

AGREEMENT FOR THE PROVISION OF RAIL PASSENGER SERVICE
Between the
NATIONAL RAILROAD PASSENGER CORPORATION
And
THE STATE OF OKLAHOMA
For Service Between
OKLAHOMA CITY, OKLAHOMA And FORT WORTH, TEXAS
(October 1, 2008 Through September 30, 2009)

THIS AGREEMENT is made as of the first day of October 2008, 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 Oklahoma acting by and through its Department of Transportation (hereinafter referred to as the "State").

WHEREAS, the State has requested that Amtrak provide rail passenger service as described herein, and has represented to Amtrak that sufficient funds have been made available to pay for such service and that it is authorized by applicable state law to enter into this Agreement.

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, 2008 through September 30, 2009, over the route(s), serving the stations and substantially in accordance with the schedules, service levels and other criteria jointly developed and agreed to by Amtrak and the State 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 and the parties shall cooperate in efforts to improve the Service, as may be appropriate. Amtrak and the State shall jointly approve decisions impacting such things as menu items and prices, level of on-board amenities, fares, on-board operating policies and reservation requirements. Both parties agree that in order to provide a consistent level of service across all Amtrak services, that 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 the State 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 or, by mutual agreement of the parties, confirmed in writing, to employ such additional compatible equipment as the State may, in its discretion, make available for use in the Service on a route provided for herein, as designated by the State.
- (d) In the event compatible equipment is made available by the State as specified in Section 1(c) or compatible equipment is otherwise made available to replace Amtrak's equipment, the Service may not be operated unless such equipment so provided is in acceptable condition, in the sole and exclusive judgment of Amtrak. The State represents and warrants to Amtrak that such equipment shall comply with all applicable laws and regulations. The State shall obtain from regulatory authorities any waivers necessary to lawfully permit the operation of the equipment in the Service to be provided. The State shall also be responsible for obtaining the approval of any railroads over which the Service is to be operated. Obtaining such waivers or approvals and conforming the equipment to applicable statutory and regulatory standards shall be a condition precedent to Amtrak operating the equipment hereunder.
- (e) The parties shall cooperate for the purpose of effecting the continuing existence and use of the rail passenger service herein and shall take such other actions as they may mutually agree is conducive to the establishment and provision of the service on a regular, efficient and economic basis. To that end, Amtrak may incorporate the service in its general advertising and promotional programs as it may deem appropriate to the area in which the service is provided. By mutual agreement between the parties, confirmed in writing, Amtrak shall, in consultation with the State, arrange for advertising directed specifically to the service. The cost of such advertising shall be borne by the State.
- (f) Amtrak agrees to insert in all published timetables and advertising related to the rail passenger service herein, the following statement:

"This service is financed primarily through funds made available by the States of Oklahoma and Texas."
- (g) The State shall be responsible for assuring that adequate station facilities (e.g., platforms, stairs, parking, etc., all of which shall be ADA compliant) are provided at each of the station stops in Oklahoma. Any payments made to provide, construct, repair and/or maintain such station facilities shall be the responsibility of the State and shall be in addition to any other payment required hereunder. The provision, construction, repair and/or maintenance of such station facilities is not included in the Service.

SECTION 2 – DECISIONS AFFECTING SERVICE

It is the objective of both the State and Amtrak to optimize revenues, maximize ridership and provide a cost effective service.

The State hereby recognizes Amtrak's statutory obligation to act in a manner consistent with prudent management in providing rail passenger service beyond that included in the basic system. Amtrak recognizes the State's financial contribution to the provision of the Service and acknowledges the budgetary limitations of the State as it considers any proposed decision affecting the Service. Except as otherwise provided in this Agreement, Amtrak shall give to the State not less than thirty (30) days prior notice in writing of implementation of any decision which is likely to have a significant effect on the scheduling, marketing (including fares and ticketing) or operations of the Service. Such notice shall contain information in sufficient detail to support and justify such decision. Accordingly, the parties shall exercise their best efforts to agree on any such decision as aforesaid pursuant to the following procedure:

- (a) If any such decision relates only to the Service provided pursuant to this Agreement, and if it can be implemented without affecting Amtrak's basic system, Amtrak shall obtain the State's concurrence therein prior to such implementation. The State shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs, or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence within the period of the said notice; provided, however, that the State shall not unreasonably withhold its concurrence.
- (b) If, in the judgment of Amtrak, any such decision as aforesaid will affect Amtrak's basic system, Amtrak shall solicit the State's concurrence therein prior to implementation. The State shall promptly respond in writing to notice from Amtrak as aforesaid stating that it concurs, or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence within the period of the said notice; provided, however, that if the parties fail to agree, Amtrak may implement such decision upon the expiration of the notice period.
- (c) If, under Subsections (a) or (b) of this Section 2, the State fails to respond in writing to notice from Amtrak as aforesaid within fifteen (15) days of delivery of such notice, the State shall be deemed to have concurred in the decision set forth therein.
- (d) Notwithstanding the notice procedures contained in this Section 2, 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 such access shall be unavailable. Amtrak shall promptly notify the State, by telephone at (800) 522-8181 of any such suspension or rerouting, and the parties shall cooperate to restore the rail service provided for herein.

- (e) Amtrak may at any time, with or without the State's concurrence, make changes in the Service that are, in its opinion, necessary for safety, environmental or regulatory reasons. Amtrak shall promptly notify the State 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.
- (f) The State shall have the right to initiate proposals with regard to scheduling, marketing (including fares and ticketing) or operations of the rail passenger service pursuant to this Agreement. Amtrak shall promptly respond to the State in writing stating its concurrence or, in the alternative, giving reasons in sufficient detail why it does not concur. In the latter event, the parties shall promptly confer for the purpose of reaching mutual agreement and concurrence within fifteen (15) days of receipt of notice; provided, however, that Amtrak shall not unreasonably withhold, delay, or condition its concurrence.
- (g) Any change to the Service made pursuant to Subsections (a), (d) (e) or (f) above may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by the State hereunder.

SECTION 3 – AMOUNT OF REIMBURSEMENT BY THE STATE

- (a) The State shall pay Amtrak the following financial support for the operation of the Service for the period from October 1, 2008 through and including September 30, 2009:
 - (i) The sum of One Million, Five Hundred and Forty-Two Thousand, and Two Hundred and Fifty-One Dollars (\$1,542,251) representing a fixed fee for all projected and non-reimbursed operational costs of the Service other than fuel. The State and Amtrak agree that this amount represents a fixed fee for the Service, mutually agreed upon by the parties and not subject to audit adjustment.
 - (ii) The State's proportional fifty percent (50%) share of total actual fuel expenses incurred by Amtrak as the result of operating the Service for the period from October 1, 2008 through September 30, 2009. Fuel expense shall be calculated based upon a consumption rate per train mile to include idling and layover fuel consumption as determined by a joint field survey to be conducted by Amtrak and the State, multiplied by the total number of train miles operated by the Service for the billing period. The product of these factors shall in turn be multiplied by the average cost-per-gallon paid by Amtrak on a monthly basis at Ft. Worth, TX and/or at other outlying fueling points as may be appropriate. All fuel expenses shall be computed by Amtrak on a monthly basis and documented to the State. In addition, all fuel expenses incurred shall be billed separately and paid monthly by the State on an actual cost basis.

- (b) In the absence of a written agreement to the contrary, the parties agree that the total charge to the State for operation of the Service from October 1, 2008, to and including September 30, 2009 under Section 3(a) shall not exceed Two Million, Two Hundred and Seventy-Seven Thousand Dollars (\$2,277,000). The parties further agree that on the last day of the eighth month of the contract year, the parties will review actual fuel costs for the preceding eight months in order to evaluate whether the remaining available State funds are likely to meet the projected fuel costs for the remaining four months of the contract year. In the event that the amount of projected fuel costs for the remaining four months of the contract year exceeds the remaining available State funds, the State agrees to (a) obtain supplemental funding and/or (b) work with Amtrak to implement any and all necessary service modifications to comply with the funding limitations of State specified herein.
- (c) Subject to the limitation imposed by Section 3(b), the State hereby agrees to pay Amtrak all amounts due under Sections 3(a) (i) and (ii) above with respect to such service. All such payments are however made with the understanding that the State of Texas is providing, under separate agreement with Amtrak, an additional, (a) One Million, Two Hundred and Ninety-Two Thousand, and Two Hundred and Fifty-One Dollars (\$1,292,251) in payment of the fixed fee described in Section 3(a) (i) above, and (b) subject to any funding limitations contained in the separate agreement with the State of Texas, additional payments equal to fifty percent (50%) of the total actual fuel expenses incurred by Amtrak for operation of the Service for the period from October 1, 2008 through and including September 30, 2009.
- (d) The total compensation the State shall provide Amtrak for the Service as described in Section 3(a) is based on the provision by Amtrak of available rail passenger equipment. In the event that the State specifies that a particular type or types of rail passenger equipment be provided by Amtrak and Amtrak agrees to provide such equipment, the State shall reimburse Amtrak for the additional costs of providing and operating such particular equipment. Should the State, at its discretion, lease or purchase rail passenger equipment as specified in Sections 1(c) and (d) for operation by Amtrak in the Service, said equipment shall meet safety standards established by the Federal Railroad Administration and be acceptable to Amtrak. Prior to Amtrak implementing any service using equipment provided by the State, the State shall obtain Amtrak's concurrence therein. In addition, Amtrak shall negotiate with the State a new total charge for the Service, amended to reflect the recomputed costs of operating the Service with equipment supplied by the State.
- (e) The total amount of the State'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 the State is not bound hereunder or for which the cost to the State, as determined hereunder, exceeds the aforesaid amount(s); provided, further, that the State may increase the amount of its financial obligation hereunder through transfers or additional appropriations.

- (f) In the event the State provides equipment as specified in Section 1(c) and (d) for the Service, the locomotive power necessary for the Service shall be provided by Amtrak to the State under this Agreement in a manner that is consistent with utilization of Amtrak-provided equipment. Amtrak shall use reasonable efforts to utilize personnel trained to provide for the on-board services of State-provided equipment consistent with train crews on Amtrak-provided equipment providing similar capacity. 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 or operation of the rail passenger equipment made available by the State and operation of the locomotive provided by Amtrak. The State shall reimburse Amtrak for the verifiable costs of operating such equipment
- (g) In the event that Amtrak and the State of Texas do not reach agreement covering operation and/or funding of the Service for the period October 1, 2008 through September 30, 2009, Amtrak may discontinue all contract service upon thirty (30) days prior written notice to the State of Oklahoma. Any such discontinuance under this section shall terminate the State'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 payments required under Section 3(a) for service provided hereunder.
- (h) 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 REIMBURSEMENT

- (a) In consideration for Amtrak's agreement to operate the Service from October 1, 2008 through September 30, 2009, the State agrees to reimburse Amtrak the amount specified in Section 3(a) (i), in accordance with the monthly payment schedule included in Appendix II. The State further agrees to remit full payment of all fuel expenses payable to Amtrak, under Section 3(a) (ii), within thirty (30) days of receipt of an invoice from Amtrak.
- (b) As it pertains to Section 3(a) (i), Amtrak shall render monthly invoices to the State 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 pertaining to the amount payable by the State under Section 3(a) (i) above will be provided to the State by Amtrak.
- (c) Notwithstanding any other provision of this Agreement, in the event that the State 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 the State of intended discontinuance. Notwithstanding the 180-day notice requirement contained in 49 U.S.C. Subsection 24706(a), if the State 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 the

State; 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 the State 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 the State any credit balance due to the State 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.
- (f) Oklahoma Passenger Incentive (OKPI) – Amtrak will credit the State against the current month's fixed price \$10.00 for each passenger above the projected base ridership shown in the OKPI table listed in Appendix II. Amtrak will render a credit invoice to the State within sixty (60) days of any given month end when a credit has been earned.

SECTION 5 – DEFENSE OF CLAIMS

- (a) Amtrak agrees to defend, indemnify and hold harmless the State 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 such person or passengers.
- (b) Amtrak agrees to defend, indemnify and hold harmless the State 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 State-provided equipment).
- (c) The State 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 the State, and for loss of, damage to, or destruction of property of such persons.
- (d) The State agrees to indemnify and hold harmless Amtrak from any and all liability for loss of, damage to or destruction of the State's property, including State-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 the State.

- (e) The State 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 the State pursuant to this Agreement.

SECTION 6 – INSPECTION AND AUDIT

- (a) The State may, at any time, inspect the facilities and equipment used in providing the Service, provided, however, any such inspection shall not hinder or delay the operation of the Service. Amtrak acknowledges and agrees that the State and their duly authorized representatives shall have access to the books, documents, papers and records which 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 the State.
- (b) In the event that an official representative of the State (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, the State, through the Oklahoma Department of Transportation, Manager, Office of Rail Programs, shall make said request to Amtrak. Amtrak shall comply with all reasonable request(s) referenced herein, or in the alternative, provide specific reasons to the State why said request(s) cannot be fulfilled.
- (c) Amtrak shall make available to the State 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. Such 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.
- (d) Amtrak shall provide to the State access to daily “Delay Reports,” monthly on-time performance information and passenger reservation information for each train within the Service listed in Appendix I of this Agreement.

SECTION 7 – FORCE MAJEURE

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

SECTION 8 – TERMINATION

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

SECTION 9 – PAY FOR PERFORMANCE

Amtrak will pay the State the sum of One Thousand, Seven Hundred and Seventy Dollars (\$1,770.00) 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(d), 2(e) 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 arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any United States District Court having jurisdiction over the parties. The parties agree that the arbitrator should be a lawyer, if possible, and to make such a request to the American Arbitration Association in the event that an arbitration proceeding is commenced hereunder.

SECTION 11 – NOTICES

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

For Amtrak: Contractual Issues:
Senior Director, State Partnerships
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: Division Manager, Rail Programs Division
Oklahoma Department of Transportation
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105-3204

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 such 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 District of Columbia.

SECTION 14 – SEVERABILITY

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

SECTION 15 – NON-DISCRIMINATION

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

SECTION 16 – COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

The State 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 such agreements, as they may exist from time to time.


SECTION 17 – 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 the State agree that this section does, and shall be deemed to, constitute adequate notice under 49 U.S.C. § 24706(a) so that the State (and/or others working with the State such as regional or local authorities) has the opportunity to agree to share or assume the cost of continuing the service provided by Amtrak hereunder upon such termination. The State 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: 10/30/08

By: 
Alexander Kummant
President and Chief Executive Officer

Approved as to Form:
By: 
Amtrak Law Department

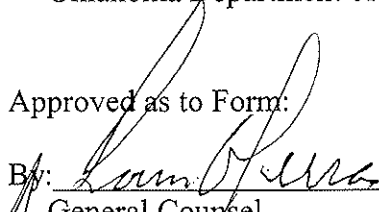
and

STATE OF OKLAHOMA

Dated: 11-3-08

By: 

Title: DIRECTOR OF ENGINEERING
Oklahoma Department of Transportation

Approved as to Form:
By: 
General Counsel

11/3/08

APPENDIX I

NATIONAL RAILROAD PASSENGER CORPORATION
and
THE STATE OF OKLAHOMA

AGREEMENT DATED 1 OCTOBER 2008
FOR THE PROVISION
OF RAIL PASSENGER SERVICE

FISCAL YEAR 2009
October 1, 2008 – September 30, 2009

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 said Service shall commence on October 1, 2008 and shall terminate on September 30, 2009.

SCHEDULE
Oklahoma City – Fort Worth
(Effective October 1, 2008)

<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 OKLAHOMA

AGREEMENT DATED 1 OCTOBER 2008
FOR THE PROVISION
OF RAIL PASSENGER SERVICE

FISCAL YEAR 2009
October 1, 2008 – September 30, 2009

Pursuant to Section 3(a) (i) of the aforesaid Agreement, the State agrees to provide Amtrak with reimbursement of a fixed fee in the amount of One Million, Five Hundred and Forty-Two Thousand, and Two Hundred and Fifty-One Dollars (\$1,542,251) for operation of the Service for the period of October 1, 2008, through and including September 30, 2009. The parties further agree that payment of the aforementioned fixed fee shall be paid by the State in accordance with the specification of Schedule A, a monthly payment schedule which is attached herein. Funds for the said purpose have been authorized and made available by the State of Oklahoma for the term of the Agreement, pursuant to the laws of the State.

Included in the total fixed fee charge specified in Section 3(a) (i) of One Million, Five Hundred and Forty-Two Thousand, and Two Hundred and Fifty-One Dollars (\$1,542,251) identified in Section 3(a) (i) for the period October 1, 2008 through and including September 30, 2009, is the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) which shall be used for the purpose of providing advertising, marketing and sales efforts directed specifically to the Service. The State will review and approve all invoices submitted for such advertising, marketing and/or sales efforts prior to payment by Amtrak. Any such funds provided by the State during the term of this Agreement for advertising, marketing and/or sales efforts, which have not been approved for payment by the State and disbursed by Amtrak upon the expiration of this Agreement shall, at the election of the State, be returned to the State or, subject to authorization from the State, applied by the State as payment against future rail passenger services or for projects pertinent to the Service. The parties agree that all decisions regarding the use of the Amtrak brand shall be approved by Amtrak before use. The parties further agree to meet via telephone or in person, not less than four (4) times each year, to discuss national and local marketing efforts initiated by Amtrak and/or the State.

The State's share of the fixed portion of the projected operating loss will be based on the fixed amount as mutually agreed to by both parties and specified in Section 3(a) (i). Schedule A is a monthly payment schedule covering payment of the fixed fee effective October 1, 2008 through September 30, 2009. Schedule B is the Oklahoma Passenger Incentive (OKPI) table for calculating the potential per passenger credit over and above the monthly base passenger projections listed.

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 the State.

SCHEDULE A

Payment Schedule for the Fixed Fee Required under Sections 3 and 4 of Agreement Dated
October 1, 2008 Between Amtrak and The State of Oklahoma

October 1, 2008	\$ 128,521
November 1, 2008	\$ 128,521
December 1, 2008	\$ 128,521
January 1, 2009	\$ 128,521
February 1, 2009	\$ 128,521
March 1, 2009	\$ 128,521
April 1, 2009	\$ 128,521
May 1, 2009	\$ 128,521
June 1, 2009	\$ 128,521
July 1, 2009	\$ 128,521
August 1, 2009	\$ 128,521
September 1, 2009	<u>\$ 128,520</u>
Total	<u>\$1,542,251</u>

SCHEDULE B

Oklahoma Passenger Incentive (OKPI)

	<u>Base Passengers</u>
October 2008	5,300
November 2008	5,100
December 2008	5,300
January 2009	3,100
February 2009	3,600
March 2009	7,600
April 2009	5,600
May 2009	7,600
June 2009	7,300
July 2009	8,900
August 2009	6,400
September 2009	4,200

The State will be credited with \$10.00 per passenger against the current month's fixed price payment for all passengers above the base monthly figure.