

COOPERATIVE AGREEMENT NO. L-9-0001

BETWEEN

LOS ANGELES – SAN DIEGO – SAN LUIS OBISPO RAIL CORRIDOR AGENCY

AND

NATIONAL RAILROAD PASSENGER CORPORATION

FOR

**DESIGN SERVICES IN SUPPORT OF THE EXPANSION OF THE PACIFIC SURFLINER
LAYOVER FACILITY IN THE CITY OF GOLETA**

THIS COOPERATIVE AGREEMENT (“Agreement”), is effective this ____ day of ____, 2019 (“Effective Date”), by and between the Los Angeles – San Diego – San Luis Obispo Rail Corridor Agency (“LOSSAN Agency”), a joint powers authority as amended pursuant to Senate Bill 1225 (Chapter 802, Statutes of 2012) and the National Railroad Passenger Corporation (AMTRAK), 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.; (LOSSAN Agency and AMTRAK are each sometimes referred to herein as a “Party” and collectively referred to as “Parties”).

RECITALS

WHEREAS, in California, AMTRAK operates, under contract with the LOSSAN Agency, intercity passenger rail service along the Los Angeles – San Diego – San Luis Obispo (LOSSAN) rail corridor which is known as the *Pacific Surfliner* Service (“Service”); and

WHEREAS, the Service is provided through funding made available by the State of California; and

WHEREAS, the LOSSAN Agency has assumed administrative and management responsibility for the Service as of July 1, 2015; and

1 **WHEREAS**, the LOSSAN Agency is an eligible recipient of annual State Rail Assistance
2 (SRA) funds, a program administered by the California State Transportation Agency (CalSTA) to
3 provide commuter and intercity rail agencies with flexible funding to invest in operating or capital
4 improvement programs; and

5 **WHEREAS**, the LOSSAN Agency is an eligible recipient of Transit and Intercity Rail Capital
6 Program (TIRCP) funds, a program administered by CalSTA in collaboration with the California
7 Department of Transportation (Caltrans); and

8 **WHEREAS**, the LOSSAN Agency has programmed \$260,000 in SRA funds for design
9 services in support of the expansion of the Pacific Surfliner layover facility in the City of Goleta
10 (Project); and

11 **WHEREAS**, the LOSSAN Agency has also programmed \$123,000 in TIRCP funding to
12 further support the design of the Project; and

13 **WHEREAS**, the LOSSAN Agency is authorized by applicable law to enter into an agreement
14 with AMTRAK on the terms and conditions hereinafter set forth and to reimburse AMTRAK in the
15 amount not-to-exceed \$383,000 to complete the design of the Project as described in Attachment A;
16 and

17 **WHEREAS**, AMTRAK holds rights for the operations, maintenance and improvements to the
18 Pacific Surfliner layover facility in the City of Goleta, which it leases from the Union Pacific Railroad
19 (UPRR); and

20 **WHEREAS**, the LOSSAN Agency and AMTRAK are committed to providing a safe, high-
21 quality passenger rail service and are mutually working to enhance the safety, security, and efficiency
22 of the Service; and

23 **WHEREAS**, the LOSSAN Agency and AMTRAK wish to work together to define the roles,
24 responsibilities and processes for preparing the design concepts and final design for the Project; and

25 **WHEREAS**, the expansion of the existing layover facility is necessary to advance service
26 expansion and enhancement goals for the Pacific Surfliner; and

1 **NOW, THEREFORE**, in consideration of the promises and mutual understandings of the
2 Parties hereto, the LOSSAN Agency and AMTRAK agree as follows:

3 **ARTICLE 1. COMPLETE AGREEMENT**

4 1. This Agreement, including any attachments incorporated herein and made applicable
5 by reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of
6 this Agreement between the LOSSAN Agency and AMTRAK and it supersedes all prior
7 representations, understandings, and communications with respect to the subject matter hereof. The
8 invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of
9 other term(s) or conditions(s) of this Agreement. The above referenced Recitals are true and correct
10 and are incorporated by reference herein.

11 2. The LOSSAN Agency's failure to insist on any instance(s) of AMTRAK's performance
12 of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment
13 of the LOSSAN Agency's right to such performance or to future performance of such term(s) or
14 condition(s), and AMTRAK's obligation in respect thereto shall continue in full force and effect.
15 Changes to any portion of this Agreement shall not be binding upon the LOSSAN Agency except
16 when specifically confirmed in writing by an authorized representative of the LOSSAN Agency by
17 way of a written amendment to this Agreement and issued in accordance with the provisions of this
18 Agreement.

19 3. AMTRAK's failure to insist on any instance(s) of the LOSSAN Agency's performance
20 of any term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment
21 of the AMTRAK's right to such performance or to future performance of such term(s) or condition(s),
22 and the LOSSAN Agency's obligation in respect thereto shall continue in full force and effect.
23 Changes to any portion of this Agreement shall not be binding upon AMTRAK except when
24 specifically confirmed in writing by an authorized representative of AMTRAK by way of a written
25 amendment to this Agreement and issued in accordance with the provisions of this Agreement.
26

ARTICLE 2. SCOPE OF AGREEMENT

1. This Agreement specifies the roles and responsibilities of both the LOSSAN Agency and AMTRAK as they pertain to the subject and Project addressed herein. Both the LOSSAN Agency and AMTRAK agree that each will cooperate and coordinate with the other in all activities agreed upon herein and any other supplemental agreements which may be required to facilitate the purposes thereof.

2. The scope of work shall define in general the Project to be funded under this Agreement. Attachment A includes a general scope of work and the Project timeframe.

ARTICLE 3. RESPONSIBILITIES OF LOSSAN AGENCY

Subject to all the terms and conditions of this Agreement and Attachment A, the LOSSAN Agency agrees to the following responsibilities for the implementation of the Project:

1. The LOSSAN Agency shall reimburse AMTRAK for allowable Project costs associated with the Project.

2. To provide a Project Manager or designee as its single point of contact to coordinate with AMTRAK to complete the scope of work for the Project, to include participation in all project related meetings, and review of draft and final submittals of reports, plans, schedules, expenditure reports and provide comments. The cost of the LOSSAN Agency's Project Manager will be borne by the LOSSAN Agency and paid by the LOSSAN Agency outside of this Agreement.

3. To be the lead agency for all outreach efforts and communications with the City of Goleta, the Santa Barbara County Association of Governments and the UPRR.

4. Monitor and review the performance of AMTRAK or its consultants in performing the scope of work to ensure that all work performed is in compliance with the obligation of the LOSSAN Agency under any grant, agreement, regulation, law or other requirements.

ARTICLE 4. RESPONSIBILITIES OF AMTRAK

Subject to all the terms and conditions of this Agreement and Attachment A, AMTRAK agrees to the following responsibilities for the implementation of the Project:

1 1. Designate a Project Manager as the point of contact to manage the scope of work
2 through completion.

3 2. AMTRAK shall be responsible for obtaining all applicable permits, clearances and
4 required licenses. It is specifically acknowledged and understood by the Parties that AMTRAK
5 may not be the owner of the real property where the work set forth in the scope of work is to be
6 performed.

7 3. In the event that AMTRAK cannot obtain permission from an applicable property
8 owner prior to the start of the Project, or if such permission is conditioned or withdrawn prior to
9 the completion of the Project, all costs incurred by AMTRAK in connection with the Project or
10 relating to cancellation or modification of the Project that are related to said lack of or conditioned
11 permission shall be considered Project costs, and shall be reimbursed to AMTRAK.

12 4. Enter into agreements related to the scope of work and be responsible for payment
13 to consultants. AMTRAK shall be responsible for reviewing consultant invoices for accuracy,
14 reasonableness, terms, and completeness.

15 5. AMTRAK shall provide final approval on all plans, specifications, estimates and
16 designs, and directly manage all consultants. Any review and approval of the consultant's
17 drawings, plans, specifications and estimates ("Documents") by AMTRAK shall be for examining
18 the general arrangement, design and details of the Project for potential impact on AMTRAK's
19 operations. AMTRAK's contract with its consultant shall provide that no review, correction or
20 approval of Documents by AMTRAK (or the LOSSAN Agency) shall relieve the consultants from
21 professional responsibility for errors or omissions in such Documents or for the adequacy thereof.
22 AMTRAK assumes no responsibility for and makes no representations or warranties, express or
23 implied, as to the design, condition, workmanship, or adequacy of the Documents or of the Project.

24 6. Upon Project completion, the cost of ongoing operation and maintenance of the
25 Project equipment, systems and facility constructed or otherwise provided pursuant to this
26 Agreement shall be borne by AMTRAK, consistent with existing operating and maintenance

1 agreements for the layover facility.

2 7. Submit a monthly progress report to the LOSSAN Agency indicating the percent
3 complete of the scope of work.

4 8. Establish a baseline schedule by primary task for completing the scope of work and
5 submit updates to the schedule on a monthly basis along with the progress report.

6 9. Submit a monthly invoice to the LOSSAN Agency that has been reviewed and
7 approved by the AMTRAK project manager as being complete and correct. The invoices should
8 detail actual costs incurred during the previous months. Each AMTRAK invoice shall include the
9 following information:

- 10 a. Agreement Number L-9-0001 and AMTRAK Project Number;
- 11 b. The time period covered by the invoice;
- 12 c. Itemized expenses including support documentation incurred during the reporting
13 period. Support documentation shall include a breakdown of all costs into the
14 following categories:
- 15 i. AMTRAK costs; to include hours and rates by labor classification, including
16 project related expenses
- 17 ii. Consultant services; to include hours and rates by labor classification,
18 including project related expenses
- 19 iii. Other project related expenses
- 20 d. Invoices shall be submitted to:
- 21 Accounts Payable
- 22 LOSSAN Rail Corridor Agency
- 23 600 S. Main St.
- 24 Orange, CA 928638
- 25 VendorInvoices@octa.net
- 26 e. Such other information pertinent to this Agreement as reasonably requested by the

LOSSAN Agency.

10. To comply with the applicable provisions of Title 24, California Code of Regulations, and of local building codes and ordinances. AMTRAK agrees its consultants shall comply with all applicable laws and regulations.

11. Include the LOSSAN Agency's designated Project Manager in all project related meetings and submit all schedules, plans and reports for review and comment by the LOSSAN Agency.

ARTICLE 5. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, LOSSAN Agency and AMTRAK mutually agree that LOSSAN Agency's maximum cumulative payment obligation hereunder shall be Three Hundred Eighty-Three Thousand Dollars (\$383,000.00), unless agreed to and amended by both Parties.

ARTICLE 6. AUDIT AND INSPECTION

AMTRAK shall maintain a complete set of records in accordance with generally accepted accounting principles. Upon reasonable notice, AMTRAK shall permit the authorized representatives of LOSSAN to inspect and audit all work, materials, payroll, books, accounts and other data and records of AMTRAK for a period of three (3) years after completion of this Agreement, or until any on-going audit is completed. For purposes of audits, the date of completion of this Agreement shall be the date of LOSSAN's payment of AMTRAK's final billing (so noted on the invoice) under this Agreement.

ARTICLE 7. ALLOWABLE COSTS AND PAYMENTS

1. All design and estimating work under this Agreement shall be performed by AMTRAK or by the consultant(s) retained by AMTRAK.

2. The LOSSAN Agency agrees to reimburse AMTRAK, not more frequently than monthly in arrears. AMTRAK will forward invoices to the LOSSAN Agency requesting reimbursement for actual allowable costs incurred by AMTRAK for the applicable Project

described in Attachment A. Allowable costs shall include those set forth in Attachment A hereto. Payment of invoices will be due upon receipt. Invoices may include other costs necessary to complete each Project such as materials and permit fees. Backup documents supporting the costs invoiced shall be made available at the LOSSAN Agency's request. Such documentation shall be sufficiently detailed to enable the LOSSAN Agency to determine that the costs included in each invoice are in accordance with the applicable Project budget.

3. If at any time during the Project AMTRAK believes that the total cost of the Project may exceed the approved Project budget, it shall promptly notify the LOSSAN Agency. The LOSSAN Agency and AMTRAK shall then confer to determine how best to address the funding shortfall (e.g. seek more funding, extend the schedule of the Project, reduce the scope of the Project). Amtrak may cease all work on such Project until such shortfall is, in Amtrak's judgment, satisfactorily addressed. Failure of the LOSSAN Agency to reimburse Amtrak pursuant to the terms of this Agreement shall be considered a breach and shall be cause for termination by Amtrak if not cured by the LOSSAN Agency within 15 days of receipt of written notice of such non-payment by Amtrak.

4. Within 120 days after completion of the work for the Project, AMTRAK shall submit a final accounting to the LOSSAN Agency of all allowable incurred Project expenses with respect to the Project. Such final accounting shall detail all Project expenses previously reimbursed by the LOSSAN Agency and those not yet submitted by AMTRAK for payment with respect to the Project. Any documents supporting the invoiced Project costs (e.g. letters, receipts, employee time records, and sub-contractor invoices, etc.) which have not been previously submitted to the LOSSAN Agency shall be included in this final accounting of the Project. The LOSSAN Agency shall reimburse Amtrak for allowable Project costs in the final accounting to the extent they do not exceed the total funds available under the Project budget for the Project. The LOSSAN Agency will audit the final invoice and all prior invoices to determine the eligibility of all costs. Any Project costs determined to be ineligible for reimbursement will be re-paid by Amtrak to the LOSSAN

1 Agency. If AMTRAK disagrees with such determination, the dispute shall be resolved in
2 accordance with Sections 7 and 8 of the Parties' Agreement for the Provision of Passenger Rail
3 Service dated October 1, 2017 and first amended on August 23, 2018 and again on December 3,
4 2018.

5 5. AMTRAK shall use its standard procurement processes for all contracted work.
6 Procurement related requirements shall be solely those established pursuant to AMTRAK's
7 procurement process as detailed in the AMTRAK Procurement Manual (December 2015 revision).
8 Should the preferred proposal or any necessary contract change orders and associated AMTRAK
9 management costs exceed the available funds set forth in the Project budget or the agreed to
10 Project schedule, the LOSSAN Agency agrees to either (a) attempt to seek additional funding;
11 (b) work with AMTRAK to reduce the scope of the Project to meet the available funds and
12 timeframe; or (c) direct AMTRAK to reject all bids and cancel the Project.

13 6. For purposes of this Agreement, the definition of "allowable costs" for all Project
14 work shall be defined as such costs directly necessary for the implementation of the Project scope
15 of work.

16 7. Amtrak staff travel pertinent to this Agreement shall be reimbursed at the federal
17 Per Diem rate as shown on the U.S. General Services Administration (GSA) website
18 (www.gsa.gov).

19 **ARTICLE 8. INDEMNIFICATION**

20 1. To the fullest extent permitted by law, LOSSAN Agency shall defend (at LOSSAN
21 Agency's sole cost and expense with legal counsel reasonably acceptable to AMTRAK), indemnify,
22 protect, and hold harmless AMTRAK, its officers, directors, employees, and agents (collectively the
23 "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses,
24 costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and
25 expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to
26 Claims arising from injuries to or death of persons (LOSSAN Agency's employees included), for

1 damage to property, including property owned by AMTRAK, or from any violation of any federal,
2 state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful
3 misconduct of LOSSAN Agency, its officers, directors, employees or agents in connection with or
4 arising out of the performance of this Agreement.

5 2. To the fullest extent permitted by law, AMTRAK shall defend (at AMTRAK's sole cost
6 and expense with legal counsel reasonably acceptable to LOSSAN Agency), indemnify, protect, and
7 hold harmless the LOSSAN Agency, its officers, directors, employees, and agents (collectively the
8 "Indemnified Parties"), from and against any and all liabilities, actions, suits, claims, demands, losses,
9 costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and
10 expenses including legal costs and attorney fees (collectively "Claims"), including but not limited to
11 Claims arising from injuries to or death of persons (AMTRAK employees included), for damage to
12 property, including property owned by LOSSAN Agency, or from any violation of any federal, state,
13 or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct
14 of AMTRAK, its officers, directors, employees or agents in connection with or arising out of the
15 performance of this Agreement.

16 3. The indemnification and defense obligations of this Agreement shall survive its
17 expiration or termination.

18 **ARTICLE 9. ADDITIONAL PROVISIONS**

19 1. Term of Agreement: This Agreement shall be effective on _____ and shall be in
20 full force and effect through _____, unless otherwise extended by written agreement by
21 the Parties.

22 2. Termination: This Agreement shall terminate upon the successful completion of the
23 Project or, in the event either Party defaults in the performance of their obligations under this
24 Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have
25 the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party.
26

1 3. Amendments: This Agreement may be amended in writing at any time by the mutual
2 consent of both Parties. No amendment shall have any force or effect unless executed in writing by
3 both Parties.

4 4. Termination for Convenience: Either Party may terminate this Agreement for its
5 convenience by providing thirty (30) days' prior written notice of its intent to terminate for convenience
6 to the other Party.

7 5. Compliance with Laws: LOSSAN Agency and AMTRAK shall comply with all
8 applicable federal, state, and local laws, statutes, ordinances and regulations of any governmental
9 authority having jurisdiction over the Project.

10 6. Legal Authority: LOSSAN Agency and AMTRAK hereto consent that they are
11 authorized to execute this Agreement on behalf of said Parties and that, by so executing this
12 Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

13 7. Severability: If any term, provision, covenant or condition of this Agreement is held
14 to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction,
15 the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant
16 or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

17 8. Counterparts of Agreement: This Agreement may be executed and delivered in any
18 number of counterparts, each of which, when executed and delivered shall be deemed an original
19 and all of which together shall constitute the same agreement. Facsimile signatures will be permitted.

20 9. Force Majeure: Either Party shall be excused from performing its obligations under
21 this Agreement during the time and to the extent that it is prevented from performing by an
22 unforeseeable cause beyond its control, including but not limited to; any incidence of fire, flood; acts
23 of God; commandeering of material, products, plants or facilities by the federal, state or local
24 government; national fuel shortage; or a material act or omission by the other Party; when
25 satisfactory evidence of such cause is presented to the other Party, and provided further that such
26 nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the

1 Party not performing.

2 10. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations,
3 duties, or authority hereunder may be assigned in whole or in part by either Party without the prior
4 written consent of the other Party in its sole and absolute discretion. Any such attempt of assignment
5 shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed
6 consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent
7 assignment.

8 11. Governing Law: The laws of the State of California and applicable local and federal
9 laws, regulations and guidelines shall govern this Agreement. Venue for any action arising out of
10 this Agreement shall be in the federal district court nearest to Orange County, California.

11 12. Insurance: AMTRAK shall cause any consultant or subconsultant it retains to perform
12 the work to provide automobile and commercial general liability insurance written on an occurrence
13 basis for bodily injury, property damage and death of no less than \$1,000,000 per occurrence. The
14 LOSSAN Agency, its officers, agents, and employees ("Insured Parties"), shall be included as an
15 additional insured on all policies of general liability insurance required for the work. Prior to start of
16 the work by each consultant or subconsultant, AMTRAK shall provide the LOSSAN Agency with
17 evidence of such coverage by submitting to the LOSSAN Agency a certificate of insurance from each
18 consultant or subconsultant.

19 13. Litigation fees: Should litigation arise out of this Agreement for the performance
20 thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing party.

21 14. Notices: Any notices, requests, or demands made between the Parties pursuant to
22 this Agreement are to be directed as follows:
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24
25
26

COOPERATIVE AGREEMENT NO. L-9-0001

To AMTRAK:	To LOSSAN Agency:
National Railroad Passenger Corporation	LOSSAN Rail Corridor Agency
530 Water Street	600 South Main Street
5th Floor	P.O. Box 14184
Oakland, CA. 92607	Orange, CA. 92863-1584
Attention: Tamika Smith Director, State Supported Services	Attention: Jennifer Bergener Managing Director
Phone: (510) 238-2615 E-mail: tamika.smith@amtrak.com	Phone: (714) 560-5462 E-mail: jbergener@octa.net

15. No Third-Party Beneficiaries: This Agreement shall not be construed to create any third-party beneficiaries under this Agreement and provides no right or claim to any entity not a party to this Agreement to bring any claim for payment, damages, injunction or specific performance of this Agreement. This Agreement shall not be construed as creating any relationship between the LOSSAN Agency and any contractor retained by Amtrak or any subcontractor, material man or other party retained by Amtrak. Amtrak shall be responsible for all payments to such entities.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement No. L-9-0001 to be executed as of the date of the last signature below.

NATIONAL RAILROAD PASSENGER CORPORATION

LOSSAN RAIL CORRIDOR AGENCY

By: _____
Tamika Smith
Director, State Supported Services

By: _____
Jennifer L. Bergener
Managing Director

Date: _____

Date: _____

Approved as to Form:

By: _____
James M. Donich
General Counsel

Date: _____

ATTACHMENT A
DRAFT SCOPE OF WORK

The scope of work for the Project will include all tasks necessary to complete conceptual through final design for expanding the capacity of the existing Goleta layover facility to support two Pacific Surfliner trainsets during midday operations and overnight, including the evaluation of conceptual design alternatives. The Project should be coordinated, to the extent possible without impacting the Project budget or schedule, with the City of Goleta and the Santa Barbara County Association of Governments and their proposed modification and expansion of the Goleta train station, which is located adjacent to the existing layover facility.

The expanded facility should be designed to maintain the existing servicing and support functions of the facility. The Project will also include coordination (to be led by the LOSSAN Agency) with Union Pacific Railroad in the identification of any potential right-of-way needs and need to modify access to their mainline.