



OKLAHOMA
Transportation

Office of General Counsel

200 Northeast 21st Street
Oklahoma City, Oklahoma 73105-3204
www.odot.org

June 27, 2022

Mr. Gary M. Lanman
3305 West Charleston Court
Stillwater, Oklahoma 74074

RE: Open Records Request: 22-0188

Dear Mr. Lanman:

Enclosed please find a copy of the current Heartland Flyer contract between the Oklahoma Department of Transportation and Amtrak.

Bus services to Kansas are coordinated and operated through Amtrak, this agency has no documents available pertaining to your request.

Sincerely,

Ann Layton

Ann Layton
Administrative Programs Officer
Office of General Counsel

Enclosure

"The mission of the Oklahoma Department of Transportation is to provide a safe, economical, and effective transportation network for the people, commerce and communities of Oklahoma."

AN EQUAL OPPORTUNITY EMPLOYER

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, 2021 through September 30, 2022)

THIS AGREEMENT is made as of the first day of October 2021, 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.

WHEREAS, under Section 209 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 Stat. 4848 ("PRIIA"), Congress required, among other things, that Amtrak, in consultation with the relevant states and the District of Columbia, develop and implement a methodology for allocating the operating and capital costs of rail routes of not more than 750 miles outside the segment of the continuous Northeast Corridor railroad line between Boston, Massachusetts and Washington, District of Columbia among the relevant states and the District of Columbia, and Amtrak.

WHEREAS, Amtrak developed such a methodology in consultation with a group of states but was unable to achieve the necessary concurrence on the methodology from all relevant states and the District of Columbia as required by PRIIA. Accordingly, on November 21, 2011, Amtrak petitioned the Surface Transportation Board (the "STB") to adopt Amtrak's proposed methodology.

WHEREAS, in a decision effective April 14, 2012, the STB adopted Amtrak's proposed methodology to meet the requirements of PRIIA (the "Agreed 209 Methodology"), which decision is incorporated herein by reference.

WHEREAS, the Heartland Flyer Service Trains 821 and 822, operating between Oklahoma City, OK and Fort Worth, TX, are subject to the Agreed 209 Methodology.

WHEREAS, because of the COVID-19 pandemic, ridership on these trains and the corresponding passenger revenue has been severely impacted; and

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

SECTION 1 – SERVICE TO BE PROVIDED

(a) Subject to payment by the State pursuant to Section 4 below, Amtrak shall provide daily round-trip rail passenger service (the “Service”) from October 1, 2021 through September 30, 2022, (“FY 2022 Contract Year”) 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. Amtrak and the State will collaborate on the addition of passenger coaches beyond the forecasted consist levels when anticipated demand so warrants such an addition.

(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 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 reservations, 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, consistent with the funding requirements of the Agreed 209 Methodology, including Equipment Capital Charges associated with the State’s use of such additional rail passenger service equipment.

(d) The State may, upon not less than 180 days prior notice, request that Amtrak increase or decrease the Service, and/or the amount of equipment used in the Service, so as to meet the needs of the traveling public. If the request is to increase either the Service or the amount of equipment used, Amtrak shall exercise reasonable efforts to accommodate such request, which may include providing additional compatible rail passenger equipment from its available resources or, by written agreement with the State, to employ additional compatible equipment as the State may choose to make available for use in the Service, consistent with the funding requirements of the Agreed 209 Methodology. In the event that equipment is made available by the State, or because the State desires to substitute State-owned or leased equipment for Amtrak-owned equipment, such equipment will be used in the Service only if it complies with all applicable laws and regulations and, by mutual agreement of the parties, is compatible with Amtrak operations and associated equipment. The State and Amtrak will use reasonable efforts to resolve discrepancies in compatibility. The State shall be responsible for obtaining the approval of any railroads over

which such equipment is to be operated. Equipment includes locomotives, cab cars and any other type of car used in a passenger train.

(e) If equipment normally used in the Service becomes unavailable for any reason, Amtrak shall exercise reasonable efforts to substitute compatible rail passenger equipment from its available resources, consistent with the funding requirements of the Agreed 209 Methodology, including Equipment Capital Charges associated with the State's use of such substitute equipment. Alternatively, the State and Amtrak may agree to use such additional compatible equipment as the State may make available, subject to the terms relating to such use as set forth in Section 1(d) above.

(f) 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, endeavor to arrange for advertising directed specifically to the Service. The cost of such advertising shall be borne by the State.

(g) Amtrak agrees to insert in all published timetables and advertising related to the rail passenger service herein, the following statement: "The Heartland Flyer is financed primarily through funds made available by the Oklahoma and Texas Departments of Transportation."

(h) 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. In the event the State fails to meet its obligations under this Section 1(h), and a station facility is unavailable for any reason, the State agrees to reimburse Amtrak for any financial loss incurred by Amtrak as a result of the State's failure to comply with the provisions of Section 1(h), such loss to specifically include any lost revenue and/or costs associated with the provision of alternate transportation of passengers to/from such station facility. Such reimbursement shall be made in accordance with Section 5(a).

(i) Amtrak's performance hereunder is conditioned on the ability of Amtrak's suppliers and vendors, the availability of materials, and the availability of Amtrak's work force or the work force of its contractors to carry out their obligations. Given the uncertainty of those conditions under the COVID-19 pandemic and related government-issued orders, Amtrak shall not be held liable for any delays or inability of Amtrak or its contractors to perform under this Agreement.

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 including any expansion of rail passenger service. 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 or operations of the Service. Such notice shall contain information in sufficient detail to support and justify such decision, if applicable. 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. The parties further agree that in accordance with the mutual desire of the parties to pursue revenue growth, Amtrak and the State shall work collaboratively on the timing and magnitude of fare increases to be implemented on the Service. Amtrak shall provide the State with at least thirty (30) days' advance written notice of any fare changes proposed by Amtrak for the Service and shall seek to obtain the State's concurrence for such change. The State's response shall state that it concurs or, in the alternative, give reasons in sufficient detail why it does not concur with the proposed change, such concurrence not to be unreasonably withheld. If after consultation the parties cannot agree, either may initiate the dispute resolution provisions of Section 11 hereof.

(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 thirty (30) 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 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 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 thirty (30) 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 1(b), 2(a), 2(d), 2(e) or 2(f) above may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by the State hereunder, consistent with the requirements of the Agreed 209 Methodology.

SECTION 3 - MARKETING AND ADVERTISING

(a) Subject to the conditions and requirements herein, each party grants the other a limited, non-exclusive license to use its name, trade names, trademarks and service marks, collectively referred to as "Marks," with Amtrak's Marks identified in Appendix V, for the purpose of implementing the regional marketing and advertising plan. Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the use of any Mark owned or used by a party is or is intended to be given or transferred to or acquired by the other party by the execution, performance or nonperformance of this Agreement or any part thereof, and each party's use of the other party's Marks shall inure to the sole benefit of the party that owns such Marks. Each party agrees to comply with all of the other party's instructions and quality control standards, oral or written, regarding the use or display of the other party's Marks. Each party that uses or displays the other party's Marks shall reasonably permit the owner and/or licensor of such Marks to monitor whether the licensed use by the licensee is meeting the quality control standards of the owner/licensor through reasonable inspection. Neither party shall use any Marks of the other in any manner that would diminish its value or harm the reputation of the other party and the control over the use of a party's Marks shall remain with the party that owns the Marks.

(b) Each party acknowledges that the other party's Marks and copyrights are considered to be valuable and that it (or its licensors) claims to own all worldwide right, title and interest therein and thereto. Each party agrees that it shall in no way contest or deny the validity of, or the right or title of, the other party's Marks by reason of this Agreement. Each party further agrees not to register anywhere in the world any domain name, name, mark, symbol, logo, copyright, company, product name, service name, or description that could be confused with or is similar to or which dilutes the other party's Marks.

(c) Each party shall have the right to review and approve, prior to publication or display, the portion of any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages, or other communications or other publicity published or distributed by the other party (or at its direction and authorization) that specifically references this Agreement, the reviewing/approving party's name, the Service, or that uses any of the reviewing/approving party's Marks. Such review and approval by the other party shall be timely and shall not be unreasonably withheld. All advertising and promotional materials proposed to be utilized by a party to promote the Service shall contain disclaimers, limitations of liability, notices, proprietary notices (e.g., trademark and copyright notices) and such other notices as are reasonably required by the other party.

(d) If at any time, the State should elect to have its own website promoting the Service it shall assure that the content is accurate, timely and consistent with information contained on Amtrak's website.

SECTION 4 – AMOUNT OF PAYMENT BY THE STATE

(a) The State shall pay Amtrak 56.754% of the following Operating Costs, Third Party Costs and Capital Costs – Passenger Service Equipment for the operation of the Service for the period from October 1, 2021 through and including September 30, 2022:

Capitalized terms shall have the meaning set forth in the Agreed 209 Methodology.

- (i) Operating Costs – General. Operating Costs will be calculated according to the Agreed 209 Methodology. Route Costs and Additives shall be fixed for the duration of the Agreement in the amounts specified in Appendix II. The State and Amtrak agree that the Route Costs and Additives for the Service have been mutually agreed upon by the parties and are not subject to audit adjustment, though they are subject to adjustments as described in Section 2(g). Passenger and Other Allocated Revenue and Third Party Costs shall be charged or credited based on actual costs/credits incurred and revenues received. For the purpose of estimating the net Operating Cost, estimates of Passenger and Other Allocated Revenue and Third Party Costs are provided in Appendix II.
- (ii) Third Party Costs – Fuel. Fuel expense shall be calculated by Amtrak using the Amtrak Performance Tracking (APT) system methodology and invoiced to the

State for each billing period. A fuel consumption field study may be requested by either party to determine an alternative method of allocating fuel expense. Expenses for any such fuel study will be borne by the requesting party. Any change to the fuel expense calculation based on a fuel study must be agreed to by the parties in writing.

- (iii) Third Party Costs - Host Railroad Maintenance of Way, Performance Incentives and Other Costs. Host railroad expenses shall be computed by Amtrak on a monthly basis, as billed to Amtrak by the host railroads, based upon the APT methodology, and invoiced to the State on a monthly basis. Upon request, and provided that the State will not disclose to any third party without Amtrak's prior approval any confidential or proprietary data provided hereunder, Amtrak shall provide documentation of actual host railroad Maintenance of Way, Performance Incentive and Other Costs.
- (iv) Capital Costs – Passenger Service Equipment. Capital Costs for Passenger Service Equipment are included in this Agreement and will be calculated as a usage fee according to the Agreed 209 Methodology and will be charged to the State in accordance with Appendix III. The parties agree however, that the actual final amount to be paid by the State, for Capital Costs – Passenger Service Equipment, for the FY 2022 Contract Year, will be dependent upon: (1) the final reconciliation by the parties of the actual Capital Costs – Passenger Service Equipment expenditures applicable to the Service for the period of October 1, 2021 through September 30, 2022 and (2) the actual amount of funding provided for such item by the State of Texas for the FY 2022 Contract Year. On a quarterly basis, Amtrak shall provide the State with an accounting of the actual pro-rata usage fee payable by the State for the operation of Amtrak-owned passenger service equipment in Oklahoma. This quarterly report will reflect Amtrak fiscal year-to-date information and is meant to give the State a snapshot of how the year-to-date estimated payments shown in Appendix IV and V compare to the year-to-date actual usage fee. Included with the quarterly report will be a bill for additional charges; the State may pay this bill or wait for the final reconciliation to be completed at the end of Amtrak's fiscal year. Any credits reflected in the quarterly report will be carried forward until the final reconciliation is provided to the State following the conclusion of the external audit for Amtrak's fiscal year. Once the final annual equipment capital charge reconciliation is prepared and sent to the State, the final bill for any additional charges will be due within thirty (30) days of receipt. If estimated payments exceed actual charges, Amtrak will apply a credit to the next year's or any prior year's capital advance obligation. Such accounting shall be used as the basis for the settlement of any payment due to Amtrak, or amount refundable to the State, as the result of any differential between the actual usage fee payable and total payments made by the State under this Agreement, subject to the mutual agreement of the parties. If the Non-Powered Control Unit (NPCU) is removed from the consist of the train, the Operating Costs and

Capital Costs for Passenger Service Equipment will be adjusted for the State pursuant to Section 2(g).

- (v) Capital Costs – Fixed Assets. Under the provisions of PRIIA Section 209, Capital Costs associated with the utilization of Amtrak owned fixed asset capital investments and/or various other non-Amtrak owned fixed assets utilized for the operation of a state-supported route are to be calculated according to the Agreed 209 Methodology and charged to the applicable state-supported routes utilizing such assets. As of the present time, no specific calculations have yet been developed for the allocation of such costs and accordingly, no such costs have been allocated, nor are currently being assessed under the provisions of this Agreement.

(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, 2021, to and including September 30, 2022 under Section 4(a) shall not exceed Three Million, Eighty-Seven Thousand, Nine Hundred and Ninety-Three Dollars (\$3,087,993) ("FY22 Not-To-Exceed-Amount"), representing the total Two Million, Five Hundred and Fifty Thousand, Eight Hundred and Seventy-Four Dollar (\$2,550,874) estimated State Operating payment shown in Appendix IV, plus the State's Five Hundred and Thirty-Seven Thousand, One Hundred and Eighteen Dollar (\$537,118) share of the Equipment Capital Charge shown in Appendix III and Appendix IV. The parties further agree that on a quarterly basis, they will review actual Third Party Costs and Capital Costs – Passenger Service Equipment for the preceding three months of the FY 2022 Contract Year in order to evaluate whether the remaining available State funds are likely to meet the projected Route Costs and Additives, Third Party Costs and Capital Costs – Passenger Service Equipment for the remaining months of the contract year. In the event that the amount of projected Route Costs and Additives, Third Party Costs and Capital Costs – Passenger Service Equipment for the remaining months of the FY 2022 Contract Year is anticipated to exceed the remaining available State funds, the State agrees to (a) obtain supplemental funding and/or (b) work with Amtrak and the State of Texas 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 4(b), the State hereby agrees to pay Amtrak all amounts due under Section 4(a) above with respect to the Service. All such payments are, however, made with the understanding that the State of Texas is providing, under separate agreement with Amtrak, an estimated additional amount of One Million Nine Hundred and Forty-Three Thousand, Seven Hundred and Forty-Two Dollars (\$1,943,742) shown in Appendix IV, plus the American Rescue Plan Act of 2021 credit to the State of Texas of Three Hundred and Ninety-One Thousand, Four Hundred and Eighty-Six Dollars (\$391,486) shown in Appendix IV, plus TxDOT's Four Hundred and Nine Thousand, Two Hundred and Seventy-Nine Dollar (\$409,279) share of the Equipment Capital Charge shown in Appendix III and Appendix IV in payment of the State of Texas's respective 43.246% share of the estimated Route Costs and Additives, Third Party Costs and Capital Costs – Passenger Service Equipment of the Service described in Section 4(a) above, for the operation of the Service for the period from October 1, 2021 through and including September 30, 2022.

(d) The total compensation the State shall provide Amtrak for the Service as described in Section 4(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(d) and 1(e) for operation by Amtrak in the Service, 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 4(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 Sections 1(d) and 1(e) 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 4, are based on the provision of equipment 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, 2021 through September 30, 2022, Amtrak may discontinue the 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 4(a) for Service provided hereunder.

(h) In the event that Amtrak and the State of Oklahoma fail to reach agreement for operation of the Service for the October 1, 2022 through September 30, 2023 ("FY 2023 Agreement") period by October 1, 2022, the parties agree that the terms of this Agreement shall govern continued operation of the Service until a new agreement is executed by the parties ("Continuation Period"). In such event, the State agrees to continue to reimburse Amtrak as set forth in Sections 4 and 5 for the October 1, 2021 through September 30, 2022 period, plus the addition of a four percent (4%) escalation component to Route Costs and Additives, as set forth in Appendix II, for the term of the Continuation Period. Once an FY 2023 Agreement is executed by the parties, Amtrak will credit the State's payments made during the Continuation Period to the State's obligations under the FY 2023 Agreement. In no event shall the Continuation Period extend beyond June 30, 2023.

(i) 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.

(j) From time to time, Amtrak may make updates to the Amtrak Performance Tracking (APT) system which is the basis of many cost allocations within the Agreed 209 Methodology or may make updates to Operating or Capital Cost forecasts derived from APT data. In the event any such updates are, consistent with the requirements of Section 209 Methodology, determined by Amtrak to warrant the revision of any such costs in a manner that would result in an adjustment of the amounts paid by or to be paid by the State under the terms of this Agreement, Amtrak will notify the State of such adjustment(s) and, subject to mutual agreement of the parties, amend this Agreement accordingly.

SECTION 5 – MANNER OF PAYMENT

(a) In consideration for Amtrak's agreement to operate the Service from October 1, 2021 through September 30, 2022, the State agrees to pay Amtrak on the first day of the month following each month of Service the net Operating Costs specified in Section 4(a), and the estimated Capital Costs – Passenger Service Equipment payable under Section 4(a) as invoiced by Amtrak in accordance with the monthly payment schedule included in Appendix IV. The State further agrees to remit full payment of all reconciliation costs payable to Amtrak, under Sections 4(a) as well as any financial loss that may be incurred by Amtrak pursuant to the provisions of Section 1(h), within thirty (30) days of receipt of a reconciliation invoice from Amtrak.

(b) With the exception of the annual reconciliation of Capital Costs for Passenger Service Equipment under Section 4(a)(iv), and/or 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 Sections 4(a) 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. In the event the State disputes a charge detailed in an invoice and Amtrak cannot provide a reasonable

explanation of said charge, the State shall have the right to withhold the amount in dispute but shall pay the remainder of the invoice. The State shall advise Amtrak, in writing, of the amount of disputed charge to be withheld, and promptly provide reasonable detail regarding reasons for the withholding, and the actions that the State considers necessary to resolve the disputed charge. Once resolution of the disputed charge is achieved between the State and Amtrak, the notice to withhold will either be withheld, withdrawn, or modified and the portion of the disputed invoice will be remitted promptly, not more than thirty (30) days after resolution of the dispute. Should resolution of the disputed charge not be achieved, the State shall pay the charge under protest after one (1) calendar month of withholding. Such payment shall not be considered as resolution of the dispute and the dispute resolution process outlined in Section 11 of this Agreement shall be carried to its conclusion. Should the resolution of the dispute result in a refund to the State, said refund shall be applied as a credit to the next monthly reconciliation payment, and shall be expressly accounted for therein. Should resolution of the dispute result in a remittance or payment to Amtrak, said payment will be made to Amtrak with the next monthly reconciliation payment and shall be expressly accounted for therein.

(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 performed prorated against the total Agreement amount.

SECTION 6 – DEFENSE OF CLAIMS

Amtrak shall be responsible for and agrees to defend, indemnify and hold harmless the State from all losses, damages, claims, demands, suits, and actions brought by any party involving injury to or death of any person, or damage to or loss of any property, to the extent such arises directly from the operation of the Service. If any claim, action or proceeding shall at any time be brought against the State asserting a liability for such injury, death, damage or loss, the State shall promptly give notice to Amtrak of such claim, action or proceeding. The parties agree that Amtrak shall control the defense of any such claim, action or proceeding. The State shall fully cooperate with Amtrak and provide all such information and reasonable assistance as Amtrak may from time to time request.

SECTION 7 – INSPECTION AND AUDIT

(a) The State may, at any time, upon reasonable notice, 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 this Agreement ("Records") for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Upon reasonable notice and no more than once annually, Amtrak shall permit the State and its duly authorized representatives to inspect Records. No copies of such records may be made by the State or its representatives. During the audit period and pending the results of the audit, the State

may not withhold or short pay any advance or reconciliation invoice amounts either based upon preliminary audit findings or awaiting the results of the audit.

(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, as mutually agreed upon by the parties.

Some of these reports may include transcriptions of comments made by passengers about experiences they had while using the Service. The State acknowledges that these comments may contain allegations that represent one party's version of these experiences, that they may contain sensitive and personal information about Amtrak passengers and employees, and that there may be additional information relevant to these experiences and related events that passengers were not aware of or did not include when they reported their allegations. Some of the transcriptions of comments made by passengers may include information that could be used to identify that passenger.

As a condition of receiving transcriptions of comments made by passengers, the State acknowledges that Amtrak has a disciplinary process to investigate and respond to passenger allegations about the behavior of Amtrak employees, and that process is the appropriate venue to investigate passenger allegations and determine whether any disciplinary response is appropriate. The State also agrees to keep these allegations confidential and treat them as they treat their own confidential personnel records. The State also agrees not to make any attempts to identify or contact the passengers or the employees involved in the alleged experiences described by passengers in the reports provided by Amtrak. The State also agrees to keep any Amtrak passenger or personnel information confidential and shall not release or disclose it for any reason. If the State fails to protect this information, Amtrak will discontinue providing reports containing this information.

The State has agreed to contribute certain types of data about the Service in reports that provide comparative data for multiple routes to be shared with other states.

Amtrak may provide access to some of these reports via an Amtrak-provided electronic data retrieval system. If the State decides to use these electronic data retrieval capabilities, the State agrees to abide by Amtrak's policies, terms and conditions for information technology security and usage while accessing Amtrak's system, and to access only the information it is authorized to access. If Amtrak determines that the State is violating Amtrak's information technology security and usage policies while using the Amtrak system, or otherwise using the

Amtrak systems in a way that is abusive, unethical, or inappropriate, it reserves the right to discontinue State access to such information.

SECTION 8 – 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, terrorism, quarantines, epidemics or pandemics, or any other cause beyond Amtrak's control.

SECTION 9 – 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 10 – PAY FOR NON-PERFORMANCE

Amtrak will credit the State the fixed operating cost (minus revenue) pro-rated per frequency, based on the Operating Forecast in Appendix II, which totals the sum of Three Thousand, One Hundred and Eighteen Dollars (\$3,118) 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 8 hereof. However, no such credit will be required where alternate transportation is provided.

SECTION 11 – 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 12 – 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: Sr. Manager, State Supported Corridors
National Railroad Passenger Corporation
510 West Martin Street, Suite 130
Raleigh, NC 27603

For the State: Division Manager, Multi-Modal 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 13 – 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 IV, shall be of any force or effect unless in writing, dated and executed by duly authorized representatives of the parties.

SECTION 14 – 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 15 – 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 16 – NON-DISCRIMINATION

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

SECTION 17 – 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 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 the State agree that, if applicable, 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.

SECTION 19 – CONFIDENTIALITY

The State desires that Amtrak disclose to the State certain proprietary and confidential commercial and financial information of Amtrak pursuant to this Agreement and the Operations provided hereunder. Amtrak shall label the confidential or proprietary information as "Confidential" to assist the State with its proper handling of such information. The State agrees to keep such confidential information in strict confidence, to maintain adequate security measures to protect the information and to immediately notify Amtrak in writing of any known or suspected disclosure, access or use of the confidential information that is not authorized under this Agreement. Further, the State agrees that it and its employees, will not, either during or at any time after the term of this Agreement, publish or disclose to any third party or the public any identified Amtrak proprietary or confidential information of any kind or nature disclosed by Amtrak to the State hereunder without the prior written authorization of Amtrak.

Upon the State's receipt of confidential or proprietary information it becomes subject to the Oklahoma Open Records Act, Title 51, Oklahoma Statutes Sections 24A.1-24A.24 (the "ORA"). The Oklahoma ORA allows the public to have access to information in the possession of a governmental body through an open records request, unless the information falls under any of

the Oklahoma ORA's exceptions to required disclosure. If a person submits an open records request seeking disclosure of confidential or proprietary information, the State will follow the procedures set forth in the Oklahoma ORA. Amtrak may assert the requested information is within any exception to required disclosure that Amtrak believes is applicable under the ORA. In the event the State receives a request to disclose all or any part of the confidential or proprietary information either through an open records request or under the terms of a valid and enforceable subpoena or order issued by a court of competent jurisdiction, the State shall: (a) immediately notify Amtrak of the existence, terms and circumstances surrounding such request; (b) consult with Amtrak on the advisability of taking legally available steps to resist or narrow such request; and (c) if disclosure of such confidential or proprietary information is required, assist Amtrak in seeking to obtain, at Amtrak's expense, an order or other reliable assurance that confidential treatment will be accorded to such portion of the disclosed confidential or proprietary information as Amtrak shall designate.

This Section shall survive termination or expiration of this Agreement.

SECTION 20 – COMPLIANCE WITH LAWS

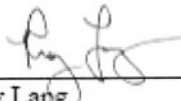
The parties will comply with all applicable state, federal and local laws and regulations in the performance of this Agreement.

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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

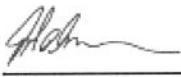
Dated: October 4, 2021

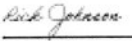
By: 
Ray Lang
Vice President State Supported Services
Business Development


and

STATE OF OKLAHOMA

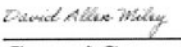
Dated: 10/05/2021

By: 
Jared Schwennesen
Multi-Modal Division Manager

By: 
Rick Johnson
Director of Capital Programs

By: 
Dawn Sullivan
Deputy Director

Approved as to Form:

By: 
General Counsel

APPENDIX I

Train Consists, Schedule, Station Hours and Staffing Levels

Heartland Flyer – Route 29

Consist

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 consists of one (1) Superliner Coach for the entire year, a second Superliner Coach from February 28, 2022 through September 6, 2022, one (1) Superliner snack coach for the entire year, one (1) P-42 locomotive for the entire year, and one (1) F40 Cab/Baggage Car – NPCU for the entire year. The parties agree that Amtrak may actively manage train consists, based upon passenger demand. The Service provided shall be operated pursuant to this Agreement for the period October 1, 2021 through September 30, 2022.

Schedule

Oklahoma City – Fort Worth
(Effective October 1, 2021)

Scheduled Time of Arrival (“AR”) or Departure (“DP”)

<u>Train 821</u>			<u>Train 822</u>		
DP	8:25 AM	Oklahoma City (unstaffed)	AR	9:27 PM	
	8:47 AM	Norman (unstaffed)		8:49 PM	
	9:02 AM	Purcell (unstaffed)		8:28 PM	
	9:25 AM	Pauls Valley (unstaffed)		8:03 PM	
	10:17 AM	Ardmore (unstaffed)		7:11 PM	
	11:13 AM	Gainesville (unstaffed)		6:28 PM	
AR	12:27 PM	Fort Worth (staffed)	DP	5:25 PM	

APPENDIX II
Operations Pricing

Heartland Flyer – Route 29

<u>Section 209 Line Item</u>	<u>Total Amount</u>	<u>Oklahoma</u>	<u>Texas</u>
REVENUES			
Ticket Revenue	\$1,606,000	\$911,469	\$694,531
Food & Beverage	\$146,658	\$83,234	\$63,424
Other Revenue	\$41,432	\$23,514	\$17,918
Total Revenue	\$1,794,090	\$1,018,218	\$775,872
EXPENSES			
<u>Third Party Costs</u>			
Host Railroad (Maintenance of Way & Performance Incentives)	(\$41,016)	(\$23,278)	(\$17,738)
Synthetic Host Railroad Charge	\$0	\$0	\$0
Fuel and Power	\$525,186	\$298,064	\$227,122
Subtotal: Third Party Costs	\$484,170	\$274,786	\$209,384
<u>Route Costs</u>			
Train & Engine Crew Labor	\$1,640,950	\$931,305	\$709,645
Car & Locomotive Maintenance and Turnaround	\$1,533,808	\$870,497	\$663,311
Onboard Passenger Technology	\$1,812	\$1,028	\$784
OBS - Crew	\$561,657	\$318,763	\$242,894
Commissary Provisions	\$72	\$41	\$31
Route Advertising	\$0	\$0	\$0
Reservations & Call Centers	\$198,585	\$112,705	\$85,880
Stations - Route	\$22,348	\$12,683	\$9,665
Stations - Shared	\$408,550	\$231,868	\$176,682
Station Technology	\$72	\$41	\$31
Commissions	\$38,341	\$21,760	\$16,581
Customer Concession	\$112	\$64	\$48
Connecting Motor Coach	\$0	\$0	\$0
Regional/Local Police	\$500	\$284	\$216
Block & Tower Operations	\$0	\$0	\$0
Terminal Yard Operations	\$309	\$175	\$134
Terminal MoW	\$46	\$26	\$20
Insurance	\$222,488	\$126,271	\$96,217
Subtotal: Route Costs	\$4,629,650	\$2,627,512	\$2,002,138
<u>Additives</u>			
Marketing	\$22,484	\$12,761	\$9,723
T&E	\$479,157	\$271,941	\$207,216
MoE	\$415,662	\$235,905	\$179,757
OBS	\$56,173	\$31,880	\$24,293
Police	\$50,945	\$28,913	\$22,032
Shared Support Services	\$150,464	\$85,394	\$65,070
Total: Additives	\$1,174,885	\$666,794	\$508,091
Total Expenses	\$6,288,705	\$3,569,092	\$2,719,613
State Operating Payment (Credit)	\$4,494,616	\$2,550,874	\$1,943,742
Equipment Capital Use Charge	\$946,397	\$537,118	\$409,279
Total PRIIA 209 State Charge (Credit)	\$5,441,013	\$3,087,993	\$2,353,021

APPENDIX III
Capital Costs – Passenger Service Equipment for Operations

Heartland Flyer – Route 29

Program	Equipment Code	Equipment Name	Allocated Units	Allocation %	Allocated Cost	Oklahoma	Texas
Diesel Locomotive LCPM	SQ_EQ_DNBD	DIESEL LOCO - P42-8 LOCO 1/3/97	1.0	1.0%	\$233,590	\$132,572	\$101,018
Superliner II Coach Overhaul	SQ_EQ_SX	Superliner Coach (I and II)	1.5	2.0%	\$71,827	\$40,765	\$31,062
Superliner I Coach Overhaul (Level 2)	SQ_EQ_SX	Superliner Coach (I and II)	1.5	2.0%	\$163,450	\$92,764	\$70,686
Superliner I Coach Overhaul (Level 2)	SQ_EQ_SXSK	SUPERLINER I - S.L. Snack Coach	1.0	33.3%	\$477,531	\$271,018	\$206,513
Total Forecast Equipment Capital Use Charge for Route 29: *					\$846,397	\$537,118	\$409,279

* Note: this is a preliminary estimated forecast

Amounts for Capital Costs – Passenger Service Equipment are estimates to be reconciled with actuals according to the Agreed 209 Methodology.

APPENDIX IV
Estimated Payment Totals and Schedule




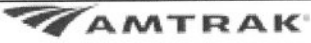


Heartland Flyer – Route 29

Cost Category	Heartland Flyer - Route 29 Total	Heartland Flyer - Route 29 Oklahoma	Heartland Flyer - Route 29 Texas
Operations Pricing (from Appendix II)	\$4,494,616	\$2,550,874	\$1,943,742
ARPA Credit:*	(\$391,486)	\$0	(\$391,486)
Capital Costs – Passenger Service Equipment for Operations (from Appendix III)	\$946,397	\$537,118	\$409,279
* amount remaining from FY21			

Monthly Advance Payment by the State of Oklahoma – Heartland Flyer – Route 29			
Month	Operations	Equipment Capital	Total
October, 2021	\$212,573	\$44,760	\$257,333
November, 2021	\$212,573	\$44,760	\$257,333
December, 2021	\$212,573	\$44,760	\$257,333
January, 2022	\$212,573	\$44,760	\$257,333
February, 2022	\$212,573	\$44,760	\$257,333
March, 2022	\$212,573	\$44,760	\$257,333
April, 2022	\$212,573	\$44,760	\$257,333
May, 2022	\$212,573	\$44,760	\$257,333
June, 2022	\$212,573	\$44,760	\$257,333
July, 2022	\$212,573	\$44,760	\$257,333
August, 2022	\$212,573	\$44,760	\$257,333
September, 2022	\$212,571	\$44,758	\$257,329
Total:	\$2,550,874	\$537,118	\$3,087,992
Note: Oklahoma takes Actual Revenue, Pays Fixed Route and Additive Costs, and Pays Actual Third Party and Equipment Capital Costs - see Section 4.			

APPENDIX V
Amtrak Marks

Heartland Flyer – Route 29

Mark Description	Mark	USPTO Registration
Travelmark Logo (Vertical)		2,602,178
Travelmark Logo (Horizontal)		2,632,665
Amtrak (Wordmark)	Amtrak	960,643
Amtrak Express	Amtrak Express	2,465,363
Amtrak Vacations	Amtrak Vacations	2,623,854
Amtrak Vacations Logo		n/a
America's Railroad	America's Railroad	4,007,792
Julie	Julie	3,153,968
Metropolitan Lounge	Metropolitan Lounge	n/a
Quiet Car	Quiet Car	2,536,556
Saver Fares	Saver Fares	4,848,263
See where the train can take you (Wordmark)	See where the train can take you	n/a
See where the train can take you lockup (Tagline below)	 <i>See where the train can take you™</i>	n/a
See where the train can take you lockup (Tagline left)	<i>See where the train can take you™</i> 	n/a
See where the train can take you lockup (Tagline below)	 <i>See where the train can take you™</i>	n/a
Heartland Flyer (Wordmark)	Heartland Flyer	4,066,981