

AGREEMENT BETWEEN THE
NORTH SAN DIEGO COUNTY TRANSIT DEVELOPMENT BOARD AND THE
ORANGE COUNTY TRANSPORTATION AUTHORITY AND THE
SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY FOR THE
IMPLEMENTATION OF COMMUTER RAIL SERVICE
AT THE OCEANSIDE TRANSIT CENTER
BETWEEN OCEANSIDE AND LOS ANGELES

This AGREEMENT is hereby entered into this 23 day of MARCH 1994, by and between the North San Diego County Transit Development Board, a public agency, having its offices at 311 South Tremont Street, Oceanside, California 92054 (hereinafter referred to as "Board"), the Southern California Regional Rail Authority, a public agency, having its offices at 818 West 7th Street, Los Angeles, California 90017 (hereinafter referred to as "SCRRA") and Orange County Transportation Authority, a public agency, having offices at 550 South Main Street, Orange, California 92613-1584 (hereinafter referred to as "OCTA.")

WITNESSETH

WHEREAS, the Board, on behalf of itself and pursuant to a Memorandum of Understanding with the San Diego Metropolitan Transit Development Board, is the developer and operator of a commuter rail system referred to as the San Diego Northern Railway, which acts as the operating entity for the Board; and

WHEREAS, the OCTA is the owner with SCRRA acting as the operating entity of the Orange and Olive Subdivisions and has funded the construction of certain improvements at the Oceanside Transit Center for the purpose of implementing commuter rail service; and

WHEREAS, the Board has constructed, or has caused to be constructed, improvements at the Oceanside Transit Center; and

WHEREAS, the Board, OCTA and SCRRA desire to enter into an agreement setting forth the conditions and responsibilities of all parties related to the operation of SCRRA trains on rights-of-way and stations owned or operated by the Board;

SCRRA (3/9/94)

NOW THEREFORE, IT IS MUTUALLY AGREED by and between the Board, OCTA and SCRRA, as follows:

1. Train Operations

a. SCRRA, acting for OCTA, will implement regularly-scheduled commuter rail service at the Oceanside Transit Center on or around March 28, 1994.

b. All proposed commuter rail service provided by OCTA and SCRRA will be mutually agreed upon with the Board.

c. OCTA and SCRRA will provide rolling stock equipment and all SCRRA operating crews and related functions at their own expense.

d. Levels of service provided to Oceanside shall solely be determined by OCTA or SCRRA.

e. The Board shall not be responsible to pay any operating subsidies for the provision of SCRRA service to Oceanside.

f. Access to the Board's right-of-way and Oceanside Transit Center shall be at no cost to OCTA or SCRRA.

g. At such time as the Board begins train operations, the Board and SCRRA will endeavor to assist each other at the layover location and Oceanside Transit Center in case of service disruptions or mechanical failures. Both the Board and SCRRA acknowledge that provision of their normal service shall have first priority.

h. OCTA and SCRRA shall permit, at no cost, the Board to move equipment in non-revenue status on property operated by the SCRRA.

2. Right-of-Way Maintenance

a. The Board will be responsible, at its own expense, for railroad maintenance-of-way, including but not limited to, track, signals, structures maintenance, utilities, right-of-way cleaning and security in San Diego County, including the railroad right-of-way between Oceanside Transit Center (MP226.4) and the Orange County/San Diego County border (MP207.4).

b. The Board will 1) maintain all facilities to the level of maintenance required in the OCTA and Board shared use agreements dated October 30, 1992, and any subsequent agreements with any other rail carriers, 2) continue maintenance activities at a level equivalent to that provided on the Board's line from Oceanside to San Diego. Appendix A contains the current speeds which will be updated as required and is incorporated herein by reference.

c. Subject to the availability of Caltrans' funds, the Board, OCTA and SCRRA will work with Caltrans to promptly implement the upgrading program at current San Onofre Siding including powered switches and signals and construct the new Las Pulgas Siding. The parties agree to work jointly to complete work at these locations by September 30, 1994.

d. The Board will inform SCRRA fifteen (15) working days prior to the start date of any scheduled program or capital work that will impact SCRRA's ability to maintain its published schedules pursuant to Section 1.

3. Oceanside Transit Center

a. OCTA/SCRRA passengers, guests, contractors and employees shall be permitted unrestricted access to the Oceanside Transit Center. Such access shall be at no cost to OCTA, SCRRA or its passengers, guests, contractors or employees and shall be equivalent to that provided to other transportation users of the Oceanside Transit Center.

b. The Board, at its own expense, will operate, maintain and provide security at the Transit Center. The level of maintenance and security shall be equivalent to that provided other users at the Oceanside Transit Center and shall include, but not be limited to scheduled cleaning and general maintenance, provision of utilities and security during all hours SCRRA is operating. The Board shall not be responsible for operations, servicing or maintenance of SCRRA ticket vending machines or related equipment.

c. OCTA and SCRRA, at their own expense, will be responsible, under separate agreement, for contracting with the Board for the installation of any equipment or signage. The Board will permit, at no cost, SCRRA to install SCRRA ticket vending machines,

validators and signage, which shall be considered on SCRRA property, at the Oceanside Transit Center at locations to be mutually agreed upon.

d. The Board will inform SCRRA fifteen (15) working days prior to the start date of any maintenance or capital work that will impact SCRRA's ability to operate out of the Oceanside Transit Center pursuant to Section 1.

4. SCRRA Train Storage Locations

a. The Board shall provide temporary and permanent layover locations.

b. Access to the temporary or permanent layover location shall be at no cost to OCTA or SCRRA. Access will also be granted at no cost to the Board's Fallbrook Yard building facility for SCRRA train crews until such time as a permanent operating facility is available. Access will be on a 24-hour a day basis.

c. The Board shall, at its own expense, contract, except as provided in Section 9, operate and maintain the physical fixed plant at any layover location including, but not limited to, provision of utilities, building, track, signal and machinery maintenance.

d. SCRRA shall provide, at its own expense, non-fixed equipment required to operate SCRRA train service including fax machines and printers. At any temporary location, SCRRA will provide a trailer for its maintenance of equipment personnel.

e. The Board shall make available any crew facilities at its permanent site, at its own expense, as SCRRA and the Board may agree.

f. SCRRA will provide, at its own expense, security at the temporary or permanent layover facilities until such time as the Board occupies such facilities for acceptance of equipment or train operations. At such time as the Board stores equipment at such a location, each party shall pay one-half the security costs.

g. The Board shall provide storage capacity and facilities for turnaround maintenance as generally defined in Appendix B at its

permanent layover location for 34 cars and 9 locomotives or any combination thereof.

h. Dispatching of trains from any layover location shall be in such a manner so as to ensure on-time operation of both SCRRA and the Board's service.

5. Maintenance of Rolling Stock

a. SCRRA will be responsible for layover maintenance on its own equipment at any temporary or permanent layover location until such time as the Board informs SCRRA, with thirty (30) days written notice, that it has the facilities and manpower available to maintain SCRRA equipment.

b. As soon as the Board has a designated operator to maintain equipment, SCRRA and the Board will negotiate an agreement on mutual maintenance of equipment.

6. Revenues

a. All revenues received for transportation to and from Oceanside Transit Center on SCRRA provided services including those related to Section 15 accruals as determined by the Federal Transit Administration, shall be credited solely to SCRRA.

b. SCRRA shall be solely responsible for setting fares and determining fare policy to and from Oceanside on SCRRA provided services.

7. Review of Records and Audit

a. All records related to or concerning any payment made under this Agreement shall be subject to the review of the requesting parties during reasonable business hours.

b. Each party may at any time, at their own cost, conduct or have conducted an audit of all records relating to or concerning any payment made pursuant to this agreement. The parties shall fully cooperate in providing information necessary to conduct said audit.

8. Labor Obligations

a. Neither SCRRA, OCTA or the Board shall be liable to others or to the employees of the other for any labor protection or other dismissal allowance, displacement allowance or other related costs, benefit or expense, (including attorneys fees) arising from any claims, demands or liability asserted by an employee of the other that results from any changes on either parties operations or service levels, or changes in any of the service provided by one party to this Agreement to any of the others. If an employee (or a representative of the employee) of any party to this Agreement asserts any such claims against any other party, the party that is the employer of the person or persons submitting the claims (or on whose behalf the claims are submitted) shall indemnify the other.

b. The Board, OCTA and SCRRA will promptly inform each other of the filing of any Federal Transit Administration grant applications for commuter rail related activities. If any labor costs are incurred by an affirmative action against one party, that party will be responsible for the cost of any Labor protection obligations.

c. No party to this Agreement will require the performance by any other party, nor will it exercise any rights under this Agreement, in a manner that would cause the other to violate the terms of or incur penalties under, unless reimbursed by the party requiring the performance, in connection with any then current labor agreements between the other party and any organization representing any of its employees. Each party represents that performance of the obligations of this Agreement will not cause it to violate the terms or conditions of any agreement between itself and any organization representing any of its employees.

9. Compensation

As sole payment for all access granted in this Agreement, including but not limited to, access to the Board's right-of-way, temporary and permanent layover locations and full use of the Oceanside Transit Center, OCTA shall provide to the Board as its only contribution for access, \$2,000,000 (two million dollars) which shall be used for construction of storage capacity as specified in Section 4(g). This shall be the only cost for OCTA, SCRRA, its

passengers, guests, employees and contractors.

10. Effective Date, Term and Termination

a. Subject to annual appropriations by OCTA to SCRRA and by the Board, SCRRA and the Board's obligations provided hereunder shall commence on or about March 28, 1994 and continue perpetually unless terminated as expressly provided in Section 10(b).

b. This Agreement may be terminated as follows:

1) By the mutual consent of all parties upon a date mutually agreed upon.

2) By any single party for default, as defined in Section 11.

11. Defaults

a. The occurrence of the following event shall constitute and "Event of Default" under this Agreement:

The failure by any party to observe or perform any of the covenants, conditions or provisions of this Agreement to be observed or performed by that party, as and when due, where such failure shall have continued for a period of 30 days after the defaulting party shall receive notice of a default of this Agreement; provided, however, that if the nature of the default is such that more than 30 days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if that party commences such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

b. In the event of any dispute between the parties with respect to an alleged default or an alleged Event of Default, the parties shall resolve their dispute in accordance with the provisions of Section 14. The arbitration award shall be enforceable as provided in the California Code of Civil Procedure.

c. No waiver by either party of any provisions hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision. Either party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act by the other party.

12. Insurance/Indemnification

a. Board agrees to defend, indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability for injury to, death of, or property damage suffered by any employee of the Board, or any employee of their contractors or agents.

b. Board agrees to indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or any of their employees, guests, agents or servants, from any and all liability to a third party caused by or resulting from negligent maintenance of any railroad right-of-way in San Diego County, including but not limited to track, signals, structures, utilities, right-of-way cleaning and security in San Diego County, except where such liability was caused by or resulted from the operation of a train by the SCRRA. Such indemnity shall include but shall not be limited to claims investigation expenses and defense costs.

c. Board agrees to indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability to a third party caused by or resulting from negligent maintenance of or negligent undertaking of capital work at the Oceanside Transit Center, except where such liability was caused by or resulted from embarking, riding in, or disembarking from a train operated by SCRRA. Such indemnity shall include but shall not be limited to claims investigation expenses and defense costs.

d. Board agrees to indemnify and save harmless SCRRA and OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability to a third party caused by or

resulting from negligent maintenance of any temporary or permanent layover location, except where such liability was caused by or resulted from the operation of a train by the SCRRA or the provision of security by the SCRRA in accordance with the terms of this Agreement. Such indemnity shall include but shall not be limited to claims investigation expenses and defense costs.

e. Board agrees to indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability to a third party arising from or related to the upgrading program at the San Onofre Siding or the construction of the new Las Pulgas siding. Such indemnity shall include but shall not be limited to claims investigation and defense costs.

f. Board agrees to indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability to a third party for loss of, damage to or destruction of any track, signal, utilities, or any other property or equipment owned by, leased to, used by or otherwise control, custody or possession of the Board in connection with any operation or service by the Board under this Agreement.

g. Board agrees to indemnify and save harmless SCRRA and the OCTA, irrespective of any negligence or fault of the SCRRA and the OCTA, or of any of their employees, guests, agents or servants, from any and all liability for injury to, death of or property damage suffered by any person as a result of gross negligence or violation of any law or regulation by the Board or any/or any of their employees, agents or contractors. Such indemnity shall include but shall not be limited to claims investigation expenses and defense costs.

h. Board shall participate in any settlement negotiations involving any indemnity obligations of the Board arising from negligent maintenance, gross negligence, and/or violation of any law or regulation by the Board. In the event that the Board, SCRRA and OCTA cannot agree on a settlement amount, the allegations of negligent maintenance, gross negligence and/or violation of any law shall be defended by the Board. Upon such severance,

SCRRA and the OCTA, shall have no further liability for any such claims.

i. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or any of their employees, guests, agents or servants, from injury to, death of, or property damage suffered by any employee of the SCRRA and/or the OCTA, or any employee of their contractors or agents.

j. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability to a third party caused by or resulting from embarking, riding in, or disembarking from a train operated by SCRRA.

k. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability to a third party resulting from collision with or in any way caused by a train operated by SCRRA.

l. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability for injury to, death of, or property damage suffered by any third party arising from or related to the negligent provision of security at temporary or permanent layover facilities until such time as the Board occupies such facilities for acceptance of equipment or train operations.

m. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or of any of their employees, guests, agents or servants, from any and all liability or alleged liability for injury to a third party for loss of, damage to or destruction of any locomotive, passenger car, rolling stock, ticket vending machines, non-fixed equipment required to operate train service, or any other property or equipment owned by, leased to, used by or otherwise in control, custody or possession of SCRRA and/or OCTA in connection with any operation or service by SCRRA under this Agreement.

n. SCRRA and OCTA agree to defend, indemnify and save harmless the Board, irrespective of any negligence or fault of the Board, or of any of their employees, guests, agents or servants, from any and all liability for injury to , death of or property damage suffered by any person as a result of gross negligence or violation of any law or regulation by SCRRA and/or OCTA, or any of their employees, agents or contractors.

o. SCRRA and the Board agree to maintain in full force and effect at its own cost and expense in a form and with insurance companies acceptable to both parties.

- (1) Railroad Liability including coverage in the amount of \$75,000,000 for bodily injury and property damage, operations of the rail passenger service, contractual liability and limited pollution resulting from hostile fire and collision, upset, derailment of a train or motor vehicle.
- (2) The policy under Section 12(o)(2) shall be subject to a maximum Self-Insured Retention of \$3,000,000 of which each party will be responsible for the Self-Insured Retention unless these incidents are due solely to the gross negligence or willful misconduct of each party under this agreement.

13. Force Majeure

a. Each party will be excused from performance of any of its obligations to the other party, where such nonperformance is occasioned by any event beyond the non-performing party's control, which shall include without limitation, any order, rule, or regulation of any federal, state or local government body, agent, or instrumentality, work stoppage, except as noted above, accident, natural disaster, or civil disorder; provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, or remove such event in the shortest practical time.

b. Section 13(a) notwithstanding, in the event of a concerted activity that disrupts the Board's provision of any service in this Agreement, the Board shall immediately provide personnel at a level equivalent to that provided on other Board lines to ensure SCRRA's provision of train service.

c. In the event of a concerted activity that prevents the Board from maintaining its rights-of-way or maintaining SCRRA equipment, SCRRA may provide qualified personnel to provide such functions on the Board's territory on which SCRRA provides regularly scheduled service at the Board's expense.

14. Resolution of Disputes

a. All parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to arbitration. The parties shall make every reasonable effort to meet within 30 days to discuss disputes. If the parties so agree, they may involve a disinterested party experienced in railroad operations, or an accountant if appropriate, to render objective advice and opinions, which shall be advisory only and not binding unless the parties previously agree in writing to be bound by the judgement in a particular instance.

b. Any claim or controversy between SCRRA, OCTA and the Board which cannot be resolved by the parties concerning the interpretation, application, or implementation of this Agreement shall be resolved by submitting the claim or controversy to arbitration pursuant to the provisions of this Article 14; provided, however, that no such claim or controversy shall be submitted to arbitration until it has first been submitted to the Executive Director of SCRRA, the Executive Director of OCTA and the Executive Director of the Board for resolution between those officers.

c. Any claim or controversy between the parties which cannot be resolved pursuant to sub-section b, above, within 30 days calendar days or such other time as the parties may agree in writing, shall be submitted to arbitration in accordance with the rules of the American Arbitration Association.

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

e. The cost and expense of arbitration shall be borne by each party as that party incurred that expense in connection with such arbitration, and both parties shall share equally the costs and expenses attributable to the services of the arbitrator.

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

15. Miscellaneous Provisions

a. The interpretation of this Agreement shall be governed by the laws of the State of California.

b. This Agreement embodies the entire agreement between SCRRA, OCTA and the Board. No oral statement or prior written matter will have any force or effect. The parties hereby acknowledge that there are no representations or agreements concerning the implementation of SCRRA/OCTA commuter services other than those contained in this Agreement. This Agreement will not be modified except in writing subscribed to by all parties.

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

substantially alters the right or obligations of any party under the Agreement.

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

e. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective transferees, successors, and assigns.

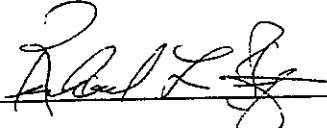
f. Notices: Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and any and all such items or payments shall be deemed to have been duly delivered upon personal delivery or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

The Board: Paul Price
Director of Service Development
North San Diego County Transit Development Board
311 South Tremont Street, Oceanside, CA 92054


SCRRA: David Solow
Deputy Executive Director
Southern California Regional Rail Authority
818 West Seventh Street, Los Angeles, CA 90017

OCTA: Stan Oftelie
Executive Director
Orange County Transportation Authority
550 South Main Street
Orange, California 92613-1584

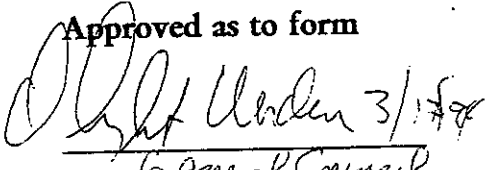
North San Diego County
Transit Development Board

BY: 
TITLE: Executive Director

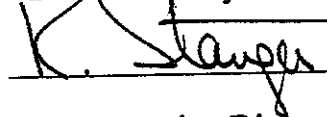
Orange County Transportation Authority

BY: 
Stan Oftelie
TITLE: Executive Director

Approved as to form

 3/1/94

General Counsel
Southern California Regional
Rail Authority

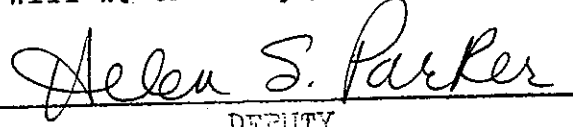
BY: 
TITLE: Executive Director

Approved as to form


Kennard K. Smart, Jr.

Approved as to form

APPROVED AS TO FORM
DE WITT W. CLINTON, County Counsel

BY: 
DEPUTY