

**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 SCRRA Operations Department.
17. **Fiscal Year** is the fiscal year used by SCRRA, 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 SCRRA 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 Superintendant, 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 SCRRA 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 SCRRA's Director of Operations and Contractor's Transportation Superintendent are unable to resolve the matter, then the matter shall be referred to SCRRA'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) SCRRA 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 SCRRA 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 SCRRA on schedules which shall be determined by SCRRA 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 SCRRA. The Contractor shall not change any such schedule of crew runs except in an emergency without first securing the approval of SCRRA. The Contractor will provide train movements into, out of and through the MF subject to Section B.9.c.

(4) SCRRA 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 SCRRA shall be governed by the terms and conditions of agreements, if any, between SCRRA and that railroad. SCRRA 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, SCRRA 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 SCRRA 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 SCRRA in writing whether crews are available for the requested operation and shall advise SCRRA 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 SCRRA has withdrawn its notice requesting the service. SCRRA shall reimburse the Contractor for the actual Direct Costs incurred in operating such special trains. SCRRA shall pay G&A, Overhead and Profit based on the Direct Costs of all special trains; provided, however, that SCRRA 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 SCRRA 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

coordination of the Services, it being understood that SCRRA will be relying upon such professional quality, accuracy, completeness and coordination in utilizing the Services. The foregoing obligations and standards shall constitute the "Standard of Performance" for purposes of this Contract.

c. Each Party shall promptly notify the other of all errors, inconsistencies, omissions, and/or non-conformities (collectively "Errors") in this Contract that it discovers. In instances where Errors are discovered by the Contractor, the Contractor shall obtain specific instructions in writing from SCRRA before proceeding with the provision of Services affected by such Errors. In instances where Errors are discovered by SCRRA, SCRRA shall not reduce or withhold any payment to Contractor for the provision of Services affected by such Errors without obtaining instructions in writing from the Contractor. Omissions or incorrect descriptions of any Services that are manifestly necessary to carry out the intent of this Contract, or that are customarily performed, shall not relieve the Parties from performing or paying for such Services, and such Services shall be performed as if fully and correctly set forth in this Contract.

#### **8. Mobilization Planning**

a. This section of the Contract shall be performed commencing on the Effective Date. The Contractor shall provide a mobilization plan subject to SCRRA approval, which describes all activities planned for the mobilization period in preparation for its provision of the Services. The mobilization plan will confirm that Contractor's Transportation Superintendent and Senior Analyst – Operating Practices will promptly be designated, hired and working in those positions.

b. The mobilization plan shall, at a minimum set forth schedules for development of and descriptions of:

- (1) Staffing plans and organization plans;
- (2) Employee hiring plans, associated start dates for each employee, and Contractor's plan for complying with the requirements of Section C.13.a;

- (3) Training program, including course descriptions, training schedules, training manuals, competency tests, territory qualification plans, Subcontractor training plans and schedules, and requalification plans;
- (4) Transition and service continuity plans;
- (5) Identification of temporary physical location and logistics;
- (6) Specifics regarding any access required to SCRRA's Service Property;
- (7) Specifics regarding support required from SCRRA staff and/or contractors;
- (8) Installation and connectivity plan for computer systems;
- (9) Quality Assurance Plan; and
- (10) Schedule for delivery of the System Safety Plan, a Disaster and Emergency Response Plan, all government-compliance programs, and a budget for Services.

c. Contractor shall mobilize and train sufficient personnel to adequately provide Services outlined in SCRRA's anticipated Fiscal Year 2010/2011 model, and shall deliver to SCRRA a mobilization plan within thirty (30) days of the later of (1) the Effective Date of this Contract, or (2) delivery of SCRRA's Service Plan. SCRRA shall review the mobilization plan and subject to modification required by SCRRA, approve the plan no later than thirty (30) days from its receipt of the plan. To compensate Contractor for mobilization costs, SCRRA shall pay Contractor \$175,125 upon receipt of invoice and concurrent with the commencement of mobilization. This "Initial Deposit" is equal to  $1\frac{1}{2}$  months of the estimated cost of mobilization ( $\$934K / 8 \text{ months} \times 1.5 \text{ months}$ ).

1. Thereafter, Contractor will bill SCRRA the Direct costs with additives thirty (30) days after the end of each month for that month. SCRRA will pay Contractor via wire transfer within thirty (30) days of receipt of the invoice.

2. For the next-to-last month of mobilization (i.e., May 2010) Contractor will bill the actual costs to SCRRA, but will draw down payment from the Initial Deposit.

3. For the final month of mobilization (i.e., June 2010) Contractor will bill the actual costs to SCRRA and draw down payment from any remaining Initial Deposit.

4. Not later than July 31, 2010, Contractor will submit a statement identifying its total costs of mobilization and the total payments made by SCRRA for final reconciliation and close out. SCRRA shall make a final payment or Contractor will issue a credit as reflected in the final reconciliation agreed to by the Parties.

9. **Relationship to Equipment Maintenance Function and Contractor**

a. **Regular Communication.** The Contractor and the MOE Contractor shall communicate with each other and with SCRRA regularly and as required to ensure the ability of each contractor to deliver the services required by their respective Contracts. The Contractor shall be knowledgeable of the MOE Contractor's requirements to meet service demands and shall advise the MOE Contractor of any operating anomaly or equipment deficiency that may affect the service. SCRRA shall require the MOE Contractor to take on reciprocal obligations.

b. **Equipment Familiarization Requirement.** Crew members must have completed and passed equipment familiarization training prior to entering into Metrolink train service under this Contract. The Contractor shall provide this training, and shall develop a training and trouble-shooting program subject to SCRRA review and approval. Contractor shall also develop a training program to keep crew members current with respect to equipment familiarization and shall include such training in the programs provided and listed in **Appendix 9.**

c. **Train Placement for Service at the MF.** The MOE Contractor shall determine the movement and placement of trains in the MF for servicing, and shall coordinate such movement with the Contractor. The Contractor shall deliver trains to tracks as directed by the MOE Contractor (or as close thereto as possible if the identified tracks are not available). The Contractor shall pick up trains from tracks as directed by the MOE Contractor. SCRRA 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.

d. Train Number Assignments and Location in the MF. The MOE Contractor shall be responsible for notifying the Contractor of train number assignments and locations in the MF prior to dispatch time. In general, such assignments of train locations shall remain constant and be made according to a plan designed to support the train schedule.

e. Equipment and Defect Reporting. The Contractor shall ensure that train crews clearly and legibly record all equipment defects and/or operating anomalies that are discovered in the course of train operation. Such items shall be recorded on the appropriate SMP forms (**Appendix 8**) located on each car or locomotive.

f. Notifications of Unscheduled Inspection Requirements. In the event of an over-the-road incident, equipment failure or operating anomaly (which may include but is not limited to incidents of passenger injury, debris strike, or placement of train into emergency braking), the train crew shall notify the SCRRA MOC as soon as possible. The crew member reporting the incident shall use his or her best efforts to describe the nature of the incident and extent of damage, if any, to the equipment in order to assist the MOE Contractor in its response.

g. Time of Dispatch from Yard. The Contractor shall notify the MOE Contractor in writing of the required train departure times from the MF. Such times shall be related to the train schedules and be subject to change upon initiation of a new train schedule. However, every effort shall be made to ensure that the MOE Contractor has adequate time to perform required maintenance tasks.

h. Joint Use of Facilities. The Contractor shall jointly occupy office space at the MF with the MOE Contractor and shall cooperate with SCRRA and the MOE Contractor in determining facility access and use of common facilities including but not limited to parking areas, restrooms, conference rooms, break areas and walkways.

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

a. **Hiring Practices.** The Contractor shall hire labor, administrative, professional, and supervisory personnel required to provide the Services; provided, however, that SCRRA reserves the right to hire or provide on-board personnel for other than operating functions and to assign SCRRA management employees or SCRRA contractors at all facilities on the SCRRA system for oversight functions. Subject to the limitations of Section C.39 and to the requirements of section B.18 of this Contract, the Contractor shall have the right to contract with third parties to provide any of the Services. The total number of full-time equivalent positions will not exceed the total number of positions included in the Approved Budget for a period of more than thirty (30) days without the prior approval of SCRRA, which approval shall not unreasonably be withheld.

b. **Personnel Qualifications.**

(1) All personnel hired by the Contractor or its Subcontractors and who are engaged in the provision of the Services shall be Qualified.

(2) SCRRA will establish criteria and prescribe qualifications that Contractor will use as a part (i.e., in addition to any of Contractor's own criteria and qualifications that it may elect to use) of Contractor's determination of the qualifications in hiring new employees for the SCRRA Commuter Rail Operations (including the employees currently employed by Connex in operation of the SCRRA Commuter Rail Operations). These criteria may include psychological tests (including personality profile assessments), criminal background checks, medical evaluations and other criteria listed in **Appendix 4**. However, with respect to any Contractor employee who is an employee of Contractor as of March 24, 2010, and who, prior to the Start Date or during the term of this Contract, seeks to exercise his or her seniority to bid on a position in the SCRRA Commuter Rail Operations, Contractor shall be required only to conduct a background investigation consistent with the Contractor's Employee and Independent Contractor Background Check Policy, a copy of which is attached hereto as **Appendix 4A**. Disqualification for

employment, or a permanent bar from employment, on another commuter rail system, whether operated by Contractor or not, or from operation of intercity passenger rail service by a host railroad on that railroad's lines, shall disqualify an applicant from employment in SCRRA Commuter Rail Operations. Contractor shall require criminal background checks in accordance with its Criminal Background Check Policy and will not hire or employ any person in the SCRRA Commuter Rail Operations if such person has a Disqualifying Criminal History as described in that Policy. As a condition of employment in SCRRA Commuter Rail Operations, Contractor will require employees to execute a release to SCRRA of confidential information that is pertinent to the issues addressed by the evaluations contained in this section, and the Parties will establish a procedure for preservation of the confidentiality of any such information provided to SCRRA. All personnel hired by Contractor will have taken and passed all Contractor-provided training courses listed in **Appendix 9** to this Contract that are appropriate for the craft prior to being engaged in the provision of the Services. The Contractor shall notify SCRRA within thirty (30) days prior to the start of a new employee or as soon as possible, of any required SCRRA-provided training needed.

c. **Employee Compensation**

- (1) As between the Contractor and SCRRA, the Contractor will be solely responsible for determination of and payment of the wages and benefits and other terms and conditions of employment of its or any Subcontractor's management or other employees; provided, however, that the Contractor or the Subcontractor shall comply with any applicable mandatory state or federal prevailing wage rate, safety or wage-hour laws. Wage rates shall be reimbursed by SCRRA at Contractor's actual Direct Cost.
- (2) **Retroactive Wage Increases**: Retroactive (i.e., adjustments made subsequent to performance of the work) wage and associated benefit costs, such as Railroad Retirement expenses, will be reimbursed based on actual costs plus the Management Fee of 9%. Contractor will provide

a reasonable estimate (which shall include the Management Fee) of the expected annual impact of these costs to SCRRA as a part of the annual budget process. SCRRA's obligation to reimburse Contractor for such retroactive costs shall, with respect to any years prior to the year in which Contractor pays retroactive wages and/or benefits to its employees, be capped at the amounts of such reasonable estimates. SCRRA's obligation to reimburse Contractor for such retroactive costs shall survive termination of this Contract.

- (3) The Contractor shall comply with all applicable laws, regulations, rules and procedures respecting employer's liability, compensation for worker's job-related injuries, unemployment insurance, and other forms of social security or railroad retirement, and also with respect to any other required withholding from the wages of employees. The Contractor shall indemnify and hold harmless SCRRA from any and all liability, damages, claims, costs (including attorney's fees), and other expenses of whatever nature arising from alleged violations of such laws, regulations, or rules.

- d. Availability of Employee Records. Upon request of SCRRA and in addition to the information described in Section B.10.b.(2), above, the Contractor shall within five (5) business days grant SCRRA access to and copies of (1) the payroll records of any employee engaged in providing the Services, and (2) the records of any such employee regarding drug and alcohol testing, efficiency testing, discipline, competency test, qualifications, training, locomotive engineer certification, motor vehicle operator license records, and criminal violations that directly relate to the performance of the Services, unless the Contractor demonstrates to SCRRA that applicable law prohibits the Contractor from granting SCRRA access to such records. Any information received by SCRRA pursuant to this subsection shall be accorded the confidentiality required by law. All records must be available in Los Angeles County for inspection in either hard copy or electronic format.

**11. Additional Meetings**

The Contractor shall make available the General Superintendent Southwest Division for not less than four (4) quarterly meetings per year, at locations to be

specified by SCRRA, at each of which the Contractor and SCRRA shall review the performance of the Services and the work of the management team. The cost of making these or other management personnel selected by the Contractor available to attend these meetings is included in the Contractor's G&A and Overhead for providing the Services.

**12. Reports**

a. General. The Contractor shall provide SCRRA with the reports at the times listed in **Appendix 10** to this Contract. In addition, the Contractor shall submit to SCRRA copies of any reports the Contractor is required to file with any federal, state or local governmental agency that pertain to SCRRA Commuter Railroad Operations. When requested by SCRRA, the Contractor shall provide to SCRRA information with respect to any of the Services for which the Contractor is responsible that SCRRA requires for reports it is required to submit to any federal, state or local governmental agency.

b. Notification Requirement. The Contractor shall also promptly, upon receipt thereof by its management, furnish to SCRRA copies of any citations or complaints issued by an enforcement or regulatory body which affects the Services or the Service Property, and the Contractor will advise SCRRA of the disposition of such citations or complaints. The purpose of the reports described in this Section is to keep SCRRA apprised of the performance of, and incidents which may impact upon the operation of, the Services. The Contractor agrees to keep full and accurate records required herein, and to provide SCRRA at its request with such other reports or information as will fulfill the purpose described in the previous sentence. All reports prepared pursuant to this Contract shall be the property of SCRRA and the Contractor shall not voluntarily release or disclose any of the contents of those reports without the prior approval of SCRRA.

**13. Safety**

a. The Contractor shall be responsible for complying with SCRRA's System Safety Program Plan (SSPP) (**Appendix 11**). SCRRA's authorized personnel may adopt changes to the SSPP during the term of this Contract and SCRRA's

Project Manager or his/her designee shall meet and confer with Contractor prior to adopting and implementing any such change.

- (1) The Contractor shall submit a compliance plan to SCRRA for review and approval 30 days prior to the Start Date of the Contract. Any changes to the Contractor's compliance plan shall be submitted to SCRRA for approval and shall be consistent with and complementary to SCRRA's then-current SSPP. The Contractor shall notify SCRRA in writing within fifteen (15) working days prior to the effective date, or as soon as possible, of any changes to its policies or procedures that conflict with the SCRRA SSPP. Application of changed policies or procedures to the Services is subject to SCRRA's approval.
- (2) If SCRRA adopts changes to its SSPP during the term of this Contract, Contractor shall adopt changes to its compliance plan to reflect the changes to SCRRA's SSPP within thirty (30) days of receipt of the modified SSPP.

b. In addition to any other reporting and inspection requirements that Contractor may have in performing the Services, the Contractor shall report any unsafe conditions of which it becomes aware that relate to the Service Property or to equipment operated by its T&E crews to SCRRA and to the MOW Contractor, MOE Contractor, C&S Contractor or other Third Party Contractor as appropriate.

c. The Contractor shall comply with all applicable safety laws, standards, codes, rules and regulations, including any safety program established by SCRRA in consultation with the Contractor. The Contractor shall cooperate and coordinate with SCRRA, Third Party Railroads, MOE Contractor, MOW Contractor, C&S Contractor and any other SCRRA Third Party contractors on safety matters, and shall promptly comply with any specific safety instructions or directions given by any duly authorized regulatory agency.

#### **14. Training of Employees**

The Contractor shall provide, administer and maintain training programs, consistent with **Appendix 9**, which address all required aspects of safety and

personnel qualifications. Unless otherwise agreed by SCRRA, the training programs shall be provided in the Los Angeles area and shall be consistent with (1) the objectives of providing the highest quality service to the public, (2) the policies, and in the best interest, of SCRRA, and (3) all applicable federal, state, and local requirements. "Backfilling" training need not be performed in the Los Angeles area. The training programs shall enable the Contractor to certify that employees are fully Qualified to perform the functions necessary for their positions. The Contractor is responsible for providing a trained and Qualified workforce to perform the Services, and each person who will be working for the Contractor in providing the Services shall complete any Contractor-provided training and Services-specific training described in **Appendix 9** that is required for, appropriate for, or pertinent to the duties of the person's job before that person starts work on the Services. SCRRA will review the program of training that Contractor proposes to provide to employees of SCRRA or Contractor working in SCRRA Commuter Rail Operations along with the curriculum for the courses, and will have the opportunity at its discretion to audit the provision by Contractor of any such training for the purposes of determining whether it wishes to request Contractor to make any changes in the content or delivery of the training provided.

a. Contractor-Provided Training. The Parties will agree on the training programs to be administered during a Contractor's employee's employment in SCRRA Commuter Rail Operations. SCRRA shall have the right to review and approve the content and location of any such training and, at its discretion, to provide discrete elements of such training. Any training set forth in **Appendix 9** requiring use of simulators shall be conducted using SCRRA's simulators. Training to be administered will include, but not be limited to, training for the implementation of Positive Train Control ("PTC") and the operation of trains in an environment that includes PTC. The Contractor shall establish and provide any required training, qualification, and requalification programs for employees who are working on the Services, including but not limited to, the training required by applicable Parts of 49 CFR. The Contractor shall provide SCRRA with copies of all training programs used for employees who are working on the Services.

Training and requalification programs will consist of classroom instruction, written testing and successful demonstration of applicable skills. The Contractor shall provide SCRRA with a monthly training report consistent with that described in **Appendix 10**. In addition, the report shall identify the number of employees taking the training courses and the pass/fail history of each employee with respect to that course. Contractor-provided training shall be administered by the Contractor; however, SCRRA shall pay as a Direct Cost the cost of employees, wages, salaries, benefits and expenses while engaging in training. The cost of development for other than Services-specific training courses shall be included in the Contractor overhead.

b. **Services-Specific Training.** Services-specific training shall prepare employees engaged in providing the Services with the Services-specific skills and qualifications. The Contractor is responsible for administering Services-specific training using its own course material, as well as material provided by SCRRA, and for administering appropriate qualification tests. The Contractor shall provide SCRRA with a monthly training report that includes summaries of specific programs and labor-hours spent in each training session. In addition, the report shall identify the number of employees taking the training courses and the pass/fail history. The cost of development for Services-specific training courses that are developed by Contractor at SCRRA's request shall be a Direct Cost.

c. **SCRRA-Provided Training.** SCRRA-provided training, as set forth in **Appendix 9**, will be administered by SCRRA.

d. **Qualification and Testing.** The Contractor shall require Qualified employees to be re-Qualified for their positions as required by 49 CFR and within the time frames specified in **Appendix 9**. If any such employee fails to re-Qualify as required by 49 CFR, the Contractor shall remove such employee from his or her job classification. If any employee fails to re-Qualify within two (2) months of the time specified in **Appendix 9**, or fails the test on two (2) occasions (whichever first occurs), the Contractor shall permanently remove such employee from his or her existing job classification, unless SCRRA's Director of Operations permits the employee to return to SCRRA Service in that job classification upon request from Contractor. An employee who is removed from his or her existing

job classification pursuant to this section shall not be placed in any other position in the SCRRA Commuter Rail Operation unless that employee is Qualified for such a position. The Contractor shall further require that an employee's promotion or advancement to a higher pay grade and experience level conform with Amtrak's normal process and that the employee be Qualified for the new position.

e. SCRRA Opportunity to Observe Employees and Conduct Efficiency Testing.

1. Each of SCRRA and Contractor reserves the right to conduct efficiency testing. The Parties will arrange for exchange of data directly regarding such testing. Contractor will ensure that its testing results will be delivered to SCRRA in a format that is accessible to the SCRRA data base. SCRRA Field Operations Personnel conducting testing may, in a manner that is safe in the circumstances, communicate the results of such efficiency testing directly to Contractor's employees as appropriate. SCRRA Field Operations Personnel may communicate directly with Contractor's employees when, in the course of day-to-day operations, such personnel observe conduct that is described in 49 CFR 240.117(e), as such regulation may be amended by the FRA from time to time. Upon observing such conduct, the SCRRA Field Operations Personnel may require the Contractor's employee to safely stop the train, may communicate the reason for the order to stop the train directly to the Contractor's employee, may board the train (if the Field Operations Personnel is near the location of the train at the time of the test) to discuss the conduct with that employee, and will communicate the results of the test immediately to the employee's supervisor.

2. SCRRA shall have the right, consistent with safety and operating rules relating to the presence of persons in the locomotive or cab of a cab car, to have Qualified personnel it designates be present in the locomotive or the cab for the purpose of observing the conduct of Contractor's employees and shall report their observations to Contractor's management for review and any necessary actions. SCRRA shall designate the name and title of the individual who has the authority to permit persons to ride in the locomotive or cab, and shall ensure that

Contractor at all times has a current list of personnel it has authorized to be present in the locomotive or cab.

f. Non-Contractor Training. In addition to training the Contractor's employees as provided above, the Contractor shall provide training of non-Contractor employees as requested by SCRRA. For training of non-Contractor employees, authorized by SCRRA, SCRRA will pay the Contractor for the Direct Cost of new course development, other out-of-pocket costs, and the actual hourly cost of trainers not occupying a position in the Approved Budget, plus G&A and Overhead and Profit at rates consistent with those included in the Cost Proposal. These costs shall not be included in the annual Approved Budget.

g. Separation from Service. Contractor shall notify SCRRA in writing when any Contractor or Subcontractor employee separates from SCRRA service. If a Contractor or Subcontractor employee participates in an approved training program which is provided, or paid for, by SCRRA, and then leaves SCRRA service for any reason within six (6) months from the date such employee initially becomes Qualified, the Contractor shall either reimburse SCRRA for the cost of such training or provide, within a reasonable period of time and at no expense to SCRRA, training necessary for a replacement employee.

h. Training Location. The Contractor shall provide the training programs listed in **Appendix 9** within the SCRRA service area. SCRRA will not reimburse the Contractor for employee expenses incurred for travel and/or lodging to attend training out of the SCRRA service area unless SCRRA has approved the travel in advance. The Contractor shall schedule training activities so as not to interfere with its provision of Services.

i. SCRRA's System General Road Foreman: Contractor shall, upon request from SCRRA, provide training for SCRRA's System General Road Foreman and other SCRRA Management personnel on all locomotives used in SCRRA Commuter Rail Operations, so that such System General Road Foreman and other SCRRA Management personnel can become and remain Qualified on all such equipment during the term of this Contract. Contractor will also provide the System General Road Foreman and other SCRRA Management personnel with Contractor's Designated Supervisor of Locomotive Engineers training.

**15. Drug and Alcohol Testing**

- a. The Contractor shall comply with its FRA approved Drug and Alcohol Testing program (**Appendix 12**) for all Hours of Service Employees, as such program may be amended from time to time, throughout the term of this Contract. This program will cover pre-employment testing, random drug and alcohol testing, and post-accident testing. The Contractor shall utilize a FRA-compliant program to cover reasonable cause testing, reasonable suspicion testing, follow-up testing, and a voluntary referral program. The Contractor shall submit any changes to that Drug and Alcohol testing program to FRA and SCRRA prior to implementing any such changes with respect to the Services.
- b. The Contractor shall administer a pre-employment drug and alcohol testing program for all applicants who are not already Amtrak employees before they begin work on the Services. To the extent lawful, any positive results (positive drug or alcohol tests) shall be reported to SCRRA's Manager, System Safety within twenty-four (24) hours. Any positive drug or alcohol test shall result in immediate disqualification of the applicant from SCRRA Commuter Rail Operations. The Contractor shall submit the drug and alcohol program to SCRRA before implementing the program on the Services.
- c. The Contractor shall notify all employees, in writing, of the requirement that they follow the drug and alcohol program required by 49 CFR 219.23.
- d. Contractor shall provide the report described in item 2.j. of **Appendix 10**.

**16. Labor Agreements**

- a. **General**. The Contractor shall not enter into agreements in which it changes the number of crafts providing the Services that were in place with the contractor who provided the Services covered by this Contract prior to Contractor. Subject to the provisions of Section B.16.d. (which provisions will apply notwithstanding any assertion by any third party that they violate any term or condition of any labor agreement between Contractor and any organization representing Contractor's employees), nothing contained in this Contract shall require Contractor to perform any Service or take any action that would violate any law or regulation, or any term or condition of any labor agreement between Contractor and any organization representing Contractor's employees or

applicable to Contractor. SCRRA does not accept, succeed to, or assume, and this Contract shall not be construed to impose or allow any acceptance of, succession to, or assumption of, any obligations of the Contractor under any of its collective bargaining agreements with its employees or their representatives. Contractor specifically confirms that the use by Contractor's employees of portable handheld devices or other electronic means of data and/or fare verification is not prohibited by the agreements governing rates of pay, rules and working conditions between Contractor and the representatives of its employees, or that if such agreements do not now permit use of such devices Contractor will endeavor to negotiate an amendment to such agreements to permit such use. The Contractor shall use all applicable agreements in place with its employees or their representatives to obtain any and all available cost and other efficiencies in the work force that can be derived from such practices to the benefit of SCRRA.

b. **Reserved**

c. Picketing. Contractor agrees that in the event its employees engage in an apparently unlawful work stoppage or picket of SCRRA's facilities in connection with a labor dispute, the Contractor will initiate all appropriate steps necessary to require the Contractor's employees to return to work or cease the picket, including initiating litigation in a court of proper jurisdiction if appropriate. The Contractor will bear the cost of these efforts. If employees of the Contractor unlawfully engage in a work stoppage or unlawfully honor a picket line of another union at an SCRRA facility, in connection with a labor dispute of any kind, and if the Contractor is unable to provide Train and Engine Crews within five (5) days, SCRRA shall be permitted to exercise its rights under Section C.18.b. Contractor shall not invoice SCRRA for Direct Costs for employees unlawfully engaged in a work stoppage or unlawfully honoring a picket line of another union at a SCRRA facility for the period during which the Contractor is unable to provide Train and Engine crews.

d. Cameras. The locomotives and cab cars used in trains operating in SCRRA's service will be equipped by SCRRA with inward and outward facing cameras and audiofeed prior to July 1, 2010, and the use and operation of those cameras and audiofeed will be in accordance with policies established by

SCRRA, the current version of which policy is attached hereto as **Appendix 18**. Contractor acknowledges that nothing in its policies or agreements precludes the use and operation of cameras in accordance with SCRRA's policies and procedures, and that it will provide crews that will work in that environment. Contractor confirms that it will not voluntarily agree, except as required by law, to any changes in its agreements with the representatives of the employees working in the SCRRA Commuter Rail Operations that in any way limit the use and operation of cameras and audiofeed in SCRRA equipment. Any such voluntary agreement shall be considered a material breach by Contractor of this Contract. Contractor will have access, subject to the policies and procedures adopted by SCRRA, to the recordings made using these cameras and audiofeed.

**17. Relationships with Other Carriers**

The Contractor expressly understands that agreements exist between SCRRA or the Member Agencies, the former Southern Pacific Transportation Company, the Union Pacific Railroad Company, and the former Atchison, Topeka and Santa Fe Railway Company (now BNSF Railway Company), governing lines included in the Service Property, as well as the Amtrak Intercity Operating Agreement. Should questions arise regarding the interpretation of those agreements with Third Party Railroads other than Contractor, those questions shall be resolved by SCRRA at its sole discretion. Any such questions regarding the Amtrak Intercity Operating Agreement shall be resolved in accordance with the dispute resolution term of that agreement. SCRRA agrees that it will consult with Contractor prior to making any changes to any provision of such agreements which affect Contractor's provision of the Services.

**18. Selection of Subcontractors**

- a. Except with respect to agreements between Contractor and any Subcontractor in effect as of the date of this Contract, and of any extensions or amendments to such agreements ("pre-existing agreements"), Contractor may not employ Subcontractors to perform any of its obligations or services, with an estimated value of \$10,000 or more per year, under this Contract without the prior written approval by SCRRA of the Subcontractor, the scope of work to be performed by that Subcontractor, and the process used to select the

Subcontractor. The Contractor shall be required to re-solicit for subcontracted services on a schedule, mutually agreed to by SCRRA and the Contractor. Solicitation for subcontract services shall comply 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 on that specific procurement rather than SCRRA's approved procurement policies and procedures. Contractor's request for approval must be submitted as required by Section C.36 of the Contract. If SCRRA's approval or disapproval has not been made within ten (10) working days of receipt of Contractor's request, Contractor may approve of the Subcontractor without SCRRA's consent.

b. Except for pre-existing agreements, each agreement with a Subcontractor shall require the Subcontractor to be bound by and comply with the terms and conditions of this Contract, as well as any other obligations that the Contractor may require. The Contractor shall remain solely responsible for any work for which it employs a Subcontractor, and SCRRA shall have no obligation to such Subcontractors whatsoever. All employees of the Contractor's Subcontractors shall be Qualified for the jobs those individuals perform. Any such employee of a Subcontractor who is not Qualified shall be removed from SCRRA Services.

c. Should SCRRA be dissatisfied with the Contractor's Subcontractor's performance it shall so notify the Contractor and the Parties shall discuss remedies to the situation. Following these discussions should the situation fail to be resolved to the satisfaction of SCRRA, SCRRA shall notify the Contractor, in writing, to terminate the Subcontractor within thirty (30) days unless the Parties agree to a different remedial action in writing.

d. Except in the event of an emergency or circumstances arising under Section B.4, in the event the Contractor employs, without the prior written approval of SCRRA, any Subcontractor to perform Services under this Contract, with an estimated value of \$10,000 or more per year, SCRRA will not provide any indemnification pursuant to Section C.19 to Amtrak or to that Subcontractor that arise out of the action or inaction of that Subcontractor.

**19. Use of Equipment, Materials and Services**

- a. As described in Contractor's mobilization plan, SCRRA and the Contractor shall conduct a joint audit of the Service Property, which shall establish its condition as of that date. The Contractor shall make no material changes to the Service Property or equipment to be used in providing the Services without SCRRA's prior written approval.
- b. The Contractor shall use the equipment, materials and services provided or paid for by SCRRA solely for the purpose of providing the Services. The Contractor shall acknowledge receipt of all equipment, materials and fixed assets, and shall include in the Annual Report described in **Appendix 10**, an inventory showing additions, deletions or other changes to the list of such equipment, materials and fixed assets. Prior to the Start Date, the Contractor shall prepare and submit to SCRRA for its approval a policy governing the distribution and replacement of equipment, material and fixed assets, including but not limited to, small tools and all Controllable Items issued by the Contractor to employees who are working on providing the Services. Upon the termination of the Contract, the Contractor shall return to SCRRA any such tools, equipment and material supplied or purchased by SCRRA or tools, equipment and material that is equivalent (or in certain circumstances, identical) in type, value and condition, excepting normal wear and tear, to the tools, equipment and material provided to the Contractor.
- c. SCRRA will provide facilities, vehicles, equipment and tools to perform the Services as determined necessary by SCRRA. The Contractor will occupy and share these facilities with SCRRA staff and other contractors involved in the provision of SCRRA Commuter Railroad Operations.
- d. The Contractor shall promptly inform SCRRA of any incident that causes damage to SCRRA property, including but not limited to rolling stock, equipment and material. Contractor may, at its sole discretion, replace the damaged property. Furthermore, Contractor shall employ its normal policy and procedures regarding recovery from any employees who are deemed responsible for the damage, and shall remit to SCRRA any amounts so recovered, net of any costs of obtaining such recovery.

**20. Assistance in Distribution of Public Information**

The Contractor will cooperate with SCRRA in distributing on-board notices and making announcements to passengers informing them on matters related to the SCRRA Commuter Railroad Operations, and will otherwise render assistance to SCRRA in monitoring and supervising such distribution and announcements. At the request of SCRRA, the Contractor will distribute schedules and other information to passengers. Content of informational materials is at the sole discretion of SCRRA.

**21. Accounting Standards**

The Contractor shall maintain the books and records which are required by this Contract, and shall provide any financial or other reports required by this Contract, all in accordance with Generally Accepted Accounting Principles.

**22. RESERVED.**

**23. Response to Request for Assurances**

SCRRA may at its sole discretion and at any time during the term of this Contract request the Contractor to provide SCRRA with evidence of its continuing financial ability to undertake and fulfill its obligations under this Contract. If, at the time of such request, Contractor has an "Investment Grade" or better rating from any major rating agency (i.e., Moody's Investor Services, Standard & Poor's, or Fitch's), it shall be deemed to have the necessary financial ability and need not provide such evidence. If, at the time of such request, Contractor does not have such an "Investment Grade" or better rating, it shall provide such evidence, which SCRRA may submit to an independent outside certified public accountant or such other qualified professional with expertise in analyzing financial statements of participants in the rail passenger and/or rail transit industries (either referred to as a "Rail Industry Financial Professional") for a determination as to the Contractor's financial ability to undertake and fulfill its obligations in this Contract. Areas to be examined may include, but are not limited to, internal liquidity, and financial risk. In assessing Contractor's continuing financial ability to undertake and fulfill its obligations under this Contract, the Rail Industry Financial Professional undertaking the review shall take into account the fact that an essential element of Contractor's cash flow and other financial projections is its reliance on receipt each year of a subsidy from the federal government. If the Rail Industry Financial Professional determines that the

Contractor does not have such requisite financial ability, the Contractor will respond promptly to that determination. If after review of the Contractor's response, SCRRA concludes that Contractor has not provided sufficient evidence of such requisite financial ability, SCRRA may, at its sole discretion, terminate this Contract for convenience.

**24. Notice of Regulatory Violations**

- a. With respect to the Services, Contractor shall inform the SCRRA MOC of violations of any applicable federal, state or local laws or regulations within 24 hours of the earlier of receipt by Contractor's Transportation Superintendant of actual notice or of his/her awareness of such a violation.
- b. Contractor shall provide to SCRRA the reports described at items 2.h., 2.i. and 5 in **Appendix 10**.

**25. Coordination with Other SCRRA Contractors**

SCRRA shall require its MOW, MOE and C&S Contractors and any Third Party Contractors to work with Contractor to establish procedures for effective and efficient cooperation between and among them for the benefit of the SCRRA Commuter Railroad Operations.

**26. Employee Discipline and Removal**

- a. Employee Conduct. All employees who are engaged in the provision of the Services shall be Qualified and shall perform their duties in a courteous, efficient and safe manner. Employees dealing with the public shall be clean and properly attired while on duty. Because of the importance to the success of the SCRRA Commuter Railroad Operations of courteous and proper decorum of all employees who are involved in the provision of the Services, the Parties consider that any conduct that is not consistent with the objectives stated in the first two sentences to be "conduct unbecoming an employee."
- b. Conduct Unbecoming an Employee. The Parties agree that the following is a non-comprehensive list of examples of "conduct unbecoming an employee."
  - (1) Actions that are inconsistent with standard operating practices or procedures, and which damage equipment or facilities used in the provision of commuter services or other services provided by SCRRA;

- (2) Violations of the GCOR, Airbrake and Train Handling Rules, Safety Rules, Timetable and Special Instruction, and any applicable federal, state or local laws or regulatory requirements that have a material impact on the safe and efficient operation of the SCRRA commuter service;
- (3) Violations of SCRRA Supplemental Instructions that have a material impact on the efficiency, reliability, and safety of the provision of the Services;
- (4) Misconduct towards a customer, fellow employee, SCRRA employee, MOW Contractor, MOE Contractor, C&S Contractor, Third Party Contractors or their employees, other railroad employees, or public official, which may include, but shall not be limited to, any instance of belligerent or malicious behavior toward the aforementioned, or willful failure to assist customers;
- (5) Gross negligence while on duty;
- (6) Falsification of report;
- (7) Threats of violence that are both genuine and credible, or fighting while on duty;
- (8) Conduct, including use of language while on duty, that violates or is prohibited by Contractor's anti-discrimination and anti-harassment policy, as such policy may be amended from time to time (the current version of which as of the date of this Contract are attached as hereto as **Appendix 13**) and/or Contractor's "Standards of Excellence", as amended from time to time (a copy of the current version of which is attached hereto as **Appendix 14**) ;
- (9) Making public statements or comments that are disparaging or harmful to SCRRA, Metrolink or Amtrak;
- (10) Littering rolling stock, station areas or any other part of the property used in providing commuter service;
- (11) Eating, smoking, reading, or engaging in other similar activities that are unrelated to provision of the Services while engaged in performing duties that involve dealing with the public;

(12) While engaged in performing the Services, using electronic devices that are prohibited by applicable operating rules, laws or regulations, including but not limited to cellular telephones, television or radios or other audio devices other than the communication devices provided by Contractor or SCRRA as part of the equipment used in the operation of the Services.

(13) Tampering with cameras or other recording devices.

c. Investigation and Consequences of Conduct Unbecoming an Employee.

(1) For the purpose of this section, the conduct described in Sections B.26.b.(1) through (8), inclusive, plus (12) and (13), shall be referred to as "Category 1" conduct, and the conduct described in Sections B.26.b.(9) through (11) inclusive, shall be referred to as "Category 2" conduct.

(2) Upon written notice from SCRRA to the Contractor that an employee has engaged in Category 1 conduct on one (1) occasion or Category 2 conduct on two (2) or more occasions, the Contractor shall promptly investigate the matter and shall confer with SCRRA concerning the facts and the Contractor's preliminary recommended handling of the employee in no more than five (5) business days. As soon as possible, the Contractor shall submit a copy of the documentation of the disciplinary process to SCRRA. SCRRA shall have the right to conduct its own investigation and Contractor shall cooperate with SCRRA's investigative efforts. SCRRA retains the right to require Contractor to prepare a separate written report for SCRRA concerning the conduct and concerns raised by the investigations if the documentation is not adequate in SCRRA's judgment.

(3) In the event that SCRRA determines that there is clear evidence that the employee has committed a violation covered in Category 1, the Director of Operations of SCRRA reserves the right to require in writing that the employee be barred from SCRRA service immediately following the initial conference referred to in the first sentence of subsection (c)(2), above, and the Contractor shall notify the employee of the bar imposed by SCRRA with respect to the SCRRA Services and the employee shall not be allowed to work in the SCRRA Services.

(4) In the absence of such a determination by SCRRA, and after the conclusion of any investigations, the Parties shall confer after receipt of the Contractor's written report, if any, in order to jointly evaluate the most appropriate handling of the conduct of the particular employee. After this further consideration, if SCRRA is convinced that the employee should be barred from SCRRA service on the basis of Category 1 conduct, and if the Director of Operations requests that action in writing, the Contractor shall notify the employee of the bar imposed by SCRRA and the employee shall not be permitted to work in the SCRRA Services. After the joint consideration following the Contractor's written report, if SCRRA is convinced that the employee should be barred from SCRRA service on the basis of two (2) or more instances of Category 2 conduct, if the employee has previously been advised of the significance of the behavior on at least one (1) occasion and been given an opportunity to improve his or her conduct, and if the Director of Operations requests that the employee be barred from SCRRA service in writing, the Contractor shall notify the employee of the bar imposed by SCRRA and the employee shall not be permitted to work in the SCRRA Services.

(5) When an employee has been barred from SCRRA Service pursuant to this subsection, the Contractor may apply to SCRRA for reinstatement of the employee to SCRRA Service no sooner than 30 days following the imposition of the bar by SCRRA. Subject to any disciplinary action taken by the Contractor in connection with the conduct of the employee, SCRRA may, but is not obligated to, lift the bar imposed on an employee and the Contractor may return the employee to SCRRA Service at SCRRA's discretion if SCRRA is satisfied that the employee has successfully completed appropriate training or counseling to address the performance problem. SCRRA shall not be obligated to reimburse the Contractor for any costs incurred by the Contractor as a result of actions taken by the Contractor in response to SCRRA requests pursuant to this subsection B.26.c., other than direct costs incurred by the Contractor in providing information or otherwise cooperating with SCRRA's investigation.

- d. Contractor shall provide the employee discipline reports described in item 2.c. of **Appendix 10.**

**27. Accident/Incident Investigations:** SCRRA personnel shall be in charge of investigations of accidents or incidents, will be the custodians of all information gathered during the investigation, all of which information shall be made available to Contractor upon its request to the extent permitted by applicable law, and will be the contact persons for communications with the National Transportation Safety Board ("NTSB"), the Federal Railroad Administration ("FRA"), the California Public Utilities Commission ("CPUC"), local police, other law enforcement agencies, and other federal or state agencies (collectively "Investigating Agencies") that have a role in any such investigation. Contractor may, however, be a party to any investigation and respond to questions posed by any of the Investigating Agencies. Contractor will provide personnel information to SCRRA as part of any investigation to the extent permitted by law. Notwithstanding the foregoing, Contractor may conduct its own investigation and shall provide all information it discovers to SCRRA to the extent permitted by law. Such information shall include but not be limited to records of efficiency testing, training records, discipline records, certification history and check-ride records. To the extent required and permitted by law, Contractor shall secure waivers from its employees for the release of all such information to SCRRA as a condition of their employment in the SCRRA Commuter Railroad Operations.

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## C. GENERAL CONDITIONS

### 1. Term; Period of Performance

- a. Contractor's mobilization shall begin on the Effective Date, and shall end on the Start Date, and the terms of this Contract shall govern the relationship of the Parties during the mobilization period. Notwithstanding the foregoing, Contractor shall only be obligated to provide services related to mobilization and training prior to the Start Date.
- b. The initial term of the Final Agreement shall end on June 30, 2014, which initial term shall be subject to renewal for two additional extended terms of three (3) years each at SCRRA's option. SCRRA shall notify Contractor of its desire to extend the Final Agreement for each extended term by no later than twelve (12) months prior to the expiration of the then-current term (i.e., by June 30, 2013 for the initial term and by June 30, 2016 for the first extended term). Contractor shall notify SCRRA within sixty (60) days of its receipt of SCRRA's notice whether it will agree to the extension. If Contractor does not agree to the proposed extension, the Final Agreement will terminate at the end of the then-current term.

### 2. Access to Equipment and Property

- a. General. At no cost to the Contractor, SCRRA shall provide, and shall allow the Contractor the necessary access to, the portions of the Service Property, locomotives and passenger cars, equipment and machinery necessary for and to be used in provision of the Services. SCRRA hereby grants the Contractor the right to enter upon and utilize the foregoing for the purpose of performance of the Contractor's obligations under this Contract. The property provided by SCRRA shall include office space and storage space. SCRRA shall pay for all utilities in all facilities, office and storage space provided pursuant to this Contract. If SCRRA cannot provide office and/or storage space to the Contractor, the Contractor may lease other office or storage space subject to SCRRA's prior approval.
- b. Changes to Service Property. The Contractor shall make no changes to the Service Property or equipment to be used in providing the Services without SCRRA's prior written approval.

c. Non-Revenue Vehicles. SCRRA may mark and identify all vehicles and other equipment provided for the Contractor's use in providing the Services with the SCRRA "METROLINK"® colors, logo or other identification marks. The Contractor employees' use of such vehicles shall be in accordance with the then-current SCRRA policy governing vehicle use. If any non-revenue vehicle leased or otherwise acquired by the Contractor is damaged, destroyed or otherwise becomes unavailable for use as a result of an incident occurring (1) other than during use in accordance with such policy, the Contractor may, at its option, replace such vehicle at its sole cost or pay for any damage up to, but not more than, \$1,000, or (2) during use in accordance with such policy, then SCRRA will replace the vehicle at its sole cost.

d. SCRRA Access. SCRRA and/or its designees will have access at all times to any SCRRA real or personal property.

**3. Changes in Equipment Provided**

SCRRA has the right to make specific improvements or additions to, or to change entirely the assigned equipment, and the Contractor shall make every reasonable effort to implement operations using such different equipment as soon as possible; provided, however, that no such change shall have any adverse effect on the Contractor's ability to operate the Services on-time and in accordance with the Contractor's obligations under this Contract. Contractor specifically acknowledges that SCRRA will be installing and implementing the operation of Positive Train Control during the term of this Contract and Contractor will make all reasonable efforts to cooperate with SCRRA in the implementation of that technology in the SCRRA Commuter Rail Operations.

**4. Fares, Timetables and Ticket Sales**

SCRRA assumes all responsibility for establishing fares, for obtaining and printing schedules and tickets, and for distributing schedules to the Contractor. Except as otherwise specifically agreed by the Parties in writing, SCRRA employees, or third parties authorized solely by SCRRA, will be responsible for selling and distributing, or arranging for the sale or distribution of, all commuter rail service passenger tickets and collecting the revenue therefrom. SCRRA may at its sole discretion provide on-board personnel to assist the Contractor employees in the conduct of fare inspections or other

non-operating tasks. Only SCRRA may issue passes for free transportation on trains in SCRRA Commuter Railroad Operations.

**5. Operations and Management Supervision**

In addition to the rights and obligations stated elsewhere in this Contract, SCRRA shall have the following rights with respect to oversight and monitoring of the Contractor's performance:

- a. Monitor for conformance with SCRRA's standards any personnel, records, facilities, and equipment developed or used by the Contractor and any Subcontractor in performance of Contractor's obligations under this Contract, as well as timetable adherence and fare inspection procedures. The Contractor shall provide SCRRA with a summary of monthly reports documenting any efficiency tests and any disciplinary actions related to safety performed by the Contractor.
- b. Specify supplies and equipment to be used by the Contractor in providing the Services, and provide the Contractor with any required Material Safety Data Sheets ("MSDS"). If the Contractor's specifications or policies for such items differ from those of SCRRA, SCRRA's policy and specifications shall govern unless SCRRA agrees to the use of Contractor's specifications.
- c. Inspect any equipment utilized on the Service Property at any time, and remove from service and replace any equipment which, in SCRRA's sole discretion, is in an unacceptable condition.
- d. In accordance with Section C.7., direct the Contractor to cease operation of any trains operated in the SCRRA Commuter Railroad Operations. The Contractor shall resume operation of any such train or trains only upon receipt of approval from SCRRA.
- e. Direct the Contractor to permanently remove from SCRRA Commuter Railroad Operations any employee for conduct unbecoming an employee, to the extent permitted by Sections B.26.b. and c. of this Contract.
- f. Unless otherwise provided for in this Contract, finally determine all matters related to the conduct and/or operation of the Services.

**6. SCRRA's Right to Information**

SCRRA shall have the right to obtain from the Contractor within ten (10) Days of a request any information related to the Services or the Service Property that Contractor possesses and is legally permitted to provide to SCRRA; provided, however, that if the Contractor reasonably requires additional time beyond ten (10) Days, it shall notify SCRRA and shall provide the information within the stated additional time.

**7. Planning for Modifications to the Services**

SCRRA may from time to time make changes in the following aspects of the SCRRA Commuter Railroad Operations and will work with the Contractor to plan for implementation of such changes:

- a. Times of day and days of week when trains operate;
- b. Increases or decreases in the level of train operations, including changes in train consists, or changes in the location and number of station stops with adjustments in scheduled running times, and crew on-duty times all as determined pursuant to Section D.7.; and
- c. Crew scheduling and staffing.

**8. Other Contracting Rights**

SCRRA reserves the right to remove any portion of the Services from the Contractor which have not been performed to SCRRA's satisfaction, provided the Contractor has been notified in writing of the deficiencies and has been provided thirty (30) days to correct the situation. SCRRA may, at its sole discretion, augment or supplant the services that are not within the scope of this Contract with its own forces or forces of another contractor or agency upon written notice to the Contractor. The Contractor shall cooperate fully with SCRRA's staff or contractors that may be providing such services. Any employee or contractor of such person, corporation or other entity shall be permitted to perform the contracted functions at any location on the Service Property; provided, however, that no such employee or contractor shall unreasonably interfere with the Contractor's provision of the Services.

**9. Rights in Property**

**a. Title.**

(1) All property purchased by the Contractor for SCRRA shall be hereafter referred to as SCRRA Property. Title to SCRRA Property shall pass to and vest in SCRRA upon the purchase of such property by the Contractor. Title to SCRRA Property shall not be affected by its incorporation into or attachment to any property not owned by SCRRA, nor shall SCRRA Property become a fixture or lose its identity as personal property by being attached to any real property subject to the terms of any other agreement in place pertaining to such property.

(2) The title transferred as described above shall, in each case, be good, and free and clear from any and all security interests, liens and/or other encumbrances. The Contractor shall not pledge or otherwise encumber the items in any manner that would result in any lien, security interest, charge, and/or claim upon or against said items.

(3) The Contractor shall promptly execute, acknowledge, and deliver to SCRRA proper bills of sale or other written instruments of title for the SCRRA Property in a form as required by SCRRA; said instruments shall convey to SCRRA title to the SCRRA Property free and clear of debts, claims, liens, mortgages, taxes, and/or encumbrances imposed by the Contractor.

(4) SCRRA Property shall be used only for performing these Services, unless otherwise provided in this Contract or approved by SCRRA.

**b. Property Administration.** The Contractor shall use, maintain, repair, protect and preserve SCRRA Property in accordance with sound business practices.

**10. Rights in Technical Data**

**a.** All SCRRA Protected Materials paid for in whole or in part by SCRRA and that address the performance of the Services or changes thereto shall be available to SCRRA without restriction or limitation on their use and shall be

made available upon request to SCRRA at any time. Upon request of SCRRA, originals of such documents and materials, to the extent such originals are in Contractor's possession at the time of such request, shall be delivered to SCRRA upon completion of the work or termination of the Services. The Contractor shall be permitted to retain and use copies of such items; however, publication of the material is subject to the written approval of SCRRA.

b. All SCRRA Protected Materials paid for in whole by SCRRA and that address the performance of the Services or changes thereto shall be the sole property of SCRRA. Upon request of SCRRA, originals of such documents and materials, to the extent such copies are in Contractor's possession at the time of such request, shall be delivered to SCRRA upon completion of the work or termination of the Services. The Contractor shall be permitted to retain and use copies of such items; however, publication of the material is subject to the written approval of SCRRA.

c. No SCRRA Protected Materials are to be released by the Contractor to any other person or agency except as necessary for the performance of the Services or as required by law, regulation or order. Notwithstanding the foregoing, Contractor may disclose SCRRA Protected Materials to its auditors, members of Congress, to the United States Department of Transportation, to the Surface Transportation Board or the National Transportation Safety Board, upon receipt of a written request therefore. Any SCRRA Protected Materials, except financial data, thus disclosed shall be clearly marked on each page as the property of SCRRA. All press releases or information related to the Services shall be distributed only after first being authorized by SCRRA.

#### **11. Public Information Responsibilities**

SCRRA will assume all responsibility for marketing the public use of the SCRRA Commuter Railroad Operations through advertisements or other promotions. SCRRA reserves the right to determine the locations for ticket sales. SCRRA assumes all responsibility for informing the public about the SCRRA Commuter Railroad Operations; provided, however, that the Contractor will cooperate with SCRRA and shall provide such information as it is directed by SCRRA to transmit to the public, including information concerning any disruptions and resulting delays due to emergencies. The

Contractor will assist in the investigation of passenger complaints and in the preparation of responses to such complaints. The Contractor will install SCRRA-approved promotional materials or public information notices on the equipment used in the SCRRA Commuter Railroad Operation pursuant to procedures established by SCRRA.

**12. Advertising**

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

**13. Labor Protection**

**a. Section 13(c) Compliance**

(1) Unless otherwise provided in this Contract, SCRRA shall be legally and financially responsible for any claims or obligations imposed by Section 13 (c) of the Federal Transit Act (49 U.S.C. §5333(b)) when such claims or obligations arise as result of any direct actions or requirements of SCRRA. SCRRA shall indemnify and hold the Contractor harmless for any 13(c) claims or obligations described in this subsection that are the responsibility of SCRRA. The Parties specifically agree that termination of this Contract pursuant to the Section C.23.a., entitled "Termination for Cause by SCRRA", or at the end of its term, including failure to exercise an option to extend the Contract, shall not be considered an action that requires SCRRA to indemnify the Contractor for such claims or obligations.

(2) The responsibilities of the Contractor related to 13(c) shall be as follows:

(a) The Contractor shall be financially and legally responsible for any 13(c) claims or other 13(c) obligations that arise out of acts or omissions of the Contractor in connection with the performance of the Services, that are not directly or expressly approved in writing by SCRRA, excluding any subcontracting by the Contractor

that occurs at the direction of SCRRA. The Contractor shall defend, indemnify and hold SCRRA harmless for any 13(c) claims or obligations described in this subsection that are the responsibility of the Contractor.

(b) The Contractor agrees to afford the employees of the current contractor who currently are providing the Services covered by this Contract a priority in hiring for positions with the Contractor, subject to the requirements of Section B.10.b. of the Contract. The Contractor shall provide as part of its mobilization plan to SCRRA a description of the process it will use to comply with this subsection, including the procedure it will use in hiring and the training it will offer to assist existing employees now performing the Services covered by this Contract to qualify for positions.

(c) The Contractor shall bargain collectively with any labor organization that is selected by its employees in accordance with applicable law, and shall comply with the terms and conditions of any collective bargaining agreement that the Contractor enters into with such labor organization.

(d) The Contractor shall promptly provide SCRRA with all information SCRRA deems necessary in connection with SCRRA's administration of its 13(c) claims or disputes, and the negotiation of agreements or settlements over issues that may arise in connection with or relate to the Services. The Contractor and SCRRA shall cooperate fully to avoid and minimize any 13(c) liability relating to the Services.

(e) The Capital Assistance Protective Arrangements, pursuant to 49 U.S.C. §5333(b), among SCRRA, ATU, IBT, SEIU, IBEW, BLE, SCCC, NCEA and ALADS, CA-90-X908, dated May 6, 1999, and among SCRRA, the United Transportation Union, the Transportation-Communication International Union and the American Train Dispatchers Association, also dated May 6, 1999,

which have been applied as well to other federal funds received by SCRRA for other projects, require any person, enterprise, body or agency which shall undertake the provision and/or operation of the SCRRA's Metrolink Commuter Rail System, or any part or portion thereof, to agree to be bound by the terms of those arrangements and accept the responsibility with SCRRA for full performance of those conditions. The Contractor agrees to be bound by the terms of those arrangements and accepts the responsibility with SCRRA, as allocated in Sections C. 13.a. and C.13.b., for full performance of these conditions.

b. Other Labor Protection Obligations

SCRRA will assume the cost of any labor protection obligations triggered by: (1) any changes in applicable local, state or federal ordinances or legislation which affect SCRRA's operations and the Contractor or SCRRA's obligations to the Contractor's employees who are providing the Services; or (2) any other affirmative act of SCRRA. In the event of any changes described in clause (1) of the previous sentence, the Contractor will diligently pursue efforts to negotiate an agreement with its employees or their representatives that minimizes the impact or the costs of such protection obligation to SCRRA.

**14. Railroad Retirement**

Contractor shall remain an "employer" within the meaning of the Railroad Retirement Act of 1974, 45 U.S.C. 231(a)(1) throughout the term of this Contract.

**15. Limitations on Covenants Not to Compete**

a. The Contractor and its Subcontractors hereby confirm that they have no existing employment agreements that contain covenants not to compete, or that if they have such covenants in their employment agreements, either the covenants are within the scope of one of the California statutorily recognized exceptions, or the covenants clearly state that they are void and unenforceable in California.

b. The Contractor agrees that it and its Subcontractors shall not enter into any employment agreements that contain covenants not to compete, unless such

covenants are within the scope of a California statutorily recognized exception that allows the covenant, or clearly state the covenants are void and unenforceable in California. Violation of this Section shall be considered a material breach of this Contract and shall entitle SCRRA to take any and all measures and seek any and all remedies provided by this Contract and as authorized by law and equity.

**16. Access to Service Property by Third Parties**

a. General. SCRRA will have the right to permit Third Party Contractors to enter upon the Service Property subject to compliance with all applicable operating and safety rules. Before any such Third Party is allowed access to the tracks or property adjacent to the tracks that are outside of any yard limits on the Service Property, SCRRA will require that Third Party to execute a permit to enter upon the property and secure railroad protective liability insurance, naming SCRRA, the Contractor, any other railroad, and any contractor which operates or performs services on that portion of the Service Property, as named insureds under the policy, as well as such other insurance as determined by SCRRA. The Third Party shall provide original counterparts of all policies to the insureds. Any such insurance shall remain in effect for one year following completion of the work requiring access to the Service Property.

b. In the Locomotive or Cab. SCRRA shall have the sole right to permit persons other than Contractor's employees to be present in the locomotive or cab compartment of a cab car, and shall from time to time provide Contractor with an updated list or notice of persons it has authorized to ride in the locomotive or cab. Any person whom SCRRA permits to be present in the locomotive or cab shall be Qualified on GCOR, or if such person is not Qualified on GCOR then such person shall be accompanied by a person (other than the conductor or engineer of that train) who is Qualified on GCOR and who is also authorized by SCRRA to ride in the locomotive or cab.

c. Notification. When SCRRA allows a third party to have access to a portion of the Service Property as described in Section C.16, SCRRA shall notify the Contractor promptly of the scope, purpose and duration of that third party's access.

d. Encroachments. All utility crossings, construction, or encroachments upon the Service Property by or for third parties must be approved by SCRRA and shall then be coordinated with the Contractor as required. Approval by SCRRA engineering personnel of all construction standards, forms, plan, utility crossings, and encroachments shall be a prior condition to any authorization by SCRRA for work by a third party to proceed. Forms and standards may receive a one-time approval until revised. SCRRA reserves the exclusive right to charge a rental or occupancy fee for any such access.

**17. Inspection and Audit**

a. The Contractor shall maintain a complete set of records relating to this Contract in accordance with Generally Accepted Accounting Principles.

b. SCRRA may, at any time during which records, accounts, work, materials and financial books are maintained in accordance with Section C.17.c., below, and at its own cost, conduct or have conducted an inspection or audit of any aspect of the Contractor's performance of its duties and obligations under this Contract. Upon reasonable notice, Contractor shall permit auditors or any other duly authorized agent of SCRRA, the U.S. Department of Transportation (including the FRA and/or the FTA), and the Comptroller General of the U.S. to inspect, examine and audit all records, accounts, work, financial books and materials then in Contractor's possession relating to the Contractor's performance under this Contract. SCRRA shall also have the right to reproduce any such books, records and accounts. Copies of all audits and inspections of Contractor's performance of its duties and obligations undertaken by or on behalf of SCRRA shall be promptly provided to the Contractor.

c. Notwithstanding SCRRA's Record Management Policy, all such books, records, accounts and documents shall be maintained and be accessible to SCRRA for three (3) years after completion or termination of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain all records until SCRRA, the FTA Administrator, or the Comptroller General, or any of their duly authorized representatives, have disposed of such litigation, appeals, claims or exceptions related thereto. For purposes of audit, the date of

completion of the Contract shall be the date of SCRRA's payment for the Contractor's final billing (so noted on the invoice) under this Contract.

d. Except for pre-existing contracts, contracts with the Contractor's Subcontractors shall include the above provisions with respect to audits. The term "subcontract" as applies to Federal audit requirements excludes (1) purchase orders not exceeding \$10,000, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

e. Any payment by SCRRA shall be subject to a reasonable audit, in accordance with Generally Accepted Auditing Standards, and evaluation of operations, performance, and costs. The scope of such audit and evaluation may be either financial or operational, or both, and may include, in addition to costs and wages reimbursed by SCRRA, the Contractor's controls, practices, and procedures and their effect upon the performance of the Services provided by the Contractor. Upon completion of the audit, the Parties shall meet and confer about the results. In the event of any dispute about the results of the audit, SCRRA shall cause its Assistant Executive Officer, Operating Services (or other appropriate official) to meet with Contractor's Vice President, Policy and Development (or other appropriate official) and attempt to resolve the dispute. If those two persons cannot resolve the matter, the dispute shall be referred to the Chief Executive Officers. If those two Officers cannot resolve the dispute, it shall be handled in accordance with Section C.22. Upon completion of the audit and the resolution of any disputes that may arise as a result of the audit, any adjustments required to make any reconciliation required shall be paid or credited, as the case may be, in accordance with the provisions of Section D.12.a. of this Contract.

**18. Emergencies; Force Majeure**

a. Force Majeure. Each Party shall be excused from performance of any of its obligations to the other hereunder, where such nonperformance is occasioned by any event beyond the non-performing Party's control which shall include without limitation, any order, rule or regulation of any federal, state, or local government body, agent, or instrumentality that mandates cessation or

interruption of service or that prevents Contractor from fulfilling its obligations under this Contract, Acts of God or the public enemy, wars, terrorism, civil disturbances, fires, floods, earthquakes that disrupt Metrolink service, epidemics, quarantine restrictions, freight embargoes, work stoppage or accident; 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. The Contractor shall cooperate fully with SCRRA and any other contractors, and shall use its reasonable best efforts to assist in (where appropriate or where requested) the repair, restoration, or replacement of any property which is necessary for the provision of Services in accordance with established train schedules and shall resume normal operations and performance of its other obligations hereunder as soon as reasonably possible.

b. Operation by SCRRA. If the Contractor is excused from performing its obligations under this Contract for any of the *Force Majeure* reasons listed above, and such an interruption in the Services continues for five (5) Days per *Force Majeure* occurrence, SCRRA may provide notice to the Contractor of its intent to begin providing the Services, and may provide those Services itself with its own or other personnel without liability to the Contractor, but only for the period during which the Contractor is unable to provide the Services. The Contractor shall cooperate with SCRRA and SCRRA's contractor to effect a seamless transition in such cases.

#### **19. Liability and Indemnification**

a. Except as provided elsewhere in this Section 19, SCRRA shall, to the extent permitted by law, defend (with counsel of SCRRA's choice), indemnify and hold Contractor and its Subcontractors harmless from all claims, damages or expenses for personal injury to or death of any person or damage to any property arising out of the SCRRA Commuter Rail Operations, regardless of cause, as follows: (i) up to \$200 million each occurrence for the period from the Effective Date through November 30, 2009; (ii) up to \$250 million each occurrence for the period from December 1, 2009 through June 30, 2010; and (iii) up to \$300 million

each occurrence for the period commencing July 1, 2010. SCRRA's obligation under this Section C.19.a. shall be without regard to insurance coverage.

b. Except as provided elsewhere in this Section C.19., SCRRA shall to the extent permitted by law indemnify and hold Contractor harmless from all claims, damages or expenses arising out of all other actions, suits, claims, liabilities and damages arising out of the SCRRA Commuter Rail Operations ("Other Actions"), regardless of cause to the extent that such claims, damages or expenses relate to the Services as follows: (i) up to \$200 million each occurrence for the period from the Effective Date through November 30, 2009; (ii) up to \$250 million each occurrence for the period from December 1, 2009 through June 30, 2010; and (iii) up to \$300 million each occurrence for the period commencing July 1, 2010. Notwithstanding the previous sentence, SCRRA's obligation to indemnify Contractor for attorneys' fees and expenses incurred by Contractor in defending such Other Actions shall not exceed One Hundred Thousand Dollars (\$100,000.00) per each such Other Action. Payment by SCRRA pursuant to such indemnity shall be made promptly upon receipt of an invoice. SCRRA's obligation under this Section C.19.b. shall be without regard to insurance coverage.

c. (1) Notwithstanding the provisions of Section C.19.b., Contractor shall defend, indemnify and hold harmless SCRRA for any claims, liabilities, damages, attorney fees and expenses that arise out of the actions of its employees, agents or subcontractors engaged in performing the Services that constitute a Contractor Employee Violation (other than conduct giving rise to claims, damages or expenses described in Section C.19.a.), to the extent that Contractor and not SCRRA has control over the equipment or property at issue or over the employee, agent or subcontractor personnel who engaged in the Contractor Employee Violation that gave rise to the claim, liability, damage, attorneys fees and/or expenses;

(2) For the purposes of this Contract, the term "Contractor Employee Violation" shall mean claims by an employee or former employee of Contractor, an employee of SCRRA, an applicant for employment with Contractor or any other third party, alleging a violation by Contractor of federal, state or municipal

law regarding discrimination or harassment, including but not limited to claims of employment discrimination that any such person may have under Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, the Equal Pay Act, claims of age discrimination under the Age Discrimination in Employment Act, claims of disability discrimination under the Americans with Disabilities Act, Sections 503 and 504 of the Rehabilitation Act of 1973, civil actions for deprivation of rights under 42 U.S.C. 1983, and claims of wrongful discharge, personal injury, breach of contract or tort that may arise as a consequence of other claims enumerated in this paragraph. The term "Contractor Employee Violation" shall not include claims arising out of actions that were performed by Contractor, its employees, agents or subcontractors at the direction of SCRRA.

- d. (1) Notwithstanding any language in this Contract to the contrary, Contractor shall defend and indemnify SCRRA from and against any and all claims, allegations, demands, damages, liabilities, losses, costs, and expenses brought by an employee of Contractor or that employee's heirs, successors, representatives or assigns, that arise from or concern personal injuries or death or damages arising from such injuries or death incurred during his or her performance of the Services under any theory of liability.
- (2) In any claim or suit referred to in (d)(1), above, that is brought by an employee of Contractor or that employee's heirs, successors, representatives or assigns, against SCRRA and/or against SCRRA and Contractor, as between Contractor and SCRRA, SCRRA shall stand as Contractor and receive the benefits of all medical expenses paid by Contractor on behalf of Contractor's employee.
- (3) Contractor shall waive any and all subrogation and contribution rights, claims and remedies against SCRRA for all expenses and damages that Contractor may incur arising from claims and suits referred to in d(1), above, that are brought by its employees or that employee's heirs, successors, representatives or assigns.

(4) There shall be no cap or limitation whatsoever on the defense and indemnity obligations between Contractor and SCRRA concerning injuries or death or damages arising from such injuries or death to Contractor's employees that are referred to in (d)(1), above.

e. In the event of a final award by a court of damages under California Civil Code § 3294, Contractor shall reimburse SCRRA for the incremental out-of-pocket litigation costs, including but not limited to attorneys' fees, incurred by SCRRA in preparing for and providing the defense of the claim for such damages. If the Parties are unable to agree on the amount of such incremental costs, the Parties shall select an independent neutral third party to evaluate the costs incurred in defending the litigation that resulted in the award of such damages, and to determine the amount of such costs that are incremental to the costs that would otherwise have been expended in preparing for and defending the litigation at issue. The costs and expenses of such third party shall be shared equally by the Parties. Any attorney(s) retained by SCRRA or its insurer to provide the defense of Contractor shall be required to maintain its or their records in a manner agreed upon by the Parties that will permit the Parties or an independent neutral third party to determine which portions of such costs are incremental for the defense of the portion of the award that constitutes damages under California Civil Code § 3294. If Contractor elects to retain its own counsel, in addition to the counsel retained by SCRRA or its insurer to satisfy SCRRA's obligation to defend Contractor, then Contractor shall bear fully the cost of its own separately retained additional counsel.

f. Notwithstanding any other provision of this Contract, SCRRA shall not indemnify and hold Contractor harmless from damages awarded in a final, non-applicable decision by a court under California Civil Code §3294.

g. SCRRA will defend, indemnify and hold harmless Contractor, its officers, employees, agents or subcontractors, from any Liability for any loss or damages to the environment that occurred or existed prior to the Start Date. Liability for any loss or damages to the environment after such date shall be allocated according to Sections C.19.a.-e. of this Contract.

h. SCRRA consents to removal to federal court in the Central District of California of any action (other than an action under the Federal Employers Liability Act, 45 U.S.C. §51, *et. seq.*), for which Contractor has an obligation to defend and indemnify SCRRA.

**20. Insurance**

a. Commercial General Liability Insurance

For the period March 26, 2010 through and including June 30, 2010, SCRRA shall maintain at its sole cost railroad operations liability insurance, with SCRRA and Contractor as named insureds in the amount of \$250 million each occurrence. Effective on July 1, 2010, SCRRA shall maintain at its sole cost for the duration of this Contract railroad operations liability insurance, with SCRRA and Contractor as named insureds, in the amount of \$300 million each occurrence. Such insurance shall cover liability for damage to property and injury to or death of persons arising out of the SCRRA Commuter Rail Operations, and shall be primary insurance for the Contractor for the SCRRA Commuter Railroad Operations and this Contract, with no contribution from any insurance carried by Contractor. Such insurance shall contain no exclusions or restrictions with respect to contractual liability or work within any particular distance (e.g., 50 feet) of a railroad. SCRRA may self-insure or maintain a deductible of up to \$5 million each occurrence at its sole expense, but such self-insurance shall cover Contractor to the same extent as if the insurance were procured with no deductible. Such insurance shall cover liability of at least \$10 million due to instances arising out of acts of terrorism; it shall not, however, cover any portion of liability of Contractor for an award by a court of damages under California Civil Code § 3294. Not later than the Start Date, and not later than every July 1 thereafter, SCRRA shall provide Contractor with evidence, reasonably satisfactory to Contractor, of the insurance required hereunder. SCRRA shall notify Contractor when the insurance policy or policies have been received and thereafter shall make available for Contractor's inspection a complete copy of such policy or policies. Any changes shall be subject to Contractor's review and approval, which approval shall not unreasonably be withheld. If SCRRA's insurance is changed so as to lessen coverage to

Contractor, Contractor may increase the Contingency Fee described in Section D.1.e., accordingly.

b. Property Insurance

SCRRA will maintain for the duration of this Contract, property insurance covering the real and personal property of SCRRA, including, but not limited to, railroad rolling stock and equipment, track, roadbed, buildings, facilities, and all equipment and materials against all risks of physical damage usually covered in a railroad property insurance policy, including but not limited to collision, derailment, upset, and overturn. Such insurance shall waive all rights of subrogation against Contractor and Contractor's employees.

c. Automobile Insurance for SCRRA Vehicles

(1) SCRRA will procure and maintain for the duration of this Contract, automobile insurance covering the liability of Contractor and SCRRA and the employees of both Contractor and SCRRA arising out of the use of all SCRRA-owned, hired, rented, or leased vehicles used by either party for the SCRRA Commuter Rail Operations, and also covering the physical damage and loss exposure of such vehicles. The automobile insurance shall name Contractor as an additional insured with respect to operations to be performed in connection with the Services.

(2) This policy shall include Insurance Services Office form number CA0001 (Ed. 1.87) Automobile Liability coverage (code 1 any auto) in the amount of \$1 million combined single limit per accident for bodily injury and property damage for any SCRRA-owned, hired, rented or leased vehicle, or SCRRA employee-owned vehicles used by SCRRA or Contractor in the performance of the Services. If Automobile Liability Insurance or other form with a general aggregate limit is used, either the general limit shall apply separately to this Contract, or the general aggregate limit shall be twice the required occurrence limit.

(3) Coverage under this policy shall include physical damage limits sufficient to cover the actual cash value of the covered vehicle. SCRRA may, at its sole discretion, obtain modifications to the automobile insurance, but the Contractor will be reimbursed by SCRRA for any

increased cost it incurs as a result of such modifications. In no event shall the deductible for automobile physical damage coverage be greater than \$1,000 per accident or occurrence.

d. Automobile Insurance for Contractor's Vehicles

Contractor shall provide Automobile Liability insurance including Insurance Services Office form number CA 0001 (Ed. 1/87) and Automobile Liability coverage (code 1 any auto) in the amount of \$2 million combined single limit per accident for bodily injury and property damage for any over the road licensed vehicle that is owned, hired, rented or leased by Contractor other than those vehicles insured pursuant to Section C.20.c., above, and provided for use by Contractor in the performance of the Services. The form will not contain a general aggregate limit. Contractor shall name SCRRA as an additional insured under the policy.

e. Worker's Compensation, FELA and Employer's Liability

Contractor shall procure and maintain for the duration of this Contract coverage for workers subject to the Federal Employers Liability Act, as applicable. Contractor shall procure and maintain at its sole expense Employer's Liability Insurance with limits of \$1 million per occurrence. Contractor may self-insure at its sole expense for any or all of this amount of required coverage.

f. Insurance Policies

The insurance required to be provided by Contractor and SCRRA shall be with insurance companies authorized to do business in the state of California, and reasonably acceptable to the other party.

g. Period of Coverage

Contractor's and SCRRA's insurance coverage described in this Section C.20., shall apply to any liability arising on or after March 26, 2010, with respect to any occurrence occurring or liability arising on or after such date through the date of termination or expiration of this Contract.

**21. Claims Handling and Defense**

a. SCRRA will undertake, at its sole expense, the investigation, defense and settlement of all claims against the Contractor or SCRRA arising out of the SCRRA Commuter Railroad Operations except for claims with respect to injury or

death of Contractor's employees while performing the Services. Each party shall cooperate with the other and shall provide the other with any information in its possession as the other may require in handling the investigation, defense or settlement of any claim for which the other may be required, in whole or in part, to pay damages based on the terms of the Contract.

b. The Contractor shall promptly notify SCRRA of any incident, accident or injury that Contractor reasonably believes may lead to a claim for which SCRRA may be responsible under the Contract. The Contractor shall give notice to SCRRA within ten (10) business days of its actual receipt of any claim or complaint for which SCRRA is responsible under the provisions set forth in this Contract. If the Contractor fails to provide SCRRA with timely notice as required herein, SCRRA's obligations to indemnify and defend the Contractor shall exclude any increased costs or increased damages incurred solely as a result of such failure.

c. SCRRA shall promptly notify the Contractor of any incident, accident or injury that SCRRA reasonably believes may lead to a claim for which the Contractor may be responsible under the Contract. SCRRA shall give notice to the Contractor within ten (10) business days of its actual receipt of any claim or complaint for which the Contractor may be responsible under the provisions set forth in this Contract. If SCRRA fails to provide the Contractor with timely notice as required herein, the Contractor's obligations to indemnify and defend SCRRA shall exclude any increased costs or increased damages incurred solely as a result of such failure.

## **22. Dispute Resolution**

a. Dispute Resolution. In the event of a dispute relating to this Contract, and unless otherwise specified in this Contract, the Parties will first attempt to resolve the dispute by discussion between SCRRA's Assistant Executive Officer, Operating Services (or other appropriate official) and Contractor's Vice President, Policy and Development (or other appropriate official), or, in the case of disputes over the results of an audit, through discussions as described in Section C.17.e. However, if the Parties are unable to resolve such a dispute as a result of such discussion either Party may in its sole discretion bring an action solely in the

United States District Court for the Central District of California to the jurisdiction of which court both Parties agree. With respect to disputes over invoices or payments due under this Contract, SCRRA shall pay any undisputed amounts within the time frame agreed upon in the Contract, withholding only the disputed amounts.

b. Pending Resolution. Except as provided specifically in other sections of this Contract, while such dispute resolution process is proceeding, the business, the operations to be conducted, physical plant to be used, and compensation for Services under this Contract, 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 court shall make a preliminary ruling to the contrary.

c. Cost of Dispute Resolution. Each party hereto shall bear the costs and expenses incurred by it in connection with such dispute resolution.

## **23. Termination**

a. Termination for Cause by SCRRA. SCRRA may, at its sole discretion, terminate this Contract, in whole or in part, upon the occurrence of a material breach of this Contract, which shall include but are not limited to, the following:

(1) The Contractor's repeated refusal or failure to perform any of the Services under this Contract, which is not excused by any other provisions of this Contract, and which refusal or failure disrupts the SCRRA Commuter Rail Operations.

(2) The Contractor's assignment or subcontracting of any of its obligations under this Contract without required prior written approval of SCRRA.

(3) The Contractor's insolvency or inability to meet its obligations, or the filing of an involuntary petition in bankruptcy against it which is not stayed or lifted within forty-five (45) Days, or the adjudication that it is bankrupt, or the Contractor's making a voluntary 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.

(4) The Contractor's failure, after notice from SCRRA, to comply with a valid and applicable law, ordinance, rule, regulation or order of any legal authority that has a material impact on the Contractor's ability or fitness to carry out its obligations to provide the Services under this Contract.

(5) The Contractor's violation of the limitations set forth in Section C.15. on covenants not to compete in their employment agreements.

(6) Determination by SCRRA that continued provision of Services by the Contractor shall result in imminent danger to the public health or safety. SCRRA may make such a determination only if SCRRA has ordered the Contractor to correct, cure or otherwise cease providing all or a portion of the Services under this Contract for public health or safety reasons and the Contractor has been unable within fifteen (15) Days of such order to remedy the cause for the order when the cause was a factor within the Contractor's control.

(7) A violation of the confirmation provided in the third sentence of Section B.16.d. of this Agreement.

(8) A violation of the obligation set forth in Section C.28. to comply in whole or in part with SCRRA's Ethics Policy.

b. Termination for Cause by Contractor. The Contractor may, at its sole discretion, terminate this Contract upon the occurrence of a material breach of this Contract by SCRRA, which shall include, but not be limited to, the failure of SCRRA to timely make two or more monthly payments described in Section D.12.a.

c. Termination for Convenience. SCRRA may terminate this Agreement for SCRRA's convenience at any time by giving Contractor a minimum of thirty (30) Days' written notice of SCRRA's election to terminate. Upon receipt of such notice, Contractor shall immediately take action not to incur any additional obligation, cost or expense, except as may be necessary to provide the Services and reasonably necessary to terminate its activities.

d. Termination Procedure. Upon the occurrence of one of the events described in the foregoing Section C.23. a., b., and c., the Party electing to terminate the Contract shall notify the other Party in writing of its election to

terminate and the basis for that action. The termination shall be effective on the date specified in the notice, except that a termination for cause shall not become effective if the other Party shall have taken action to substantially remedy the default within a reasonable time. Notwithstanding the foregoing; SCRRA may at its option elect to extend the notice period for the effective date of a termination for cause or for convenience by either Party for up to eighteen (18) months from the date of the notice to ensure that SCRRA Commuter Rail Operations will continue uninterrupted at the conclusion of the notice period; provided, however, that if Contractor terminates for cause for non-payment, SCRRA will have the opportunity to cure the default by making payment in full within thirty (30) days, and if SCRRA does not so cure, the termination for cause will be effective on the date specified by Contractor.

e. Rights and Obligations upon Termination

(1) Upon termination for cause, SCRRA shall have the right to arrange for provision of the Services by another contractor. The Contractor shall reasonably cooperate with SCRRA and SCRRA's contractors to effect a seamless transition in such cases. Failure to reasonably cooperate with SCRRA or SCRRA's contractors shall be subject to Section D.11.c.

(2) If SCRRA has terminated this Contract for cause pursuant to Section C.23., then the Contractor shall cooperate reasonably with SCRRA in arranging for a transfer of the Contractor's employees currently working on providing the Services who elect to leave the employment of the Contractor to either SCRRA, a replacement contractor, or such other third party as SCRRA may determine.

(3) Upon the effective date of the notice of termination for cause or convenience, the Contractor shall: (1) immediately discontinue all Services affected (unless the notice directs otherwise), and (2) deliver to SCRRA all data, drawings, specifications, reports, estimates, summaries and such other information and material as may have been accumulated by the Contractor or its Subcontractors in performing this Contract, whether completed or in process.

- (4) The Contractor shall bear any actual direct cost incurred by it that is attributable to termination for cause by SCRRA.
- (5) SCRRA will bear any actual direct cost incurred by either it or Contractor that is attributable to termination for cause by Contractor.
- (6) SCRRA will pay the following termination costs to the Contractor:
- (a) Reasonable cost of settling and paying claims arising out of the termination of Services under subcontracts or purchase orders;
  - (b) Reasonable costs which are incurred pursuant to the performance of any specific written instructions received from SCRRA concerning such termination; and
  - (c) Other reasonable costs incidental to such termination of Services.
- (7) No payment will be made for lost profit, unearned anticipatory profit, or consequential damages.
- (8) If, after the notice of termination for failure to fulfill Contract obligations, it is determined that the Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of SCRRA pursuant to Section C.23.c. of this Contract.
- (9) No termination of this Contract shall in any way diminish or otherwise affect SCRRA's obligation to pay for any Services rendered, or to fulfill any other obligations incurred prior to the effective date of the termination. The rights and remedies of the Parties provided in this section are in addition to any other rights and remedies provided by law or under this Contract.
- (10) Upon completing this Contract or at such earlier dates as may be fixed by SCRRA: (1) the Contractor shall prepare and submit a final inventory list of all SCRRA Property which includes the property's description, location and condition; (2) the Contractor shall prepare for shipment, and deliver F.O.B. destination, SCRRA Property as may be directed or authorized by SCRRA; and (3) the

Contractor shall cooperate with SCRRA and SCRRA's contractors to effect a seamless transition to succeeding operator.

**24. Use of Metrolink Logo**

The Contractor shall obtain written authorization from SCRRA prior to using the "METROLINK®" logo or name on any durable good or garment, in any promotional literature, or for any other purpose; provided, however, that during the term of this Contract or following termination thereof Amtrak may use such logo or name: (i) on its website; (ii) as may be required by law; (iii) in any submission to any governmental body (e.g., legislative, judicial, regulatory, executive); or (iv) when such use is for Contractor to identify entities or properties for which Contractor is providing services related to commuter rail operations, and on copies thereof. Upon request of SCRRA, originals of such documents and materials, to the extent such copies are in Contractor's possession at the time of such request, shall be delivered to SCRRA upon completion of the work or termination of the Services.

**25. Use of SCRRA's Name by the Contractor**

SCRRA shall review all SCRRA-related material proposed for use by the Contractor for advertising or public relations (other than as may be permitted under Section C.24., above) purposes prior to publication. The Contractor shall not allow SCRRA-related material to be published in its advertisements and public relations programs prior to receiving SCRRA's written approval. The Contractor shall ensure that all published information is factual and that it does not, in any way, imply that SCRRA endorses the Contractor's firm, service and/or product(s).

**26. Governing Law**

The validity of this Contract and of any of its terms and provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the state of California.

**27. Compliance with Rules and Regulations**

- a. General. The Contractor shall be responsible for compliance with the provisions, and successor provisions, of all applicable regulations of FRA and other entities with regulatory authority over the rail industry as well as other

applicable federal, state and local laws regarding the provisions of the Services as they apply to the matters that are within the scope of this Contract. Unless SCRRA has withheld from the Contractor the funding specifically requested by the Contractor to remedy a violation or other authority to remedy it, the Contractor shall also indemnify, protect and defend and save SCRRA and its officers, agents and employees harmless from all fines, penalties or other costs imposed under such laws and regulations regarding the Contractor's provision of the Services..

b. Changes in Law. If any changes are made to the law affecting the Services as described in this Contract during the term (including options if exercised) and such changes have a positive or negative impact on the Contractor's cost to provide the Services, the budget shall be amended pursuant to Section D.5.

**28. Compliance with Lobbying Policies**

The Contractor agrees that if it is a Lobbyist Employer or if it has retained a Lobbying Firm or Lobbyist, as such terms are defined by SCRRA in its Ethics Policy, it shall comply or ensure that its Lobbying Firm and Lobbyist complies with SCRRA's Ethics Policy.

If the Contractor (Lobbyist Employer) or its Lobbying Firm or Lobbyist fails to comply, in whole or in part, with SCRRA's Ethics Policy, such failure shall be considered a material breach of this Contract and SCRRA shall have the right to immediately terminate or suspend this Contract.

**29. Public Records Act**

a. All materials of any kind, in any format, that are submitted by Contractor to SCRRA may be considered public records that are discloseable pursuant to the California Public Records Act ("PRA") (Cal. Govt. Code Sections 6250 et seq.), including without limitation the content of any document submitted to SCRRA in relation to this Contract (hereafter "Records"). SCRRA will endeavor to inform the Contractor of any request by a third party for the disclosure of any Records.

- b. If the Contractor believes any Records that it is submitting to SCRRA contain trade secrets or other proprietary information that are exempt from disclosure under the PRA and Contractor desires that such Records be withheld from any disclosure to third parties, then Contractor must clearly label each page of such Records as "TRADE SECRET," "PROPRIETARY" OR "CONFIDENTIAL" at the time of submission. If the proposed exempt material is less than an entire page, Contractor shall in addition identify the specific portion of the page that it desires to designate as a trade secret or otherwise proprietary.
- c. Under no circumstances will SCRRA be liable for the disclosure to a third party of any Records, whether or not such Records are labeled "TRADE SECRET," "PROPRIETARY" OR "CONFIDENTIAL." Contractor agrees that it will not make a claim, sue or maintain any legal action against SCRRA, its member agencies, or their directors, officers, employees or agents in connection with the disclosure of, or withholding from disclosure of, Records submitted by Contractor.
- d. If Contractor requests that SCRRA withhold from disclosure any Records identified as "TRADE SECRET," "PROPRIETARY" OR "CONFIDENTIAL," SCRRA shall comply with such request, except as may be otherwise required by PRA. Contractor agrees that it shall assume all responsibility for any challenges resulting from the non-disclosure, and shall defend, indemnify and hold harmless the SCRRA, its member agencies, or their directors, officers, employees or agents, from and against all claims, suits and liability (including attorneys' fees that may be awarded to the complaining party), relating to the withholding of the Contractor's Records.

**30. Prohibited Interests**

- a. The Contractor warrants that no person or agent has been specifically employed or retained to solicit or obtain the Contract in exchange for a contingent fee, except a bona fide employee or agent. A breach or violation of this warranty shall be considered a breach of this Contract giving rise to the remedies described in Section C.22.a., entitled "Termination for Cause by SCRRA". In addition to any rights and remedies otherwise provided for in the

Contract or by law, SCRRA may deduct from the Contract Price or consideration, or otherwise recover, the full amount of the contingent fee.

b. "Bona fide agent" as used in this Section, means an established commercial or selling entity that is maintained by the Contractor for the sole purpose of securing business and that neither exerts nor proposes to exert improper influence to solicit or obtain SCRRA Contract(s) nor holds itself out as being able to obtain any SCRRA Contract(s) through improper influence.

c. "Bona fide employee", as used in this Section, means a person who is employed by the Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance and who neither exerts nor proposes to exert improper influence to solicit or obtain SCRRA Contract(s) nor holds itself out as being able to obtain any SCRRA Contract(s) through improper influence.

d. "Contingent fee", as used in this Section, means any commission, percentage, or other sum that is payable only upon success in securing an SCRRA Contract.

e. The Contractor agrees that, for the term of this Contract, no member, officer, or employee of SCRRA, or of a local public body during his/her employment and for one (1) year thereafter, shall have any interest, direct or indirect, in this Contract, or to any benefit arising thereof.

**31. Whistleblower Requirements**

The Contractor shall not adopt any rule, regulation or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee believes the information discloses violation or noncompliance with a federal, State or local regulation; nor shall the Contractor retaliate against an employee for taking such actions.

**32. Notification of Employment of SCRRA Board Members/Alternates and Employees**

To ensure compliance with SCRRA's Ethics Policy, the Contractor shall provide written notice to SCRRA disclosing the identity of any individual who Contractor desires to employ or retain under a contract, and who (1) presently serves as a Board Member/

Alternate or an employee of SCRRA, or (2) served as a Board Member/Alternate or an employee of SCRRA within the previous twelve (12) months of the date of the proposed employment or retention by the Contractor. The Contractor's written notice shall indicate whether the individual will be an officer, principal or shareholder of the entity and/or will participate in the performance of this Contract.

**33. Severability**

In the event that any term, covenant, condition, or provision of this Contract or the application thereof to any person or circumstance is found to be invalid or unenforceable in any respect, the remainder of this Contract shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted.

This Section shall not apply where the term, covenant, condition, or provision or part thereof that is declared invalid or unenforceable is so fundamental to the Contract that the remainder of the Contract, standing alone, does not represent a meeting of the minds of the Parties, or substantially alters the rights or obligations of either party under the Contract.

**34. Waiver**

None of the provisions of this Contract 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 Contract or as a waiver of any past or future default or breach hereof, except as 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 Contract, or to exercise any right or remedy in this Contract, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof.

**35. Entire Contract**

This Contract, and any attachments, exhibits, or other documents incorporated herein by inclusion or by reference, embody the entire agreement between SCRRA and the Contractor related to the Services. No oral statement or prior written matter will have any force or effect. The Parties specifically agree that this Contract supersedes the

Memorandum of Understanding between them dated October 13, 2009, and that in the event of a conflict between the terms of this Contract and the Memorandum of Understanding the terms and conditions of this Contract govern. The Parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Contract. This Contract shall not be modified except in writing subscribed to by both Parties.

**36. Notices, Contact Information and Delegation of Authority**

**a. Notices and Contact Information**

Any notice legally required to be given by one Party to another under this Contract shall be in writing, dated, and signed by the Party giving such notice or by a duly authorized representative of such party. Any notice shall not be effective, for any purpose whatever, unless it is transmitted by the legally required method (if any), or by United States Postal Service Registered Mail, or by a bonded and guaranteed courier/delivery service or by e-mail. All notices to the Parties (other than e-mails) will be enclosed in a sealed envelope and transmitted to the respective contact persons and addresses below.

	SCRRA PROJECT MANAGER	CONTRACTOR
Contact Name	Gary Lettengarver	Michael Chandler
Contact Title	Director of Operations	Transportation Superintendent.
Address	2558 Supply Street Bldg. A	279 E. Arrow Hwy. St. A
City, State, Zip	Pomona, CA 91767	San Dimas, CA 91773
Telephone	909-593-0292	
Facsimile	909-596-9837	
Mobile/Cell	213-200-1450	213-494-0218
E-mail	<a href="mailto:lettengarv@scrra.net">lettengarv@scrra.net</a>	<a href="mailto:chandm@amtrak.com">chandm@amtrak.com</a>

SCRRA CONTRACT  
ADMINISTRATOR

Contact Name	Lia McNeil-Kakaris	[TBD]
Contact Title	Principal Contract Administrator	Principal Officer Commuter Partnerships
Address	700 South Flower Street 26 <sup>th</sup> Floor	[TBD]
City, State, Zip	Los Angeles, CA 90017	[TBD]
Telephone	213-452-0237	[TBD]
Facsimile	213-452-0425	[TBD]
Mobile/Cell	562-773-1778	[TBD]
E-mail	<a href="mailto:mcneill@scrra.net">mcneill@scrra.net</a>	[TBD]

b. **Delegation of Authority.** Unless stated otherwise specifically in this Contract, all actions to be taken by SCRRA may be taken by the SCRRA Project Manager. The foregoing delegation of authority does not apply to the following actions, which are reserved in the SCRRA Board to act upon or delegate: approval of the Approved Budget or any modifications of such Approved Budget pursuant to Article D; agreement to or approval of any amendments to this Contract; or assignment of this Contract.

c. A Party may substitute a representative of equal or higher rank to fulfill any obligation of a representative of that Party recited in this Contract.

**37. Transportation of Contractor Employees**

a. SCRRA shall permit T&E Crews and other persons employed by the Contractor to travel at no additional charge on SCRRA trains as necessary to transport such crews and persons between SCRRA stations or facilities in the performance of their duties for the SCRRA Commuter Railroad Operations. SCRRA shall provide such transportation solely for the purpose of Contractor's employees traveling between locations on the Service Property where such

crews are performing or will perform Services under this Contract, including between the point where an employee signs on or off for the day and that employee's work location for that day, and will not be for the purpose of commuting between an employee's residence and the location at which he or she will begin or end his or her work assignment for that day.

b. SCRRRA or a Third Party Contractor shall provide transportation of Contractor's employees between SCRRRA locations or facilities in the performance of their duties for the SCRRRA Commuter Railroad Operations for the purposes of Contractor's employees traveling between locations on the Service Property where such crews are performing or will perform such Services.

**38. Transition Process**

a. SCRRRA may be required to conduct a solicitation process prior to the expiration or termination of this Contract in order to select a Contractor with which SCRRRA will enter into a new Operator Services contract ("Successor Contractor") to provide Services upon expiration or termination of this Contract. Contractor may be the Successor Contractor. SCRRRA requires that Contractor provide to prospective proposers all information necessary to prepare technical and cost proposals in response to SCRRRA's solicitation; provided however that Contractor shall not be required to provide proprietary cost information to prospective proposers unless SCRRRA is otherwise required to make such information available to the public under this Contract. Contractor shall reasonably cooperate with SCRRRA and prospective Successor Contractors that are participating in the solicitation process, and any failure to reasonably cooperate shall be subject to liquidated damages under Section D.11.c.

b. Document Review: Contractor shall make available to prospective Successor Contractors for review at a location(s) determined by SCRRRA copies of any and all documents and records related to the Contractor's provision of Services as SCRRRA shall request. Issues regarding confidential or proprietary information shall be addressed as specified in Section C. 29.

c. Inspection of Service Property: Prospective Successor Contractors shall have access to the Service Property and Equipment during the solicitation process for the purpose of inspection so as to understand, without limitation, the

operations and conditions. SCRRA shall schedule and conduct site visits by prospective Successor Contractors. Contractor shall fully cooperate with SCRRA during such site visits and shall make available any personnel and records that would otherwise be made available to SCRRA under this Contract as SCRRA requests. Contractor shall permit prospective Successor Contractors to question Contractor personnel regarding any and all aspects of the Operator Services, Service Property and Equipment, and to examine such requested records.

d. Transition Plan: The following obligations apply in the event that Contractor is not selected as the Successor Contractor.

(1) Successor Contractor Access: Contractor shall provide the Successor Contractor full and complete access to the Service Property and Equipment in accordance with this Contract. Access will commence up to eight (8) months prior to the expiration or termination of this Contract in conjunction with the Successor Contractor's mobilization period. Throughout this period, the Successor Contractor may have one or more representatives on site until the expiration or termination of this Contract.

(2) Employment of Existing Personnel: Contractor shall provide a list, and resumes, if available, of all its then-current personnel (who are engaged in providing the Services) to SCRRA and the Successor Contractor at least six (6) months prior to the expiration or termination of this Contract. Contractor shall allow the Successor Contractor to interview any Contractor personnel for employment purposes in a way and at times that are consistent with the schedule and the needs of the ongoing SCRRA Commuter Railroad Operations and that avoids interference with Contractor's ability to fulfill its obligations under this Contract. Contractor agrees that the Successor Contractor has the right to offer employment to any of Contractor personnel that are on the list prior to the expiration or termination of this Contract.

e. Turnover Requirements:

(1) Records, Manuals, Reports, and Databases: A minimum of six (6) months prior to the expiration of this Contract, or in the event of Termination pursuant to Section C. 23. within thirty (30) Days of Contractor's receipt of SCRRA's notice of intent to terminate this Contract, Contractor shall provide to SCRRA a complete and accurate inventory of all relevant and material documents (in SCRRA's opinion) related to Metrolink Operator Services, including but not limited to records, reports, databases, and manuals.

(2) Support Property, Office Equipment and Supplies: A minimum of six (6) months prior to the expiration of this Contract, or in the event of Termination pursuant to Section C. 23. within thirty (30) days of Contractor's receipt of SCRRA's notice of intent to terminate this Contract, Contractor shall provide to SCRRA a complete and accurate inventory of all Support Property, office equipment and supplies that were provided or paid for by SCRRA and related to Metrolink Operator Services. Support Property means equipment, tools, machines, computer equipment, software, non-revenue vehicles used in the provision of the Operator Services. Immediately upon expiration or termination of this Contract, Contractor shall relinquish to SCRRA all such Support Property, office equipment and supplies used in performing the Operator Services. Office equipment shall be in good working condition, reasonable wear and tear excepted.

(3) Permits: Any and all existing permits held by Contractor and required for providing Operator Services for SCRRA shall be transferred to the Successor Contractor as of the date the Successor Contractor begins providing Operator Services.

(4) Contract Close-out Requirements: SCRRA may conduct inspections and/or audits as necessary to determine the status of the requirements for close-out of this Contract. Within thirty (30) Days of such inspection or audit, SCRRA will deliver to Contractor a list of items where deficiencies were found ("Punch List"). Contractor shall correct such deficiencies within thirty (30) days of receipt of the Punch List. SCRRA may exercise any rights or remedies available under this Contract, if it is determined by SCRRA that Contractor has not complied with the provisions of this Section.

**39. Assignment**

Except as provided for in Section B.18., Contractor shall not assign its rights and/or obligations under this Contract to any third party without the approval of SCRRA in its sole discretion.

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## **D. COSTS, BUDGETING, AND COMPENSATION**

### **1. Costs**

#### **a. Direct Costs**

(1) The Direct Costs billable to SCRRA shall be those incurred directly in the provision of the Services as described in **Appendix 16**, and, except as otherwise explicitly set forth herein, shall include all costs of complying with the terms of this Contract.

(2) All covered employee labor hours billed for provision of the Services under this Contract shall be at the actual hourly rates paid by the job category and shall be subject to the annual budget process as described in Section D.2. or to the process for revision of the Approved Budget described in this Article D.

(3) All exempt employee labor billed for provision of the Services shall be at the employee's actual salary, subject to the annual budget process or to the process for revision of the Approved Budget described in this Article D.

(4) Non-labor costs billed for provision of the Services under this Contract shall reflect the actual cost paid by the Contractor.

(5) **Employee Benefit and Injury Costs.** Employee benefit and injury costs as further described in Paragraph 2 of **Appendix 16** are billable to SCRRA as Direct Costs and shall be applied as a rate over appropriate employee labor costs. Contractor's employee benefit additive rates are updated quarterly, each October 1, January 1, April 1 and July 1, and SCRRA will pay these actual rates notwithstanding the rates proposed as part of the Annual Budget Process.

b. General and Administrative (G&A)

(1) G&A shall be added to all Direct Costs. The costs and expenses listed in Appendix 17 shall not be included in the Direct Costs but shall be included in G&A. The amount of G&A payable in a Fiscal Year shall be paid as a percentage of the actual Direct Costs, and shall be included in the Approved Budget for each Fiscal Year. Notwithstanding the G&A rate estimated in the Annual Approved Budget, the G&A rate billed to SCRRA shall be the G&A rate in effect for the month for which Contractor is submitting an invoice.

(2) SCRRA will pay G&A on actual Direct Costs incurred in providing any Services in addition to those provided for in the Approved Budget.

c. Profit and Overhead

(1) A nine percent (9%) Management Fee, to reflect six percent (6%) Profit and three percent (3%) Overhead, shall be paid with respect to the actual Direct Costs and G&A that are included in the Approved Budget, as may be amended during a Fiscal Year.

(2) SCRRA will pay the Management Fee of 9% on actual Direct Costs and G&A incurred in providing any Services in addition to those provided for in the Approved Budget.

(3) The Management Fee will not be applied to the Contingency Fee paid pursuant to Section D.1.d., below.

d. Contingency Fee

(1) SCRRA shall pay to Contractor annually a non-refundable Contingency Fee of \$2 million to cover costs Contractor may incur during the term of this Contract that cannot be quantified with precision at this time. SCRRA shall pay a G&A additive as described in Section D.1.b., above, with respect to \$1 million of the Contingency Fee (the "Fixed Amount"). SCRRA shall pay no G&A additive with respect to the other \$1 million (the "Variable Amount"). The Variable Amount shall increase or decrease annually by the same percentage as the percentage increase or decrease in SCRRA's premium for the operations liability insurance described in Section C.20.a., above, and the amount of the increase or

decrease each year shall be added to or subtracted from the base (which may be more or less than \$1 million and is the amount determined by applying the methodology described in Section D.1.d.(2) to the previous year's base) on which the next year's increase or decrease will be computed.

(2) Methodology for Adjusting the Variable Amount of the Contingency Fee: The Base Period shall be July 1, 2010 to June 30, 2011.

(a) The Base Variable Amount shall be \$1,000,000. SCRRA shall submit to Contractor written proof of the cost of the \$300 million railroad operations liability ("ROL") insurance policy(ies) required pursuant to Section C.20.a. of this Contract (hereafter, "SCRRA ROL") for the Base Period and annually thereafter prior to July 1<sup>st</sup> of each year. The annual cost of SCRRA ROL for the Base Period shall be the Base Amount. The annual cost of SCRRA ROL for each subsequent year beginning July 1st shall be the Annual Contract ROL Amount. The percentage increase or decrease of the Annual Contract ROL Amount in comparison to the Base Amount shall be applied to the previous year's Variable Amount to determine the Annual Variable Amount for that year.

For example:

Base Variable Amount:	\$1,000,000
Base Amount (SCRRA ROL cost for 7/1/10-6/30/11):	\$11,000,000
Annual Contract ROL Amount (7/1/11-6/30/12):	\$12,100,000
Percentage Increase (decrease) to Base for 7/1/11-6/30/12:	10%
Annual Variable Amount for 7/1/11-6/30/12:	\$ 1,100,000
Annual Contract ROL Amount (7/1/12-6/30/13):	\$11,550,000
Percentage Increase (decrease) to Base for 7/1/12-6/30/13:	5%
Annual Variable Amount for 7/1/12-6/30/13:	\$1,055,500

- (b) In the event that changes occur to SCRRA ROL in a subsequent year due to coverage, deductible, or limits that make the comparison according to Section D.2.a. above inequitable to either Party for adjustment of the Annual Variable Amount, either Party may submit other criteria for such adjustment on an equitable basis to be agreed upon (including but not limited to changes in SCRRA's liability insurance cost, or industry inflationary or trend factors).
- (3) Notwithstanding the foregoing, even if the calculated Annual Variable Amount is below \$1 million, in no event shall the annual amount actually paid to Contractor for the Variable Amount be less than \$1 million.

## **2. Annual Budget Process**

### **a. Preparation of Proposed Service Plan**

Prior to January 1 of each year during the term of the Contract, SCRRA will prepare and submit to the Contractor a Service Plan for the next Fiscal Year, which shall include a detailed description of the Services SCRRA expects the Contractor to provide in the next Fiscal Year, and will form the basis for the Approved Budget. SCRRA reserves the right to exclude from the Service Plan any aspect of SCRRA Commuter Railroad Operations when such exclusion is required due to reductions in service levels, frequencies or service offerings from those that were included in the Service Plan in prior years.

### **b. Preparation of Proposed Budget**

(1) No later than February 1 of each year, or thirty (30) days after delivery of a Service Plan; whichever is later, the Contractor shall prepare and submit to SCRRA a proposed budget, in a format to be determined by SCRRA, for provision of the Services described in the Service Plan for the next Fiscal Year. The proposed budget shall reflect actual operations and levels of Services being provided during the then current Fiscal Year, except as modified by the Service Plan for the coming Fiscal Year. The proposed budget shall:

- (a) Be consistent with the Service Plan;
- (b) Be based upon the actual or projected labor rates for the applicable Fiscal Year;

- (c) Be based upon actual or projected annual salaries for exempt employees;
- (d) Include projected employee benefit and injury costs;
- (e) List all positions, both exempt and covered whose time will be chargeable directly during the coming Fiscal Year;
- (f) Specify Direct Costs, G&A and Management Fee projected for the next Fiscal Year;
- (g) Provide an estimate of expected retroactive wage increases pursuant to Section D.9., below; and
- (h) Specify the assumptions used in developing the proposed budget.

(3) The proposed budget shall not include the Direct Costs the Contractor may incur in clearing wrecks, operating special trains, assisting Third Parties who are permitted access to the Service Property, or any extra work determined by SCRRA to be outside scheduled operations.

c. Additional Information to Accompany Proposed Budget

At the same time that it prepares and submits the proposed budget, the Contractor shall submit to SCRRA a detailed backup itemizing each Controllable Item contained in the proposed budget.

d. SCRRA Review of Proposed Budget

By no later than March 1, or thirty (30) days after the Contractor submits its budget for each year, whichever is later, SCRRA will present to the Contractor its comments on the proposed budget and all other proposals the Contractor has provided pursuant to Sections D.2.b. and c., above, which will specify the item(s), if any, to which SCRRA objects, and the basis for each objection. SCRRA and the Contractor shall promptly negotiate with respect to any items to which SCRRA objects and shall endeavor in good faith to complete the negotiation process by no later than April 1 of each year. The SCRRA Board of Directors will review the proposed budget by no later than May 1. In the event the SCRRA Board of Directors does not approve the proposed budget by its June meeting, SCRRA will provide to the Contractor within five (5) Days after its June meeting, a copy of all documents upon which the Parties have reached agreement, and a copy of all documents on which all or part is not yet agreed upon,

along with a precise statement of the items that remain unresolved. The Contractor shall provide SCRRA staff with a statement of the Contractor's position on any unresolved items by June 30 and, unless otherwise agreed, both SCRRA's statement and Contractor's statement shall be submitted to the SCRRA CEO by July 1.

e. Operations Without Budget

If the Parties are unable to agree on a budget prior to the start of a Fiscal Year, either Party may refer the matter to the dispute resolution process described in Section D.10., below. If the Contractor and SCRRA are unable to agree on a budget by the beginning of a Fiscal Year, and if Contractor's proposed budget would result in an increase or a decrease to the Approved Budget that was in effect on the last day of the prior Fiscal Year (the "Prior Budget"), and if the Service Plan for the new Fiscal Year does not include any changes in service levels from those in place during the Fiscal Year then concluding, SCRRA will make monthly payments to the Contractor pending completion of the negotiations or of the dispute resolution process referred to in Section D.10., which equal the 1/12 of the annual Direct Costs, G&A, Profit and Overhead in accordance with the Prior Budget. When the Parties agree on an Approved Budget either voluntarily or if the matter is resolved through the Dispute Resolution process set forth in Section D.10., the next Monthly Advance payment made pursuant to Section D.12.a. shall be adjusted to reflect 1/12<sup>th</sup> of the newly agreed upon Approved Budget. If the Service Plan for the new Fiscal Year does include a change in service levels and the Parties are unable to agree upon a budget prior to the start of that Fiscal Year, the proposed change in service level will not occur (unless the Parties otherwise agree) until completion of the dispute resolution process described in Section D.10., below.

3. Monitoring Adherence to the Approved Budget

No later than forty-five (45) Days after the end of each month, the Contractor shall provide SCRRA with a statement showing its performance during that month in comparison with the Approved Budget amount for that month and for the Fiscal Year to date, along with a comprehensive and detailed explanation of the reasons for the variance (if any) and of the actions the Contractor shall take, subject to SCRRA's approval, to bring any continuing variance back into conformity with the Approved Budget. To comply with this section, the Contractor shall provide the monthly reports described in Appendix 10. In addition, on January 20 of each year, the Contractor shall

provide to SCRRA a forecast of expected actual expenses and variances for the remainder of the Fiscal Year (i.e., January – June).

**4. Budget Amendment for Unforeseen Events**

Upon the occurrence of events that were not reasonably foreseeable at the time of approval of the Approved Budget, which will cause a material change in the Direct Costs, G&A and Overhead and Profit included in the Approved Budget, the Parties shall agree upon amendments to the Approved Budget for that Fiscal Year to reflect those changes. The procedure for agreeing upon amendments shall be that set forth in this Section D.7.a.(2) for revising a budget for changes in service levels.

**5. Budget Amendment for Added Services**

Upon receipt of a written request from SCRRA to perform added tasks (other than those described in Section D.7., below) not included in the Approved Budget in effect at the time, the Contractor shall, within five (5) business days, prepare and submit a cost estimate for performing the work. The Parties shall agree upon amendments to the Approved Budget to reflect those changes, and shall commence with the added work within a time frame to be agreed to by the Parties. The procedure for agreeing upon amendments shall be that set forth in Section D.7a.(2) for revising a budget for changes in service levels.

**6. Budget Revisions for Cost Overruns**

If the annual Direct Costs, G&A, Overhead and Profit are projected to exceed the Approved Budget in effect at the time, by any amount more than One Hundred and Fifty Thousand Dollars (\$150,000), the Contractor shall promptly submit a proposed revised budget to SCRRA, and the Parties shall promptly meet to negotiate a revised Approved Budget for the remainder of the Fiscal Year. Budget revisions may require approval of the SCRRA Board of Directors and if so, such revised Approved Budget shall not become effective until the SCRRA Board takes such action. If SCRRA Board approval is required, SCRRA shall submit the proposed revised budget for action by the SCRRA Board within forty-five (45) Days of the Parties' agreement on such revisions. If the SCRRA Board does not approve the proposed revised budget by the end of that 45 Day period, the Parties shall promptly meet and confer to agree upon a course of action with respect to next steps, which may include but will not be limited to cost reductions,

service reductions or other permissible actions to ensure that the costs of the Services do not exceed the funds available to SCRRA to pay for such Services.

**7. Procedure for Changes in Services or Service Levels**

**a. Procedure**

(1) SCRRA may require at any time, upon reasonable notice, that the Contractor provide Modified Services on existing routes. For the purposes of this Contract, the following routes shall be considered "existing routes:"

- Los Angeles Union Passenger Terminal (LAUPT) to San Bernardino
- LAUPT to Oceanside
- LAUPT to Lancaster
- LAUPT to Montalvo
- LAUPT to Riverside (via UPRR)
- LAUPT to Riverside (via BNSF)
- San Bernardino to Oceanside (the Inland Empire-Orange County route).

(2) Subject to agreement with respect to the budget, availability of crews and equipment and other factors in connection with the proposed Modified Services, the Contractor shall begin providing the Modified Services in a timely fashion in accordance with SCRRA's requirement. The modified payment, if any, for any Modified Services shall be determined in the same manner as Direct Costs, G&A, Overhead and Profit calculated pursuant to Section D.1.a., b. and c. After receiving a request from SCRRA for Modified Services, the Contractor shall prepare a proposed budget within ten (10) business days to cover the Services in accordance with the cost provisions of this Contract, and the Parties shall proceed promptly to discuss and agree upon a modification to the Approved Budget. If SCRRA Board approval is required, SCRRA shall submit the proposed revised budget for action by the SCRRA Board within forty-five (45) Days of the Parties' agreement on such revisions. If the SCRRA Board does not approve the proposed revised budget by the end of that 45 Day period, the Parties shall promptly meet and confer to

agree upon a course of action with respect to next steps. If the Parties are unable to agree upon a revised budget for submission to the SCRRA Board within thirty (30) Days of a request for such a revised budget, the matter shall be handled in accordance with Section D.10., below.

- b. RESERVED
- c. RESERVED
- d. Service on New Routes

SCRRA may from time to time request Contractor to begin providing Services on routes that are not specified in Section D.8.a., or that have not been added to the Service Property by agreement of the Parties. Upon receipt of such a request, Contractor shall within thirty (30) Days prepare a proposed budget to cover those new Services, using the Direct Cost, and G&A and Overhead and Profit provisions of Section D of this Contract. After agreement on an amendment to the Approved Budget and any special provisions required to accommodate the new Services, such Services will begin as soon as feasible, taking into consideration availability of personnel and rolling stock to support the new Services. The amendment to the Approved Budget shall include an amended Service Plan as described in Section D.2., which will include supplements to Appendices as required to accurately describe the changes in Services to be provided. If the Contractor and SCRRA are unable to agree on a budget for the Services on the new routes by the time the change is to be implemented, the Parties will refer the outstanding issues to dispute resolution pursuant to Section D.10., below, and the proposed service charges will not be implemented until completion of that process.

**8. Cost Control**

- a. Contractor shall use an accrual method of accounting wherein expenditures are recorded in the Fiscal Year in which they result in liabilities for benefits received, regardless whether or not payment of the expenditure is made in the same accounting period. The cost system shall allow for accurate tracking of costs, labor hours and man-months spent against an annual Approved Budget. The cost system must also track and aggregate costs and hours expended on unbudgeted or recollectable projects, or extra work directed by SCRRA. Financial reports must be auditable and must provide sufficient detail to determine the validity of costs charged to SCRRA.

b. The cost system shall allow the Contractor to report monthly and year-to-date costs and labor hours according to SCRRA's Fiscal Year. Monthly cost status reports and invoices shall be due to SCRRA within 30 Days from the end of the accounting month. Invoices shall be submitted with the following backup elements:

(1) Labor

(a) Summary of hours (i.e., straight time, overtime, double-time and other, as applicable) for each Covered Employee in the current invoice period, reported by job function (e.g., conductor, engineer) and employee name, and summary of days actually worked by each Exempt Employee assigned to the Services in the current invoice period reported by job title and employee name.

(b) Summary of Labor Costs at the actual rates for the relevant Fiscal Year for each Exempt Employee and Covered Employee in the current invoice period, reported by job function, and employee benefit and injury costs for each job function.

(c) Summary of employees by job function, for the current invoice month and Fiscal Year to date.

(d) Summary of approved positions and the identity of the actual employee filling each position.

(2) Non-Labor

(a) Summary of non-labor costs incurred by expense type in the current invoice month and Fiscal Year to date.

(b) Non-labor costs must be substantiated with copies of receipts and invoices from Suppliers, vendors and Subcontractors. The receipts and invoices must contain sufficient detail to allow the Contractor and SCRRA to assess the validity of the costs billed to the Contractor.

(3) G&A and Profit and Overhead.

Summary of G&A and Overhead, and Profit earned at the approved rates

(4) Liquidated Damages

Summary of liquidated damages, if any, incurred for the current month and Fiscal Year to date. Any liquidated damages incurred during the month will be represented as a reduction to the applicable month's total costs.

(5) Total Cost Summaries

Total Cost Summaries must summarize labor, non-labor, material, , G&A, Profit and Overhead, Liquidated Damages, and manpower for the current invoice month and Fiscal Year to date.

**9. Adjustment of Direct Labor Costs**

Retroactive (i.e., adjustments made subsequent to performance of the work) wage and associated benefit costs, such as Railroad Retirement expenses, will be reimbursed during the term of this Contract in accordance with Section B.10.c.2. above.

**10. Expedited Dispute Resolution for Budget Matters**

If the Parties are unable to agree upon a budget or revisions to an Approved Budget, and either Party requests use of the Expedited Dispute Resolution ("EDR") process, the following procedure shall apply:

(1) The Party referring the matter for EDR shall provide written notice by overnight delivery and e-mail to the other. The written notice shall specify the items in the proposed budget upon which the requesting Party asserts that the Parties have not reached and cannot reach agreement. The other Party shall respond within three (3) business days with any additional issues upon which it asserts the Parties have not reached agreement.

(2) The requesting Party shall request a conference between Contractor's Vice President, Policy and Development and SCRRA's Assistant Executive Officer, Operating Services. Such conference shall occur within seven (7) Days of the submission of the request.

(3) If the two officials referred to in sub-paragraph (2) cannot reach agreement within five (5) business days of their conference, the matter shall be referred upon written request by either Party for resolution to an individual knowledgeable in the field of passenger railroad operations, including the costs associated with such operations (the "Arbiter"). The Party making the referral

request shall identify two candidates to act as Arbiter within three (3) business days of submitting the referral. The other Party shall, within three (3) business days of its receipt of that designation, either (a) accept one of the proposed candidates; or (b) designate two (2) candidates to serve as Arbiter. If none of the four candidates thus designated is acceptable to both Parties, then the two individuals referred to in sub-paragraph (2), above, shall meet and designate an Arbiter, who may be one of the four candidates previously identified or any other individual who is knowledgeable in the field of passenger railroad operations, including the costs associated with such operations.

(4) Within five (5) business days of selection of the Arbiter, the Parties shall submit written support to the Arbiter for their position on all issues identified by both Parties in accordance with sub-section (1), above. The Parties shall also provide the Arbiter with a description of the items in the budget upon which they have reached agreement.

(5) The Parties shall meet with the Arbiter within five (5) business days of that submission to address any questions the Arbiter may have with respect to the issues. If the Arbiter requires additional information or meeting(s) following that meeting, the Parties shall promptly submit such additional information and attend such meetings.

(6) The Arbiter shall provide the Parties with a written decision concerning all issues identified by the Parties within seven (7) Days of the submission of the last information the Arbiter has requested pursuant to sub-paragraph (5), above.

(7) The Arbiter's decision shall be binding on the Parties as to the matters described therein. Notwithstanding the foregoing, if the budget that results from the process described in this Section D.10. (including amendments to an approved budget during a Fiscal Year) requires approval of the SCRRA Board of Directors, SCRRA personnel shall submit the budget prepared in accordance with the Arbiter's decision to the SCRRA Board and request approval thereof.

(8) If the SCRRA Board does not approve an Arbiter's recommended budget for a new Fiscal Year when the Service Plan does not include any change in service levels, Amtrak may terminate this Contract for cause. If the SCRRA Board does not approve any other budget thus submitted, the Parties shall

promptly meet and confer and shall determine a course of action with respect to next steps which may include but will not be limited to cost reductions, service reductions or other permissible actions to ensure that the costs of the Services do not exceed the funds available to SCRRA to pay for such Services.

**11. Liquidated Damages**

**a. General**

(1) SCRRA will be damaged if the Contractor fails to perform the Services in compliance with the terms of this Contract, or if the Contractor's act or omission disrupts the operations of SCRRA. It is impractical and/or extremely difficult to ascertain the exact damage that SCRRA will sustain upon the occurrence of the events described below. As a result, the Parties have agreed that it is reasonable under the circumstances as of the date of this Contract to fix as a set value the liquidated damages described below.

(2) Liquidated damages will be assessed against the Contractor's monthly Profit at SCRRA's sole discretion in accordance with this Contract. Maximum liquidated damages assessed in any month may not exceed the month's Profit.

(3) The following liquidated damages are the sole financial assessment that SCRRA may make against the Contractor for the events listed in this Section; provided, however, that the foregoing clause shall not limit SCRRA's right to terminate for cause under this Contract, or to exercise its rights under any other provisions of this Contract.

**b. Train Performance**

(1) The Contractor's monthly profit shall be reduced by One ThousandDollars (\$1,000.00) for each revenue train which arrives at its terminal station more than twenty (20) minutes later than the time stated in the Metrolink public timetable when the delay is caused by:

(a) The failure of a Contractor employee who was directly engaged in the operation of the delayed revenue train to report to duty on-time unless such failure was attributable to late delivery by a Metrolink train or SCRRA contractor of such employee to his/her reporting location;

(b) The failure of a Contractor employee who was directly engaged in the operation of the delayed revenue train to be Qualified;

(c) The failure of a Contractor employee who was directly engaged in the operation of the delayed revenue train to have completed and passed equipment familiarization training;

(d) The failure of a Contractor employee who was directly engaged in the provision of Services to legibly record a defect and provide information on the SMP form about the cause of the defect, if such failure results in the delay of a revenue train; or

(e) An occurrence of conduct unbecoming an employee by a Contractor employee who is engaged in the operation of the delayed revenue train on which such conduct occurs.

(2) The Contractor's monthly Profit shall be reduced by Ten Thousand Dollars (\$10,000.00) upon the occurrence of conduct of a Contractor employee that is described in 49 CFR 240.117(e).

(3) The Contractor's monthly Profit shall be reduced by Ten Thousand Dollars (\$10,000.00) upon the occurrence of a violation of any of the GCOR rules listed in **Appendix 15**.

(4) Trains annulled or terminated due to actions or inactions stated in Section D.11.b.(1) above will be considered 20 minutes late for the purpose of this calculation.

(5) For the purposes of the preceding subsections (1) and (4), an incident shall be a single occurrence that is the cause of one or more trains being late, annulled or terminated. Trains subsequent to the first train per incident that are more than twenty (20) minutes late shall cause a reduction in the Contractor's monthly profit of Five Hundred Dollars (\$500) each.

c. Other

1. The Contractor's monthly profit shall be reduced by Ten Thousand Dollars (\$10,000.00) per month in any month in which Contractor fails materially to comply with the requests of SCRRA or a successor contractor for information or materials or to otherwise reasonably cooperate in the transition process as described in Section C.38.e.1. Transition Process.

d. Credits Against Liquidated Damages

If after the Contractor is assessed liquidated damages in any given month under Section D.11.b.(1),(2) or (3) or D.11.c., the Contractor incurs no such assessments in the three (3) following months, SCRRA shall provide a credit equal to the liquidated damages initially assessed against the Contractor on the following month's invoice. For conduct described in Section D.11.b.(2) or (3) or D.11.c., above, Contractor shall receive such a credit only if there has been no violation of the same rule which caused the assessment of the Liquidated Damages within the three month period following occurrence of the event that gave rise to that assessment in the first instance.

e. Exceptions

Notwithstanding any other provision of this Section D.11., Contractor shall not be assessed any Liquidated Damages for any event described in Section D.11.b. (1), (2) or (3) if Contractor notifies SCRRA of the occurrence of the event that would otherwise give rise to the assessment of the Liquidated Damages prior to the time that SCRRA personnel learn of that occurrence and Contractor has presented to SCRRA its plan for addressing the situation that would otherwise have given rise to the imposition of Liquidated Damages.

f. Liquidated Damages Disputes

(1) SCRRA shall provide the Contractor with notice of intent to assess liquidated damages pursuant to this Section D.11. no later than thirty (30) days after the end of the month in which the events on which the assessment is based occurred. In the event of a disagreement between the Contractor and SCRRA as to the cause or responsibility of an action or inaction that result in liquidated damages or reduction in payment as specified by Section D.11., the final determination will be made by the

SCRRA Director of Operations upon an objective investigation of the matter. Disputes regarding liquidated damages are not subject to Section C.22.

(2) Notwithstanding the foregoing, in the event of a dispute over the assessment of liquidated damages pursuant to Section D.11.c., above, the following procedure shall apply:

(a) SCRRA shall timely notify Contractor of its intent to assess such Liquidated Damages. Contractor shall promptly respond if it disagrees with the assessment of such Liquidated Damages.

(b) If the exchange of information described in sub-section (1), above, does not lead to resolution of the disagreement, the matter shall be referred to the Assistant Executive Officer – Operating Services and the Contractor’s Vice President – Policy and Development for resolution.

(c) If individuals described in sub-section (5), above, cannot resolve the matter, SCRRA may deduct the amounts from its payment to Amtrak in accordance with this Contract, and Amtrak may refer the matter to dispute resolution pursuant to Section C.22. of this Contract.

## **12. Payment**

### **a. Schedule of Regular Payments**

No later than the first (1<sup>st</sup>) Day of each month, the Contractor shall submit to SCRRA an invoice equal to one twelfth (1/12) of the approved annual budget amount (the “Monthly Advance”). SCRRA shall pay such amount to the Contractor via wire transfer by the first business day following the fourteenth (14<sup>th</sup>) Day of that month. Within forty-five (45) Days after the close of each month, Contractor shall provide SCRRA with a statement of the actual Direct Costs and G&A and Overhead and Profit incurred during that month and copies of the applicable supporting documentation. The Contractor will also provide a statement of expenses compared to the Monthly Advance (the “Reconciliation Statement”). If the Reconciliation Statement shows that SCRRA owes money to

the Contractor, then the next regular Monthly Advance payment to the Contractor shall be increased to account for the additional money owed according to the Reconciliation Statement. If the Reconciliation Statement shows that the Contractor owes money to SCRRA, then the next regular Monthly Advance payment to the Contractor shall be decreased by the amount of money that the Contractor owes to SCRRA. In the event SCRRA does not agree with any item on the Reconciliation Statement submitted by the Contractor, it shall promptly notify the Contractor of the item with which it disagrees, along with a statement of the reason for the disagreement and its view as to the correct amount payable. The Parties shall promptly confer on the item(s) to which SCRRA has taken exception. If the Parties are in agreement, then the Contractor shall include an adjustment on the invoice for the next Monthly Advance to reflect the item(s). If the Parties are unable to reach agreement, SCRRA may withhold from the monthly payment to the Contractor the amount that SCRRA asserts is in excess of the amount that should be paid and the provisions of Section C.22. shall apply. Upon final resolution, any adjustments shall be paid or credited, as the case may be.

b. Untimely or Incorrect Payments

In the event a payment is not made in a timely fashion or it is ultimately agreed by the Parties or otherwise determined that a payment made by SCRRA was excessive or was insufficient, the amount of the overpayment or underpayment shall bear interest at the Federal Funds Rate (as published in the *Wall Street Journal*), beginning thirty (30) Days after an undisputed invoice or demand was made by either party, to the date the amount is repaid or paid.

c. Deductions for Controllable Items

SCRRA reserves the right to deduct payment for Controllable Items purchased without proper authorization in accordance with Section B.3. or for items other than Controllable Items purchased outside the scope of the Approved Budget (including working documents used in developing the current year's Approved Budget).

d. Excusable Delayed Payment

If the Contractor fails to make a report to SCRRA within the time required, and if SCRRA is required to make payment to the Contractor based on that report, the number of days required to make the payment shall be increased by the number of days the report was late.

e. Determination of Timeliness

For the purposes of this Contract, when determining whether submission of an invoice or of a payment is timely, if the event that triggered the obligation to submit the invoice or the payment was delayed, then the number of days of that delay shall be added to the time allotted for submission of the invoice or the payment.

**13. Segregated Amounts**

Contractor shall segregate advance amounts received from SCRRA within its accounting system and will return any unexpended or unobligated amounts upon demand from SCRRA within thirty (30) Days of such demand.

**14. Backfill Training**

SCRRA will reimburse the Contractor a fixed amount of \$118,950 (plus Contractor's G&A and management fee) per engineer and \$24,379 (plus Contractors G&A and management fee) per conductor to fill or backfill vacant positions. Fill or backfill engineer and conductor training will be considered a Direct Cost and billable to SCRRA when the SCRRA position is filled. Contractor will not charge SCRRA for backfill training when the vacancy on SCRRA occurs because an employee working in SCRRA Commuter Railroad Operations bids on and secures a position in Amtrak Intercity Rail Passenger services. These fixed amounts are in effect for Fiscal Year 2010/11 and shall be adjusted each July 1 based on the percentage change in the Association of American Railroads (AAR) Quarterly Index of Chargeout Prices and Wage Rates, Table C, West, "materials, prices, wage rates and supplements combined (excluding fuel)" index in effect for the first quarter of the calendar year compared to the same index in effect for the first quarter of 2010. The first adjustment will be made

effective July 1, 2011. SCRRA shall not be required to reimburse the Contractor these fixed amounts if the vacancy is created by an employee who is barred from Metrolink service under Section B.26.c of this Contract.

**15. Other Reports**

a. Contractor shall provide the following additional reports at the times indicated in **Appendix 10**:

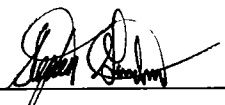
- (1) Extra Board Utilization report described in item 2.d.; and
- (2) The Employee absenteeism report described in item 2.e.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be executed as of the date first shown above, and effective on the Effective Date.

CONTRACTOR

National Railroad Passenger Corporation

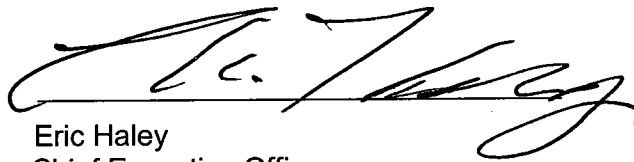
  
\_\_\_\_\_  
Stephen Gardner  
Vice President  
Policy and Development

Date:

APPROVED AS TO FORM:

  
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Jared I. Roberts  
Managing Deputy General Counsel

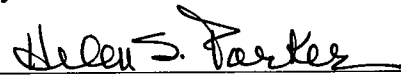
SOUTHERN CALIFORNIA  
REGIONAL RAIL AUTHORITY

  
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Eric Haley  
Chief Executive Officer

Date:

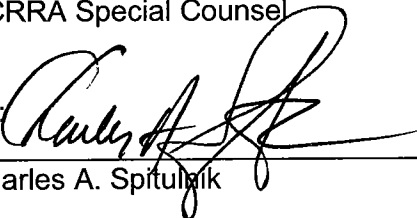
APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN  
County Counsel  
By

  
\_\_\_\_\_  
Helen S. Parker  
Principal Deputy County Counsel  
SCRRA General Counsel

APPROVED AS TO FORM:

Kaplan Kirsch & Rockwell LLP  
SCRRA Special Counsel

By:   
\_\_\_\_\_  
Charles A. Spitulnik