

**CONFORMED CONTRACT**

**CONTRACT NO. OP136-10  
METROLINK OPERATOR SERVICES  
AWARDED: March 26, 2010**

**CONTRACT BETWEEN**

**SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY**

**AND**

**NATIONAL RAILROAD PASSENGER CORPORATION (Amtrak)  
FOR METROLINK OPERATOR SERVICES**

**AWARDED: March 26, 2010**

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SOUTHERN CALIFORNIA REGIONAL RAIL AUTHORITY  
AND  
NATIONAL RAILROAD PASSENGER CORPORATION  
FOR METROLINK OPERATOR SERVICES  
AWARDED: March 26, 2010**

This Contract (the "Contract" or "Final Agreement"), dated as of March 26, 2010, is entered into by and between the Southern California Regional Rail Authority ("SCRRA") and National Railroad Passenger Corporation ("Contractor" or "Amtrak") (collectively, the "Parties").

**RECITALS**

WHEREAS, SCRRA is an independent joint powers authority organized under §6500 *et seq.* of the California Government Code and §130255 of the California Public Utilities Code, with power to contract for the Services described in this Contract,

WHEREAS, SCRRA desires to hire a contractor to perform the Operation of Commuter Services,

WHEREAS, Contractor warrants and represents that it has the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and that it will provide the necessary tools and materials, not provided by SCRRA, to perform the Services in an efficient, professional and timely manner in accordance with the terms and conditions of this Contract,

NOW, THEREFORE, for the consideration hereinafter stated, the Parties agree to the following terms and conditions.

A. **DEFINITIONS**

1. "**Amtrak**" has the meaning set forth in A.7., below.
2. **Amtrak Intercity Operating Agreement** means the agreement among SCRRA, the Member Agencies and Amtrak dated March 1, 1994 regarding operation of Amtrak's intercity rail passenger service on lines owned by the Member Agencies.
3. **Approved Budget** means the budget agreed upon by the Parties pursuant to the process described in Section D.2. of this Contract or that results from the conclusion of the dispute resolution process described in Section D.10 of this Contract, including any amendments to such budget.
4. **Asset** means an item with a unit cost of Five Thousand Dollars (\$5,000) or more and a useful life of more than one (1) year.
5. **CEO** means the Chief Executive Officer of the SCRRA.
6. **C&S Contractor** shall mean the person, corporation or other entity that contracts with SCRRA to provide services related to the maintenance of communications and signal facilities and equipment on or related to the Service Property.
7. **Contractor** means the National Railroad Passenger Corporation or "Amtrak" which is the entity responsible for providing train and engine crews for operation of Metrolink Commuter Rail Trains.
8. **Contractor Employee Violation** shall have the meaning set forth in Section C.19.c.(2).
9. **Controllable Item** means an item of any value with a manufacturer's serial number marked with an SCRRA asset number in SCRRA's property management system which allows the item to be tracked, assigned and controlled, and includes (but is not limited to) computer hardware or software, office equipment and communications equipment.



10. **Covered Employee** means an employee of the Contractor who is covered by or subject to any term or terms of a collectively bargained agreement between the Contractor and any group of its employees or that group's duly designated representative.
11. **CPUC** means the California Public Utilities Commission.
12. **Days** mean calendar days, unless specifically stated otherwise.
13. **Direct Cost(s)** shall have the meaning stated in Section D.1.a. of this Contract.
14. **Effective Date** shall mean October 26, 2009.
15. **Exempt Employee** means an employee of Contractor who is not in any way covered by or subject to the terms of a collectively bargained agreement between Contractor and any group of its employees or that group's duly designated representative.
16. **Field Operations Personnel** means employees in the Field Operations division of the SCRRRA Operations Department.
17. **Fiscal Year** is the fiscal year used by SCRRRA, which is July 1 through June 30.
18. **FRA** means the Federal Railroad Administration.
19. **FTA** means the Federal Transit Administration.
20. **GCOR** shall mean the General Code of Operating Rules as such rules may be amended from time to time.
21. **General and Administrative (G&A) and Overhead** shall have the meaning stated in Section D.1.b. and c.
22. **Hours of Service Employee** means employees who meet the definition set forth in 49 CFR §228.5(c) as such regulation may be amended from time to time.

23. **Limited Notice to Proceed** means the document provided to Contractor that authorized Contractor to commence work on mobilization prior to execution of this Contract.
24. **Management Fee** shall have the meaning stated in D.1.c.
25. **Member Agencies** means Los Angeles County Metropolitan Transportation Authority (LACMTA); Orange County Transportation Authority (OCTA); Riverside County Transportation Commission (RCTC); San Bernardino Associated Governments (SANBAG); and Ventura County Transportation Commission (VCTC).
26. **MF** means Mechanical Facilities, including all SCRRA-designated mechanical, maintenance, and layover facilities.
27. **MOC** means the Metrolink Operations Center located in Pomona, California.
28. **Modified Services** means any additional Services or other changes to existing Services of the kind currently provided at the time of the change, on existing or new routes. "Modified Services" includes reduced levels or frequencies of existing Services.
29. **MOE Contractor** means the person, corporation or other entity that contracts with SCRRA to provide services related to maintenance of the rolling stock used in the SCRRA Commuter Railroad Operations.
30. **MOW Contractor** means the person, corporation or other entity that contracts with SCRRA to provide services related to the maintenance of rail, track and structures.
31. **Notice to Proceed** means the written authorization from SCRRA to Contractor specifying the date on which the Contractor can begin performing mobilization activities work beyond those specified in the Limited Notice to Proceed.
32. **Operating Plan** means the detailed description of the operation of the Services in a Fiscal Year, and shall reflect specific routes on which the Contractor is to

provide Services, employee counts and job assignments, and other related services, all as agreed upon by the Parties, prior to the start of each Fiscal Year, or as amended pursuant to the terms of this Contract during the course of the Fiscal Year.

33. **Operator** when used in this Contract or the Appendices to it shall mean the Contractor.
34. **Parties** shall mean SCRRA and the Contractor.
35. **Profit** shall have the meaning stated in D.1.c.
36. **Qualified** means that a person has satisfied the training requirements for a position and possesses the background, skills and experience necessary to fulfill the duties of a job included in the provision of Services.
37. **SCRRA** means the Southern California Regional Rail Authority, an independent joint powers authority created pursuant to Cal. Public Utilities Code § 130255 and Cal. Govt. Code §6500 et seq. and pursuant to an agreement among the Member Agencies.
38. **SCRRA Commuter Railroad Operations** means the railroad passenger services to be provided under the auspices of SCRRA, and all related or ancillary functions that are part of the provision of those services.
39. **SCRRA Protected Materials** means all documents and materials prepared or developed by Contractor and its Subcontractors pursuant to this Contract and that address the performance of the Services or changes thereto.
40. **Service(s)** means those train operations and related functions that are to be performed by the Contractor for SCRRA pursuant to this Contract.
41. **Service Plan** means the detailed description of the Services SCRRA expects the Contractor to perform in the following Fiscal Year as described in Section D.2.a., and which shall include the information required for the preparation of the Operating Plan.

42. **Service Property** means tracks, land, structures and other facilities (including stations) that are located on or adjacent to the rail lines and at the yards listed on **Appendix 1**, that are to be used by the Contractor in provision of the Services under this Contract. The "Service Property" does not include any structures, land or other facilities owned or controlled by SCRRA and located on or adjacent to the property listed in **Appendix 1**, which the Contractor does not require to provide the Services. SCRRA may supplement the list of rail lines and yard facilities in **Appendix 1** to be included in the Service Property by including a description of any such additional rail lines and yards in the Operating Plan.
43. **SMP** means the Standard Maintenance Procedures form.
44. **Start Date** shall mean June 26, 2010, which is the date on which the Contractor begins providing Services pursuant to the terms and conditions of this Contract.
45. **Subcontractor** means a party or parties who perform a specific part of the Services undertaken by the Contractor, pursuant to an agreement with the Contractor.
46. **Supplemental Instructions** means the SCRRA-provided rules and instructions for Train and Engine crews.
47. **Supplier** means a person or entity that provides equipment, tools, consumables or other goods to the Contractor, which are to be used in the provision of the Services.
48. **Support Property** has the meaning set forth in Section C.38.e.(2).
49. **System Safety Program Plan (SSPP)** means SCRRA's established plan outlining the safety practices that SCCRA has developed for operating a safe and efficient commuter rail service, as such plan may be amended by SCRRA from time to time.
50. **Third Party Contractor** means a contractor who provides, under separate contract to SCRRA, services other than the Services specified under this

Contract. The MOE Contractor, the MOW Contractor and the C&S Contractor are not considered Third Party Contractors under this Contract.

51. **Third Party Railroad** means the BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP), or their successors operating trains on the SCRRRA Service Property. In addition, the intercity rail passenger services provided by Amtrak over lines owned by the Member Agencies pursuant to the Intercity Agreement are considered "Third Party Railroad" operations under this Contract.
52. **Train and Engine (T&E) Crews** means conductors and locomotive engineers.
53. **Work Stoppage** means an occasion when employees do not report for work as a result of a dispute under the terms and conditions of a collectively bargained agreement, or about the formation of such an agreement, and either the employer has, or the employees have, elected to exercise any self-help rights that may be available to them under the applicable law.

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**B. SCOPE OF SERVICES PROVIDED**

**1. Train Operations General Management**

a. General Management

(1) The Contractor agrees that it will provide the Services on the terms and conditions described in this Contract. The Contractor shall make available to SCRRA a staff of Qualified management personnel who shall manage the provision of the Services using good business practices in a manner that is consistent with both Parties' objective of providing the highest quality service to the public, and consistent with the policies of and in the best interests of the SCRRA Commuter Railroad Operations and the Contractor.

(2) The Contractor's management assigned to the Services shall have experience and knowledge in the area of railroad passenger operations and shall have authority to make decisions concerning the daily operations and management of the Services consistent with this Contract including SCRRA policies, procedures and practices, rules, timetables and special instructions. The management team assigned by Contractor to the SCRRA Commuter Railroad Operation shall be assigned exclusively to SCRRA train operations. All management personnel assigned full-time to SCRRA's operations must be located at an SCRRA owned or provided facility within the five county SCRRA service area. The Contractor shall administer and manage all functions involved in providing the Services as set forth and described more fully in this Contract in a manner which is consistent with SCRRA's goal of providing a safe and well-maintained facility and on-time train operations, and will be in compliance with all applicable local, state and federal requirements. Absent specific SCRRA policies, procedures and practices, the Contractor shall adhere to its corporate policies, procedures and practices, rules, timetables and special instructions, in the day-to-day operation of the Services. Such corporate policies applicable to the performance of the Services shall be made available to SCRRA upon request and the Parties shall work cooperatively to resolve any issues

that may arise with respect to the application of such policies to the provision of the Services.

(3) All personnel provided by Contractor and Contractor's Subcontractors involved in any aspect of providing the Services shall be employees or contractors of the Contractor or its Subcontractors, and not of SCRRA, and shall be fully trained and Qualified to perform the Services prior to starting work on the SCRRA Services and shall be subject to the direction, supervision and control of the Contractor and not of SCRRA. All management personnel who work on providing the Services, except as provided specifically in this Contract or by mutual agreement of the Parties, shall be assigned exclusively to the Services. The Contractor shall provide an organization chart showing all positions for provision of the Services and clearly indicating reporting relationships to the Transportation Superintendent, which is subject to the approval of SCRRA.

(4) Contractor acknowledges that during the term of this Contract SCRRA will be commencing installation and operation of positive train control ("PTC") technology. Contractor will cooperate fully with SCRRA in ensuring that its Train and Engine Crews and road foremen are familiar with and trained in utilization and operation of the PTC equipment on the SCRRA Service Property and rolling stock.

b. Transportation Superintendent. The Contractor will operate the Services under the direction of a full time Transportation Superintendent who will have overall responsibility for all aspects of the Services and who must be located at the MOC, or such other SCRRA owned or provided facility within the five county SCRRA service area as may be approved by SCRRA, throughout the term of this Contract. SCRRA may request a revision of Contractor's organizational reporting relationship of those Contractor management personnel assigned to the SCRRA Service and the Contractor shall not unreasonably withhold its approval of the requested change. The Contractor shall select a Transportation Superintendent subject to SCRRA's prior approval. If SCRRA is dissatisfied with the performance of the Transportation Superintendent, and following consultation

with the Contractor and SCRRA's Operations Director, the Contractor will promptly remove him or her from SCRRA service upon receipt of notice from SCRRA and will promptly provide a replacement Transportation Superintendent subject to SCRRA's prior approval. The Contractor will not transfer the Transportation Superintendent or any of his or her direct reports away from that assignment for at least one (1) year from the date the employee begins work in that assignment, except as required by applicable law, regulation or any provision of this Contract, or with the consent of or at the request of SCRRA. The Contractor will not otherwise transfer or reassign a Transportation Superintendent until a replacement approved by SCRRA has accepted the position and is available to begin work in that position. The Transportation Superintendent will be available to attend service meetings with SCRRA staff, including but not limited to the morning call, the timetable meeting, System Safety Leadership meetings and any root cause analysis discussion. The Transportation Superintendent will provide SCRRA with a calendar showing days and times he or she will be unavailable, and will provide SCRRA with names and contact information for the person who will be the acting Transportation Superintendent in his/her absence.

c. Other Management Personnel. The Contractor shall select other management personnel. If SCRRA is dissatisfied with the performance of the other management personnel, and following consultation with the Contractor and SCRRA's Operations Director, the Contractor will remove him or her from SCRRA service and replace him or her upon receipt of notice from SCRRA. SCRRA will have the opportunity to have a representative participate in an interview panel for any management vacancies. The Assistant Superintendent shall have an office at the CMF, and all other management personnel assigned full-time to SCRRA's operations must be located at an SCRRA owned or provided facility within the five county SCRRA service area.

**2. Train Operations**

a. Operations.

(1) (a) During the term of the Contract, the Contractor shall manage, operate, maintain and provide staff for the Services and shall



implement its responsibilities under this Contract consistent with the highest standards of safety, efficiency and reliability.

(b) Subject to any applicable rules, regulations, or orders of the FRA, the following operating policies and procedures, which are in effect as of the Start Date, and as they may be amended from time to time, shall guide the Contractor's operation of the Services: (i) the current GCOR (**Appendix 2**); (ii) timetable and special instructions for all Metrolink operating territories (**Appendix 3**); (iii) SCRRA's Supplemental Instructions (**Appendix 5**); (iv) the Contractor's air brake and train handling rules until such time as SCRRA adopts its own rules; (v) the Contractor's rules and instructions or SCRRA policies issued in the ordinary course of business for its employees that by their terms apply as well to Contractor employees; (vi) any additional standards or procedures as the Parties may agree upon from time to time; and (vii) the procedures which are set forth in **Appendix 6**. SCRRA has provided Contractor with copies of its policies referred to in item (v) of the preceding sentence prior to the execution of this Contract. The terms of Section C.17.b. and c. shall govern the obligations of Contractor notwithstanding the obligations of SCRRA's Record Management Policies.

(c) SCRRA may amend any of the foregoing SCRRA-issued documents or any of its rules and policies or procedures that govern the Service, subject to an obligation to meet and confer with Contractor prior to implementation of any such changes. SCRRA specifically reserves the right to add additional safety systems, equipment, policies and procedures to its operation and to the equipment used in that operation, and Contractor will cooperate reasonably in the implementation of any such changes. If Contractor imposes or adopts any additional operating rules or special instructions that affect the provision of the Services, Contractor shall notify SCRRA prior to implementation and shall work collaboratively with SCRRA to address the impact of such changes; provided, however, that Contractor shall comply with the requirements of

Section B.13.a.(1) prior to making any changes in its policies or procedures that are in conflict with the SSPP.

(d) In the event of a discrepancy or conflict between Contractor rules or instructions, on the one hand, and SCRRRA policies referred to in clause (v) of Section 2.a.(1)(b), above, the Parties shall work cooperatively using all reasonable efforts to resolve such discrepancy or conflict promptly. If SCRRRA's Director of Operations and Contractor's Transportation Superintendent are unable to resolve the matter, then the matter shall be referred to SCRRRA's Assistant Executive Officer, Operating Services (or other appropriate official) and Contractor's Vice President, Policy and Development (or other appropriate official) for resolution.

(2) SCRRRA shall be entitled to review and approve changes in any of the Contractor-provided documents listed above (that is, any additional operating rules or special instructions that affect the provision of the Services) that affect SCRRRA Commuter Railroad Operations provided that such approval shall not be unreasonably withheld. These policies and procedures shall be amended from time to time, upon request of either Party, as the needs of the operations change, and the other Party's consent to any such requested change shall not unreasonably be withheld.

(3) The Contractor shall operate the commuter trains of SCRRRA on schedules which shall be determined by SCRRRA based on consultations with the Contractor's staff. The Contractor shall propose crew run schedules and such proposed crew runs shall become effective after approval by SCRRRA. The Contractor shall not change any such schedule of crew runs except in an emergency without first securing the approval of SCRRRA. The Contractor will provide train movements into, out of and through the MF subject to Section B.9.c.

(4) SCRRRA may request the MOE or MOW Contractors to move equipment for non-revenue generating purposes on lines or facilities included in the Service Property, as part of the provision of MOE or MOW

services. Such moves may include moves to reposition and/or place equipment for revenue service.

b. Delays. The Contractor will provide immediate notice to the SCRRA MOC by telephone or radio of any single event that would result in a delay of more than 5 minutes (5'00") to the operation of a SCRRA Commuter Railroad Operations train and cooperate with SCRRA in notifying the passengers affected by the resultant delays.

c. Rule Violations. Any allegations of a violation of the GCOR, or any rule pertaining to the safe movement of trains, by a Contractor employee shall be considered an "incident" as that term is used in Section B.27 hereof and must be reported immediately to the SCRRA MOC.

d. Equipment and Track. SCRRA shall assure that the equipment provided for its commuter rail service is mechanically sound, and that the track over which such service is operated is adequately maintained, and that such equipment and track comply with all applicable federal, state and local laws and regulations.

e. Other Reports. Contractor shall provide the daily reports described in items 3.a., b. and c. on Appendix 10.

### 3. Materials Management

a. The cost of materials the Contractor is required to purchase in order to perform the Services under this Contract shall be reimbursed as a Direct Cost. All materials or equipment purchased by the Contractor pursuant to this Contract for the provision of the Services shall be used solely for the purpose of providing the Services to SCRRA and shall be the property of SCRRA. Upon termination of the Agreement all such materials or equipment shall be returned to SCRRA in the same condition as at the time of purchase, reasonable wear and tear excepted.

b. In emergency circumstances where parts or supplies needed for provision of the Services are not available from SCRRA's supplies but are available in the inventory maintained by the Contractor, the Contractor may use such parts or supplies to provide the Services.

c. In making purchasing decisions, the Contractor 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 and freight charges and to applicable local, state and federal regulations. Purchases made by Contractor in order to perform the Services under this Contract shall be made in compliance with Contractor's FRA-approved procurement policies and procedures; provided, however, that Contractor shall bear its own costs of any procurement that it undertakes as a result of rejection by the State of California or the FTA of Contractor's use of its own policies for that specific procurement rather than SCRRA's approved procurement policies and procedures.

d. SCRRA approval is required to purchase a Controllable Item that costs in excess of \$5,000. Such approval shall be deemed to have been given if an item is included and itemized in the current year's Approved Budget (including back-up documents showing detail of items included in the current year's Approved Budget), and the purchase price does not exceed the budgeted amount specified therein. Alternatively, Contractor may separately seek approval for items not included in the Approved Budget. The Contractor shall provide reasonable backup documentation of purchases of Controllable Items as agreed to by the Parties.

e. Any request by SCRRA that Contractor purchase any materials or services that are not required by Contractor to perform the Services shall be in writing and include an explanation of why SCRRA cannot itself purchase such materials or services. Contractor may approve or deny such request at its sole discretion.

#### **4. Service Disruptions**

Upon request from SCRRA, the Contractor will cooperate with and support SCRRA in clearing wrecks which involve SCRRA trains. Where a wreck involves a Third Party Railroad operating on SCRRA property and the Contractor is called upon to assist in clearing the property, the Contractor shall segregate its costs of providing such assistance and provide them to SCRRA for SCRRA's efforts to obtain reimbursement from the Third Party Railroad for expenses incurred in clearing the wreck. The Contractor acknowledges that SCRRA will coordinate the Contractor's activities required to fulfill its obligations under this section. The

respective rights and obligations of the Third Party Railroad and SCRRRA shall be governed by the terms and conditions of agreements, if any, between SCRRRA and that railroad. SCRRRA shall reimburse the Contractor for Direct Costs incurred in clearing wrecks and restoring service. Such Direct Costs are not included in the Approved Budget. Notwithstanding any other provision of this Contract, SCRRRA shall not pay a management fee on the amount of Direct Costs, G&A and overhead paid to Contractor for clearing of wrecks and restoring service caused by a failure of the Contractor or one of its Subcontractors to follow rules governing train operations set forth in Section B.2.a.

**5. Special Trains**

The cost of operation of any special trains shall not be included in the budget proposal submitted pursuant to Section D.2. or in the Approved Budget. When SCRRRA anticipates providing special train service, it shall submit to the Transportation Superintendant a notice in writing to operate such service as many days in advance of the event as possible. The Contractor shall use all reasonable efforts to accommodate such request, and, promptly upon receipt of written notice, shall inform SCRRRA in writing whether crews are available for the requested operation and shall advise SCRRRA of the estimated cost of providing such service in accordance with the cost provisions of Section D.1. The Contractor shall operate the service as requested, subject to applicable labor agreements, operational feasibility and availability of crews and equipment, unless SCRRRA has withdrawn its notice requesting the service. SCRRRA shall reimburse the Contractor for the actual Direct Costs incurred in operating such special trains. SCRRRA shall pay G&A, Overhead and Profit based on the Direct Costs of all special trains; provided, however, that SCRRRA shall not pay G&A and Overhead and Profit on the Direct Costs incurred to run special trains for the purpose of training the Contractor's employees unless the special trains are run to train employees when SCRRRA adds new routes or extends existing routes to lines not currently served. Contractor specifically acknowledges that requirements for work trains or for Special Trains to accommodate special events (including but not limited to sporting events, local fairs or other similar events) will arise during the term of this Contract, and that a prompt response and diligent

efforts to accommodate such requests are in the best interests of both SCRRA and Contractor.

**6. Verification of Fares**

- a. Subject to SCRRA's right to hire or provide on-board personnel for other than operating functions, the Contractor personnel shall conduct fare verification inspections, and shall perform all other related functions (including issuance of citations pursuant to Cal. Penal Code §830.14 and in compliance with SCRRA's Supplemental Instructions (**Appendix 5**), and attending any resulting court hearings), except for ticket sales.
- b. The Contractor shall make employees available for court attendance or other functions related to verification of fares and enforcement of violations.
- c. Contractor shall provide the Fare Verification Report described in item 2.b. of **Appendix 10**.

**7. Standard of Performance**

- a. Contractor warrants and represents that it has the professional capabilities, qualifications, licenses, skilled personnel, experience, expertise and financial resources, and will provide the necessary tools and materials not provided by SCRRA, to perform the Services in an efficient, professional and timely manner.
- b. The Contractor shall perform and require its Subcontractors to perform the Services in accordance with i) the requirements of this Contract, ii) all applicable federal, state and local laws and regulations, including but not limited to all applicable safety laws, standards, codes, rules and regulations, iii) Contractor's "Standards of Excellence" manual (a copy of which is attached hereto as **Appendix 14**), and iv) all existing regulations and procedures specified in **Appendix 6** as such rules, regulations and procedures may be amended from time to time, consistent with the highest standards of safety, efficiency and reliability and in accordance with professional standards of skill, care, and diligence adhered to by firms recognized for their expertise, experience and knowledge in performing services of a similar nature. The Contractor shall be responsible for the professional quality, technical accuracy, completeness and

