

AGREEMENT

BY AND BETWEEN

TRANSIT AMERICA SERVICES, INC.

AND

THE BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION

WHEREAS, Transit America Services, Inc., (hereinafter "TASI") has agreed to assume certain responsibilities for the operation of the Caltrain commuter rail service for the Peninsula Corridor Joint Powers Board (hereinafter "JPB"), effective March 3, 2012;

WHEREAS, it is the desire of the parties to this Agreement to avoid and interruption of service in the interests of the public and to minimize impact on the commuter rail employees of Amtrak, the operator of JPB Caltrain commuter rail service prior to March 3, 2012;

WHEREAS, the assumption of this operation will result in the establishment by TASI of comparable positions necessary to perform certain work formerly performed by commuter rail employees of Amtrak as the operator; and

WHEREAS, TASI intends to offer employment with TASI to certain commuter rail employees of Amtrak,

NOW, THEREFORE, IT IS AGREED:

PART I

1. TASI recognizes the Brotherhood of Maintenance of Way Employees Division/IBT (hereinafter "BMWE" or "Organization") as the bargaining representative of the Maintenance of Way Department employees classified as B&B Foreman, Track Foreman, B&B Mechanic, Welder, Machine Operator, Trackman and of other employees of similar classifications under the jurisdiction of the Maintenance of Way Department Cal Train Commuter Service (formerly the Peninsula Commute Service), except those employees who come within the scope of other existing agreements.
2. The Collective Bargaining Agreement effective March 1, 1976, as amended by the parties most recently effective March 17, 2008 and as deemed amended pursuant to the provisions of the Amtrak Reform and Accountability Act of 1997 and other applicable statutes, presently in effect between Amtrak and BMWE and applicable to employees performing service on the JPB Caltrain commuter rail service, will continue to apply to the operations and service which TASI is to provide the JPB Caltrain service except as specifically provided herein.

- A. Nothing in this Agreement is intended or shall be construed to provide additional pay, benefits, or coverage of specific Collective Bargaining Agreement provisions to TASI employees which were not applicable to them during their employment with Amtrak, except as specifically provided herein.
 - B. The adoption by TASI of the current Collective Bargaining Agreement provisions between BMW and Amtrak, as amended herein, satisfies the obligation of TASI under Paragraph 33 – Labor Protections, Sections A and B., of the Agreement between TASI and JPB dated September, 1, 2011 (“Operating Agreement”).
3. The service covered by this Agreement will be a single, separate seniority district and the employees securing a position in accordance with this Agreement will be placed on a separate seniority roster identified as the “TASI Caltrain San Jose – San Francisco Commuter Service Seniority District Roster” in the same rank order as the current Amtrak PCS Rosters.
4. Within five (5) days of the ratification of this Agreement, TASI will deliver, by certified mail, return receipt requested, to the home address of all qualified Employees defined in Paragraph B below, a conditional offer of employment, along with other required documents. These documents must be completed and returned to TASI, by the date set forth therein (postmark to govern), with a copy to the General Chairman, in order for the employee to be eligible for further participation in the employment process set forth in this Agreement. TASI shall have no further employment obligations to individuals who fail or decline to return the requisite completed documents within the time prescribed. Those employees who timely complete the process described in this paragraph are referred to hereinafter as “eligible employees.”
- A. TASI will provide the General Chairman of the Organization with not less than thirty (30) days’ written notification of TASI’s assumption of the operation, which notice will list the estimated number of positions to be established by TASI. Nothing in this Agreement is intended to impose an obligation upon TASI to establish minimum staffing levels or requirements.
 - B. To insure a smooth transition between Amtrak and TASI operations eligible employees who accept an offer of employment from TASI will be retained in the position worked at Amtrak March 2, 2012.
 - C. All Eligible applicants will be accepted in seniority order based upon their length of service as a BMW represented employee in a covered position on the Amtrak Seniority Roster and shall be placed on the TASI Seniority Roster in the same relative order.

- D. Eligible, qualified Employees, as set forth in B above, who are inactive for the entire application period by reason of sickness, temporary or occupational disability, disciplinary suspension or dismissal, military leave, leave of absence to take a full time union position with BMW or a management position related to JPB Caltrain commuter rail service, revocation of certification, or vacation, shall have the right to make application within five (5) days of their return to active status. Such applicants will be placed on the TASI Roster as if they had been in active status during the original application period, and will exercise their seniority in accordance with the applicable provisions of the Collective Bargaining Agreement. Note: With the exception of those employees on vacation during the application period, the provisions of Part II, Item 1.A of this Agreement shall not apply to employees in this status on the effective date of the Agreement.
5. Except as provided herein, existing Collective Bargaining Agreement provisions pertaining to disapproval of employment application will not be applicable to those employees who accept employment with TASI pursuant to the terms of this Agreement.
- A. Amtrak commuter rail employees will be required to sign a release instructing and authorizing Amtrak to provide TASI with a copy of the employee's Amtrak medical records related to fitness for duty. The Amtrak employee will also be required to complete TASI's Pre-employment Medical Questionnaire. Should TASI's Medical Department determine that additional information is required as a result of the information provided on that Questionnaire, the employee will be required to request his/her physician to provide such additional information. Any further action in this area, which may include a physician examination by a TASI designated physician, will be handled on a case-by-case basis in accordance with the provisions of the applicable Collective Bargaining Agreement.
- B. The Amtrak commuter rail employee will be required to undergo drug and alcohol testing. Any employee testing positive for a controlled substance will be provided the opportunity, upon his/her request, for a split sample test at the employee's expense, by a testing facility selected by TASI which will use another testing method that is specific for the substance(s) detected in the initial test.
- C. In the event of a confirmed positive result, the employee may not be accepted for employment with TASI. The employee may, at no cost to TASI, seek self-recovery and/or provide a satisfactory test result within 45 days from the date of deferral. Upon such timely presentation, the employee will then be eligible to complete the employment process set forth in the Agreement. Upon such employment, seniority and other rights will be governed by the provisions of Part I, Section 3 of this Agreement.

As a condition of employment, the employee will be required to agree and comply with the instructions set forth in the Prevention Program Companion Agreement.

6. Amtrak commuter rail employees will be required to execute a release authorizing Amtrak to provide certain personnel records to TASI as a condition of employment by TASI.
 - A. Employees with a previous Rule violation that resulted in a Waiver Agreement and probationary period that is still in effect on March 3, 2012 will be considered still bound by the terms of such arrangement when employed on TASI. This will include, but not be limited to, obligations of ongoing participation in EAP counseling, follow-up/random testing, and/or any other condition agreed to in conjunction with the Waiver Agreement. Upon completing the probationary requirements, the provisions of the Rule G Bypass and Prevention Program Companion Agreements will apply.
 - B. This Agreement does not supersede any action which TASI may be required to take under the provisions of the CFR, federal or other laws, or regulations imposed by the FRA
7. Compensated days and years of service currently recognized by Amtrak shall be used in determining eligibility for vacation and personal leave days entitlements for employees who accept a position with TASI pursuant to this Agreement. The Company anticipates it will receive information from Amtrak outlining such information, as well as the number of vacation and personal leave days and compensatory or "bank time" hours, if any, each employee has accrued but has not taken for the calendar year. An individual employee who disputes the correctness of the information provided by Amtrak may request further review. In the event of disagreement, the General Chairman and the General Manager will meet for the purpose of informally resolving the dispute.
8. TASI recognizes its obligation pursuant to the Operating Agreement between TASI and JPB to provide health and welfare benefits substantially equivalent to those in effect on March 2, 2012. TASI has sought input and participation from the Organization in its fulfillment of this obligation, and the Organization agrees that the health and welfare benefits established by TASI as of March 3, 2012 satisfy such obligation as of that date.
9. There shall be no pyramiding or duplication of any benefit(s) in the application of any portion of this Agreement.

PART II

1. Unless otherwise paid by Amtrak or other third party, on or before August 31, 2012, TASI shall make a single lump-sum payment to employees covered under this Agreement for the difference between their base rate and the 1.5% increases

effective July 1, 2010, January 1, 2011, and July 1, 2011, as well as the 1% increase effective January 1, 2012 not rolled into their base rates for all hours worked between July 1, 2010 and March 2, 2012 to which said wage increases would have applied. The basic wage rates in effect for all job classifications and positions in effect on March 2, 2012, shall be assumed by TASI as the basic rates of pay in effect upon assumption of the service on March 3, 2012. These rates of pay include all COLA adjustments previously rolled into the basic rates, prior to the application of the general wage increase described in sub-paragraphs A-F below (including the 1.5% increases effective July 1, 2010, January 1, 2011, and July 1, 2011, as well as the 1% increase effective January 1, 2012). Thereafter, the following shall apply:

- A. Implementation Incentive. Subject to the conditions set forth below, effective 30 days after the date of TASI's assumption of the JPB Caltrain service, each eligible employee covered by this Agreement who remains employed by TASI will be entitled to a lump sum implementation incentive of one thousand five hundred dollars (\$1,500). This incentive is subject to the Organization commencing the ratification process forthwith. The Organization acknowledges and agrees that TASI may commence the application and hiring process for BMWWE represented employees during this ratification process. The Company will make all reasonable efforts to pay the incentive within 30 days from April 3, 2012.
- B. First General Wage Increase. Effective July 1, 2012, the hourly base rates of pay of employees covered by this Agreement shall be increased in the amount of 3 percent (3%).
 - (i) Disposition of Fractions. Rates of pay resulting from application of this Section B. which end in a fraction of a cent will be rounded to the nearest whole cent; fractions less than one-half cent will be dropped, and fractions of one-half cent or more will be increased to the nearest full cent.
 - (ii) Application of Wage Increases. The increase in wages provided for in this Section B. shall be applied in accordance with the wage or working conditions agreement in effect. Special allowances and differentials not included in fixed hourly rates of pay for all services rendered, and arbitraries representing duplicate time payments, will not be increased. Overtime hours will be computed in accordance with individual schedules for all overtime hours paid for.
- C. Second General Wage Increase. Effective July 1, 2013, the hourly base rates of pay of employees covered by this Agreement shall be increased in the amount of three percent (3%). The increase provided in this Section will be applied in the same manner as provided in Section (B)(ii) hereof.

- D. Third General Wage Increase. Effective July 1, 2014, the hourly base rates of pay of employees covered by this Agreement shall be increased in the amount of three percent (3%). The increase in this Section will be applied in the same manner as provided in Section (B)(ii) hereof.
- E. Fourth General Wage Increase. Effective July 1, 2015, the hourly base rates of pay of employees covered by this Agreement shall be increased in the amount of three percent (3%). The increase provided in this Section will be applied in the same manner as provided in Section (B)(ii) hereof.
- F. Fifth General Wage Increase. Effective July 1, 2016, the hourly base rates of pay of employees covered by this Agreement shall be increased in the amount of three percent (3%). The increase in this Section will be applied in the same manner as provided in Section (B)(ii) hereof.

Part III

The following modifications/clarifications of the Collective Bargaining Agreement and side letters are agreed to in order to accommodate the change in administrative structure of TASI:

- 1. Provide reopener for medical insurance issues (including plan design and cost sharing), effective July 1, 2014 (with notice served no earlier than May 1, 2014)
- 2. Change Rule 15 as follows:
 - A. An employee in service who has completed his probationary period shall not be disciplined or dismissed without just cause following a fair and impartial hearing, unless such employee accepts dismissal or other discipline in writing and waives a formal investigation. An employee may be held out of service, subject to Paragraph (C), pending investigation or notification of the discipline to be assessed only if his retention in service could be detrimental to himself, another person, or the Company.
 - B. If the Company has reasonable suspicion that discipline of an employee may be warranted, the employee will be notified in writing, with a copy to his duly accredited representative, of the Company's intent to hold a hearing to determine the facts surrounding an alleged rules infraction. The notice will advise the employee of the specific offense(s) and the reason(s) for the intended imposition of discipline. Such notice of hearing shall not be issued to an employee for any offense of which the employee's immediate supervisor has had actual knowledge of more than 15 calendar days, except where a civil action or criminal proceeding results from the offense, in which event the notice of hearing may be issued within 30 days of final judgment.
 - C. Within 7 days from receipt of the notice of hearing, the employee and his duly accredited representative will meet with management's representative

at the employee's city of employment for the purpose of resolving the matter. At the meeting, the carrier will provide copies of all documents that would be used in an investigation and the parties will either agree in writing to the amount of discipline to be assessed, if any, or a formal investigation will be scheduled as provided in paragraph D, below. If management's representative fails to attend the hearing, the notice of hearing will be withdrawn and canceled. If the employee fails to attend the hearing, the Corporation may assess whatever discipline it considers appropriate, subject to appeal pursuant to paragraph E.

- D. If an investigation is held, it will be held at the employee's city of employment within 15 days from the date of the meeting (subject to one postponement not to exceed an additional 15 calendar days). At least 5 days prior to the investigation, the carrier shall provide copies of all documents expected to be used in the investigation that were not available at the time of the meeting prescribed in Paragraph C above. Where circumstances prevent providing certain documents 5 days in advance of the hearing, copies will be provided as soon as possible and the employee afforded reasonable time to review such documents, not to exceed 5 days. At such investigation, the employee may be assisted by a duly accredited representative. A decision will be rendered within 15 calendar days after completion of the investigation. A copy of the investigation transcript together with any documents placed in the record at the investigation will be provided to the employee and the duly accredited representative if discipline is assessed.
- E. If the employee is dissatisfied with the decision, he shall have the right to appeal, either in person or through his duly accredited representative, to the Vice President of Operations and a conference shall be granted, provided written request is made to such officer within 15 calendar days of the date of receipt of a copy of the transcript. A decision will be rendered on the appeal within 30 calendar days from the appeal is received or the date of conference, whichever is later. Any appeal from the decision of the Vice president of Operations must be made to a proper tribunal, as established under the provisions of the Railway Labor Act within 9 months of the date of such decision.
- F. An employee held out of service under this rule shall remain under pay as though he were in active service on his regular position unless medically disqualified. Compensation under this rule shall continue until the issue is resolved or the decision is rendered following the investigation, except that if the employee or his duly accredited representative requests a postponement of the employee's investigation, the employee will not be compensated for the period of such postponement. In the event of such a postponement (each party having the right to a single postponement of not more than fifteen (15) days for any or no cause), the Company shall attempt to reschedule the investigation to commence within fifteen (15)

days of the postponement. If the investigation cannot be scheduled within that time, through no fault of the employee or his representative, compensation will again be paid after the fifteen (15) day period.

- G. If the final decision decrees that the charges against the employee were not sustained, the record shall be cleared of the charges. If held out of service, (suspended or dismissed) the employee shall be reinstated with all rights unimpaired and reimbursed for wages lost, less outside earnings, if any
- H. The time limits of this Rule shall not apply to requests for leniency. The time limits set forth in this Rule may be extended by mutual agreement.
- I. It is agreed that the following understanding will be applied to suspensions under Rule 15:
 - (i) If the discipline is suspension, the period of suspension shall be deferred, if within the succeeding six (6) month period following notice of discipline the accused employee does not commit another offense for which discipline is subsequently imposed.
 - (ii) If, within such succeeding six (6) month period, the employee commits one or more offenses for which discipline is subsequently imposed, the initial suspension shall be served and suspensions resulting from offenses committed during the six (6) month period shall not be deferred.
 - (iii) However, should the employee be disciplined by suspension for an offense committed subsequent to a six (6) month period the first such occurrence shall be the basis for the succeeding six (6) month period referred to in paragraph one of this provisions

3. Change to Claims and Grievances Rule 14 as follows:

- A. Informal Resolution. Employees are encouraged to attempt to resolve disputes arising under this agreement informally at the earliest possible date. Accordingly, the employee or their representative may bring any claims or grievances other than those involving discipline to the supervisor and/or department manager for informal resolution. Any claim or grievance resolved through such informal methods shall not create a binding precedent for either the Company or Union.
- B. Formal Resolution.
 - (i) Step One. All claims or grievances other than those involving Discipline not resolved informally pursuant to subparagraph A above must be presented in writing by or on behalf of the employees involved, to the General Manager within 30 days from the date of the occurrence on which the claim or grievance is

based. Should any such claim or grievance be disallowed, the General Manager shall, within 15 days from the date same is filed, notify whoever filed the claim or grievance (the employee or their representative) in writing of the reasons for such disallowance. If not so notified within 15 days, the claim or grievance shall be allowed as presented.

- (ii) Step Two. If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be made Vice President of Operations within 30 calendar days from receipt of notice of disallowance. Failing to comply with this provision, the claim or grievance shall be considered closed. If the Vice President of Operations to whom the appeal is made fails to render a decision in writing within 30 calendar days of the date of appeal, the claim or grievance shall be allowed as presented.
 - C. A claim or grievance that is disallowed after the appeal to the Vice President of Operations may be referred to a tribunal established under the provisions of the Railway Labor Act, provided such proceedings are initiated within 9 months from the date of the decision of the Director of Labor Relations.
 - D. The time limits set forth in this Rule may be extended by mutual agreement.
 - E. Claims or grievances which are allowed or barred on account of failure to comply with the time limits set forth in this Rule shall not constitute a precedent or waiver of contention by either party as to other claims or grievances.
 - F. This Rule recognizes the right of duly accredited representatives to file and prosecute claims and grievances for and on behalf of the employees, and to attend all conferences held under this Rule.
 - G. When a claim, appeal or decision under this Rule is transmitted by United States mail the date of mailing as indicated by the postmark or other Postal Service record will be considered the date on which the claim was presented, appealed or decided.
 - H. Time off duty on account of sickness, leave of absence, vacation or suspension shall extend the time limits specified in Paragraph A; however, the claim liability will not be increased by the time off duty.
4. Change to Holiday Rule 19. If a designated holiday falls within an employee's vacation period and on a day which he would normally work, the employee will receive vacation pay for that day and have the option of the following: 1) eight hours holiday pay; 2) a day added on to the vacation; or 3) an additional personal

leave day. An employee who fails to specify his option prior to his vacation will automatically be credited with eight hours holiday pay.

An employee will be paid no more than 16 hours for both the vacation day and the holiday if a holiday falls within an employee's vacation period, except as may be required to pay for work performed by the employee.

5. Add Compensatory Time Rule 11A

RULE 11A COMPENSATORY TIME

- (a) Employees, at their option, may elect to accept compensatory time off in lieu of overtime pay on the basis of one hour overtime worked equaling one and one-half hours' time off. It is understood that employees may not accrue more than eight (80) hours of such time. The election to accept compensatory time off in lieu of overtime pay for overtime worked must be made not later than the day such time is reported for payroll purposes.
- (b) Compensatory time off may be taken with approval of the proper carrier officer upon 48 hours' minimum advance notice from the employee, *provided*, with Company approval less than 48 hours in advance, employees may use compensatory time to attend to unforeseeable personal or family emergencies.
- (c) Compensatory time off will be paid for at the pro rata rate of the employee's regularly assigned position.
- (d) The carrier shall have the option to fill or not fill the position of an employee who is off on compensatory time. If the vacant position is filled, the rules of the agreement applicable thereto will apply.
- (e) In the event an employee wishes his unused compensatory time paid in full they shall request in writing to the proper company officer for such payment.
- (f) Upon leaving the employment of the Company for whatever reason, all earned compensatory time will be paid to the employee, provided said employee requests such payment in writing.
- (g) Time paid for compensatory time off will constitute compensation as defined in Rule 11, Overtime, and therefore count toward fulfilling the forty-hour workweek for purposes of overtime, and for accrual of days worked for vacation eligibility.
- (h) For holiday Pay qualification, compensatory time will be considered the same as vacation and the first work day preceding or following the

employee's compensatory time, as the case may be, will be considered as the qualifying day for holiday purposes.

- (i) Per Diem pay will not be paid for compensatory time days taken as days off or paid.
6. Supplemental Sick Benefits payment levels will be adjusted consistent with the general wage increase percentages called for in this agreement, and thereafter.
7. In the event that TASI reaches agreement with other organizations representing other crafts, which contain more favorable general wage increases or new benefits during the current round of negotiations, such provisions will be incorporated into this agreement, unless such improvement(s) was made in consideration for modification(s) in other work rules in the agreement between the parties.
8. The parties agree to meet after July 1, 2012, to establish a standing Special Board of Adjustment and an expedited arbitration board for the handling of unresolved discipline appeals.
9. TASI shall provide a safety Certification pay of \$10 per pay each day an employee renders compensated service. The employee shall be required to attend such training as TASI may require in connection with such safety certification. In the event that during the term of this agreement, federal or state statutes or regulations require certification of covered employees in a manner not required as of the effective date of the agreement, the payment for the safety certification prescribed in this section shall be discontinued and the payment shall instead be made to covered employees who satisfy and maintain such new certification requirements.

Part IV

1. Any dispute or controversy with respect to the interpretation, application or enforcement of the provisions of this Agreement which has not been resolved by the parties within thirty (30) days may be submitted by either party to a Special Board of Adjustment for final and binding decision thereon as provided by Section 3, Second of the Railway Labor Act.
2. This Agreement shall become effective March 3, 2012, and shall continue in effect thereafter unless or until changed pursuant to the terms of the Railway Labor Act, as amended.
3. The purpose of this Agreement is to fix the general level of compensation and the work rules that shall apply during the period of the Agreement. Except with respect to the agreed upon reopener for negotiation of medical insurance issues referenced in Part III, paragraph 1, no party to this Agreement shall serve, prior to October 1, 2016 (not to become effective before July 1, 2017) any notice or

proposal for the purpose of changing the subject matter of the provisions of this Agreement or which proposes matters covered by the proposals of the parties in negotiating this Agreement, subject to subparagraph four (4), below.

4. The parties agree to meet to negotiate concerning issues relating to the change in operations that may have been overlooked in preparing this Implementation Agreement.

Signed at San Jose, California this 8th day of August, 2017.

For the Organization:

Wayne E. Morrow
General Chairman,
Brotherhood of Maintenance of Way
Employees

For the Company:

Robert J. Smith
President, TASI

Joseph C. Francis
General Manager, TASI

Approved: David D. Tanner
David D. Tanner, Vice President