

FUNDING AGREEMENT
Between the
NATIONAL RAILROAD PASSENGER CORPORATION
And
THE STATE OF TEXAS,
Acting By and Through the Texas Department of Transportation
For Rail Passenger Service Between
OKLAHOMA CITY, OKLAHOMA and FORT WORTH, TEXAS
(October 1, 2007 through September 30, 2008)

THIS AGREEMENT is made as of the first day of October 2007, by and between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. § 24101 et. seq.) and the laws of the District of Columbia and having its principal office and place of business in Washington, D.C. (hereinafter referred to as "Amtrak"), and the State of Texas, acting by and through the Texas Department of Transportation (hereinafter referred to as "TxDOT").

WHEREAS, the Texas Transportation Code, Chapter 91, Subchapter A authorizes TxDOT to finance the operation of a railroad; and

WHEREAS, TxDOT has determined that it is in the best interest of the State for Amtrak to continue to provide rail passenger service as described herein; and

WHEREAS, TxDOT has represented to Amtrak that sufficient State funds have been made available to pay Amtrak's cost to provide the Service;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1 – SERVICE TO BE PROVIDED

- (a) Amtrak shall provide daily round-trip rail passenger service (the "Service") from October 1, 2007 through September 30, 2008, over the route(s), serving the stations and substantially in accordance with the schedules, service levels and other criteria as set forth in Appendix I incorporated by reference and attached hereto. Amtrak shall not be required to provide service on any other route, or to increase any train frequency, except pursuant to a mutually agreed upon amended Appendix I; provided, however, that this shall not preclude Amtrak from providing such service or increased frequency at its own or another's expense.
- (b) Amtrak shall exercise its best efforts to provide rail passenger service of high quality. General tariff policies (including age or membership restrictions to qualify for passenger-type discounts, and rules, procedures and fees for handling reservation cancellations, ticket exchanges, and ticket or payment refunds) will be handled consistent with Amtrak national policies. Amtrak will provide TxDOT at least thirty (30) days notice of any changes to the general tariff policies.

- (c) In the event that the Service may, from time to time, be fully utilized by the traveling public, Amtrak shall endeavor to provide additional rail passenger service equipment from its available resources.
 - (d) In the event compatible equipment becomes available to replace Amtrak's equipment, the Service may not be operated unless the equipment is in acceptable condition, in the sole and exclusive judgment of Amtrak.
 - (e) Amtrak may incorporate the Service in its general advertising and promotional programs as it may deem appropriate to the area in which the Service is provided.
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- (f) Amtrak agrees to insert in all published timetables and advertising related to the Service, the following statement:

"This service is financed, in part, through funds made available by the States of Oklahoma and Texas."

SECTION 2 – DECISIONS AFFECTING SERVICE

- (a) It is Amtrak's objective to optimize revenues, maximize ridership and provide a cost effective service.
- (b) TxDOT recognizes Amtrak's statutory obligation to act in a manner consistent with prudent management in providing rail passenger service beyond that included in the basic system. Amtrak recognizes TxDOT's financial contribution to the provision of the Service and acknowledges the budgetary limitations of TxDOT as it considers any proposed decision affecting the Service.
- (c) Except as otherwise provided in this Agreement, Amtrak shall give TxDOT not less than thirty (30) days prior written notice before implementing any decision that is likely to have a significant effect on the scheduling, marketing (including fares and ticketing) or operations of the Service. The notice shall contain information in sufficient detail to support and justify the decision. Notwithstanding this notice procedure, if access to or over rail lines on any route(s) provided herein shall be unavailable by reason of obstruction or otherwise, Amtrak may suspend or reroute any part of the Service provided pursuant to this Agreement for so long as the access shall be unavailable. Amtrak shall promptly notify TxDOT by telephone at (512) 486-5127 of any such suspension or rerouting.
- (d) Amtrak may at any time, with or without TxDOT's concurrence, make changes in the Service that are, in its opinion, necessary for safety, environmental or regulatory reasons. Amtrak shall promptly notify TxDOT of any such changes. Said changes include, but are not limited to, compliance with rulings by the Federal Railroad Administration, the National Transportation Safety Board, the Department of Homeland Security, the Food and Drug Administration and/or the Environmental Protection Agency.

- (e) Any change to the Service made pursuant Subsections (c) or (d) above may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by TxDOT hereunder.

SECTION 3 – AMOUNT OF PAYMENT BY THE STATE

- (a) The total charge from Amtrak for operation of the Service from October 1, 2007, to and including September 30, 2008, is Four Million, Two Hundred and Ninety-Seven Thousand Dollars (\$4,297,000). TxDOT hereby agrees to pay Amtrak One Million, Nine Hundred and Ninety-Eight Thousand, Five Hundred Dollars (\$1,998,500) with respect to the Service with the understanding that the State of Oklahoma is providing, under separate agreement with Amtrak, an additional Two Million, Two Hundred and Ninety-Eight Thousand, Five Hundred Dollars (\$2,298,500). TxDOT and Amtrak agree that this amount represents a fixed fee mutually agreed to by the parties.
- (b) The total compensation TxDOT shall provide Amtrak for the Service as described in Section 3(a) is based on the provision by Amtrak of available rail passenger equipment.
- (c) The total amount of TxDOT's financial obligation to Amtrak under this Agreement shall equal the amount set forth in Section 3(a) above; provided, however, that Amtrak shall not be required to provide any of the services or any services whatsoever for which TxDOT is not bound hereunder or for which the cost to TxDOT, as determined hereunder, exceeds the aforesaid amount(s); provided, further, that TxDOT may increase the amount of its financial obligation hereunder through transfers or additional appropriations.
- (d) The costs of the Service hereunder, as determined pursuant to Subsection (a) of this Section 3, are based on the provision of equipment by Amtrak.
- (e) In the event that Amtrak and the State of Oklahoma do not reach agreement covering operation and/or funding of the Service for the period October 1, 2007 through September 30, 2008, Amtrak may discontinue all contract service upon thirty (30) days prior written notice to TxDOT. Any such discontinuance under this section shall terminate TxDOT's obligation hereunder to pay for any part of the Service not yet provided, and shall not constitute or be considered as a waiver by Amtrak of payment, at the rate established in Section 3(a) for service provided hereunder.
- (f) Any termination of all or a portion of the Service shall be without prejudice to Amtrak's right to receive payment in proportion to the amount of service provided through the date of actual termination of the Service.

SECTION 4 – MANNER OF PAYMENT

- (a) In consideration for Amtrak's agreement to operate the Service from October 1, 2007 through September 30, 2008 for the amount specified in Section 3(a), TxDOT agrees to pay Amtrak in accordance to the monthly payment schedule included in Appendix II.
- (b) Amtrak shall render monthly invoices to TxDOT in accordance with the payment schedule in Appendix II. Except in the event of changes to the service or equipment, no further financial statements or "actual" bills will be provided to TxDOT by Amtrak.
- (c) Notwithstanding any other provision of this Agreement, in the event that TxDOT shall fail to remit payment in full, as provided in this Section, Amtrak may discontinue any or all of the Service on ten (10) days prior notice in writing to TxDOT of intended discontinuance. Notwithstanding the 180-day notice requirement contained in 49 U.S.C. Subsection 24706(a), if TxDOT fails to remit payment in full within the period of the notice, Amtrak shall discontinue the portion or portions of the Service referred to therein after thirty (30) days prior written notice to TxDOT; provided, however, that the discontinuance shall not constitute or be construed as a waiver by Amtrak of any such payment; provided, further, that any such discontinuance shall be without prejudice to the continued operation of any remaining portion or portions of the Service.
- (d) Neither party shall, by reason of any dispute or controversy with the other or for any reason whatsoever, be entitled to withhold any payment or performance due under this Agreement; provided, however, that no payment which has been made by TxDOT shall constitute or be construed as a waiver of any such claim it may have against Amtrak. The parties hereto shall make every reasonable effort to resolve any dispute or controversy by negotiation.
- (e) Amtrak agrees to promptly refund to TxDOT any credit balance due to TxDOT in the event of early termination of this Agreement. The cost of a shortened Agreement shall be determined by the number of days of service prorated against the total Agreement amount.

SECTION 5 – DEFENSE OF CLAIMS

- (a) Amtrak agrees to defend, indemnify and hold harmless TxDOT from any and all liability for injuries to or death of any employee of Amtrak or any contractor, subcontractor, licensee or invitee of Amtrak, or any person or passenger who has purchased an Amtrak-approved ticket for any train operated by or for the account of Amtrak and for loss of, damage to, or destruction of property of the person or passengers.
- (b) Amtrak agrees to defend, indemnify and hold harmless TxDOT from any and all liability for loss of, damage to, or destruction of any locomotive, passenger car or any other property or equipment owned by, leased to, used by, or otherwise in the control, custody or possession of Amtrak (other than TxDOT-provided equipment).

- (c) Amtrak agrees to defend, indemnify and hold harmless TxDOT from any and all liability for injury to or death of any person or persons (other than those persons, employees, contractors, subcontractors, licensees, invitees or passengers described in Section 5(a) above), and from any and all liability for loss, damage or destruction to any property (other than property described in Section 5(b) above) which arises from activities by Amtrak pursuant to this Agreement.
- (d) To the extent allowable by law, TxDOT agrees to indemnify and hold harmless Amtrak from any and all liability for injuries to or death of any employee of the State or any contractor, subcontractor, tenant, licensee or invitee of TxDOT, and for loss of, damage to, or destruction of property of such persons.
- (e) To the extent allowable by law, TxDOT agrees to indemnify and hold harmless Amtrak from any and all liability for loss of, damage to or destruction of TxDOT's property, including TxDOT-provided equipment, or any other personal or real property or equipment owned by, leased to, used by, or otherwise in the control, custody or possession of TxDOT.
- (f) To the extent allowable by law, TxDOT agrees to defend, indemnify and hold harmless Amtrak from any and all liability for injury to or death of any person or persons (other than those persons, employees, contractors, subcontractors, licensees, invitees or passengers described in Section 5(a) above), and from any and all liability for loss, damage or destruction to any property (other than property described in Section 5(b) above) which arises from activities by TxDOT pursuant to this Agreement.

SECTION 6 – INSPECTION AND AUDIT

- (a) TxDOT may, at any time, inspect the facilities and equipment used in providing the Service, provided, however, that any such inspection shall not hinder or delay the operation of the Service. Amtrak acknowledges and agrees that TxDOT and its duly authorized representatives shall have access to the books, documents, papers and records that are directly pertinent to the specific agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by TxDOT.
- (b) In the event that an official representative of TxDOT (including both state and federal elected officials and state agency staff) elects to inspect the Service and/or other Amtrak routes connecting with or to the Service, TxDOT, through its Transportation Planning and Programming Division, Director of Multimodal Section, shall make the request to Amtrak. Amtrak shall comply with all reasonable request(s) referenced herein, or in the alternative, provide specific reasons to TxDOT why the request(s) cannot be fulfilled.

- (c) Amtrak shall make available to TxDOT such ridership data relating to the Service as may be reasonably available in Amtrak's informational retrieval system, e.g., passengers carried, passenger miles and on-time performance. The data shall be computed and furnished on a monthly basis. Amtrak will endeavor to provide such other data relating to the Service as may be reasonably available.

SECTION 7 – FORCE MAJEURE

The obligations of Amtrak hereunder shall be subject to force majeure. Amtrak shall not be liable for any failure to perform, delay, or cancellation in connection with the performance of any obligation hereunder if the failure, delay, or cancellation is due to or in any manner caused by the laws, regulations, acts, demands, orders, or interpositions of any federal, state or local government agency having jurisdiction thereof, or by Acts of God, strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection or terrorism, or any other cause beyond Amtrak's control.

SECTION 8 – TERMINATION

This Agreement may be terminated by either party upon ninety (90) days written notice to the other. Termination of this Agreement shall be without prejudice to TxDOT's obligation to pay Amtrak hereunder for the Service provided until and including the date of termination.

SECTION 9 – PAY FOR NON-PERFORMANCE

Amtrak will pay TxDOT the sum of Two Thousand, Seven Hundred and Thirty-Seven Dollars and Fifty Cents (\$2,737.50) for each train that is cancelled (annulled) before departing its point of origin, as set forth in Appendix I, for reasons other than those set forth in Section 2(c), 2(d) or 7 hereof. However, no such payment will be required where alternate transportation is provided.

SECTION 10 – DISPUTE RESOLUTION PROVISIONS

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by mediation administered by a mutually acceptable third party to be chosen by TxDOT and Amtrak within fifteen (15) days after written notice demanding mediation under this Section. By mutual agreement, TxDOT and Amtrak may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that TxDOT and Amtrak shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation.

SECTION 11 – NOTICES

Any notices required by this Agreement or related to the Service by either party shall be in writing and shall be directed to the officials identified herein by personal delivery or by deposit in the United States mail via first class mail, postage prepaid, or by overnight courier. All

notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein.

For Amtrak: Contractual Issues:
Senior Principal, Contract Administration
National Railroad Passenger Corporation
525 W. Van Buren Street
Chicago, IL 60607

All Other Issues:
General Superintendent - Southwest Division
810 North Alameda Street
Los Angeles, California 90012

For the State: Texas Department of Transportation
Director, Multimodal Section
P.O. Box 149217
Austin, Texas 78714-9217

The titles and addresses set forth herein may be changed at any time by either party hereto by notice in writing to the other.

SECTION 12 – AGREEMENT CONTENT

This Agreement constitutes the entire agreement between the parties. There are no agreements, whether express or implied, except as may be expressly set forth herein. All prior agreements and understandings between them with respect to the provision of the Service on and after the effective date of this Agreement are subsumed within this Agreement. No change or modification in or to this Agreement, excepting only those changes provided for in Appendix I and II, shall be of any force or effect unless in writing, dated and executed by duly authorized representatives of the parties.

SECTION 13 – CONSTRUCTION

The Section headings used in this Agreement are for convenience only and shall not affect the construction of any of the terms hereof. This Agreement and the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the State of Texas.

SECTION 14 – SEVERABILITY

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

SECTION 15 - COMPLIANCE WITH LAWS

The parties shall comply with all applicable Federal, State, and Local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of this Agreement.

SECTION 16 – NON-DISCRIMINATION

Both TxDOT and Amtrak shall comply with applicable laws and regulations pertaining to hiring and employment.

SECTION 17 – COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

TxDOT acknowledges the existence of collective bargaining agreements between Amtrak and certain labor organizations representing certain of Amtrak's employees, and agrees that Amtrak will provide the Service in a manner consistent with its obligations and rights under the agreements, as they may exist from time to time.

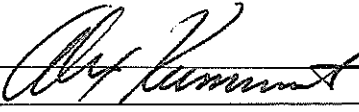
SECTION 18 – TERMINATION NOTICE

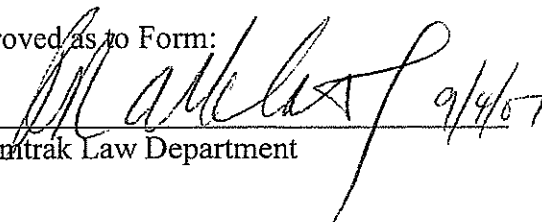
49 U.S.C. § 24706(a) requires that at least 180 days before "discontinuing service over a route, Amtrak shall give notice of the discontinuance in the way Amtrak decides will give a State, regional or local authority, or another person the opportunity to agree to share or assume the cost of any part of the train, route, or service to be discontinued." Because the availability of funding upon the termination of this Agreement is not now known, Amtrak and TxDOT agree that this section does, and shall be deemed to, constitute adequate notice under 49 U.S.C. § 24706(a) so that TxDOT (and/or others working with TxDOT such as regional or local authorities) has the opportunity to agree to share or assume the cost of continuing the Service upon the termination. TxDOT concurs with Amtrak's decision that no notice beyond that set forth in this section need be given.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives in multiple original counterparts on the date indicated below.

NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 9/12/07

By: 
Alexander Kummant
President and Chief Executive Officer

Approved as to Form:
By:  9/4/07
Amtrak Law Department

and

STATE OF TEXAS

Dated: 9-24-07

By:  PE
Title: Executive Director
Texas Department of Transportation

APPENDIX I
NATIONAL RAILROAD PASSENGER CORPORATION
and
THE STATE OF TEXAS

AGREEMENT DATED 1 OCTOBER 2007
FOR THE PROVISION
OF RAIL PASSENGER SERVICE

FISCAL YEAR 2008
October 1, 2007 – September 30, 2008

Pursuant to Section 1 of the aforesaid Agreement, Amtrak shall provide rail passenger service over the route(s) set forth below, in accordance with the schedule(s) shown below. Typical equipment for the Service shall consist of two (2) Hi-Level Coaches, one (1) Superliner snack/coach, one (1) P-42 locomotive and one (1) NPCU. The Service shall commence on October 1, 2007 and shall terminate on September 30, 2008.

SCHEDULE
Oklahoma City – Fort Worth
(Effective October 1, 2007)

<u>Train 821</u>		<u>Train 822</u>	
DP 8:25 AM	Oklahoma City (unstaffed)	AR 9:39 PM	
8:49 AM	Norman (unstaffed)	8:53 PM	
9:06 AM	Purcell (unstaffed)	8:36 PM	
9:31 AM	Pauls Valley (unstaffed)	8:11 PM	
10:20 AM	Ardmore (unstaffed)	7:22 PM	
11:01 AM	Gainesville (unstaffed)	6:41 PM	
AR 12:39 PM	Fort Worth (staffed)	DP 5:25 PM	

APPENDIX II

NATIONAL RAILROAD PASSENGER CORPORATION
and
THE STATE OF TEXAS

AGREEMENT DATED 1 OCTOBER 2007
FOR THE PROVISION
OF RAIL PASSENGER SERVICE

FISCAL YEAR 2008
October 1, 2007 – September 30, 2008

Pursuant to Section 3(a) of the aforesaid Agreement, TxDOT's obligation during the term of the Agreement to pay Amtrak under the Agreement shall be in the aggregate One Million, Nine Hundred and Ninety-Eight Thousand, and Five Hundred Dollars (\$1,998,500). Funds for this purpose have been authorized and made available by the State of Texas for the term of the Agreement, pursuant to the laws of the State.

TxDOT's share of the operating loss will be based on a fixed amount as mutually agreed to by both parties. Schedule A is a monthly payment schedule effective October 1, 2007 through September 30, 2008.

This Appendix II constitutes an integral part of the aforesaid Agreement. No change, modification or amendment thereto shall be of any force or effect unless evidenced by a revised Appendix II dated and executed by Amtrak and TxDOT.

SCHEDULE A

Payment Schedule for Texas Contract

October 15, 2007	\$ 166,542
November 15, 2007	\$ 166,542
December 15, 2007	\$ 166,541
January 15, 2008	\$ 166,542
February 15, 2008	\$ 166,542
March 15, 2008	\$ 166,541
April 15, 2008	\$ 166,542
May 15, 2008	\$ 166,542
June 15, 2008	\$ 166,541
July 15, 2008	\$ 166,542
August 15, 2008	\$ 166,542
September 15, 2008	\$ 166,541
Total	<u>\$1,998,500</u>