FUNDING AGREEMENT
Between the
NATIONAL RAILROAD PASSENGER CORPORATION
And
THE STATE OF TEXAS,
Acting By and Through the Texas Department of Transportation
For Rail Passenger Service Between
OKLAHOMA CITY, OKLAHOMA and FORT WORTH, TEXAS
(September 1, 2024 through March 31, 2025)

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

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

WHEREAS, the Texas Legislature has appropriated money to TxDOT for the purpose of funding a portion of Amtrak's cost to provide the rail passenger service; and

WHEREAS, TxDOT has represented to Amtrak that the funding amount set forth in Section 4(b) has been made available to pay a portion of Amtrak's cost to provide the Service; and

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, D.C. Such methodology was approved by the Surface Transportation Board upon submittal by Amtrak, together with amendments thereto from FY2013-FY2023 (the "Agreed 209 Methodology"); and

WHEREAS, the latest version of the Agreed 209 Methodology is titled *State-Supported-Route Cost and Service Policy*, version 11, and is attached hereto as Appendix VI and incorporated fully herein and became effective June 17, 2024 (hereinafter, the "Agreed 209 Methodology");

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, pursuant to Section 7.1, Operating-Cost Charges, Invoicing and Reconciliation of the Agreed 209 Methodology, TxDOT has elected the Fixed Invoicing Method

and does not elect Operating-Cost Reconciliation for Non Pass-Through (flat rate and fixed) Operating Costs following the term of this Agreement; 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 TxDOT, pursuant to Section 4 below, Amtrak shall provide daily round-trip rail passenger service (the "Service") from September 1, 2024 through March 31, 2025, (the "Service Period") or ("FY25 Contract Year") over the route(s), serving the stations and substantially in accordance with the schedules, service levels and other criteria as set forth in Appendix I incorporated by reference and attached hereto. Amtrak shall not be required to provide service on any other route, or to increase any train frequency, except pursuant to a mutually agreed upon amended Appendix I. Amtrak and TxDOT may 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. 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 TxDOT at least thirty (30) days' notice of any changes to the general tariff policies.

(c) In the event that the Service may, from time to time, be fully utilized by the traveling public, Amtrak shall endeavor to provide additional rail passenger service equipment from its available resources, subject to the FY25 Not-To-Exceed-Amount in Section 4(b) below and consistent with the funding requirements of the Agreed 209 Methodology, including Equipment Capital Charges associated with TxDOT's use of such additional rail passenger service equipment.

(d) TxDOT 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 TxDOT, to employ additional compatible equipment as TxDOT 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 TxDOT, or because TxDOT 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. TxDOT and Amtrak will use reasonable efforts to resolve discrepancies in compatibility. TxDOT 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. Any changes in frequencies, or the introduction of additional Amtrak-owned equipment, or the introduction of equipment not owned by Amtrak shall require an amendment to this Agreement.

(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 TxDOT's use of such substitute equipment. Alternatively, TxDOT and Amtrak may agree to use such additional compatible equipment as TxDOT may make available, subject to the terms relating to such use as set forth in Section 1(d) above.

(f) 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.

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

SECTION 2 – DECISIONS AFFECTING SERVICE

(a) It is Amtrak's objective to optimize revenues, maximize ridership and provide a cost-effective service.

(b) TxDOT recognizes Amtrak's statutory obligation to act in a manner consistent with prudent management in providing rail passenger service including any expansion of rail passenger service. Amtrak recognizes TxDOT's financial contribution to the provision of the Service and acknowledges the budgetary limitations of TxDOT as it considers any proposed decision affecting the Service.

(c) Except as otherwise provided in this Agreement, Amtrak shall give TxDOT not less than thirty (30) days prior written notice before implementing any decision that is likely to have a significant effect on the scheduling, marketing (including fares and ticketing) or operations of the Service. The notice shall contain information in sufficient detail to support and justify the decision. Notwithstanding this notice procedure, if access to or over rail lines on any route(s) provided herein shall be unavailable by reason of obstruction or otherwise, Amtrak may suspend or reroute any part of the Service provided pursuant to this Agreement for so long as the access shall be unavailable. Amtrak shall however notify TxDOT, by telephone at (512) 486-5230, within twenty-four (24) hours of first learning of any such suspension or rerouting.

(d) Amtrak may at any time, with or without TxDOT's concurrence, make changes in the Service that are, in its opinion, necessary for safety, environmental or regulatory reasons. 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. Amtrak shall notify TxDOT of any such changes within five days of receiving any such ruling.

(e) Any change to the Service made pursuant to Subsections (c) or (d) above may, if agreed to in writing between the parties, result in an adjustment of the amounts paid by TxDOT hereunder, consistent with the requirements of the Agreed 209 Methodology, except that in no case shall TxDOT pay more than the FY25 Not-To-Exceed-Amount amount provided in Section 4(b).

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 of 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. 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.

(c) 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. COSTS, PAYMENTS, CREDITS AND REVENUE

(a) Subject to the limitation in subsection (b) of this Section, TxDOT shall pay Amtrak 43.246% of the following Non Pass-Through Operating Cost Obligations (flat rate and fixed), Pass-Through Operating Costs, and Capital Costs – Passenger Service Equipment, all net of Ticket Revenue, Food Service Revenue, and Other Revenue (collectively, "Total Revenue"), for the operation of the Service for the FY25 Contract Year.

(i) Estimated Total Revenue, Non Pass-Through Operating Costs (flat rate and fixed), and Pass-Through Operating Cost Obligations are set forth in Appendix II and are defined in greater detail in Appendix VII. Non Pass-Through (flat rate and fixed) Operating Cost Obligations shall be fixed for the duration of the Agreement in the amounts specified in Appendix II. TxDOT and Amtrak agree that Non Pass-Through (flat rate and fixed) Operating Cost Obligations have been agreed upon by the Parties and are not subject to audit adjustment. Pass-Through Operating Costs and credits for Total Revenue shall be charged based on actual costs incurred and revenues received. For the purposes of estimating the net Financial Obligation, estimates of Pass-Through Costs and Passenger and Other Allocated Revenue (Total Revenue) are provided in Appendix II.

(ii) 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 TxDOT in accordance with Appendix III. The parties agree however, that the actual final amount to be paid by TxDOT, for Capital Costs – Passenger Service Equipment for the FY25 Contract Year, (1) will be dependent upon the final reconciliation by the parties, on an actual cost basis, of the actual expenditures applicable to the Service for the period of September 1, 2024 through March 31, 2025; and (2) shall be subject to TxDOT's not-to-exceed funding amount for the FY25 Contract Year as specified in Section 4(b) below. On a quarterly basis, Amtrak shall provide TxDOT with an accounting of the actual pro-rata usage fee payable by TxDOT for the operation of Amtrak-owned passenger service equipment in Texas. This quarterly report will reflect Amtrak fiscal year-to-date information and is meant to give TxDOT 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 any additional charges; TxDOT 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 TxDOT following the conclusion of the external audit for Amtrak's fiscal year. If estimated payments exceed actual charges, Amtrak will either refund the overpayment, or, at TxDOT's election, apply a credit to the next 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 TxDOT, as the result of any differential between the actual usage fee payable and total payments made by TxDOT under this Agreement, subject to the mutual agreement of the parties.

(iii) 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 TxDOT for operation of the Service from September 1, 2024, to and including March 31, 2025 under Section 4(a) shall not exceed Two Million, Four Hundred and Sixty Four Thousand, Eight Hundred and Ninety Four Dollars ($2,464,894).("FY25 Not-To-Exceed-Amount"), representing appropriated state funding of $2,464,894 for FY2025. This amount covers TxDOT's estimated share of Operating Costs shown in Appendix II, plus TxDOT's share of the Equipment Capital Charge shown in Appendix III, plus a 12.35% contingency, for the period September1, 2024 through March 31, 2025. The parties further agree that they will review actual Total Revenue, Pass-Through Costs, and Capital Costs – Passenger Service Equipment on a quarterly basis, for the preceding three months of the FY25 Contract Year, in order to evaluate whether the remaining available state funds are likely to meet the projected Non-Pass Through (flat rate and fixed) Operations Costs, Pass-Through Costs, and Capital Costs – Passenger Service Equipment, all net of Total Revenue for the remaining months of the FY25 Contract Year. In the event that the amount of projected Non Pass-Through (flat rate and fixed) Operations Costs, Pass-Through Costs, and Capital Costs – Passenger Service Equipment, net of Total Revenue for the remaining months of the FY25 Contract Year is anticipated to exceed the remaining available state funds, TxDOT agrees to work with Amtrak and, to the extent authorized by law, the State of Oklahoma, to implement any and all necessary Service modifications to comply with the funding limitations of TxDOT specified herein.

(c) Subject to the limitation imposed by Section 4(b), TxDOT 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 Oklahoma is providing, under separate agreement with Amtrak, an estimated additional $5,012,226, which represents the total $4,347,435 estimated State payment shown in Appendix II, plus the State's $664,791 share of the FY 2025 Equipment Capital Charge shown in Appendix III in payment of the costs described in Section 4(a) above, and subject to any funding limitations contained in the separate agreement with the State of Oklahoma, additional payments equal to a projected 56.754% of the Non-Pass Through (flat fee and fixed) Operations Costs, Pass-Through Costs, and Capital Costs – Passenger Service Equipment, all net of Total Revenue incurred by Amtrak for operation of the Service for the period from October 1, 2024 through and including September 30, 2025, subject to the TxDOT FY25 Not-To-Exceed Amount specified in Section 4(b) above. The total compensation TxDOT shall provide Amtrak for the Service as described in Section 4(a) is based on the provision by Amtrak of available rail passenger equipment.

(d) TxDOT's financial obligation to Amtrak under this Agreement shall not exceed the TxDOT FY25 Not-To-Exceed Amount specified in Section 4(b) above; provided, however, that Amtrak shall not be required to provide any of the services or any services whatsoever for which TxDOT is not bound hereunder or for which the cost to TxDOT, as determined hereunder, exceeds the aforesaid amount(s).

(e) In the event that Amtrak and the State of Oklahoma do not reach agreement covering operation and/or funding of the Service for the period October 1, 2024 through September 30, 2025, Amtrak may discontinue the Service upon thirty (30) days prior written notice to TxDOT. Any such discontinuance under this section shall terminate TxDOT's obligation hereunder to pay for any part of the Service not yet provided and shall not constitute or be considered as a waiver by Amtrak of payments required under Section 4(a) for service provided hereunder.

(f) In the event that Amtrak and TxDOT fail to reach agreement for operation of the Service for the April 1, 2025 through September 30, 2025 ("FY 2026 Agreement") period by April 1, 2025, 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, TxDOT agrees to continue to reimburse Amtrak as set forth in Sections 4 and 5 for the April 1, 2025 through September 30, 2025 period, to the extent that funds have been appropriated for such purpose. Once an Agreement for the April 1, 2025 through September 30, 2025 period is executed by the parties, Amtrak will credit TxDOT's payments made during the Continuation Period to the State's obligations under the FY 2025 Agreement. In no event shall the Continuation Period extend beyond September 30, 2025.

(g) 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.

(h) Amtrak may make updates to financial systems, such as SAP and the 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. In the event any such updates which are consistent

with the requirements of Section 209 Methodology are 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 TxDOT under the terms of this FY25 Agreement, Amtrak will notify TxDOT of such adjustment and, if the Parties agree, they shall amend this FY25 Agreement accordingly.

SECTION 5 – MANNER OF PAYMENT

(a) In consideration for Amtrak's agreement to operate the Service from September 1 1, 2024 through March 31, 2025, and subject to the TxDOT FY25 Not-To-Exceed Amount specified in Section 4(b) above, TxDOT agrees to pay Amtrak in advance the Non Pass-Through (flat rate and fixed) and Pass-Through Operating Costs specified in Section 4(a), and the estimated Capital Costs – Passenger Service Equipment, all net of Total Revenue payable under Section 4(a) as invoiced by Amtrak, on a monthly basis, in accordance with the monthly payment schedule included in Appendix IV. TxDOT further agrees, subject to the TxDOT FY25 Not-To-Exceed Amount specified in Section 4(b) above, to remit full payment of all reconciliation costs payable to Amtrak, under Section 4(a) within thirty (30) days of receipt of an invoice from Amtrak.

(b) With the exception of the reconciliation of the invoices referenced in section 5(a) and 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 will be provided to TxDOT by Amtrak.

(c) Notwithstanding any other provision of this Agreement, in the event that TxDOT shall fail to remit payment in full, as provided in this Section, Amtrak may discontinue any or all of the Service on ten (10) days prior notice in writing to TxDOT of intended discontinuance. Pursuant to 49 U.S.C. § 24702, and notwithstanding the 180-day notice requirement contained in 49 U.S.C. § 24706(a), if TxDOT fails to remit payment in full within the period of the notice, Amtrak shall discontinue the portion or portions of the Service referred to therein after thirty (30) days prior written notice to TxDOT; provided, however, that the discontinuance shall not constitute or be construed as a waiver by Amtrak of any such payment; provided, further, that any such discontinuance shall be without prejudice to the continued operation of any remaining portion or portions of the Service.

(d) Neither party shall, by reason of any dispute or controversy with the other or for any reason whatsoever, be entitled to withhold any payment or performance due under this Agreement; provided, however, that no payment which has been made by TxDOT shall constitute or be construed as a waiver of any such claim it may have against Amtrak. The parties hereto shall make every reasonable effort to resolve any dispute or controversy by negotiation. In the event TxDOT disputes a charge detailed in an invoice and Amtrak cannot provide a reasonable explanation of said charge, TxDOT shall have the right to withhold the amount in dispute but shall pay the remainder of the invoice. TxDOT 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 TxDOT considers necessary to resolve the disputed charge. Once resolution of the disputed charge is achieved between TxDOT 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, TxDOT 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 TxDOT, 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 TxDOT any credit balance due to TxDOT in the event of early termination of this Agreement. The cost of a shortened Agreement shall be determined by the number of days of service prorated against the total Agreement amount.

SECTION 6 – DEFENSE OF CLAIMS

Amtrak shall be responsible for and agrees to defend, indemnify and hold harmless TxDOT from all losses, damages, claims, demands, suits and actions involving injury to or death of any person or damage to or loss of any property, to the extent such arises from the operation of the Service. If any claim, action or proceeding shall at any time be brought against TxDOT asserting a liability for such injury, death, damage, or loss, TxDOT 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. TxDOT 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) TxDOT may, at any time, upon reasonable notice, inspect the facilities and equipment used in providing the Service, provided, however, that any such inspection shall not hinder or delay the operation of the Service. Amtrak acknowledges and agrees that TxDOT and its duly authorized representatives shall have access to the books, documents, papers and records that are directly pertinent to this Agreement ("Records") for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years after final payment. Upon reasonable notice and no more than once annually, Amtrak shall permit TxDOT and its duly authorized representatives to inspect Records. No copies of such records may be made by TxDOT or its representatives. During the audit period and pending the results of the audit, TxDOT 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 TxDOT (including both state and federal elected officials and state agency staff) elects to inspect the Service and/or other Amtrak routes connecting with or to the Service, TxDOT, through its Rail Division, shall make the request to Amtrak. Amtrak shall comply with all reasonable request(s) referenced herein, or in the alternative, provide specific reasons to TxDOT why the request(s) cannot be fulfilled.

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

Some of these reports may include transcriptions of comments made by passengers about experiences they had while using the Service. TxDOT 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.

TxDOT agrees to keep these allegations confidential and treat them as they treat their own confidential personnel records. TxDOT 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. TxDOT also agrees to keep any Amtrak passenger or personnel information confidential and shall not release or disclose it for any reason. If TxDOT fails to protect this information, Amtrak will discontinue providing reports containing this information. However, TxDOT's duty to maintain confidentiality under this Section is subject to its obligations under the Texas Public Information Act as expressed in Section 19.

TxDOT 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 TxDOT decides to use these electronic data retrieval capabilities, TxDOT 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 TxDOT 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 TxDOT's access to such information. However, TxDOT's duty to maintain confidentiality under this Section is subject to its obligations under the Texas Public Information Act as expressed in Section 19.

(d) The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

(e) Subsection (d) only applies to a subcontractor to the extent Amtrak subcontracts with the subcontractor for the provision of the Service in whole or in part.

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, delay, or cancellation in connection with the performance of any obligation hereunder if the failure, delay, or cancellation is due to or in any manner caused by the laws, regulations, acts, demands, orders, or interpositions of any federal, state or local government agency having jurisdiction thereof, or by Acts of God, strikes, fire, flood, weather, war, acts of picketing, rebellion, insurrection, terrorism, quarantines, epidemics or pandemics, including the COVID-19 pandemic and related government-issued orders, or any other cause beyond Amtrak's control.

SECTION 9 – TERMINATION

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

SECTION 10 – PAY FOR NON-PERFORMANCE

Amtrak will credit TxDOT the fixed operating cost (minus revenue) pro-rated per frequency, based on the Operating Forecast in Appendix II, which totals the sum of Two Thousand, Seven Hundred and Eighty-Seven Dollars ($2,786.89) for each train that is cancelled (annulled) before departing its point of origin, as set forth in Appendix I, for reasons other than those set forth in Section 2(c), 2(d) or 8 hereof. However, no such credit will be required where alternate transportation is provided. The parties further agree that no such credit otherwise due under this section shall be payable in the event that payments due from TxDOT, under the provisions of Section 4(a) above, are reduced or eliminated due, in whole or in part, to the activation of the TxDOT FY25 Not-To-Exceed Amount specified in Section 4(b) above.

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

SECTION 12 – NOTICES

Any notices required by this Agreement or related to the Service by either party shall be in writing and shall be directed to the officials identified herein by personal delivery or by deposit in the United States mail via first class mail, postage prepaid, or by overnight courier. All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein.

For Amtrak: Sr. Manager, State Supported Corridors
National Railroad Passenger Corporation
510 West Martin Street, Suite 130
Raleigh, NC 27603

For the State: Texas Department of Transportation
Director, Rail Division
125 E. 11th Street
Austin, Texas 78701

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 the Service on and after the effective date of this Agreement are subsumed within this Agreement. No change or modification in or to this Agreement 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 State of Texas.

SECTION 15 – SEVERABILITY

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

SECTION 16 – NON-DISCRIMINATION

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

SECTION 17 – COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

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

SECTION 18 – TERMINATION NOTICE

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

SECTION 19 – CONFIDENTIALITY

TxDOT desires that Amtrak disclose to TxDOT 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 TxDOT with its proper handling of such information. TxDOT 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, TxDOT 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 TxDOT hereunder without the prior written authorization of Amtrak, unless required by the Texas Public Information Act or court order.

Upon TxDOT's receipt of confidential or proprietary information it becomes subject to the Texas Public Information Act, Chapter 552, Texas Government Code (the "Texas PIA"). The

Texas PIA 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 Texas PIA's exceptions to required disclosure. If a person submits an open records request seeking disclosure of confidential or proprietary information, TxDOT will follow the procedures set forth in the Texas PIA. Amtrak may assert the requested information is within any exception to required disclosure that Amtrak believes is applicable under the PIA. In the event TXDOT 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, TXDOT 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.

SECTION 20 - COMPLIANCE WITH LAWS

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

SECTION 21 – NO JOINT VENTURE

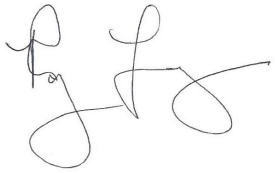
Nothing in this Agreement or its performance thereof shall be construed as creating a joint venture or partnership between TxDOT and Amtrak.

This Section shall survive termination or expiration of this Agreement.

This area intentionally left blank

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.

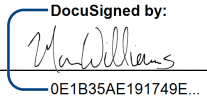
NATIONAL RAILROAD PASSENGER CORPORATION

Dated: 11/7/2024 By: 

Ray Lang
Vice President State Supported Services
Business Development

and

STATE OF TEXAS

Dated: 11/15/2024 By: DocuSigned by: 
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Title: Marc D. Williams
Executive Director
Texas Department of Transportation

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 from February 28, 2025 through September 6, 2025, one (1) Superliner snack coach, one (1) P-42 locomotive, and one (1) F40 Cab/Baggage Car - NPCU. 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 September 1, 2024 through March 31, 2025.

Schedule

Oklahoma City – Fort Worth
(Effective September 1, 2024)

Scheduled Time of Arrival ("AR") or Departure ("DP")

	Train 821			Train 822
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
	11:03 AM	Gainesville (unstaffed)		6:28 PM
AR	12:27 PM	Fort Worth (staffed)	DP	5:25 PM

APPENDIX II
FY25 Operations Pricing - Annual
Heartland Flyer – Route 29

FY2025	APT_RT_29 : Heartland Flyer	56.754%	43.246%
State Operating Forecast Calculation	FY2025 Charge	OK[2]	TX[2]
REVENUE			
Coach	$ 2,147,777	$ 1,218,950	$ 928,828
Business Class	$ -	$ -	$ -
First Class	$ -	$ -	$ -
Sleeper Car	$ -	$ -	$ -
Passenger Other	$ 32,223	$ 18,288	$ 13,935
Ticket Revenue	$ 2,180,000	$ 1,237,237	$ 942,763
Food and Beverage Revenue	$ 286,742	$ 162,738	$ 124,005
Other Revenue	$ 55,896	$ 31,723	$ 24,173
Total Revenue	**$ 2,522,639**	$ 1,431,698	$ 1,090,940
OPERATING COSTS			
Train and Engine Crews	$ 2,143,489	$ 1,216,516	$ 926,973
On-board Services	$ 712,323	$ 404,272	$ 308,051
Car and Locomotive Maintenance	$ 3,030,572	$ 1,719,971	$ 1,310,601
Stations	$ 384,736	$ 218,353	$ 166,383
Yard Operations	$ 27,956	$ 15,866	$ 12,090
Credit Card Fees	$ 61,268	$ 34,772	$ 26,496
Call Center	$ 167,884	$ 95,281	$ 72,603
Dispatching	$ -	$ -	$ -
National Corporate Expenses	$ 608,515	$ 345,357	$ 263,159
Commercial Performance	$ 54,344	$ 30,842	$ 23,502
On-board Wifi	$ -	$ -	$ -
National Transportation Support	$ 125,099	$ 70,999	$ 54,100
Host Railroad Maintenance of Way	$ 343,704	$ 195,066	$ 148,638
Host Railroad Performance Incentives	$ 1,140,605	$ 647,339	$ 493,266
Synthetic Host Railroad	$ -	$ -	$ -
Host Railroad	$ 1,484,309	$ 842,405	$ 641,904
Fuel	$ 739,228	$ 419,542	$ 319,687
Diesel Emissions Fluid	$ -	$ -	$ -
Electric Traction Power	$ -	$ -	$ -
Fuel and Power	$ 739,228	$ 419,542	$ 319,687
Route Advertising	$ -	$ -	$ -
Connecting Motor Coach*	$ 355,000	$ 355,000	$ -
Passenger Inconvenience	$ 17,548	$ 9,959	$ 7,589
Route-Specific Insurance	$ -	$ -	$ -
Subtotal: Pass-Through and Non-Pass Through Operating Costs	**$ 9,912,271**	**$ 5,779,134**	**$ 4,133,137**
Estimated State Payment (or Credit)	**$ 7,389,632**	**$ 4,347,435**	**$ 3,042,197**

Notes: 1) Denotes type of expense, see Appendix VII. 2) All train revenue and expenses are split per agreement as noted, except for Connecting Motorcoach expenses associated with the OKC to Newton, KS service, which is paid 100% by ODOT and supplemental security services at the Oklahoma City station which are reimbursed separately by ODOT.

APPENDIX III

FY2025
Capital Costs – Passenger Service Equipment for Operations
Heartland Flyer – Route 29
(Annual Amount)

$1,171,356
(full route)

$506,565
TxDOT Annual Amount

$42,214
TxDOT Monthly Amount

Route 29:	Heartland Flyer		
Equip/Proj. Code	Equipment Name / Project Description	Allocation %	FY2025 Forecast Equip. Capital Use Charge
SQ_EQ_DXBD	DIESEL LOCOMOTIVE - P42-8 LOCO 1/3/97	1.85%	$648,156
C.ME.100070	Fleet Modification - Locomotive - Diesel		$26,864
C.ME.100080	Legacy PTSO		$2,697
C.ME.100104	TMC-5 Upgrade		$34,254
C.ME.100109	IETMS Modem Replacement		$3,172
C.ME.100121	INWARD/OUTWARD CAMERAS 3.0		$12,775
C.ME.100653	Diesel Locomotive LCPM		$568,394
SQ_EQ_SX	Superliner Coach (I and II)	2.44%	$460,441
C.ME.100042	Superliner II Coach Overhaul		$43,454
C.ME.100059	Fleet Modifications - Superliner I & II		$45,028
C.ME.100177	Superliner I Coach Overhaul (Level 2)		$371,959
SQ_EQ_SXSK	SUPERLINER I - S.L. Snack Coach	11.11%	$62,759
C.ME.100177	Superliner I Coach Overhaul (Level 2)		$62,759
Total Route Equipment Capital Use Charge			**$1,171,356**

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

Annual FY2025

Monthly Advance Payment by the State of Texas – Heartland Flyer – Route 29			
Month	**Operations**	**Equipment Capital**	**Total**
Sep-24	$258,353	$42,214	$300,567
Oct-24	$264,898	$42,214	$307,112
Nov-24	$259,880	$42,214	$302,094
Dec-24	$246,898	$42,214	$289,112
Jan-25	$284,426	$42,214	$326,640
Feb-25	$280,390	$42,214	$322,604
Mar-25	$223,879	$42,214	$266,093
Total:	**$1,818,724**	**$295,498**	**$2,114,222**

APPENDIX V
Amtrak Marks

Heartland Flyer – Route 29

Mark Description	Mark	USPTO Registration	
Travelmark Logo (Vertical)	AMTRAK®	2,602,178	
Travelmark Logo (Horizontal)	AMTRAK®	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	AMTRAK Vacations	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	4,848,283	
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)	AMTRAK® See where the train can take you℠	n/a	
See where the train can take you lockup (Tagline left)	See where the train can take you℠ | AMTRAK®	n/a	
See where the train can take you lockup (Tagline below)	AMTRAK® See where the train can take you℠	n/a	
Heartland Flyer (Wordmark)	Heartland Flyer	4,069,981	

APPENDIX VI

(Approved 209 Methodology - Version 11)
June 16, 2024

APPENDIX VII
Detailed Cost Breakdown by Cost Type
Full Route (Annual) – FY2025

Cost Category	Sub-Cost Category	Rate Type
Train and Engine Crew Labor		Mixed
	Conductor Labor Hours - OT	Usage
	Conductor Labor Hours - ST	Usage
	Crewbase Supervision and Support	Flat
	District Supervision	Flat
	Engineer Labor Hours - OT	Usage
	Engineer Labor Hours - ST	Usage
	National Crew Planning and Scheduling	Flat
	National Supervision	Flat
	Regional Supervision	Flat
	Supervision - Borealis	Flat
	Supervision - Mardi Gras	Flat
On-Board Services		Mixed
	Commissary Management and Support	Flat
	Crewbase Operations and Maintenance	Flat
	Food, Beverage, and Supplies	Pass-Through
	National Supervision	Flat
	Regional Supervision	Flat
	Service Attendants - OT	Usage
	Service Attendants - ST	Usage
	Supervision - Borealis	Flat
	Supervision - Mardi Gras	Flat
Car and Locomotive Maintenance		Mixed
	Car Cleaning and Inspection	Usage
	Corrective & Scheduled Maintenance	Usage
	Custom Mechanical Pass-Through	Pass-Through
	Locomotive Cleaning & Inspection	Usage
	Mechanical Support	Flat
	Technical Support and Spares Supply Agreements	Pass-Through
Stations		Mixed
	Baggage Handlers - OT	Usage
	Baggage Handlers - ST	Usage
	Cash Remittances and Mobility Assistance	Flat
	Custom Ticket Agent Labor Charge	Flat
	District Supervision	Flat
	Moynihan Allocation	Flat
	National Supervision	Flat
	Red Caps and Porters - OT	Usage
	Red Caps and Porters - ST	Usage
	Regional Supervision	Flat
	Station Maintenance	Flat
	Station Operations	Flat
	Station Technology	Flat
	Supervision - Borealis	Flat
	Supervision - Mardi Gras	Flat
	Ticket Agents - Baggage - OT	Usage
	Ticket Agents - Baggage - ST	Usage
	Ticket Agents - Ticketing - OT	Usage
	Ticket Agents - Ticketing - ST	Usage
	Ushers, Stationmasters, and Other Station Labor - OT	Usage
	Ushers, Stationmasters, and Other Station Labor - ST	Usage
Yard Operations		Pass-Through
	Terminal Yard Operations	Pass-Through
	Terminal Maintenance of Way	Pass-Through
Credit Card Fees		Percent
	Food and Beverage Sales	Percent
	Ticket Sales	Percent
Call Center		Usage
Dispatching		Usage
National Corporate Expenses		Percent
Commercial Performance		Flat
	Advertising Management and Digital Marketing	Flat
	Commercial Performance - Borealis	Flat
	Commercial Performance - Mardi Gras	Flat
	Core Programs	Flat
	Customer Communications	Flat
	Loyalty Marketing	Flat
	Management, Standards, and Data	Flat
	Market Research and CSI Survey	Flat
	National Advertising and Social Media	Flat
	Pricing and Revenue Management	Flat
	Product Support	Flat
	Reservation System	Flat
	Sales Channels	Flat
On-Board Wifi		Usage
National Transportation Support		Flat
Host Railroad		Pass-Through
	Host Railroad Maintenance of Way	Pass-Through
	Host Railroad Performance Incentives	Pass-Through
	Synthetic Host Railroad	Pass-Through
Fuel and Power		Pass-Through
	Fuel	Pass-Through
	Diesel Emissions Fluid	Pass-Through
	Electric Traction Power	Pass-Through
Route Advertising		Pass-Through
Connecting Motor Coach		Pass-Through
Passenger Inconvenience		Pass-Through
Property Buy Back Insurance		Pass-Through