (3) losses consequent upon evacuation arising from actual or threatened **Bodily Injury** or destruction of tangible property.

AB. "**Termination**" or "**Termination Date**" means:

- (1) for Coverage A, the earlier of the effective cancellation date of this Policy pursuant to Condition L or the end of an **Annual Period** if Coverage A is not extended pursuant to Condition Q;
- (2) for Coverage B, the end of the **Discovery Period**.

AC. "**Ultimate Net Loss**" means the total sum which the **Insured** shall become obligated to pay for **Damages** on account of **Personal Injury**, **Property Damage** and/or **Advertising Liability** which is, or but for the amount thereof would be, covered under this Policy less any salvages or recoveries.

AD. "**Waste**" means all waste and includes, without limitation, materials to be discarded, stored pending final disposal, recycled, reconditioned or reclaimed.

AE. "**Watercraft**" means any ship or vessel of whatever type, including, but not limited to, cargo vessels, passenger vessels, other vessels used for transport, towboats and barges, vessels used in the construction of pipelines, platforms or other facilities, storage vessels, tanker vessels, drill ships, drilling rigs and barges (including, without limitation, submersible drill rigs and barges, semi-submersible drill rigs and barges and self-elevating drill rigs and barges) and all other vessels of whatever nature and description, all whether or not self-propelled. **Watercraft** shall not include an offshore oil or gas platform secured in place for drilling or producing operations.

#### IV. EXCLUSIONS

This Policy does not apply to actual or alleged:

A. **PRIOR TO INCEPTION DATE**

**Personal Injury** to any individual person, **Property Damage** to any specific property or **Advertising Liability** which takes place prior to the **Inception Date**.

B. **UNEMPLOYMENT COMPENSATION, ETC.**

Liability in respect of any obligation for which the **Insured** or any company as its insurer may be liable under any unemployment compensation or disability benefits law; provided, however, that this Exclusion B does not apply to liability of others assumed by the **Insured** under contract or agreement or to liability arising under the Federal Employers Liability Act, the Jones Act or the Longshoremen's and Harbor Workers' Compensation Act.

C. **PROFESSIONAL SERVICES**

Liability for **Property Damage** arising out of any act, error or omission in the rendering of professional services, other than architectural and engineering services (which are nonetheless subject to the other exclusions herein, including, without limitation, Exclusion E below), including, but not limited to, the rendering of legal, accounting, data processing, consulting, or investment advisory services.

D. **OWNED PROPERTY; CARE, CUSTODY OR CONTROL, ETC.**

**Property Damage to:**

- (1) property owned or occupied by or rented to any **Insured**;
- (2) property loaned to any **Insured**;
- (3) property in the care, custody or control of any **Insured**; or
- (4) that particular part of real property or fixtures on which any **Insured** or any contractors or sub-contractors working directly or indirectly on behalf of any **Insured** are performing operations, if such **Property Damage** arises out of such operations;

provided, however, that paragraphs (2), (3) and (4) of this Exclusion D do not apply to liability assumed under a railway sidetrack agreement; provided further that paragraphs (1) and (3) of this Exclusion D do not apply as respects damage to property of any **Insured** which is an **Insured** solely by virtue of paragraph (4) of Definition P where such property is not owned or occupied by, rented to, or in the care, custody or control of any **Insured** which is an **Insured** other than by virtue of paragraph (4) of Definition P.

E. **EFFICACY, LOSS OF USE, ETC.**

**Liability of the Insured:**

- (1) arising out of the failure of any **Insured's Products** or of work, including architectural or engineering services, by or on behalf of any **Insured** to meet any warranty or representation by any **Insured** as to the level of performance, quality, fitness or durability or to perform their function or serve their purpose, to the extent that such liability is for the diminished value or utility of any **Insured's Products** or work by or on behalf of any **Insured**;
- (2) without limiting paragraph (1) of this Exclusion E, in respect of **Property Damage** to any portion or section of the **Insured's Products** or of work performed by or on behalf of any **Insured**, if such **Property Damage** arises out of or is alleged to arise out of that portion of such products or that section of work, or out of materials, parts or equipment furnished in connection therewith;
- (3) for the costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of any **Insured's Products** or work, including, without limitation, architectural or engineering services, or, in connection with any of the forgoing, loss of use thereof; provided, however, that this paragraph (3) shall not apply in respect of costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of products or work of a party other than an **Insured** of which the **Insured's Products** or work forms a part;
- (4) for the costs incurred for the withdrawal, inspection, repair, recall, return, replacement or disposal of any **Automobiles** or products used in **Automobiles** of which the **Insured's Products** or work forms a part or for **Property Damage** to **Automobiles** or products used in **Automobiles** as a result of incorporation of the **Insured's Products** or work therein; or
- (5) in respect of decline of value of real or personal property, to the extent such decline in value is attributable not to physical damage or destruction thereof but to proximity to continuing operations, activities or equipment which limit the usage of such property or make occupation of such property by people less feasible or desirable.

F. **ADVERTISING**

**Advertising Liability** arising out of:

- (1) breach of contract, but this paragraph (1) shall not exclude liability for unauthorized misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- (2) infringement of registered trademarks, service marks or trade name by use thereof, but this paragraph (2) shall not apply to titles or slogans;
- (3) the failure of goods, products or services to conform with advertised quality or performance;
- (4) the wrong description of the price of goods, products or services; or
- (5) advertising activities on behalf of a party other than an **Insured** by an **Insured** engaged in the business of advertising.

G. **WAR**

**Personal Injury, Property Damage or Advertising Liability** directly or indirectly occasioned by, happening through or in consequence of war, invasion, hostile action of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority; provided, however, that this Exclusion G shall not apply to **Personal Injury, Property Damage or Advertising Liability**:

- (1) taking place in and caused by the foregoing events in the land area of the United States of America, its territories or possessions, Puerto Rico or Canada; or
- (2) caused by any act or acts committed by one or more persons, whether or not agents of a sovereign power, for political or terrorist purposes where (a) such person or persons are not acting on behalf of a government, governmental authority or other power (usurped or otherwise) which exercises *de facto* jurisdiction over part or all of the populated land area of the country in which the **Personal Injury or Property Damage** takes place; and (b) if such person or persons are acting as an agent or agents of any government recognized *de jure* by a majority of Belgium, Canada, France, Germany, Japan, the United Kingdom and the United States, such person or persons are acting secretly and not in connection with the operation of regular military or naval armed forces in the country where the **Personal Injury or Property Damage** takes place.

H. **TOXIC SUBSTANCES**

**Personal Injury, Property Damage or Advertising Liability** arising out of the manufacture, distribution, sale, installation, removal, utilization, ingestion or inhalation of, or exposure to or existence of, as the case may be:

- (1) asbestos or any asbestos-containing materials; provided, however, that this Exclusion H shall not apply to **Property Damage** arising out of asbestos not contained in the **Insured's Products** as a result of explosion, hostile fire or lightning;
- (2) tobacco or any tobacco products (or ingredients of, or used in the manufacture or production of, such products);
- (3) 2,3,7,8-TCDD (2,3,7,8-tetrachlorodibenzo-p-dioxin);



- (4) asbestiform talc;
- (5) diethylstilbestrol ("DES");
- (6) any intra-uterine device ("IUD");
- (7) any product containing silicone which is in any form implanted or injected in the body;

provided, however, that this Exclusion H shall not apply to actual or alleged **Personal Injury** or **Property Damage** where such **Personal Injury** or **Property Damage** is not related to the asbestos, tobacco (or other consumed portion of a tobacco product), 2,3,7,8-TCDD, asbestiform talc, DES, IUD or silicone content of goods, materials or products or completed operations. The listing of materials herein shall not give rise to an inference that **Personal Injury**, **Property Damage** or **Advertising Liability** attributable to other materials was neither **Expected** nor **Intended** by the **Insured**.

#### I. AIRCRAFT

Liability arising out of the design, manufacture, construction, maintenance, service, use or operation of any **Aircraft** or any component part or equipment thereof or any other **Aircraft** navigational or aviation related equipment; provided, however, that this Exclusion I shall not apply to any liability or alleged liability in respect of:

- (1) **Personal Injury** or **Property Damage** arising out of **Aircraft** operated or used by the **Insured** for purposes other than **Commercial Aviation Operations**;
- (2) the processing, distribution, sale, storage, transportation or handling of **Aircraft** fuel or **Aircraft** refueling and related operations;
- (3) **Personal Injury** or **Property Damage** caused by the **Insured's Products** incorporated into an **Aircraft** which are a type or grade sold principally for purposes other than use in **Aircraft** or aviation;
- (4) **Personal Injury** or **Property Damage** arising from a component part or equipment of an **Aircraft** which has not yet been incorporated into an **Aircraft**;
- (5) **Aircraft** for which the **Insured** provides financing (including, without limitation, lease financing), provided that neither the **Insured** nor any affiliate, agent or representative of the **Insured** maintains, services, uses or operates the **Aircraft** or is obligated by virtue of a written contract or agreement to maintain or service the **Aircraft**; or
- (6) liability in connection with manufacturing and associated operations in respect of **Aircraft** or any component part thereof or any **Aircraft** equipment where all **Personal Injury** and **Property Damage** giving rise to such liability take place at a manufacturing, storage or associated premises on the ground (or in connection with on the ground transportation by other than an **Aircraft**) and such liability and the **Personal Injury**, **Property Damage** or **Advertising Liability** giving rise thereto do not arise directly or indirectly out of a crash, hijacking or other circumstance in connection with the operation of any **Aircraft**.

#### J. WATERCRAFT

Liability arising out of the design, construction, maintenance, sale, manning, ownership or operation of any **Watercraft**, but this Exclusion J shall not apply to:

- (1) **Watercraft** or risks listed on Schedule C hereto and any additional **Watercraft** acquired in the ordinary course of business during the **Policy Period** which are of a similar type and use as the **Watercraft** listed on Schedule C; provided, however, that the aggregate gross

tonnage of such additional **Watercraft** shall not exceed 20% of the gross tonnage of **Watercraft** listed on Schedule C;

- (2) loading or unloading of any **Watercraft** at premises owned, leased or controlled by the **Insured**;
- (3) liability for any **Personal Injury** or **Property Damage** to third parties arising out of or allegedly arising out of **Incidental Watercraft Use** (provided that damage to the hull or any portion, component or equipment of the **Watercraft** owned, leased or chartered by the **Insured** or to its cargo contents shall not constitute **Property Damage** to third parties);
- (4) liability for **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the design, construction, maintenance or sale by the **Insured** of any **Watercraft** less than 75 feet in length; or
- (5) **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of or alleged to arise out of design, manufacture, maintenance or sale by the **Insured** of any component part or equipment of any **Watercraft**.

#### K. POLLUTION

- (1) (a) liability for **Personal Injury**, **Property Damage** or **Advertising Liability** arising out of the **Discharge** of **Pollutants** into or upon land or real estate, the atmosphere, or any watercourse or body of water whether above or below ground or otherwise into the environment; or
- (b) liability, loss, cost or expense of any **Insured** or others arising out of any direction or request, whether governmental or otherwise, that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**.

This Exclusion K applies whether or not such **Discharge** of such **Pollutants**:

- (i) results from the **Insured's** activities or the activities of any other person or entity;
  - (ii) is sudden, gradual, accidental, unexpected or unintended; or
  - (iii) arises out of or relates to industrial operations or the **Waste** or by-products thereof.
- (2) Paragraph (1) of this Exclusion K does not apply to:
    - (a) **Product Pollution Liability**; or
    - (b) (i) liability of the **Insured** for **Personal Injury** or **Property Damage** caused by an intentional **Discharge** of **Pollutants** solely for the purpose of mitigating or avoiding **Personal Injury** or **Property Damage** which would be covered by this Policy; or
    - (ii) liability of the **Insured** for **Personal Injury** or **Property Damage** caused by a **Discharge** of **Pollutants** which is not **Expected** or **Intended**, but only if the **Insured** becomes aware of the commencement of such **Discharge** within seven (7) days of such commencement;

provided that the **Insured** gives the **Insurer** written notice in accordance with Section D of Article V of this Policy of such commencement of the **Discharge** under subparagraphs (2)(b)(i) or (ii) of this Exclusion K within forty (40) days of such commencement. Such notice must be provided irrespective of whether notice as soon as practicable otherwise would be required pursuant to Section A of Article V of this Policy.

L. **NUCLEAR**

Liability for:

- (1) **Personal Injury, Property Damage or Advertising Liability** in the United States, its territories or possessions, Puerto Rico or the Canal Zone (A) with respect to which an **Insured** under this Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limits of liability or (B) resulting from the hazardous properties of nuclear material and with respect to which (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the **Insured** is or, had this Policy not been issued, would be entitled to indemnity from the United States of America or any agency thereof under any agreement entered into by the United States of America or any agency thereof with any person or organization;
- (2) medical or surgical relief or expenses incurred with respect to **Bodily Injury**, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization in the United States, its territories or possessions, Puerto Rico or the Canal Zone;
- (3) injury, sickness, disease, death or destruction resulting from hazardous properties of nuclear material, if:
  - (a) the nuclear material (i) is at any nuclear facility owned by or operated by or on behalf of an insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone or (ii) has been discharged or dispersed therefrom;
  - (b) such nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed by or on behalf of an Insured in the United States, its territories or possessions, Puerto Rico or the Canal Zone; or
  - (c) the injury arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of a nuclear facility, but if such facility is located within the United States of America, its territories or possessions, Puerto Rico or the Canal Zone, this subparagraph (c) applies only to injury to or destruction of property at such nuclear facility.
- (4) As used in this Exclusion:
  - (a) "hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material," "special nuclear material" and "by-product material" have the meanings given them by the Atomic Energy Act of 1954 or in law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material
    - (i) containing by-product materials; and
    - (ii) resulting from the operation by a person or organization of a nuclear facility included within the definition of nuclear facility under clauses (i) or (ii) of subparagraph (b) below;

- (b) "nuclear facility" means:
  - (i) any nuclear reactor;
  - (ii) any equipment or device designed or used for (x) separating the isotopes of uranium or plutonium, (y) processing or utilizing spent fuel, or (z) handling, processing or packaging waste;
  - (iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **Insured** at such premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or combination thereof or more than 250 grams of uranium 235;
  - (iv) any structure, basin, excavation, premises or place prepared for storage or disposal of waste;
- (c) "nuclear facility" includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (d) "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (e) with respect to injury or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property or loss of the use thereof.

**M. RADIOACTIVE CONTAMINATION (OUTSIDE U.S.)**

Liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity outside the United States, its territories or possessions, Puerto Rico or the Canal Zone from any nuclear fuel or from any nuclear waste from the combustion, fission or fusion of nuclear fuel.

**N. ERISA**

Liability arising out of any negligent act, error or omission of any **Insured**, or any other person for whose acts any **Insured** is legally liable, in the administration of any **Insured's** Employee Benefits Programs, as defined below, including, without limitation, liability or alleged liability under the Employee Retirement Income Security Act of 1974, as amended, or any similar provisions of state statutory law or common law or any other law.

As used in this Exclusion N, the term "Employee Benefits Programs" means group life insurance, group accident or health insurance, profit sharing plans, pension plans, employee stock subscription plans, workers' compensation, unemployment insurance, social benefits, disability benefits, and any other similar employee benefits.

As used in this Exclusion N, the term "administration" means any of the following acts if such acts are authorized by the **Insured**:

- (1) giving counsel to employees with respect to the Employee Benefits Programs;
- (2) interpreting the Employee Benefits Programs;
- (3) handling of records in connection with the Employee Benefits Programs; or
- (4) enrolling, terminating or cancelling employees under the Employee Benefits Programs.

O. **REPETITIVE STRESS**

Liability arising out of any repetitive motion, repetitive stress, repetitive strain or cumulative trauma disorder, including, without limitation, (i) liability or alleged liability arising from asserted improper design of goods, equipment, machinery or operations, (ii) failure to warn or properly instruct as to use of goods, equipment or machinery or conduct of operations, (iii) improper supervision of use of goods, equipment or machinery or conduct of operations, or (iv) without limiting the foregoing, carpal tunnel syndrome arising or allegedly arising from, without limitation, use of keyboards or finger pads.

P. **SECURITIES, ANTITRUST, ETC.**

Liability arising under any statute, law, ordinance, rule or regulation, whether established pursuant to legislative, administrative, judicial, executive or other authority, of any nation or federal, state, local or other governmental or political body or subdivision thereof relating to:

- (1) the purchase, sale or distribution of securities or offers to purchase or sell securities, or investment counseling or management, including liability under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, the Investment Advisers Act of 1940, and the so-called "blue-sky" laws of the various states or other jurisdictions;
- (2) antitrust or the prohibition of monopolies, activities in restraint of trade, unfair methods of competition or deceptive acts and practices in trade and commerce including, without limitation, the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, the Lanham Act and the Hart-Scott-Rodino Antitrust Improvements Act;
- (3) fraud or breach of fiduciary duty;
- (4) criminal penalties;
- (5) the failure to pay when due any governmental tax including income, excise, property, value added and sales tax, or tariff, license fee or other governmental fee which is incidental to the conduct of business, or any assessment, fine, or penalty related thereto;
- (6) copyright, patent or trademark infringement other than **Advertising Liability** with respect to titles or slogans;
- (7) any defect in or impairment to title to real property, including fixtures, whether or not owned by an **Insured**;
- (8) disclosure relating to, or other regulation of sales of or offers to sell, real property;
- (9) liability or alleged liability arising out of employee, officer or director dishonesty; or
- (10) any liability of an employee, officer or director of an **Insured** entity to such **Insured** entity.

No inference shall be made from the express exclusion of liabilities in this Exclusion P that this Policy would otherwise cover such liabilities or similar liabilities.

V. **NOTICE OF OCCURRENCE**

A. **NOTICE AS SOON AS PRACTICABLE**

If an **Executive Officer** shall become aware of an **Occurrence** likely to involve this Policy, the **Named Insured** shall, as a condition precedent to the rights of any **Insured** under this Policy, give written notice thereof to the **Insurer** in the manner provided in Section D of this Article V.

Such notice shall be given as soon as practicable and, in any event, during the **Policy Period** or the **Discovery Period**, if applicable, and in accordance with Paragraph 2(b) of Exclusion K, if applicable. Failure to provide written notice as prescribed above shall result in a forfeiture of any rights to coverage hereunder in respect of such **Occurrence**.

**B. PERMISSIVE NOTICE**

Any **Insured** may at any time during the **Policy Period** or **Discovery Period** give notice of an **Occurrence** to the **Company** in the manner provided in Section D of this Article V.

**C. PERMISSIVE NOTICE OF INTEGRATED OCCURRENCE**

The **Insured** may at its option give written notice to the **Insurer** of any **Occurrence** as an "**Integrated Occurrence**" by designating it as such and giving such notice in the manner provided in Section D of this Article V. Once the **Insured** gives **Notice of Integrated Occurrence**, all **Personal Injury** or **Property Damage** that falls within the **Integrated Occurrence** (as provided in the terms, conditions and exclusions of this Policy) shall be treated as such for all purposes under this Policy irrespective of whether this Policy has been terminated after the **Insured** has given **Notice of Integrated Occurrence**. The limit of liability applicable to such **Integrated Occurrence** shall be the limit described in Article II of this Policy.

**D. MANNER OF NOTICE**

- (1) Notice of **Occurrence** must explicitly be designated as such in writing and must be directed to the **Insurer's** Claims Department at the address set forth in Item 8(a) of the Declarations.
- (2) Information (including, without limitation, information about pending and/or prior claims, reserves or payments, loss runs, etc.) submitted (whether face-to-face, by mail, telex, courier, facsimile or otherwise) to the **Insurer's** underwriter(s) (whether in an initial or annual renewal application/submission or otherwise) shall not constitute notice of **Occurrence**. All material directed to the **Insurer** at the address indicated in Item 8(b) of the Declarations shall be deemed to have been submitted to the **Insurer's** underwriters (unless otherwise acknowledged by the **Insurer** in writing).

**VI. CONDITIONS**

**A. PREMIUM**

The premium for this Policy is a flat premium and is not subject to adjustment, except as specifically provided herein. The premium shall be paid to the **Insurer**.

**B. INSPECTION**

The **Insurer** shall be permitted but not obligated to inspect the **Insured's** property, operations, books, records and files at any time. Neither the **Insurer's** right to make inspections nor the making thereof or of a report thereon shall constitute an undertaking on behalf of or for the benefit of the **Insured** or others to determine or warrant that such property or operations are safe or are in compliance with any statute, law, ordinance, rule or regulation.

**C. CROSS LIABILITY**

In the event of a **Claim** being made by reason of **Personal Injury** suffered by an employee of one **Insured** hereunder for which another **Insured** hereunder is or may be liable, this Policy shall cover such **Insured** against whom such a **Claim** is made or may be made in the same manner as if separate policies had been issued to each **Insured** hereunder.

Nothing contained herein shall operate to increase the **Company's** limits of liability as set forth in Item 2 of the Declarations.

#### D. ASSISTANCE AND COOPERATION

- (1) The **Insurer** shall not be called upon to assume charge of the settlement or defense of any **Claim** made or suit brought or proceeding instituted against an **Insured**, but the **Insurer** shall have the right and shall be given the opportunity to associate with the **Insured** or the **Insured's** underlying insurers or both in the defense and control of any **Claim** relative to any **Occurrence** where the **Claim** or suit involves, or appears to the **Insurer** reasonably likely to involve, the **Insurer**, in which event the **Insured** and the **Insurer** shall cooperate in all things in the defense of such **Claim**.
- (2) The **Insured** shall furnish promptly all information reasonably requested by the **Insurer** with respect to any **Occurrence**, both with respect to any **Claim** against the **Insured** and pertaining to coverage under this Policy.
- (3) If liabilities, losses, costs and/or expenses are in part covered by this Policy and in part not covered by this Policy, the **Insured** and **Insurer** shall use their best efforts to agree upon a fair and proper allocation thereof between covered and uncovered amounts, and the **Insured** shall cooperate with such efforts by providing all pertinent information with respect thereto.
- (4) Those expenses incurred by the **Insurer** on its own behalf in connection with claims representation pursuant to this Condition D shall be at its own expense and shall not be part of **Ultimate Net Loss**.

#### E. APPEALS

In the event the **Insured** or the **Insured's** underlying insurers elect not to appeal a judgment in excess of the retention or the underlying limits, as the case may be, the **Insurer** may elect to make such appeal at its own cost and expense and shall be liable for the taxable costs and disbursements of such appeal and post-judgment interest on the judgment appealed from accruing during such an appeal. In no event, however, shall liability of the **Insurer** for **Ultimate Net Loss** exceed the applicable limit of liability plus the costs and expenses of such appeal.

#### F. LOSS PAYABLE

Liability under this Policy with respect to any **Occurrence** shall not attach unless and until:

- (1) the **Insured's** underlying insurer(s) or the **Insured** shall have paid the greater of the amount of any applicable underlying limits or the applicable retention set forth in Item 3 of the Declarations; and
- (2) the **Insured's** liability covered hereunder shall have been fixed and rendered certain either by final judgment against the **Insured** after actual trial or by settlement approved in writing by the **Insurer**, and the **Insured** shall have paid such liability.

Any consideration paid by the **Insured** or the **Insured's** underlying insurers other than in legal currency shall be valued at the lower of cost or market, and any element of the **Insured's** profit or other benefit to the **Insured** shall be deducted in determining the value of such consideration. The **Insurer** may examine the underlying facts giving rise to a judgment against or settlement by the **Insured** to determine if, and to what extent, the basis for the **Insured's** liability under such judgment or settlement is covered by this Policy.

The **Insured** shall make a definite demand for payment for any amount of the **Ultimate Net Loss** for which the **Insurer** may be liable under this Policy within twelve (12) months after the **Insured** shall have paid such amount. If any subsequent payments shall be made by the **Insured** on account of the same **Occurrence** or **Claim**, additional demands for payment shall be made similarly from time to time. Such losses shall be due and payable by the **Insurer** thirty (30) days after they are respectively paid by the **Insured**, demanded and proven in conformity with this Policy.

G. **REPRESENTATION**

The **Named Insured** or such other person as it shall designate in Item 5 of the Declarations shall represent and have authority to bind the **Named Insured** and any and all **Insureds** hereunder in all matters under this Policy, including, without limitation, payment of premium, negotiation of the terms of renewal or reinstatement and the adjustment, settlement and payment of claims. The **Named Insured**, by notice to the **Insurer** in writing, may designate a substitute representative, which representative shall, effective as of the date such notice is received, be deemed to be designated in Item 5 of the Declarations.

H. **OTHER INSURANCE**

If other valid and collectible insurance with any other insurer, whether issued prior hereto, simultaneously herewith or subsequent hereto, is available to the **Insured** for **Ultimate Net Loss** covered by this Policy, other than insurance which is listed on Schedule B as excess of a portion of the limits of this Policy, the insurance afforded by this Policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this Policy subject to the terms, conditions or limitations of other insurance.

If this Policy shall be deemed or required to contribute to **Ultimate Net Loss** with other insurance and such contribution arises in whole or in part from the failure of the **Named Insured** to list such other insurance on Schedule B hereto in accordance with the instructions for such Schedule B, then the **Named Insured** shall indemnify the **Insurer** for the amount of any such contribution, and this Policy shall apply as if such other insurance had been so listed.

I. **SUBROGATION**

In the event of any payment hereunder, the **Insurer** shall be entitled to exercise rights of subrogation, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. In such case, the **Insurer** will act in concert with all other interested parties, including the **Insured**, concerned in the exercise of rights of recovery. The apportioning of any amounts which may be so recovered, net of expenses, shall follow the principle that any parties, including the **Insured**, that shall have paid an amount over and above any payment hereunder shall first be reimbursed up to the amount paid by them. The **Insurer** is then to be reimbursed out of any balance then remaining up to the amount paid by it; lastly, the parties of whose interests this coverage is in excess, including the **Insured**, are entitled to claim the residue, if any.

J. **CHANGES**

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the **Insurer** from asserting any right under the terms of this Policy. The terms of this Policy may not be waived or changed, except by written endorsement issued to form a part hereof and signed by the **Insurer**.

K. **ASSIGNMENT**

Assignment of interest under this Policy shall not bind the **Insurer** unless and until its consent is endorsed herein.



## L. CANCELLATION

- (1) Coverage A under this Policy may be cancelled on a pro rata basis:
  - (a) at any time by the **Named Insured** by delivering written notice to the **Insurer** at the address listed in Item 8(b) of the Declarations stating when, not less than thirty (30) days from the date such notice is received, cancellation shall be effective;
  - (b) at any time by the **Insurer** by delivering written notice to the **Named Insured** stating when, not less than ninety (90) days from the date the notice is received, cancellation shall be effective; or
  - (c) if any **Insured** shall institute a suit or proceeding against the **Insurer** other than as provided in Condition N below (or to enforce an award arising out of such arbitration), at any time thereafter by the **Insurer** by delivering written notice to the **Named Insured** stating when, not less than five (5) days from the date the notice is received, cancellation shall be effective.
- (2) This Policy will be cancelled automatically retroactive to the commencement of the **Annual Period**, if the premium or proof of payment thereof is not received by the **Insurer** within five (5) business days of the commencement of such **Annual Period**.
- (3) Coverage B may not be cancelled by either the **Named Insured** or the **Insurer**, except the **Insurer** may cancel effective immediately upon the delivery of written notice to the **Named Insured** if the **Insured** should institute a suit or proceeding against the **Insurer** other than as provided in Condition N below (or to enforce an award arising out of such arbitration).

## M. CURRENCY

The premiums and losses under this Policy are payable in the respective currency(ies) set forth in Item 6 of the Declarations. Unless otherwise specified in Item 6, such currency(ies) shall be United States dollars. If judgment is rendered, settlement is denominated or another element of **Damages** is stated in a currency other than in the applicable currency, payment under this Policy shall be made in the applicable currency at the rate of exchange prevailing on the date the final judgment is rendered, the amount of the settlement is agreed upon or the other element of **Damages** is due, respectively.

## N. ARBITRATION

- (1) Any dispute, controversy or claim arising out of or relating to this Policy or the breach, termination or invalidity thereof shall be finally and fully determined in London, England under the provisions of the Arbitration Acts of 1950, 1975 and 1979 and/or any statutory modifications or amendments thereto, for the time being in force, by a Board composed of three arbitrators to be selected for each controversy as follows:

Any party may, in the event of such a dispute, controversy or claim, notify the other party or parties to such dispute, controversy or claim of its desire to arbitrate the matter, and at the time of such notification the party desiring arbitration shall notify any other party or parties of the name of the arbitrator selected by it. The other party who has been so notified shall within thirty (30) calendar days thereafter select an arbitrator and notify the party desiring arbitration of the name of such second arbitrator. If the party notified of a desire for arbitration shall fail or refuse to nominate the second arbitrator within thirty (30) calendar days following the receipt of such notification, the party who first served notice of a desire to arbitrate will, within an additional period of thirty (30)

calendar days, apply to a judge of the High Court of Justice of England and Wales for the appointment of a second arbitrator and in such a case the arbitrator appointed by such a judge shall be deemed to have been nominated by the party or parties who failed to select the second arbitrator. The two arbitrators, chosen as above provided, shall within thirty (30) calendar days after the appointment of the second arbitrator choose a third arbitrator. In the event of the failure of the first two arbitrators to agree on a third arbitrator within said thirty (30) calendar day period, either of the parties may within a period of thirty (30) calendar days thereafter, after notice to the other party or parties, apply to a judge of the High Court of Justice of England and Wales for the appointment of a third arbitrator and in such case the person so appointed shall be deemed and shall act as the third arbitrator. Upon acceptance of the appointment by said third arbitrator, the Board of Arbitration for the controversy in question shall be deemed fixed. All claims, demands, denials of claims and notices pursuant to this Condition N shall be given in accordance with Condition U below.

- (2) The Board of Arbitration shall fix, by a notice in writing to the parties involved, a reasonable time and place for the hearing and may prescribe reasonable rules and regulations governing the course and conduct of the arbitration proceeding, including, without limitation, discovery by the parties.
- (3) The Board shall, within ninety (90) calendar days following the conclusion of the hearing, render its decision on the matter or matters in controversy in writing and shall cause a copy thereof to be served on all the parties thereto. In case the Board fails to reach a unanimous decision, the decision of the majority of the members of the Board shall be deemed to be the decision of the Board and the same shall be final and binding on the parties thereto. Such decision shall be a complete defense to any attempted appeal or litigation of such decision in the absence of fraud or collusion. Without limiting the foregoing, the parties waive any right to appeal to, and/or seek collateral review of the decision of the Board of Arbitration by, any court or other body to the fullest extent permitted by applicable law.
- (4) Any order as to the costs of the arbitration shall be in the sole discretion of the Board, who may direct to whom and by whom and in what manner they shall be paid.
- (5) The **Insurer** and the **Insured** agree that in the event that claims for indemnity or contribution are asserted in any action or proceeding against the **Insurer** by any of the **Insured's** other insurers in any jurisdiction or forum other than that set forth in this Condition N, the **Insured** will in good faith take all reasonable steps requested by the **Insurer** to assist the **Insurer** in obtaining a dismissal of these claims (other than on the merits) and will, without limitation, undertake to the court or other tribunal to reduce any judgment or award against such other insurers to the extent that the court or tribunal determines that the **Insurer** would have been liable to such insurers for indemnity or contribution pursuant to this Policy. The **Insured** shall be entitled to assert claims against the **Insurer** for coverage under this Policy, including, without limitation, for amounts by which the **Insured** reduced its judgment against such other insurers in respect of such claims for indemnity or contribution, in an arbitration between the **Insurer** and the **Insured** pursuant to this Condition N, which arbitration may take place before, concurrently with and/or after the action or proceeding involving such other insurers; provided, however, that the **Insurer** in such arbitration in respect of such reduction of any judgment shall be entitled to raise any defenses under this Policy and any other defenses (other than jurisdictional defenses) as it would have been entitled to raise in the action or proceeding with such insurers (and no determination in any such action or proceeding involving such other insurers shall have collateral estoppel, res judicata or other issue preclusion or estoppel effect against the **Insurer** in such arbitration, irrespective of whether or not the **Insurer** remained a party to such action or proceeding).

O. **LAW OF CONSTRUCTION AND INTERPRETATION**

This Policy, and any dispute, controversy or claim arising out of or relating to this Policy, shall be governed by and construed in accordance with the internal laws of the State of New York, except insofar as such laws:

- (1) may prohibit payment in respect of punitive damages hereunder;
- (2) pertain to regulation under the New York Insurance Law, or regulations issued by the Insurance Department of the State of New York pursuant thereto, applying to insurers doing insurance business, or issuance, delivery or procurement of policies of insurance, within the State of New York or as respects risks or insureds situated in the State of New York; or
- (3) are inconsistent with any provision of this Policy;

provided, however, that the provisions, stipulations, exclusions and conditions of this Policy are to be construed in an evenhanded fashion as between the **Insured** and the **Insurer**; without limitation, where the language of this Policy is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant provisions, stipulations, exclusions and conditions (without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insured** or the **Insurer** or reference to the "reasonable expectations" of either thereof or to contra proferentem and without reference to parol or other extrinsic evidence). To the extent that New York law is inapplicable by virtue of any exception or proviso enumerated above or otherwise, and as respects arbitration procedure pursuant to Condition N, the internal laws of England and Wales shall apply.

P. **LIABILITY OF THE INSURER**

The **Named Insured** and the **Insured** agree that the liability and obligations of the **Insurer** hereunder shall be satisfied from the funds of the **Insurer** alone and that the individual shareholders of the **Insurer** shall have no liability hereunder to the **Named Insured** or the **Insured**.

Q. **POLICY EXTENSION**

Subject to Condition L, Coverage A of this Policy may be extended at the expiration of each **Annual Period** for another **Annual Period**, subject only to agreement between the **Insurer** and the **Named Insured** as to the applicable premium and such other terms and conditions as the **Insurer** and the **Named Insured** may mutually deem appropriate. Coverage A shall expire at the end of an **Annual Period** if not extended (or upon cancellation thereof). Where Coverage A (or Coverage B) is cancelled or not extended, such cancellation or non-extension shall not affect the rights of the **Insured** as respects any **Occurrence** or **Integrated Occurrence** of which notice was given in accordance with the provisions of this Policy prior to such cancellation or non-extension and shall not limit whatever rights the **Insured** otherwise would have under this Policy as respects actual or alleged **Personal Injury, Property Damage** or **Advertising Liability** included in such **Occurrence** or **Integrated Occurrence** taking place subsequent to such cancellation or non-extension.

R. **REINSTATEMENT**

- (1) At the time of each annual Policy extension of Coverage A, the aggregate limit of liability set forth in Item 2(b) of the Declarations (including the **Integrated Occurrences** sublimit under Article II, Section C) shall, unless otherwise agreed in writing between the **Named Insured** and the **Insurer**, automatically be reinstated with respect to covered **Occurrences** of which notice is first given during the following **Annual Period**. There shall be no separate premium charged for this automatic reinstatement in addition to that provided for in Condition Q above. There shall be no reinstatement of the aggregate limit of liability, unless otherwise agreed in writing by the **Insurer**, as respects Coverage B, and the remaining amount, if any, of the aggregate limit for the final **Annual Period** under Coverage A shall apply as respects the **Discovery Period**.

(2) If during any **Annual Period**, as respects Coverage A only, the aggregate limit of liability set forth in Item 2(b) ("Original Aggregate Limit") of the Declarations is or may be impaired by virtue of **Occurrence(s)** of which notice has been given previously during such **Annual Period**, then the **Named Insured** shall be entitled to elect one reinstatement of all or any portion of such aggregate limit (but no such reinstatement shall reinstate or otherwise increase the **Integrated Occurrence** sublimit under Article II, Section C, unless otherwise agreed by the **Insurer** in writing), based on the following terms and conditions:

(a) Such reinstatement must be elected in writing by the **Named Insured**, which election shall specify the amount being reinstated, not to exceed an amount equal to the Original Aggregate Limit ("Reinstatement Amount"), and must be accompanied by payment of the reinstatement premium as provided in subparagraph (c) below. Such reinstatement shall be effective as of the date of the receipt by the **Insurer** of such written election and premium ("Reinstatement Date").

(b) (i) There shall be an aggregate sublimit of liability for all **Occurrences** of which notice is first given to the **Insurer** at any time during the entire **Annual Period** in an amount equal to the Original Aggregate Limit of which any **Insured** is aware at the Reinstatement Date (including, without limitation, all **Occurrences** of which notice was first given during such **Annual Period** prior to such date). An **Insured** shall be deemed to have been aware of an **Occurrence** if any **Executive Officer** was aware of such **Occurrence**, irrespective of whether or not such person believed or expected such **Occurrence** was likely to involve this Policy.

(ii) The aggregate limit of liability for all **Occurrences** of which no **Insured** is aware at the Reinstatement Date and of which notice is first given to the **Insurer** during the portion of the **Annual Period** on or subsequent to the Reinstatement Date and during any **Discovery Period** in the event Coverage A terminates at the end of such **Annual Period** shall be:

(x) any unused portion of the Original Aggregate Limit pertaining to the portion of the **Annual Period** prior to the Reinstatement Date and to any **Occurrences** of which any **Insured** is aware at such date; plus

(y) the Reinstatement Amount.

In no event shall the aggregate limit of liability under this subparagraph (2)(b)(ii) exceed the Original Aggregate Limit.

(iii) In no event shall the aggregate limit of liability of the **Insurer** in respect of all **Occurrences** of which notice is first given to the **Insurer** during the entire **Annual Period** exceed the sum of the Original Aggregate Limit and the Reinstatement Amount.

(c) The reinstatement premium shall be one hundred percent (100%) of the total premium for the **Annual Period** in which the reinstatement takes place. If there is no notice of any **Occurrence** subsequent to the Reinstatement Date during the **Annual Period** in which a reinstatement is elected, or if there is a notice but during the portion of the **Annual Period** subsequent to the Reinstatement Date there is no payment of **Ultimate Net Loss** by the **Insurer** in respect thereof, then the **Insurer** will refund (without interest) seventy-five percent (75%) of the reinstatement premium in respect of such reinstatement at the end of such **Annual Period**; in the event that after such a refund the **Insurer** later is called upon to make any payment after the **Annual Period** in respect of any occurrence which is the subject of a notice given during such **Annual Period** after the Reinstatement Date, such payment shall be reduced by the amount of the premium so refunded (without interest).

S. **DISCOVERY PERIOD**

- (1) In the event of **Termination** of Coverage A, other than by reason of cancellation for non-payment of premium or due to institution of a proceeding other than as contemplated by Condition N, the **Named Insured** may elect, prior to the **Termination Date** of such Coverage A, to secure Coverage B for the following **Annual Period** for such **Insureds** as the **Named Insured** shall designate, by giving the **Insurer** written notice of such election and paying to the **Insurer** the annual premium set forth in the attached Schedule D no later than the date of commencement of such **Annual Period**.
- (2) In the event that the **Named Insured** elects to secure Coverage B pursuant to paragraph (1) above, the **Named Insured** may elect to continue such Coverage B for any number of additional **Annual Periods** by giving the **Insurer** written notice of each election for a subsequent **Annual Period** and paying to the **Insurer** the corresponding annual premium set forth in the attached Schedule D no later than the end of the **Annual Period** for which such Coverage B was previously elected. If the **Named Insured** shall fail to elect Coverage B for any **Annual Period**, it may not elect Coverage B for any subsequent **Annual Period**.
- (3) For the purpose of application of retentions and limits of liability, notice of an **Occurrence** given during the **Discovery Period** shall be deemed to have been given during the final **Annual Period** in the **Policy Period**. The aggregate limit of liability shall not be reinstated for the **Discovery Period**.

T. **FORMER SUBSIDIARIES, AFFILIATES AND ASSOCIATED COMPANIES**

If any subsidiary, affiliate or associated company of the **Named Insured** which is an **Insured** hereunder shall cease to be such a subsidiary, affiliate or associated company of the **Named Insured**, then at such time Coverage A shall automatically terminate as to such former subsidiary, affiliate or associated company. Coverage A shall continue with respect to the **Named Insured** and any other entity which remains an **Insured** for its own liability, if any, arising out of its prior ownership of or affiliation or association with the former subsidiary, affiliate or associated company. At such time of such automatic termination of coverage, Coverage B shall, unless the **Named Insured** otherwise specifies, automatically incept as to such former subsidiary, affiliate or associated company and continue in force for the balance of the **Annual Period**, without additional payment or return of any premium. Prior to the end of the **Annual Period**, such former subsidiary, affiliate or associated company may, with written consent received by the **Insurer** from the **Named Insured**, elect to extend Coverage B beyond the end of the **Annual Period** on such terms and conditions, for such period, subject to such limits and for such additional premium as may be agreed with the **Insurer**.

U. **NOTICE**

All notices under any provision of this Policy shall be in writing and given by hand, prepaid express courier, airmail or telecopier properly addressed to the appropriate party and will be deemed as having been effected only upon actual receipt. Notice to any **Insured** may be given to the **Named Insured** at the address shown in Item 1(b) of the Declarations or to such other person as the **Named Insured** shall designate in Item 5 of the Declarations.

V. **HEADINGS**

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

**MULTI-YEAR ANNUAL INSTALLMENT PREMIUM ENDORSEMENT**

551/U7R0069



1. It is agreed and acknowledged that in consideration of the payment by the **Named Insured** of the following premium, the **Policy Period** shall include the Period set forth below (the "Extension Period"):

Premium:	<u>\$290,000</u>
Policy Period: from 12:01 A.M.	<u>1st July, 1997</u>
to 12:01 A.M.	<u>1st July, 1999</u>

Prevailing time at the address of the **Named Insured**

2. It is further agreed and acknowledged that the definition of "**Termination**" or "**Termination Date**" in Article III (Definitions) is amended to read in its entirety as follows:

"AB. '**Termination**' or '**Termination Date**' means:

- (1) for Coverage A, the earlier of the effective cancellation date of this Policy pursuant to Condition L or the end of the Extension Period if not extended pursuant to Condition Q (and, if so extended, at the end of the last **Annual Period** for which it is so extended);
- (2) for Coverage B, the end of the "**Discovery Period**".

3. It is further agreed and acknowledged that Article VI, Sections A (**Premium**), Q (**Policy Extension**) and R(1) and (2) (**Reinstatement**) are amended to read in their entirety as follows:

**A PREMIUM**

The premium shall be paid to the **Insurer**.

<u>Premium</u>	<u>Payment Date</u>
\$145,000	1st July, 1997
\$145,000	1st July, 1998

cont'd/.....

The effective date of this endorsement is \_\_\_\_\_ --

All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. \_\_\_\_\_ --

of A.C.E. INSURANCE COMPANY, LTD.

Issued to: \_\_\_\_\_ --

Date of Issue: \_\_\_\_\_ --

By \_\_\_\_\_  
Authorized Representative

**PER OCCURRENCE RETENTION SCHEDULE**  
(Item 3 of the Declarations)

551/U7R0069



1. With respect to the perils described below, it is agreed that the Per Occurrence Retention Amount set forth in Item 3 of the Declarations shall be amended to be the amounts respectively set forth with respect thereto:

**PERIL (S):**            **AMENDED PER OCCURRENCE RETENTION AMOUNT (S):**

All perils except those listed below.....\$150,000,000

If **Damages** arise out of operations or the existence of a **Joint Venture**, the Per Occurrence Retention Amount in Item 3 of the Declarations with respect to such **Damages** shall equal the greater of US\$100 million or the product of the Per Occurrence Retention Amount for the applicable risk listed above and the percentage interest of the **Insured** in the liability of the **Joint Venture** for such **Damages**. All other Declarations, provisions, stipulations, exclusions and conditions of the Policy shall remain in effect.

If any amount listed above is less than the Per Occurrence Retention Amount previously in effect, then the **Inception Date** as respects the coverage afforded by such decrease shall (i) for the purposes of Section III.V and IV.A, be the **Inception Date** set forth in Item 4 of the Declarations, and (ii) for all other purposes, including without limitation, Section III.M, be the **Effective Date** of this Endorsement.

2. If **Ultimate Net Loss** in respect of any one **Occurrence** is attributable to two or more specific perils, the portions of such **Ultimate Net Loss** attributable to any two or more of the above referenced perils may be combined at the option of the **Named Insured**, and the highest Amended Per Occurrence Retention Amount listed above for any of such combined perils shall apply to such combined **Ultimate Net Loss**. As respects **Ultimate Net Loss** for any peril not included in such combination, the Amended Per Occurrence Retention Amount listed above with respect thereto shall separately apply.

cont'd/.....

The effective date of this endorsement is \_\_\_\_\_  
All other terms and conditions remain unchanged.  
This endorsement is attached to and made a part of Policy No. \_\_\_\_\_  
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: \_\_\_\_\_

Date of Issue: \_\_\_\_\_

By \_\_\_\_\_  
Authorised Representative

Except as otherwise provided in the Policy, the above-referenced premium is not subject to adjustment during the Extension Period unless one or more of the following occur during the Extension Period, in which event the **Insurer** may reasonably adjust the premium:

- (1) the Limit of Liability set forth in Item 2 of the Declarations are amended by mutual agreement of the **Named Insured** and **Insurer** in whole or in part;
- (2) the Per **Occurrence** Retention Amount set forth in Item 3 of the Declarations is amended by mutual agreement of the **Named Insured** and **Insurer**;
- (3) for any accounting year of the **Named Insured** which ends during the Extension Period, the revenues of the **Named Insured** increase or decrease by more than 25% in comparison to the immediately preceding accounting year (in which case maximum annual additional premium of 20% to apply); or
- (4) during any **Annual Period**, the total assets of the **Named Insured** and its consolidated subsidiaries and affiliates increase or decrease in the aggregate by more than 25% as a result of any asset or entity acquisitions, mergers, or divestitures.

If, pursuant to Article VI, Section L, the Policy is cancelled (i) by the **Named Insured**, Coverage A of the Policy shall automatically expire and Coverage B shall automatically incept and continue in force until expiration of the Extension Period without additional payment or refund of any premium; or (ii) by the **Insurer**, Coverage A shall automatically expire and unless Coverage B is properly elected, the **Insurer** shall refund (without interest) to the **Named Insured** the amount of the unearned premium. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

**Q. POLICY EXTENSION**

Subject to Condition L, Coverage A of the Policy may be extended at the expiration of the Extension Period (or any subsequent **Annual Period**) for an **Annual Period**, subject only to agreement between the **Insurer** and the **Named Insured** as to the applicable premium and such other terms and conditions as the **Insurer** and the **Named Insured** may mutually deem appropriate. Where Coverage A (or Coverage B) is cancelled or not extended, such cancellation or non-extension shall

The effective date of this endorsement is \_\_\_\_\_ --


All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. \_\_\_\_\_ --

of A.C.E. INSURANCE COMPANY, LTD.

Issued to: \_\_\_\_\_ --

Date of Issue: \_\_\_\_\_ --

By \_\_\_\_\_  
Authorized Representative 



**R REINSTATEMENT**

(1) Upon the inception of each **Annual Period** under the Policy, the aggregate limit of liability set forth in Item 2(b) of the Declarations (including the **Integrated Occurrence** sublimit under Article II, Section C) shall, unless otherwise agreed by the **Named Insured** and the **Insurer**, automatically be reinstated with respect to covered **Occurrences** of which notice is first given during such **Annual Period**. There shall be no separate premium charged for this automatic reinstatement in addition to any premium provided for in Condition Q above. There shall be no reinstatement of the aggregate limit of liability, unless otherwise agreed in writing by the **Insurer**, as respects Coverage B, and the remaining amount, if any, of the aggregate limit for the preceding **Annual Period** under Coverage A shall apply as respects the **Discovery Period**."

- 4. Notwithstanding paragraph (7) of Section III.P, no additional premium shall be payable as respects the acquisition of any Potential Additional Insured except as provided in Section VI.A of the Policy (as amended by paragraph 3 above). Any Potential Additional Insured, other than one giving rise to the obligation to pay additional premium, shall automatically be an **Insured**. Any Potential Additional **Insured** the acquisition of which triggers an additional premium obligation shall not be an **Insured** unless the additional premium is paid, and the **Named Insured** agrees to notify the **Insurer** as soon as practicable of any such acquisition.
- 5. It is agreed and acknowledged that (a), (b) and (c) of Article V, Section L. Cancellation are deleted and replaced by the following:
  - (a) By mutual consent in writing between the Named Insured and the Insurer; or
  - (b) for any accounting year of the Named Insured which ends during the Extension Period, if the total assets or revenues of the Named Insured increase by more than 50% in comparison to the immediately preceding account year; or
  - (c) (see existing language); or
  - (d) if the combined net worth of ACE Limited falls below \$900,000,000

cont'd/....

The effective date of this endorsement is \_\_\_\_\_ --

All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. \_\_\_\_\_ --  
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: \_\_\_\_\_ --

Date of Issue: \_\_\_\_\_ --

By \_\_\_\_\_ 

Authorised Representative

End No. 3 cont'd.

6. It is further agreed and acknowledged that paragraph (2) of Article V, Section L **Cancellation** is amended to read as follows:

Except as may be specifically agreed by the **Insurer**, this Policy shall automatically cancel as of any instalment date if the **Insurer** does not receive within five (5) business days following such installment date payment of proof of payment of the **Premium** for the respective period commencing on such installment date. Coverage B must be properly elected by the Named Insured.

7. Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st July, 1997

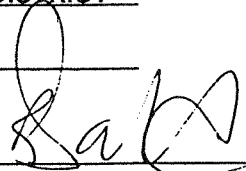
All other terms and conditions remain unchanged.

This endorsement is attached to and made a part of Policy No. SFBAR-796/5

of A.C.E. INSURANCE COMPANY, LTD.

Issued to: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Date of Issue: 26th August, 1997

By  \_\_\_\_\_  
Authorised Representative

3. Nothing herein shall affect the application of the Policy as excess of all underlying insurances; without limiting the foregoing, where separate underlying insurances apply in respect to a single **Occurrence**, this Policy shall be excess of the cumulative coverage thereunder as provided in Sections II.A(1) and VI.H of the Policy. It is agreed and acknowledged that the only purpose of Schedule B is to set forth the underlying insurance for the application of subparagraph (a) of paragraph (1) of Section II.A of the Policy, and nothing contained in Schedule B shall affect application of any other provision of the Policy.
4. This Endorsement applies to all **Occurrences** with respect to which notice of **Occurrence** or **Claim** is given to the **Insurer** on or after the Effective Date shown below notwithstanding that the event or conditions commenced or the **Personal Injury** or **Property Damage** took place in whole or in part prior to the Effective Date of this Endorsement.

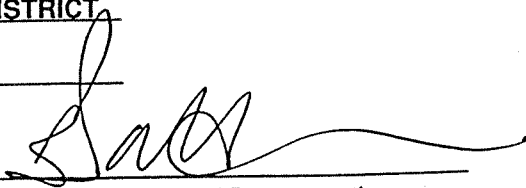
Notwithstanding anything herein to the contrary, the Per **Occurrence** Retention Amount shall under no circumstances be less than US\$100 million.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

The effective date of this endorsement is 1st July, 1997  
All other terms and conditions remain unchanged.  
This endorsement is attached to and made a part of Policy No. SFBAR-796/5  
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Date of Issue: 27th August, 1997

By   
Authorised Representative

**INCREASED LIMIT OF LIABILITY ENDORSEMENT**  
**(No Retro Coverage)**

551/U7R0069



It is agreed and acknowledged that Item 2(a), (b) and (c) of the Declarations are amended to read in their entirety as follows:

- (a) Per Occurrence: \$50,000,000
- (b) Annual Aggregate: \$50,000,000
- (c) Integrated Occurrence Sublimit: \$50,000,000

With respect to that portion of the Limits of Liability set forth above which is excess of this Policy's immediately preceding limits, the **Inception Date** shall be 1st July, 1997. This Endorsement increases, but does not reinstate, the above-referenced Limits of Liability as of the effective date of this Endorsement.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, exclusions or limitations of the Policy referenced below, except as expressly stated herein.

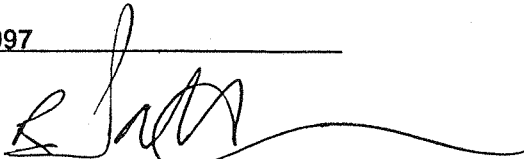
The effective date of this Endorsement is 1st July, 1997

All other terms and conditions remain unchanged.

This Endorsement is attached to and made a part of Policy No. SFBAR-796/5  
of A.C.E. INSURANCE COMPANY, LTD.

Issued to: SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Date of Issue: 27th August, 1997

By   
Authorized Representative



**FIRST AMENDMENT TO  
FUND TRANSFER AGREEMENT**

**BETWEEN**

**THE STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**AND THE**

**CAPITOL CORRIDOR  
JOINT POWERS AUTHORITY**

**EFFECTIVE DATE: March 1, 1999**

## FIRST AMENDMENT TO FUND TRANSFER AGREEMENT

**THIS FIRST AMENDMENT TO FUND TRANSFER AGREEMENT** ("Amendment") is made and entered into effective as of March 1, 1999, by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation ("STATE") and the CAPITOL CORRIDOR JOINT POWERS AUTHORITY ("AUTHORITY").

### **RECITALS**

**WHEREAS**, the STATE and the AUTHORITY have entered into, as of July 1, 1998, an Interagency Transfer Agreement ("ITA") and a Fund Transfer Agreement ("FTA"); and

**WHEREAS**, the STATE has presently authorized the AUTHORITY to operate the rail passenger Capitol Corridor Service ("Service") under an annual operating contract with Amtrak pursuant to an annual budget identified in the AUTHORITY'S annual business plan and approved by the Secretary of the Business, Transportation and Housing Agency ("Secretary"), with mandated cost allocation and reporting required of the AUTHORITY pursuant to the terms set forth in the FTA; and

**WHEREAS**, the FTA allows this Amendment to be made thereto; and

**WHEREAS**, the AUTHORITY and Amtrak now seek to provide for a negotiated fixed-price contract ("Contract") for operation of the Service by Amtrak in lieu of the cost reimbursement process agreed to by the parties at the time of execution of the FTA; and

**WHEREAS**, the Secretary hereby consents to the AUTHORITY'S negotiating a fixed-price Contract between the AUTHORITY and Amtrak for operation of the Service for the balance of this Contract year, ending September, 1999; and for each subsequent Contract year thereafter for so long as the Secretary approves the AUTHORITY'S proposed budget incorporating that fixed price Service operating Contract.

### **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual premises herein contained, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, STATE and AUTHORITY do hereby agree as follows:

1. **Fixed Price Contract.** The AUTHORITY may negotiate a Contract for operation of the Service by Amtrak for the balance of this Contract federal fiscal year ending September 30, 1999, providing for a fixed annual Contract payment (or a payment covering the appropriate portion of such Contract federal fiscal year), in monthly fixed increments, to be paid by the AUTHORITY to Amtrak as negotiated between the AUTHORITY and Amtrak.

2. **Validation Basis.** The AUTHORITY shall provide the Secretary with an annual basis (or such shorter remaining portion of a year) for the Secretary's validation of the Contract (or the first partial year thereof), and each subsequent annual fixed-price Contract. The annual validation must include a submittal to the Secretary of all estimates of future year train/bus

service costs provided by Amtrak based on actual costs incurred by Amtrak for the previous year's Service, including year-to-date experience, which has been adjusted for future year volume, new or amended Service levels, and inflation. The AUTHORITY must receive from Amtrak, and provide to the STATE, monthly historical data of ridership, revenues and all costs expended by Amtrak by train number on a quarterly basis in the same detail that is provided by Amtrak to the STATE in the Amtrak billings for operation of the San Diegan and San Joaquin Routes.

3. Service Standards. The AUTHORITY and Amtrak will include measurable Service standards along with incentives for success and liquidated damage assessments for any failure on the part of Amtrak to meet those standards as established in the executed Contract for operation of the Service. A conformed copy of each such Contract shall be delivered to the Secretary and the STATE promptly upon its execution.

4. Actual Cost Provisions. If, at any time, the AUTHORITY and Amtrak do not enter into a fixed-price Contract, or if the Secretary subsequently declines to authorize a future fiscal year fixed-price Contract between the AUTHORITY and Amtrak, all actual-cost provisions of the FTA will remain in full force and effect.

5. Precedence. The provisions of this Amendment take precedence over and supersede any contrary provisions of the FTA and, to the extent necessary, any contrary provisions of the ITA. All other provisions of the FTA and ITA not affected by this Amendment are hereby ratified and affirmed by the STATE and the AUTHORITY.



IN WITNESS WHEREOF, STATE and AUTHORITY have executed this First Amendment to Fund Transfer Agreement affective as of the day and year first written above.

**CAPITOL CORRIDOR JOINT POWERS AUTHORITY**

**STATE OF CALIFORNIA  
Department of Transportation**

By: *Smudra*  
Title: *Chair*

By: *Jose Medina*  
Title: *Director*

**Approved as to Form and Procedure:**

By: *Lenora A. Otk*  
Attorney for Authority

By: *William B. B...*  
Attorney for State

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

By: *Delmuck 6/23/99*  
Title: *1*

**FUND TRANSFER AGREEMENT**

**BETWEEN THE**

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**AND THE**

**CAPITOL CORRIDOR JOINT POWERS AUTHORITY**

**EFFECTIVE DATE: July 1, 1998**

**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I. Operational Process Description .....	2
ARTICLE II. Scope of Work .....	3
ARTICLE III. Payment .....	3
ARTICLE IV. Reports and Records .....	13
ARTICLE V. General Provisions .....	17

**TABLE OF ATTACHMENTS**

ATTACHMENT I                      FUND ENCUMBRANCE DOCUMENT

ATTACHMENT II                     AUTHORITY RESOLUTION

**STANDARD PROVISIONS OF INTERCITY RAIL  
FUND TRANSFER AGREEMENT (FTA)  
BETWEEN THE STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION  
AND THE CAPITOL CORRIDOR JOINT POWERS AUTHORITY (AUTHORITY)  
COVERING ALLOCATIONS OF STATE/FUNDS**

**EFFECTIVE DATE OF FTA: July 1, 1998**

**TERMINATION DATE OF FTA: See ARTICLE V, Section 17**

**FUND AUTHORIZATIONS: (SEE ATTACHMENT I)**

FUND SOURCE	AMOUNT	FISCAL YEAR	LAST EXPENDITURE DATE
046T	\$ _____	97/98	_____
046T	\$ _____	98/99	_____
046T	\$ _____	99/00	_____

This FTA shall be effective as of the date set forth above and is entered into by and between the State of California ("STATE"), acting through the Department of Transportation, and the Capitol Corridor Joint Powers Authority ("AUTHORITY"). AUTHORITY has the authority to agree as set forth herein and in Attachment II and has agreed to the provisions contained herein, including all

Attachments and Addenda (these "Provisions"), as a condition of its receipt and acceptance of funds transferred from STATE pursuant to that certain Interagency Transfer Agreement ("ITA") between STATE and AUTHORITY of even date herewith. Attached to this FTA as Attachment I and incorporated by this reference is a Fund Encumbrance Document for Fiscal Year 97/98 setting forth the amount to be allocated to the AUTHORITY for the balance of this fiscal year. This allocation represents a pro rata amount of the amount appropriated to the STATE by the 1997 State Budget Act for the operation of the Service. For each subsequent fiscal year that this FTA is in effect, a subsequent and sequential Attachment I shall be signed by the parties hereto and shall be attached to and made a part of the FTA setting forth the amount allocated to the AUTHORITY from the Budget Act ("State Budget Act") appropriation for the fiscal year in question. Unless otherwise defined herein, capitalized terms shall have the meanings indicated in the ITA, and to the extent not otherwise defined in the ITA, in the Equipment Lease.

## **ARTICLE I. OPERATIONAL PROCESS DESCRIPTION**

SECTION 1. AUTHORITY agrees to utilize the funding appropriated by the State Budget Act and allocated to the AUTHORITY for the applicable fiscal year in accordance with the provisions hereof and of the ITA and to operate the Capitol Corridor Rail Service (the "Service") as described in the ITA (the "Operational Process"). The AUTHORITY further agrees, effective upon transfer of maintenance supervision responsibility to it in accordance with the provisions of the ITA and the Equipment Lease, to maintain the State-owned Equipment transferred to it by STATE as described in the Equipment Lease subject to the terms and conditions therein and in the ITA.

SECTION 2. AUTHORITY agrees that if STATE appropriated and allocated funds prove insufficient to provide and maintain the complete Service as defined in the ITA and the Business Plan required to be submitted and updated annually by the AUTHORITY and approved by the Secretary, the provision of additional amounts, if any, required to fund the Service shall be in accordance with Article 15 of the ITA.

SECTION 3. The parties acknowledge that the AUTHORITY will operate the Service pursuant to the terms of the ITA and the Equipment Lease. The AUTHORITY shall be solely responsible for complying with the funding and use restrictions established by the State Budget Act and other statutes from which these STATE funds are derived, the Act, the ITA, the Equipment Lease, and the terms of this FTA. The AUTHORITY shall indemnify, defend and hold harmless the STATE against all judgments, costs, damages and penalties arising from any violation of such applicable agreement, law or regulation in accordance with and as limited by Article 14 of the ITA.

## **ARTICLE II. SCOPE OF WORK**

SECTION 1. AUTHORITY shall be responsible for complete performance of the work allocated to the AUTHORITY pursuant to the ITA, this FTA, the Equipment Lease and the approved annual Business Plan or Business Plan Update. All work of the AUTHORITY shall be accomplished in accordance with applicable State, Federal and local law.

## **ARTICLE III. PAYMENT**

SECTION 1. In accordance with the ITA and the provisions of this FTA, so long as the ITA remains in effect, AUTHORITY agrees to contribute any required funding (other than state or federal funds) toward the actual cost of the Capitol Corridor Service from funds available to the AUTHORITY if required to meet the AUTHORITY Business Plan or Business Plan Update approved by the Secretary and included in the Scope of Work.

SECTION 2. In accordance with OMB Circular A-87, reimbursement for the related transportation and subsistence costs of the AUTHORITY and its contractors and subcontractors shall be based on rates established and applied consistently by the AUTHORITY, provided such rates are reasonable. In the determination of whether the AUTHORITY's travel and subsistence costs are reasonable, rates applied to STATE or federal employees as established by the State Department of Personnel Administration or the General Services Administration may be used. In no event shall

project related transportation and subsistence costs of AUTHORITY and its contractors and subcontractors exceed rates authorized to be paid to STATE employees under current STATE Department of Personnel Administration rules. Should reimbursement authorized and paid by the AUTHORITY and allowed by STATE be subsequently questioned or disallowed pursuant to an audit, the AUTHORITY shall refund to STATE all disallowed portions of those reimbursements.

SECTION 3.

a. AUTHORITY invoices shall separate or allocate expenses for capital projects, operations, maintenance, administration and marketing costs. AUTHORITY may invoice for advance funding of Amtrak operating and maintenance services performed pursuant to the Operating Agreement, the Transfer Agreement, the Maintenance Agreement, the New Operating Agreement, the New Transfer Agreement or any successor operating, maintenance or transfer agreement, in accordance with the following (for purposes of this FTA, the provisions herein relating to National Railroad Passenger Corporation ("Amtrak" herein) operating and maintenance services include the services of any subsequent operator):

(i) On or before the first day of each month, from the Effective Date through eighth month, inclusive, of the federal fiscal year in effect on the Effective Date, and from the first month through the eighth month, inclusive, of each subsequent federal fiscal year during which this FTA is in effect, STATE shall remit to AUTHORITY, in response to signed duplicate invoices rendered by AUTHORITY, one-twelfth of the then aggregate amount appropriated by the then effective State Budget Act for the operation of the Service; and, to the extent that the AUTHORITY has assumed maintenance supervision responsibility for the maintenance of the State-owned Equipment in accordance with the Equipment Lease, one twelfth of the aggregate amount appropriated by the then effective State Budget Act for maintenance supervision in accordance with this FTA, less one twelfth of any amount retained by the STATE to reimburse amounts billed directly to the STATE by Amtrak in connection with any maintenance supervision responsibility retained by the STATE in accordance with the provisions of the ITA and the Equipment Lease.



(ii) For the ninth through the twelfth months, inclusive, of the federal fiscal year in which this FTA becomes effective and for the ninth through twelfth months inclusive of each subsequent federal fiscal year during which this FTA is in effect, on or before the first day of each month, STATE shall remit to AUTHORITY an amount adjusted to be the average of the actual monthly billings invoiced by and received from Amtrak or from any subsequent operator pursuant to any successor agreement, for operation of the Service and, if applicable, maintenance of the State-owned Equipment, for any previous months of the same federal fiscal year for which invoices have been received by the AUTHORITY, plus any increases of the Service provided by the State Budget Act.

(iii) The AUTHORITY may request advance payment in the following manner. Invoices for monthly advance payments shall be rendered by the AUTHORITY not less than forty-five (45) days prior to the date payment is due and shall specify the address to which the said remittance shall be made. An adjusted monthly invoice which complies with Section 3(a)(iv) below shall be submitted by the AUTHORITY not later than ninety (90) days following the last day of the month for which the advance payment is due. If an adjusted monthly invoice due from AUTHORITY is submitted to STATE later than ninety (90) days after the end of the month for which the advance payment to which such adjusted monthly invoice relates was made, any remittance due thereafter shall be held, but not longer than the period the adjusted monthly invoice is delayed beyond ninety (90) days.

(iv) Such adjusted monthly invoices for Amtrak service contract operations shall be rendered as soon as practicable, but in any event not more than ninety (90) days after the end of the month with respect to which advance payment was made, and shall record the following information for the Service:

(A) Operating Revenues (as defined below) attributed to the Service for the period and for both the applicable State fiscal years and the applicable Federal fiscal years-to-

date. For purposes of this FTA, "Operating Revenues" means revenues credited by Amtrak from passenger fares, food and beverage services, and from transportation of mail, baggage and express packages in the operation of the Service;

(B) Costs of Service (including any incentive or penalty payments made to or by an operating railroad) by item or category, as applicable for the monthly period and for both State and Federal fiscal years-to-date. For purposes of this FTA, "Costs of Service" means all reasonable and allowable Service costs incurred by Amtrak or any subsequent operator pursuant to the Transfer Agreement, the Operating Agreement, the Maintenance Agreement or any subsequent transfer, operating or maintenance agreement for the operation of the Service, net of any amounts retained by the STATE for maintenance supervision prior to transfer of maintenance supervision responsibility to the AUTHORITY, and net of any amounts retained thereafter by STATE for retained maintenance supervision responsibilities of the STATE with respect to warranty rework of State-owned Equipment;

(C) Net Income/Loss of the Service for the monthly period and for both State and Federal fiscal years-to-date. For the purposes of this FTA, "Net Income/Loss" means Operating Revenues less the Cost of Service which shall be the amount allowable to be billed to the AUTHORITY by Amtrak or any subsequent operator pursuant to the Transfer Agreement, the Operating Agreement, the Maintenance Agreement, the New Operating Agreement, the New Transfer Agreement or any subsequent transfer, operating or maintenance agreement for the operation of the Service or maintenance of the State-owned Equipment;

(D) Associated equipment capital costs of the said Service for the monthly reporting period and for both the State and Federal fiscal years-to-date;

(E) Minor Capital Cost (as defined below) billings, which must be rendered as soon as practicable after the completion of any such capital project. For purposes of this FTA, "Minor Capital Costs" means any allowable costs associated with and actually expended for a

Minor Capital Project. Prior to incurring any Minor Capital Cost, the AUTHORITY shall provide at least ten (10) calendar days' notice to the STATE of the Minor Capital Project. If the cost of the Minor Capital Project is \$10,000 or more, the AUTHORITY may proceed with the Project unless it is notified by STATE within such ten (10) day period that STATE objects to the project. If the STATE objects within such ten (10) day period, the parties shall meet and confer in order to resolve the matter. If the parties are unable to agree on the expenditure, AUTHORITY shall not proceed with the Minor Capital Project. The foregoing notwithstanding, the existence of any condition which jeopardizes passenger safety may be promptly remedied by the AUTHORITY without compliance with such notice and meet and confer requirements.

b. Except as provided in Section 4 of this Article III, payment shall be made by STATE within forty-five (45) days of the date of receipt of signed invoices containing required information and shall be in the amount of such invoice, increased or decreased by the amount by which any adjusted monthly invoice received not less than forty-five (45) days prior to the date of such payment is greater or less than the amount of the advance payment to which it relates.

c. As of the last day of the eighth month of any federal fiscal year, the amount allocated to the AUTHORITY to operate the Service from the amount appropriated by the then effective State Budget Act shall be compared to the actual Service total costs incurred by the AUTHORITY to that date; provided, however, that such comparison may be made as of the last day of any preceding month if it appears that actual costs for the said fiscal year may exceed the said specified amount.

(i) If the amount so determined and extended for the full federal fiscal year is not greater than the proportionate amounts appropriated by the State Budget Act and allocated to the AUTHORITY for the Service for the full federal fiscal year, AUTHORITY shall issue invoices for months nine through twelve of the federal fiscal year.

(ii) If the amount as so determined in subsection (i) above is greater than the applicable STATE funding limitation, AUTHORITY may take action to seek to increase the

amounts available to fund the Service to equal the amount as herein redetermined and if the parties agree, they may promptly execute a new amended approved Business Plan or Business Plan Update; provided, however, that if the parties do not agree, or if the Secretary or the Secretary's designee shall fail to approve the said amended Business Plan or Business Plan Update within thirty (30) days from the date of redetermination pursuant to this subsection, AUTHORITY shall, in accordance with the provisions of the ITA:

(A) seek to obtain other sources of funding to meet the shortfall,

(B) if the AUTHORITY is unable to obtain other funding, reduce the level of the Service, but not to less than the Minimum Service, or

(C) if the AUTHORITY is unable to maintain Minimum Service for the balance of the fiscal year with available funds, terminate the ITA pursuant to the terms thereof.

(iii) In no event shall the total of all payments to AUTHORITY in any State fiscal year exceed the amount allocated to the AUTHORITY from the applicable fiscal year State Budget Act appropriation for the Service. Following the end of each federal fiscal year, any amounts appropriated pursuant to the prior State Budget Act, allocated to the AUTHORITY for the Service and encumbered pursuant to this FTA, subject to Article 7 of the ITA, and, after making all appropriate adjustments and accounting for any portion of advances which have not been expended, shall be reimbursed to the STATE.

d. On or before the fifteenth day following the first day of the first full State fiscal year following the effective date of this FTA and each full or partial State fiscal year during which this FTA is in effect, the STATE shall advance to AUTHORITY, in response to signed advance invoices rendered by the AUTHORITY, a percentage (as determined below) of the aggregate amount appropriated for the Service by the enacted State Budget Act and allocated to the AUTHORITY for administration and marketing of the Service. The amount advanced shall be the total amount

allocated to the AUTHORITY for each full or partial State fiscal year during which this FTA is in effect from the State Budget Act appropriation for administration and marketing, divided by the total number of full or partial months remaining in such State fiscal year, which sum shall be multiplied by two.

(i) From the first through the tenth months, inclusive, of each full or partial State fiscal year during which this FTA is in effect, AUTHORITY shall render actual signed invoices monthly in arrears to STATE for STATE's share of the actual costs expended during the month for which the invoice is being submitted by the AUTHORITY for administration and marketing of the Service, but in no event in an amount in excess of the amount established for these elements of the Service in accordance with the Business Plan or Business Plan Update approved by the Secretary.

(ii) For the eleventh and twelfth months of each full or partial State fiscal year during which this FTA is in effect, AUTHORITY shall render signed actual invoices monthly in arrears to STATE for STATE's share of the actual costs expended during the month for which the invoice is being submitted by the AUTHORITY for administration and marketing of the Service, in accordance with the approved Business Plan or Business Plan Update, less one-half of the initial advance provided following the effective date of this FTA. In no event shall the total of all STATE payments to AUTHORITY for administration and marketing exceed the actual total allowable costs (or applicable portion thereof for any State partial fiscal year) for such elements as are set forth in the Business Plan approved by the Secretary and allocated to the AUTHORITY.

(iii) All actual signed monthly invoices shall be rendered by AUTHORITY as soon as practicable but in any event not more than sixty (60) days after the last day of the month as to which such invoice applies.

e. Final reconciling Service invoices funded each State fiscal year must be submitted not later than ninety (90) days from the end of the State fiscal year (each June 30th) (except for

Amtrak operating billings which shall be submitted not later than one hundred eighty (180) days from the June 30th end of the State fiscal year).

f. No later than one hundred eighty (180) days following the last day of each State fiscal year of this FTA, each party hereto shall remit to the other the full balance due in respect of underpayment or overpayment, if any, relating to the obligations of each party to the other pursuant to the terms of this FTA. If the aggregate allowable amount of cost invoices for Service maintenance, operations, administration, marketing and Minor Capital Projects exceeds the aggregate amount of the aforesaid remittances made to AUTHORITY for the entirety of the fiscal year herein, STATE shall pay to AUTHORITY an amount equal to the difference within forty-five (45) days of STATE's receipt of the AUTHORITY's reconciling invoice, but in no event shall the total of all STATE payments made in accordance with this Section 3 exceed the maximum of all STATE funding authorized by the approved Business Plan or Business Plan Update (or applicable portion thereof for any partial State fiscal year of the FTA) as limited by the amount which is appropriated by the applicable State fiscal year State Budget Act and allocated to the AUTHORITY for the Service. Such payment shall be made within one hundred eighty (180) days of Service completion for a State fiscal year. AUTHORITY shall furnish STATE with a final financial report, in three complete copies, adjusting all actual Service costs against estimated Service costs billed to STATE for that State fiscal year. Any refund due to STATE at the completion of each STATE fiscal year shall be made in accordance with the process identified herein.

g. Notwithstanding the expiration date of this FTA, STATE will pay AUTHORITY for legitimate allowable costs for Service performed during each State Budget Act funded term of the ITA and for the allowable costs of Minor Capital Projects authorized by an approved Business Plan or Business Plan Update and begun during that term of this FTA but invoiced after the expiration date of this FTA, up to, but not in excess of, the amount which is appropriated for the Service (or applicable portion thereof for any partial State fiscal year of the FTA) contained in the applicable State fiscal year State Budget Act and allocated to the AUTHORITY.

h. No later than ninety (90) days following the termination of this FTA, each party hereto shall remit to the other the full balance due in respect of underpayment or overpayment, if any, relating to the obligations of each party to the other pursuant to the terms of this FTA. Any overpayments shall be promptly reimbursed to STATE by AUTHORITY; any underpayments shall be promptly paid by STATE to AUTHORITY, provided that STATE's obligation with respect to underpayments shall be strictly limited to, and shall not exceed, together with all other payments for that applicable FTA State fiscal year, the amount appropriated (or applicable portion thereof for any partial State fiscal year of the FTA) by the State Budget Act for that State fiscal year's Service and allocated to the AUTHORITY.

i. In the event STATE disputes a charge detailed in an invoice, and AUTHORITY cannot provide adequate documentation and an explanation of said charge reasonably acceptable to STATE, STATE shall have the right, at its sole discretion, to withhold the disputed portion of the invoice amount after notifying AUTHORITY in writing ten (10) working days in advance of the payment due date of STATE's intention to withhold the payment of an invoice amount or any portion thereof. STATE shall advise AUTHORITY of the amount of disputed charges proposed to be withheld, detail reasons for the withholding, and the actions that STATE considers necessary to resolve the disputed invoice amount. In the event that resolution of the disputed invoice amount is not achieved by the payment date, STATE shall withhold the disputed invoice amount from the next invoice payment.

j. If resolution of the disputed invoiced amount is achieved in favor of AUTHORITY as between STATE and AUTHORITY after the amount has been withheld, the withheld amount will be remitted with the next invoice payment. Should resolution of the disputed invoice in favor of AUTHORITY not be achieved through negotiation, the withheld amount will be paid under protest after one calendar month of withholding. Such payment shall not be considered as resolution of the dispute which dispute shall then be resolved pursuant to the procedures set forth in Article 18 of the ITA.

SECTION 4. The AUTHORITY may, not more frequently than monthly, prepare and submit to STATE duplicate signed monthly invoices for Service reimbursements other than payments to Amtrak or any subsequent operator of the Service consistent with this FTA, the ITA and the current approved Business Plan or Business Plan Update. These original signed invoices for reimbursement, including all appropriate supporting documentation, shall be mailed to:

Department of Transportation  
Rail Program Manager, MS 74  
P. O. Box 942874  
Sacramento, CA 94274-0001

STATE shall request, within ten (10) calendar days from receipt of acceptable invoices by State, that the State Controllers Office issue a warrant for each approved monthly invoice within ten (10) calendar days of receipt of the State request. Payments made pursuant to this Section 4 (of Article III) are subject to the withholding process described in Section 3 of Article III.

SECTION 5. Reimbursement for any State fiscal year will be made only for work performed after the Effective Date of this FTA and prior to the end of the federal fiscal year commencing during such State fiscal year; provided, that reimbursement shall be permitted for costs incurred after the end of the federal fiscal year with respect to any Minor Capital Project encumbered prior to such federal fiscal year ending date (provided further that no reimbursements shall be made for any Minor Capital Project costs incurred by AUTHORITY more than two years after the end of the State fiscal year in which the funds were encumbered).

SECTION 6. It is understood that for the mutual benefit of both parties, this FTA will have been entered into prior to the full availability of congressional or legislative appropriations of funds in order to avoid program and fiscal delays that would occur only after full funding was appropriated. This FTA is valid and enforceable only if sufficient funds for this FTA are made available to STATE by the United States Government and/or the Legislature for the purpose of this



program for each full or partial State fiscal year of the Service. In addition, this FTA is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress or the Legislature that may affect the provisions, terms or funding of this FTA in any manner.

SECTION 7. In the event of any imposition by STATE of additional conditions, or any delay, cancellation or reduction in STATE funding, and subject to and limited by applicable provisions of the ITA, AUTHORITY shall be excused from meeting the time and expenditure schedule of the approved Business Plan or Business Plan Update to the extent of such STATE delay, cancellation or fund reduction, provided that in no event shall AUTHORITY, if it could otherwise terminate and it elects to continue to manage the Service, be relieved from its obligation to maintain Minimum Service.

#### **ARTICLE IV. REPORTS AND RECORDS**

SECTION 1. AUTHORITY shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for the Service. AUTHORITY accounting systems shall conform to generally accepted accounting principles ("GAAP"), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of AUTHORITY connected with performance under this FTA shall be maintained for a minimum of three (3) years from the date of final payment to AUTHORITY under these provisions and shall be held open to inspection and audit by representatives of STATE, the California State Auditor and the Federal Transit Administration and copies thereof will be furnished upon request. In conducting an audit of the costs claimed under these provisions, STATE will rely to the maximum extent possible on any prior audit of AUTHORITY pursuant to the provisions of federal and state laws. In the absence of such an audit, any acceptable audit work performed by AUTHORITY's external and internal auditors and/or federal auditors may be relied upon and used by STATE when planning and conducting additional audits as the awarding body as defined under the California Labor Code Sections 1720-1815.

SECTION 2. AUTHORITY agrees to comply with any required Federal procedures relative to contracting and cost allowability when performing the Service in accordance with this FTA and the ITA and to comply, whether or not required, as to a particular contract, by applicable law, with the following:

- a. Office of Management and Budget Circular A-87, Cost Principles for State and Local Governments.
- b. 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

Any costs for which AUTHORITY has received payment that are determined by subsequent audit to be unallowable under Office of Management and Budget Circular A-87 or 49 CFR Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, are to be repaid to STATE by AUTHORITY . Should AUTHORITY fail to reimburse moneys due STATE within 30 days of demand, or within such other period as may be agreed between the parties hereto, STATE is authorized to withhold future payments due AUTHORITY, from any source, including but not limited to, the State Treasurer, The State Controller and the California Transportation Commission (CTC).

The allowability of all cost items included in this FTA may be audited at any time, including immediately preceding execution and final approval of this FTA. AUTHORITY agrees that any audit recommendations regarding modifications to this FTA, budgeted amounts, AUTHORITY's costs or individual items of cost shall, at STATE's sole discretion, be incorporated into this FTA. If the AUTHORITY does not agree to any preliminary audit recommendations, it may, prior to the Effective Date of this FTA, repudiate this FTA and any other agreements between the State and the AUTHORITY whether or not effective, without further obligation or liability on the part of either party.

SECTION 3. For the purpose of determining compliance with Public Contract Code Section 10115, et seq., and Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of AUTHORITY's contracts with third parties pursuant to Government Code Section 8546.7, AUTHORITY, STATE, and AUTHORITY's contractors shall maintain, and AUTHORITY shall include provisions in its contracts requiring its contractors to include such provisions in their contracts with subcontractors to maintain, all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including but not limited to, the costs of administering the various contracts. All of the above referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under such contract. STATE, the California State Auditor, the Federal Transit Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents that are pertinent to the FTA for audits, examinations, excerpts, and transactions and copies thereof shall be furnished if requested.

AUTHORITY agrees to include this FTA and the Service in the schedule of projects examined under any single audit that is prepared in accordance with Office of Management and Budget Circular A-133.

SECTION 4. AUTHORITY will insert clauses in any contracts funded by STATE in whole or part, and shall require its contractors to include such provisions in their subcontracts which are wholly or partially funded by State, to the effect of Sections 1, 2 and 3 above of this Article IV, imposing such requirements on AUTHORITY contractors and subcontractors, excepting only contracts with Amtrak as to which Cost Principles For Contracts Between Amtrak and State of California Department of Transportation will apply.

SECTION 5. AUTHORITY and STATE agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of the Service ("Quarterly Review"). The first Quarterly

Review meeting shall take place within 90 days following execution of this FTA. AUTHORITY agrees, during each Quarterly Review, to inform STATE regarding

- a. whether the Service is proceeding on schedule and within budget,
- b. any requested changes to the Service Business Plan,
- c. any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties,
- d. the status of the budget and,
- e. the status of critical elements of the Service.

The Quarterly Reviews will include consideration of whether activities are within the scope of the Service and in compliance with State laws, regulations, administrative requirements, and implementation of the Service under the terms of the ITA and the current approved Business Plan or Business Plan Update.

SECTION 6. Unless prohibited by law or GAAP, it will be permissible for AUTHORITY to expend funds as needed and to move funds between expenditure categories and line items with maximum flexibility in accordance with revised budgets furnished prior to the actual expenditures. However, AUTHORITY shall notify the Secretary or the Secretary's designee, (i) of any proposed shifts in funds in excess of ten percent (10%) (in the case of operating budget), and twenty percent (20%) (in the case of the marketing and administration budget) of the amount of the expenditure category into or from which funds are being shifted; or (ii) of a reduction in proposed Service.

SECTION 7. If AUTHORITY determines, at any time during the performance of the Service, that the approved Business Plan or Business Plan Update budget may be exceeded, AUTHORITY shall take the following steps:

- a. Notify the designated STATE representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which will bring the budget into balance,
- b. Schedule the projected overrun for discussion, at the next subsequent Quarterly Review meeting or at an interim meeting (upon ten (10) days advance notice) called for such purpose, and
- c. Identify the source of additional funds, if any, which can be made available to accomplish the Service levels set by the AUTHORITY Business Plan or Business Plan Update.

## **ARTICLE V. GENERAL PROVISIONS**

SECTION 1. AUTHORITY will comply with, and shall include provisions in its contracts and subcontracts requiring its contractors and any subcontractors to comply with, all applicable requirements of affirmative action and other law, including, without limitation, requirements of the State Fair Employment Practices and Housing Commission. AUTHORITY agrees to insert, in appropriate contracts, any required clauses in contracts and subcontracts with respect thereto, including, without limitation, the California Labor Code requirements that all workers employed on public works (as defined in California Labor Code Sections 1720 et seq.) will be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations. As between the STATE and the AUTHORITY, AUTHORITY shall have the sole duty and authority under this FTA to enforce these obligations as the awarding body as defined under the California Labor Code.

SECTION 2. AUTHORITY is obligated as provided herein and in the ITA to continue operation of the dedicated public transportation rail service for which STATE funding was approved.

Service right of way, facilities constructed or reconstructed, or property purchased (excluding construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this FTA) shall remain dedicated to public rail transit use in the same proportion and scope and to the same extent as described in the ITA and Business Plan unless STATE agrees otherwise. Unless STATE agrees otherwise, equipment acquired as part of the Service, including rail passenger equipment, shall be dedicated to that passenger use for its full economic life cycle, including any extensions of that life cycle achieved by reconstruction, rehabilitation or enhancements.

SECTION 3. AUTHORITY shall maintain all AUTHORITY controlled stations and rail service appurtenances, including, but not limited to, restroom facilities, in good condition and repair, and in accordance with high standards of cleanliness (Public Utilities Code Section 99317.8).

SECTION 4. Except as otherwise set forth in this Section 4 and Section 5 of this Article V, STATE, or any assignee public body of STATE, shall be entitled to a refund or credit, at STATE's sole option, equivalent to the proportionate funding participation by STATE and other non-AUTHORITY generated public funds towards real or personal property acquisition or construction of Service capital improvements in the event that AUTHORITY ceases to utilize STATE funded equipment or property for the Service or sells or transfers title to or control over that property. The parties hereto expressly acknowledge that the AUTHORITY leases and does not hold title to the State-owned Equipment transferred by the Equipment Lease and that the AUTHORITY has no right or ability to transfer title or to encumber such State-owned Equipment. The foregoing notwithstanding, to the extent the AUTHORITY ceases to utilize State-funded equipment or property or sells or transfers title or control over that property, such a refund or credit to STATE shall not be required, subject to STATE approval of such intended use, if AUTHORITY dedicates the proceeds of such sale or transfer exclusively to STATE approved public transportation purposes which shall thereafter also be subject to this credit due STATE if subsequently sold or transferred or, in the case of proceeds attributable to non-STATE, non-AUTHORITY funding, such proceeds are returned to the funding entity or otherwise expended according to the funding agreement with such

entity. STATE shall also be granted an acquisition credit for future purchases or condemnation of all or portions of the Service property by STATE. The refund or credit due STATE will be measured by the ratio of STATE's contribution to that funding contribution of the AUTHORITY, when applied to the then fair market value of the Service property acquired.

SECTION 5. In determining the fair market value of the entire Service property for purposes of STATE's refund or credit under Section 4 of this Article V of this FTA, the portions of the property contributed by AUTHORITY shall be included in the fair market value calculation. Thereafter, a proportionate split of such property shall be made to reflect the STATE's funding participation and the AUTHORITY's funding participation. In determining STATE's proportionate funding participation, funding contributions on behalf of the Service by parties other than STATE or AUTHORITY shall be included as STATE contributions, if made a part of Service funding for Capitol Corridor projects.

SECTION 6. Once STATE receives the refund or credit provided for under Sections 4 and 5 above of this Article V because the AUTHORITY has ceased utilization of the Service property for the intended public transportation purpose or sells or transfers title to or control over the Service property, any person to whom AUTHORITY has transferred title or control, shall no longer have any obligation to dedicate the Service property facilities sold or transferred for public transportation purposes, but may use the Service property sold or transferred for any other lawful purpose.

SECTION 7. AUTHORITY is on notice that the Federal Transit Administration (previously "UMTA") does not share in any revenue stream from projects which it has participated in. However, the Federal Transit Administration does require that it specifically approve private and incidental uses of its funded projects to assure that they do not adversely impact transit use. In Federal Transit Administration funded projects, revenues that are derived from these private and incidental uses must be documented, are subject to audit and are required to be applied to transit purposes. Federal Transit Administration Circular 5010.1C provides program management guidelines.

SECTION 8. This FTA constitutes the entire agreement between the parties regarding the subject matter hereof.

SECTION 9. Disabled access review by the Department of General Services is required for all publicly funded construction of buildings, structures, sidewalk, curbs and related facilities; no Service related construction contract for those types of facilities will be awarded by AUTHORITY until the Department of General Services, Division of the State Architect, Access Compliance Section, has issued written approval of plans and specifications for such facilities per Section 4450 and 4454, California Government Code. Further requirements and guidance are provided in Title 24 of the California Administrative Code and the Americans with Disabilities Act.

SECTION 10. The State Fire Marshal has adopted building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State owned or State occupied buildings as provided in Section 13108 of the Health and Safety Code. Any future AUTHORITY building plans must be reviewed by the State Fire Marshal to ensure consistency with State fire protection standards.

SECTION 11. The remedy for the resolution of claims or disputes arising under this FTA shall be arbitration in accordance with Article 18 of the ITA.

SECTION 12. Environmental clearance of any project by AUTHORITY may be required prior to requesting STATE funds for right of way purchase or construction. AUTHORITY shall not authorize expenditures of STATE funds for any project, except feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied by an environmental impact report or other applicable environmental document. The California Environmental Quality Act ("CEQA") provides an exemption for rail projects which institute or increase passenger or commuter services on rail or highway rights-of-way already in use (California



Government Code, Section 21080(b)(10)), and this or other statutory or categorical exemptions may be applicable to a Service project as determined by the lead agency.

SECTION 13. All statutes cited herein shall be deemed to include successor statutes to the cited statutes as they presently exist.

SECTION 14. This FTA may not be assigned, transferred, hypothecated or pledged by any party without the express written consent of the other party.

SECTION 15. Any notice which may be required under this FTA shall be in writing, shall be effective when received, and shall be given by personal service, or by certified or registered mail, return receipt requested, to the addressees set forth below, or to such other addresses as may be specified in writing and given to the other party in accordance herewith.

If given to State:

State of California  
Department of Transportation  
P. O. Box 942874  
Sacramento, CA 94274-0001  
Attention: Rail Program Manager, MS 74

with a copy to:

State of California  
Office of the Secretary  
Business, Transportation and Housing Agency  
US Bank Building  
980 9th Street, Suite 2450  
Sacramento, CA 95814-2719  
Attention: Deputy Secretary, Rail and Transit

If given to AUTHORITY:

Capitol Corridor Joint Powers Authority  
P.O. Box 12688 (LMA-5)  
Oakland, CA 94604-2688  
Attention: District Secretary

SECTION 16. This FTA may not be changed, modified, or amended except in writing, signed by the parties hereto, and approved in advance in writing by the Secretary, and any attempt at oral modification of this FTA shall be void and of no effect.

SECTION 17. This FTA shall be effective as of the Effective Date, shall remain in effect for so long as the ITA remains in effect, and shall be terminated effective as of the date and time of termination or expiration of the ITA, but in no event shall it extend beyond the sixth anniversary date of the Effective Date unless specifically amended to extend such termination date..

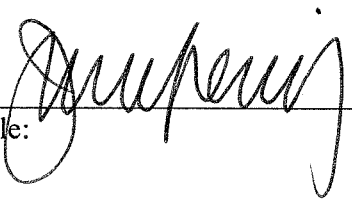
SECTION 18. The execution of this FTA has been duly authorized by each of the parties hereto and is a legal, valid and binding obligation of each of the parties, enforceable in accordance

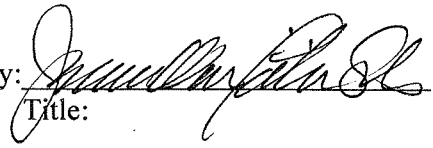
with its terms. Attached to this FTA as Attachment II is a resolution of the board of the AUTHORITY authorizing the execution of this FTA.

IN WITNESS WHEREOF, the parties hereto have executed this FTA by their duly authorized officers.

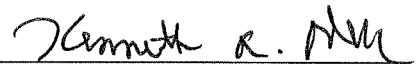
**CAPITOL CORRIDOR JOINT POWERS  
AUTHORITY**

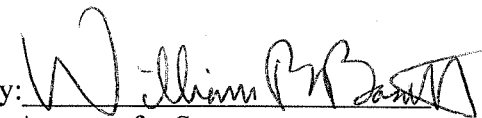
**STATE OF CALIFORNIA**  
Department of Transportation  
**JAMES VAN LOBEN SELS**  
Director

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

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

**Approved as to Form and Procedure:**

By:   
Attorney for Authority

By:   
Attorney for State

with its terms. Attached to this FTA as Attachment II is a resolution of the board of the AUTHORITY authorizing the execution of this FTA.

IN WITNESS WHEREOF, the parties hereto have executed this FTA by their duly authorized officers.

**CAPITOL CORRIDOR JOINT POWERS  
AUTHORITY**

**STATE OF CALIFORNIA**  
Department of Transportation  
JAMES VAN LOBEN SELS  
Director

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

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

**Approved as to Form and Procedure:**

By: \_\_\_\_\_  
Attorney for Authority

By: \_\_\_\_\_  
Attorney for State



## FUND ENCUMBRANCE DOCUMENT

Name of Recipient: Capitol Corridor Joint Powers Authority (AUTHORITY)

Name of Service: Capitol Corridor Service

Amount of Allocation: \$ \_\_\_\_\_

Fund Source: TPDA

Expiration Date of Funds: \_\_\_\_\_

**TPDA MONEY**

SOURCE	CHARGE	EXP AUTH	SPECIAL DESIGNATION	OBJECT	AMOUNT	DE	FY	ENCUMBRANCE
DIST UNIT	DIST UNIT	GEN LED SUB ACCT WORK ORDER NO.	SUB JOB NO. RW PARCEL NO. LOCATION BRIDGE NO.			CR		DOCUMENT NUMBER
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.								
ITEM	CHAPTER	STATUTES	FISCAL YEAR					

SOURCE	CHARGE	EXP AUTH	SPECIAL DESIGNATION	OBJECT	AMOUNT	DE	FY	ENCUMBRANCE
DIST UNIT	DIST UNIT	GEN LED SUB ACCT WORK ORDER NO.	SUB JOB NO. RW PARCEL NO. LOCATION BRIDGE NO.			CR		DOCUMENT NUMBER
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.								
ITEM	CHAPTER	STATUTES	FISCAL YEAR					

**AMOUNT ENCUMBERED BY THIS DOCUMENT**      \$ \_\_\_\_\_

**PRIOR AMOUNT ENCUMBERED**                      \$ \_\_\_\_\_

**TOTAL AMOUNT ENCUMBERED**                    \$ \_\_\_\_\_



BEFORE THE CAPITOL CORRIDOR JOINT POWERS BOARD

In the Matter of Amending Resolution No. 98-2

Regarding The Date of Transfer of Management of the Capitol Corridor  
Service From the State to the Authority

Resolution No. 98-3

WHEREAS, on May 28, 1998 the Capitol Corridor Joint Powers Authority ("CCJPA"), acting by and through the Capitol Corridor Joint Powers board, adopted Resolution No. 98-2, relating to the approval of certain agreements necessary to transfer management of the Capitol Corridor Service from the State of California to the CCJPA; and

WHEREAS, certain dates in that resolution were in the month of June, 1998, when in fact all documents related to this transaction as set forth in Resolution 98-2 were executed on July 1, 1998, and the Capitol Corridor Service was transferred from the State of California to the CCJPA as of that date;

RESOLVED, that Resolution No. 98-2 is hereby amended to read in its entirety in the form set forth as Exhibit A hereto, correcting any reference to June, 1998 to the appropriate and correct date of July 1, 1998.

AND BE IT FURTHER RESOLVED, that the CCJPA forthwith transmit a copy of this resolution to the State and to Amtrak.

\* \* \*

ADOPTED JULY 8, 1998



BEFORE THE CAPITOL CORRIDOR JOINT POWERS BOARD

In the Matter of  
Approving the Agreements Necessary  
to Transfer Management of the Capitol Corridor  
Service From the State to the Authority

Resolution No. 98-2

WHEREAS, the Capitol Corridor Joint Powers Authority ("CCJPA") acting by and through the Capitol Corridor Joint Powers Board ("CCJPB"), and the State of California, acting by and through its Department of Transportation ("State") have been negotiating the terms and conditions upon which the Capitol Corridor Service will be transferred, no later than July 1, 1998, from the State to the CCJPA; and

WHEREAS, the CCJPB wishes to rescind its prior authorization of an Interagency Transfer Agreement and to authorize execution of the following described Agreements which set forth the terms and conditions upon which such transfer of the Capitol Corridor Service will be made;

RESOLVED, that the CCJPB does hereby rescind its authorization made by CCJPB Resolution No. 97-5 on April 16, 1997, to execute an Interagency Transfer Agreement between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority substantially in the form presented to the CCJPB at a meeting on that date;

AND BE IT FURTHER RESOLVED, that the CCJPB does hereby authorize execution of the following Agreements by the Chairman of the CCJPB or his duly authorized designee, on behalf of the CCJPA, substantially in the form presented to this meeting:

1. Interagency Transfer Agreement Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority ("Interagency Transfer Agreement" or "ITA"), attached hereto as Exhibit A.
2. Fund Transfer Agreement Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority ("Fund Transfer Agreement" or "FTA"), attached hereto as Exhibit B.
3. Equipment Lease Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority ("Equipment Lease"), attached hereto as Exhibit C.

EXHIBIT A

4. National Railroad Passenger Corporation and Capitol Corridor Joint Powers Authority Agreement for the Provision of Rail Passenger Service ("New Operating Agreement" or "NOA"), attached hereto as Exhibit D.

5. New Transfer Agreement Among the California Department of Transportation (State) and the Capitol Corridor Joint Powers Authority (CCJPA) and the National Railroad Passenger Corporation (Amtrak) for the Transfer and Operation of Certain State-Owned Rail Equipment in the Capitol Corridor dated July 1, 1998 ("New Transfer Agreement" or "NTA"), attached hereto as Exhibit E.

AND BE IT FURTHER RESOLVED, that none of the above-described Agreements shall be effective until all are fully executed by the CCJPA, the State, and Amtrak, as the case may be.

AND BE IT FURTHER RESOLVED, that the CCJPB does hereby approve, by at least a two-thirds vote, the Business Plan Update (FY 97/98 - FY 98/99) presented to this meeting, attached hereto as Exhibit F.

AND BE IT FURTHER RESOLVED, that the CCJPB forthwith transmit a copy of this resolution to the State and to Amtrak.

\* \* \*

ADOPTED MAY 28, 1998



**FIRST AMENDMENT TO  
EQUIPMENT LEASE**

**BETWEEN**

**THE STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**AND THE**

**CAPITOL CORRIDOR  
JOINT POWERS AUTHORITY**

**EFFECTIVE DATE: March 1, 1999**

## FIRST AMENDMENT TO EQUIPMENT LEASE

THIS FIRST AMENDMENT TO EQUIPMENT LEASE ("Amendment") is made and entered into effective as of March 1, 1999, by and between the STATE OF CALIFORNIA, acting by and through its Department of Transportation ("Lessor") and the CAPITOL CORRIDOR JOINT POWERS AUTHORITY ("Lessee").

### RECITALS

WHEREAS, as of July, 1, 1998, Lessor and Lessee entered into an equipment lease ("Equipment Lease") for certain rail passenger equipment ("Equipment") utilized in the Capitol Corridor Rail Service ("Service"); and

WHEREAS, as of July 1, 1998, Lessor and Lessee also entered into certain agreements relating to the Service, among others an Interagency Transfer Agreement ("ITA") and a Fund Transfer Agreement ("FTA"); and

WHEREAS, Lessor and Lessee mutually desire to clarify, amplify and confirm their respective rights and duties under the Equipment Lease should Lessor wish to lease or lease - back the Equipment or any part thereof to a third party or parties.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual premises herein contained, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, Lessor and Lessee do hereby agree as follows:

1. Ownership and Possession. Lessor and Lessee hereby ratify and confirm Lessor's title to the Equipment as set forth in Article 4., Ownership, of the Equipment Lease and Lessor's right to assign the Equipment Lease or any rights thereunder pursuant to the provisions of Article 16., Assignment, of the Equipment Lease, subject to Lessee's possessory rights as further set forth in the Equipment Lease, the ITA and the FTA.
2. Lease and Lease - Back. Lessor and Lessee hereby ratify and confirm that Lessor is the sole party entitled to engage in any process to lease and lease-back the Equipment for non- Service revenues, so long as Lessee's possessory interest in and right to utilize its interest in the Equipment as set forth in the Equipment Lease is not disturbed, impaired or hindered.
3. Cooperation. So long as Lessee's interest in and right to operate the Equipment under the Equipment Lease is not disturbed, impaired or hindered, Lessee agrees, at no expense to Lessee, to execute all reasonable documentation and take any reasonable actions


requested by Lessor to effectuate any lease or lease - back of the Equipment to third parties, including any necessary conversion of the Equipment Lease to a sublease with Lessor.

4. Precedence. The provisions of this Amendment take precedence over and supersede any contrary provisions of the Equipment Lease. All other provisions of the Equipment Lease not affected by this Amendment are hereby ratified and affirmed by Lessor and Lessee.

IN WITNESS WHEREOF, Lessor and Lessee have executed this First Amendment to Equipment Lease effective as of the day and year first written above.

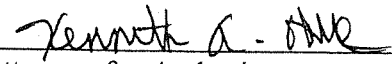
**CAPITOL CORRIDOR JOINT POWERS  
AUTHORITY**

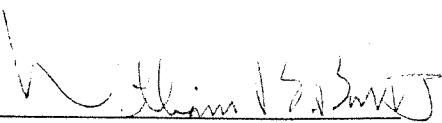
**STATE OF CALIFORNIA  
Department of Transportation**

By:   
Title: Chair

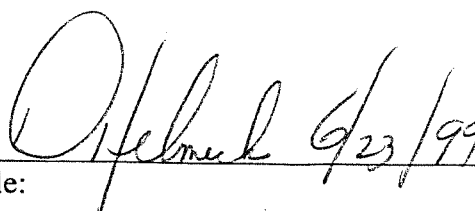
By:   
Title: Director

**Approved as to Form and Procedure:**

By:   
Attorney for Authority

By:   
Attorney for State

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY**

By:   
Title: 9/23/99

**EQUIPMENT LEASE**

**BETWEEN THE**

**STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION**

**AND THE**

**CAPITOL CORRIDOR JOINT POWERS AUTHORITY**

**EFFECTIVE DATE: July 1, 1998**

## TABLE OF CONTENTS

	<u>Page</u>
<b>RECITALS</b> .....	1
<b>AGREEMENT</b> .....	3
<b>ARTICLE 1. LEASE OF EQUIPMENT</b> .....	4
1.01. Lease of Equipment .....	4
1.02. Description of Equipment .....	4
1.03. Equipment Lease Subject to the NOA, Transfer Agreement, and the Maintenance of Agreement.....	4
1.04. Transfer of Maintenance and Maintenance Compliance Supervision .....	5
1.05. Contract Precedence.....	5
<b>ARTICLE 2. TERM OF LEASE</b> .....	6
2.01. Initial Term .....	6
<b>ARTICLE 3. RENT</b> .....	6
3.01. Rental Payments.....	6
<b>ARTICLE 4. OWNERSHIP</b> .....	6
4.01. No Sale or Security Interest Intended .....	6
<b>ARTICLE 5. OPERATION EXPENSES</b> .....	7
5.01. Payment of Expenses .....	7
5.02. Lessee Maintenance Budget.....	7
5.03. Form of Maintenance Budget and Invoices .....	7
5.04. Maintenance Expense Apportionment.....	8
<b>ARTICLE 6. MAINTENANCE AND REPAIR</b> .....	8
6.01. Transfer of Responsibility for Maintenance Compliance Supervision .....	8
6.02. Lessee's Maintenance Responsibility.....	9
6.03. Equipment Repairs.....	9
6.04. Accessions.....	9
6.05. Modification to Equipment.....	10
6.06. Lessor Duties .....	10
6.07. Liability and Indemnification .....	10



ARTICLE 7.	USE OF EQUIPMENT .....	11
	7.01. Rights of Lessee .....	11
	7.02. Lessee Control of Equipment.....	11
	7.03. Operating Responsibilities of Lessee.....	12
	7.04. Maintenance Responsibilities of Lessee .....	12
	7.05. Non-Standard Maintenance and Repair .....	12
	7.06. Equipment Security.....	12
	7.07. Repair of Equipment.....	13
	7.08. Deployment Use Limitation.....	13
	7.09. Training and Safety Requirements.....	14
	7.10. Maintenance Facility.....	14
	7.11. Maintenance Facility Design Review .....	15
ARTICLE 8.	LESSOR'S RIGHT OF INSPECTION AND REPAIR .....	15
	8.01. Inspection and Repair .....	15
	8.02. Rail Safety Requirements .....	16
ARTICLE 9.	ENFORCEMENT OF LESSOR'S WARRANTIES .....	16
	9.01. Warranty Administration .....	16
	9.02. Availability of Equipment for Program Warranty Work.....	16
ARTICLE 10.	NOTIFICATION AND CONCURRENCE TO ASSIGNMENT OF CERTAIN AGREEMENTS .....	17
	10.01. Notification and Concurrence .....	17
ARTICLE 11.	TAXES AND OTHER CHARGES .....	18
	11.01. Taxes.....	18
	11.02. Other Charges .....	18
	11.03. Taxes, Charges and Fees Paid by Lessor .....	19
	11.04. Contested Taxes .....	19
ARTICLE 12.	JOINT INSPECTION .....	19
	12.01. Joint Inspection .....	19
	12.02. Inspection Acceptance .....	19
	12.03. Joint Inspection at Termination of the Equipment Lease .....	20
	12.04. Lessee's Return of Equipment.....	20
	12.05. Repair at Termination .....	21
ARTICLE 13.	INSURANCE.....	21
	13.01. Lessee's Duty to Insure .....	21
	13.02. Proof of Insurance.....	21
	13.03. Excess Liability Indemnity .....	22
	13.04. Equipment Used on San Joaquin Corridor.....	22

ARTICLE 14.	INDEMNIFICATION AND LIABILITY .....	22
	14.01. Liability Assumed by Lessee .....	22
	14.02. Lessee's Duty to Indemnify.....	23
	14.03. Lessor's Duty to Indemnify.....	23
	14.04. Obligations Survive Lease Term .....	23
	14.05. Equipment Used on San Joaquin Corridor.....	24
ARTICLE 15.	ACCIDENT, LOSS OF EQUIPMENT, OR DAMAGE TO EQUIPMENT .....	24
	15.01. Notification to Lessor .....	24
	15.02. Cooperation in Defense of Claims.....	24
	15.03. Stipulated Replacement Cost .....	24
ARTICLE 16.	ASSIGNMENT.....	25
	16.01. Assignment by Lessor.....	25
	16.02. Assignment or Subletting by Lessee.....	25
ARTICLE 17.	TERMINATION.....	25
	17.01. Termination.....	25
ARTICLE 18.	RIGHTS, REMEDIES, AND OBLIGATIONS ON DEFAULT.....	26
	18.01. Lessor's Rights and Remedies.....	26
	18.02. Lessee's Obligation for Lessor's Costs.....	27
	18.03. Remedies Cumulative .....	27
	18.04. Effect of Forbearance.....	27
	18.05. Forfeiture of Lessee's Interest on Default .....	27
ARTICLE 19.	LIENS .....	27
	19.01. Encumbrances or Liens; Notice .....	27
ARTICLE 20.	NOTICES.....	28
	20.01. Service of Notice.....	28
ARTICLE 21.	AMENDMENT AND MODIFICATION.....	28
	21.01. Method of Amendment or Modification.....	28
ARTICLE 22.	ENTIRE AGREEMENT.....	29
	22.01. Incorporation by Reference.....	29
	22.02. Entire Agreement.....	29
ARTICLE 23.	GOVERNING LAW.....	29
	23.01. Choice of Law.....	29
ARTICLE 24.	EFFECT ON SUCCESSORS AND ASSIGNS.....	29
	24.01. Successors and Assigns.....	29

ARTICLE 25.	TIME OF ESSENCE .....	30
	25.01. Time Of Essence .....	30
ARTICLE 26.	MANDATORY ARBITRATION .....	30
	26.01. Arbitration.....	30
ARTICLE 27.	SEVERABILITY .....	30
	27.01. Agreement Survives Partial Invalidity.....	30

## TABLE OF APPENDICES

<u>Appendix</u>	<u>Description</u>	<u>Reference</u>
A	Description of Equipment	1.02, 15.03, 21.01
B	Contract No. 75-92001	6.03
C	Contract No. 75-93001	6.03
D	Amerail Operating Manual	7.02
E	F59PHI Operator's Manual	7.02
F	Deployment Plan for the Capitol and San Joaquin Corridors	7.08
G	Inspection Documents	12.01

## EQUIPMENT LEASE

This Equipment Lease (the "Equipment Lease") is made and entered into as of July 1, 1998 by and between the **STATE OF CALIFORNIA**, acting by and through its Department of Transportation ("Lessor") and the **CAPITOL CORRIDOR JOINT POWERS AUTHORITY** ("Lessee"). Unless otherwise indicated herein, capitalized terms used herein shall have the meanings ascribed to such terms herein or in the Interagency Transfer Agreement between the parties hereto and of even date herewith ("ITA" herein).

### RECITALS

**WHEREAS**, the Governor of the State of California has signed into law Senate Bill No. 457 (Statutes of 1996, Chapter 263), as amended by Assembly Bill 1720 (Statutes of 1996, Chapter 878) and as amended by Senate Bill 47 (Statutes of 1997, Chapter 252), collectively referenced herein as the Intercity Passenger Rail Act of 1996 (the "Act") which authorizes, among other things, the transfer of administrative responsibility over the Capitol Corridor Rail Service ("Service" herein) from the State to the regional level; and

**WHEREAS**, Lessee has been organized by that certain Joint Exercise of Powers Agreement among its constituent member-agencies, pursuant to and in accordance with the Joint Exercise of Powers Act (California Government Code Sections 6500 et seq.), which member-agencies consist of the Placer County Transportation Planning Agency, the Sacramento Regional Transit District, the San Francisco Bay Area Rapid Transit District, the Santa Clara Valley Transportation Authority, the Solano Transportation Authority and the Yolo County Transportation District (each a "Member Agency" and collectively, the "Member Agencies"); and

**WHEREAS**, The Service has been operated, up until the Effective Date, pursuant to the terms of the Operating Agreement, the Transfer Agreement and the Maintenance Agreement under which Lessor had collectively transferred possession, control and maintenance responsibility over

the Equipment to Amtrak as operator of the Service pursuant to the terms and conditions of the Operating Agreement, the Transfer Agreement and the Maintenance Agreement; and

**WHEREAS**, Lessor and Lessee have entered into that certain ITA of even date herewith and that certain Fund Transfer Agreement of even date herewith ("FTA" herein) for the purpose of effecting the aforesaid transfer of certain responsibility over and procedures for State funding for the Service to the Lessee; and

**WHEREAS**, in furtherance of the aforesaid Service transfer, the Lessee and Amtrak have negotiated a new operating agreement ("NOA" herein) and Lessee, Lessor and Amtrak have negotiated a New Transfer Agreement ("NTA" herein) related to operations within the Capitol Corridor and use of the State-owned Equipment transferred by this Equipment Lease, both of which are effective as of the Effective Date, which NOA and NTA include provisions formerly found in the Operating Agreement and the Transfer Agreement relating to operation of the Service and supervision of the Equipment as described in Section 1.02 hereof; and

**WHEREAS**, when the NOA and the NTA become effective, Lessor shall be released pro tanto from its obligations under the Operating Agreement and the Transfer Agreement with respect to operations within the Capitol Corridor and use of the Equipment; and

**WHEREAS**, Lessor and Lessee desire to execute contemporaneously, on the Effective Date, the ITA, the FTA, this Equipment Lease, the NOA and the NTA in order to transfer operational responsibility for the Service and the Equipment, subject to the conditions and limitations contained within the agreements and this Equipment Lease, from Lessor to Lessee, as provided for in the Act; and

**WHEREAS**, thereafter, Lessor will initiate a Warranty Re-Work Program ("Program" herein) with Amerail as part of Contract No. 75-92001, and on the completion of the Program, including any Program extended warranty period, or earlier, as agreed by the parties, responsibility

for maintenance and maintenance compliance supervision, and such extended warranty administration over the Equipment as is agreed to by the parties, will be transferred from Lessor to Lessee (which date shall be referred to as the "Maintenance Transfer Date" herein); and

**WHEREAS**, following the Effective Date and prior to the Maintenance Transfer Date, Lessor, Lessee and Amtrak will negotiate and enter into either (i) an assignment of Lessor's interest in the Maintenance Agreement and the Transfer Agreement to Lessee, in whole or in part, or (ii) renegotiated maintenance and transfer agreements with Amtrak or with any subsequent operator of the Service or maintenance provider in accordance with the ITA, which are subject to the approval of the Lessor (the "Renegotiated Maintenance and Transfer Agreements" or "RMTA" herein), at the conclusion of which the Lessee will replace the position of the Lessor, either wholly or in part, in these two Agreements with respect to the Equipment which is assigned to the Service and/or with respect to which the Lessee has assumed maintenance responsibility, and, effective as of the Maintenance Transfer Date, the NTA will be terminated; and

**WHEREAS**, it is the intent of the parties that, except for such maintenance and warranty administration duties as Lessor may retain pursuant to the Program as set forth herein, effective as of the Maintenance Transfer Date, Lessee shall take on all duties and responsibilities, and shall have all the rights respecting the Service, as Lessor now holds and exercises.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

## ARTICLE 1. LEASE OF EQUIPMENT

1.01. Lease of Equipment. Lessor hereby leases its herein-described interest in the "Equipment" (defined in Section 1.02 hereinbelow) to Lessee, and Lessee hereby leases from Lessor, such interest in the Equipment on the terms and conditions set forth herein.

1.02. Description of Equipment. The "Equipment" shall mean the equipment and other personal property (identified by equipment type and number of units) described in **Appendix A**, attached hereto and such additions, deletions, accessions, installations, substitutions, modifications, or replacements as may be acquired or provided in the future by Lessee or Lessor in accordance with this Equipment Lease.

1.03. Equipment Lease Subject to the NOA, Transfer Agreement, and the Maintenance Agreement. This Equipment Lease is subject to all of the terms and conditions contained in the NOA, the NTA, the Transfer Agreement, and the Maintenance Agreement, and the rights of the Lessee in the Equipment are made expressly subject to Amtrak's rights and duties under the NOA, the NTA, the Transfer Agreement and the Maintenance Agreement. As of the Effective Date, Lessor's interest in the Operating Agreement relating to the Service, along with such portions of the Transfer Agreement as affect operation of the Service or which relate to Lessee's possession and use of the Equipment through this Equipment Lease, have been incorporated into the NOA and the NTA and, except as otherwise provided herein or therein, Lessor has been released from such portions of the Operating Agreement and the Transfer Agreement related to the Service and the possession and use of the Equipment, so that Lessee has been substituted in Lessor's place, as of the Effective Date. Immediately after the Effective Date, Lessor, Lessee and Amtrak shall commence negotiations either to assign Lessor's remaining interest in the Service through the Maintenance and the Transfer Agreements to Lessee, in whole or in part, or to renegotiate the Maintenance Agreement and the Transfer Agreement and to enter into RMTA on terms acceptable to the parties, in order to substitute Lessee for Lessor under these Agreements in the Capitol Corridor, so that effective as of the Maintenance Transfer Date, Lessee will have fully succeeded to the position of



Lessor with respect to the Service and the use, supervision and maintenance of the Equipment in the Operating, Transfer and Maintenance Agreements, at which time the NTA will be terminated.

1.04. Transfer of Maintenance and Maintenance Compliance Supervision. On the Maintenance Transfer Date as set forth in Section 6.01, hereinbelow, Lessee shall assume responsibility for maintenance and maintenance compliance supervision, and such extended warranty administration over the Equipment as is agreed to by the parties, in conformance with the terms of the assigned or renegotiated Maintenance Agreement and Transfer Agreement and subject to the requirements contained in Section 6.02 hereinbelow. Lessor shall retain Service and other rail funding sufficient to cover Lessor's equipment related costs, plus a pro rata portion of Service administration budgeted funds for each State fiscal year as appropriated by the State Budget Act for such year for so long as Lessor remains responsible for such maintenance, maintenance compliance supervision, and extended warranty administration in conformance with the terms of the Transfer Agreement, the Maintenance Agreement, and this Equipment Lease.

1.05. Contract Precedence. The parties hereto acknowledge and agree that to the extent that any provisions of the ITA, the FTA, this Equipment Lease, the Transfer Agreement, the Maintenance Agreement, the NOA, the NTA or executed RMTA are inconsistent or ambiguous, such inconsistency or ambiguity shall be resolved by reference to the following agreements in descending order of precedence and priority (with the terms of any particular document listed below given precedence over the conflicting and ambiguous terms of all other contract documents listed thereafter):

- Operating Agreement
- Transfer Agreement
- Maintenance Agreement
- NOA
- NTA
- RMTA

- ITA
- Equipment Lease
- FTA
- Amerail Contract (Amerail/Caltrans Contract No. 75-92001)
- EMD Contract (EMD/Caltrans Contract No. 75-93001)

Any change orders or amendments to any of the above-referenced agreements expressly approved by the parties thereto shall be deemed to be a part of that respective agreement, in descending order of precedence of the most recent to the oldest; provided, however, that a party hereto shall only be bound by such change orders or amendments as to which it has actual knowledge.

## **ARTICLE 2. TERM OF LEASE**

2.01. Initial Term. Unless sooner terminated as set forth herein or in the ITA, the term of this Equipment Lease shall commence on the Effective Date and shall expire on the earlier of termination or expiration of the ITA, as provided in Articles 3 and 17 thereof.

## **ARTICLE 3. RENT**

3.01. Rental Payments. As rent for the Equipment during the entire term of this Equipment Lease, Lessee shall pay Lessor the sum of ONE DOLLAR (\$1.00) concurrently with the execution of this Equipment Lease, the receipt of which is hereby acknowledged by Lessor.

## **ARTICLE 4. OWNERSHIP**

4.01. No Sale or Security Interest Intended. This Equipment Lease constitutes a lease of the Equipment and not a sale to or the creation of a security interest in Lessee. Lessee shall not have, nor at any time acquire, any right, title, or interest in the Equipment except the right to possession, operation and use as provided for in this Equipment Lease. Lessor shall at all times be

the sole owner of the Equipment in accordance with Section 1.11., "Title", of the Transfer Agreement.

## **ARTICLE 5. OPERATION EXPENSES**

5.01. Payment of Expenses. Except as otherwise expressly provided herein, Lessee shall be responsible for all expenses accruing during the term of this Equipment Lease for obligations assumed by Lessee hereunder, including but not limited to expenses for storage, security, maintenance (but excluding all maintenance, maintenance supervision and warranty responsibilities retained by Lessor until those responsibilities are transferred to Lessee as set forth in Section 1.04 hereinabove), repair, operations, insurance, and all other charges in connection with the possession, operation and use of the Equipment.

5.02. Lessee Maintenance Budget. In accordance with Article 10 of the ITA, Lessee shall include all anticipated required and permissible Service expenses in its annual Business Plan update and operating budget for review, modification by, and approval of the Secretary. Approved Service expenses shall be included in the Department's budget to be submitted to the Legislature for appropriation. Lessee's proposed budget for maintenance (including extraordinary repairs) of the Equipment, on and after the Maintenance Transfer Date, as described in Sections 6.01 and 6.02 hereinbelow, shall include only the elements of expense included under the "Maintenance of Equipment" category in Appendix II of the Operating Agreement.

5.03. Form of Maintenance Budget and Invoices. On and after the Maintenance Transfer Date (as defined in Section 6.01 hereinbelow), Lessee's budgets for maintenance of the Equipment (including that used on the San Joaquin Corridor Rail Service) shall be based upon the equipment maintenance budget provided by Amtrak under the provisions of Section 5, "Budgeting Process", of the Transfer Agreement and Section 7, "Annual Maintenance Budget", of the Maintenance Agreement (less the cost of any warranty maintenance retained by Lessor), and Lessee shall use the categories and formats specified in those provisions. Lessee's invoices to Lessor for maintenance

of the Equipment shall be in the format, and on the basis, provided in Section 6, "Invoicing and Payment", of the Transfer Agreement and Section 8, "Invoicing and Payment", of the Maintenance Agreement.

5.04. Maintenance Expense Apportionment. As provided in Section 8.8(a) of the ITA, maintenance expenses for the Equipment shall be apportioned between the Service, the San Joaquin Corridor Rail Service and any other California Intercity Rail Program jointly using the Equipment, on the basis of Amtrak's cost allocation methodology as provided under the "Maintenance of Equipment" category in Appendix II of the Operating Agreement. Lessee shall only be responsible under the approved Business Plan for funding maintenance of the Equipment used on the Service.

## **ARTICLE 6. MAINTENANCE AND REPAIR**

6.01. Transfer of Responsibility for Maintenance Compliance Supervision. Lessor will pursue the negotiation of the Program with Amrail to conclude Equipment warranty disputes. Until the date the Program has been negotiated and implemented, in accordance with Section 1.04 hereinabove, responsibility for maintenance, maintenance compliance supervision and such extended warranty administration over the Equipment as is agreed to by the parties, including but not limited to maintenance of all electrical power and mechanical systems, shall be retained by Lessor and sufficient Service funding appropriated by the Legislature plus a pro rata portion of Service administration budgeted funds for each State fiscal year as appropriated by the State Budget Act for such year shall be retained by Lessor to perform such responsibilities. Upon completion of the Program, or at such earlier date following negotiation and implementation of the Program as agreed to by the parties, Lessee will accept responsibility for maintenance of the Equipment as is agreed to by the parties and in accordance with the provisions of this Section 6.01 and Section 6.02 or as otherwise agreed to by the parties (the "Maintenance Transfer Date") and Service funding for such responsibility previously retained by Lessor shall thereafter be made available to Lessee subject to appropriation by the Legislature. Such responsibility shall include Lessee's assuming all obligations and liability with respect to maintenance and maintenance compliance supervision, and

such extended warranty administration duties as are agreed to by the parties to be assumed by Lessee, relating to the possession, use, operation, storage, and scheduling of maintenance and repair of the Equipment. If the Maintenance Transfer Date occurs prior to the completion of the Program, the Lessor may determine to retain maintenance supervision responsibility with respect to the Program or any Program components, in which event sufficient Service funding appropriated by the Legislature plus a pro rata portion of Service administration budgeted funds for each State fiscal year as appropriated by the State Budget Act for such year shall be retained by Lessor to perform such responsibilities.

6.02. Lessee's Maintenance Responsibility. Lessee shall, at Lessee's own expense, on and after the Maintenance Transfer Date maintain the Equipment in good condition and running order and in strict compliance with all provisions of the Maintenance Agreement and any Maintenance Agreement which is assigned to Lessee in whole or in part, or which is a new maintenance agreement negotiated with the maintenance provider in a form approved by Lessor. Lessee acknowledges that Lessee has obtained and will comply with all preventative maintenance schedules as are set forth in such assigned Maintenance Agreement or renegotiated maintenance agreement. Lessor shall attempt to identify and obtain funding for substantiated Service cost increases resulting from enhanced levels of Equipment maintenance obligations beyond those obligations in existence at the time of execution of this Equipment Lease.

6.03. Equipment Repairs. Lessee shall ensure that all Equipment repairs are completed in strict compliance with Lessor's Contract No. 75-92001, as amended on October 10, 1995, attached hereto as **Appendix B**, and Contract 75-93001, attached hereto as **Appendix C**.

6.04. Accessions. Once approved in advance by Lessor, all installations, replacements, and substitutions of parts or accessories with respect to any of the Equipment shall constitute accessions and shall become part of the Equipment and shall be owned by Lessor. Lessee agrees that any installation, replacement or substitution of parts or accessories, or a modification with respect to any of the Equipment shall not alter or modify the existing San Joaquin Corridor Rail Service as

described in Section 7.08 hereinbelow. No such accession shall be permitted which would reduce or eliminate any applicable warranty on the Equipment, and any such resultant impact, notwithstanding Lessor's prior approval for such modification, shall be the sole responsibility of the Lessee. The Lessee shall implement immediate corrective action that is specification compliant with Contract No. 75-92001 and Contract No. 75-93001 to remedy the reduction or termination of any such warranty coverage.

6.05. Modification to Equipment. Lessee shall not modify the Equipment or cause or permit the Equipment to be modified, without Lessor's prior approval. Any Lessor-approved modification or additions to the Equipment shall become the property of the Lessor and shall be returned to Lessor with the Equipment at the termination of the Equipment Lease.

6.06. Lessor Duties. Except as to any extended warranty administration responsibilities retained by Lessor in accordance with Section 6.01, on and after the Maintenance Transfer Date, Lessor shall not be under any liability or obligation in any manner to provide maintenance, repairs, or parts for any of the Equipment and any Service funding appropriated to perform such responsibilities shall be transferred in accordance with the provisions of the FTA to Lessee. Lessee shall be responsible for supervision of all maintenance and repair work, (excluding any warranty administration work retained by Lessor) with respect to the Equipment.

6.07. Liability and Indemnification. In accordance with and subject to and as limited by the liability and indemnification provisions of Article 14 of the ITA, on and after the Effective Date, Lessee shall indemnify and hold Lessor harmless against any loss or liability incurred as a result of the negligent acts or omissions of Lessee or of any of Lessee's contractors or subcontractors. In accordance with and subject to, and as limited by such liability and indemnification provisions of Article 14 of the ITA, Lessee shall, on and after the Maintenance Transfer Date, be responsible for and shall indemnify and hold Lessor harmless against any claims, liability, losses, costs resulting from loss of Equipment manufacturer's warranty, liabilities, fines, forfeitures, or penalties for violations of any statute, law, ordinance, rule, or regulation of any duly

constituted public authority claiming jurisdiction over the Equipment due to Lessee's failure or negligence in maintaining or repairing the Equipment to the standards noted herein.

## ARTICLE 7. USE OF EQUIPMENT

7.01. Rights of Lessee. On and after the Effective Date, Lessee shall store, secure, maintain, operate, use, and have possession and control of the Equipment pursuant to the terms and conditions of: (a) this Equipment Lease; (b) the NOA, the NTA and the Transfer and Maintenance Agreements as assigned to Lessee in whole or in part or RMTA pre-approved by Lessor; (c) the FTA; (d) Contract No. 75-92001, as amended on 10/10/95 and (e) Contract No. 75-93001, during the full term of this Equipment Lease, provided Lessee is not in material default of any provision of any of the foregoing agreements to which it is a party or an assignee, in whole or in part, and subject to Lessor's ownership of the Equipment and those maintenance and warranty duties Lessor may have retained.

7.02. Lessee Control of Equipment. On and after the Effective Date, Lessee shall exercise its control, supervision, and responsibility over the Equipment and any operators and users of the Equipment employed on the Service to assure that the Equipment is not operated, maintained, repaired or used in violation of applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession, use, or maintenance of the Equipment, and that the Equipment is not operated in a manner inconsistent with the methods defined in the approved version of Amerail's "Operating Manual" (attached hereto as **Appendix D**) and Electro-Motive Division's "F59PHI Operator's Manual" (attached hereto as **Appendix E**). Should the manufacturers revise and deliver modified versions of the above-referenced Operating or Operator's Manuals to Lessor, Lessor shall provide Lessee within twenty (20) working days with copies of all revisions of those modified operating procedures to the Lessee to ensure that the Equipment is operated pursuant to those revisions. Lessor shall attempt to identify and obtain funding for substantiated Service cost increases, directly resulting from such revisions, to the levels of Equipment maintenance obligations in existence at the time of execution of this Agreement.

7.03. Operating Responsibilities of Lessee. On and after the Effective Date, Lessee shall secure, store, operate, and otherwise use, or cause to be operated, protected, stored, and otherwise used, the Equipment in a commercially safe and prudent manner and shall not permit the Equipment to be operated, or used in violation of any applicable federal, state, or local statute, law, ordinance, rule, or regulation relating to the possession or use of the Equipment.

7.04. Maintenance Responsibilities of Lessee. On and after the Maintenance Transfer Date, and subject to the terms of Article 6 of this Equipment Lease, Lessee shall maintain and repair or cause the Equipment to be maintained or repaired in accordance with the most current version of Amtrak's Maintenance Analysis Program ("MAP," as shall be identified in the assigned Maintenance Agreement and Transfer Agreement or any RMTA approved by Lessor) as applied to the Equipment and shall not permit the Equipment to be maintained or repaired in violation of any applicable federal, state, or local statute, law, ordinance, rule or regulation relating to the repair or maintenance of the Equipment.

7.05 Non-Standard Maintenance and Repair. Before undertaking any new or revised maintenance work or changing the frequency periods established in the assigned Maintenance and Transfer Agreements or any RMTA approved by Lessor, and as specified in the manufacturer's operating manuals for the Equipment, the Lessee shall obtain the Lessor's prior written agreement to the use of such non-standard maintenance schedules and procedures. All repairs shall be performed in a manner that is compliant with Lessor's Contract No. 75-92001 as amended on 10/10/95 for Passenger Cars or Contract No. 75-93001 for Passenger Locomotives as amended by any approved change orders and amendments.

7.06. Equipment Security. On and after the Effective Date, Lessee shall provide, or cause to be provided, security for the Equipment wherever it is stored or maintained, to ensure that the Equipment is not exposed to theft, vandalism, or other damage. Lessee shall notify Lessor within five (5) days of the discovery of any vandalism or other damage over Five Thousand Dollars



(\$5,000) per incident. Lessee shall, on and after the Maintenance Transfer Date, complete vandalism or damage repairs to Lessor's approval within thirty (30) days of providing notice to Lessor, unless required repair parts are unavailable or Lessee is able to document the infeasibility of effecting such repair within thirty (30) days, in which case the repair will be completed as soon as practicable. In the event such repair cannot be effected within thirty (30) days, Lessee shall advise Lessor in writing, not more than thirty (30) days after advising the Lessor of the discovery of that vandalism or other damage, of the specific parts which are unavailable, the dates purchase documents ordering the parts were issued, the estimated dates of delivery of ordered parts and the date when corrective repairs will be completed, or such other reason why it is not reasonably possible to effect such repair within thirty (30) days. If Lessee fails to complete any repairs within the required period, as provided in this Section 7.06, Lessor may, after twenty (20) working days advance notice in writing to Lessee, withhold funds payable under the FTA from Lessee for the cost of repairs (at reasonable repair rates) performed by a third party selected by Lessor.

7.07. Repair of Equipment. Lessee agrees to repair damaged Equipment or reimburse Lessor in full, within thirty (30) days from the date of occurrence for the cost of all repairs for damage to the Equipment arising from any misuse or negligent act by Lessee, its employees, its agents and third parties and for damage to the Equipment by reason of theft, vandalism or other causes, as set forth in Section 7.06, unless required repair parts are unavailable or Lessee has documented the infeasibility of effecting such repair within thirty (30) days.

7.08. Deployment Use Limitation. Lessee shall operate, or cause to be operated, the Equipment, pursuant to the terms and conditions of the Deployment Plan for the Capitol and San Joaquin Corridors (attached hereto as **Appendix F**) and in accordance with each of the agreements and documents set forth in Section 1.05, in the order of precedence set forth therein. Lessee shall not attempt to modify that Deployment Plan without the prior written approval of Lessor. Subject to the terms of Appendix F, and to the terms of each of the agreements and documents set forth in Section 1.05 (subject to the order of precedence set forth therein), Lessee may use the Equipment assigned to the Capitol Corridor identified in the Description of Equipment (attached hereto as

**Appendix A)** at its discretion. The parties acknowledge that the list of Equipment reflects only the Equipment assigned to the Capitol Corridor as of the Effective Date of this Equipment Lease, and that such Equipment may be deployed and redeployed as determined by the Lessor and Lessee consistent with the terms of this Equipment Lease.

7.09. Training and Safety Requirements. On and after the Effective Date, Lessee shall be responsible for ensuring training of its employees, agents, contractors and subcontractors with respect to the operation of the Equipment. On and after the Maintenance Transfer Date, Lessee shall be responsible for ensuring training of its employees, agents, contractors and subcontractors with respect to the maintenance and/or repair of the Equipment pursuant to the MAP procedures to be identified in the assigned Maintenance Agreement and Transfer Agreement or RMTA approved by the Lessor, and the procedures defined in the "Running Maintenance and Service Manual", the "Heavy Maintenance and Service Manual", the "Operating Manual" and any other specific service manuals supplied by the manufacturer or the manufacturer's vendors covering systems or components installed in the Equipment. Lessee shall provide maintenance and operating staff assigned to the Equipment with individual pocket size copies of the appropriate manuals listed hereinabove to respond to hazard and safety requirements applicable to the operation and maintenance of the Equipment.

7.10. Maintenance Facility. Lessor and Amtrak presently intend to jointly own and construct a car and locomotive maintenance facility specifically designed for maintenance of Lessor-owned equipment (including the Equipment), and Amtrak-owned equipment, including, but not limited to, equipment operating as the California Zephyr. Lessee agrees to cooperate fully in the implementation of maintenance of the Equipment at that facility as soon as it becomes operable for occupation (projected to be late 1999), unless Lessee is able to provide the Secretary with adequate justification for performing Equipment maintenance at a separate facility without increasing maintenance costs or disrupting San Joaquin Corridor service. Amtrak will be the sole occupant of the facility and the sole operator of all maintenance operations subject to terms of the assigned Maintenance and Transfer Agreements or RMTA and the terms of the agreement between

Amtrak and Lessor relative to the financing and construction of that facility. Replacement of Amtrak as the maintenance provider for the Service will only be by agreement of the Lessee and Lessor. If this facility is constructed, all Equipment subject to the terms of this Equipment Lease will be maintained at this facility, unless Lessee is able to provide the Secretary with adequate justification for performing Equipment maintenance at a separate facility without increasing overall fleet maintenance costs or disrupting San Joaquin Corridor service. In the event that Lessor and Amtrak do not ultimately construct this facility, Lessee shall have no recourse or remedy against Lessor or Amtrak for not providing such a facility.

7.11. Maintenance Facility Design Review. To assure to the extent possible that the design of the Maintenance Facility referenced in Section 7.10 of this Equipment Lease does not adversely impact maintenance operations of the Service performed either by Amtrak or a successor agency under contract to Lessee, Lessee has the right, but not the obligation, to participate in design reviews of this facility; provided, however, that such participation shall not render Lessee liable for claims or lawsuits related to the design of this facility. Lessor and Amtrak shall, however, have ultimate discretion in determining the final design of this facility.

## **ARTICLE 8. LESSOR'S RIGHT OF INSPECTION AND REPAIR**

8.01 Inspection and Repair. On and after the Effective Date, Lessor and its employees and agents, at Lessor's sole discretion, during Lessee's operator's regular business hours, shall have the right to enter upon the premises where any of the Equipment is located for storage, maintenance, repair or use and conduct a reasonable inspection of such Equipment, wherever located and while at rest or in operation. If, in the sole opinion of Lessor, any Equipment covered by this Equipment Lease is not being maintained or repaired in accordance with the terms of this Equipment Lease, Lessor shall provide notice to Lessee of the specific nature of the Lessee's failure to maintain the Equipment and Lessee shall, thereafter, have thirty (30) days to cure such default or failure or to expeditiously commence the cure of said default or failure if such default or failure by its nature cannot reasonably be cured within thirty (30) days, and thereafter diligently pursue such

cure to completion. Should Lessee not cure said failure or default within a reasonable period of time, Lessor shall have the right, but not the obligation, to have the Equipment repaired or maintained at the expense of Lessee and at no additional cost to Lessor. The cost of any Equipment repairs performed by Lessor shall, after twenty (20) working days advance written notice to Lessee, be withheld from the next scheduled invoice submitted by Lessee.

8.02 Rail Safety Requirements. Lessor's employees and agents entering into any premises where Equipment is located shall comply with all applicable safety requirements required by the operator or rail regulatory agency.

## **ARTICLE 9. ENFORCEMENT OF LESSOR'S WARRANTIES**

9.01 Warranty Administration. For the period provided hereinabove in Section 6.01, Lessor shall retain responsibility for all warranty claims administration affecting the Equipment. During such period, the cost of any Equipment warranty enforcement by Lessor shall be performed at the expense of Lessor and shall in no way render Lessor responsible to Lessee for the performance of any of the warranties. If, after the Maintenance Transfer Date, warranty administration responsibility has been transferred to Lessee and any warranty claims are rejected by a manufacturer or supplier due to Lessee's allegedly not performing required maintenance, and such rejection is upheld by a court or arbitrator, Lessee shall be financially responsible for that warranty enforcement and resolution.

9.02 Availability of Equipment for Program Warranty Work. On and after the Effective Date, Lessee agrees to deliver specified leased Equipment to the Lessor's designated warranty rework site in Oakland, California within seventy-two (72) hours of written notification by Amerail or Amtrak of required Program warranty rework. If Lessee is able to quantitatively demonstrate substantial impacts to Capitol Corridor service as a result of delivery of Equipment for Program rework pursuant to this Section 9.02, Lessor shall attempt either to provide alternative service capacity, identify and attempt to obtain funding for replacement equipment to retain Service

capacity, or adjust fare box return requirements for the substantiated costs of replacement Service capacity. If Lessee fails to make Equipment available on the schedule specified by Lessor, Lessee will pay all accrued costs to Lessor, Amtrak and Amerail (or any substitute Program contractor) directly and proximately resulting from the failure of Lessee to deliver the designated Equipment at the times and places scheduled.

**ARTICLE 10. NOTIFICATION AND CONCURRENCE TO ASSIGNMENT OF  
CERTAIN AGREEMENTS**

10.01 Notification and Concurrence. Lessor and Lessee agree, prior to the Maintenance Transfer Date and subject to concurrence of the other parties to such agreements, to separately implement the assignment of all or portions of the following agreements to Lessee or the renegotiation of all or certain of such agreements to include Lessee in furtherance of the purposes of this Equipment Lease and for Lessee to assume the obligations and duties of Lessor in the Capitol Corridor in connection therewith:

- (i) the Maintenance Agreement
- (ii) the Transfer Agreement
- (iii) such provisions, as agreed to by parties to this Equipment Lease and to such Caltrans contract, of that certain Caltrans Contract No. 75-92001 with Amerail, including amendments, dated October 10, 1995
- (iv) such provisions, as agreed to by the parties to this Equipment Lease and to such Caltrans contract, of that certain Caltrans Contract No. 75-93001 with Electro-Motive Division, General Motors Co.

## ARTICLE 11. TAXES AND OTHER CHARGES

11.01 Taxes. Lessee shall be liable for and pay on or before their due dates, any applicable taxes, including but not limited to sales taxes, use taxes, personal property taxes, business taxes or governmental charges or fees imposed on the Equipment or levied against, or based on, the amount of rent to be paid under the Equipment Lease or assessed in connection with the Equipment Lease. Unless otherwise specified, the term "taxes" as used in this Article 11 shall include all taxes, charges and fees imposed by any federal, state, county, municipal, or other governmental authority. Lessee shall promptly notify Lessor and send Lessor copies of any notices, reports, and inquiries from taxing authorities concerning delinquent taxes, fees or other charges received, or assessments received by Lessee. All taxes, charges and fees imposed on the entire Equipment fleet without any allocation as between the Capitol Corridor, the San Joaquin Corridor and other intercity rail corridors served by the Equipment shall be apportioned, as appropriate, on the same basis used to allocate Equipment maintenance expense between those corridors as provided in Appendix II of the Operating Agreement.

11.02 Other Charges. Title to the Equipment is now and shall at all times remain vested in Lessor unless modified by Lessor by legislative action. Lessee shall be liable for any fees and charges for, and shall obtain, or cause to be obtained, all licenses, registrations, permits and other certificates as may be required for lawful operation of the Equipment. All certificates of title shall be issued and maintained in the name of Lessor, as owner. Such certificates of title shall be delivered to Lessor and Lessee shall pay all expenses in relation to them. All such fees and charges imposed on the entire Equipment fleet without any allocation as between the Capitol Corridor, the San Joaquin Corridor and other intercity rail corridors served by the Equipment shall be apportioned, as appropriate, on the same basis used to allocate Equipment maintenance expense between those corridors as provided in Appendix II of the Operating Agreement.

11.03. Taxes, Charges and Fees Paid by Lessor. If any taxing authority requires that a tax, fee or charge be paid to the taxing authority directly by Lessor, Lessee shall, on notice from Lessor, reimburse to Lessor the amount of the tax, late fee or charge paid by Lessor promptly upon demand. All taxes, late fees or damages imposed on the entire Equipment fleet without any allocation as between the Capitol Corridor, the San Joaquin Corridor and other intercity rail corridors served by the Equipment shall be apportioned, as appropriate, on the same basis used to allocate Equipment maintenance expense between those corridors as provided in Appendix II of the Operating Agreement.

11.04. Contested Taxes. Lessee shall have the right, at Lessee's own expense, to contest the validity or amount of any tax, fee or other charge referred to in Sections 11.01 and 11.02 hereinabove by legal proceedings promptly instituted and diligently conducted. Lessee shall pay the tax, fee or charge demanded by the demanding authority before initiating any proceedings. If taxes, fees or charges are reduced or canceled, Lessee, and Lessor, acting on behalf of the San Joaquin Corridor and other rail corridors if appropriate, shall be entitled to the refund for any taxes, fees or charges previously paid, provided that Lessee is not in default under any of the terms and conditions of this Equipment Lease.

## **ARTICLE 12. JOINT INSPECTION**

12.01. Joint Inspection. On the Effective Date of this Equipment Lease and again on the Maintenance Transfer Date, each item of Equipment shall undergo joint acceptance inspection and testing procedure as set forth in Intercity Passenger Car Inspection Document, Intercity Consist Test and Locomotive Inspection Document A (collectively, herein, the "Inspection Documents"). The inspection and testing process shall not exceed one hundred (100) days. Copies of the Inspection Documents are attached to this Equipment Lease as **Appendix G**.

12.02. Inspection Acceptance. Unless Lessee gives written notice to Lessor specifying any defect in or other proper objection to an item of Equipment, then Lessee agrees that it shall be

conclusively presumed as between Lessor and Lessee that except as to such defects the Equipment is in good condition and repair and that Lessee is satisfied with and has accepted the Equipment in such good condition and repair, prior ordinary wear and tear excepted. At such time as the inspection and testing process identified in Section 12.01 is finished, the completed Inspection Documents shall have established the condition of the Equipment.

12.03. Joint Inspection at Termination of the Equipment Lease. Lessor and Lessee shall initiate joint inspection of the Equipment within five (5) days of termination of this Equipment Lease. Such process shall not thereafter exceed one hundred (100) working days, and each item of Equipment shall undergo the identical inspection and testing procedure as set forth in the Inspection Documents. Any change in the condition of the Equipment from that as set forth in the Inspection Documents at the last joint inspection performed by the parties, other than ordinary wear and tear, shall be noted by the parties and repaired as follows:

(i) if such final inspection occurs prior to the Maintenance Transfer Date, any change in condition occurring between the Effective Date and such final inspection which is solely attributable to Lessor's failure to properly maintain the Equipment, shall be repaired by Lessor at its cost; any change in condition solely attributable to operation of the Equipment shall be repaired by Lessee at its cost;

(ii) if such final inspection occurs after the Maintenance Transfer Date, any change in condition occurring between the Maintenance Transfer Date and such final inspection (except with respect to any change in condition attributable to any extended warranty maintenance retained by Lessor, which shall be repaired by Lessor at its cost), shall be repaired by Lessee at its cost.

The foregoing notwithstanding, Lessor shall be under no obligation to make any repairs for changes in condition attributable to any obligation retained by it, and Lessee shall not attempt to enforce any such obligation.

12.04. Lessee's Return of Equipment. Upon the termination or expiration date of this Equipment Lease with respect to any or all of the Equipment, Lessee shall return such Equipment



to Lessor, together with all accessions, additions and modifications, free from all damage and in the same condition and appearance as noted in the Inspection Documents in effect at the time of transfer under the ITA and the terms of Section 12.01 of this Equipment Lease, ordinary wear and tear excepted. Lessee shall return the Equipment to a site in Northern California as determined by Lessor. If Lessee fails or refuses to return any Equipment to Lessor, Lessor shall have the right, subject to complying with all applicable safety procedures required by the operator or rail regulatory agency, to take possession of such Equipment and for that purpose to enter any premises where such Equipment may be located without being liable in any suit, action, defense, or other proceedings to Lessee. Lessee agrees to pay for all costs and charges expended by Lessor to repossess any Equipment.

12.05 Repair at Termination. Lessee shall have the option to initiate the remedy or repair of any such changed condition noted in the Inspection Documents within ten (10) days after written notice by Lessor, or to reimburse Lessor for that cost of repair if undertaken by Lessor. If the parties are unable to agree on the cost of the remedy or repair, the reasonable and ordinary cost of the repair or remedy shall be established by Amtrak or any applicable successor Service operator or Equipment maintenance contractor, which determination shall be final and binding on the parties hereto.

### **ARTICLE 13. INSURANCE**

13.01 Lessee's Duty to Insure. Lessee agrees to maintain, or cause to be maintained, in full force and effect, Public Liability and Property Damage Insurance issued by companies satisfactory to Lessor, insuring the interests of Lessor, Lessee, and their authorized agents, officers and employees in accordance with and subject to the provisions of Article 14 of the ITA.

13.02 Proof of Insurance. Lessee shall cause the insurer to furnish to Lessor, no less than five (5) business days prior to the Effective Date, and no less than ten (10) business days prior to the expiration date of any then existing insurance, a certificate evidencing the required coverage.

The policy shall provide that the insurer shall not cancel or materially modify the insurance without approval of the Lessor, except upon thirty (30) days advance written notice to Lessor, and that Lessor is not, except as set forth in Article 14 of the ITA, subject to any assessments, participation or other payment to the insurer under the policy. If Lessee fails to procure, maintain or renew the insurance coverage required in this Equipment Lease, Lessor may, but is not obligated to, obtain insurance on behalf of or in the name of Lessor and for the account of Lessee without prejudice to any other rights that Lessor may have.

13.03. Excess Liability Indemnity. On and after the Effective Date, in accordance with and as limited by the provisions of Article 14 of the ITA, Lessee shall protect, defend, indemnify and hold Lessor, its officers and employees, harmless from and against all loss, liability, damage and expense, including reasonable attorneys' fees, caused by or arising out of the Lessee's possession, use, operation, storage, maintenance, or repair of the Equipment during the term of this Equipment Lease.

13.04. Equipment Used on San Joaquin Corridor. Anything to the contrary in this Article 13 notwithstanding, the obligation of Lessee with respect to insurance and indemnification shall be subject to any shared or partitioned obligations and duties of the operator of the San Joaquin Corridor Rail Service Corridor and other intercity rail corridor service operators with respect to insurance and indemnification pertaining to the shared possession, operation, use, storage, maintenance and repair of any or all of the Equipment used on the San Joaquin Corridor and any other intercity rail corridor.

## **ARTICLE 14. INDEMNIFICATION AND LIABILITY**

14.01. Liability Assumed by Lessee. On and after the Effective Date, in accordance with and subject to and as limited by the provisions of Article 14 of the ITA, Lessee assumes all responsibility, risks and liability for the loss of or damage to the Equipment with respect to which Lessee has assumed responsibility under the terms of the ITA and this Equipment Lease and for all

other risks and liabilities arising from the possession, use, operation, storage, repair, and maintenance of such Equipment.

14.02. Lessee's Duty to Indemnify. Lessee shall protect, indemnify, defend, and hold harmless Lessor, its officers and employees from all claims, losses and damages Lessor may sustain or suffer resulting from any and all expenses, losses, liabilities, fines, penalties, and other claims of every type, including reasonable attorneys' fees, imposed on or incurred by Lessor because of Lessee's possession, operation, use, storage, repair and maintenance of any Equipment, or because of the failure of Lessee to perform any of the terms of this Equipment Lease. Such protection, indemnity, defense and holding harmless of Lessor by Lessee is expressly subject to and limited by the provisions of Article 14 of the ITA, wherein Lessor is designated as "State" and Lessee is designated as "Authority", and no new duty for liability and indemnification of Lessor by Lessee outside the scope of such Article 14 is created hereby.

14.03 Lessor's Duty to Indemnify. Lessor shall protect, indemnify, defend, and hold harmless Lessee, its officers and employees from all claims, losses and damages Lessee may sustain or suffer resulting from any and all expenses, losses, liabilities, fines, penalties, and other claims of every type, including reasonable attorneys' fees, imposed on or incurred by Lessee because of Lessor's maintenance, maintenance compliance supervision, and warranty administration of any Equipment, relating to the period from the Effective Date to the Maintenance Transfer Date, and because of any warranty maintenance responsibility retained by Lessor after the Maintenance Transfer Date.

14.04. Obligations Survive Lease Term. All obligations of the Lessee that either expressly or by their nature survive expiration or termination of this Equipment Lease shall continue in full force and effect subsequent to and regardless of the reason for expiration or termination, and until they are fully satisfied or by their nature expire.

14.05. Equipment Used on San Joaquin Corridor. Anything to the contrary in this Article 14 notwithstanding the obligations of Lessee with respect to insurance and indemnification shall be subject to any shared or partitioned obligations and duties of the operators of the San Joaquin Corridor Rail Service and other intercity rail corridor service operator with respect to insurance and indemnification pertaining to the shared possession, operation, use, storage, maintenance and repair of any or all of the Equipment used on the San Joaquin Corridor and any other intercity rail corridor.

#### **ARTICLE 15. ACCIDENT, LOSS OF EQUIPMENT, OR DAMAGE TO EQUIPMENT**

15.01. Notification to Lessor. If, in a single incident greater than Five Thousand Dollars (\$5,000), any of the Equipment is damaged, lost, stolen, or destroyed, or if any person is injured or dies, or if any Equipment is damaged as a result of Lessee's possession, operation, use, storage, maintenance, and repair of the Equipment, Lessee shall notify Lessor within five (5) days of such occurrence, and shall file, or will cause to be filed, within the period of time required by law or insurers, all necessary reports, including those required by law and those required by insurers of the Equipment.

15.02. Cooperation in Defense of Claims. Lessee, its officers and employees and Lessor, its officers and employees, shall all cooperate fully with each other and all Equipment insurers providing the insurance required under this Equipment Lease in the investigation and defense of any and all claims or suits. Lessee and Lessor shall, within five (5) working days, deliver to the other any and all papers, notices, and documents served on or delivered to Lessee or Lessor, their officers or employees in connection with any claim, suit, action, or proceeding at law or in equity commenced or threatened against Lessee, Lessor, or both, concerning the Equipment.

15.03. Stipulated Replacement Cost. If any Equipment becomes lost, stolen, destroyed, or damaged beyond repair, Lessee shall pay Lessor in cash the "Stipulated Replacement Cost", less any net proceeds of insurance for the Equipment received by Lessor and any deductible amount

agreed to be assumed by Lessor in accordance with the terms of Article 14 of the ITA. For purposes of this provision, "Stipulated Replacement Cost" means the replacement cost of the item of the Equipment as established at the time of loss as covered by the physical damage insurance written on an equipment cost replacement basis as set forth in Section 14.5 of the ITA. The original purchase prices of the Equipment transferred as of the Effective Date of this Equipment Lease are set forth in Part 2 of Appendix A to this Equipment Lease. The original purchase price of any Equipment purchased after the effective date of this Lease shall be added to Appendix A by amendment thereto. Upon the payment to Lessor of a Stipulated Replacement Cost loss, this Equipment Lease shall terminate with respect to that item of Equipment and Lessee shall become the owner of that item of replaced or lost Equipment on an "as-is-where-is" ownership basis, without warranty by Lessor, express or implied, as to any matter whatsoever.

#### **ARTICLE 16. ASSIGNMENT**

16.01. Assignment by Lessor. Lessor may assign this Equipment Lease or any rights under it at any time without Lessee's consent. In the event of any assignment, Lessor's assignee ("Assignee") shall have all the rights, powers, privileges, and remedies of Lessor set forth in this Equipment Lease.

16.02. Assignment or Subletting by Lessee. Lessee shall not assign this Equipment Lease or any of the Equipment, or transfer, assign, hypothecate, pledge or otherwise encumber this Equipment Lease or the Equipment, or any interest in the Equipment Lease or the Equipment, or sublet any of the Equipment without the express prior written consent of Lessor.

#### **ARTICLE 17. TERMINATION**

17.01. Termination. This Equipment Lease shall be terminated effective as of the date and time of termination of the ITA pursuant to any termination event described in Article 17 thereof.

## ARTICLE 18. RIGHTS, REMEDIES, AND OBLIGATIONS ON DEFAULT

18.01. Lessor's Rights and Remedies. After any event of default which is material and substantial ("Event of Default", herein), Lessor shall provide written notice to Lessee of the specific nature of Lessee's default, and Lessee shall, thereafter, have thirty (30) days to either cure such default or, if such default is of a nature that it cannot reasonably be cured within such time, Lessee shall commence such cure within such thirty (30) day period and diligently pursue such cure to completion. Such defaults shall include a default occurring under the Deployment Plan; maintenance of Equipment; repairs not completed pursuant to the terms of this Equipment Lease; and any event described in Section 17.4 of the ITA. In the event that Lessee is unable to cure said default within such time period, Lessor shall have all of the following options:

- (i) to terminate the Equipment Lease and Lessee's rights under the Equipment Lease;
- (ii) to declare the balance of all amounts owing and all other charges of any kind required of Lessee under the Equipment Lease to be due and payable immediately, in which event Lessor shall be entitled to the balance due together with interest at the rate of ten percent (10%) per annum from the date of notification of default to the date of payment;
- (iii) to repossess the Equipment without legal process, free of all rights of Lessee in and to the Equipment. Lessee authorizes Lessor or Lessor's agent to enter on any premises where the Equipment is located and repossess and remove it. Lessee specifically waives any right of action Lessee might otherwise have arising out of that entry and repossession, and releases Lessor from any claim for trespass or damages caused by reason of the entry, repossession, or removal; provided, however that Lessor's agents and employees shall comply with all applicable safety requirements required by the operator or rail regulatory agency.

18.02. Lessee's Obligation for Lessor's Costs. After the occurrence of any Event of Default, Lessee shall reimburse Lessor for all reasonable expenses of repossession and enforcement of Lessor's rights and remedies, together with interest at the rate of ten percent (10%) per annum to the date of payment.

18.03. Remedies Cumulative. The remedies of Lessor shall be cumulative to the extent permitted by law and may be exercised partially, concurrently, or separately. The exercise of one remedy shall not be deemed to preclude the exercise of any other remedy.

18.04. Effect of Forbearance. No failure on the part of Lessor to declare a default and exercise any remedy or right and no delay in the exercise of any remedy or right shall operate as a waiver. No single or partial exercise by Lessor of any remedy or right shall preclude any other or further exercise of that remedy or right or the exercise of any other rights or remedies. No forbearance by Lessor to exercise any rights or privileges under this Equipment Lease shall be construed as a waiver, but all rights and privileges shall continue in effect as if no forbearance had occurred. Acceptance by Lessor of performance of defaulted obligations made by Lessee after the occurrence of an Event of Default shall not be deemed a waiver of Lessor's rights and remedies arising from the occurrence of such Event of Default.

18.05. Forfeiture of Lessee's Interest on Default. Upon the occurrence of any Event of Default, Lessee and Lessee's successors in interest shall have no right, title or interest in the Equipment, its possession, or its use. Lessor shall retain all rents and other payments of any kind made by Lessee under this Equipment Lease.

## **ARTICLE 19. LIENS**

19.01 Encumbrances or Liens; Notice. Lessee shall not pledge, encumber, create a security interest in, or permit any lien to become effective on any Equipment. If any of the aforesaid events takes place, Lessor shall have the option of declaring the occurrence of an Event of Default and

exercising any of the rights or remedies available hereunder. Lessee shall, within five (5) days, notify Lessor of any liens, charges, or other encumbrances of which Lessee has knowledge. Lessee shall pay or satisfy any obligation within thirty (30) days from the date on which any lien or encumbrance arises, and shall otherwise keep the Equipment and all of Lessor's right, title, and interest free and clear of all liens, charges, and encumbrances. Lessee shall, upon request by Lessor, deliver to Lessor appropriate satisfactions, waivers, or evidence of payment promptly within ten (10) days of payment or satisfaction.

## **ARTICLE 20. NOTICES**

20.01. Service of Notice. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Equipment Lease or by law to be served on or given to either party by the other party shall be in writing and shall be deemed duly served and given to the person or persons to whom such notice is being given or served as indicated, and in the manner provided, in the ITA.

## **ARTICLE 21. AMENDMENT AND MODIFICATION**

21.01. Method of Amendment or Modification. Additional Equipment may be added and deleted under this Equipment Lease as agreed upon by the parties. Any additional Equipment acquired, shall be added to the attached Appendix A by an amendment describing the Equipment, the monthly rental, the term of the leasing period, the original purchase price and the Stipulated Replacement Cost of the additional Equipment. All amendments to this Equipment Lease and any attached Appendices must be in writing and signed by both parties. Other than by this amendment procedure, this Equipment Lease shall not be amended, modified, or altered in any manner except in writing signed by both parties and approved in writing in advance by the Secretary or the Secretary's designee.



## ARTICLE 22. ENTIRE AGREEMENT

22.01. Incorporation by Reference. Any attached Appendices are hereby incorporated and made an integral part of this Equipment Lease by this reference.

22.02. Entire Agreement. This Equipment Lease, including any attached Appendices, constitutes the entire agreement between the parties with respect to the lease of the Equipment and it is an express part of the ITA executed by the parties. No agreements, representations, or warranties other than those specifically set forth in this Equipment Lease or in the attached Appendices shall be binding on any of the parties unless set forth in writing and signed by both parties.

## ARTICLE 23. GOVERNING LAW

23.01. Choice of Law. This Equipment Lease shall be deemed to be executed and delivered in the State of California and governed by and construed in accordance with its laws.

## ARTICLE 24. EFFECT ON SUCCESSORS AND ASSIGNS

24.01. Successors and Assigns. This Equipment Lease and each of its provisions shall be binding on and shall inure to the benefit of the respective successors and assigns of the parties to this Equipment Lease. Nothing contained in this Section 24.01 shall be construed as a consent by Lessor to any assignment of this Equipment Lease or any interest therein by Lessee except as provided in Article 16 hereinabove.

## ARTICLE 25. TIME OF ESSENCE

25.01. Time of Essence. Time is of the essence in this Equipment Lease and in each provision contained herein, and each provision is made and declared to be a material, necessary, and essential part of this Equipment Lease.

## ARTICLE 26. MANDATORY ARBITRATION

26.01. Arbitration. Any controversy or claim, including any claim of misrepresentation, arising out of or related to this Equipment Lease or breach of this Equipment Lease shall be settled by arbitration in accordance with the provisions of Article 18 of the ITA.

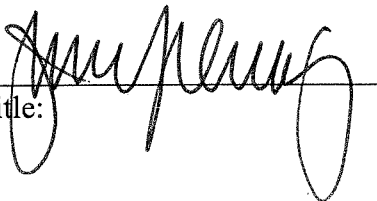
## ARTICLE 27. SEVERABILITY

27.01. Agreement Survives Partial Invalidity. If any provisions of this Equipment Lease or the application of any of its provisions to any party or circumstance is held invalid or unenforceable, the remainder of this Equipment Lease and the application of those provisions to the other parties or circumstances shall remain valid and in full force and effect.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Equipment Lease effective on the day and year first written above.

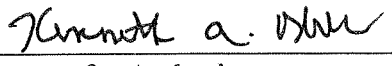
**CAPITOL CORRIDOR JOINT POWERS  
AUTHORITY**

**STATE OF CALIFORNIA**  
Department of Transportation  
JAMES VAN LOBEN SELS  
Director

By:   
Title:

By:   
Title:

**Approved as to Form and Procedure:**

By:   
Attorney for Authority

By:   
Attorney for State



APPENDIX A

DESCRIPTION OF EQUIPMENT

Description of Equipment. The items of Equipment to which this Schedule and Lease applies are described as follows:

<u>Item No.</u>	<u>Mfr./Type of Item</u>	<u>Model No.</u>	<u>Serial No.</u>
1	MK-Trailer	8001	8001-IT
2	MK-Trailer	8002	8002-IT
3	MK-Trailer	8003	8003-IT
4	MK-Trailer	8004	8004-IT
5	MK-Trailer	8005	8005-IT
6	MK-Trailer	8006	8006-IT
7	MK-Trailer	8007	8007-IT
8	MK-Trailer	8008	8008-IT
9	MK-Trailer	8009	8009-IT
10	MK-Trailer	8010	8010-IT
11	MK-Trailer	8011	8011-IT
12	MK-Trailer	8012	8012-IT
13	MK-Trailer	8013	8013-IT
14	MK-Trailer	8014	8014-IT
15	MK-Trailer	8015	8015-IT
16	MK-Trailer	8016	8016-IT
17	MK-Trailer	8017	8017-IT
18	MK-Trailer	8018	8018-IT
19	MK-Trailer	8019	8019-IT
20	MK-Trailer	8020	8020-IT
21	MK-Trailer	8021	8021-IT
22	MK-Trailer	8022	8022-IT
23	MK-Trailer	8023	8023-IT
24	MK-Trailer	8024	8024-IT
25	MK-Trailer	8025	8025-IT
26	MK-Trailer	8026	8026-IT
27	MK-Trailer	8027	8027-IT
28	MK-Trailer	8028	8028-IT
20	MK-Trailer	8029	8029-IT
30	MK-Trailer	8030	8030-IT
31	MK-Trailer	8031	8030-IT
32	MK-Trailer	8032	8030-IT
33	MK-Baggage	8201	8201-BC
34	MK-Baggage	8202	8202-BC

<u>Item No.</u>	<u>Mfr./Type of Item</u>	<u>Model No.</u>	<u>Serial No.</u>
35	MK-Baggage	8203	8203-BC
36	MK-Baggage	8204	8204-BC
37	MK-Baggage	8205	8205-BC
38	MK-Baggage	8206	8206-BC
39	MK-Cab	8301	8301-IC
40	MK-Cab	8302	8302-IC
41	MK-Cab	8303	8303-IC
42	MK-Cab	8304	8304-IC
43	MK-Cab	8305	8305-IC
44	MK-Cab	8306	8306-IC
45	MK-Cab	8307	8307-IC
46	MK-Cab	8308	8308-IC
47	MK-Cab	8309	8309-IC
48	MK-Cab	8310	8310-IC
49	MK-Cab	8311	8311-IC
50	MK-Cab	8312	8312-IC
51	MK-Cab	8313	8313-IC
52	MK-Cab	8314	8314-IC
53	MK-Food Service	8801	8801-FS
54	MK-Food Service	8802	8802-FS
55	MK-Food Service	8803	8803-FS
56	MK-Food Service	8804	8804-FS
57	MK-Food Service	8805	8805-FS
58	MK-Food Service	8806	8806-FS
59	MK-Food Service	8807	8807-FS
60	MK-Food Service	8808	8808-FS
61	MK-Food Service	8809	8809-FS
62	MK-Food Service	8810	8810-FS
63	MK-Food Service	8811	8811-FS
64	MK-Food Service	8812	8812-FS
65	MK-Food Service	8813	8813-FS
66	MK-Food Service	8814	8814-FS
67	GM- Locomotive	F59 PHI	2001
68	GM- Locomotive	F59 PHI	2002
69	GM- Locomotive	F59 PHI	2003
70	GM- Locomotive	F59 PHI	2004
71	GM- Locomotive	F59 PHI	2005
72	GM- Locomotive	F59 PHI	2006
73	GM- Locomotive	F59 PHI	2007
74	GM- Locomotive	F59 PHI	2008
75	GM- Locomotive	F59 PHI	2009
76	GE - Locomotive	8-32BWH	2051
77	GE - Locomotive	8-32BWH	2052



**State of California**  
**DEPARTMENT OF TRANSPORTATION**  
**Division of Rail**

*The California Car*

**Contract No. 75-92001**

**For Procurement of Passenger Rail Cars For  
Commuter and Intercity Service**

**Volume I**  
*(Pages 1 through 416)*



*A copy of*

***CONTRACT NO. 75-92001***  
***Volume I (Pages 1 through 416)***

*Can Be Obtained From*

*State of California*  
***DEPARTMENT OF TRANSPORTATION***  
*Division of Rail*

State of California  
**DEPARTMENT OF TRANSPORTATION**  
Division of Rail

*The California Car*

**Contract No. 75-92001**

**For Procurement of Passenger Rail Cars For  
Commuter and Intercity Service**

**Volume II**  
*(Pages 417 through 871)*

*A copy of*

**CONTRACT NO. 75-92001**  
***Volume II (Pages 417 through 871)***

*Can Be Obtained From*

*State of California*  
**DEPARTMENT OF TRANSPORTATION**  
*Division of Rail*



State of California  
**DEPARTMENT OF TRANSPORTATION**  
Division of Rail

*The California Locomotive*

**Contract No. 75-93001**

**For Procurement of Passenger Rail Locomotives For  
Intercity Service**

**Volume I**  
*(Pages 1 through 316)*

*A copy of*

**CONTRACT NO. 75-93001**  
**Volume I (Pages 1 through 316)**

*Can Be Obtained From*

*State of California*  
**DEPARTMENT OF TRANSPORTATION**  
*Division of Rail*





CALIFORNIA DEPARTMENT  
OF TRANSPORTATION  
RAIL PROGRAM

OPERATING  
MANUAL

for



CALIFORNIA CAR  
1997

Prepared By



American Passenger Rail Car Company, L.L.C.

---

Technical Publications and Training



*A complete copy of*

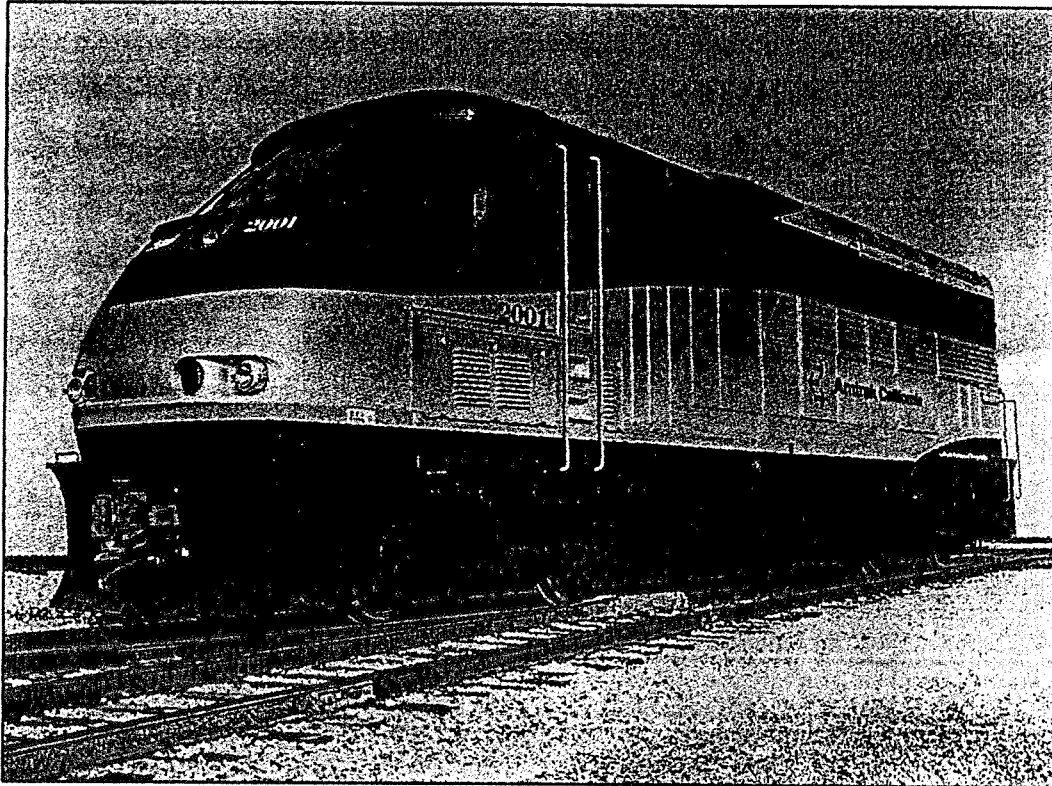
**AMERAIL OPERATING MANUAL**

*is on file with Caltrans and CCJPA*



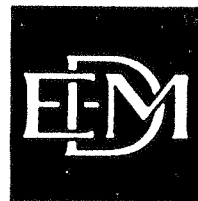
# F59PHI

## Operator's Manual



**California Department of Transportation**

Road Numbers 2001 thru 2009



ELECTRO MOTIVE

*A complete copy of*

**F59PHI OPERATOR'S MANUAL**

*is on file with Caltrans and CCJPA*



APPENDIX F

CALIFORNIA RAIL EQUIPMENT DEPLOYMENT PLAN

CURRENTLY, AND AFTER THE 5<sup>TH</sup>

CAPITOL CORRIDOR TRAIN IS PUT IN SERVICE

A total of 52 (fifty-two) cars and 9 (nine) locomotives are made available for operations of the Capitol Corridor and San Joaquin Corridor to cover regular revenue service and scheduled PM maintenance. The distribution, by car type, of the 52 cars is as follows:

<u>CAR TYPE</u>	<u>NUMBER</u>
Coach	25
Cab Control Car	10
Food Service	11
Baggage	<u>6</u>
Total	52

The deployment of this equipment between the Capitol and San Joaquin Corridors shall be governed by the provisions of the "Equipment Deployment Plan", as incorporated and included in this Equipment Lease as Appendix F.

Effective on the date that a fifth round trip is initiated on the Capitol Corridor in such a manner as to require an additional train consist, the number of units to be made available for the operation of the Capitol Corridor, the San Joaquin Corridor, and to cover regular service and scheduled PM maintenance shall be as follows:

<u>Equipment Type</u>	<u>Capitol</u>	<u>San Joaquin</u>
Locomotive	4	5
Food Service	5	6
Coach	17	10
Baggage	0	6
Cab	5	5

Any units not needed on one corridor on any given day (i.e. during anticipated low ridership periods) may be used on another corridor to accommodate scheduled group moves, special events, etc.



# INTERCITY PASSENGER CAR INSPECTION DOCUMENT

CAR # \_\_\_\_\_  
CAR TYPE \_\_\_\_\_  
CAR NAME: \_\_\_\_\_  
LOCATION OF INSPECTION: \_\_\_\_\_

**DRAFT - A**

## LEASE TRANSFER INSPECTION

CALTRANS Inspector (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name (of above Inspector): \_\_\_\_\_

CCJPB Inspector ( signature ): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name ( of above Inspector): \_\_\_\_\_

## TERMINATION INSPECTION

CALTRANS Inspector (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name (of above Inspector): \_\_\_\_\_

CCJPB Inspector ( signature ): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name ( of above Inspector): \_\_\_\_\_



*A complete copy of*

**INTERCITY PASSENGER CAR  
INSPECTION DOCUMENT**

*is on file with Caltrans and CCJPA*

# INTERCITY CONSIST TEST DOCUMENT

CAR # \_\_\_\_\_  
CAR TYPE \_\_\_\_\_  
CAR NAME \_\_\_\_\_  
LOCATION OF INSPECTION \_\_\_\_\_

CHECK APPROPRIATE LINE TO IDENTIFY INSPECTION TYPE:

LEASE TRANSFER INSPECTION: \_\_\_\_\_

OR

TERMINATION INSPECTION: \_\_\_\_\_

CALTRANS Inspector (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name (of above Inspector): \_\_\_\_\_

CCJPB Inspector (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Print Name (of above Inspector): \_\_\_\_\_

*A complete copy of*

**INTERCITY CONSIST TEST DOCUMENT**

*is on file with Caltrans and CCJPA*



NATIONAL RAILROAD PASSENGER CORPORATION  
and  
CAPITOL CORRIDOR JOINT POWERS AUTHORITY  
AGREEMENT FOR THE PROVISION OF RAIL  
PASSENGER SERVICE

*THIS AGREEMENT* made as of the first day of July 1998, by and between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. 24101 et seq.) and the laws of the District of Columbia and having its principal office and place of business in Washington, D. C. (hereinafter referred to as "Amtrak"), and the Capitol Corridor Joint Powers Authority, a joint powers authority established under the laws of the State of California (hereinafter referred to as "CCJPA").

*WHEREAS*, this Agreement is intended to implement the provisions of California law (S.B. 457, A.B. 1720 and S.B. 47) which authorize the State of California (hereinafter referred to as the "State") to enter into agreements with specified joint exercise of powers entities, pursuant to which the joint exercise of powers entities will assume responsibility for certain intercity passenger rail services currently assumed by the State within designated rail corridors; and

*WHEREAS*, this Agreement implements portions of the assignment and assumption of such responsibilities to CCJPA with respect to the Capitol Corridor and applies only to operations

within the Capitol Corridor, except as otherwise expressly provided herein; and

*WHEREAS*, CCJPA has requested that Amtrak provide rail passenger service in the Capitol Corridor beyond that level included in the Amtrak basic system for the benefit of persons traveling to, from and within the State; and CCJPA has provided Amtrak adequate assurances as to CCJPA's resources to reimburse Amtrak for certain proportions of the associated operating losses (expenses not covered by revenue) and capital costs of such service levels, as more specifically defined herein; and

*WHEREAS*, CCJPA is authorized by applicable State law to enter into this Agreement with Amtrak on the terms and conditions hereinafter set forth and funds for this purpose have been made available by CCJPA as set forth herein; and

*WHEREAS*, the parties wish to provide for certain described daily bus service to connect with the aforesaid rail passenger service, the cost of which will be borne by CCJPA; and

*WHEREAS*, CCJPA and Amtrak are committed to providing a safe high-quality service at a reasonable cost, and are aggressively pursuing ongoing cost reduction strategies which should provide savings in the future to be applied to enhancing service; and

WHEREAS, CCJPA and Amtrak believe that closer coordination with regional and local governments will help improve the Capitols service, and are eager to work with state, regional and local governments and agencies to concentrate on further improving the Capitol Corridor service and ensuring that the service becomes an efficient part of the region's transportation network.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1 - SERVICE TO BE PROVIDED

- (a) Amtrak shall provide rail passenger service over the route(s) set forth in Appendix I hereto and substantially in accordance with the schedules prescribed therein. Amtrak shall not be required to increase the frequency of any of the schedules except pursuant to a mutually agreed and amended Appendix I made pursuant to Section 9(a) or Section 11 hereof; provided, however, that this shall not preclude Amtrak from providing such increased scheduled service at its own cost and expense.
  
- (b) Amtrak shall not be required to provide rail passenger service on any route additional to the route(s) set forth in Appendix I hereto except pursuant to a mutually agreed and duly executed and supplemental Appendix I. Each such supplemental Appendix I shall be supported by a market

analysis conducted by CCJPA and acceptable to Amtrak. The parties agree to collaborate and to develop promptly a mutually agreed upon type and form of market analysis; provided, however, that such type and form may, in the light of future experience, be modified from time to time by mutual agreement between the parties. Amtrak will not unreasonably delay the consideration of CCJPA marketing studies.

- (c) Amtrak shall diligently work to provide rail passenger service of high quality and the parties shall cooperate in efforts to improve the service, as may be appropriate. Unless expressly and mutually agreed in writing between the parties, the service shall be at least equal in quality and consistent in type to that of Amtrak's basic system services.
- (d) In the event that the said rail passenger service may, from time to time, be fully utilized by the traveling public, Amtrak shall exercise reasonable efforts to provide additional rail passenger service equipment from its available resources or, by mutual agreement of the parties, confirmed in writing, to employ such additional compatible equipment as CCJPA may, with the prior written approval of Amtrak, make available for use in the service on a route provided for herein.
- (e) The parties shall cooperate for the purpose of effecting the continuing existence and use of the rail passenger service



herein and shall take such other action as they may mutually agree is conducive to the establishment and provision of the service on a regular, efficient and economic basis. To that end, Amtrak may incorporate the service in its general advertising and promotional programs as it may deem appropriate to the area in which the service is provided. By mutual agreement between the parties, confirmed in writing, Amtrak shall, in consultation with CCJPA, arrange for additional/alternative advertising directed specifically to the service. The cost of such additional advertising shall be borne by CCJPA.

- (f) Amtrak agrees to insert, in all published timetables and advertising related to the rail passenger service herein, the following statement:

"This service is financed in part through funds made available by the State of California, Department of Transportation."

- (g) In order to enhance the operation of the service set forth in Appendix I, Amtrak and CCJPA may, from time to time, identify minor capital projects to improve facilities used on the Capitol Corridor route identified in Appendix I. Minor capital projects are understood to include the following: maintenance, physical improvements alteration or repair work done for facilities related to rail or feeder bus service, which facilities include, but are not limited to, track, rail equipment, and stations (landscaping, pavement, parking lots, signage, P.A. systems, baggage rooms,

lighting, bus loading and layover area). Such projects may, at the written request of CCJPA and with the written approval of Amtrak, be undertaken by Amtrak using a portion of the funds set forth in Appendix III. In order to implement a specific project, CCJPA will provide Amtrak with a written authorization to proceed with that project, including a project description, any prior written approval of the plans and specifications for the project, and the total cost estimate and limits for such project. Such authorization shall specify the maximum amount of money that is allocated to the specific project being authorized. Amtrak shall respond to CCJPA's authorization within sixty (60) days, providing concurrence in or rejection of the project description and budget. If Amtrak provides concurrence, its response shall advise of the project's estimated schedule, including start and completion dates. If Amtrak rejects the project, its response shall specify the reason(s) therefor.

- (h) Amtrak shall contract with one or more bus operators ("Contract Bus Operator(s)") on a competitive bid basis ("Bus Agreement") for the provision of connecting bus service between an Amtrak station or stations and other points, over such route(s) and in accordance with service levels as may be more particularly set forth in Appendix A, attached hereto and made part hereof; provided, however, that Amtrak shall not contract with any Contract Bus

Operator or enter into any Bus Agreement unless and until CCJPA shall have given its written approval to such Bus Agreement. Amtrak shall provide CCJPA with a copy of each Bus Agreement and amendment thereto. Only passengers in possession of valid Amtrak tickets, vouchers or passes for transportation to, from, or through the aforesaid Amtrak station or stations shall be accepted for carriage. No checked baggage shall be carried, except between such specific points as may hereafter be agreed to by Amtrak and CCJPA.

- (i) CCJPA is leasing State-owned cars and locomotives for shared service in northern California on the Capitol Corridor with the equipment also being assigned to the San Joaquin Corridor. When a State-owned car or locomotive is made a part of the pool supporting these two corridors, Amtrak will give CCJPA twelve (12) hours advance written notice of its arrival. Upon its arrival, the car or locomotive will be held for CCJPA inspection. When CCJPA notifies Amtrak that the vehicle has been inspected or after the vehicle has been in northern California for twelve (12) hours, whichever occurs first, the vehicle shall be released for Amtrak use. Amtrak will notify CCJPA in writing that a car or locomotive is leaving the northern California pool eighteen (18) hours before movement. Provided this notification is given, Amtrak is free to move the car upon inspection by CCJPA or at the end of the eighteen (18) hour period (whether or not

it has been inspected by CCJPA), whichever occurs first. In an emergency situation, Amtrak is authorized to move State-owned cars and locomotives in and out of the northern California pool without the notice and holding periods set forth above; however, Amtrak will provide a notice to CCJPA as soon as possible.

SECTION 2 - DECISIONS AFFECTING SERVICE

(a) Amtrak shall give CCJPA not less than thirty (30) days' prior notice in writing of implementation of any Amtrak decision which is likely to have a significant effect on the scheduling, marketing (including fares and ticketing), or operations of the rail passenger service provided pursuant to this Agreement. Such notice shall contain information in sufficient detail to support and justify such decision. CCJPA hereby recognizes Amtrak's statutory obligation to act in a manner consistent with prudent management in providing rail passenger service beyond that included in the basic system. Accordingly, the parties shall work in good faith to reach mutual accord on any such decision as aforesaid pursuant to the following procedure:

- (i) If any proposed aforesaid decision relates only to the train and bus services provided pursuant to this Agreement, and if it can be implemented, in the reasonable judgment of Amtrak, without adversely affecting Amtrak's basic system, Amtrak shall obtain CCJPA's concurrence thereon prior to

such implementation. CCJPA shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs, or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence within the period of the notice; provided, however, that CCJPA shall not unreasonably withhold its concurrence.

- (ii) If, in the reasonable judgment of Amtrak, any proposed aforesaid decision will affect Amtrak's basic system, Amtrak shall solicit CCJPA's concurrence thereon prior to implementation. CCJPA shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence with the period of the notice; provided, however, that if the parties fail to agree, Amtrak may implement such proposed decision upon the expiration of the period.

- (iii) If, under Subsections (a)(i) or (ii) of this Section 2, CCJPA fails to respond in writing to notice from Amtrak as aforesaid within fifteen (15) days, CCJPA shall be deemed to have concurred in the proposed decision set forth therein.

- (b) Notwithstanding the notice procedures contained in this Section 2, if access to or over rail lines on any route provided herein shall be unavailable by reason of obstruction or otherwise, Amtrak may suspend or reroute any part of the service provided pursuant to this Agreement for so long as such access shall be unavailable. Amtrak shall promptly notify CCJPA of any such suspension or rerouting, and the parties shall cooperate to restore the rail service provided for herein.
- (c) If either party desires to change any service element in this Agreement, it will give written notice to that effect. The parties agree that within two (2) weeks of receipt of such written notice, they will meet to negotiate the desired changes. If the parties agree to change a service element, the Agreement will be amended as required by the service change. The parties may not after good faith discussions unreasonably withhold consent to change a service element. The foregoing notwithstanding, either party may withhold such consent at its sole discretion due to an adverse impact on service quality, ridership, and/or financial performance. If consent is withheld, such service element change will not occur.
- (d) Schedule and bus service level corrections or revisions, agreed to by Amtrak and CCJPA, not affecting the dollar amount of this Agreement, will be confirmed by letter signed

by Amtrak's duly authorized representative and forwarded to CCJPA according to Section 9, hereof. Changes in the aforesaid schedule(s) may be made, as necessary to coordinate with changes in applicable schedules of Amtrak's rail passenger service. Each such service shall commence on the applicable commencement date set forth in Appendix A and shall terminate without further notice on the applicable termination date set forth therein. Notwithstanding the foregoing, any such service may be terminated by Amtrak (with the concurrence of CCJPA) or the Contract Bus Operator on sixty (60) days' prior written notice; and CCJPA may upon seventy-five (75) days' prior written notice, request Amtrak to terminate any portion of the service provided in Appendix A; provided, further, that termination hereunder shall not relieve either party hereto of financial obligations incurred prior to termination.

- (e) Amtrak shall endeavor to include CCJPA in discussions or negotiations with railroads or appropriate regional rail authorities regarding schedule changes which impact service hereunder.
  
- (f) Amtrak shall make a written report (with a copy to the State) and an oral presentation to the Board of the CCJPA annually concerning the services provided hereunder. The report and presentation shall include past performance of the service, the annual business plan, and challenges and

opportunities for the future.

SECTION 3 - BUS AGREEMENT PAYMENTS

Each Contract Bus Operator will invoice Amtrak monthly for the cost of the applicable service hereunder. In the event additional bus miles are operated on a trip-by-trip basis as a result of a natural disaster or man-made road closure (or any other reason mutually agreed to by CCJPA and Amtrak and confirmed in writing in advance), said additional service shall be paid for at the established rate and will be incorporated in the monthly invoice to Amtrak, accompanied by a written explanation documenting the date, time and necessity for the additional miles operated.

i) Rates for Short Nonestablished Route Segments

Extra buses are sometimes required for segments of existing routes for which there is no agreed-to price in Appendix A of this Agreement or in the Bus Agreement. Amtrak may pay for such extra bus segments in any of the following three ways:

(a) Amtrak may pay the Contract Bus Operator at the rate provided by the Bus Agreement for the shortest route segment that includes the segment to be covered by the extra bus. Amtrak will notify CCJPA of the rate to be paid for such extra bus segments by providing CCJPA with a provision of notice of such a negotiated rate which will be signed by Amtrak's manager of bus operations or other Amtrak officer; or



(b) if Amtrak is able to negotiate with the Contract Bus Operator a limited time rate for such a short extra bus segment that will lower the cost of such extra bus segments (as compared to the cost under Subsection 3(i)(a) above), Amtrak may pay the Contract Bus Operator for such extra segments based on that negotiated rate. Amtrak will notify CCJPA of such a limited time rate with a provision of notice to CCJPA of such a negotiated rate including charges, based on that rate, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer, or

(c) if Amtrak is able to negotiate with the Contract Bus Operator a negotiated rate for such an extra bus segment that will lower the cost of such extra bus segments (as compared to the cost under Subsection 3(i)(a) above), Amtrak may pay the bus operator for such extra segments based on that negotiated rate. Amtrak will notify CCJPA of such a negotiated rate with a provision of notice to CCJPA of such a negotiated rate, based on that rate, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer.

(d) Amtrak may negotiate such rates under the preceding Subsections 3 (i) (b) and (c) on the basis of multiple trips, daily usage, flat mileage, the cost of upgrading to a larger capacity bus, or any other reasonable basis.

ii) Rates for Temporary and Long-term Special Service due to Service Disruptions

(a) If natural disasters or other events cause bus service to be temporarily detoured or otherwise disrupted (30 days or less), Amtrak may secure special bus service from a Contract Bus Operator at the lowest available rate that provides service acceptable to Amtrak. If Amtrak determines that the Contract Bus Operator cannot provide any or all of the special service sought at a rate acceptable to Amtrak, Amtrak may secure such special bus service from one or more non-contract transportation providers (including taxi or van service providers) at the lowest available rate that provides service acceptable to Amtrak. Amtrak will notify CCJPA of such special rates with any Contract Bus Operator and non-contract transportation providers by providing CCJPA with a provision of notice of such a standing rate, incorporating such rates, which invoices will be signed by Amtrak's manager of bus operations or other Amtrak officer.

(b) If natural disasters or other events cause long-term (expected to exceed 30 days) disruptions to bus service, and Amtrak and CCJPA agree upon the basic level of service to be provided during such disruptions, Amtrak may negotiate with a Contract Bus Operator for continuing special bus service at the lowest available rate that provides service acceptable to Amtrak. Amtrak will also obtain CCJPA's concurrence with such special long term service arrangements prior to confirmation to the Contract Bus Operator. Such rates may cover additional route

miles, extra equipment needed to provide service, driver housing, and any other additional elements involved in providing the special bus service. Amtrak will notify CCJPA of such continuing special rates with a provision of notice to CCJPA of such a standing rate, including charges based on such rates, which notification will be signed by Amtrak's manager of bus operations or other Amtrak officer.

iii) Rates for Short-Notice Bus Service from Non-Contract Bus Operators

(a) When a Contract Bus Operator is unable to meet a request for extra bus service, made on less than three hours notice of need (or less than the call-time stated, if any, in the Bus Agreement with Amtrak), Amtrak may secure such extra bus service from a non-contract transportation provider (including taxi or van service provider) at the lowest available rate providing service acceptable to Amtrak. Amtrak will notify CCJPA of such special rates with any non-contract transportation providers by providing CCJPA with a provision of notice incorporating such rates, which will be signed by Amtrak's manager of bus operations or other Amtrak officer.

(b) Where Amtrak anticipates a future need to secure such short-notice extra bus service from a non-contract transportation provider, Amtrak may negotiate a standing rate for such service. Amtrak's provision of notice to CCJPA of such a standing rate, signed by Amtrak's manager of bus operations or other Amtrak officer, will satisfy the notice requirement under the

preceding Subsection 3(iii)(a).

iv) CCJPA Payment of Short-Segment, Disruption-Service and Short-Notice Rates

CCJPA will reimburse Amtrak in full under this Agreement based on any rates obtained by Amtrak (with notice to CCJPA) under the preceding Subsections 3(i), (ii) and (iii).

v) Cost Allocation of Extra Buses Required by Late Trains

(a) When an extra bus must be ordered solely because of a late connecting train when such delay was for reasons within Amtrak's direct control, Amtrak will charge the cost of the extra bus to the late train's operations rather than to the bus service.

(b) When a train operates late for reasons not within Amtrak's direct control, the cost of any extra bus required by the late connecting train will be charged to the bus service rather than to the late train's operations.

(c) When a train connecting to bus service is late, Amtrak will attempt to minimize the overall costs resulting from the late train by holding scheduled buses for a limited period of time, recognizing after a certain period of time that continuing to hold a bus will increase, rather than decrease, costs. In determining how long to hold a connecting bus, Amtrak will consider the bus driver's hours-of-service limitation, safety-related conditions, the needs of customers other than those on

the late-arriving train to reach their destinations or to make other connections, among other relevant factors.

SECTION 4 - AMOUNT OF REIMBURSEMENT BY CCJPA

- (a) The basis for determining the loss, cost, revenues, and associated capital costs of the service provided pursuant to this Agreement is set forth in Appendix II hereto. If the basis for determination under Appendix II is amended by Amtrak's Board of Directors, amendment to Appendix II shall take effect on the first day of the following federal fiscal year of this Agreement, except as may be otherwise agreed between the parties hereto.
  
- (b) The costs, as determined pursuant to Subsection (a) of this Section, are based on the provision by Amtrak of available rail passenger equipment. In the event that CCJPA specifies that a particular type or types of rail passenger equipment be provided by Amtrak and Amtrak agrees to provide for such equipment, CCJPA shall reimburse Amtrak for the additional costs of providing and operating such specified equipment on the basis provided in Appendix II.
  
- (c) The total amount of CCJPA's financial obligation to Amtrak under this Agreement for services to be rendered by Amtrak pursuant hereto shall not exceed the amount(s) set forth in Appendix III hereto; provided, however, that Amtrak

shall not be required to provide any of the said services or any services whatsoever for which CCJPA is not bound hereunder or for which the cost to CCJPA, as determined hereunder, exceeds the aforesaid amount(s); provided, further, that CCJPA may increase the amount of its financial obligation hereunder through transfers or additional appropriations. Amtrak's obligation to provide the services agreed to by the parties under this Agreement shall not cease until ninety (90) days after Amtrak has notified CCJPA, in writing, that Amtrak's cost projections indicate that the maximum financial obligation of CCJPA, as provided herein, is insufficient to meet CCJPA's share of the costs. Nothing contained in this Agreement shall be construed to obligate CCJPA for any services beyond the amount(s) set forth in Appendix III.

- (d) CCJPA hereby agrees to pay up to one hundred percent (100%) of the costs of projects undertaken in accordance with Subsection (g) of Section 1 of this Agreement.
- (e) With respect to each connecting bus service hereunder, Amtrak hereby agrees that, subject to the terms of its Bus Agreements, it will pay all valid monthly invoices.
- (f) With respect to each connecting bus service hereunder, CCJPA hereby agrees that it will reimburse Amtrak for the amount of all said monthly invoices up to the maximum financial

obligation of CCJPA hereunder.

i) Amtrak agrees to provide CCJPA with a monthly billing from the Contract Bus Operator as soon as practicable after receipt of the said billing, and will proceed diligently to provide same to CCJPA within sixty (60) days after the end of that month. Amtrak further agrees that, insofar as practicable, each monthly invoice submitted to CCJPA for monthly advance payment shall be adjusted to reflect actual costs of service previously billed by the Contract Bus Operator less any applicable revenue credit.

ii) After completion of each period of bus service contracted for pursuant to Section 1(h) of this Agreement, Amtrak will provide CCJPA with a final accounting setting forth the total amount of billings received from the Contract Bus Operator(s) for the service provided hereunder, and the total amount of monthly advance payments received from CCJPA. If total payments received from CCJPA are insufficient to reimburse Amtrak fully for the costs of service hereunder, CCJPA agrees to remit promptly to Amtrak the additional amount necessary to provide full reimbursement for the said cost of service. If total payments received from CCJPA are greater than the amount required to reimburse Amtrak fully for the costs of service incurred hereunder by Amtrak, Amtrak agrees to credit CCJPA against future payments due from CCJPA to Amtrak; provided,

however, that if this Agreement is renewed, the amount of any such underpayment or overpayment not already used to adjust CCJPA's financial obligations may be added to or subtracted from the first monthly advance payment due pursuant to this Agreement as so renewed.

iii) CCJPA also hereby agrees that it will, in addition and in a like manner, reimburse Amtrak for the direct cost of employee time, as described and in the amounts specified in Appendix A hereto.

SECTION 5 - MANNER OF REIMBURSEMENT

(a) On or before the fifteenth day of each month from the first through the eighth months, inclusive, of the federal fiscal year specified in Appendix III hereto, CCJPA shall remit to Amtrak, in response to an invoice rendered by Amtrak, one-twelfth of the amount allocated therein to each route or one-twelfth of the aggregate amount allocated therein if there shall be only one route. The parties may agree to modify the amount of the remittance specified in Subsection (a) or (b) herein to better reflect expected actual billings. Invoices shall be rendered not less than forty-five (45) days prior to due date and shall specify the address to which the said remittance shall be made. Any such advance then due shall not be remitted if the adjusted monthly invoices due from Amtrak are submitted to CCJPA later than ninety (90) days after the end of that month but



no longer than the period the bill is delayed beyond ninety (90) days.

- (b) As of the last day of the eighth month of the federal fiscal year, the amount specified in Appendix III hereto shall be recomputed on the basis of the actual costs incurred (as defined in Section 4(a) hereof) during the immediately preceding then available eight consecutive months of invoices; provided, however, that such recomputation may be made as of the last day of any preceding month if it appears that actual costs for the federal fiscal year may tend to exceed the said specified amount. If the amount so recomputed is not greater than the amount specified in Appendix III hereto, Amtrak shall issue invoices for months nine through twelve of said contract period for amounts that approximate an average of previous actual charges for the twelve consecutive months of actual invoices then available. If the amount so recomputed is greater than the amount specified in Appendix III hereto, CCJPA shall take immediate action to increase the amount so specified to equal the amount as herein recomputed and the parties shall promptly execute a new Appendix III, amended accordingly; provided, however, that if CCJPA shall fail to execute the said amended Appendix III within thirty (30) days from the date of computation pursuant to this Subsection, Amtrak may, in accordance with the provisions of Subsection (c) of Section 4 hereof, discontinue services provided hereunder

and CCJPA shall remain liable for all amounts owed under this Agreement for the period prior to such termination. In respect to each route therein, the difference between the amount as herein recomputed and the sum of the payments made pursuant to Subsection (a) of this Section shall be remitted by CCJPA to Amtrak in four equal monthly payments on or before the fifteenth day of the ninth through the twelfth months, inclusive, of the federal fiscal year specified in Appendix III hereto.

(c) Amtrak shall render adjusted invoices monthly to CCJPA for CCJPA's share of the costs as set forth and defined in Section 4 hereof. Such invoices shall be rendered as soon as practicable but in any event not more than ninety (90) days after the end of each month and shall separately record the following information for each route:

(i) Revenues attributed to the rail passenger service set forth in Section 1 hereof;

(ii) Costs of said service (including any incentive or penalty payments made to or by an operating railroad) by item or category, as applicable.

(iii) Associated capital costs of the said service. Any difference between the aggregate of the monthly remittance made by CCJPA pursuant to the provisions of this Section and the aggregate of the costs contained in the aforesaid monthly invoices shall be adjusted between the parties in the manner prescribed in Subsection (d) of this Section.

- (d) If the aggregate amount of the aforesaid invoices exceeds the aggregate amount of the aforesaid remittances for the entirety of the fiscal year herein, CCJPA shall pay to Amtrak an amount equal to the difference. If the aggregate amount of the said remittances exceeds the aggregate amount of the said invoice for the entirety of the fiscal year herein, Amtrak shall pay to CCJPA an amount equal to the difference. In either case, such payment shall be made within forty-five (45) days of receipt of the invoice for the last month of the said fiscal year; provided, however, that if this Agreement is renewed pursuant to the provisions of Section 9 hereof, the amount of any such difference may be subtracted from or added to the first monthly remittance due pursuant to Section 4(a) of this Agreement as so renewed.
- (e) In the event that CCJPA shall fail to remit payment in full, as provided in this Section, Amtrak may suspend the applicable portion or portions of the rail passenger service provided for herein on ten (10) days' prior notice in writing to the CCJPA of intended suspension. If CCJPA fails to remit payment in full within the period of the said notice, Amtrak shall, upon one-hundred eighty (180) days' public notice, discontinue the portion or portions of the said service referred to therein; provided, however, that such discontinuance shall not constitute or be construed as

a waiver by Amtrak of any such payment.

- (f) If any minor capital projects are implemented in accordance with Subsection (g) of Section 1 above, Amtrak shall render separate invoices for CCJPA's share of each project.

Such invoices shall be rendered as soon as practicable after the completion of the project, but in any event not more than sixty (60) days after completion. The aggregate of all such invoices shall be included in the year-end reconciliation prescribed in Subsection (d) of this Section.

- (g) Notwithstanding the expiration date of this Agreement or the termination of this Agreement for any reason, CCJPA will pay Amtrak for legitimate costs for services performed during the term of the Agreement and for the allowable costs of minor capital projects authorized and begun during the term of this Agreement but invoiced after the expiration date or termination of this Agreement.

- (h) Amtrak will review the monthly invoices from each Contract Bus Operator hereunder. If, in the opinion of Amtrak, it appears likely that the contribution of CCJPA hereunder will be insufficient to pay the cost of the service provided for hereunder, Amtrak shall so advise CCJPA in writing. Amtrak shall terminate the said service by giving sixty (60) days' notice prior in writing to the Contract Bus Operator and CCJPA unless CCJPA promptly agrees in writing to

reimburse Amtrak for the full amount of all such excess cost. Such notice shall be timed to ensure that the cost of the said service shall not exceed the maximum financial obligation of CCJPA hereunder.

- (i) Not later than ninety (90) days following the termination of the said service as provided herein, each party hereto shall remit to the other the full balance due in respect of underpayment or overpayment, if any, relating to the obligations of each party to the other pursuant to the terms of this Agreement.
  
- (j) In the event that Amtrak fails to perform the services as required by this Agreement, or an invoiced amount is disputed by CCJPA, the provisions of this subsection shall apply.

(i) Withholding Payment Due to Failure to Comply

In the event Amtrak does not substantially comply with the material requirements of this Agreement as they relate to State provided equipment and train and bus service operations for the Federal Fiscal Year specified in Appendix II, CCJPA shall compute the value of the perceived failure and notify Amtrak in writing that a corresponding amount will be withheld from the monthly advance payment following the next monthly payment if the perceived failure has not been resolved to CCJPA's reasonable

satisfaction. CCJPA shall detail the reason for the proposed withholding of payment and the actions CCJPA considers necessary to resolve the perceived failure. Once resolution of the failure to comply is achieved between CCJPA and Amtrak, the notice to withhold will be withdrawn, or the portion of the monthly payment withheld will be remitted with the next monthly advanced payment. Should resolution of the perceived non-compliance not be achieved through negotiation or the provisions of Section 6.1 of the New Transfer Agreement among the State, CCJPA, and Amtrak for the Transfer and Operation of certain State owned Rail Equipment in the Capitol corridor executed concurrently with this Agreement (hereinafter referred to as the "New Transfer Agreement"), the withheld amount will be paid under protest once the invoice for that month is presented. Such payment shall not be considered as resolution of the dispute, and the process outlined in Section 6 of the New Transfer Agreement shall be carried to its conclusion. Should the resolution of the dispute result in a refund to CCJPA, said refund shall be applied as a credit to the next monthly advanced payment, and shall be expressly accounted for therein.

(ii) Withholding Payment Due to Invoice Dispute

In the event CCJPA disputes a charge detailed in the monthly invoice, and Amtrak cannot provide a reasonable explanation of said charge, CCJPA shall have the right to withhold the amount in dispute as specified herein and shall be required to pay the remainder of the invoice. CCJPA shall advise Amtrak of the

remainder of the invoice. CCJPA shall advise Amtrak of the amount of disputed charges to be withheld, detail reasons for the withholding, and the actions that CCJPA considers necessary to resolve the disputed invoice amount. CCJPA shall notify Amtrak in writing one (1) month in advance of its intention to withhold the payment of an invoice amount. In the event that resolution of the disputed invoice amount is not achieved within the notice period, CCJPA shall withhold the disputed amount from the next invoice payment due after the notice period has expired. If resolution of the disputed invoiced amount is achieved between CCJPA and Amtrak after the amount has been withheld, the withheld amount will be remitted with the next invoice payment. Should resolution of the disputed invoice amount not be achieved through negotiation of the provisions of Section 6.1 of the New Transfer Agreement, the withheld amount will be paid under protest after three (3) calendar months of withholding. Such payment shall not be considered as resolution of the dispute and the process outlined in Section 6 of the New Transfer Agreement shall be carried to its conclusion.

SECTION 6 - INDEMNIFICATION

(a) Amtrak will indemnify and hold harmless (and defend, in accordance with the provisions of Subsection (d) below) CCJPA, its employees and agents, irrespective of any negligence of any kind on their part, against any and all claims, damages, liability and court awards, including reasonable costs, expenses

and attorney fees, incurred (1) as a result of any act or omission by Amtrak or its employees, agents, or contractors, and third parties except with respect to claims, damages, liability and court awards for which CCJPA is required to indemnify Amtrak pursuant to Subsection (b) hereof, and (2) for death or injury to Amtrak employees. For the purpose of this Section 6, each of the member agencies of CCJPA and their employees, while performing any duty delegated to it or them by CCJPA, shall be considered an "agent" of CCJPA. However, in no event shall Amtrak be liable to CCJPA, its employees or agents, for any special, incidental or consequential damages, even if Amtrak has been advised of the possibility of such potential loss or damage.

(b) CCJPA will indemnify and hold harmless (and defend, in accordance with the provisions of Subsection (d) below) Amtrak, its employees and agents, irrespective of any negligence of any kind on their part, against any and all claims, damages, liability and court awards, including reasonable costs, expenses and attorney fees, incurred (1) for death or injury to any person and for damage to any property as a result of any act or omission by CCJPA or its employees, agents or contractors, except with respect to death or injury to Amtrak employees, and (2) for death or injury to employees of CCJPA, its agents or contractors and for damage to property of CCJPA, the State, their employees, agents or contractors, which death, injury, or property damage in (1) above or this (2) occurs while such CCJPA employee, agent, or contractor is (i) at any Amtrak maintenance facility or station



or on any railroad right of way, or (ii) riding a train or bus on an inspection pass (rather than on a purchased ticket). However, in no event shall CCJPA be liable to Amtrak, its employees or agents for any special, incidental or consequential damages, even if CCJPA has been advised of the possibility of such potential loss or damage.

(c) Amtrak shall name CCJPA, the CCJPA member agencies, the State of California, Department of Transportation, and the State of California, Business, Transportation and Housing Agency as additional insureds on Amtrak's existing liability insurance policy or policies, which currently provide limits of coverage from \$10 million up to \$200 million, to the extent that their respective interests may appear thereon but only for the purpose of satisfying the indemnification and associated cost obligations assumed by both parties pursuant to this Agreement.

Notwithstanding the foregoing, the indemnification obligations of CCJPA shall not be limited to such insurance coverage. Therefore, to the extent CCJPA is responsible for indemnifying Amtrak pursuant to this Agreement, CCJPA shall be responsible for all liability above and below the coverage limits provided by the Amtrak insurance.

(d) Each party agrees to provide prompt written notice and all information and to cooperate fully with respect to any claims presented to such party which is subject to indemnification and defense by the other party.

- (i) If a claim, lawsuit, action or proceeding arises solely from the alleged conduct of, death or injury to, or damage to property of CCJPA or the State, CCJPA's employees, agents or contractors for which CCJPA has agreed to indemnify Amtrak pursuant to Subsection (b) of this Section, then CCJPA shall assume the defense and bear the cost and expense (including attorneys' fees) of undertaking the defense and/or settlement of and shall pay any settlement or final judgment disposing of such claim, lawsuit, action or proceeding.
- (ii) If a claim, lawsuit, action or proceeding arises solely from the alleged conduct of Amtrak, its employees, agents or contractors or from death or injury to Amtrak employees for which Amtrak has agreed to indemnify CCJPA pursuant to Subsection (a) of this Section, then Amtrak shall assume the defense and bear the cost and expense (including attorneys' fees) of undertaking the defense and/or settlement of and shall pay any settlement or final judgement disposing of such claim, lawsuit, action or proceeding.
- (iii) If a claim, lawsuit, action or proceeding arises from the alleged conduct of both Amtrak and CCJPA for which each has agreed to indemnify the other pursuant to this Section or if the cause of the death or alleged injury or damage is not alleged at the time the claim, lawsuit, action or proceeding is filed, then Amtrak shall undertake the defense and/or

settlement of such claim, lawsuit, action or proceeding and shall initially bear the cost and expense (including attorneys' fees) thereof, and CCJPA shall have the right to participate in the defense at its own expense and to approve any settlement or referral to arbitration. If a final adjudication or arbitrial decision is later made that the death or alleged injury or damage arose as a result of conduct for which CCJPA has agreed to indemnify Amtrak hereunder, then CCJPA shall reimburse Amtrak promptly for the costs and expenses (including attorneys fees) incurred by Amtrak therefor.

SECTION 7 - INSPECTION AND AUDIT

- (a) CCJPA may, at any time, inspect the rail passenger and bus feeder service provided hereunder; provided, however, that such inspection shall not hinder or delay the operation of the said service. Upon reasonable notice, Amtrak shall permit auditors or any other duly authorized agent of CCJPA to inspect all books, records and accounts relating to the service, including supporting documentation provided to Amtrak by operating railroads in connection therewith and further including all records and documents relating to the determination and allocation of the costs and revenues of the service. All such books, records, accounts and documents shall be maintained by Amtrak in accordance with generally accepted accounting principles and be accessible

to CCJPA for a period of three (3) years following the expiration of each contract period as defined in Appendix III hereto.

- (b) Amtrak shall, without cost to CCJPA, make available such financial, operating and ridership data relating to the service provided hereunder as may be available in Amtrak's information retrieval system. Operating and ridership data shall be supplied for each train hereunder and shall include numbers of (i) passengers carried, (ii) passenger miles, (iii) car miles. Such data shall be computed and furnished on a monthly basis. Amtrak will provide CCJPA with the monthly ridership tape origin-destination data for all tickets collected on the train and feeder bus network. Furthermore, Amtrak will take reasonable steps to provide such supplemental data relating to the said service as may be reasonably requested by CCJPA.

SECTION 8 - FORCE MAJEURE

The obligations of Amtrak hereunder shall be subject to force majeure. Amtrak shall not be liable for any failure to perform, or for any delay or cancellation in connection with the performance of any obligation hereunder if such failure, delay or cancellation is due to or in any manner caused by the statutes laws, regulations, acts, demands, orders or interpositions of any federal, state, county or local government agency or joint powers authority having jurisdiction thereof, or by Acts of God,

strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection or terrorism, track condition, or any other cause beyond Amtrak's control.

SECTION 9 - RENEWAL AND TERMINATION

(a) This Agreement may be renewed for successive terms of twelve (12) months each upon compliance with the following conditions:

(i) Not less than ninety (90) days prior to the first day of each federal fiscal year, the parties shall review the rail passenger and bus service to be provided during the next succeeding twelve (12) month term and may mutually agree in writing to continue unchanged or to amend Appendix A, Appendix I or Appendix III hereto. Appendix A, Appendix I and Appendix III, as continued or amended, shall each contain an express statement of the federal fiscal year or part thereof to which they apply. Concurrently, with such review, and prior to agreement as aforesaid, Amtrak shall confirm to CCJPA in writing the estimated total amount of CCJPA's financial obligation to Amtrak for the rail passenger and feeder bus services to be provided during the next succeeding twelve (12) month term.

(ii) Not less than sixty (60) days prior to the first day of

each federal fiscal year, CCJPA shall confirm to Amtrak in writing that funds as aforesaid have been made available to CCJPA or, in the alternative, that CCJPA has requested and reasonably expects the said funds to be made available. If the former, the parties shall forthwith execute a new Appendix A, Appendix I and Appendix III as provided in Subsection (a) (i) of this Section.

- (iii) If, pursuant to Subsection (a) (ii) of this Section, CCJPA has confirmed that it has requested and reasonably expects the said funds to be made available, the parties shall forthwith execute a new Appendix A, Appendix I and Appendix III as provided in Subsection (a) (i) of this Section, which execution shall be subject to the said funds being made available to CCJPA. Immediately upon the said funds being made available or immediately upon the said funds being denied, as the case may be, CCJPA shall so advise Amtrak by overnight courier with confirmed delivery. If the said funds are denied, Amtrak shall, notwithstanding any other provision hereof, forthwith discontinue any service to which the said funds apply.
- (b) In the absence of mutual agreement and the execution of a new Appendix A, Appendix I and Appendix III as aforesaid, this Agreement and any renewal thereof shall terminate on the last day of the applicable federal fiscal year, or subject to the provisions of Section 4(c), when the funds

set forth therein are exhausted and not renewed or otherwise cease to be available for the service provided for herein, whichever is earlier.

(c) Notwithstanding anything to the contrary herein, this Agreement shall terminate effective upon termination of the Interagency Transfer Agreement between the State and CCJPA. CCJPA agrees to give notice to Amtrak, by overnight courier with confirmed delivery, promptly upon receipt of notice from the State of termination of the Interagency Transfer Agreement in accordance with its provisions, or if given by CCJPA, promptly upon giving such notice to the State. In addition to the provisions of Subsections (a), (b) and (c) of this Section, this Agreement and any renewal thereof may be terminated upon ninety (90) days' prior notice in writing from CCJPA to Amtrak. Upon termination of this Agreement for any reason at any time other than at the end of a federal fiscal year, CCJPA shall pay the following termination costs to Amtrak:

- (i) The reasonable cost of settling and paying claims 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 specific written instructions received from CCJPA concerning such termination;

and

- (iii) Any other reasonable costs incidental to such termination of Service, specifically excluding, however, any costs of labor protection arising from such termination.

Notwithstanding all of the foregoing, the total amount of termination costs payable to Amtrak shall not exceed 1/12 of the approved contract amount for the fiscal year in which the termination occurs. No termination of this Agreement shall diminish or affect CCJPA's obligation to pay for any service rendered or to fulfill other obligations incurred prior to the effective date of the termination.

- (d) Termination pursuant to this Section shall be without prejudice to Amtrak's right to receive compensation and reimbursement pursuant to the provisions of Sections 4 and 5 hereof for service provided until and including the date of termination.

#### SECTION 10 - NOTICES

Except as otherwise provided in Section 5(a) hereof, any notices required by this Agreement or related to the service provided for under this Agreement by either party shall be in writing and shall be directed to the officials identified herein by personal



delivery or by deposit in the United States mail via first class mail, postage prepaid, or by overnight courier.

For Amtrak: Senior Director - Planning, Marketing and  
Contract Administration  
Amtrak West  
National Railroad Passenger Corporation  
530 Water Street, 5th Floor  
Oakland, California 94607

For CCJPA: Capitol Corridor Managing Director  
800 Madison Street  
PO Box 12688 (LMA-2)  
Oakland, California 94604-2688

The titles and addresses set forth herein may be changed at any time by either party hereto by notice in writing to the other.

SECTION 11 - AGREEMENT CONTENT

(a) This Agreement constitutes the entire agreement between the parties related to the subject matter hereof. There are no agreements, whether express or implied except as are expressly set forth herein. All prior agreements and understandings between the parties with respect to the provision of service herein on and after the effective date of this Agreement, or any renewal thereof, are subsumed within this Agreement and any renewal thereof. No change or modification in or to this Agreement, excepting only those changes provided for in Appendix I, Appendix III, and Appendix A shall be of any force or effect unless in writing, dated and executed by duly authorized representatives of the parties.

(b) Notwithstanding the provisions of Subsection (a) of this Section, the parties acknowledge and agree that as between CCJPA and Amtrak the provisions of the New Transfer Agreement control the use by CCJPA and operation by Amtrak of State-owned cars and locomotives for the rail service provided hereunder. To the extent that there are any conflicts or inconsistencies between the provisions of this Agreement and the New Transfer Agreement, the provisions of this Agreement shall be controlling.

SECTION 12 - CONSTRUCTION

The Section headings used in this Agreement are for convenience only and shall not affect the construction of any of the terms hereof. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the District of Columbia without regard to conflicts of laws or choice of laws provisions.

SECTION 13 - SEVERABILITY

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

SECTION 14 - FAIR EMPLOYMENT PRACTICES

Amtrak shall observe the terms and conditions set forth in Appendix IV, titled FAIR EMPLOYMENT PRACTICES ADDENDUM, attached hereto. In said addendum, the term "Contractor" shall be deemed to read "Amtrak".

SECTION 15 - CONFIDENTIALITY

CCJPA desires that Amtrak disclose to CCJPA certain proprietary and confidential commercial and financial information of Amtrak pursuant to this Agreement and the services provided hereunder. CCJPA agrees that, subject to the requirements of the California Public Records Act (California Government Code Sections 6250 et seq.) it, its employees, contractors and agents will not, either during or at any time after the term of this Agreement, publish or disclose to any third party or the public any identified Amtrak proprietary or confidential information of any kind or nature disclosed by Amtrak to CCJPA hereunder without the prior written authorization of Amtrak. This Section shall survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts as of the day and year first above written.

NATIONAL RAILROAD PASSENGER CORPORATION

DATE: 7/1/98

BY: *Richard O. Mulvey*  
President  
Amtrak West

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

DATE: 7-1-98

BY: *[Signature]*



APPENDIX I

NATIONAL RAILROAD PASSENGER CORPORATION

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

AGREEMENT DATED 1 JULY 1998  
FOR THE PROVISION OF  
RAIL PASSENGER SERVICE

FISCAL YEAR 1998  
July 1, 1998 - September 30, 1998

Pursuant to Section 1 of the aforesaid Agreement and subject to compliance by CCJPA with the provision of Section 9 thereof, Amtrak shall provide rail passenger service during fiscal year 1998 over the route set forth below, substantially in accordance with the schedule(s) attached. The said service shall commence on July 1, 1998, and shall terminate September 30, 1998.

ROUTE

San Jose to Sacramento to Colfax

# CAPITOLS

Reno • Colfax • Roseville • Sacramento • Emeryville/San Francisco • San Jose

Train Number ▶	721	723	711	733	725	715	Thruway	727	717
Normal Days of Operation ▶	Mo-Fr	Daily	Daily	SaSu	Daily	Daily	Daily	Daily	Daily
Will Also Operate ▶				5/25, 9/7					
Will Not Operate ▶	5/25, 9/7								
On Board Service ▶	☺ ☻	☺ ☻	☺ ☻	☺ ☻	☺ ☻	☺ ☻	☺ ☻	☺ ☻	☺ ☻
	Mile	Symbol							
Sparks, NV—The Nugget • (PT)	0	• &	Dp		☺ 3 30A				☺ 1 45P
Reno, NV •	4	○ &			☺ 3 50A				☺ 2 05P
Truckee, CA	38	• &			☺ 4 40A				☺ 3 00P
Soda Springs, CA	93	• &							☺ 3 20P
Colfax, CA	104	• &			☺ 6 00A				☺ 4 10P
Auburn, CA—see Note below	121	• &			☺ 6 38A				☺ 4 00P
Rocklin, CA	135	• &			☺ 7 00A				☺ 4 30P
Roseville, CA	139	• &	Ar	☺ 4 30A	☺ 7 11A			☺ 3 15P	☺ 4 45P
Sacramento, CA •	157	☺	Ar Dp	☺ 5 05A ☺ 5 15A	☺ 7 47A ☺ 7 50A	☺ 8 15A	☺ 8 35A	☺ 12 25P ☺ 12 40P	☺ 5 45P ☺ 6 35P
Davis, CA	170	• &		☺ 5 33A	☺ 8 08A	☺ 8 35A	☺ 9 53A	☺ 12 58P	☺ 4 10P
Suisun-Fairfield, CA	197	• &		☺ 6 02A	☺ 8 37A		☺ 10 22A	☺ 1 27P	☺ 6 03P
Martinez, CA	214	• &		☺ 6 27A	☺ 9 02A	☺ 9 55A	☺ 10 47A	☺ 1 52P	☺ 6 32P
Richmond, CA	234	• &		☺ 6 59A	☺ 9 31A	☺ 10 24A	☺ 11 16A	☺ 2 21P	☺ 6 57P
Berkeley, CA	239	• &		☺ 7 06A	☺ 9 39A	☺ 10 31A	☺ 11 24A	☺ 2 29P	☺ 7 26P
Emeryville, CA ☺ San Francisco—see below	241	• &	Ar	☺ 7 15A	☺ 9 55A	☺ D10 54A	☺ D11 49A	☺ 2 45P	☺ 7 34P
Oakland, CA —Jack London Sq	246	• &	Ar Dp	☺ 7 40A ☺ 7 55A	☺ 10 08A ☺ 10 10A	☺ 11 05A	☺ 12 00N ☺ 12 05P	☺ 2 54P ☺ 2 56P	☺ 7 59P ☺ 8 01P
Hayward, CA	259	• &		☺ 8 10A	☺ 10 28A		☺ 12 30P	☺ 3 15P	☺ 8 20P
Fremont—Centerville, CA	271	• &		☺ 8 35A	☺ 10 44A		☺ 12 50P	☺ 3 32P	☺ 8 37P
Santa Clara—Great America, CA	284	• &		☺ 8 55A	☺ 10 59A		☺ 1 10P	☺ 3 47P	☺ 8 49P
San Jose, CA ☺ Santa Barbara—see page 59	291 (PT)	• &	Ar	☺ 9 20A	☺ 11 20A		☺ 1 30P	☺ 4 10P	☺ D10 14P

## AMTRAK THRUWAY MOTORCOACH CONNECTIONS

Emeryville • San Francisco

Emeryville, CA (PT)	0	• &	Dp	7 16A	9 56A	11 00A	11 55A	2 50P	5 40P	7 51P	10 15P
San Francisco, CA •	9	• &	Ar	☺ D 7 45A	☺ D10 20A	☺ D11 25A	☺ D12 20P	☺ D 3 15P	☺ D 7 05P	☺ D 8 15P	☺ D10 40P
—Financial Dist., Hyatt Regency	9	• &		☺ D 7 45A	☺ D10 20A	☺ D11 30A	☺ D12 20P	☺ D 3 15P	☺ D 7 05P	☺ D 8 20P	☺ D10 40P
—Ferry Bldg., Amtrak Station	10	• &		☺ D 7 55A	☺ D10 30A	☺ D11 45A	☺ D12 35P	☺ D 3 30P	☺ D 7 20P	☺ D 8 30P	☺ D10 55P
—Fisherman's Wharf, Pier 39	11	• &	Ar	☺ 7 55A	☺ 10 30A	☺ 11 59A	☺ 11 55A	☺ 3 45P	☺ 7 35P	☺ 8 45P	☺ 11 00P
—S.F. Shopping Cir., 835 Market St.											

## COMMUTER RAIL AND RAPID TRANSIT CONNECTIONS

### San Francisco Bay Area—

CalTrain commuter rail service between San Francisco and Amtrak's San Jose station with stops at San Mateo, Palo Alto and other intermediate peninsula cities. Peak hour service also operated between San Jose, Morgan Hill and Gilroy. (415) 508-6455 or, in Northern California (800) 660-4287.

Bay Area Rapid Transit (BART) connects San Francisco and the East Bay. (415) 992-2278

San Francisco Municipal Railway (MUNI) streetcar, cable car & bus service in San Francisco: (415) 673-6864

Alameda-Contra Costa Transit District bus service in the East Bay: (510) 839-2882

### San Jose—

CalTrain commuter rail—see above  
Santa Clara Valley Transit light rail & bus: (408) 321-2300

### Sacramento—

Regional Transit light rail & bus: (916) 321-2877

Trains 11/14 and 5/6 offer additional service between Sacramento, Oakland and San Jose. Schedules are on pages 48 and 52.

### Amtrak\* Thruway Connections

Amtrak offers an extensive system of Thruway motorcoach connections throughout California with direct transfers at train stations serving the San Diegans, Capitols, and the San Joaquins. Please see page 56 for complete details.

Note—Service at Auburn, CA is expected to be centralized at the Nevada and Fulweiler Sts. station this Spring. Please confirm location with Amtrak before traveling. Meanwhile, there are two stations:

- Westbound Train 723 (and its motorcoach connection from Nevada City) stops at the Chamber of Commerce, Elm Ave. and Lincoln Way.
- Eastbound Train 726 and all other Thruway motorcoach connections stop at Nevada and Fulweiler Sts.
- For the convenience of passengers who park at Lincoln Way and travel westbound on Train 723, a free shuttle is available on arrival of Train 726 at Nevada St. for transfer back to Lincoln Way, and eastbound Thruway motorcoach trips will stop at Lincoln Way on request.

# CAPITOLS

## San Jose • San Francisco/Emeryville • Sacramento • Roseville • Colfax • Reno

Train Number ▶	722	Thruway	Thruway	714	724	726	718	728	738
Normal Days of Operation ▶	Daily	Mo-Fr	SaSu	Daily	Daily	Daily	Daily	Mo-Fr	SaSu
Will Also Operate ▶									5/25, 27
Will Not Operate ▶								5/25, 27	
On Board Service ▶									
San Jose, CA (PT)	0	↓	↓	6 20A	6 25A	8 15A			
☞ Santa Barbara—see below									
Santa Clara-Great America, CA	7	●	↓	6 32A		8 30A		5 35P	6 35P
Fremont-Centerville, CA	20	●	↓	6 47A		9 00A		5 47P	6 47P
Hayward, CA	32	●	↓	7 02A		9 15A		6 02P	7 02P
Oakland, CA	45	●	↓	7 20A	7 40A	9 55A		6 17P	7 17P
☞ Jack London Sq.				7 22A				6 35P	7 35P
Emeryville, CA	50	●	↓	7 38A				6 37P	7 37P
☞ San Francisco—see below								6 51P	7 51P
Berkeley, CA	52	●	↓	7 40A				5 35P	6 35P
Richmond, CA	57	●	↓	7 48A				5 47P	6 47P
Martinez, CA	77	●	↓	8 26A				6 02P	7 02P
Suisun-Fairfield, CA	94	●	↓	8 46A				6 17P	7 17P
Davis, CA	121	●	↓	9 18A				6 35P	7 35P
Sacramento, CA	134	●	↓	9 50A				6 37P	7 37P
				☞ 10 00A				5 35P	6 35P
Roseville, CA	152	●	↓	☞ 10 25A				5 48P	6 51P
Rocklin, CA	156	●	↓	☞ 10 35A				5 52P	6 55P
Auburn, CA (see Note on page 58)	170	●	↓	☞ 10 55A				6 00P	7 03P
Colfax, CA	187	●	↓	☞ 11 00A				6 03P	7 06P
Soda Springs, CA	198	●	↓	☞ 11 50A				6 03P	7 03P
Truckee, CA	253	●	↓	☞ 12 10P				6 11P	7 11P
Reno, NV	287	●	↓	☞ 1 05P				6 11P	7 11P
Sparks, NV—The Nugget	291	●	↓	☞ 1 20P				6 11P	7 11P

### AMTRAK THRUWAY MOTORCOACH CONNECTIONS

#### San Francisco • Emeryville

San Francisco, CA	0	●	↓	6 35A					
☞ S.F. Shopping Ctr., 835 Market St.				6 45A					
☞ Fisherman's Wharf, Pier 39				7 00A					
☞ Ferry Bldg., Amtrak Station				6 45A					
☞ Financial Dist., Hyatt Regency				7 25A					
Emeryville, CA	11	●	↑						

#### San Jose • Santa Barbara

725	Mile		Connecting Train Number	Symbol	724
4 40P	0	Dp	San Jose, CA—Amtrak Sta. (PT)	↓	12 30P
5 20P	30	↓	Gilroy, CA	●	11 30A
6 00P	59	↓	Sallinas, CA—Amtrak Sta.	●	10 55A
D 6 25P	83	↓	Soledad, CA	●	10 25A
D 6 50P	103	↓	King City, CA	●	9 45A
D 7 40P	154	↓	Paso Robles, CA—Amtrak Sta.	●	8 50A
D 8 15P	184	↓	San Luis Obispo-Cal Poly, CA	●	8 20A
8 30P	186	↓	San Luis Obispo, CA—Amtrak Sta. ●	↓	8 15A
8 50P	195	↓	Grover Beach, CA—Amtrak Sta.	●	7 45A
9 15P	212	↓	Santa Maria, CA	●	7 25A
D 10 00P	246	↓	Sonoma, CA	●	6 50A
			Santa Barbara, CA	●	
			☞ Amtrak Sta. ● (PT)	↑	6 00A

### SERVICES ON THE CAPITOLS

Coaches: Unreserved  
 Cafe Service: Sandwiches, snacks and beverages  
 Railfone: Public telephone service available  
 Bicycles: All trains shown on the Capitols route table are equipped with a limited number of bike racks—passengers may bring bicycles as unboxed carry-on baggage  
 ● Available first-come, first-served—no reservations or service charge  
 ● Unboxed bicycles may be put in the bin under San Francisco—Emeryville motorcoaches. Amtrak disclaims liability for loss or damage. Service not available on other Thruway coaches.  
 ☞ Smoking is prohibited entirely on these trains

These services are financed in part through funds made available by the California Department of Transportation. State supported trains are operated at the discretion of each state and their operation is dependent upon continued state financial support.

- D Stops only to discharge passengers.
- R Stops only to receive passengers.
- (2) Transfer point to/from the Coast Starlight—see page 52.
- (2) BART rapid transit connection available for San Francisco and East Bay points. BART Richmond station is adjacent to Amtrak.
- (2) Connection between train and motorcoach at Colfax.
- (2) Connection between train and motorcoach at Stockton.
- (2) Connection between train and motorcoach at Martinez.

For details on train, station and baggage services, see pages 6-7.



This Appendix I constitutes an integral part of the aforesaid Agreement. No change, modification or amendment hereto shall be of any force or effect unless evidenced by a revised Appendix I dated and executed by Amtrak and CCJPA; provided, however, that notwithstanding the foregoing, changes in the schedule(s) listed herein may be made pursuant to Section 2 of the aforesaid agreement.

NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 7/1/98

By: Debra O. Mullen  
President  
Amtrak West

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

Dated: 7-1-98

By: [Signature]



APPENDIX II

NATIONAL RAILROAD PASSENGER CORPORATION  
and  
CAPITOL CORRIDOR JOINT POWERS AUTHORITY

AGREEMENT DATED FEBRUARY 1, 1998  
FOR THE PROVISION OF RAIL PASSENGER SERVICE  
PURSUANT TO TITLE 49 U.S.C. §24704

\* \* \* \* \*

Basis for Determining Fully Allocated Loss  
and Associated Capital Costs of Service

Attached is the basis for determining the fully allocated operating costs, associated capital costs, and total revenues for services operated pursuant to 49 U.S.C. Section 24704 as amended.

This Appendix II constitutes an integral part of the aforesaid Agreement and any renewals thereof and shall not be amended except pursuant to the provisions of Section 3(a) of the said Agreement.

SECTION 24704 BILLING PROCESS  
Revenue Definitions

<u>Revenue Item</u>	<u>Items Included</u>	<u>Comments</u>
Local	Transportation (coach, first class, USA Rail) Food & Beverage Mail Baggage Express	Revenue generated by the Section 24704 portion of a route.
Connecting	Not Included	Revenue generated on non- 24704 trains by 24704 paxs beginning or ending their trip on non-24704 Amtrak trains.
Through	Includes same line items as local. Includes routes where non-24704 trains operate on the same route.	Revenue earned from the non-24704 portion of a route but generated by the 24704 segment.

NOTE: Through revenue  
credited to the state  
as long as state pays  
for any through car  
operating costs.

SECTION 24704 BILLING PROCESS  
Fully Allocated Cost Definitions

SECTION 1 - FULLY ALLOCATED COST EXPENSE BASIS

Amtrak's Route Profitability System (RPS) shall be the basis for determining the Section 24704 fully allocated loss. The parties may agree to exceptions to this general basis, to be detailed in this Appendix II, when the State desires to deviate from the standard service contract. Furthermore, it is understood that from time to time, the RPS allocated results will require certain manual adjustments to more appropriately reflect the specific operating traits of a Section 24704 train.

SECTION 2 - MAJOR ACCOUNTS

For billing purposes the RPS Expense Lines, as defined in Section 3 below, will be grouped into major accounts and be billed to the State in the following percentages:

<u>Major Account</u>	<u>RPS LINES</u>	<u>ROUTE 39 (Capitol Corridor)</u>
Train & Engine Crews	045 - 050	100%
Train Fuel & Power	055 - 060	100%
On-Board Service Labor	065 - 075	100%
On-Board Service Supplies	080 - 090	100%
Rolling Stock Rent	095 - 100	100%
Station Services	105 - 115, 120 - 150, 475	100%
Transportation	155 - 182, 190, 195, 480, 485	80%
Maintenance of Way	390 - 460, 468, 469, 470	100%
Other Railroad	520 - 540	100%
Railroad Performance Payments	545	100%
Commissary	510	100%
Crew Base	515	95%
SBU Advertising	497	50%
Commissions	500	100%
Sales*	505	\$95,000
Information/Reservations*	490	\$300,000
General Support	550 -552, 555 -570	45%
Insurance	670, 675	100%
Depreciation	575, 580, 611, 660	95%
Interest & Taxes	677, 665	65%
General & Administration	674, 676	10%

*Full FFY 98 Budget*

\*Annual fixed price, to be billed in twelve equal installments.

SECTION 3 - RPS COST DEFINITIONS

The allocation rules, cost pools, RPS expense line descriptions, and the corresponding Amtrak Financial Information System (General Ledger) expense categories used by RPS to allocate expenses to trains are delineated in Exhibit 1 below. Any RPS allocation changes made during the duration of this contract period will be made on a system wide basis and not be done solely for California charges. Amtrak will exercise due diligence to inform California of any changes that will have significant impact on billings under this contract.

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
45	Trainmen	1616 1631 1635 1643	Extra Board Guarantee Train Operations Trainmen Operations Qualifying Trainmen	Road Crews	TLH - Trainmen Labor Hours Monthly hours worked aboard the trains by crew base as reported in the Labor Collection System.  For Railroad crews, train miles on the railroad (per whitebills for certain triweekly service).	Actual (500010 & 500014)/ Local Crew Base	Train
50	Enginemen	1615 1631 1633 1642	Extra Board Guarantee Train Operations Enginemen Operations Qualifying Enginemen	Road Crews	ELH - Enginemen Labor Hours Same as Line 45	Actual (500010 & 500014)/ Local Crew Base	Train
55	Train Fuel	1181 1631	Insurance and Taxes Train Operations	Corp. Common Fueling Locations	Expenses from some fueling locations are split between short-distance train cost pool and long-distance cost pool based on percents provided by the field personnel. The cost pools are then allocated to the respective trains using GLC (Gallons Consumed). GLC has factors by equipment type (efficiency) and number of locos and Cars operated.	Local Fueling Location	Train
60	Power (Electric)	1631	Train Operations	Propulsion Power NEC Commuter Credits	ECM - Electric Car Miles. Electric powered Car Miles. Car miles are weighted for type of Propulsion unit used.	Local NEC	Train
65	Dining and Snack Car Labor	1321	On-Board Services - Dining and Snack Car	Sr. Director OBS & Stations Crew Bases	DLH - Dining Labor Hours. Monthly hours worked aboard train as reported in the Labor Management System for each crew base. OLH - All trains based on hours worked aboard the train as reported in Labor Collection System.	Actual (500010 & 500014)/ Local Crew Base	Train
70	Coach Service Labor	1341	On-Board Services - Coach Service	Crew Bases	Same as Line 65.	Actual (500010 & 500014)/ Local Crew Base	Train
75	Sleeping Car Labor	1331	On-Board Services - Sleeping Car	Crew Bases	Same as Line 65.	Local Crew Base	Train
80	Food	1321	On-Board Services -	Sr. Director Planning for	DRV Dining car revenue for trains stocked	Local	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
		A/C 540304 540342 540343 540344	Dining and Snack Car	Programs Standards Commissaries Crew Bases	at a location.	Commissary	
85	Liquor and Tobacco	1321 A/C 540308	On-Board Services - Dining and Snack Car	Sr. Director Planning for Programs Standards Commissaries Crew Bases	Same as Line 80.	Local Commissary	Train
90	Non-Consumables	1321 1331 1341	On-Board Services - Dining and Snack Car On-Board Services - Sleeping Car On-Board Services - Coach Services	Commissaries Crew Bases	Same as Line 80.	Local Commissary	Train
95	Rents - Locomotive	1661	Rolling Stock Rental	Railroads	LUM Locomotive unit miles operated by each railroad.	Railroad Freight RR	Train
100	Rents - Cars	1661	Rolling Stock Rental	Railroads	TCM Car miles operated by each railroad.	Railroad Freight RR	Train
105	Route Stations Ticketing and Supervisory	1231 1241 1266	Station Services - Ticketing Station Services - Managerial & Supervisory Station Services - Stationmasters & Ushers	Station Services	TBD Total boards and debords at each station.	Local Station	Route
110	Route Stations Operating and Passenger Services	1251 1261 1271 1275 1286	Station Services - Red Caps & Porters Station Services - Baggage & Express Station Services - Station Operations Station Services - FDA Direct Costs Station Services - FDA Indirect Costs	Station Services	Same as 105.	Local Station	Route
115	Route Stations Cleaning and Maintenance	1231	Station Services - Ticketing	Stations Services	Same as 105.	Local Station	Route
120	Shared Stations Ticketing	1231	Station Services - Ticketing	Station Services	Same as 105.	Local Station	Route
125	Shared Stations	1266	Station Services - Stationmasters &	Station Services	Same as 105.	Local	Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
	Stationmasters and Ushers		Ushers			Station	
130	Red Caps/Porters	1251	Station Services - Red Caps & Porters	Station Services	Same as 105.	Local Station	Route
135	Baggage and Express	1261	Station Services - Baggage & Express	Station Services	BCM Baggage car miles.	Local Station	Route
140	Mail Handling	1262	Station Services - Mail	Station Services	MRV Mail Revenue	Local Station	Route
145	Operations	1241 1242 1271 1275	Station Services - Managerial & Supervisory Station Services - First Class Lounge Station Services - Station Operations Station Services - FDA Direct Costs	Station Services	Same as 105.	Local Station	Route
150	Cleaning and Maintenance	1721	Railroad - Facility and Other Maintenance	Railroads	TCM Car miles operated by each railroad.	Local Station	Route
155	Train Dispatching - Amtrak	1632	Train Dispatching	Transportation Movement Offices Blocks	FTT Trip frequency through each NEC transportation division.	Regional NEC	Route
160	Signal/Interlocker Operations - Amtrak	1634	Signal and Interlocker Operation	Supervisor Signals Blocks	Same as line 155.	Regional NEC	Route
165	Qualifying - Amtrak	1637	Qualifying - Block and Tower Operations	Blocks Terminal Superintendent	Same as line 155.	Regional NEC	Train
170	Drawbridge Operations - Amtrak	1636	Bridge Operation	Drawbridge Operations Supervisor Structures	TUT Total unit trips through a maintenance-of-way division/geographic area.	Regional NEC	Route
175	Clearing Wrecks - Amtrak	1639	Clearing Wrecks	Supervisor Structures Track Supervisor	Same as line 170.	Regional NEC	Train
180	Transportation Operations - Railroads	1600 1617 1641	Budget Adjustment - Transportation Train and Enginemen Overhead Other Transportation - Misc.	General Superintendent Railroads Connecting Bus Services	Train miles operated by a railroad - TTM Total unit trips - TUT	Railroad	Train
181	Connecting Bus Transportation	1601 1641	Transportation - Managerial and Supervisory Other Transportation	Assist. Trans. Superintendent Road Crews General Superintendent	FTT - Train Frequency	Local Train groups set up for each bus service	Train



ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description (Miscellaneous)	FIS Expense Category (ResCens) Superintendent Transportation Terminal Superintendent	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
182	Trucked Mail Operations	1201	Sales	Manager - Mail & Express Sales	MRV- Mail revenue	Trains with Trucked Mail	Train
190	Yard Operations	1616 1621 1622 1623 1626 1633 1635 1642 1643 1685	Extra Board Guarantee - Trainmen Yardmasters and Clerks Yard - Engine Crew Operations Yard - Trainmen Operations Engine Attendants Passenger Train - Enginemen Operations Passenger Train - Trainmen Operations Qualifying - Enginemen Qualifying - Trainmen Train Operations - FDA Direct Costs	GM Comm. Svs. Trans. Block Operators Yardmaster Yard Crews Road Crews Movement Off. Work Wire Weck Flags Extra Board Terminal Supervisor	TUT Total trains at a location based on total unit trips.	Local Yard	Train
195	Passenger Inconvenience	1291	Passenger Inconvenience	Director Customer Comm. Sr. Director OBS Stations Station Services	TBD Total boards and deboards at a station.	Local Station	Train
FOR MAINTENANCE OF EQUIPMENT LINES SEE THE ATTACHED CHART AT THE END							
226	Locomotive Turnaround Svcing	1821	Locomotive Turnaround Svcing	MOE Facilities	LUT Locomotive Unit Trips	Local	Train
230	Locomotive Servicing Railroad	No expense in FY 96	No expense in FY 96	Railroads	LUM Locomotive unit miles on the RR.	Local	Train
370	Exterior Car Cleaning	1880 1884 1981	Maintenance of Equipment- FDA Direct Costs Maintenance of Equipment- FDA Indirect Costs Passenger Common - Exterior Car Cleaning	MOE Facilities	TCM Total car miles	Local	Train
375	Train Riders	1988	Passenger Common - Train Riders	MOE Facilities	Same as line 370	Local	Train
385	Cars Servicing Railroad	1911	Maintenance of Equipment- Railroad Car Running Maintenance	Railroads	Same as line 370.	Local	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
386	M of E Vacation	1814	Maintenance of Equipment - Shop Overhead - Miscellaneous	MOE Facilities	TUD - Total Units Demanded	Local	Train
387	M of E Inventory Loss	1992	Maintenance of Equipment - Inventory Adjustment	MOE Facilities	TUM - Total unit miles	SBU level	Train
388	Car Turnaround Servicing	1828	Car Turnaround Servicing	MOE Facilities	CUT - Car unit trips	Local	Train
390	Roadway Maintenance	1702	Roadway Maintenance	Supervisor Structures Track Supervisor Equipment Engineer	TUM Total unit miles through designated maintenance of way division/locations (RPS uses total unit trips where all mileage in a division is the same) ie New York	Regional M/W Region	Route
395	Track and Public Right of Way	1703 1704 1708 1741 1776	Track Maintenance Public right-of-way Maintenance Track Surfacing Wrecks, Storms, and Other Track Repair Maintenance of Way - Manufacture & Repair - Materials	Facility Design Track Laying System High Speed Surfacing Track Engineer M/W District Engineer Division Engineer Track Supervisors	Same as line 390.	Regional M/W Region	Route
400	Snow and Ice Removal	1285 1748	Station Services - Snow and Ice Removal Snow and Ice Removal	Station Services Track Supervisor Supervisor Structures Utilities	Same as line 390.	Regional M/W Region	Route
405	Tunnels Maintenance	1722 1746	Tunnel Maintenance Wrecks, Storms, and Other Tunnel Repair	Supervisor Structures Supervisor Electric Traction Utilities	Same as line 390.	Regional M/W Region	Route
410	Bridges, Trestles, and Culverts	1723 1725 1744	Undergrade Bridge, Trestle, and Culvert Maintenance Overhead Highway Bridge Maint. Wrecks, Storms, and Other	Asst. Chief Engineer - Track - NEC Supervisor Structures Track Supervisor	Same as line 390.	Regional M/W Region	Route
415	Signs and Fences	1731	Signs and Fence Maintenance	Supervisor Structures	Same as line 390.	Regional M/W Region	Route
420	Track and Roadway Railroad	1711	Railroad - Track and Roadway Maintenance	Railroads	TTM Train miles for each train operated by a given railroad. (Railroads which bill Amtrak on basis of gross ton miles have costs allocated on total unit miles on that RR).	Regional M/W Region	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
425	Signal and Interlocker - Amtrak	1713 1742 1776	Signal and Interlocker Systems and Facilities Maintenance Wrecks, Storms, and Other Signal Repair Maintenance of Way - Manufacture and Repair - Materials	Washington Radio Shop ADE Communications & Signal M of W - New Orleans District Engineer Track Supervisor Supervisor Communications & Signals Supervisor Signals CETC - Phila. Supervisor Structures Communications & Signal Repair	Same as line 390.	Regional M/W Region	Route
430	Communications System - Amtrak	1712 1743	Communications Systems Maintenance Wrecks, Storms and Other Communications Line Repair	Radio Shop Supervisor - Communications & Signals Supervisor Communications Supervisor Signals Electric Technicians Phila Communications Mar. Comm. Engineering Utilities Work Wire Wreck Flag Summary Stations	Same as line 390.	Regional M/W Region	Route
435	Power Transmission System - Amtrak	1718 1719 1747	Power transmission Systems Maintenance Power Transmission Systems Operation Wrecks, Storms and Other Electric Traction Repair	Supervisor Electric Traction Power Dir. & Load Dispatch Spr. Electric Traction Electric Traction Spr. Communic. & Signals ET Construction Work Wire Wreck Flag	Same as line 390.	Regional M/W Region	Route
440	Roadway Buildings Maintenance - Amtrak	1726 1745 1776	Roadway Building Maintenance Wrecks, Storms and Other Building Repair Maintenance of Way - Manufacture and Repair - Materials	District Engineer Track Supervisor Supervisor Structures Supervisor B&B Facilities	Same as line 390.	Regional M/W Region	Route
445	Station Building Maintenance Amtrak	1281 1785 1786	Station Services - Building Maintenance Maintenance of Way - FDA Direct Costs Maintenance of Way - FDA Indirect Costs	Station Services Unmanned Stations Track Supervisor Supervisor Structures Supervisor Communic. & Signals Supervisor B&B Facilities Railroads	TBD Total Boards/deboards for each train at a given station.	Local M/W Region	Route
450	Roadway Machines - Amtrak	1733 1734 1753 1776	Roadway Machine Maintenance Work Equipment Maintenance Maintenance of Way - Equipment Maintenance of Way - Manufacture and Repair - Materials	Rail Gang Track Laying System High Speed Surfacing Panel Renewal System Tie Gang	Same as line 390.	Regional M/W Region	Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
455	Maintenance of Way Other - Amtrak	1724 1727 1739	Power Plant and Substation Maintenance Office Building Maintenance Dismantling Retired Road Property	District Engineer Track Supervisor M of W Equip. Shop Production Gangs and Misc. Equipment Engineer Bear Sys. Equip. Shop Bear Complex Bear Material Reclamation	Same as line 390.	Regional M/W Region	Route
460	Maintenance of Way Facility and Other Railroad	1721	Railroad - Facility and Other Maintenance	Terminal Engineer M of W - NOUPT Supervisor Structures Supervisor Electric Traction Track Supervisor Utilities Summary Stations	TUM Total unit miles for each train operated by a given railroad.	Railroad	Train
468	M of W Vacation	1751	Maintenance of Way - Overhead	MOW Facilities	TUT - Total unit trips & TUM - Total unit miles	Regional & Local	Route
469	M of W Inventory Loss	1792	Maintenance of Way - Inventory Adjustment	Corporate Common	TUM - Total unit miles	SBU Level	Route
470	Maintenance of Way Supervisory	1700 1701 1705 1710 1751 1776 1787 1796 1721	Maintenance of Way - Budget Adjustment Managerial Industrial Engineering Training Overhead Manufacture and Repair - Materials FDA Training Costs Material Control Railroad - Facility and Other Maintenance	Technical Training VP Engineering Facility Design VP and Chief Engineer Assistant Chief Engineer Sr. Engineer Clearance & Testing Sr. Dir. Engineering Support Rail Gang Track Laying System High Speed Surfacing Panel Renewal System Tie Gang Director Zone Projects Radio Shop Track Engineer M of W ADE Communications & Signals Division Engineer Engineer Facility Maintenance Terminal Engineer District Engineer Track Supervisor	TUT Total Unit Trips TUM Total unit miles for trains traveling through specific geographic division/locations. Train miles on a PRR for railroad incurred costs.	Mixed	Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
475	Station Services Supervisory	1231 1240 1241 1251 1261 1266 1271 1286 1287	Station Services - Ticketing Training Managerial & Supervisory Red Caps & Porters Baggage & Express Stationmasters & Ushers Station Operations FDA Indirect Costs FDA Training Costs	M of W Equipment Shop Supervisor Structures Supervisor Electric Traction Electric Traction Supervisor Communications & Signals Supervisor Communications Supervisor Signals CETC Supervisor B&B Facilities Regional Engineer Production Gangs and Misc. Vehicle and Equipment Shop Equipment Engineer Communications and Signal Repair ET Construction Sr. Dir. C&S Construction Bear Sr. Dir. Equipment & Veh Bear Sys. Equip. Shop Bear Material Complex Bear Material Reclamation Dir. Subcontract Admin. Material Control General Supervisor Utilities			
480	Transportation Supervisory	1601 1610 1617 1631 1641 1666 1669	Transportation - Managerial and Supervisory Transportation - Training Train and Enginemen Overhead Train Operations Other Transportation - Misc. Vehicle Shop - Direct Vehicle Shop - Overhead	Passenger Services Training Station Services Utilities  Mgr. Safety & Env. Control Vehicle Maintenance Shop Vehicle and Equip. Shop VP - Transportation Superintendent Crew Mgmt. Svcs. Operations Transportation Superintendent Transportation Trainmaster Movement Office Stationmaster Yard Crews General Superintendent Train Fuel Work Wire Wreck Flag Road Crews	TBD Total Boards/deboards for a given train operating through stations.  A variety of techniques depending on source of expenses. For Amtrak T&E res/locs, hours from LPS are used. Other techniques include frequency, total unit trips, and total unit miles for groupings of trains (ALL, NEC, T/X, R/X, NON, etc.) plus train miles on a railroad.	Local  Mixed	Route  Route

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
485	Joint Terminal Facilities	1631 1651	Train Operations Joint Terminal Facility	Extra Board Auto Train Terminal Terminal Superintendent District Superintendent Assistant Transportation Superintendent Railroads	TUT & FTT At Amtrak sites, total unit trips through a location or frequency. Total unit trips for railroad incurred costs.	Local Terminal	Route
490	Information & Reservations	1210 1219 1220 1221	Marketing and Sales - Training Reservations - Special Services Reservations - Managerial/ Administration Reservations	Sr. Dir. Reservation Sales & Services Dir. Reservations Sales Office Network Services & RSO Support	RSO Monthly survey of customer calling patterns	National	Train
495	Marketing	1210	Marketing and Sales - Training	Sales and Marketing	TBD Total Passenger boards/deboards system-wide.	National	Train
497	SBU Advertising	1211	Advertising	Marketing R/C: 1014 1035 1042 1044 1045 1046 1047 1048 1169 2302	TBD	Local	Train
500	Commissions	1201	Sales	Corporate Common	TRV Total train transportation revenue.	SBU Level	Train
505	Sales	1200 1201 1210 1223 1224 1225	Budget Adjustment - Marketing Sales Marketing and Sales - Training Ticketing - City Ticket Offices & Tickets by Mail Ticketing - City Ticket Office Counter Marketing Support	Corporate Common Sales and Marketing	TAS Gross sales reported by travel agencies.	National	Train
510	Commissary Supervisory	1311 1387	Commissary On-Board Services - FDA Training Costs	Commissary Station Services Utilities	DRV Trains at a location based on dining car revenue.	Local	Train
515	Crew Support Supervisory	1300 1301 1310	On-Board Services - Budget Adjustment - Managerial and Supervisory Training	Dir. Food & Quality Assurance Crew Mgmt Center Commissary Crew Base	OLH All trains based on hours worked aboard the train as reported in Labor Collection System.	Local	Train

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
		1385 1386 1387	FDA Direct Costs FDA Indirect Costs FDA Training Costs	District Manager Station Services	2704		
520	Railroad Tax Accrual	1161 Acct # 570817	Railroad - Unallocated	Railroads	TTM Train miles for trains operated by each railroad.	Railroad	Train
525	Railroad Administration	1161 Acct # 570801	Railroad - Unallocated	Railroads	Same as line 520.	Railroad	Train
530	Railroad H & W Benefits and Pensions	1161 Acct # 570803	Railroad - Unallocated	Railroads	Same as line 520.	Railroad	Train
535	Railroad Contract Avoidable	1691 Acct # 570896	Railroad Incentives and Avoidable Costs	Railroads	Same as line 520.	Railroad	Train
540	Railroad Assumption of Liability	1691 Acct # 570897	Railroad Incentives and Avoidable Costs	Railroads	Same as line 520.	Railroad	Train
545	Railroad Performance Payments	1691	Railroad Incentives and Avoidable Costs	Railroads	Train level dollars as booked in FIS from railroad invoice (Whitebills).	Actual	Train
550	General Support	1011 1121 1132 1151 1181 1266 1271 1387 6881 6891 6897	Budget Adjustment - General Corporate Services Leadership & Management Unallocated Insurance and Taxes Station Services - Stationmasters and Ushers Station Services - Station Operations On-Board Services - FDA Training Costs Transfers - Miscellaneous Transfers - Overhead Transfers - Core/Commercial Development	Corporate Common Employee Benefits CQI Office Of IG General Counsel Claims Services Office of Disciplinary Investing. Dir. Customer Communications Minority Business Dev. Office Corp. Svcs. Headquarters Office Services Dir. Admin East Office Services Relocation Dir. Graphics Records Mgmt Reprographic Services Micrographics Passenger and Sales Payroll Operations Executive Vice President Sales and Marketing Occupational Health Nurses	Two principal techniques: (1) systemwide car miles TCM (2) frequency FTT	Mixed	System

ROUTE PROFITABILITY SYSTEM

EXHIBIT I

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
551	GM Mail Operations Administration	1121 1201	Corporate Services Sales	Human Resources Passenger Services Commissary Regional Dir & District Mgr. Passenger Svcs. Safety and Environmental Control Labor Relations Engineering Materials Management Transportation	MRV - Mail Revenue	Mail trains	System
552	Product Line Mgmt & Support	1123	Product line mgmt & support	Manager - Mail & Express Sales	FTT, BDS, TUT	Regional	System
555	Training	1131 1133 1287 1611 1687	Training - Safety Station Services - FDA Training Costs Transportation Training - Engineer Train Operations - FDA Training Costs	Passenger & Sales - Rev. Acct. Personnel Operations Human Resources Field Oper. Leadership Development Safety Educ. Continuous Quality Improvement Training Passenger Services Training Technical Training Gen. Superintendent, Transp.	Most used technique is trip frequency systemwide. Others include frequency for train groupings, boards and debords, total unit miles and total unit trips.	Mixed	System
560	Procurement - Purchasing	1121	Corporate Services	Materials Management	Frequency for trains assigned to a specific location.	Mixed	Route
565	Police and Security	1121 1675	Corporate Services Safety Operations	Police Department	TUT Total unit trips for trains assigned to specific locations. FTT Train Frequency	Mixed	Route
570	Computer Systems	1121	Corporate Services	Information Systems Department	Total unit miles systemwide.	Mixed	Route
575	Road Depreciation	1171	Depreciation	Corporate Common	TUM Total unit miles, systemwide NEC.	Regional NEC	Route
580	Shop, Power Plant Machinery & Other Equipment Depreciation	1171	Depreciation	Corporate Common	TUM Total unit miles systemwide.	Mixed	Route
611	Diesel Switcher	1172	Unit Depreciation	Corporate Common	TUD - Total Units Demanded	SBU Level	Train



ROUTE PROFITABILITY SYSTEM

EXHIBIT I

APPENDIX II  
PAGE 15 OF 17

RPS Expense Line	RPS Exp. Line Description	FIS Functions	FIS Function Description	FIS Expense Category (ResCens)	RPS Allocation Rules	Cost Pool	Train, Route & System Assignment
660	Inactive Equipment	1171	Depreciation	Corporate Common	Total locomotive unit miles or total car miles systemwide.	SBU Level	Train
665	Taxes	1181	Insurance and Taxes	Corporate Common	Total car miles systemwide.	National	Route
670	Purchased Insurance	1181	Insurance and Taxes	Corporate Common Treasury	Weighted car miles passenger carrying cars are allocated more costs than baggage cars and auto carriers). Passenger miles.	National	Train
674	SBU General and Administrative	1002	General & Administrative	Various SBU R/C's	TTE- Total month to date train expenses	Local	System
675	Self Insurance	1181	Insurance and Taxes	Corporate Common Stations	Same as 670.	National	Train
676	General and Administrative	1001	Presidents Employee Communications Inspector General Government Affairs Law Finance and Administration Corp. Planning & Development Human Resources Labor Relations Restructuring Charges Accrued Restructuring Expense Budget Adjustment - Administrative General & Administrative - FDA Indirect General & Administrative - Special Projects Transfers - General & Administrative Transfers - Interest	Corporate Common	Allocated to all trains based on TTE - Total Train Expenditure MTD Exp.	National	System
677	Interest	1191	Finance - Banking Charge	Corporate Common	TCM by equipment type.	SBU Level	Route

EXHIBIT I

**Maintenance of Equipment**  
FIS transition in to RPS Lines and the allocations formulas for the Localized M/E Cost Pool

M/E Overhead	Allocations	Train, Route & System Assignment
6831 Transfers	All trains Based on Total Units at a location	Route
1800 Budget Adjustment		Route
1801 Managerial		Route
1802 Railroads		Route
1803 Power Plant Facility Maintenance		Route
1804 Power Plant Equipment Maintenance		Route
1806 Shop Facility Maintenance		Route
1807 Shop Equipment Maintenance		Route
1808 Shop Overhead - Supervision		Route
1810 Training		Route
1812 Snow and Ice Removal		Route
1814 Shop Overhead - Miscellaneous		Route
1816 Material Control		Route
1817 Power Plant Operations		Route
1819 Unassigned Time		Route
1848 Work Train-Car Maintenance		Route
1875 Hazardous Material Removal		Route
1888 FDA Training		Route

RPS Line ▲ 465 M/E Supervisory

Turnaround Servicing	Allocations	Train
1821 Locomotive Turnaround Servicing	100% on Locomotive Unit Trips LUT at a location	Train
1828 Car Turnaround Servicing	100% on Car Unit Trips CUT at a location	Train

RPS Line ▲ 226 Locomotive Turnaround Servicing  
388 Car Turnaround Servicing

Running Repairs	Allocations	Train
1820 Special Trains	34% on Diesel Unit Miles DUM, 66% on Diesel Locomotive Units DLU	Train
1822 Locomotive Program Maintenance	100% on California Car Miles TCM-OY	Train
1823 Locomotive Bad Orders	36% on Electric Unit Miles EUM, 64% on Electric Locomotive Units ELU	Train
1825 Locomotive Modifications	61% on Amfleet Car Miles TCM-AX, 39% on Amfleet Units AMU	Train
1827 Locomotive Warranty	61% on Cab Car Miles TCM-CB ; 39% on Cab Car Units PPU	Train
1829 Car Program Maintenance	73% on Heritage Car Miles TCM-CX, 27% on Heritage Cars Units CLU	Train
1830 Car Bad Orders	73% on Auto Carrier Miles TCM-LX; 27% on Auto Carrier Units ACU	Train
1831 Car Modifications & Conversions	61% on Horizon Car Miles TCM-HY; 39% on Horizon Car Units HZU	Train
1834 Car Warranty	63% on Superliner Car Miles TCM-SX; 37% on Superliner Units SLU	Train
1835 Component Rework	63% on Superliner II Car Miles TCM-SY; 37% on Superliner II Units SYU	Train
1836 Freeze Damage Repairs	40% on Turbo Car Miles TCM-TX; 60% on Turbo Car Units TBU	Train
1841 Car Extraordinary Cleaning and Furnigation	73% on Viewliner Car Miles TCM-VX; 27% on Viewliner Units VLU	Train
	73% on Baggage Car Miles BCM, 27% on Baggage Car Units BCU	Train
	100% on California Car Miles TCM-OY	Train

RPS Lines ▲

Heavy Repairs	Allocations	Train
1824 Locomotive Heavy Overhaul	48% on Diesel Unit Miles DUM, 52% on Diesel Locomotive Units DLU	Train
1832 Car Heavy Overhaul	37% on Electric Unit Miles EUM, 63% on Electric Locomotive Units ELU	Train
1839 Superliner Progressive Overhaul	55% on Amfleet Car Miles TCM-AX, 45% on Amfleet Units AMU	Train
1842 Car 12 Month Progressive Overhaul	55% on Cab Car Miles TCM-CB, 45% on Cab Car Units PPU	Train
1843 Car 36 Month Progressive Overhaul	42% on Heritage Car Miles XCM-CX; 58% on Heritage Cars Units CLU	Train
	51% on Auto Carrier Miles ACM; 49% on Auto Carrier Units ACU	Train
	55% on Horizon Car Miles TCM-HY; 45% on Horizon Car Units HZU	Train
	55% on Superliner Car Miles TCM-SX, 45% on Superliner Units SLU	Train
	47% on Turbo Car Miles TCM-TX, 53% on Turbo Car Units TBU	Train
	42% on Viewliner Car Miles TCM-VX, 58% on Viewliner Units VLU	Train
	42% on Baggage Car Miles BCM, 58% on Baggage Car Units BCU	Train
	100% on California Car Miles TCM-OY	Train

RPS Lines ▲

Wreck and Accident	Allocations	Train
1826 Locomotive Wreck and Accident	100% on Diesel Unit Miles DUM	Train
1833 Car Wreck and Accident	100% on California Car Miles TCM-OY	Train
	100% on Electric Unit Miles EUM	Train
	100% on Amfleet Car Miles TCM-AX	Train
	100% on Cab Car Miles TCM-CB	Train
	100% on Heritage Car Miles TCM-CX	Train
	100% on Auto Carrier Miles ACM	Train
	100% on Horizon Car Miles TCM-HY	Train
	100% on Superliner Car Miles TCM-SX	Train
	100% on Turbo Car Miles TCM-TX	Train
	100% on Viewliner Car Miles TCM-VX	Train
	100% on Baggage Car Miles BCM	Train

RPS Lines ▲

SECTION 24704 BILLING PROCESS  
Definition of Capital Charges

<u>Capital Item</u>	<u>Items Included</u>	<u>Comments</u>
Facilities	Newly required facilities to operate 24704 service such as track, signals, stations and facilities, etc.	No charge is made for use of existing capital items. Reimbursement for capital charges are determined by separate agreement.
Equipment	Actual number of Amtrak cars and locomotives used, including protect.	The equipment capital charge includes a pro forma charge for depreciation and interest which is calculated as follows:  <u>Depreciation:</u> ICC depreciation expense for equipment utilized in 403(b) service as reported in Amtrak's Financial Information system (FIS).  Interest: Debt service interest for equipment utilized in 403(b) service, as reported in FIS.



APPENDIX III

NATIONAL RAILROAD PASSENGER CORPORATION

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

AGREEMENT DATED 1 JULY 1998  
FOR THE PROVISION OF  
RAIL PASSENGER SERVICE

FISCAL YEAR 1998  
July 1, 1998 - September 30, 1998  
Effective July 1, 1998

Pursuant to Section 4 of the aforesaid Agreement, CCJPA's obligation during fiscal year 1998 to reimburse Amtrak under the said Agreement shall not exceed \$1,314,400 (one million three hundred fourteen thousand four hundred dollars). Funds for the said purpose have been authorized and made available by CCJPA for fiscal year 1998 pursuant to the laws of the State.

The aforesaid aggregate amount is hereby allocated as follows:

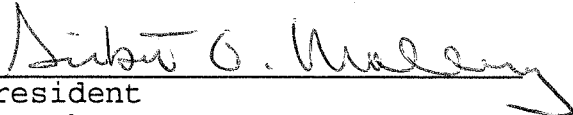
San Jose/Sacramento/Colfax Route	\$ 1,310,400
<u>TOTAL</u>	\$ 1,310,400

CCJPA's share of the operating loss will be billed based on that delineated in Appendix II hereto.

This Appendix III constitutes an integral part of the aforesaid Agreement. No change, modification or amendment thereto shall be of any force or effect unless evidenced by a revised Appendix III dated and executed by Amtrak and CCJPA; provided, however, that notwithstanding the foregoing, interim changes may be made herein pursuant to Section 4(c) of the aforesaid Agreement.

NATIONAL RAILROAD PASSENGER CORPORATION


Dated: 7/1/98

By:   
President  
Amtrak West

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

Dated: 7-1-98

By: 



APPENDIX IV  
FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex\*, age\*, national origin or physical handicap\*. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, ancestry, sex\*, national origin or physical handicap\*. Such action will include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the State setting forth the provisions of this Fair Employment Practices section.

2. The Contractor will permit access to his records of employment, employment advertisements, application forms and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by the awarding authority for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.

3. Remedies for Willful Violation

(a) The State may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgement having that effect from a court in an action to which contractor was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and issued an order under Labor Code Section 1426, which has become final or obtained an injunction under labor Code Section 1429.

(b) For willful violation of this Fair Employment Practices provision, the State shall have the right to terminate this contract either in whole or in part, and any loss or damage sustained by the State in securing the goods or services hereunder shall be borne and paid for by the Contractor and by his surety under the performance bond, if any, and the State may deduct from any moneys due or that thereafter may become due to the Contractor, the difference between the price named in the contract and the actual cost thereof to the State.

\* See Labor Code Sections 1411 - 1432.5 for additional details.





APPENDIX A  
NATIONAL RAILROAD PASSENGER CORPORATION  
and  
CAPITOL CORRIDOR JOINT POWERS AUTHORITY

\* \* \* \* \*

FISCAL YEAR 1998  
July 1, 1998 - September 30, 1998  
(Effective July 1, 1998)

Pursuant to the aforesaid Agreement and subject to all the terms and conditions thereof, Amtrak shall arrange for the provision of connecting bus service(s) during fiscal year 1998 over the route(s) set forth in Appendix A. The said service(s) shall commence and terminate on the commencement and termination dates set forth therein, unless sooner terminated as provided in the aforesaid Agreement.

ROUTE 20

1. From: Sacramento           Via: Cal-Expo, Roseville, Auburn, Lake  
          To: Sparks                   of the Pines, Grass Valley, Nevada  
  City, Colfax, Soda Springs, Truckee  
  & Reno

Service Level: 7 Daily Round Trips

2. Revenue credits per passenger:

Calculation methodology explained at end of Appendix A.

3. Commencement date: July 1, 1998
4. Termination date: September 30, 1998

ROUTE 21

1. (A) From: Emeryville or Oakland      Via: Fremont, Santa Clara  
      To: San Jose

Service Level: 2 Daily Round Trips  
and

(B) From: San Jose      Via: Santa Cruz, Gilroy &  
      To: Monterey      Salinas

Service Level: 2 Daily Round Trips  
and

(C) From: San Jose      Via: Gilroy, Salinas,  
      To: Santa Barbara      Soledad, King City,  
                                 Paso Robles, San  
                                 Luis Obispo, Santa  
                                 Maria & Goleta

Service Level: 1 Daily Round Trip

2. Revenue credits per passenger:

Calculation methodology explained at end of Appendix A.

3. Commencement date: July 1, 1998

4. Termination date: September 30, 1998

ROUTE 22

1. From: San Jose  
      To: Santa Cruz

Service Level: 12 Daily Round Trips

2. Revenue credits per passenger:

Calculation methodology explained at end of Appendix A.

3. Commencement date: July 1, 1998

4. Termination date: September 30, 1998



**REVENUE CREDITS FOR FEEDER BUS ROUTES** - the revenue contribution to the CCJPA Capitol Corridor by the feeder bus routes will be determined through the following methodology:

Utilizing a table of city pair mileage for bus routes provided by Caltrans, Amtrak will calculate bus route revenue credits by multiplying this city pair mileage times city pair ridership for the route from the Marketing Origin-Destination System. The sum of this calculation will be bus passenger miles for each of the bus routes. The bus passenger miles for each route are then added to the route's train passenger miles providing total passenger miles for the route. The total passenger miles for the route, divided into the route's revenue will provide the true route yield.

To derive the bus revenue credit for each route the true route yield is multiplied by the bus passenger miles (as determined above) for the appropriate route.

In order for the calculation of bus revenue credits to be as accurate as possible it is CCJPA's responsibility to provide Amtrak with an updated list of city pair mileage whenever a new stop or stops or bus route is added. This list of city pair mileage will be conveyed to Amtrak in an IBM compatible spreadsheet format by disk or E-Mail at least 30 days prior to

the institution of any change in service, or as soon as possible if less than 30 days notice is available. If city pair mileage for new stops or routes is not provided to Amtrak at least 30 days in advance, the revenue credits for the new stops will not be shown until the next month's billing.

#### **COSTS FOR FEEDER BUS SERVICE**

Amtrak will select the lowest qualified bidder from vendors bidding to provide feeder bus service.

From time to time it becomes necessary to provide for miscellaneous costs to offer reasonable, identifiable and necessary Bus Feeder service. These costs may be charged to CCJPA and paid by CCJPA to Amtrak to cover such expendable costs as decals, conductor neckties, etc. after approval is given in writing by CCJPA.

#### **GENERAL**

This Appendix A constitutes an integral part of the aforesaid Agreement. No change, modification, or amendment hereto shall be of any force or effect unless evidenced by a Revised Appendix A to the Agreement dated and executed by Amtrak and CCJPA.



**NEW TRANSFER AGREEMENT**

**AMONG**

**THE CALIFORNIA DEPARTMENT OF TRANSPORTATION  
(STATE)**

**AND**

**THE CAPITOL CORRIDOR JOINT POWERS AUTHORITY  
(CCJPA)**

**AND**

**THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)**

**FOR THE TRANSFER AND OPERATION OF  
CERTAIN STATE-OWNED RAIL EQUIPMENT IN THE  
CAPITAL CORRIDOR**

**DATED JULY 1, 1998**



NEW TRANSFER AGREEMENT  
INDEX

	PAGE
1. GENERAL PROVISIONS	
1.1 Definitions	3
1.2 Scope of Agreement	5
1.3 Term	5
1.4 Notices	5
1.5 Successors and Assigns	6
1.6 Entire Agreement	6
1.7 Severability	6
1.8 Waiver	7
1.9 Authority of CCJPA Officer	7
1.10 Interpretation of this Agreement	8
1.11 Transfer of Custody	8
2. AMTRAK SERVICES TO BE PROVIDED	
2.1 Basic Scope of Services	8
2.2 Administrative and Managerial Services	8
2.2.1 Amtrak Management	8
2.2.2 Accounting Records	9
2.2.3 Performance Monitoring	9
2.3 Deployment Plan	9
2.4 Use of State -owned Equipment	9
2.4.1 State Supported Routes	10
2.4.2 Emergency Circumstances	10
2.4.3 Emergency Circumstances-Definition	10
2.4.4 Special Trains	11
2.5 Clearing of Wrecks	12
2.6 Maintenance of State-owned Equipment	12
3. AMTRAK RIGHTS AND OBLIGATIONS	
3.1 Training Obligations	12
3.2 Amtrak Contractors	13
3.3 Compliance with Industry Codes, Regulations and Standards	13
3.4 Reporting Obligations	13
4. CCJPA RIGHTS AND OBLIGATIONS	
4.1 Operations and Management Supervision	14
4.2 Access to Equipment	14
4.3 CCJPA Right to Additional Information	15

---

	PAGE
4.4 Public Information Responsibilities	15
4.5 Advertising	16
4.6 Other Contracting Rights	16
5. DAMAGE TO EQUIPMENT	
5.1 Property Insurance	17
6. DISPUTE RESOLUTION	
6.1 Settlement of Disputes	17
6.2 Controversies Subject to Arbitration	17
6.3 Arbitration Procedure	18
6.4 Pending Resolution	18
6.5 Cost of Arbitration	18
6.6 Enforcement	18
7. EMPLOYEE CONDUCT	
7.1 Employee Conduct and Discipline	19
8. EMERGENCIES	
8.1 Force Majeure	19
8.2 Operation Disruption	19
8.3 Notification of Emergency	20
9. TERMINATION	
9.1 Termination for Cause by State or CCJPA	20
9.2 Termination for Cause by Amtrak	21
9.3 Termination for Convenience	21
9.4 Termination Upon Termination of Other Agreements	22
9.5 Termination Procedure	22
9.6 Rights and Obligations Upon Termination	22
10. CONSTRUCTION	
10.1 Section Headings; Governing Law	23

APPENDIX 1

State-owned Equipment Operating Procedures

NEW TRANSFER AGREEMENT AMONG THE CALIFORNIA DEPARTMENT OF  
TRANSPORTATION  
(STATE)  
AND  
THE CAPITOL CORRIDOR JOINT POWERS AUTHORITY  
(CCJPA)  
AND  
THE NATIONAL RAILROAD PASSENGER CORPORATION  
(AMTRAK)  
FOR THE TRANSFER AND OPERATION OF  
CERTAIN STATE-OWNED RAIL EQUIPMENT IN THE  
CAPITOL CORRIDOR  
DATED JULY 1, 1998

THIS AGREEMENT, DATED JULY 1, 1998, IS ENTERED INTO BY AND  
AMONG STATE, CCJPA AND AMTRAK.

1. GENERAL PROVISIONS

1.1 Definitions

As used in this Agreement, the following terms shall have the meaning specified  
in this Section.

- a. Agreement. This Agreement and all Appendices hereto as amended or  
modified pursuant to the terms hereof.
- b. Agreements. The following agreements, all of even date herewith: this  
Agreement; Interagency Transfer Agreement; Fund Transfer Agreement; Equipment  
Lease; and New Operating Agreement.
- c. Amtrak. The National Railroad Passenger Corporation.
- d. Amtrak Provided Equipment. Locomotives and passenger cars supplied  
by Amtrak under contract for State supported service.
- e. Caltrans Officer. The Chief of the Office of Equipment of the Rail  
Program of the California Department of Transportation, acting directly or through an  
authorized representative.
- f. CCJPA. The Capitol Corridor Joint Powers Authority, a joint powers  
authority established under the law of the State of California.
- g. CCJPA Officer. The duly appointed representative of CCJPA to Amtrak,  
as designated in writing.

- h. Capitol Corridor. The rail corridor which has as its termini and intermediate stations, the following: Colfax-Sacramento-Suisun City-Oakland-San Jose.
- i. Effective Date. The date first herein above written.
- j. Equipment Lease. That certain Equipment Lease Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority of even date herewith.
- k. Federal Fiscal Year/Fiscal Year. The Federal Fiscal Year from October 1 through September 30.
- l. Fund Transfer Agreement. That certain Standard Provisions of Intercity Rail Fund Transfer Agreement (FTA) Between the State of California Department of Transportation and the Capitol Corridor Joint Powers Authority (Authority) Covering Allocations of State Funds of even date herewith.
- m. Interagency Transfer Agreement or ITA. That certain Interagency Transfer Agreement between The State of California Department of Transportation and the Capitol Corridor Joint Powers Authority of even date herewith.
- n. Maintenance Agreement. That certain Maintenance Agreement Between California Department of Transportation (Caltrans) and National Railroad Passenger Corporation (Amtrak) For the Maintenance of State Provided Equipment Dated November 20, 1994, and all amendments thereto.
- o. Maintenance Transfer Date. The date upon which responsibility for maintenance and maintenance compliance supervision (and such extended warranty administration over the State-owned Equipment as is agreed to between State and CCJPA) is transferred from State to CCJPA.
- p. New Operating Agreement or NOA. That certain National Railroad Passenger Corporation and Capitol Corridor Joint Powers Authority Agreement for the Provision of Rail Passenger Service of even date herewith.
- q. Operating Agreement. That certain National Railroad Passenger Corporation and The State of California Agreement for the Provision of Rail Passenger Service Pursuant to Title 49 U.S.C. Section 24107 dated as of October 1, 1997.
- r. Planned Deployment Plan. The detailed description of the operation of State-owned Equipment in a Federal Fiscal Year, including specific routes on which Amtrak shall provide the Services, train consists, units of equipment to be maintained, and other related services, all as agreed upon by the parties, prior to the start of each Federal Fiscal Year, set forth in Exhibit F to the Equipment Lease.

s. Service. Rail and related service in the Capitol Corridor, including feeder bus service related thereto, as expanded, modified and developed pursuant to the Agreements or any amendments thereto.

t. State. The State of California, acting by and through its Department of Transportation.

u. State-owned Equipment. Locomotives and passenger cars, supplied by State under the Equipment Lease, that are used in providing the Service.

v. Transfer. The change of custody for each State-owned locomotive or State-owned passenger car from CCJPA to Amtrak, or from Amtrak to CCJPA. Each such locomotive or passenger car shall be considered transferred upon the effective date of this Agreement.

w. Transfer Agreement. That certain Transfer Agreement between the California Department of Transportation (Caltrans) and the National Railroad Passenger Corporation (Amtrak) for the Transfer and Operation of State Provided Rail Equipment dated November 20, 1994.

## 1.2 Scope of Agreement

This Agreement relates only to the matters related to the Service in the Capitol Corridor in California, as set forth herein, and to the State-owned Equipment transferred to CCJPA by the Equipment Lease, and to that extent this Agreement modifies and supersedes the Transfer Agreement. All matters not set forth herein and any other rail and bus service in California and any State-owned Equipment not covered by the Equipment Lease shall continue to be governed by the said Transfer Agreement or by other agreements between Amtrak and State.

## 1.3 Term

The term of this Agreement, unless terminated earlier as set forth herein, shall be from the Effective Date to the Maintenance Transfer Date.

## 1.4 Notices

Any notice, report, or other communication shall, unless otherwise specified, be in writing and shall be delivered in hand or mailed by first class mail, postage prepaid, or sent by overnight courier addressed to:

For State:

Manager, Rail Program  
California Department of Transportation MS#74  
P.O. Box 942874  
Sacramento, CA 94274-0001

For Amtrak:

Senior Director  
Planning, Marketing and Contract Administration  
National Railroad Passenger Corporation  
530 Water Street, 5th Floor  
Oakland, CA 94607

For CCJPA:

Capitol Corridor Managing Director  
800 Madison Street  
P.O. Box 12688 (LMA-2)  
Oakland, CA 94604-2888

Any party may change the name, address, or title of the recipient to be notified hereunder by notifying the other parties in writing of such change.

#### 1.5 Successors and Assigns

The rights and obligations of Amtrak, CCJPA and State hereunder may not be assigned unless with the prior written consent of all parties.

#### 1.6 Entire Agreement

This Agreement relates only to matters related to the Service in the Capitol Corridor in California, as set forth herein, and to the State-owned Equipment transferred to CCJPA by the Equipment Lease.

Other than with respect to certain matters set forth in the Operating Agreement, the Transfer Agreement, the Maintenance Agreement, and the Agreements (excluding this Agreement, not all parties hereto being signatories to all the agreements hereinabove listed) this Agreement embodies the entire agreement among State, CCJPA and Amtrak regarding the matters set forth herein. No oral or prior written matter among all three parties relating to the subject matter hereto and not incorporated herein will have any force or effect. The signatory parties hereby acknowledge that they are not relying on any representations or agreements regarding the matters set forth herein other than those contained in this Agreement. This Agreement will not be modified except in writing subscribed to by all parties.

#### 1.7 Severability

In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remainder of this Agreement shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted. This will not apply where the provision 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 that deletion substantially alters the rights or obligations of any party under the Agreement.

#### 1.8 Waiver

None of the provisions of this Agreement shall be considered waived by any 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 is expressly stated in the waiver. The failure of any 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.

#### 1.9 Authority of CCJPA Officer

The CCJPA Officer maintains sole operating supervision authority and responsibility for the State-owned Equipment employed on behalf of CCJPA in the Capitol Corridor for the Service.

The CCJPA Officer shall decide on behalf of CCJPA all questions which may arise regarding the quality or acceptability of the supervision of operation of the Service performed in the Capitol Corridor under this Agreement; all questions which may arise regarding the interpretation of this Agreement; all questions that may arise regarding the acceptable fulfillment of this Agreement on the part of Amtrak; and all questions which may arise regarding operational compensation payable to Amtrak. In addition, the CCJPA Officer shall have complete authority to administer and make decisions on disputes and claims on behalf of CCJPA during the term of this Agreement. The CCJPA Officer's decision shall be CCJPA's final position and the CCJPA Officer shall have the authority to enforce and make effective such decisions and orders in accordance with the terms of this Agreement which Amtrak fails to carry out. This authority of the CCJPA Officer is subject to the provisions of Section 6, "Dispute Resolution", of this Agreement.

The CCJPA Officer shall respond in writing, within twenty (20) working days of receipt, to all written questions and requests concerning approvals, interpretations, and other matters pertaining to this Agreement from Amtrak and State, unless otherwise allowed for by this Agreement.

Amtrak shall respond, in writing, within twenty (20) working days of receipt, to all questions and requests for information in writing from the CCJPA Officer and State regarding this Agreement as those questions relate to Amtrak's operation of the Service.

### 1.10 Interpretation of this Agreement

Should it appear that the Service is not sufficiently detailed or explained in this Agreement, Amtrak may request from the CCJPA Officer such further written explanations as may be necessary, and shall, as part of this Agreement, conform to the explanation provided by the CCJPA Officer, provided that such explanation is consistent with the provisions of this Agreement.

### 1.11 Transfer of Custody

In the event of special, unforeseen or extenuating circumstances, or termination or default of this Agreement by State, Amtrak or CCJPA, State, as owner of the State-owned Equipment, may initiate transfer of custody of the State-owned Equipment from Amtrak to CCJPA, for delivery back to State in accordance with the provisions of the Equipment Lease. No later than thirty (30) days after receipt of State's or CCJPA's official written notification, Amtrak will transfer custody of designated State-owned Equipment to a site in Northern California as determined by State. The State-owned Equipment transferred from Amtrak to CCJPA for return to State shall be in the same condition as when transferred to Amtrak by CCJPA pursuant to the terms of this Agreement, ordinary wear and tear excepted.

## 2. AMTRAK SERVICES TO BE PROVIDED

### 2.1 Basic Scope of Services

Except with respect to any matters reserved between State and Amtrak with respect to the Service, during the Agreement term, Amtrak shall operate and maintain the State-owned Equipment in the Capitol Corridor in accordance with the terms of this Agreement, the NOA, and the Maintenance Agreement, in accordance with all applicable laws and regulations and in accordance with the terms and provisions herein set forth. There are certain features specific to State-owned Equipment that require operation in accordance with the procedures detailed in Appendix 1 hereto. Any revision to Appendix 1 shall be mutually agreed among State, CCJPA and Amtrak, and these then modified procedures shall be followed by Amtrak.

### 2.2 Administrative and Managerial Services

#### 2.2.1 Amtrak Management

Amtrak shall identify responsible qualified managers, based in California, who shall manage the provisions of this Agreement in a manner that is consistent with all parties' objective of providing the highest quality service to the public.

The Amtrak managers assigned to the Service in the Capitol Corridor shall have experience and knowledge in the area of railroad passenger operations and shall have authority to make decisions in a timely manner concerning the daily operations and management of the Service consistent with this Agreement. Amtrak shall administer



and manage all functions involved in providing the Service as set forth and described more fully in this Agreement in a manner which will comply with all applicable local, California and Federal requirements. All personnel provided by Amtrak and Amtrak's contractors involved in any aspect of providing the Service in the Capitol Corridor shall be employees of Amtrak or its contractors, and not of CCJPA or State, and shall be subject to the direction, supervision and control of Amtrak and not of CCJPA or State.

### 2.2.2 Accounting Records

During the Agreement term, Amtrak shall keep full and accurate accounting records, in accordance with generally accepted accounting principles, of all costs associated with this Agreement covering State-owned Equipment. Amtrak shall retain such records for at least three (3) years following the end of the accounting period to which the records apply; such records may be retained on microfiche or electronic medium. Upon reasonable advance notice, State and/or CCJPA may inspect, audit and obtain copies of the accounting records of Amtrak pertaining to the Service at any reasonable time during regular business hours at Amtrak's place of business where said records are kept. Such actions shall not unreasonably interfere with the business or accounting functions of Amtrak. Amtrak shall cooperate fully with CCJPA and State in the explanation of the contents of said records. CCJPA and State shall use their best efforts to schedule a single audit and agree to share audit results and documents.

### 2.2.3 Performance Monitoring

Amtrak shall maintain performance records and furnish to State and to CCJPA the written performance reports as required by this Agreement. The criteria on which Amtrak will be monitored on a performance basis by CCJPA will be as follows:

- a. Adherence to Amtrak operating crew procedures as they relate to State-owned Equipment. For example, car door use failures or operation of wheelchair lift;
- b. Provision of operation/warranty/performance guarantee reports as required by this Agreement;
- c. Availability of Amtrak Provided Equipment and State-owned Equipment for service as scheduled;
- d. Compliance with the Planned Deployment Plan.

### 2.3 Deployment Plan

The operation of State-owned Equipment shall be in accordance with the Planned Deployment Plan.

### 2.4 Use of State-owned Equipment

#### 2.4.1 State Supported Routes

a. Unless otherwise specifically provided for elsewhere in this Agreement, the use of State-owned Equipment transferred to Amtrak for operation in the Capitol Corridor shall be governed by this Section 2.4 and the Planned Deployment Plan.

b. State-owned Equipment shall not be utilized on any routes other than State supported routes within California unless approved in writing in advance by the CCJPA Officer (including that portion of the daily rate payable to State by CCJPA representing State-incurred maintenance costs).

c. As between Amtrak and CCJPA, in the event CCJPA gives permission for Amtrak to use State-owned Equipment on non-State service or Amtrak sponsored special trains, CCJPA shall be reimbursed by Amtrak for the use of the State-owned Equipment at a daily rate to be mutually agreed upon before use of the equipment (including that portion of the daily rate payable to State by CCJPA representing State-incurred maintenance costs).

#### 2.4.2 Emergency Circumstances

In "Emergency Circumstances" as detailed below, Amtrak may use State-owned Equipment without prior approval, provided that:

a. All reasonable efforts have been made to gain prior CCJPA approval; and,

b. The use of State-owned Equipment will not cause the substitution of non-State-owned Equipment in, or the annulment of, a State supported service train; and,

c. The use of State-owned Equipment will not adversely impact State supported service schedules.

#### 2.4.3 Emergency Circumstances-Definition

For the purposes of this Section, "Emergency Circumstances" shall be considered all of the following:

a. Failure of Amtrak Provided Equipment that would cause the cancellation of an Amtrak funded service; and,

b. No replacement Amtrak Provided Equipment is available within two (2) hours; and,

c. Replacement by freight railroad owned equipment is not available within two (2) hours.

In the event State-owned Equipment is used in "Emergency Circumstances" CCJPA shall be reimbursed at the current daily rate charged by Amtrak to State for similar Amtrak equipment.

In the event that Amtrak uses State-owned Equipment on the Service other than as provided for in this Agreement or as previously agreed to by CCJPA in writing, then Amtrak shall compensate CCJPA and State (solely for maintenance costs) for the use of that State-owned Equipment at a rate of compensation which shall be two (2) times the current highest lease rate charged by Amtrak to State or to CCJPA for similar Amtrak equipment.

All reimbursements and compensation referred to in this Section shall take the form of credits to CCJPA and to State, respectively, to be applied to the then current month's invoice from Amtrak, and shall be expressly accounted for therein.

Amtrak is responsible for the maintenance and repair of any State-owned Equipment used or damaged during Amtrak use on non-State sponsored trains, at no cost to CCJPA or State, prior to return to CCJPA. Amtrak shall continue to compensate both CCJPA and State proportionately based on the formula used to allocate maintenance costs between the Capitol and San Joaquin Corridors at the applicable compensation rate until damaged State-owned Equipment is repaired and available for service in State sponsored service.

#### 2.4.4 Special Trains

Amtrak shall not use State-owned Equipment for special trains in the Capitol Corridor without the prior written approval of CCJPA. Requests to use State-owned Equipment on special trains by Amtrak shall be submitted in writing prior to the intended use. Such requests shall include the schedule for the special train, the duration that State-owned Equipment is required and any other relevant information required by CCJPA. Approval for use shall be at the sole discretion of CCJPA. CCJPA shall respond to such requests no less than ten (10) working days after receipt of the written request. In the event that CCJPA gives permission for Amtrak to use State-owned Equipment on non-State supported services or Amtrak sponsored special trains, CCJPA shall be reimbursed by Amtrak for the use of the State-owned Equipment, at a daily rate to be mutually agreed upon before the use of that State-owned Equipment.

CCJPA shall have the absolute priority and right to use State-owned Equipment on State sponsored special trains in the Capitol Corridor. The operation of State sponsored special trains shall be mutually agreed upon between CCJPA and Amtrak prior to operation. Prior to any event for which CCJPA anticipates providing special train service, it shall submit to Amtrak a request in writing for Amtrak to operate such service. Amtrak shall inform CCJPA in writing of the cost of providing such service. Amtrak shall not unreasonably refuse to operate State sponsored special trains provided that State-owned Equipment and Amtrak crews are available. The operation

of such special trains shall not unreasonably interfere with the contracted maintenance of State-owned Equipment.

The use of any State-owned Equipment for any special trains shall not be included in the budgeted amount agreed on by the parties unless specifically included in the Planned Deployment Plan. All reimbursements and compensation referred to in this Section shall take the form of a credit to CCJPA and State (for all incurred maintenance costs) to be applied to the current month's invoice from Amtrak, and shall be expressly accounted for therein.

## 2.5 Clearing of Wrecks

Amtrak will have full responsibility for clearing wrecks in the Capitol Corridor which involve State-owned Equipment.

The repair of wreck-damaged State-owned Equipment shall be in accordance with the provisions of the Maintenance Agreement. State's rights and obligations with respect to access to the wreck site and to any involved State-owned Equipment shall be governed by Section 2.5 of the Transfer Agreement.

## 2.6 Maintenance of State-owned Equipment

The maintenance of State-owned Equipment shall be in accordance with the Maintenance Agreement between State and Amtrak.

# 3. AMTRAK RIGHTS AND OBLIGATIONS

## 3.1 Training Obligations

Amtrak shall ensure that all employees and contractors assigned to the operation of State-owned Equipment are thoroughly trained in the operation of the specific features of State-owned Equipment. Operation of such features shall be in accordance with the provisions of this Agreement and standard Amtrak operating practice.

Amtrak will be responsible for ensuring that said training is provided when necessary and is regularly updated as required. State shall ensure that contracted training to be provided by the manufacturers is given to Amtrak's training personnel. This shall include the provision of trainer's notes to Amtrak. All subsequent training of personnel shall be the responsibility of Amtrak.

Except as relates to maintenance training programs, (1) all operational training programs or portions thereof that are designed specifically for State-owned Equipment will be reviewed and approved by CCJPA, and will be designed, developed and implemented in accordance with established professional standards for performance-based instruction, and (2) Amtrak will provide CCJPA with copies of all operational training programs and records used for employees who are working on State-owned

Equipment to the extent that final drafts of maintenance manuals and training manuals, agreed upon by Amtrak and State, are made available to Amtrak by State.

Amtrak shall maintain accurate training records which identify Amtrak personnel/contractors who received training, and the dates of courses taken. Training records shall be made readily available upon CCJPA's request.

### 3.2 Amtrak Contractors

Amtrak's contractors and their employees involved in any aspect of providing any portion of the Service shall be subject to the direction, supervision, and control of Amtrak and not State or CCJPA.

### 3.3 Compliance with Industry Codes, Regulations and Standards

During the operation of State-owned Equipment and Amtrak Provided Equipment on the Service, Amtrak shall comply with all applicable FRA and CPUC regulations, AAR and accepted industry standards, California and local codes, and with all performance standards set forth in this Agreement.

Amtrak shall be solely responsible for any fines or penalties resulting from Amtrak violation of applicable laws and standards other than those that are solely a result of the original design and manufacture of State-owned Equipment.

### 3.4 Reporting Obligations

Amtrak shall provide State and CCJPA with access to the operational reports listed in this Section. In addition, Amtrak shall prepare and submit in a timely manner, all reports affecting State-owned Equipment which are required to be submitted to any Federal, California or local governmental agency, and shall furnish copies simultaneously to State and CCJPA. Amtrak shall also promptly furnish to State and CCJPA copies of any citations or complaints issued by an enforcement or regulatory body which involve State-owned Equipment, and Amtrak will advise State and CCJPA in writing, within ten (10) working days, of the disposition of such citations or complaints. The purpose of the reports described in this Section is to keep State and CCJPA apprised of the performance of, and incidents which may impact the operation of, State-owned Equipment.

Amtrak agrees to keep full and accurate records required herein and to provide State and CCJPA with such other reports or information as will fulfill the purpose described in the previous sentence. Amtrak shall not release or disclose any reports that relate solely to the performance of State-owned Equipment without prior written notification to CCJPA and State.

CCJPA shall have on demand, via a printer maintained at CCJPA's expense and located at its offices, access to the following Amtrak reports on an as-needed basis:

- a. Unit Status List
- b. Display Unit Record Report
- c. Display Mechanical History Report
- d. Build Resources List Report
- e. Train Status Report for Capitol Corridor Trains and Connections
- f. Daily Consist Report
- g. All information pertinent or relevant to Capitol Corridor operation

The Daily Capitols Report shall be supplied automatically each day by the printer at CCJPA.

State now has and will continue to have during the term of this Agreement an operating Arrow terminal at its premises.

In addition, Amtrak shall supply to both State and to CCJPA, copies of major incident reports, when completed, for incidents that involve State-owned Equipment and a copy of incident reports related to the Service to CCJPA. The above reports are in addition to any other reports required elsewhere.

#### 4. CCJPA RIGHTS AND OBLIGATIONS

##### 4.1 Operations and Management Supervision

In addition to the rights and obligations stated elsewhere in this Agreement, CCJPA shall have the following rights with respect to oversight and monitoring of Amtrak's performance in the Capitol Corridor:

- a. All facilities and equipment used by Amtrak in the performance of its obligations under this Agreement and the levels of resources allocated/consumed to fulfill the terms of this Agreement may be monitored;
- b. State-owned Equipment may be inspected at any time and removed from service when, in CCJPA's sole discretion, and with justifiable reason, any equipment is determined to be in an unacceptable condition.

##### 4.2 Access to Equipment

Authorized CCJPA employees, agents, and contractors will be allowed immediate and unannounced access to inspect State-owned Equipment transferred to Amtrak in the Capitol Corridor. CCJPA shall notify Amtrak in advance in writing of all such authorized employees, agents, and contractors.

A special access permit will not be required for CCJPA employees, agents, and contractors in an Amtrak mechanical and maintenance facility. CCJPA agrees that it will defend, indemnify and save harmless Amtrak, its employees, operating railroads,

and agents, irrespective of any negligence of any kind on their part and in accordance with the provisions of Section 6 of the NOA, from and against any and all liability for bodily injury, death, or property damage to or of any person caused by CCJPA, its employees, contractors and agents, and for bodily injury and death of any employee of and for damage to property of CCJPA, its contractors and agents, while at an Amtrak mechanical and maintenance facility. Upon arrival in such facility, authorized CCJPA employees, contractors and agents will immediately contact Amtrak's Facility Manager or senior official prior to entering the equipment maintenance work area in order to coordinate their on-site activity. Authorized CCJPA employees, contractors and agents shall comply with all Amtrak safety rules and regulations while at the maintenance facility or on Amtrak property. State's rights, duties and obligations with respect to access to State-owned Equipment and to the Amtrak mechanical and maintenance facility shall be governed by Section 4.2 of the Transfer Agreement.

For head-end access and train access without a purchased ticket, a special photo ID inspection permit will be required for employees of CCJPA. Amtrak will provide no more than three (3) photo ID Train Authorization Permits for CCJPA to issue its employees at any one time. The Amtrak Train Authorization Permit for selected employees of CCJPA authorizes immediate and unannounced access to the cab of State-owned locomotives (head-end) and on-board Amtrak trains in the Capitol Corridor. To protect the safety of Amtrak passengers and operating crews, CCJPA shall issue the Authorization Permits only to those individual employees of CCJPA who have been trained, have knowledge of railroad operating rules and practices, and have a need, as determined by CCJPA, to have access to State-owned Equipment on Amtrak operated trains in the Capitol Corridor to perform their duties and responsibilities. CCJPA agrees that it will defend, indemnify and save harmless Amtrak, its employees and agents, irrespective of any negligence of any kind on their part and in accordance with the provisions of Section 6 of the NOA, from and against any and all liability for bodily injury, death or property damage to or of any person caused by CCJPA or its employees and for bodily injury and death of any employee of and to damage of property of CCJPA, while riding a train on a Train Authorization Permit.

#### 4.3 CCJPA Right to Additional Information

CCJPA shall have the right to obtain from Amtrak within fifteen (15) working days of receipt of a written request, any reasonable information related to State-owned Equipment. This is in addition to any other rights to information and reports included in this Agreement and the Agreements.

#### 4.4 Public Information Responsibilities

CCJPA is assuming partial responsibility for marketing the public use of State supported services, and specifically State-owned Equipment, through advertisements or other promotions. Amtrak will cooperate with CCJPA in CCJPA marketing efforts as related to State-owned Equipment employed in the Capitol Corridor Service.

**Amtrak will inform CCJPA of all Capitol Corridor passenger complaints that relate to the design and function of State-owned Equipment.**

#### 4.5 Advertising

Only State may utilize or authorize the utilization (including authorizations which are already in effect) of the interior and exterior of State-owned Equipment for the display of any written or printed advertising, promotional material, or public information notices, and any revenues from such advertisements shall be credited to the Service (including authorizations which are already in effect).

Only State may authorize, in writing, the use of the Caltrans logo or images of State-owned Equipment, which authorizations are already in effect.

#### 4.6 Other Contracting Rights

With respect to the Service, CCJPA specifically reserves the right to contract with any other person, corporation or other entity for performance of any tasks required by State or CCJPA that are not specifically assigned to Amtrak by this Agreement, the Maintenance Agreement and the NOA in force at that time or which task Amtrak cannot perform for whatever reason. Any such person, corporation or other entity shall provide in its contract with CCJPA that (i) it will indemnify, defend and hold harmless State, Amtrak and CCJPA from any loss, cost or damage resulting from its work thereunder, and (ii) that it will provide insurance coverage naming State, CCJPA and Amtrak as additional insureds and loss payees as their respective interests may appear with coverages, amounts and deductibles which are commercially reasonable in this context. Any employee or contractor of such person, corporation or other entity shall be permitted to perform contracted functions after daily operations at locations and in a manner mutually agreed by CCJPA and Amtrak; provided however, that no such employee or contractor shall unreasonably interfere with Amtrak's operation, servicing, maintenance and inspection of State-owned Equipment or of Amtrak Provided Equipment.

### 5. DAMAGE TO EQUIPMENT

When it is determined by arbitration or agreement as provided in Section 6 of this Agreement that damage to State-owned Equipment has been caused solely by the negligent acts or omissions of Amtrak, including its employees, contractors, or agents, Amtrak shall be solely responsible for the cost of clearing wrecks, repair of damage, or provision of replacement equipment to permit continued operation of the Service. For purposes of this Section, a railroad or other entity that has contracted to permit Amtrak to use its rail lines or services shall not be deemed to be a contractor or agent of Amtrak.

In the event Amtrak recovers costs from a third party due to damage to, or derailment of, State-owned Equipment, and CCJPA or State has contributed to the



costs for recovery and/or repair of the affected State-owned Equipment, such recovery shall be equitably pro rated among Amtrak, State and CCJPA, and CCJPA shall be reimbursed its pro-rata contribution by Amtrak in the form of a credit to CCJPA, to be applied to the next current month's invoice from Amtrak, and State shall be reimbursed its pro rata share, if any, in the form of a credit to be applied to Amtrak maintenance charges billed to State. In no event shall the amount of reimbursement to CCJPA or State exceed CCJPA's or State's original contribution or the amount recovered from the third party. To the extent that Amtrak is unable to pursue a third party responsible for damage to State-owned Equipment, then Amtrak shall assign such collection to CCJPA if requested.

As between Amtrak and CCJPA, as expressly set forth in this Section 5, "Damage to Equipment", all rights and duties regarding liability and indemnification shall be as set forth in Section 6 of the NOA.

#### 5.1 Property Insurance

During the term of this Agreement, Amtrak shall keep in effect at all times at State's expense its policy of property insurance covering the State-owned Equipment, currently with a limit of \$10,000,000, naming State as an additional insured and loss payee, the premiums for which shall be included in the Business Plan Update submitted pursuant to the terms of the ITA.

### 6. DISPUTE RESOLUTION

#### 6.1 Settlement of Disputes

All parties to this Agreement shall make every reasonable effort, through telephone communications, letters, and meetings, 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. 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.

#### 6.2 Controversies Subject to Arbitration

Any claim or controversy between or among the State, CCJPA, 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 6; provided, however, that no such claim or controversy shall be submitted to arbitration until it has first been submitted to the Caltrans Officer, CCJPA Officer, and Amtrak's assigned manager for resolution among them.

### 6.3 Arbitration Procedure

Any controversy, claim or dispute arising out of or related to the interpretation, construction, performance or breach of this Agreement which cannot be resolved by the parties, shall be submitted to mediation in the County of San Francisco, State of California, administered by the American Arbitration Association under its Commercial Mediation Rules. Mediation shall proceed and continue until the matter is either resolved, or the mediator finds, or the parties agree, that mediation should not continue. However, unless otherwise agreed, the mediation process shall not last more than sixty (60) days. If the parties cannot resolve the controversy, claim or dispute through the mediation process described above, the matter shall upon the request of any party, be settled by arbitration in the County of San Francisco, State of California, administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

### 6.4 Pending Resolution

Except as provided specifically in other Sections of this Agreement, when such arbitration is pending, the business, operations, physical plant and compensation for the Service 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 arbitrator(s) shall make a preliminary ruling to the contrary.

### 6.5 Cost of Arbitration

All direct costs and expenses of mediators, arbitrators, and associated facilities shall be borne equally by the parties to the dispute; all costs and expenses of each party other than those for payment to the mediator or arbitrator(s) and/or mediation or arbitration facilities shall be borne and paid for by the party which incurs such expenses.

### 6.6 Enforcement

Upon failure of a party to comply with an arbitration award issued pursuant to this Section, any other party to the dispute may refer the matter to a court of competent jurisdiction for enforcement of the said award. In the event legal proceedings (other than mediation and arbitration) are instituted to seek to require the non-compliant party to an arbitration to comply with a settlement agreed to in a mediation or an arbitration decision, the prevailing party in said enforcement proceedings shall be compensated for all costs associated with enforcement of the settlement, including attorneys fees, in addition to any other relief to which it may be entitled.

7. EMPLOYEE CONDUCT

7.1 Employee Conduct and Discipline

All Amtrak employees/contractors engaged in providing the Service shall be fully trained and qualified, according to Amtrak standards, and shall discharge their duties in a safe, courteous, and efficient manner. Employees dealing with the public shall be clean and properly attired while on duty. Amtrak shall properly discipline any employee whose conduct is not consistent with the proper and efficient operation of State-owned Equipment as listed below:

a. Repeated instances of willful failure to use the features of State-owned Equipment in accordance with this Agreement and Amtrak and manufacturer operating procedures;

b. Willful or negligent conduct resulting in damage to, or the degradation of, State-owned Equipment.

Amtrak shall promptly hold disciplinary hearings, and in accordance with the findings of those hearings assess discipline in accordance with applicable Amtrak labor agreements. Information pertaining to employee conduct witnessed by State or CCJPA employees should be forwarded to Amtrak West in Oakland, California. The provisions of this Section shall be governed by applicable Amtrak labor agreements.

8. EMERGENCIES

8.1 Force Majeure

Each party will be excused from performance of its obligations hereunder, except obligations involving payment to another party, where such non-performance is due to or in any manner caused by the statutes, laws, regulations, acts, demands, orders or interpositions of any federal, state, county or local government agency or joint powers authority having jurisdiction thereof, or by Acts of God, strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection or terrorism, track condition, or any other cause beyond the control of the excused party; provided that the party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy or remove such event in the shortest practical time.

8.2 Operation Disruption

Amtrak shall inform passengers on the Service of any foreseeable disruptions and resulting delays. Amtrak may make reasonable temporary adjustments in schedules or consists and take other such actions as are necessary to minimize interference with train operations caused by the performance of necessary track and roadbed maintenance, track construction work or construction of public utilities or highways.

### 8.3 Notification of Emergency

In the event of an emergency involving State-owned Equipment, as detailed in this Section, Amtrak shall notify State and CCJPA within two hours after Amtrak has been made aware of the occurrence of the emergency. Amtrak will notify State and CCJPA by any of the following procedures:

- a. The State 24 Hour Emergency Office;
- b. By contacting the San Francisco Bay Area Rapid Transit District Control Center;
- c. State "Arrow" terminal or printer; Sending a "FLASH" message.
- d. Through the CCJPA's printer; Sending a "FLASH" message.

For the purposes of this Section, an emergency that requires notification involves a fatality, including crew members, on-board personnel or passengers, and affects or was caused by State-owned Equipment or results in damages expected to exceed \$20,000 in repair or replacement of State-owned Equipment.

All other incidents not covered by the above shall be reported to State and CCJPA in the Daily Capitols Report.

## 9. TERMINATION

### 9.1 Termination for Cause by State or CCJPA

State or CCJPA may, at their sole discretion, terminate this Agreement upon thirty (30) days prior notification upon the occurrence of material breach of this Agreement, which shall include, but not be limited to, the following:

- a. Amtrak's refusal to perform any part of the Service scheduled or required under this Agreement when such refusal significantly disrupts CCJPA supervision and is not excused by any other provisions of this Agreement;
- b. Amtrak's insolvency or inability to meet its obligations, the filing of an involuntary petition in bankruptcy against it, the adjudication of bankruptcy, 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;
- c. Amtrak's failure to comply with a valid law, ordinance, rule, regulation or order of any legal entity or authority and that failure has a material impact on Amtrak's ability or fitness to carry out its obligations to provide the Service under this Agreement.

Notwithstanding the foregoing, Amtrak shall have thirty (30) days to cure such a material breach or, if such breach is of a nature that it cannot reasonably be cured within thirty (30) days, Amtrak shall commence such cure within such thirty (30) day period and diligently pursue such cure to completion.

## 9.2 Termination for Cause by Amtrak

Amtrak may, at its sole discretion, terminate this Agreement upon thirty (30) days prior notification upon the occurrence of material breach of this Agreement, which shall include, but not be limited to, the failure of CCJPA to make payments as required by the NOA or CCJPA's failure to perform its obligations hereunder.

Notwithstanding the foregoing, CCJPA or State, as the case may be, shall have thirty (30) days to cure such a material breach or, or if such breach is if a nature that it cannot reasonably be cured within thirty (30) days, CCJPA or State shall commence such cure within such thirty (30) day period and diligently pursue such cure to completion.

## 9.3 Termination for Convenience

State or CCJPA may, no later than ninety (90) days after the occurrence of any of the following, (except as to the event set forth in Section 9.3 f., in which case such termination shall be immediate) where the occurrence of the event makes it impossible or unsuitable for Amtrak to continue as operator of the Services, terminate this Agreement:

- a. The abolition or merger of CCJPA with another entity;
- b. Legislation or court decision requiring that another entity operate or finance the Service;
- c. Funding is not available for the Service;
- d. Patronage on trains included in the Service falls so short of projections that the Service is not deemed cost effective with respect to the transportation benefits and air quality goals;
- e. Legislation, regulation or court decision places on State or CCJPA, or on the operation of the Service, financial or operational burdens which are so great as to degrade Service quality below acceptable levels, or which impose unforeseen and excessive liabilities on State or CCJPA, or which raise costs to a level where costs are deemed by State or CCJPA to exceed benefits;
- f. State or CCJPA determines that continued provision of the Service by Amtrak will result in imminent danger to the public health or safety.

#### 9.4 Termination Upon Termination of Other Agreements

Notwithstanding anything to the contrary herein, this Agreement and the NOA shall terminate effective upon termination of the Interagency Transfer Agreement between State and CCJPA. CCJPA agrees to give notice to Amtrak, by overnight courier with confirmed delivery, promptly upon receipt of notice from State of termination of the Interagency Transfer Agreement in accordance with its provisions, or if given by CCJPA, promptly upon giving such notice to State. Effective upon termination of this Agreement and the NOA in accordance herewith, State may, but shall be under no obligation to, enter into a new transfer agreement with Amtrak with respect to the Capitol Corridor and the State-owned Equipment which is subject to the Equipment Lease, amend any existing operating agreement between State and Amtrak to include operations within the Capitol Corridor, or take other steps consistent with its interests.

#### 9.5 Termination Procedure

Except as set forth in Sections 9.3 and 9.4 above, upon termination, the party electing to terminate this Agreement shall follow the procedure set forth below:

- a. The party electing to terminate shall notify the others in writing and clearly state the basis for that action.
- b. The termination shall be effective no later than thirty (30) days after receipt of notice, except that a termination for cause shall not become effective if the other party has taken effective action to remedy the default within that thirty (30) day period.

#### 9.6 Rights and Obligations Upon Termination

- a. Amtrak shall bear any incremental cost incurred by either State, CCJPA or Amtrak that is due to termination for cause attributable to Amtrak.
- b. State shall bear any incremental cost incurred by either State, CCJPA or Amtrak that is due to termination for cause attributable to State.
- c. CCJPA shall bear any incremental cost incurred by either State, CCJPA or Amtrak that is due to termination for cause attributable to CCJPA.
- d. Upon termination of this Agreement for any reason at any time other than at the end of a Federal Fiscal Year, CCJPA shall pay the following termination costs to Amtrak:
  - (i) The reasonable cost of settling and paying claims 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 specific written instructions received from CCJPA concerning such termination; and
- (iii) Any other reasonable costs incidental to such termination of Service, specifically excluding, however, any costs of labor protection arising from such termination.

e. Termination pursuant to this Section shall be without prejudice to Amtrak's right to receive compensation and reimbursement pursuant to the provisions of Sections 4 and 5 of the NOA for service provided until and including the date of termination.

Notwithstanding all of the foregoing, the total amount of termination costs payable to Amtrak shall not exceed 1/12 of the approved contract amount for the Fiscal Year in which the termination occurs. No termination of this Agreement shall diminish or affect CCJPA's obligation to pay for any service rendered or to fulfill other obligations incurred prior to the effective date of the termination.

## 10. CONSTRUCTION

### 10.1 Section Headings; Governing Law

The Section headings used in this Agreement are for convenience only and shall not affect the construction of any of the terms hereof. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the District of Columbia without regard to conflicts of laws or choice of laws provisions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts as of the day and year first above written.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

APPROVED AS TO FORM AND PROCEEDINGS

William B. Bassett

ATTORNEY  
DEPARTMENT OF TRANSPORTATION

DATE: July 1, 1998

BY: [Signature]

and

CAPITOL CORRIDOR JOINT POWERS AUTHORITY

DATE: 7-1-98

BY: [Signature]

and

NATIONAL RAILROAD PASSENGER CORPORATION

DATE: 7/1/98

BY: [Signature]  
President  
Amtrak West





APPENDIX 1

STATE-OWNED EQUIPMENT OPERATING PROCEDURES

## DOOR CONTROL

### EQUIPMENT

The California Car is equipped with trainlined door control, to maximize passenger flow in boarding and alighting operations, and thereby minimize station dwell time. Each cab and trailer has two 52-inch wide passenger door openings on each side of the lower level. The doors are of the sliding pocket type, electrically controlled and pneumatically operated, with two door panels for each door opening.

The doors may be controlled from control panels located adjacent to the door openings at the "B" end of the car. The control panels are accessible and operable by a standard conductor's key. Each panel may be configured to control all doors ahead of the local door, all doors behind the local door, or the local door alone. The door control system is interlocked with the propulsion control system to prevent motion of the train when any of the doors are opened for passenger boarding or alighting. An override button is provided to allow one door leaf to be kept open upon departure at speeds up to 10 miles per hour, to allow Amtrak personnel to look out the door and in either direction of train travel. The override button must be kept depressed to keep the door open.

The lower floor of the California Car is 18 inches above the Top of Rail. Station platforms in California are intended to be constructed or modified to a height of 8 inches above the Top of Rail. The predominant step height between platform and car floor throughout California is therefore 10 inches. There are, however, platforms lower than the Top of Rail.

### PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the doors and trainlined door control system. The following shall supplement Amtrak's standard boarding and alighting procedures:

- Both leaves shall be opened at active doors throughout boarding and alighting.
- At stations with platforms constructed to 8 inches above the Top of Rail, all doors on the platform side of the train shall be opened for boarding and alighting when the train is stopped at a station.
- At stations with platforms constructed to 8 inches above the Top of Rail, when a consist is longer than a train platform, or the train must be stopped such that not all doors are positioned over the platform, only those doors over the platform shall be opened.
- At stations with platforms lower than 8 inches above the Top of Rail, the number of doors opened shall equal the number of train Amtrak personnel

available to attend boarding and alighting, with one Amtrak personnel per open door.

- At stations with platforms lower than 8 inches above the Top of Rail, Amtrak personnel shall deploy step boxes on the platform to assist fully ambulatory passengers in boarding and alighting.
- When one or more wheelchair lift is deployed at any station, at least one other door shall be opened and crewed for boarding and alighting of fully ambulatory passengers.

## WHEELCHAIR ACCESS

### EQUIPMENT

The California Car is designed to maximize access to the car, its amenities and features for all passengers, regardless of physical ability. It is equipped with on-board wheelchair lifts, one on either side of the car, both located at the door openings at the "B" end of the car. The wheelchair lifts are manually deployed and electrically operated, and can be used for the boarding and alighting of passengers in wheelchairs over the entire range of platform/car floor height differentials. Door openings at the "B" end of the car are identified by standard wheelchair access symbols.

The lower level passenger seating area of the California Car is designed for access by passengers in wheelchairs. Two spaces for passengers in wheelchairs are provided in the lower level passenger seating area. These spaces are equipped with tip-up passenger seats which when stored, allow ample space for the positioning of a wheelchair, according to ADA requirements. In addition, all double and single seats have movable armrests to allow the transfer of a passenger from a wheelchair to a standard passenger seat.

There are two lavatories on the lower level, of which the one at the "A" end is designed for access by passengers in wheelchairs.

### PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the on-board wheelchair lifts. The following shall supplement Amtrak's standard procedures for providing access to passengers with physical disabilities.

- Amtrak personnel attending passenger doors shall identify in advance passengers on the train or on the platform who will require use of the on-board lift(s), and direct them to attended, lift-equipped doors.
- If all wheelchair seating locations in a given car are full, and a boarding passenger in a wheelchair does not wish to transfer to a standard seat, the passenger shall be directed to the nearest attended lift-equipped door, in a

car that has adequate capacity. If no other lift-equipped door is attended, Amtrak personnel shall attend the nearest lift-equipped door in a car that has adequate capacity.

- At stations with platforms lower than 8 inches above the Top of Rail, if lifts are deployed at one or more equipped door openings, at least one additional door shall be open and attended for the boarding and alighting of fully ambulatory passengers.
- Amtrak personnel attending doors where lifts are deployed shall direct fully ambulatory passengers to other doors for boarding and alighting.
- Amtrak personnel shall provide assistance as required or requested to passengers using the on-board lift to ensure their safe and secure boarding and alighting.
- Amtrak personnel shall direct passengers in wheelchairs to designated seating locations in the lower level passenger seating area, and shall provide whatever assistance is required to ensure that both the passengers and their mobility aids are safely and securely situated.
- Wheelchairs of passengers transferring to standard seats shall be stored, if possible, in the bicycle storage locker of the same car. If the bicycle storage locker is entirely occupied by bicycles or other mobility aids, the passenger will be directed to a wheelchair seating location.
- Priority for use of wheelchair seating locations in a given car will be given to passengers in wheelchairs, over fully ambulatory passengers traveling with passengers in wheelchairs and using the tip-up seats, unless additional capacity can be provided in other cars.
- Groups of passengers traveling together in wheelchairs will be accommodated to the extent possible in a single car. If available capacity in a single car is exceeded, one or more passengers shall be asked to transfer to standard passenger seats if wheelchair storage space is available, or shall be directed to the nearest available car with adequate capacity. The on-board lift on that car shall be attended if it is not already.

## INFORMATION DISPLAYS

## EQUIPMENT

The California Car is equipped with trainlined destination and passenger information displays. The displays will be used to provide advance notice of station arrivals, service information, and any such public information that Caltrans specifies. Two displays are located on the outside of the car, on either side, two in the upper level passenger area and two in the lower level passenger area. An additional display is

provided on the "A" end of cab cars. Food service cars will have only one display in the lower level.

The system is controllable from a display keyboard, one of which is located in the electrical locker of each car. The displays for an entire consist may be controlled from the electrical locker of any car. The trainlined information display system has the capability, via Global Positioning System (GPS) technology, for preprogramming of all station announcements on a given route. Until this capability can be utilized, however, individual station announcements shall be made by Amtrak personnel in advance of arrivals. The information displays will also be programmable in advance with background information to be determined by Caltrans. Cab end displays shall indicate the terminus of the route to which the train is assigned.

## PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the trainlined destination and passenger information signs. Some of the following procedures will become unnecessary when the full GPS-based capability of the destination sign system becomes available.

- Caltrans, and Amtrak will agree on the content and format of all information to be programmed for display.
- Maintenance personnel shall ensure that only and all of the information determined by or agreed to with Caltrans is programmed for display in every car.
- Amtrak personnel shall scroll through all display contents in advance of each departure to verify the operability of the system and the content of preprogrammed background information and station announcements.
- Amtrak personnel shall monitor the operation of the system and content of all display information periodically throughout the course of each trip.
- Amtrak personnel shall key the appropriate code for each station stop in advance of arrival, prior to making a voice announcement.
- Amtrak personnel shall ensure that next stop information is canceled or overridden following each station stop.

## AUDIO ENTERTAINMENT SYSTEM

### EQUIPMENT

California Car cabs and trailers provide at-seat audio entertainment and information. Each car is equipped with a 3-channel audio system, with a central

control complex located in the electrical locker. The audio system includes two multiple-disc compact disc changers, a cassette tape player/AM-FM radio tuner, and an amplifier. Each seating location is provided with personal control unit (PCU) with channel selector and volume controls. The PCU accepts standard personal wire-type headsets, either passengers' personal property or headsets purchased on board the train. The audio entertainment broadcast may be overridden by Amtrak personnel or prerecorded voice announcements from the public address system.

## PROCEDURES

Amtrak personnel shall follow all manufacturer's prescribed procedures in the operation of the audio entertainment and information system.

- CCJPA and Amtrak will agree on the content and format of all information to be programmed for broadcast.
- Maintenance personnel shall ensure that only and all of the entertainment and information determined by or agreed to with CCJPA is programmed for broadcast in every car.
- Amtrak personnel shall ensure the security of the central control complex in the electrical locker of each car.
- Amtrak personnel shall vend headsets to passengers from the food service car upper level service area and any cart-based point of sale for a price to be agreed with Caltrans.

## SEAT BACK INFORMATION CARDS

### EQUIPMENT

Most seat locations in California Car cabs and trailers will be provided with seat-back magazine nets. These will be used to provide passengers with printed vehicle information, safety and emergency procedures, entertainment programming, Amtrak, CCJPA or Caltrans periodicals and marketing material.

## PROCEDURES

- CCJPA and Amtrak will agree on the content and format of all material to be provided at seat locations.
- Amtrak personnel will ensure the provision of current agreed material at each seat location prior to each departure at the beginning of each day of service.
- Amtrak personnel will ensure that sufficient replacement material is available aboard each train to replace that removed or requested by passengers.

## LAVATORIES

### EQUIPMENT

Lavatories in California Cars incorporate several features that differ from those on existing Amtrak equipment operated in California. In particular, the lavatories include attendant call buttons, electric hand dryers, disposable soap dispensers, and infant diaper changing tables (Accessible lavatory only).

The lavatory attendant call system is trainlined to sound an audible signal in each car of the train. The car in which the call button has been activated will indicate via lights at each upper level inter-car passageway the specific space to which the call applies.

### PROCEDURES

- Amtrak personnel shall verify the operability of all equipment and features, the cleanliness of the spaces and fixtures, and the provision of sufficient consumables in each lavatory space prior to each departure.
- Once the issue of misplacement of the attendant call button has been resolved, upon the sounding of a lavatory attendant call, Amtrak personnel shall identify the car and lavatory from which the call was initiated. Amtrak personnel shall knock on the lavatory door and inquire as to the assistance required. Should no response result, Amtrak personnel shall unlock the door, if locked, evaluate the situation and render assistance as necessary.
- Amtrak personnel shall reset the attendant call system, using the dedicated reset switch in the electrical locker, immediately upon completion of their assistance on scene.
- Amtrak personnel shall monitor the operability of all equipment and features, the cleanliness of the spaces and fixtures, and the provision of sufficient consumables in each lavatory space at the beginning of each trip.
- Amtrak personnel shall restock all consumables in each lavatory (toilet tissue, hand soap, seat protectors, facial tissue, etc.) as required at the beginning of each trip in addition to the standard end of service stocking.

### FOOD SERVICE

CCJPA and Amtrak will determine, via separate and supplemental agreement, the standards, practices and procedures for the provision of service within the food service cars or via cart-based food service, unless, in the opinion of State, a disproportionate food service cost is incurred by State due to variance in services provided by Amtrak for San Joaquin service, in which case State consent must be obtained.



## SEATS

### EQUIPMENT

The California Car cabs trailers and baggage combines are equipped with single and double seats designed and arranged to maximize the comfort, convenience, aesthetics, and accessibility of the equipment. The intent of the equipment is that every passenger shall be provided the most comfortable travel possible for their fare.

The majority of seating in the passenger areas is in paired seats. A small number of single seats are provided as well. All seats are equipped with armrests that may be raised or lowered according to the preference of the passengers and to facilitate access to and egress from the seats. Seat pairs are fitted with center armrests between the two seating locations. When raised, the center armrest stows flush with the seat back, providing a continuous bench seat, wider than the two normally available widths combined.

### PROCEDURES

A paid individual passenger boarding the California Car is entitled to one seat location for his or her person. No passenger shall be entitled to more than one seat location for their person or any personal effects. Only if light loading permits shall passengers use adjacent seat locations for placement of their belongings.

Amtrak personnel shall provide every assistance necessary for elderly or physically challenged passengers to be placed in or moved from a seat. In the event that an individual location, either a single or double seat, is not sufficient for the comfortable accommodation of a passenger because of physical dimension or handicap, such a passenger shall be permitted to occupy the entire width of a double seat with the center armrest raised. This expanded occupancy shall be provided at no additional cost to the passenger.

### BICYCLES

Amtrak shall permit passengers to bring bicycles on the trains, subject to the terms of this Agreement.

### EQUIPMENT

Each California Car cab and trailer are equipped with a bicycle storage and securement unit, located in one passenger vestibule diagonally across from the accessible lavatory. The unit provides space and securement for up to three bicycles, stored vertically on their rear wheels and secured to the inside bulkhead of the unit.

## PRIORITY

Bicycles shall be accommodated on California Car consists or consists including one or more California Cars, up to the combined capacity of California Car bicycle storage units. All State supported train consists and any special trains made up of or including California Cars shall accommodate bicycles to the extent of the available bicycle storage capacity.

The primary purpose of the bicycle storage unit shall be to secure storage and securement of bicycles. All bicycles boarding a consist of California Cars shall be stored and secured in the bicycle storage units.

## CAPACITY

Should the number of bicycles boarding a train made up of, or including, California Cars exceed the available bicycle storage capacity, the Conductor shall determine the available passenger space in the lower level of the cars. At the discretion of the conductor, additional bicycles may be boarded, provided that:

- a. They are held in a standing position in the lower level passenger seating area by the subject passenger and do not obstruct or impede the passage of other passengers, or
- b. They are held in a standing position in one of the lower level vestibules and do not obstruct or impede the passage of other passengers.

Amtrak personnel shall monitor bicycle storage capacity and direct passengers boarding bicycles in excess of the bicycle storage capacity of the car being boarded to other cars with available capacity. Should a passenger attempt to board a bicycle on a train which is at bicycle capacity, Amtrak personnel shall deny that boarding if the Amtrak personnel judges that regular passenger loading precludes the safe carriage of the bicycles.

## PROCEDURES

The following procedures shall be followed by Amtrak personnel in boarding, storing and alighting passengers with bicycles:

- a. Passengers boarding California Cars with bicycles shall be directed to the doors opening to the vestibule in which the bicycle storage unit is located.
- b. Passengers shall carry bicycles, clear of the ground, from the platform into the vestibule of the car. Amtrak personnel shall assist passengers carrying bicycles as necessary to ensure safe and expeditious boarding.
- c. In the vestibule, bicycles shall be lifted to a vertical position, with their rear wheels on the floor, for movement into the bicycle storage unit.

- Amtrak personnel shall assist passengers storing bicycles, as necessary, to ensure safe and expeditious boarding.
- d. Bicycles shall be secured in the bicycle storage unit as directed by storage device instructions, conspicuously displayed in or adjacent to the bicycle storage unit and included in this Appendix. Bicycles may be locked in the storage unit by passengers with personal bicycle locks.
  - e. Passengers boarding bicycles shall take seats in the passenger seating areas of the train. Passengers with bicycles may remain in the company of their stored bicycle at the discretion of the Amtrak personnel if they do not obstruct or impede the passage of other passengers.
  - f. Audible announcements of the next scheduled station stop shall provide adequate notice for passengers to remove bicycles from the storage unit.
  - g. Passengers shall carry bicycles, clear of the ground, from the vestibule to the platform. Amtrak personnel shall assist passengers carrying bicycles as necessary to ensure safe and expeditious alighting.

#### GROUPS OF BICYCLISTS

Groups of bicyclists shall be accommodated to the extent of available bicycle storage space on each car and in an entire consist. Should the number of passengers in a group boarding bicycles exceed the storage capacity of a single car, Amtrak personnel will direct the group to store additional bicycles in other cars. Should the number of passengers in a group boarding bicycles exceed the storage capacity of an entire train, Amtrak personnel will advise the group accordingly, and allow them the option to board part of the group or wait for a following train. At no point shall the safety and comfort of any other passengers be compromised to accommodate passengers carrying bicycles in excess of the capacity of the consist.



**AMENDMENT 2**  
to  
**NATIONAL RAILROAD PASSENGER CORPORATION**  
and  
**THE STATE OF CALIFORNIA**  
**AGREEMENT DATED OCTOBER 1, 1997**  
**FOR FISCAL YEAR 1998**  
**October 1, 1997 to September 30, 1998**  
and  
**AMENDMENT 1**  
to  
**TRANSFER AGREEMENT BETWEEN**  
**THE CALIFORNIA DEPARTMENT OF TRANSPORTATION**  
**(CALTRANS)**  
**AND**  
**THE NATIONAL RAILROAD PASSENGER CORPORATION**  
**(AMTRAK)**  
**FOR THE TRANSFER AND OPERATION OF**  
**STATE PROVIDED RAIL EQUIPMENT**  
**DATED NOVEMBER 20, 1994**

**THIS AGREEMENT** (the Amendment Agreement) is made as of the date last set forth below by and between the State of California, by and through the Department of Transportation (STATE) and the National Railroad Passenger Corporation (AMTRAK) with reference to the following:

WHEREAS, AMTRAK and the STATE are parties to the above-captioned Agreement dated October 1, 1997, for the Statewide provision of rail and bus feeder services (the "Operating Agreement"); and

WHEREAS, AMTRAK and the STATE are parties to the above-captioned Agreement dated November 20, 1994, for the transfer and operation of State-provided rail equipment (the "Transfer Agreement"); and

WHEREAS, AMTRAK and the Capitol Corridor Joint Powers Authority (Authority) now intend to contract for the provision of rail and bus feeder services on a portion of the prior Statewide service, designated as the Capitol Corridor, from San Jose to Sacramento to Colfax (previously Roseville) (the Capitol Corridor Service); and

WHEREAS, STATE and the Authority have concluded negotiations and are prepared to execute, contemporaneously with the execution of this Amendment Agreement, the necessary agreements to accomplish the transfer of operational supervision over the Capitol Corridor Service, the lease of such State-owned rail passenger equipment as shall be allocated to that Capitol Corridor Service, and STATE funds budgeted to STATE for the STATE share of the cost of that Capitol Corridor Service to be now allocated from STATE to Authority for the Authority to support that Capitol Corridor Service pursuant to the provisions of California Government Code Section 14076.2 (collectively, the Agreements); and

WHEREAS, the STATE is authorized by applicable state law to enter into this Amendment Agreement on the terms and conditions hereinafter set forth.

**NOW THEREFORE**, the parties hereto agree as follows:

1. That the rights and obligations contained in the Operating Agreement and the Transfer Agreement which relate to operational supervision of the State-supported Capitol Corridor Service by the STATE, which rights and obligations have been assigned or delegated to the Authority by the Agreements, are suspended, excluding from such suspension and reserving to the STATE, all rights and obligations not so assigned to the Authority. Such suspension shall remain in effect until such time as the parties execute a subsequent amendment or amendments to one or more of the Operating Agreement, the Transfer Agreement and the Agreements, or the parties enter into new or substitute agreements, reinstating the Capitol Corridor Service under the operational supervision of the STATE.

2. That such suspended rights and obligations of the STATE include all provisions related to operations supervision of State-supported Capitol Corridor Service contained in (a) the Operating Agreement, (b) all such provisions in the Appendices thereto, and (c) the Transfer

Agreement which have been assigned to the Authority by the Agreements. STATE has prepaid July 1998 operational costs of \$959,833 and will prepay total operational costs, including maintenance costs, of \$1,919,666 for the months of August and September 1998 to fund, on behalf of Authority, the Authority's operating contracts with AMTRAK (the New Operating Agreement or "NOA" and New Transfer Agreement or "NTA", both of even date herewith).

3. That the suspended aspects of the Operating Agreement and the Transfer Agreement shall not include the maintenance of the rail passenger equipment for the Capitol Corridor Service, which will continue to be under STATE control, as provided under the terms of the NOA and NTA and in accordance with the MAINTENANCE AGREEMENT BETWEEN CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) AND NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) FOR THE MAINTENANCE OF THE STATE PROVIDED EQUIPMENT DATED NOVEMBER 20, 1994 (the "Maintenance Agreement"). Moreover, the parties agree that the STATE's rights, duties, and obligations relating to maintenance facility access, contained in Section 4.2 of the Transfer Agreement, are not suspended by this Amendment Agreement and remain in full force and effect. STATE has retained \$506,000 for the payment of August and September 1998 AMTRAK maintenance costs directly to AMTRAK.

4. That the parties hereto acknowledge and understand that, as of the date of this Amendment Agreement, the Capitol Corridor Service shall no longer be under STATE operational supervision, as the Service continues under the NOA and the NTA.

5. That subsequent to the date of this Amendment Agreement, as the need arises, the parties hereto, AMTRAK and the STATE, will enter into any necessary agreement(s) regarding the interpretation and implementation of this Amendment Agreement by administrative letters which further define details regarding the transition of operational authority for the Capitol Corridor Service and its related impact on other State-supported rail and bus services retained by the parties to this Amendment Agreement.

6. ALL OTHER TERMS AND CONDITIONS OF THE OPERATING AGREEMENT DATED OCTOBER 1, 1997, THE APPENDICES THERETO AND THE TRANSFER AGREEMENT DATED NOVEMBER 20, 1994, SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment Agreement to be executed by their duly authorized officers.

NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 7/1/98

By: Robert O. Mollen  
President  
Amtrak West

and

THE STATE OF CALIFORNIA

Approved as to Form and Procedure

William B. Bassett

Attorney

Department of Transportation

Dated: July 1, 1998

By: James Van Loben Sels  
Department of Transportation  
JAMES VAN LOBEN SELS  
Director