

May 27, 2020

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VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street S.W., Room 1034
Washington, DC 20423-0001

ENTERED
Office of Proceedings
May 27, 2020
Part of
Public Record

Re: **Docket No. FD 36332 National Railroad Passenger Corporation – Petition For Proceedings Under 49 U.S.C. § 24903(c)(2) – Amtrak’s Opening Statement (PUBLIC VERSION)**

Dear Ms. Brown:

This public filing follows the filing under seal submitted in the above-captioned proceeding on May 20, 2020. Now attached for filing are the following documents:

1. Amtrak’s Opening Statement (WITH REDACTIONS)
 - a. Exhibits 1–7 – NON-CONFIDENTIAL
2. Verified Statement of Christine Suchy (WITH REDACTIONS)
 - a. Exhibit 1 – NON-CONFIDENTIAL *except for Pages 42–44*
 - i. Pages 42–44 – CONFIDENTIAL AND FILED UNDER SEAL
 - b. Exhibit 2 – CONFIDENTIAL AND FILED UNDER SEAL
 - c. Exhibit 3 – NON-CONFIDENTIAL
3. Verified Statement of Nancy Miller (WITH REDACTIONS)
 - a. Exhibits 1–18 – CONFIDENTIAL AND FILED UNDER SEAL
4. Verified Statement of Deputy Chief Joseph Patterson (WITH REDACTIONS)
 - a. Exhibit 1 – NON-CONFIDENTIAL


Ms. Cynthia T. Brown
May 27, 2020
Page 2

- b. Exhibit 2 – CONFIDENTIAL AND FILED UNDER SEAL
 - c. Exhibit 3 – CONFIDENTIAL AND FILED UNDER SEAL
 - d. Exhibit 4 – CONFIDENTIAL AND FILED UNDER SEAL
5. Verified Statement of Bethany Tiernan (WITH REDACTIONS)
a. Exhibit 1 – CONFIDENTIAL AND FILED UNDER SEAL
6. Verified Statement of Thomas Moritz (WITH REDACTIONS)
7. Verified Statement of Philip A. Balderston (WITH REDACTIONS)

Pursuant to the Parties' agreement, and as stated in the Certificate of Service for each document, Amtrak is serving Metra with email copies of all documents.

Should you have any questions or concerns regarding this filing, please do not hesitate to contact me.

Respectfully submitted,



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

AMTRAK'S OPENING STATEMENT

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	5
	A. Chicago Union Station.....	5
	B. History of Chicago Union Station.....	6
	C. The 1984 Agreement.....	6
	D. Policing at Chicago Union Station.....	8
III.	PROCEDURAL BACKGROUND.....	10
	A. Metra’s 2018 Petition for Declaratory Order.....	10
	B. Amtrak’s June 2019 Proposed Agreement	10
	C. The Board Proceedings	11
IV.	GOVERNING LEGAL PRINCIPLES	14
	A. The Requirements of Section 24903.....	14
	B. Determination of Compensation Under Similar Full-Allocation Statutes.....	15
	C. The Cost Areas and the Appropriate Allocation Factors	18
	D. Agreement Terms.....	20
V.	THE BOARD SHOULD ADOPT AMTRAK’S PROPOSAL FOR DETERMINATION OF METRA’S SHARE OF OPERATING COSTS.	21
	A. Amtrak Calculated the Costs Incurred for Metra’s Benefit Using an Objective, Verifiable Method.....	21
	B. Amtrak’s Proposed Factors for Determining Metra’s Share of Operating Costs Are Objective, Administratively Feasible, and Avoid Cross-Subsidization.....	25
	C. Total Share of Operating Costs.....	37
VI.	THE BOARD SHOULD ADOPT AMTRAK’S PROPOSAL FOR DETERMINATION OF METRA’S SHARE OF CAPITAL COSTS.	38
VII.	THE BOARD SHOULD IMPOSE ADDITIONAL TERMS FOR THE NEW AGREEMENT AS STATED IN the PROPOSED AGREEMENT	41
VIII.	CONCLUSION.....	53

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AMTRAK'S OPENING STATEMENT

Petitioner National Railroad Passenger Corporation (“Amtrak”) respectfully submits its Opening Statement in these proceedings under 49 U.S.C. § 24903(c)(2). Amtrak and the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority (collectively, “Metra”) (Amtrak and Metra collectively, “the Parties”) cannot reach agreement on all terms and compensation for a new contract allowing Metra to use Chicago Union. Amtrak therefore respectfully requests that the Board set the terms and compensation pursuant to the statute.

I. INTRODUCTION

Amtrak owns Chicago Union Station and uses it to provide intercity train service. Metra also uses Chicago Union Station for its Chicago-area commuter service under an agreement signed in 1984 (the “1984 Agreement”) (attached as Ex. A to Amtrak’s July 22, 2019 Petition). In fact, Metra is the primary user of Chicago Union Station. [REDACTED] percent of all trains at Chicago Union Station are operated by Metra, and [REDACTED] of all rail passengers at Chicago Union Station are Metra passengers. Metra’s use of Chicago Union Station has increased significantly since 1984.

The 1984 Agreement, as extended by the Parties, expired in July 2019. Negotiations for a new agreement proved futile. Metra wants to continue to use Chicago Union Station, and agrees it must pay Amtrak significant amounts of money. But Metra does not want to pay what

is required by the statute. While Metra has largely refused to explain its position to Amtrak in discovery in this matter, *see* Letter from B. Smith to N. Gilman (Jan. 10, 2020) (attached as Ex. 1), and although Metra has agreed to Amtrak’s methodology for two key cost components, *see* Stipulation (filed on May 18, 2020) (“May 18, 2020 Stip.”), Metra may suggest that the Board adopt an incremental cost model for certain costs. But there can be no dispute that 49 U.S.C. § 24903 mandates a fully allocated cost model. The purpose of this proceeding is for the Board to apply that model and determine Metra’s appropriate share, as well as the terms for Metra’s continued use of Chicago Union Station.

In this opening statement, Amtrak will explain its position on the key issues, including the amounts that Metra must pay. Metra currently pays approximately \$9.66 million a year in base operating expenses.¹ As explained in detail below, to avoid the cross-subsidization prohibited by Congress, Metra must contribute \$15,318,019 in operating costs, \$1,700,000 in Tier 1 capital costs, and an amount to be determined in Tier 2 capital costs, based on a process the Board should adopt.

Amtrak made an offer to Metra in June 2019 (the “Proposed Agreement”) (attached as Ex. 1 to Suchy Stmt.).² In its Petition Amtrak stated that it would present the Proposed Agreement to the Board and ask the Board to impose the terms included in the Proposed

¹ In response to discovery requests on November 20, 2019, Metra reported that its 2019 year-to-date amount paid to Amtrak was \$9,003,384.38, subject to a quarterly adjustment. *See* Metra’s Responses to Amtrak’s First Requests for Admission (No. 6) (attached as Ex. 2); *see also* Section Five of the 1984 Agreement.

² Concurrently with its Opening Statement, Amtrak has filed six Verified Statements from the following individuals: Christine Suchy, Nancy Miller, Thomas Moritz, Joseph Patterson, Bethany Tiernan, and Philip A. Balderston. Those Verified Statements are cited herein as “[Last Name] Stmt.” Those Verified Statements include many of the documents that Amtrak cites in this Opening Statement. Other documents are attached as exhibits to this Opening Statement.

Agreement. Amtrak's position here is consistent with that offer, with some modifications based on further analysis, discovery and discussions and agreements with Metra. The Proposed Agreement constitutes a full agreement, containing all the terms and compensation necessary for Metra's continued use of Chicago Union Station. As outlined in the Proposed Agreement, Metra must pay Amtrak five primary categories of costs:

Dispatching: The Parties have reached agreement that Metra will pay Amtrak \$1.8 million for fiscal year 2020, to be increased each year of the agreement by the inflation adjustment.³

Maintenance of Way: The Parties have agreed that Metra will pay Amtrak \$2.95 million for fiscal year 2020, to be increased each year of the agreement by the inflation adjustment.

Station Operations and Maintenance: Amtrak seeks \$6,475,039 for fiscal year 2020. Metra has refused to tell Amtrak in this proceeding what it believes it should pay. Amtrak's proposed allocation is based on a detailed accounting of the Station Operations and Maintenance costs it incurs at Chicago Union Station, coupled with a thorough, area-by-area spatial analysis of Chicago Union Station, using the square footage available to each party as a proxy for the Parties' relative use of Chicago Union Station. As best as Amtrak can discern, Metra does not disagree with that approach in principle—Metra just believes it could make do with a smaller station, so should only have to pay for that theoretical, smaller station. But the Parties must take the Station as they (and their passengers) find it.

Policing: Amtrak seeks \$4,092,980 for fiscal year 2020. Metra's proportionate share of the Policing costs is based on a factor comprising the average of (i) Metra's share of train movements (about [REDACTED]) and (ii) Metra's share of passenger ridership (about [REDACTED]). The train movements / ridership factor results in an allocation of [REDACTED] of Policing costs to Metra. As explained herein, Amtrak's proposal is very favorable to Metra. Amtrak seeks primarily the cost of the salaries of the officers who patrol Chicago Union Station, and excludes many other costs, such as the costs of Amtrak Police Department ("APD") management (including the Deputy Chief and two Captains), the APD Intelligence and Counterterrorism unit, training programs, and policing equipment, that benefit Metra and its passengers and could properly be part of the cost allocation.

³Because Metra's use of Chicago Union Station will continue over time, there must be an annual increase in payments. The Parties agree with this concept, but disagree with the index that should be used to make this calculation. See May 18, 2020 Stip. ¶ 4. This issue is discussed below.

Capital: Amtrak seeks \$1.7 million for a Tier 1 (baseline) capital investment. This is based on Metra's recent annual contribution to capital projects. Amtrak also seeks a contractual commitment to Tier 2 capital investment up to \$10 million annually, allocated between Amtrak and Metra based on the location of the projects being funded. Metra would have significant input into the projects selected for the Tier 2 capital.

The Proposed Agreement also includes terms for Metra's continued use of Chicago Union Station. These terms are crucial. They address important safety issues. And they include other key points, such as the number of trains Metra may operate for the costs it is paying, the cost of operating additional trains, and the monthly charge for Metra's use of ground power. Without these terms, it will be difficult if not impossible for Metra to operate at Chicago Union Station.

The Board should adopt Amtrak's proposal described here, which is based on its Proposed Agreement with the modifications explained in this Opening Statement. Amtrak's approach is fair, reasonable, and complies with the statutory requirement that the Board must assign to Metra the costs Amtrak incurs only for the benefit of Metra, plus a proportionate share of all other costs of providing transportation incurred for the common benefit of Amtrak and Metra. The methodology Amtrak proposes to determine proportionate share is the same as the one utilized in agreements with commuter rail authorities governed by PRIIA and the cost allocation policy developed thereunder (the "Section 212 Policy"), as discussed more fully below. And while Metra will no doubt quibble with various costs, Amtrak's good faith is demonstrated by the fact that Metra ultimately agreed to Amtrak's proposed allocable costs and the methodology for allocating those costs for dispatching and maintenance of way. *See* May 18, 2020 Stip. ¶¶ 1, 2. As explained in the Verified Statement of Nancy Miller and below, the costs that Amtrak seeks to allocate to Metra are those actually incurred by Amtrak. Accordingly, for the reasons discussed below, Amtrak respectfully requests that the Board adopt Amtrak's proposal.

II. FACTUAL BACKGROUND

Amtrak is the nation's intercity passenger rail service and high-speed rail operator, established under the Rail Passenger Service Act of 1970, Pub. L. 91-518, 84 Stat. 1327 (codified as amended at 49 U.S.C. §§ 24101-24315 (2012)). Congress created Amtrak to take over the intercity passenger rail service previously operated by private railroad companies, which had been operating at a net loss for many years. Amtrak now provides intercity rail passenger service in major intercity travel markets across the United States. The Passenger Rail Investment and Improvement Act of 2008 ("PRIIA") states that Amtrak's mission is to "provide efficient and effective intercity passenger rail mobility consisting of high-quality service that is trip-time competitive with other intercity travel options." 49 U.S.C. § 24101(b).

Metra is the commuter rail agency serving the Chicago metropolitan area. It serves more than 100 communities with 241 stations on eleven lines running from downtown Chicago. Metra transports an average of 290,000 passengers per weekday an average distance of 20 miles.

A. Chicago Union Station

Chicago Union Station is located in downtown Chicago alongside the Chicago River. Chicago Union Station is the busiest rail hub in the Midwest, and a major economic driver for the entire Chicago metropolitan region. It is the third busiest passenger railroad terminal in the United States, with an average of over 120,000 daily weekday intercity passengers and commuters. Chicago Union Station serves 16 different Amtrak intercity rail lines, six Metra commuter rail lines, and more than 300 weekday trains in total. Chicago Union Station is the central hub for long-distance and state-supported trains that make up Amtrak's national network. In fiscal year 2018, Chicago Union Station served over ten percent of Amtrak's 31.7 million riders. On top of that, more than *30 million* Metra passengers rely on trains in and out of Chicago Union Station annually.

B. History of Chicago Union Station

At the turn of the century, architect Daniel Burnham conceived of the design for the original Union Station. After twelve years of planning and construction, Chicago Union Station opened in May of 1925. The architecture of Chicago Union Station is distinct and remarkable. It has a grand Bedford limestone Beaux-Arts façade, massive Corinthian columns, marble floors, and an expansive interior, the Great Hall. According to the Commission on Chicago Landmarks in the 2000 Landmark Designation Report, “Union Station is considered to be one of the most historically significant passenger railroad stations in the nation for its planning and grand architectural design.” The historic Headhouse occupies a city block between West Adams Street and West Jackson Boulevard, and South Canal Street and South Clinton Street.

Chicago Union Station was originally owned by the Chicago Union Station Company (“CUSCO”). In 1976, the Penn Central Corporation conveyed its interests in CUSCO to Amtrak pursuant to the United States Railway Association’s Final System Plan and the Regional Rail Reorganization Act of 1973 (the “3R Act”), Pub. L. 93-236, 87 Stat. 985 (codified as amended at 45 U.S.C. §§ 701-797m (2012)). *See Penn Cent. Corp. v. Chi. Union Station Co.*, 830 F. Supp. 1509, 1514 (Reg’l Rail Reorg. Ct. 1993). In 1984, Amtrak acquired the remaining outstanding CUSCO shares, making Amtrak the sole shareholder of CUSCO, and CUSCO a wholly-owned subsidiary of Amtrak. *Id.* at 1515. From 1984 to 2017, Amtrak and CUSCO maintained separate corporate identities. In May 2017, CUSCO merged into Amtrak, and CUSCO ceased to exist as an independent entity.

C. The 1984 Agreement

On May 1, 1984, CUSCO entered into a lease agreement with Metra, which allowed Metra to access and use the Chicago Union Station facilities. The 1984 Agreement was executed at a time when Chicago Union Station had excess capacity. The parties agreed that Metra could

add additional trains at any time, without any increase in funding or payments for its share of station costs. Since then, Metra has expanded service at Chicago Union Station whenever it wished to do so. *See* Moritz Stmt. ¶ 7. Metra operates 40% more trains today than it did in 1984, but there has been no increase in Metra's contribution to station costs or funding for necessary capital investments. Moritz Stmt. ¶ 8; *see also* Metra's Responses to Amtrak's First Requests for Admission (No. 13) (attached at Ex. 2) (admitting that Metra has approximately 40% more train movements at Chicago Union Station than it had in 1984). Today, approximately [REDACTED] of train movements and [REDACTED] of the passengers using Chicago Union Station belong to Metra. *See* Moritz Stmt. ¶ 9; *see also* Amtrak0005283, Tabs Train Moves, Rider Statistics (attached as Ex. 3 to Miller Stmt.).⁴ Metra reports that it had 31.6 million passengers boarding or alighting trains at Chicago Union Station in FY 2018, *see* Metra's Verified Answers to Amtrak's First Interrogatories (No. 1) (attached as Ex. 3), compared to only 3.3 million Amtrak passengers, *see* Amtrak's Responses to Metra's First Interrogatories (No. 13) (attached as Ex. 6).

Because Metra's service has exceeded levels the Station can accommodate, platform and station space is at or above capacity during peak travel periods. This creates overcrowding, delays to commuter trains and Amtrak trains, and limits Amtrak's overall ability to expand its intercity service. It is essential, and critical to the future of Chicago Union Station, that Metra pay its fair share for its use of the Station. To date, and despite protracted negotiations between the Parties, Metra has not been willing to do so.

⁴*See also* Amtrak0008170 (Amtrak FY 2016–FY2019 Station Ridership) (attached as Ex. 12 to Miller Stmt.); Amtrak0008167 (Passenger Traffic and Slotting Counts – September 2016 – Weekly Revenue Train Moves for CUS North/South) (attached as Ex. 9 to Miller Stmt.); Amtrak0008168 (FY 2017 Dispatch Statistics) (attached as Ex. 10 to Miller Stmt.); Amtrak0008169 (FY 2017 On-Time Performance) (attached as Ex. 11 to Miller Stmt.).

D. Policing at Chicago Union Station

Amtrak is empowered under 49 U.S.C. § 24305(e) to “directly employ or contract with rail police to provide security for rail passengers and property of Amtrak.” APD officers have the same police authority as local or state law enforcement officials within their jurisdiction. *See* § 24305(e) (“Rail police directly employed by or contracted by Amtrak who have complied with a State law establishing requirements applicable to rail police or individuals employed in a similar position may be directly employed or contracted without regard to the law of another State containing those requirements.”). The Amtrak Police Department (“APD”) is a national police force committed to protecting the passengers, employees, and patrons of Amtrak, and Amtrak’s partner agencies throughout the United States. APD is responsible for ensuring the safety and security of millions of customers traveling to over 500 destinations in 46 states, the District of Columbia, and three Canadian provinces on more than 21,400 miles of routes. *See* Amtrak0006545 at 6 (attached as Ex. 1 to Patterson Stmt.).

The vast majority of APD officers in the Central Division work out of Chicago Union Station.⁵ Patterson Stmt. ¶ 10. Chicago Union Station is the fourth busiest station in Amtrak’s national network; however, Metra has almost ten times the number of passengers Amtrak does. *Id.* ¶ 13. On any given weekday, Metra has approximately 110,000 passengers coming through Chicago Union Station. *See* METRA000230 (excerpted from METRA000160) (attached as Ex. 7). Although Metra has its own police department, the Metra Police Department does not police Chicago Union Station.

⁵ APD consists of the Central Division, Western Division, Mid-Atlantic South Division, Mid-Atlantic North Division, New England Division, and New York Division. *See* Patterson Stmt. ¶ 8. The Central Division encompasses twenty-two States across the Midwest and Southwest and numerous major cities, including Chicago, Illinois, St. Louis, Missouri, Milwaukee, Wisconsin, and New Orleans, Louisiana. Patterson Stmt. ¶ 8; *see also* Amtrak0006545 at 6 (Ex. 1 to Patterson Stmt.).

APD officers fulfill a variety of roles. As part of their official duties, APD officers respond to incidents, assist passengers, answer questions, maintain crowd control, investigate crime at and on the property of Chicago Union Station, make lawful arrests, and provide support and security during special events. Patterson Stmt. ¶ 16. APD officers also act as first responders to medical emergencies and provide first aid, CPR, and other necessary medical treatment before paramedics arrive on the scene. *Id.* ¶ 17. [REDACTED]

[REDACTED] *Id.* ¶ 27. The mere physical presence of APD officers deters crime at the Station—an undeniable benefit to all passengers. *Id.* ¶ 18.

APD provides policing coverage to Chicago Union Station twenty-four hours a day, seven days a week, including holidays. Patterson Stmt. ¶ 24. The Chicago Field Office currently has [REDACTED] sworn members, [REDACTED]. Patterson Stmt. ¶ 45.

[REDACTED] are assigned to the [REDACTED] [REDACTED] respectively. *Id.* ¶ 46. Aside from these [REDACTED] all members of the Chicago Field Office are assigned full-time to Chicago Union Station. *Id.* Today, it takes approximately [REDACTED] officers to fill the schedule at Chicago Union Station ([REDACTED]). *See id.* ¶ 64; Amtrak0006421 (attached as Ex. 2 to Patterson Stmt.). The 2017 per position cost of an APD officer was [REDACTED]. *See* Amtrak0005283 at Tab Police Cost Summary. Indeed, an officer's salary by itself was between [REDACTED] in 2017 (and between [REDACTED] in 2019). *See* Amtrak0006416 (attached as Ex. 3 to Patterson Stmt.). Accordingly, the cost of these [REDACTED] officers *alone* is [REDACTED] million.

The Verified Statement of Deputy Chief Joseph Patterson lays out in detail the role played by APD at Chicago Union Station. This includes the benefits APD provides to everyone at Chicago Union Station, including Metra and its passengers.

III. PROCEDURAL BACKGROUND

A. Metra's 2018 Petition for Declaratory Order

The 1984 Agreement was set to expire on April 1, 1989. The parties extended the term of the 1984 Agreement until April 30, 2019, and again by 90 days until July 29, 2019. A year before the 1984 Agreement was set to expire, Metra sought Board intervention and filed a Petition for Declaratory Order on the Status of Chicago Union Station on April 6, 2018. *See Commuter Rail Div. of the Reg'l Transportation Auth. & Ne. Illinois Reg'l Commuter R.R. Corporation – Petition for Declaratory Order – Status of Chicago Union Station*, No. FD 36171 (filed Apr. 6, 2018) (“Metra’s 2018 Petition”).

Amtrak opposed Metra’s Petition in a Reply dated April 26, 2018, arguing that negotiations were barely underway, and the Parties had not yet reached an impasse. The Board ultimately dismissed the Petition, agreeing with Amtrak that Metra’s Petition was premature. *See* August 20, 2018 Order in FD 36171.

During March and April 2019, Metra and Amtrak began exchanging initial proposals regarding the terms of a new agreement to govern Metra’s future use of Chicago Union Station. Amtrak provided Metra with several proposals allocating proposed operating and capital costs, as well as other financial terms.

B. Amtrak’s June 2019 Proposed Agreement

Amtrak’s proposals culminated in its detailed and comprehensive Proposed Agreement on June 4, 2019 (attached as Ex.1 to Suchy Stmt.). Under the Proposed Agreement, Metra would continue to access and use Chicago Union Station to operate Metra commuter rail service. Metra

would also benefit from a range of services at the Station. The Amtrak Police Department would provide patrol services in jointly-used areas. Metra would have real-time access to view the movement of Metra operations at the Station's dispatch locations. Metra would be able to use the station's electric power, facilitating a fuel cost saving for Metra. Amtrak would also be responsible for maintenance and recapitalization of projects providing a sole benefit to *Metra*, subject to reimbursement by Metra for costs incurred.

In turn, Metra would compensate Amtrak for a base usage fee, recapitalization costs, and contract services.⁶ Metra would fund a share of recapitalization program costs proportionate to Metra's use of Chicago Union Station, and Amtrak would fund its proportionate share. Metra would also pay Amtrak for its actual costs to support Metra's sole benefit capital projects, training or related services provided to Metra or its third-party contract employees, ground power, and use of the dispatching feed. Metra would pay Amtrak a rate per train for special trains, test trains, and extra moves.

The Proposed Agreement was consistent with the mandate of 49 U.S.C. § 24903(c)(2), which requires Metra to pay for its sole benefit costs, plus a proportionate share of all cost incurred for the benefit of both Amtrak and Metra. Amtrak's proposal in this proceeding is consistent with its June 2019 Proposed Agreement, with changes where appropriate and identified.

C. The Board Proceedings

Metra rejected Amtrak's June 2019 Proposed Agreement. Despite good-faith negotiations, the Parties remained too far apart to reach an agreement.

⁶ "Contract services" means Amtrak's ground power, training, dispatching feed, and other additional services as may be agreed upon by the Parties, other than those elements that comprise the base usage fee, recapitalization program, or test trains, special trains, or extra moves.

Amtrak filed its Petition under 49 U.S.C. § 24903(c)(2) on July 22, 2019, requesting that the Board initiate proceedings, establish a procedural schedule, and enter an order determining the terms and compensation for Metra's use of Chicago Union Station. *See* Amtrak's July 22, 2019 Petition. Amtrak noted in its Petition that the Board did not have jurisdiction under the statutory sections invoked by Metra in its previous Petition—49 U.S.C. §§ 11002 and 28502—but that the Board had jurisdiction under 49 U.S.C. § 24903 because Amtrak acquired its initial interest in Chicago Union Station pursuant to the 3R Act.

The Board entered an interim decision on July 29, 2019, ordering that Amtrak continue providing Metra access to Chicago Union Station on an interim basis under the terms of the 1984 Agreement until further order of the Board. Metra replied and agreed to the Board opening a proceeding under 49 U.S.C. § 24903. *See* Metra Reply at 1 (filed August 12, 2019). The Board shortly thereafter instituted proceedings under 49 U.S.C. § 24903(c)(2). *See* Sept. 26, 2019 Decision.

The Parties then proposed a schedule and commenced discovery. Metra served three rounds of voluminous discovery on Amtrak, amounting to 119 interrogatories, 60 requests for production, and 28 requests for admission. Amtrak provided substantive answers to the vast majority of requests. Much of the discovery was focused on the primary cost categories at issue – Maintenance of Way, Dispatching, Station Operations and Maintenance, Policing and Capital. Amtrak provided numerous excel spreadsheets showing the costs it was incurring, how it proposed to allocate costs to Metra, and the amounts it believe Metra should pay. (Amtrak had also produced substantial documentation and data to Metra before this proceeding ever started, as part of the negotiations that culminated in the June 2019 Proposed Agreement.) Amtrak also engaged in informal discussions with Metra's counsel to explain the spreadsheets. And Amtrak

offered to make Nancy Miller, the person at Amtrak most knowledgeable about the costs and allocation methodology described by those complicated spreadsheets, available for deposition. Metra decided not to take the deposition, or any other depositions.

Discovery was not a two-way street. Amtrak sought in discovery to determine Metra's position. Amtrak told Metra in its Proposed Agreement and in the spreadsheets the amounts it believed Metra should pay. Amtrak simply wanted to know how much Metra thought it should pay. Metra refused. It claimed it did not have enough information, which seemed unlikely given the Parties' negotiations. *See* Metra's Verified Answers to Amtrak's First Interrogatories (Nos. 8-13, 15, 17, 21) (attached at Ex. 3). But Metra also asserted that these questions were illegitimate. In a letter sent in response to Amtrak's attempt to meet and confer on Metra's discovery responses, Metra's counsel stated that it was not required to and would not make its position known until its Opening Statement. *See* Letter from B. Smith to N. Gilman (Jan. 10, 2020). Metra claims that Amtrak will be able to address Metra's position in its reply. *Id.* Given Metra's refusal to provide information, this is what Amtrak will in fact be required to do.

Amtrak also tried to determine what parts of Amtrak's June 2019 Proposed Agreement Metra disagreed with by requesting Metra's position.⁷ Metra seemed to agree generally with Amtrak's methodologies in some instances. *See* Metra's Supplemental Answers to Amtrak's First Interrogatories (No. 9, 15(b)) (Ex. 5). But Amtrak could not pin Metra down on specifics. For example, when asked what Amtrak-proposed terms Metra disagreed with, Metra again claimed not to have enough information, even with respect to matters plainly within its knowledge, such as whether its employees need safety training, whether it would procure certain insurance or even what law it believed should govern. *See* Metra's Verified Answers to

⁷*See* Metra's Verified Answers to Amtrak's First Interrogatories (Nos. 8, 11, 12, 13, 15, 17) (attached as Ex. 3).

Amtrak's First Interrogatories (No. 8) (attached as Ex. 3); Metra's Supplemental Answers to Amtrak's First Interrogatories (No. 8) (attached as Ex. 5).

In light of the information disparity, Amtrak's position being known and Metra's position being unknown, the Parties' List of Issues for Determination was necessarily at a very high level. The Parties were then able to narrow the issues for the Board by resolving the appropriate payment and methodology for Maintenance of Way and Dispatching, and agreeing on some aspects of the Station Operations and Maintenance and inflation index disputes.⁸ See May 18, 2020 Stip.

IV. GOVERNING LEGAL PRINCIPLES

A. The Requirements of Section 24903

The Parties agree that this dispute is governed by 49 U.S.C. § 24903(c). Section 24903 authorizes Amtrak to engage in certain business activities, including "mak[ing] agreements with ... commuter authorities to grant, acquire, or make arrangements for ... commuter rail passenger transportation over[] rights of way and facilities acquired under the Regional Rail Reorganization Act of 1973 (45 U.S.C. § 701 et seq.) [the "3R Act"]." 49 U.S.C. § 24903(a)(6). Amtrak acquired its initial interest in Chicago Union Station under the 3R Act. As such, any agreement between Amtrak and Metra for Metra's use of Chicago Union Station is subject to Section 24903. Under that section, if the Parties do not agree on terms and compensation with respect to

⁸ The Parties filed a Joint Submission of Issues on February 7, 2020. Amtrak's joint submission of that document does not imply that Amtrak believes the Board must actually decide every purported issue listed there. Specifically, Amtrak does not address Issues 1.1.3 ("Whether costs must be specific, quantifiable and verifiable") and 1.1.5 (Whether the selection of appropriate factors by the Board is sufficient to avoid cross-subsidization"). In Amtrak's view, these points are subsumed in the broader, more relevant issues addressed in this Opening Statement. For instance, as explained below, there can be little doubt that Amtrak's costs are "specific, quantifiable and verifiable," so a legal discussion on the point is moot.

such agreements, the Board is required to order that the transportation continue and determine appropriate compensation for the transportation. 49 U.S.C. § 24903(c)(2).

Through Section 24903, Congress has mandated that Metra pay its full share of Chicago Union Station costs. *See* 49 U.S.C. § 24903(c)(1). Metra cannot pay only the incremental costs Amtrak would not pay but for Metra's use. The statute requires that the Board assign to the rail carrier (in this case, Metra) the costs that Amtrak incurs only for the benefit of Metra ("sole benefit" costs), plus a proportionate share of *all other costs* of providing transportation incurred for the common benefit of Amtrak and Metra ("common benefit" costs). 49 U.S.C. § 24903(c)(2). A ban on cross-subsidization necessarily requires full allocation of costs: if Metra receives a benefit from Amtrak without paying for it, that constitutes cross-subsidization. *Id.* That would be no more permissible than requiring Metra to pay more than its fully allocated costs, essentially subsidizing Amtrak's business.

In determining Metra's share of the costs Amtrak incurs for the benefit of both Parties, the Board must assign proportionate shares to each entity based on "factors that *reasonably reflect* the relative use of the rail property." 49 U.S.C. § 24903(c)(2) (emphasis added). The statute offers the examples of "volume of car operations [or] tonnage," but also permits the Board to utilize other factors that satisfy the statute. *Id.* The basic principle is that no factor will be able to allocate costs to a certainty based on exact use, and any attempt to do so would be cost prohibitive and self-defeating. Rather, the statute simply asks the Board to find a good, broad proxy that provides a reasonable basis for sharing the costs of facilities used by both Amtrak and another commuter rail agency.

B. Determination of Compensation Under Similar Full-Allocation Statutes

Neither the Board nor any court has interpreted Section 24903 or its specific requirements for cost allocation. But the Northeast Corridor Commission ("NECC") adopted an

allocation methodology governed by a very similar provision.⁹ The NECC approach in that matter is instructive—and directly supports Amtrak’s position here.

The NECC’s development and adoption of the Section 212 Policy, which governs allocation of costs between Amtrak and commuter agencies using the Northeast Corridor, provides a nearly perfect roadmap for a reasoned, reasonable allocation of costs in this matter. PRIIA Section 212, now codified at 49 U.S.C. § 24905, established the NECC. Under Section 212, the NECC’s first obligation was to develop a standardized methodology allocating costs, revenues, and compensation among owners and operators providing commuter and intercity rail service along the Northeast Corridor. Like Section 24903, Section 212 proscribes any cross-subsidization between commuter, intercity, and freight transportation. And like Section 24903, Section 212 mandates full cost allocation to commuter rail authorities using Amtrak stations and track.

The NECC spent thousands of work hours, over several years, to develop a method for fully allocating costs associated with state commuter rail authorities’ use of Amtrak infrastructure and services with respect to facilities used by both the commuter rail authority and Amtrak. *See* Moritz Stmt. ¶ 16; Miller Stmt. ¶ 36-37. Voting members of the NECC include representatives from the FRA, U.S. Department of Transportation, several state departments of transportation, several state commuter rail authorities, and Amtrak. *See* Moritz Stmt. ¶ 17.

In 2015, the NECC approved the Section 212 Policy, which provides the framework and methodology for identifying and allocating operating and capital costs incurred by Northeast Corridor users, including Amtrak as the owner and state commuter rail authorities. The Section

⁹ *See* Northeast Corridor Commission, *Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy* (originally approved Sept. 17, 2015, as amended through June 19, 2019), available at https://nec-commission.com/app/uploads/2018/04/2019-06-19_Cost-Allocation-Policy_v09.00_Cmsn-Amended-2019-June-19-Clean.pdf (last visited May 14, 2020).

212 Policy is specifically intended to ensure no cross-subsidization between commuter, intercity, and freight transportation, and to ensure full allocation of costs.

The Section 212 Policy's methodology is driven by statistics that reflect proportional use of infrastructure. It answers nearly the exact same question posed by Section 24903: the appropriate factors to fully allocate costs associated with state commuter rail authorities' use of Amtrak assets to provide transportation.

Closely tracking Amtrak's Proposed Agreement, the Section 212 Policy identifies six functional areas for cost sharing: Maintenance of Way, Train Dispatching, Policing, Stations Operations and Maintenance, Electric Propulsion, and Capital Renewal. The NECC determined that in selecting factors for cost allocation, the Section 212 Policy had to balance achieving the desired level of precision with the costs associated with precision. A policy that allocates costs on a line-item basis is not a useful or workable policy.

To identify the appropriate factor for allocating costs within one of the six areas identified above, the NECC considered a variety of potential allocation factors (also called allocation statistics). The NECC determined that the best allocation factors are those that drive the costs for the relevant category of activity. There must be a relationship between the cost category and the proposed allocation factor, to avoid arbitrariness. But to be useful, a factor must be capable of objective measurement, and readily available to the Parties, to ensure predictability and consistency. In everyday life, an example would be using mileage as the basis for reimbursing employees for driving their private vehicles—it is not a perfect measure of the costs the employee incurred, but the mileage is a driver of the costs, and has a strong relationship to the costs.

Amtrak utilized these principles in identifying appropriate factors for allocation of shared-benefit costs at Chicago Union Station.

C. The Cost Areas and the Appropriate Allocation Factors

The Parties agree that the cost areas the Board needs to resolve here overlap closely with the primary cost areas addressed in the NECC's Section 212 Policy: Maintenance of Way, Dispatching, Policing, Station Operations and Maintenance, and Capital. Those areas and the appropriate factors are:

Maintenance of Way: Maintenance of Way means costs related to the maintenance of the right-of-way, which includes track, bridges, structures, and support activities, communications and signals, and electric traction infrastructure. For terminal zones, the Section 212 Policy allocates the cost of maintenance of way based on train movements.¹⁰ Utilizing train movements for terminal zones is appropriate because trains travel at much lower speeds in terminal zones, and train movements therefore more accurately reflect costs than gross-ton miles. Train movements are also an appropriate allocation metric for any electric locomotives or multiple units in terminal zones. Likewise, communications and signal costs should be allocated based on train movements, because such costs are directly correlated to train frequencies. As indicated in the Parties' stipulation, the Parties have agreed on the methodology and amount for Maintenance of Way. *See* May 18, 2020 Stip. ¶ 1.

Dispatching: The Section 212 Policy allocates dispatching costs in terminal zones based on train movements. The number of dispatchers needed to safely direct trains is the primary driver of costs related to dispatching. For terminal zones, these costs should be allocated by train movements, since trains travel at much lower speeds over smaller areas, but a dispatcher still

¹⁰ For non-terminal segments, the Section 212 Policy allocates maintenance of way costs based on gross-ton miles.

must monitor all movements occurring in the terminal. As indicated in the Parties' stipulation, the Parties have agreed on the methodology and amount for Maintenance of Way. *See* May 18, 2020 Stip. ¶ 2.

Policing: Security and policing costs include "costs of patrolling and protecting stations, platforms, and station facilities." Section 212 Policy, § 5.4.1, Table 5 at p. 41. The Section 212 Policy allocates the cost of policing stations based on a 50/50 split of train movements and ridership. *See id.*, § 5.3.3 at p. 39, n.27, § 5.4.1(5). Policing costs includes labor and other costs incurred for police officers engaging in routine patrols or responding to incidents. Policing conducted by the operator of a station is for the common benefit of every railroad that uses that station.

Station Operations and Maintenance: Cost allocation for this category, unlike the other categories, involves a more tailored and individualized analysis because of the unique nature of different station facilities. Under the Section 212 Policy, the allocation of Station Operations and Maintenance costs is composed of the following steps: identification of all station costs associated with station operations (i.e., utilities, station operations, station ushers, station maintenance), and exclusion of costs associated with sole-benefit activities (i.e., ticketing, redcaps, and baggage handling). In cases where the proportion of costs eligible for allocation is not distinctly tracked within an owner's accounting system, sole-benefit costs should be calculated based on the share of station square footage that is used only by an individual operator, and common-benefit costs should be calculated based on the share of square footage that is deemed shared space. Section 212 Policy § 5.4.1. The Section 212 Policy assigns the common-benefit square footage based on a 50/50 split of ridership and train movements. *Id.*

Capital Costs: For capital costs, the Section 212 Policy devised a complicated process under which a baseline capital charge is assigned to each operator based on factors that reflect asset condition and relative use that is calculated as a percentage of the normalized replacement amount: replacement of basic infrastructure assets on a regular schedule to maintain infrastructure components and facilities within lifecycle to sustain a state-of-good-repair. *See* Section 212 Policy § 5.5. The normalized replacement amount is based on the population of each asset type, the average useful life of each asset type, and the unit cost for each asset type. As discussed below, Amtrak has proposed a streamlined approach to capital costs that allocates to Metra a smaller proportion of costs than would be dictated by either a ridership or train movements factor.

D. Agreement Terms

The Board must not only determine appropriate compensation, but also appropriate terms for the agreement between Amtrak and Metra. Section 24903(c) contemplates that the Board will impose terms of operation on the parties, both while a proceeding is pending and in a final order. The Board's interim order in this matter suggested as much (*see* July 26, 2019 Interim Order at 2 (ordering access to continue "under the *terms* of the 1984 Agreement") (emphasis added)), and both parties agree that the Board must impose terms where necessary. *See* Issues for Determination (filed on February 7, 2020); Metra's Answers to Amtrak's Second Interrogatories (attached as Ex. 4) (agreeing that the Board has the authority to impose terms of the Parties' agreement). The purpose of Section 24903(c) is to provide Parties who are unable to agree a framework for operations going forward. Compensation alone cannot provide that framework.

V. THE BOARD SHOULD ADOPT AMTRAK'S PROPOSAL FOR DETERMINATION OF METRA'S SHARE OF OPERATING COSTS.

Calculating preliminary cost sharing values associated with Metra's use of Chicago Union Station and the surrounding infrastructure requires two primary inputs: a calculation of the total costs incurred for Metra's benefit, and an appropriate method for determining Metra's share of the costs incurred by Amtrak for the Parties' common benefit.

A. Amtrak Calculated the Costs Incurred for Metra's Benefit Using an Objective, Verifiable Method.

First, Amtrak determined the costs that it incurs at Chicago Union Station for the sole benefit of Metra or the common benefit of Amtrak and Metra at Chicago Union Station. *See* Miller Stmt. ¶ 10. Operating costs were determined using a two-year average of Amtrak's costs (FY2016 and FY2017) subject to an inflation adjustment.

Amtrak uses SAP software as its general ledger and financial accounting system for reporting and management. *Id.* ¶ 7. In SAP, each Amtrak financial transaction is associated with a data record. *Id.* ¶ 8. Each financial transaction data record is assigned distinct codes that provide information about the type of transaction (i.e. revenue or expense) as well as the amount, cost category, associated department, etc. *Id.* When a transaction is entered into SAP, the relevant codes are assigned to the data record. *Id.*

There are four financial transaction codes that are the key building blocks used in the Amtrak's financial reporting process. *Id.* ¶ 9. Those transaction codes are:

- a. Cost Center. SAP maintains a database of Amtrak Cost Centers. Most Cost Centers are organizational units with a supervisor and staff where work takes place—e.g., San Antonio Station Services Cost Center. Each Cost Center is identified by a four-character code and an associated description.

- b. Cost Element. Cost Elements describe the type and category of costs. A cost element corresponds to a cost relevant item in Amtrak's chart of accounts. SAP maintains a database of Cost Elements that identify various types of expenses, revenue sources, and balance sheet items—e.g., wages. Each Cost Element is identified by a unique six-digit number and an associated description. Amtrak's accounting systems use approximately 2,000 Cost Elements.
- c. Internal Order. Internal Orders categorize expenses by purpose and identify the task, type, or nature of work performed—e.g., Ticketing, Operations, or Red Caps/Porters. Each Internal Order is identified by a four-digit number and an associated name. SAP uses approximately 175 Internal Orders.
- d. Work Breakdown Structure (WBS) Element. The WBS element captures cost by project task. SAP maintains a database of approximately 50,000 WBSs to track a project's expenses. WBSs have a multi-level coding structure. A higher-level code provides general information about a project, while a lower-level code provides more detail about the project's expenses (e.g., location, geographic segment, or specific equipment units).

Id. Amtrak used SAP and these transaction codes to calculate the costs incurred at Chicago Union Station relating to Maintenance of Way, Dispatching, Policing, and Station Operations and Maintenance. *Id.* ¶¶ 10-14. Because the Parties have reached an agreement on Metra's share of Maintenance of Way and Dispatching costs, only the Policing and Station Operations and Maintenance costs are pertinent here.

Policing: The Policing costs at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008166 (attached as Ex. 7 to Miller Stmt.).¹¹ As described in the Miller Verified Statement, Amtrak identified those costs by searching within SAP for WBS Elements relating to Chicago Union Station (e.g., those containing the terms CUS, CHI, Chicago, or something similar). Amtrak then reviewed the WBS descriptions to identify those related specifically to Chicago Union Station, and removed all other entries. Amtrak then reviewed the Account information for the remaining entries to confirm that they related to Policing at Chicago Union Station. The result of that process is Amtrak0008166. Amtrak0008166 comprises [REDACTED] rows, each of which represents a specific cost incurred.

Amtrak reviewed the cost centers coded to WBS elements: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

See Miller Stmt. ¶ 29(b);

Amtrak0005283, Tab Police Cost Summary. The calculation of policing costs also includes the addition of G&A expenses: [REDACTED] for Fiscal Year 2016 and [REDACTED] for Fiscal Year 2017. *See* Amtrak0005283, Police Cost Summary. This process is further explained in the Miller Verified Statement.

¹¹ Amtrak used 2016 and 2017 because Amtrak and Metra began negotiating a new agreement in 2018. The Parties have agreed for purposes of this proceeding to utilize this 2016 and 2017 cost data, subject to an inflation adjustment.

Station Operations and Maintenance: The relevant costs incurred by Amtrak in Fiscal Years 2016 and 2017 relating to Station Operations and Maintenance at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008162 (attached as Ex. 6 to Miller Stmt.). As explained in the Miller Verified Statement, Amtrak identified those costs by searching within SAP for WBS Elements relating to Chicago Union Station (e.g., those containing the terms CUS, CHI, Chicago, or something similar). Amtrak then reviewed the WBS descriptions to identify those related specifically to Chicago Union Station, and removed all other entries. Amtrak then reviewed the Account information for the remaining entries to confirm that they related to Station Operations and Maintenance at Chicago Union Station. The result of that process is Amtrak0008162, which comprises [REDACTED] rows, each of which represents a specific cost incurred. For example, Row 288 represents [REDACTED] posted [REDACTED] [REDACTED] All other rows provide a similar level of detail. Amtrak's calculation of Station Operations and Maintenance costs also includes the addition of general and administrative expenses. For Fiscal Year 2016, Amtrak's General and Administrative ("G&A") expenses were [REDACTED], and for Fiscal Year 2017 Amtrak's G&A expenses were [REDACTED]. See Amtrak0005283, Tab Station Cost Allocation.

The average of the 2016 and 2017 costs incurred by Amtrak for Station Operations and Maintenance at Chicago Union Station, after adding applicable G&A expenses and a 2018 inflation factor, is [REDACTED]. See Amtrak0005283, Tab Station Cost Allocation (attached as Ex. 3 to Miller Stmt.). Less the operations and maintenance costs associated with Dispatching, this amount is \$12,801,311. See *id.*

B. Amtrak's Proposed Factors for Determining Metra's Share of Operating Costs Are Objective, Administratively Feasible, and Avoid Cross-Subsidization.

After identifying the costs to be allocated, Amtrak applied the appropriate methodology to determine the allocation of those costs. There are some critical facts to keep in mind when analyzing how great a benefit Metra receives, relative to Amtrak, from costs incurred for the common benefit of both Parties. [REDACTED] of the passengers boarding or alighting trains at Chicago Union Station are Metra passengers and [REDACTED] are Amtrak passengers, a [REDACTED] ratio. [REDACTED] percent of the train movements are Metra trains and [REDACTED] are Amtrak trains, a more than [REDACTED] ratio. Any allocation must "reasonably reflect" this disparity in use of the Station.

Amtrak was also able to look to the work of the NECC for guidance. Amtrak's proposed allocation methodology here largely tracks the methodology jointly developed and adopted by the NECC for fully allocating costs to Amtrak and state commuter rail authorities on the Northeast Corridor, under statutory language nearly identical to the statutory language governing this case.

1. Metra Has Agreed to Amtrak's Proposed Factors and Cost Allocation for Dispatching and Maintenance of Way.

Amtrak proposed relative number of train movements as the primary metric. Train movements are directly tied to both maintenance of way and dispatching. The NECC also selected train movements as the appropriate factor for allocating these two cost categories in the Section 212 Policy. Metra agrees with this allocation methodology. *See* May 18, 2020 Stip.; Metra's Supplemental Answers to Amtrak's First Interrogatories (Nos. 9, 15(b)) (attached as Ex. 5). Based on the methodology described above, Metra has agreed to pay **\$2,950,000** for its fully

allocated share of Maintenance of Way costs and **\$1,800,000** for its fully allocated share of Dispatching costs plus the inflation index determined by the Board. May 18, 2020 Stip. ¶¶ 1-2.

2. Metra's Share of Station Operations and Maintenance Costs Should Be Based on the Square Footage Available for Metra's Sole or Common Use.

The Parties agree that Station Operations and Maintenance costs be allocated to Amtrak and Metra primarily on a square footage basis. *Id.* ¶ 3. Metra's share of Station Operations and Maintenance costs is equal to the percentage of square footage at Chicago Union Station that benefits Metra (with square footage that benefits both Amtrak and Metra divided based on ridership and train movements).¹² Thus, the formula for the calculation of Metra's share is:

$$\frac{\text{Metra sole use square footage} + (\text{common square footage} \times .842)}{\text{total allocable square footage}} \times \text{total allocable costs}$$

Id.

As explained below, Amtrak contends there are 360,932 square feet to allocate. Metra alone benefits from [REDACTED] of these square feet. Metra and Amtrak both benefit from [REDACTED] square feet. The common square footage should be allocated [REDACTED] to Metra, based on a 50/50 split of Metra's proportion of ridership and train movements. Thus, [REDACTED] total square feet are allocated to Metra. With that number divided by the total square feet at issue—360,932—Metra's proportionate share of the Station Operations and Maintenance costs is [REDACTED] See

¹² This is essentially the same methodology Amtrak proposed for Station Operations and Maintenance in its June 2019 proposal to Metra. The application of the methodology has been simplified in a handful of ways for purposes of this proceeding. First, in the June 2019 proposal, Amtrak kept janitorial costs separate, and allocated these costs based on a spatial analysis covering only those areas serviced by janitors. Second, in the June 2019 proposal, Amtrak allocated the costs for snow removal and platform maintenance separately, using the ridership/train movements factor (i.e., [REDACTED] of those costs to Metra). The simplification of the calculation to include all three of these categories in the overall spatial allocation results in a more favorable allocation to Metra. In an attempt to reach a resolution, Amtrak's June 2019 proposal also allocated only 15% of the Great Hall to Metra. The calculations herein include the Great Hall the same as all other space at Chicago Union Station.

Miller Stmt. ¶ 65(f). The total Station Operations and Maintenance costs in 2018 dollars (based on the average of 2016 and 2017 costs), not including Dispatching costs, are \$12,801,311. *See id.* ¶ 67. Metra's share of those costs was [REDACTED] In Fiscal Year 2020 dollars, that amount is **\$6,475,039**.

While this is an objective, easily applied method for allocating Station Operations and Maintenance costs, deriving the inputs for the calculation required significant effort.

Determination of Allocable Square Footage. First, Amtrak calculated the allocable square footage for all spaces of Chicago Union Station based on available station maps. *See* Miller Stmt. ¶ 65(a); Amtrak0000184 (spatial analysis of Chicago Union Station) (attached as Ex. 13 to Miller Stmt.); Amtrak0008175 (CBRE Chicago Union Station Square Footage Schedule) (attached as Ex. 14 to Miller Stmt.).

Chicago Union Station has 12 levels: Sub-Basement, Basement, Concourse, Mezzanine, Street Level, and Floors 2 through 8. *See* Suchy Stmt. ¶ 13. Chicago Union Station is divided not only vertically, by floor, but also horizontally, into the Headhouse and the Concourse. *Id.* Metra does not use or occupy any part of the Sub-Basement or Floors 2 through 8, but uses or occupies areas on the other four floors—the Basement, Concourse, Street Level, and Mezzanine (the “Shared Floors”). *Id.* The individual spaces on the Shared Floors, including a description and square footage, can most easily be seen on a set of plans prepared before this proceeding began. *See* Amtrak0008171-74 (attached as Ex. 15 to Miller Stmt). The Parties have stipulated that only the Basement, Concourse, and Mezzanine levels are relevant for purposes of the Station Operations and Maintenance calculation. *See* May 18, 2020 Stip. ¶ 3(a)

Amtrak's calculation includes all of the square footage for the Basement – Concourse (i.e., the Basement level on the Concourse side of the building), the Concourse level, and the

Mezzanine level (in total, 354,162 square feet). *See* Miller Stmt. ¶ 65(e)(ii). Amtrak applied (and proposes that the Board apply) a [REDACTED] adjustment factor to the Basement – Headhouse (the Basement level on the Headhouse side of the building). That adjustment factor means that [REDACTED] of the 135,373 square feet should be included in the calculation. *See* Miller Stmt. ¶ 65(e)(iii). This adjustment factor accounts for the fact that the area is primarily devoted to mechanical and other uses such as a paved ramp to loading docks that do not consume more than a *de minimis* proportion of building maintenance and operations costs (e.g., utilities, janitorial services) compared to the main floors of Chicago Union Station. *See id.*

Based on this spatial analysis, the total allocable square footage for Chicago Union Station is 360,932 square feet. *See id.* ¶ 65(e)(iv).

Identification of the Areas from Which Metra Benefits. Second, Amtrak designated spaces at Chicago Union Station as common or as providing benefit solely to either Amtrak or Metra. Amtrak listed the individual spaces in a spreadsheet produced to Metra. *See* Amtrak0005283, Tab Spatial [sic] Analysis (attached as Exhibit 3 to Miller Stmt.). That spreadsheet lists 308 individual areas on the Shared Floors in the Basement, Concourse, Mezzanine and Street levels. The spreadsheet notes each area's location (Columns B & C), its square footage (Column F), its use (Column G), and whether it benefits Amtrak, Metra, or both entities (Column H). Amtrak undertook a close analysis of each area in Chicago Union Station, from spaces as large as the Great Hall to as small as individual janitorial closets. *See* Miller Stmt. ¶ 65(b)(i). As stated above, these areas and their square footage can be seen on building plans prepared by CBRE. *See id.*; Amtrak008171 (existing spatial plans for Chicago Union Station) (attached as Ex. 15 to Miller Stmt.).

Amtrak designated areas as solely for Metra's benefit, solely for Amtrak's benefit, or for both parties' benefit based on which entity (or both) can access or use the area. *See* Suchy Stmt. ¶ 15; Amtrak0005283, Tab Saptial [sic] Analysis Data. Amtrak made these designations with input from Amtrak employees at Chicago Union Station, based on whether one or both parties use the area or have a right to use the area.¹³ Areas from which Amtrak derives revenue, such as areas occupied by tenants paying rent to Amtrak, were designated as solely benefiting Amtrak. *See* Suchy Stmt. ¶ 15. These areas were designated as solely benefiting Amtrak even though Metra passengers and personnel could, in many cases, derive a direct benefit from them—i.e., restaurants in the food court—or pass through them.¹⁴

As an example of the areas listed in the spreadsheet attached as Exhibit 3, Row [REDACTED] identifies [REDACTED]. *See*

¹³ Amtrak designated areas associated with the Dispatching function separately, as the costs incurred for maintenance and operation of those areas are accounted for in the Dispatching allocation. Amtrak did not include in this spatial analysis the square footage of the platforms, several of which are used solely for Metra's benefit. The Station Operations and Maintenance costs include costs associated with those platforms. But the spatial analysis does not allocate to Metra the square footage of the platforms used solely for its benefit. Amtrak's decision not to include the platform square footage in the spatial analysis was strongly in Metra's favor, and is further evidence of Amtrak's attempt to be conservative in its allocation methodology, in order not to over-allocate to Metra, thus upsetting the balance that avoids cross-subsidization.

¹⁴ Amtrak started this spatial analysis in the context of contract negotiations with Metra. Amtrak's initial determinations are memorialized in Amtrak0005283, Tab Saptial [sic] Analysis Data. Those determinations formed the basis of the June 2019 Proposed Agreement. Subsequently, Amtrak further analyzed how Metra passengers and employees use Chicago Union Station, and the areas to which they have access. *See* Suchy Stmt. ¶¶ 15-16. That further analysis resulted in some revisions to the initial designations. For instance, during walk-throughs, Amtrak observed significantly higher traffic in the Great Hall during rush hour, signifying that Metra passengers use the Great Hall. *See id.* ¶ 19. That fact informed Amtrak's determination that the Great Hall should be designated a common-benefit area. *See id.* Additionally, Amtrak originally had identified a [REDACTED] on the Concourse level as a common-benefit area. *See id.* ¶ 20. However, Amtrak determined that the shoe-shine stand should be designated as Amtrak sole-benefit, because Amtrak derives revenue from the stand. *See id.* Amtrak adjusted its allocation accordingly. *See id.*

Amtrak0005283, Tab Saptial [sic] Analysis Data. It is [REDACTED]
[REDACTED]. *See id.*; Amtrak0008172 (attached as Ex. 15 to Miller Stmt.). It is designated as solely for the benefit of Metra. Amtrak0005283, Tab Saptial [sic] Analysis Data. Other Metra sole-benefit areas include the [REDACTED]
[REDACTED]. *See id.*; Amtrak0008171.

The common-benefit areas are similarly identified. [REDACTED]
[REDACTED]. *See* Amtrak0005283, Tab Saptial [sic] Analysis Data; Amtrak0008172. It is [REDACTED] square feet. *See* Amtrak0005283, Tab Saptial [sic] Analysis Data. Because it is available to employees and passengers of both Metra and Amtrak, it is designated as being for the common benefit of both Metra and Amtrak. *See id.*
[REDACTED]. *See id.*; Amtrak0008172. It is [REDACTED] square feet. *See* Amtrak0005283, Tab Saptial [sic] Analysis Data.
[REDACTED]. *See* Amtrak0008172. [REDACTED]
[REDACTED] of the passengers boarding and alighting from the North concourse are Metra passengers. *See* Amtrak0005283, Tab Rider Statistics. Amtrak has designated it a common-benefit area, since both Metra and Amtrak passengers and employees can access it. *See* Amtrak0005283, Tab Saptial [sic] Analysis Data.

That is consistent with Amtrak's approach overall. The fact is that although Metra almost certainly uses the North Corridor far more than Amtrak, that space is available to both Metra and Amtrak, and provides a benefit to both. It is not administratively feasible to divvy up the square footage for each individual area based on the relative use of each individual area and assign a different allocation factor to each area. Nor should the Board chop up the spaces to

make guesses about which portions of spaces Metra or Amtrak passengers use most often—e.g., Amtrak passengers crossing just a narrow swath of the North Corridor on a regular basis.

That goes both ways. Just as the Board should not allocate to Amtrak just ■ of the North Corridor, neither can the Board allocate to Metra only square footage for narrow paths that Metra passengers supposedly traverse most often. For instance, Amtrak and Metra passengers both access the Great Hall. *See* Suchy Stmt. ¶ 19. If Metra passengers are using the Great Hall, then it is providing a benefit to Metra even if Amtrak passengers use that space in a higher proportion than their numbers would indicate. Requiring detailed studies or, alternatively, speculation, about which benches Metra passengers use and how often, or whether they only walk along straight paths, is unworkable. Moreover, it is inconsistent with the statute, which recognizing the unworkability of any other approach, requires only a factor that “reasonably reflects” relative use.

When analyzing the proportion of square footage from which Metra benefits, and choosing a definition for “common benefit” square footage, the Board should recognize that square footage is just a proxy. The goal of the analysis is to identify the amount of total costs from which Metra benefits. When Metra passengers walk down a hallway, they are benefiting from the whole hallway being clean, even if they most often walk down the center of the hallway. In the winter, they are benefiting from all the air in the hallway being warmed by the HVAC system—not just a column of air in the center of the hallway. If Metra passengers or employees can access or use an area of Chicago Union Station, then that area benefits Metra for purposes of this calculation.

Calculation of Metra's Share of Square Footage. Third, Amtrak calculated the total square footage attributable to Metra for purposes of the allocation. The floor-by-floor totals are included here:

Level	Total Square Footage	Adj. Factor	Total Allocated	Common	Sole Benefit Metra	Sole Benefit Amtrak
Bas. – Headhouse	135,393					
Bas. – Concourse						
Concourse						
Mezzanine F. Court						
Mezzanine H.H.						
Total	489,555		360,932			
% of Total			100.00%			

The square footage for the common-benefit areas () square feet) was divided between Amtrak and Metra based on the 50% ridership/50% train movements formula—meaning about of the common-benefit square footage was assigned to Metra. *See* Amtrak0005283, Tab Rider Statistics, Cell C32 (of Chicago Union Station passengers are Metra's); Cell C43 (50/50 ridership/train moves split equals allocation to Metra). That amount (square feet) was added to Metra's sole-use square footage (8,120). This square footage number (square feet) represents the numerator in the fraction determining Metra's share of Station Operations and Maintenance costs. *See* May 18, 2020 Stip. ¶ 3(d)-(e). Amtrak used the ratio of the square footage attributable to Metra () divided by the total allocable square footage (360,932) to calculate the allocation factor for Metra's share of station operations and maintenance costs:

This is the allocation method the NECC adopted for Station Operations and Maintenance in the Section 212 Policy. *See* Section 212 Policy, § 5.4.1(5).

Amtrak applied this allocation factor to the total Station Operations and Maintenance costs for Chicago Union Station, less the costs allocated under Dispatching. *See* May 18, 2020

Stip. ¶ 3(f). The total allocable costs in 2018 dollars were \$12,801,311. Metra's share of those costs was [REDACTED]. In Fiscal Year 2020 dollars, that amount is **\$6,475,039**.

Amtrak's proposed costs and methodology are consistent with the statute and provide a reasonable method for determining the costs Metra must pay for station operations and maintenance. Amtrak respectfully requests that the Board adopt this approach.

3. Metra's Share of Policing Costs Should Be Based on Train Movements and Ridership.

To determine Metra's share of policing costs, the appropriate factor is a 50/50 mix of relative train movements and ridership. Using that factor, Metra should pay **\$4,092,980** in Fiscal Year 2018 dollars, adjusted to Fiscal Year 2020 dollars. The March 2018 proposal included [REDACTED] allocated to Metra for Amtrak police services at Chicago Union Station. *See* Amtrak0005283, Tab Summary-Operating. This amount was inflated to 2020 levels of \$4,092,980 in the June 2019 Proposed Agreement. *See* Miller Stmt. ¶ 62; Proposed Agreement at 20. The underlying methodology for both proposals was the same and based on:

1. The average of Amtrak's actual FY2016 and FY2017 applicable allocated costs ([REDACTED]);
2. Plus: the expense associated with [REDACTED] additional officers that were anticipated to be added in 2018;
3. Less: The cost of [REDACTED] that reflected the approximate expense of [REDACTED]
4. Plus: The cost associated with the Amtrak K-9 unit and [REDACTED] detectives assigned to Chicago Union Station; and
5. Plus: Applicable General and Administration (G&A) and inflation index expenses.

See Miller Stmt. ¶ 27; *see also* Patterson Stmt. ¶¶ 45-56, 64-69 (explaining the number of officers necessary, the K-9 unit and the structure of the APD). As explained above, the bulk of allocated policing costs were those associated with the [REDACTED] full-time APD employees (plus [REDACTED])

additional positions) in cost center [REDACTED]. This process is further explained in the Miller Verified Statement.

The total police cost was allocated to Metra based on a factor representing the Metra commuter service's portion of a usage metric that represents an equal weighting of ridership (measured by passenger on-off counts) ([REDACTED]) and train movements ([REDACTED] or [REDACTED]). See Amtrak0005283, Tabs Rider Statistics, Train Moves. Amtrak proposes that Metra be allocated [REDACTED] of the applicable policing costs.

Both the cost and the benefit of policing are directly tied to the number of trains and passengers traveling through the station. It is the passengers themselves who most benefit from Amtrak's police presence. But using ridership statistics alone would have allocated [REDACTED] of policing costs to Metra. Instead, Amtrak used an even split of ridership and train movements as the appropriate factor, resulting in the allocation [REDACTED] of the relevant costs to Metra. That is the same method the NECC adopted under Section 212 for the costs of policing train stations along the Northeast Corridor.

As explained above, Amtrak primarily asks the Board to include the costs associated with the [REDACTED] full-time APD employees who patrol Chicago Union Station (as of August 1, 2017) plus [REDACTED] additional positions. The basis for these costs and Metra's share is demonstrated in Amtrak's spreadsheets and Verified Statements. See Amtrak0008165 ([REDACTED]) (attached as Ex. 8 to Miller Stmt.); Amtrak0005283, Tab Police Cost Summary; Miller Stmt. ¶ 29. In 2020, it takes approximately [REDACTED] officers to fill the schedule at Chicago Union Station. See Amtrak0006421 (attached as Ex. 2 to Patterson Stmt.). The 2017 per position cost of an APD officer was [REDACTED]. See Amtrak0005283 at Tab Police Cost Summary. An officer's salary by itself was between [REDACTED] in 2017. See Amtrak0006416 (attached as

Ex. 3 to Patterson Stmt.). Therefore, the cost of these [REDACTED] officers alone is at least [REDACTED] million. It cannot be disputed that these costs are incurred for the common benefit of Amtrak and Metra, as they relate directly to the safety and security of Amtrak and Metra passengers, trains and operations. *See* 49 U.S.C. § 24903(c)(2).

Notably, Amtrak did not seek to allocate all of its policing costs. As explained in Deputy Chief Patterson's Verified Statement, Amtrak incurs significant costs for, among other things, training programs and policing equipment. Patterson Stmt. ¶¶ 78-81, 82-90. However, those costs were not included in the amounts allocated to Metra, *see* Miller Stmt. ¶ 32; Amtrak0005283, Tab Police Cost Summary, further demonstrating the reasonableness of Amtrak's approach. Additionally, labor costs for [REDACTED] [REDACTED] were not included as part of the direct cost allocation. Miller Stmt. ¶ 29(b). These costs are appropriate and necessary to safely, effectively, and efficiently patrol and secure Chicago Union Station. Patterson Stmt. ¶¶ 48, 57. Nonetheless, Amtrak did not include them in its proposal in an effort to compromise with Metra. And while it is free to add those back now given Metra's rejection of Amtrak's proposal, Amtrak will continue to exclude them for purposes of this proceeding.

While Metra's position is not clear, Metra may argue that the APD provides more of a benefit to Amtrak than Metra, and that the allocation methodology should therefore be altered. In particular, Metra may seek to rely on a statistical summary showing that [REDACTED] [REDACTED] [REDACTED] *See* Amtrak0006422 (attached as Ex. 1 to Tiernan Stmt.). But this would be wrong for several reasons.

First, a methodology relying on dividing up incidents would be inconsistent with the statute. The statute requires the Board to allocate costs based on “factors that reasonably reflect the relative use of the rail facility,” not “factors that reasonably reflect the relative use of the police.” Thus, even if the numbers are meaningful, which they are not, they are irrelevant.

Second, a methodology based on incidents ignores the clear benefits provided by the APD outside the context of incidents. As explained in detail in Deputy Chief Patterson’s Verified Statement, APD provides numerous important services other than responding to incidents that ensure the safety of passengers (the vast majority of which are Metra passengers), and enable the operation of the transportation that is the purpose of Chicago Union Station (the majority of which is operated on Metra trains). *See* Patterson Stmt. ¶¶ 14-32. Indeed, the mere presence of the APD provides a significant benefit to Metra. *See id.*

Third, the statistical summary numbers are essentially meaningless. Amtrak only produced them in this case because Metra asked for them. The Verified Statement of Bethany Tiernan (Criminal Intelligence Analysts at the APD Office of Intelligence and Analysis), the creator of Amtrak0006422, explains why the statistical summary numbers have no explanatory power. Put simply, it is not APD’s regular practice to assign or otherwise denote in its reporting whether Calls for Service (“CFS”) or incidents are associated with Amtrak or another entity. *See* Tiernan Stmt. ¶ 11. Thus, only when the information is volunteered or if the call or incident can be geolocated can there be an attribution. *Id.* ¶ 16; *see also* Patterson Stmt. ¶ 41. Geolocation data is an approximation—subject to human error of the inputting dispatcher or officer—and not always precise. *See* Tiernan Stmt. ¶ 20.

This is why the Report

██████████ *Id.* ¶ 26. Notably, because of the readily-identifiable key words for Amtrak, it was much easier to associate CFS and incidents with Amtrak than with Metra. Tiernan Stmt. ¶ 23. Amtrak trains have specific and consistent numbers, passenger name records and tickets with passengers' names. *Id.* ¶ 23. And spelling errors are more likely for Metra (e.g., "Metra" v. "Metro"). *Id.* ¶ 25. Accordingly, the final numbers more than likely do not accurately reflect the actual proportion of calls and incidents involving Amtrak and Metra passengers. Indeed, the sheer number of Metra passengers makes that unlikely. Patterson Stmt. ¶¶ 37-38; *see also* Tiernan Stmt. ¶ 33.

C. Total Share of Operating Costs

Amtrak's proposal is consistent with Section 24903(c)(2) and reflects the cost allocation methodologies previously approved by the NECC under Section 212. Costs incurred that benefit more than one operator were labeled as "common" costs. Both direct and indirect costs were included in order to represent "fully allocated" costs for the functional areas described above. No profit or management fee was included in the costs being allocated. Amtrak's cost allocation methodology provided that for shared-use territory at Chicago Union Station, Amtrak and Metra would share operating costs, including without limitation, Amtrak's standard cost categories (such as direct labor and materials, employee benefits, FELA, vacation and holiday, and the applicable Amtrak indirect support and general and administrative additives), based upon each Party's proportional amount of usage. Amtrak then calculated Metra's proportionate share of the cost categories based upon the metrics described above.

In total, under the Section 24903(c) methodology Amtrak proposes, Metra should pay **\$15,318,019** annually (in FY 2020 dollars) for the four primary areas of operating costs: Maintenance of Way (\$2.95 million), Dispatching (\$1.8 million), Stations Operations and Maintenance (\$6.475 million), and Policing (\$4.093 million). Amtrak has demonstrated that

these costs were actually incurred, stem from Metra's use of Amtrak's property or were costs incurred for the common benefit of Amtrak and Metra, and that the method to allocate the common costs complies with the statutory mandate to select a factor that "reasonably reflects the relative use of the" Chicago Union Station.

VI. THE BOARD SHOULD ADOPT AMTRAK'S PROPOSAL FOR DETERMINATION OF METRA'S SHARE OF CAPITAL COSTS.

In addition to the compensation for operating costs, Metra should pay Amtrak \$1,700,000 dollars for Tier 1 capital expenditures for Fiscal Year 2020, and an amount for Tier 2 to be determined based on joint project selection.

Metra is drastically undercontributing to capital costs at Chicago Union Station. Metra contributes less than [REDACTED] of costs to the projects that jointly benefit Amtrak and Metra despite the fact that Metra is the majority user of Chicago Union Station. As a result, Amtrak is effectively cross-subsidizing Metra's operations, because Metra is avoiding its full share of the costs associated with running trains at Chicago Union Station. It is imperative that the Board fix this problem and bring Metra's level of capital contribution into compliance with Section 24903.

Since Fiscal Year 2016, Metra has contributed about [REDACTED] a year to capital expenditures at Chicago Union Station. *See* Suchy Stmt. ¶ 29. Yet in Fiscal Year 2016, the capital costs at Chicago Union Station were [REDACTED]; in Fiscal Year 2017, that number rose to [REDACTED]. *See id.* ¶ 22; Amtrak0005283, Tab Capital-Common, Cells D40 & E40. Metra has been contributing less than [REDACTED] of capital while contributing more than three out of four train movements and nine out of ten passengers. The Board cannot permit that imbalance and cross-subsidization to continue.

Amtrak determined the annual capital investment necessary for Chicago Union Station based on a thorough analysis of ongoing capital projects, current state of good repair of assets,

and forecasted costs based on historical levels of capital investment. *See* Amtrak0000233 (spreadsheet reflecting the status of assets at Chicago Union Station) (attached as Ex. 17 to Miller Stmt.). Based on an inventory of track assets, and each asset's projected life cycle of replacement, Amtrak projected a combined annualized replacement cost of [REDACTED]. The cost to ensure all assets are in a state of good repair is an additional [REDACTED]. *See* Amtrak0000294, Tab Cost Summary, Cells E40 & F40 (attached as Ex. 2 to Suchy Stmt.).

Amtrak proposes a two-tiered capital program structured to ensure a baseline level of capital investment that Amtrak can put to its highest and best use—as seen by Amtrak—while also providing Metra with a seat at the table to select and guide larger capital projects. Tier 1 Investment is a primary level of committed capital investment that Metra would fund at a level [REDACTED] \$1,700,000 annually. Amtrak would fund an additional \$800,000 of Tier 1 investment. Thus, Metra would be responsible for 68% of Tier 1 Investment, [REDACTED]. [REDACTED] For Tier 1 projects, Metra would have input, but not the ability to unilaterally reject projects or add new projects—that discretion would remain with Amtrak.

Tier 2 Investment is a secondary level of investment consisting of an additional \$10 million annually for each of the first five years of the agreement. The parties will identify appropriate capital projects through a joint effort, and together will spend up to \$10 million on those projects annually. Amtrak proposes that the Parties should establish a working group to expedite joint planning efforts for capital improvement projects relating to Chicago Union Station. The working group would collaborate to identify appropriate capital projects for each fiscal year.

Because capital costs are highly variable from year to year, and project-specific, Amtrak asks the Board to order a methodology for Tier 2 cost allocation, rather than a specific dollar figure that might not be the right fit for each year. Responsibility for Tier 2 investment would be based on relative train movements, specific to the North or South Concourse, depending on the location of the project at issue. Metra operates [REDACTED] of trains at the North Concourse, and [REDACTED] of trains at the South Concourse. *See* Amtrak0000294, Tab Train Moves, Cells D57 & D58 (attached as Ex. 2 to Suchy Stmt.). For Tier 2 purposes, then, Metra should be responsible for [REDACTED] of capital expenditures for projects on the North side of the station, and [REDACTED] of capital expenditures for projects on the South side of the station.

As things currently stand, Metra is able to pick and choose which capital projects to fund, which allows it to free-ride on Amtrak's capital investment. Metra is forcing Amtrak to cross-subsidize Metra's operations through Amtrak's capital expenditures.

Metra proposes that the status quo continue, even though it violates Section 24903(a)(6) and (c)(1). In the Joint Submission of Issues, Metra suggested that the Board should order "the Parties [to] agree on capital expenditures as they arise." (Joint Submission of Issues at 3, ¶ 3.1.) Exactly that approach has led to the current undercapitalization and Station conditions. If the Board permits Metra to continue to pick and choose which capital expenditures to fund, Metra will continue to freeride on many critical projects, safe in the knowledge that Amtrak will have to foot the bill on its own if Metra declines to participate. Section 24903(c)(2) is designed to avoid exactly that outcome.

Finally, notwithstanding the Tier 1 and Tier 2 proposal, Metra also should be responsible for reimbursing Amtrak for its actual costs incurred for Metra sole-benefit capital projects, as this is plainly required by the statute.

VII. THE BOARD SHOULD IMPOSE ADDITIONAL TERMS FOR THE NEW AGREEMENT AS STATED IN THE PROPOSED AGREEMENT

The Proposed Agreement forms the basis for Amtrak's position in these proceedings under 49 U.S.C. § 24903. The Board should rely on the Proposed Agreement when imposing the additional terms of the forthcoming access agreement (the "New Agreement").¹⁵

Metra agrees that the Board can and should impose terms. *See* Metra Answers to Amtrak's Second Interrogatories (Nos. 31-37) (attached as Ex. 4). However, in discovery Metra claimed it had "insufficient information" as to what those terms should be. *See* Metra's Suppl. Answers to Amtrak's First Set of Interrogatories (No. 8) (attached as Ex. 5). This is strange—Metra has been operating at Chicago Union Station for more than 30 years and had Amtrak's proposed terms for six months at the time it made this claim. Metra further claims that the Board should only impose terms where the Parties cannot agree. *See* Metra Answers to Amtrak's Second Interrogatories (No. 37). But Metra has made no attempt to agree to terms. Moreover, as of the filing of this Opening Statement Amtrak still has no idea which terms proposed by Amtrak Metra disagrees with, or what terms Metra believes should be included in an agreement or imposed by the Board. Other than the vague pronouncement that "liability, indemnification and insurance obligations should be apportioned in such a manner where each party bears its own costs, so as to avoid cross-subsidization," *id.*, Metra has said nothing on this subject.

Amtrak addresses some of its key proposed terms and explains why they are necessary. Amtrak hopes that many of these terms will not be controversial and therefore will not be opposed by Metra. Amtrak will address any terms that Metra proposes or opposes in detail in its reply.

¹⁵Amtrak summarizes certain key terms below. However, the precise language of these terms is included in Amtrak's June 2019 Proposed Agreement (Ex. 1 to Suchy Stmt.) and Amtrak requests that the Board impose the terms as included therein.

1. Term

Proposal: A 10-year term.

Reason Proposal Should be Adopted: A 10-year term avoids the need for constant renegotiation or return to the Board. On the other hand, it allows it provides the appropriate time to address new or evolving circumstances.

2. Access to Chicago Union Station

Proposal: Metra, its contractors, and agents will have the right to enter upon and access Chicago Union Station to perform necessary duties with respect to Metra's operation of commuter rail service at Chicago Union Station. In turn, Metra will coordinate and communicate the scope of this access with Amtrak. Metra should provide a list of employees, contractors, and agents assigned to supervise and oversee commuter rail service at Chicago Union Station. Metra's operations and other personnel, and employees and officials of Metra's third-party contractors should also be able to access Chicago Union Station for purposes necessary to their roles, subject to notice to Amtrak and compliance with existing labor agreements, where applicable. Amtrak may, for cause, remove Metra or third-party contractor employees from Chicago Union Station.

Reason Proposal Should be Adopted: Such a provision is obviously necessary. Amtrak needs to know who is coming into the Station to do work and for what purposes. Amtrak also needs to ensure that any work is coordinated with what Amtrak is doing.

3. Training of Metra Personnel

Proposal: Amtrak may require that Metra personnel, including Metra's third-party contract employees, who access Chicago Union Station attend safety classes. Metra will pay Amtrak for the costs of training or other related services provided.

Reason Proposal Should be Adopted: The Board should ensure the agreement protects passengers, visitors and other Amtrak and Metra employees by mandating that those who are accessing Chicago Union Station on behalf of Metra have the proper safety training. And it is appropriate for Metra to pay the costs to Amtrak of providing this training. These are costs that Metra must incur for its personnel to be able to perform Metra-related services. Amtrak should not pay those costs for Metra.

4. Metra Equipment

Proposal: Metra should be responsible for providing necessary equipment for its commuter rail service. All such equipment must meet applicable legal and regulatory requirements. Amtrak may remove from service any unit of equipment that does not meet Amtrak's written safety or operation standards, or legal or regulatory requirements. Metra will not store Metra equipment at Chicago Union Station.

Reason Proposal Should be Adopted: Metra runs its own rail service and should provide the equipment necessary to run that service. As to storage, this simply confirms current practice and Amtrak does not expect Metra to seek any changes. The remainder is necessary for safety purposes. Amtrak cannot have unsafe or illegal equipment running through Chicago Union Station.

5. Schedule of Metra Operations

Proposal: Metra operations at Chicago Union Station should be scheduled as indicated on the Metra website. Amtrak will advise Metra of anticipated changes in the schedules of Amtrak intercity passenger trains in Chicago Union Station that will affect Metra. Amtrak will not unnecessarily change the schedule of its operation in a way that affects Metra's schedule without first considering reasonable alternatives.

If Metra wishes to increase service levels or modify its current service schedules, Metra will provide Amtrak with a written request. Permanent schedule changes will require amending the New Agreement. The Parties will jointly evaluate the available facilities and existing services to accommodate any request to increase or modify Metra service.

Reason Proposal Should be Adopted: In prior years, Metra was able to add service as it wanted. However, as explained above, Chicago Union Station is now operating at or above capacity. *See* Moritz Stmt. ¶ 10. Additions, especially without notice and Amtrak's agreement, can cause service disruptions and other problems. Changes to scheduling, especially Metra scheduling given that it operates the vast majority of the trains, requires close coordination between the Parties.

6. Emergency Disruptions

Proposal: In the event of emergency disruptions, Amtrak agrees to immediately notify Metra's terminal manager or designee. Amtrak will also prepare for Metra's review and approval an emergency communications protocol. Amtrak further agrees to inform Metra of its own service changes to ensure service continuity.

Reason Proposal Should be Adopted: This is a fairly standard provision to ensure appropriate handling of emergency situations.

7. Number of Trains Operated Under the Base Fee

Proposal: Metra will pay Amtrak an annual fee determined by the Board and consisting of the payments for Maintenance of Way, Dispatching, Station Operations and Maintenance and Police (the "Base Usage Fee"). In exchange for providing this compensation, Metra may operate 111,497 trains (scheduled revenue and deadheads) in and out of Chicago Union Station annually. This is the number of train Metra ran last year. If the number of Metra trains changes (up or

down), the amount paid by Metra will be adjusted by the total operating costs the Board awards divided by the total number of trains.

Reason Proposal Should be Adopted: The 111,497 trains is the number operated by Metra in 2017. It is Amtrak's understanding that this number is agreeable to Metra. Additional Metra trains would be permitted only with Amtrak's agreement. It is fair and reasonable that Metra pay Amtrak if that were the case. And a fair payment, easily calculable, would take the Base Usage Rate—which consists of the costs for Maintenance of Way, Dispatching, Stations Operation and Maintenance and Policing (i.e., the primary costs of operating the Station)—and divide it by the number of allowed trains. The actual amount depends on the Board's ultimate resolution of this matter.

8. Special Trains and Test Trains

Proposal: Metra should be able to request, in advance and in writing, the operation of Metra special trains and test trains, which should not be unreasonably denied by Amtrak. Metra will pay Amtrak the costs incident to such operations. That cost should be Metra's share of the total operating costs (dispatching, maintenance of way, station operations and maintenance, and policing) divided by 111,497, the number of trains Metra ran last year.

Reason Proposal Should be Adopted: If Amtrak agrees to allow special trains, Metra must bear the costs. The payment should be the same as for any additional trains, the calculation for which is discussed above in Number 7. These are costs that Metra, if it chooses to run special trains and test trains, is causing Amtrak to incur. While Amtrak will not unreasonably deny requests for run such trains, Amtrak needs to know when they will be run so that it can coordinate them within the constraints of the then-current scheduling.

9. Dispatching and Dispatching Feed

Proposal: Amtrak will dispatch Metra Commuter Rail Service in Chicago Union Station. Amtrak and Metra should meet periodically to review on-time performance.

Amtrak will continue to provide Metra will real-time access to view the commuter rail service out of the dispatching office. Data from the Amtrak dispatch operations center feeds directly into monitors accessed by Metra personnel. Where feasible, Amtrak will attempt to communicate to Metra in advance of any potential activities that may affect the Dispatching Feed. Metra will pay Amtrak \$500 per month for access to the Dispatching Feed.¹⁶

Reason Proposal Should be Adopted: This proposal is consistent with current practice. The amount is consistent with amounts paid under similar agreements. *See* Miller Stmt. ¶ 80(a).

10. Police and Security

Proposal: The Amtrak Police Department will patrol Chicago Union Station and areas jointly used by Amtrak intercity passenger rail service and Metra commuter rail service. Metra's police force may patrol and monitor areas used by Metra passengers and Metra Commuter Rail Service trains at Metra's discretion. The respective police forces will work cooperatively and meet periodically.

Reason Proposal Should be Adopted: This is consistent with current practice. Metra's payment to Amtrak for policing is discussed in great detail above. This proposal simply allows Metra to supplement Amtrak's efforts as it deems appropriate.

¹⁶ This amount covers the charge for the feed only. It does not include any hardware or software. *See* Miller Stmt. ¶ 80(a). Nor does it include any maintenance costs, which would be billed separately.

11. Risk of Liability and Indemnity

Proposal: Metra will indemnify, defend and hold harmless Amtrak, its officers, agents, employees, subsidiaries, and third parties (to the extent Amtrak is obligated to defend, indemnify or save harmless such third parties), irrespective of any fault of Amtrak or such persons, for all damage or liability for property damage, personal injury, or death, which would not have been incurred but for the existence of Metra commuter rail service and/or the performance of associated contract services.

This specifically includes, but is not limited to, any damage or personal injury to persons at Chicago Union Station purchasing a ticket or obtaining information in connection with Metra commuter rail service, or persons meeting or assisting a Metra passenger at Chicago Union Station. Metra will have no responsibility to defend or indemnify Amtrak for injury or death to Amtrak employees performing services on behalf of Metra, for which Metra is compensating Amtrak.

Amtrak will promptly tender to Metra the defense of all cases which would not exist but for the existence of Metra commuter rail service, and Metra shall be responsible for defense of, settlement, and the payment of any judgments arising from such claims. Amtrak will fully cooperate with Metra in the defense of such cases and claims, and Metra will keep Amtrak informed concerning the handling of such cases. In the event Metra fails to diligently defend such cases and claims, Amtrak may provide its own defense at Metra's expense. Metra's indemnity obligations will survive termination of the New Agreement.

Reason Proposal Should be Adopted: Amtrak proposes a "no fault" approach to liability allocation. This approach is used in other Amtrak agreements with commuter rail agencies and freight railroads. *See* Balderston Stmt. ¶ 9. It has also been recognized by the Board. *See Application of the Nat'l R.R. Passenger Corp. Under 49 U.S.C. 24309(a) – Springfield Terminal*

Ry. Co., Bos. & Maine Corp., & Portland Terminal Co., FD 33381, 3 S.T.B. 157, 1998 WL 1799020 (decided May 28, 1998) (“*Guilford*”). As explained in the Balderston Verified Statement, the “no fault” approach reduces both transaction costs and overall claim costs, and therefore benefits both Amtrak and Metra. *See* Balderston Stmt. ¶ 9. It avoids disputes between Amtrak and Metra. *Id.* And it makes Amtrak whole for Metra’s use of Amtrak’s property. *Id.*

The Balderston Verified Statement further explains the shortcomings of other possible liability approaches. *Id.* ¶¶ 6-8. In particular, it shows how other liability allocation methodologies cause, rather than resolve, disputes between Amtrak and Metra and increase costs to both. *Id.* Once Metra proposes a particular liability allocation methodology, Amtrak will address it further.¹⁷

12. Insurance

Proposal: Metra will procure and maintain liability insurance, with combined single limits for bodily injury and property damage of at least \$325,000,000 per occurrence and in the annual aggregate, with Amtrak designated as an additional insured. Such insurance shall cover Metra’s liability for injury or death of persons and damage to property, including coverage for punitive or exemplary damages, arising out of Metra commuter service and shall waive all rights of subrogation against Amtrak. Such insurance shall also cover Metra’s liability for injury or death to Metra employees who pursue FELA claims. Metra can elect to self-insure any or all of the \$325,000,000 subject to Amtrak’s approval, not to be unreasonably withheld. The proposal

¹⁷As explained in the Balderston Verified Statement, Metra currently pays Amtrak a “risk charge” between [REDACTED] annually to address Amtrak’s increased third-party liability due to Metra’s presence and operations in Chicago Union Station. Balderston Stmt. ¶ 5. Such a charge is not required by Amtrak’s liability proposal. Amtrak therefore has not requested a risk charge as part of any payments the Board should order Metra to make. Amtrak reserves the right to ask the Board to impose such a charge depending on the liability methodology Metra requests and/or the Board adopts.

also requires Metra to obtain property insurance sufficient to cover its equipment used in the Metra Commuter Rail Service and such coverage shall waive all rights of subrogation against Amtrak.

Reason Proposal Should be Adopted: These provisions are based on the statutory requirements of 49 U.S.C. § 28103. That provision imposes a cap on Amtrak's rail passenger liability, currently at \$295 million. However, it does not address liability for FELA and other third party (non-passenger) claims, which is the reason for the additional amount. Balderston Stmt. ¶ 11. Because the purpose of the insurance provision is to ensure that Metra's insurance covers the liability allocated to Metra, a no subrogation provision is necessary so that liability is not shifted back to Amtrak. *Id.* ¶ 12. Similarly, because 49 U.S.C. § 28103 permits punitive damages, if allowed under state law, coverage for punitive damages is also necessary.

13. Prorated Contract Years

Proposal: In the event the New Agreement terminates with one or more months remaining in the contract year, the annual costs will be prorated.

Reason Proposal Should be Adopted: This is a standard provision that is in Metra's favor. If Metra ceases to use the Station, it should stop paying once its use stops and not be required to pay for the entire year.

14. Inflation Index

Proposal: The Board should include the American Association of Railroads ("AAR") Quarterly Index of Chargeout Prices and Wage Rates (Table C), East, "material prices, wage rates and supplements combined (excluding fuel)" index as the inflation index to apply to Fiscal Year 2020 compensation for future years.

Reason Proposal Should be Adopted: Metra agrees that an inflation index should be applied annually to the various costs that will be imposed by the Board. *See* May 18, 2020 Stip

¶ 4. Metra proposes the Federal Reserve Personal Consumption Expenditure (“PCE”) index. *Id.* The Board has previously explained that “[w]e generally prefer the index that is most closely related to the type of costs being indexed.” *Guilford* at *9. That is clearly the AAR Index. The AAR index is a standard index used in agreements between railroads, because it is based on railroad costs. *See* Miller Stmt. ¶ 79(a). Importantly, it is an index directly tied to the types of costs incurred by railroads. *See Guilford* at *9 (adopting an index “more specifically related to the cost of providing rail service”). Thus, it is the right measure for determining the rate of change in Amtrak’s costs. Those costs, after all, are the central question in determining how much Metra should pay.

The PCE index, on the other hand, is a consumer-facing metric based on the cost of goods and services regularly consumed by individuals.¹⁸ Metra and Amtrak are not individuals, they are not consumers, and the proposed agreement is not one for the sale of consumer goods or services. *Guilford* at *9 (rejecting CPI as an index because “the CPI is a much broader index of costs that includes many items unrelated to rail operations”). Moreover, the PCE Index does not include labor costs, which are a large part of the costs Amtrak incurs.¹⁹ There is no reason to think the PCE index would accurately reflect changes in the costs Amtrak incurs in operating Chicago Union Station.

In the recent past, labor costs have risen more quickly than the PCE Index. *See* Miller Stmt. ¶ 79(b). Thus, use of the PCE would very likely result in Amtrak’s cross-subsidization of

¹⁸ *See* U.S. Bureau of Economic Analysis, *Personal Consumption Expenditures Price Index* (Apr. 30, 2020), <https://www.bea.gov/data/personal-consumption-expenditures-price-index> (last visited May 18, 2020) (“The PCE price index . . . reflects changes in the prices of goods and services purchased by consumers in the United States.”).

¹⁹ *See* Daniel Liberto, *Personal Consumption Expenditures (PCE)* (Oct. 8, 2019), <https://www.investopedia.com/terms/p/pce.asp> (last visited May 18, 2020) (the PCE Index “is comparable to the Consumer Price Index (CPI), which also focuses on consumer prices”).

Metra in future years, because Metra's compensation fee would increase more slowly than Amtrak's actual costs.

15. Payments and Annual Budget

Proposal: Payments Metra are due within thirty days of receipt of any invoice. Payments not made will be subject to an interest charge of 1.5 percent per month.

No later than May 1st of each Contract Year, Metra will provide Amtrak with its proposed operating plan and any anticipated Contract Services to be provided by Amtrak during the next Contract Year. Amtrak will provide Metra with a proposed annual budget for the next Contract Year that will include all amounts due to Amtrak including the applicable annual Recapitalization Program costs. No later than August 1st of each year, the Parties will agree upon an annual budget for the next Contract Year representing all compensation that will be due to Amtrak. Metra will make monthly payments toward the budget. Amtrak will provide reconciliation statements showing actual charges and any money owed, to Metra.

In the event that either Party disagrees with an invoice with respect to the determination of actual costs, or capital costs for recapitalization and system enhancements to Chicago Union Station, the Party in disagreement will promptly notify and provide to the other Party a written statement setting forth the nature and basis for the disagreement and also enumerating those aspects and amounts, if any, of such statements or determinations which are not in dispute.

Reason Proposal Should be Adopted: The proposal seeks standard payment terms and standard provision for challenging any invoices. The proposal for the budget agreement is simply to allow the Parties to work together smoothly and to avoid surprises. Amtrak believes this provision will provide great benefit to both Parties.

16. Ground Power

Proposal: Metra shall have the right to use the 480-volt standby electric power in Chicago Union Station to minimize the amount of locomotive exhaust at the Station and to facilitate a fuel cost savings for Metra. Metra shall pay a flat fee of \$10,500 each month (subject to the annual inflation index).

Reason Proposal Should be Adopted: Amtrak first notes that this proposal is slightly different than the June 2019 Proposed Agreement. There, Amtrak proposed the installation of meters and that Metra would pay actual cost. Amtrak understands that neither Party prefers the installation of meters due to the complications caused by wiring patterns and the potentially prohibitive expense, so has withdrawn that part of the Proposal.

Metra has never challenged the amount, which is reasonable and based on readings at the four tracks that currently have meters, *see* Miller Stmt. ¶ 77(b). Instead, Metra contends that ground power is not a cost of transportation, claiming it is only necessary because of Amtrak's air rights tenants. *See* Metra's Answers to Amtrak's First Interrogatories (No. 22) (attached at Ex. 3). This is simply wrong. The idea that limiting the amount of diesel exhaust in a closed train station is not a cost of operating trains has no basis. Indeed, it is not clear whether Metra's position is that it should not use the ground power at all, or whether Amtrak should pay for Metra's use. Amtrak looks forward to Metra's explanation. Moreover, Metra's payments to Amtrak will be offset at least in part by the fuel savings generated.

17. Other Terms

Amtrak's June 2019 Proposed Agreement contains many other has included other basic terms of the agreement, such as the requirement of payment for additional services Metra requests from Amtrak, non-assignment, severability, governing law, dispute resolution, ADA compliance, force majeure, etc. Amtrak asks the Board to adopt its proposed terms in total.

Amtrak understands that Metra may object to some of the terms, but does not know which ones. Amtrak will address any objections to the terms discussed above or the remaining terms if and when Metra explains any disagreement.

The key point, however, is that the terms Amtrak proposed are designed to ensure that the Parties have an understanding of their respective roles and responsibilities at Chicago Union Station. That is the purpose of a contract and, absent a contract, the purpose of the Board imposing terms. Absent contractual terms, Metra's attempt to use Chicago Union Station will not be successful.

VIII. CONCLUSION

For all the foregoing reasons, Amtrak respectfully requests that the Board impose the terms and compensation as proposed in this Opening Statement.

Dated: May 20, 2020

William H. Herrmann
Christine E. Lanzon
National Railroad Passenger Corporation
(Amtrak)
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Respectfully submitted,



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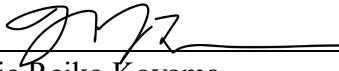
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Counsel for the National Railroad Passenger Corporation (Amtrak)

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

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Bradon J. Smith
Robert A. Wimbish
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By: 
Perie Reiko Koyama

Opening Stmt.

Ex. 1

FLETCHER & SIPPEL LLC

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January 10, 2020

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VIA ELECTRONIC MAIL

Neil K. Gilman, Esq.
Hunton Andrews Kurth LLP
2200 Pennsylvania Ave. NW
Washington, D.C. 20037
ngilman@hunton.com

Re: **Docket No. FD 36332**
National Railroad Passenger Corporation -- Petition
For Proceedings Under 49 U.S.C. § 24903(c)(2)

Dear Neil:

It was good to speak with you on December 23, 2019 to discuss the status of each party's various discovery requests. I want to reiterate my appreciation for your accommodation of two postponements of that conference for the personal and business emergencies I encountered. I also realize this letter is reaching you during your vacation; I hope you can accept my apologies for the timing.

At the December 23 conference, Metra committed to providing supplementary answers to Interrogatory Nos. 8, 9, 11, 12(b)-(c), 13(c), 15, and 17. As I generally understood the concerns—No. 8 was the only one discussed in significant detail—Amtrak indicated that Metra's responses that it had "insufficient information" on these interrogatories were unacceptable to Amtrak in that the responses did not identify the precise reasons for Metra's purported rejection of Amtrak's offer or the position Metra would take regarding allocation methodologies. As I explained, because this is a question of Amtrak's costs of providing transportation—a determination based on information solely within Amtrak's possession—Metra is unable to exhaustively identify the precise reasons it has been unable to come to agreement with Amtrak, in no small part because Amtrak did not explain how it used certain historical costs to estimate an allocation and value to Metra. Nevertheless, consistent with your request and the commitment Amtrak and Metra share to a cooperative discovery process, Metra's First Supplemental Responses are served concurrent with this letter. Among other things, the supplemental responses clarify that Metra has insufficient information regarding (1) what costs at CUS were considered for allocation; and (2) how Amtrak ultimately determined some costs, but not others, should be allocated.

Even so, to date Metra has asked for this information in two ways: Metra Interrogatory No. 11, amongst other things, requests Amtrak identify the calculations it

FLETCHER & SIPPEL LLC

Neil K. Gilman, Esq.

January 10, 2020

Page 2

performed to identify the costs behind the Proposed Agreement. Amtrak has declined to answer substantively. Interrogatory No. 44 requested Amtrak identify the specific ledger entries and accounting records for the costs it incurred for the benefit of Metra; Amtrak identified general account codes but has since clarified that this list is over inclusive—costs not attributable to Metra fall under these general account codes, and, if I understand the implication, there is no limitation, designation, or marker within Amtrak's system of accounts that attributes costs to Metra. (Gilman email of Dec. 8, 2019). How costs were selected for allocation remains unclear, which Metra's Third Interrogatories and Request to Produce attempt to resolve.

There would appear to be an incongruity in positioning at this point—while Amtrak has outlined its theory of the case in its petition for relief by incorporating its "Proposed Agreement" and its underlying allocations, Metra has not made comparable assertions. Indeed, Metra was under no obligation to have an allocation methodology during the pendency of commercial negotiations—only with Amtrak's petition for relief was the issue joined. To date, Metra has not determined with certainty the allocation methodologies it will propose. Moreover, to give an answer today on an allocation methodology, simply to have it altered, modified, or discarded in an opening statement could have the appearance of gamesmanship or purposeful misleading in discovery. Metra is not required to put forward any allocation methodology until its opening statement, after the proponents of its verified statements have reviewed all evidence. The only reason Metra was able to serve discovery on Amtrak's methodology was due to Amtrak's adoption thereof in its petition for relief. In any event, there is no prejudice to Amtrak as it will have ample opportunity to respond to Metra's case-in-chief in accordance with the joint procedural schedule.

Turning to other matters regarding the completion of discovery, it is our expectation that written discovery will be complete a reasonable time before depositions. With regard to Metra's Second Interrogatories and Requests to Produce served November 22, 2019, please let us know when we can expect a response—but our expectation would be no later than January 15, 2020. In light of the service of the Metra's Third Interrogatories and Requests to Produce, written discovery will be completed on January 27, 2020. With this in mind, we appreciate, and accept, Amtrak's offer to permit Metra to depose Amtrak personnel the first week of February, as you conveyed to me by phone the third week of December. Per my discussion with Mr. Waskom on January 7, 2020, I am reviewing available dates in the last week of January and first week of February for Metra personnel.

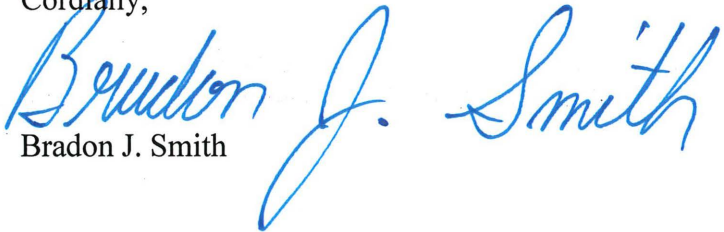
We appreciate that discovery can help identify the issues in dispute. Consistent with the Board's Procedural Order in this matter Metra has attempted to begin negotiations that would narrow the issues upon which each party will present legal theories and on which the Board will rule. We have yet to receive a response from Amtrak on these overtures.

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Neil K. Gilman, Esq.
January 10, 2020
Page 3

We remain hopeful that the scope of this proceeding can be limited to certain issues—namely, the standards and methods of determining cost allocation for specific functions at CUS (Station Operations and Maintenance; Dispatch; Policing; Maintenance of Way)—though the precise contours of the standards and methods may not be evident until the first pleading (except as a party has otherwise committed to arguing). Upon our agreement to identify those issues of disputed standards to the Board, and ensuing resolution thereof, we are confident that a shared review of costs can resolve factual concerns on an ongoing basis beyond this proceeding. Please respond to our working draft submitted on October 16, 2019 for your consideration so that we can mutually work to meet the January 30, 2020 deadline for a Joint Issues Submission.

Cordially,



Bradon J. Smith

cc: Thomas Waskom, Esq.
Perie Royokama, Esq.
Thomas J. Litwiler, Esq.
Robert A. Wimbish, Esq.
Thomas J. Healey, Esq.

Opening Stmt.

Ex. 2

(Excerpted from Metra's Responses to
Amtrak's First Requests for Admission)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

METRA’S RESPONSES TO AMTRAK’S FIRST REQUESTS FOR ADMISSION

Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad (collectively “Metra”) hereby respond to Petitioner National Railroad Passenger Corporation’s (“Amtrak”) First Requests for Admission as follows:

GENERAL OBJECTIONS

Metra submits this response to Petitioner’s First Requests for Admission without waiving any objection to the relevance of any of the requests made by Petitioner or any other basis for which an objection may be made.

REQUESTS FOR ADMISSION

1. Admit that Exhibit A is a true and correct copy of the May 1, 1984 Agreement (the “1984 Agreement”) previously governing Metra’s access to and use of Chicago Union Station.

RESPONSE: ADMITTED.

2. Admit that Exhibit B is a true and correct copy of the May 1, 1988 Amendment to the 1984 Agreement.

RESPONSE: ADMITTED.

3. Admit that Exhibit C is a true and correct copy of the Fourth Amendment

to the 1984 Agreement.

RESPONSE: ADMITTED.

4. Admit that Metra's contractual access to Chicago Union Station under the 1984 Agreement expired on July 29, 2019.

RESPONSE: DENIED. The 1984 Agreement granted Metra access to Chicago Union Station. Metra avers that the 1984 Agreement did expire, but that access did not expire. Metra further avers the precise nature of that right was not necessarily contractual and may have been a leasehold, other proprietary right, or other non-contractual occupancy right arising pursuant to federal rail transportation policy.

5. Admit that Metra's access to Chicago Union Station was temporarily extended during the pendency of these proceedings pursuant to the Board's interim order dated July 26, 2019.

RESPONSE: DENIED. Metra and Amtrak have agreed that Metra may continue to occupy and make use of certain parts of Chicago Union Station, and that the Board ratified that arrangement in its July 26, 2019 order.

6. Admit that Metra's current annual operating contribution is \$9.84 million.

RESPONSE: DENIED. The request is vague with regard to what an "operating contribution" is and such sum is not referenced under Section Five of the 1984 Agreement. The 2019 year-to-date amounts paid to Amtrak pursuant to Section Five is \$9,003,384.38; the monthly fraction thereof is subject to a quarterly adjustment.

7. Admit that Metra's current discretionary investments for capital or Capital Projects at Chicago Union Station average \$3.82 million per year or less.

RESPONSE: DENIED. The request is vague, and Metra has insufficient information to identify over what period, and based on what sums, the purported average advanced by Amtrak in this request has been computed.

Metra-share but does not do so on any stated assumption or calculation that the percentage is based on passenger counts.

13. Admit that Metra has approximately 40% more Train Movements at Chicago Union Station than it did when the 1984 Agreement was negotiated.

RESPONSE: ADMITTED.

14. Admit that Metra's passengers now comprise over 90% of the passengers boarding and alighting trains at Chicago Union Station annually.

RESPONSE: DENIED. Metra has insufficient information to know the number of persons who board and alight Metra and non-Metra trains at Chicago Union Station annually, nor does Metra count, estimate, or calculate the number of persons who both board and alight Metra, but rather maintains figures on persons who board or alight trains.

15. Admit that Metra's trains now comprise over 77% of the Train Movements at Chicago Union Station.

RESPONSE: DENIED. Metra has insufficient information to know the number of Train Movements of non-Metra trains at Chicago Union Station.

16. Admit that Metra passengers are permitted to utilize and access all areas and services open to the public in Chicago Union Station.

RESPONSE: ADMITTED.

17. Admit that Metra passengers are permitted to utilize and access the same public areas and services in Chicago Union Station as Amtrak passengers.

RESPONSE: DENIED. It is unclear, based upon Amtrak-derived materials now in Metra's possession, whether the Great Hall component of Chicago Union Station is intended for the use of Metra passengers, or is instead reserved exclusively for the benefit of Amtrak passengers. See Exhibit A.

18. Admit that the Amtrak Police Department responds to calls for service from Metra staff and Metra passengers.

Opening Stmt.

Ex. 3

(Excerpted from Metra's Answers to
Amtrak's First Set of Interrogatories)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

METRA'S ANSWER TO AMTRAK'S FIRST INTERROGATORIES

Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad (collectively "Metra") hereby answers Petitioner National Railroad Passenger Corporation's (collectively "Amtrak") Interrogatories as follows:

GENERAL OBJECTIONS

Metra incorporates the following objections into each discovery request:

1. Metra objects to Petitioner's interrogatories to the extent that they call for the production of information that is protected from disclosure by the attorney-client privilege.
2. Metra objects to Petitioner's interrogatories to the extent that call for the production of information that is protected from disclosure by the attorney work-product privilege.
3. Metra objects to Petitioner's interrogatories to the extent that they seek to impose any obligations on Metra beyond those permitted under the Board's Rules of Practice of 49 C.F.R. Part 1114, Subpart B.

ANSWERS TO INTERROGATORIES

1. Please state the number of passengers boarding and alighting Metra trains at Chicago Union Station annually from FY 2015 through FY 2019.

ANSWER: Metra objects to the extent that these interrogatories call for the production of information that is protected from disclosure by the attorney-client privilege or otherwise impose obligations beyond the Board's Rules of Practice. Notwithstanding these objections, Metra has not performed a count of the number of passengers who board and alight Metra trains at Chicago Union Station from FY 2015 through FY 2019. Metra has estimated the number of passengers boarding or alighting at Chicago Union Station as follows:

2015: 33,490,588

2016: 33,031,311

2017: 32,468,290

2018: 31,609,551

Metra further references its response to Amtrak Request for Production ("RFP") No. 3 made contemporaneously with these Answers.

2. Please state the percentage of Metra passengers boarding and alighting trains at Chicago Union Station annually from FY 2015 through FY 2019.

ANSWER: Metra objects to the extent that these interrogatories call for the production of information that is protected from disclosure by the attorney-client privilege or otherwise impose obligations beyond the Board's Rules of Practice. Metra also objects because the term "percentage of" Metra passengers boarding and alighting trains is vague, and it is unclear what the "percentage of" is intended to denote. If intended to denote the percentage of all passengers at Chicago Union Station, Metra has insufficient knowledge to answer this interrogatory. Available passenger counts are contained in business records Metra is producing

5. Please state the percentage of Metra Train Movements through Chicago Union Station (as compared to non-Metra Train Movements) annually from FY 2015 through FY 2019.

ANSWER: Metra has insufficient information regarding non-Metra Train Movements to state the percentage of Metra Train Movements.

6. Please state any projections for FY 2020 through FY 2024 of Metra's Train Movements at Chicago Union station during those years. In your answer, please separate the number of trains into scheduled trains and other trains, which include i) special trains, ii) extra trains, and iii) deadhead moves.

ANSWER: Metra objects to the extent this may require Metra to undertake a study or other analysis not already undertaken. Metra further objects to the Response on the basis that "Train Movements"; "special trains" and "extra trains" are vague. Notwithstanding these objections, Metra does not project future Train Movements.

7. Please state the time period, conducting entity, nature, and scope of any property appraisals and/or financial analyses involving Chicago Union Station by or conducted on behalf of Metra, including but not limited to internal analyses or analyses conducted by Jones Lang LaSalle, Inc., and Quandel Consultants, LLC.

ANSWER: Metra objects to Petitioner's interrogatories to the extent that said interrogatories call for the production of information that is protected from disclosure by the attorney work-product privilege or requests information already within the possession of Amtrak. Notwithstanding this objection, an "Appraisal Report" dated April 26, 2019 was conducted by JLL Valuation and Advisory Services, LLC.

8. If you decline to accept the terms of Amtrak's proposed Access Agreement dated June 4, 2019, please state all facts and identify all documents explaining your position.

ANSWER: Metra has insufficient information as to the basis of any purported declination of Amtrak's proposed Access Agreement.

9. Please state your position regarding the proposed allocation of costs between Amtrak and Metra. If you have a proposed Cost Allocation methodology,

please include this in your answer.

ANSWER: Metra has insufficient information to propose allocation. Notwithstanding its objection, Metra's position is that the proposed allocation of costs between Amtrak and Metra should use factors that reasonably reflect the relative use of rail property, and that no single methodology (e.g., train counts, train movements, passenger counts, passenger movements, spatial allocation, or any combination thereof) is universally appropriate for every cost Amtrak may seek to allocate. Metra further states that any allocation must not result in the cross subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation. Metra has insufficient information to propose a Cost Allocation methodology for any particular cost.

10. Please identify the person(s) affiliated with Metra most knowledgeable on the issues of Metra's proposed payments to Amtrak for each of Capital Projects, Maintenance of Way, and Station Operations and Maintenance at Chicago Union Station.

ANSWER: Metra has insufficient information to answer with regard to the payments it proposes in this matter and reserves its right to update seasonably upon further developments. Notwithstanding this objection, Metra identifies:

Capital Projects:	Thomas Crowley, L.E. Peabody
Maintenance of Way:	Bob Moore, Quandel
Station Operations and Maintenance :	Thomas Crowley, L.E. Peabody and Bob Moore, Quandel.

11. Please state your position with respect to proposed compensation to Amtrak for Capital Projects, including whether Metra should compensate Amtrak for Capital Projects and/or a Recapitalization Program and, if so, how much and why.

ANSWER: Metra has insufficient information to propose compensation, and objects to the request to the extent compensation is over-inclusive beyond costs incurred. Notwithstanding this request, Metra's position is that Amtrak may recover costs where a Capital Project or Recapitalization is a cost of transportation for the benefit of Metra that does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation. Metra further states as follows:

(Interrogatory cont.): Please include in your answer:

- a. A description of the composition and calculation of the compensation amount.

ANSWER: Metra's compensation to Amtrak should reasonably reflect Metra's proportional and relative use of the Capital Project. To the extent a Capital Project includes an "enhancement" for which Metra incurs no discernible benefit in the provision of commuter transportation, Metra should not compensate Amtrak for such enhancements. Metra should not be required to contribute to a Capital Project where an underlying asset has a residual useful life and remains in a state of "fair" or "good" repair except with the consent of Metra.

- b. A description of Capital Projects that Metra supports and does not support, including projects you view as "directly impacting Metra customers."

ANSWER: Metra has inadequate information as to whether any Capital Projects are necessary so as to be supported by Metra.

- c. A description of your proposal for timeline of completing the Capital Projects.

ANSWER: Metra has inadequate information as to whether any Capital

Projects are necessary, or might become necessary, so as to propose a timeline for completing the Capital Projects.

- d. The basis for any disagreement with Amtrak's proposal on Capital (i.e. the Tier 1 Investment and Tier 2 Investment under the CUS Recapitalization Program) set forth in the June 4, 2019 proposed Access Agreement, including an explanation of all facts and an identification of all documents explaining your disagreement.

ANSWER: Metra has inadequate information to state its position and has insufficient information to state the basis for any purported disagreement. Notwithstanding this objection, Metra states that its consent—not to be unreasonably withheld—and availability of funding (whether internal to Metra or by outside contributions, grants, or appropriations) are both required for any Capital Project from which Metra will receive a benefit.

12. Please state your position with respect to proposed compensation to Amtrak for Maintenance of Way, including whether Metra should compensate Amtrak for Maintenance of Way and, if so, how much and why.

ANSWER: Metra has inadequate information to state its position and objects to the vagueness of “compensation” as over-inclusive, beyond costs incurred. Metra's position is that Amtrak may recover costs for Maintenance of Way where such costs incurred in Amtrak providing transportation for the benefit of Metra; notwithstanding this objection, Metra states that Maintenance of Way costs are recoverable under 49 U.S.C. § 24903(c)(2).

(Interrogatory cont.) Please include in your answer:

- a. Your proposed definition of “maintenance of way” if it differs from the definition provided above.

ANSWER: Metra agrees to Amtrak's definition for the purposes set forth herein.

- b. A description of the composition and calculation of the compensation amount.

ANSWER: The costs of Maintenance of Way should be composed of costs of inspection, preventative maintenance in accordance with industry practice; and repair of the underlying assets but should not include any catastrophic or casualty damage to, or premature repair or replacement of, the asset due to (1) Amtrak's own failings or (2) arising as a result of the action, inaction, or presence, of a person beyond Metra's reasonable control (e.g., faulty manufacture, installation, maintenance, or repair of a Maintenance of Way asset or in the instance falling concrete supporting an air rights tenant damages a platform). Metra has insufficient information to calculate the compensation amount for Maintenance of Way at Chicago Union Station.

- c. The basis and a description, including any assumptions made, for calculating overhead costs.

ANSWER: Metra has insufficient information to address what Amtrak has identified as "overhead" but states that Metra should only be responsible for those costs actually incurred by Amtrak as a result of providing transportation at Chicago Union Station.

- d. The basis for any disagreement with Amtrak's proposal on Maintenance of Way, as set forth in the June 4, 2019 proposed Access Agreement, including an explanation of all facts and identification of all documents explaining your disagreement.

ANSWER: Metra has insufficient information to state the basis for any purported disagreement with Amtrak's proposal on Maintenance of Way.

- 13. Please state your position with respect to proposed compensation to Amtrak for Station Operations and Maintenance, including whether Metra should compensate Amtrak for Station Operations and Maintenance and, if so, how much and why.

ANSWER: Metra has inadequate information to state its position and objects to the vagueness of "compensation" as over-inclusive, beyond costs incurred. Notwithstanding this objection, Metra's position is that Amtrak may recover costs where Station Operations and

Maintenance is a cost of transportation for the benefit of Metra that does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation.

(Interrogatory, cont.) Please include in your answer:

- a. Please provide your proposed definition of “station operations and maintenance” if it differs from the definition above.

ANSWER: “Station Operations and Maintenance” shall mean rail property, other than the Maintenance of Way assets (1) that are accessible to Metra or its passengers and are physically occupied by the same on a greater than *de minimis* basis; (2) that convey a greater-than marginal benefit to Metra in providing transportation to commuters; (3) for which Amtrak incurs a cost in excess of revenue received from sources other than Metra; and (4) where such cost is a cost incurred related to the movement of persons on trains, or facilities related to the transportation of persons (excluding those facilities accessible and utilized by persons not boarding or alighting trains).

- b. A description of the composition and calculation of the compensation amount.

ANSWER: The composition of Station Operation and Maintenance should be on a spatial allocation of rail assets physically occupied by Metra or its passengers on a more than *de minimis* basis reflecting a proportionate usage factor derived from (1) train counts and (2) passengers.

- c. The basis for any disagreement with Amtrak’s proposal on Station Operations and Maintenance set forth in the June 4, 2019 proposed Access Agreement, including an explanation of all facts and identification of all documents explaining your disagreement.

ANSWER: Metra has inadequate information to address this interrogatory.

14. Please identify the person(s) affiliated with Metra most knowledgeable with respect to Dispatching at Chicago Union Station.

ANSWER: Richard Oppenheim, Assistant Superintendent.

15. Please state your position with respect to proposed compensation to Amtrak for Dispatching, including whether Metra should compensate Amtrak for Dispatching and, if so, how much and why.

ANSWER: Metra has inadequate information to state its position and objects to the vagueness of “compensation” as over-inclusive, beyond costs incurred. Metra’s position is that Amtrak may recover costs for Dispatching where the cost is for the benefit of Metra and does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation.

(Interrogatory, cont.) Please include in your answer:

- a. Your proposed definition of “dispatching” if it differs from the definition provided above.

ANSWER: Metra agrees to Amtrak’s definition for the purposes set forth herein.

- b. A description of the composition and calculation of the compensation amount.

ANSWER: “Dispatching” costs are composed of the number of personnel-directed Train Movements resulting in a cost Amtrak incurs for the benefit of Metra. Metra has inadequate information to calculate compensation for Dispatching.

- c. The basis and a description for calculating shifts of Dispatching.

ANSWER: Metra objects to Petitioner’s interrogatories to the extent it seeks information beyond the requirements of the Board’s Rules of Practice, Metra has inadequate information to calculate Dispatching shifts under either definition.

- d. The basis for any disagreement with Amtrak's proposal on Dispatching set forth in the June 4, 2019 proposed Access Agreement, including an explanation of all facts and identification of all documents explaining your disagreement.

ANSWER: Metra has inadequate information to answer with regard to a purported disagreement on Dispatching (as that term was used in the Proposed Agreement). Notwithstanding this objection, time spent directing Train Movements made by Dispatchers at Chicago Union Station for the benefit of locomotive-powered consists outside the Chicago Union Station terminal area should be subtracted from Amtrak's costs incurred in providing transportation.

16. Please identify the person(s) affiliated with Metra most knowledgeable with respect to Policing at Chicago Union Station.

ANSWER: Paul Riggio, Deputy Chief of Police.

17. Please state your position with respect to proposed compensation to Amtrak for Policing, including whether Metra should compensate Amtrak for Policing and, if so, how much and why.

ANSWER: Metra has inadequate information to state its position and objects to the vagueness of "compensation" as over-inclusive, beyond costs incurred. Metra's position is that any Amtrak may recover costs for Policing where the cost is for the benefit of Metra and does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation.

(Interrogatory, cont.) Please include in your answer:

- a. Your proposed definition of "policing" if it differs from the definition provided above.

ANSWER: Metra agrees to Amtrak's definition of "Policing."

- b. A description of the composition and calculation of the compensation amount.

ANSWER: Metra has inadequate information to answer this interrogatory. Notwithstanding this objection. "Policing" compensation should be composed of Metra's proportionate share of costs (based on a rail property usage factor) incurred for its benefit at the rail property of Chicago Union Station, namely, wages, and operating costs incurred as a result of time spent by police officers policing the rail property of Chicago Union Station for the benefit of commuters and excluding policing activities undertaken by the same personnel only tenuously related to the safety of commuters (e.g., narcotics trafficking, human trafficking, and other federal, interstate concerns) or occurring beyond Chicago Union Station rail property boundaries.

- c. The basis for any disagreement with Amtrak's proposal on Policing set forth in the June 4, 2019 proposed Access Agreement, including an explanation of all facts and identification of all documents explaining your disagreement.

ANSWER: Metra has inadequate information to answer this interrogatory with regard to a purported disagreement on Policing.

18. Please state the number of calls for service per year that the Metra Police Department received for incidents occurring at Chicago Union Station from January 1, 2016 to the present.

ANSWER: Metra objects to the extent it may require Metra to undertake a study or other analysis not already undertaken, and because the interrogatory is unlikely to lead to relevant evidence. Notwithstanding this objection, Metra has received an average of 67 calls per year for service from January 1, 2016 to present.

19. Please state the number of calls for service that the Metra Police Department self-initiated at Chicago Union Station while patrolling at Chicago Union Station.

ANSWER: Metra objects to the extent it may require Metra to undertake a study or other analysis not already undertaken, and because the interrogatory is unlikely to lead

to relevant evidence. Notwithstanding this objection, Metra has self-initiated an average of 7 calls per year on average since January 1, 2016.

20. Please state the number of calls for service at Chicago Union Station that were redirected by the Metra Police Department to the Amtrak Police Department.

ANSWER: Metra objects to the extent it may require Metra to undertake a study or other analysis not already undertaken, and because the interrogatory is unlikely to lead to relevant evidence. Notwithstanding this objection, Metra Police redirected 55 calls on average per year since January 1, 2016.

21. Please state whether Metra contends that it should provide Policing for Chicago Union Station under a new Access Agreement and, if so, please provide the following:

ANSWER: Metra objects to the interrogatory as unlikely to result in the manifestation of evidence relevant to the subject of this proceeding, which is the costs Amtrak incurs in the provision of transportation, and exceeds the requirements of the Board's Rules of Practice by requiring Metra to make its own proposal to Police Chicago Union Station. Notwithstanding this objection, Metra is willing to discuss providing a Policing proposal at Chicago Union Station, but has insufficient information to answer the subparts of this interrogatory that would form the basis for such an irrelevant proposal.

- a. Labor rates and wages for the Metra police force;
- b. Breakdown of full-time and part-time employees in the Metra police force;
- c. How many employees in the Metra police force would receive overtime pay;
- d. Job descriptions and scope of duties for the Metra police force, including whether police force would include anti-terrorism, K9, TSA, or other specialized units;
- e. Patrol or shift schedules;
- f. Necessary equipment for the Metra police force;

g. Typical Metra police staffing and budgeting at large stations such as Chicago Union Station; and

h. Metra's proposal for the number of personnel by shift that Metra would utilize at Chicago Union Station.

22. Please state your position with respect to proposed compensation to Amtrak for ground power, including whether Metra should compensate Amtrak for ground power and, if so, how much and why.

ANSWER: The cost of ground power is a cost not of providing transportation, but of accommodating air rights tenants.

23. Please identify the person(s) affiliated with Metra most knowledgeable with respect to passenger usage of the facilities and services at Chicago Union Station.

ANSWER: Dave Rubino, Director of Station Services.

24. If you contend that, on average, Metra passengers remain in Chicago Union Station for less time than Amtrak passengers, please state all facts and identify all documents supporting or relating to your contention, including the median and average times both Metra and Amtrak passengers remain in Union Station.

ANSWER: Metra contends that intercity train passengers using Chicago Union Station as a departure, terminal, or layover spend a longer average dwell-time in Chicago Union Station than the average commuter. Metra has insufficient information with regard to the residual elements of this interrogatory. Notwithstanding this objection, Metra identifies its responses to Amtrak's First Requests for Production Nos. 2, 7, and 14.

25. If you contend that Metra passengers utilize Chicago Union Station building services less than Amtrak passengers, please state all facts and identify all documents supporting or relating to your contention.

ANSWER: Metra objects to this Interrogatory on the basis that to "utilize . . . building services less" is vague. Notwithstanding this objection, Metra contends that intercity train passengers using Chicago Union Station as a departure, terminal, or layover spend a longer average dwell-time in Chicago Union Station than the average commuter. Metra has insufficient

Opening Stmt.

Ex. 4

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)

METRA’S ANSWER TO AMTRAK’S SECOND INTERROGTORIES

Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad (collectively “Metra”) hereby answer the Second Interrogatories of Petitioner National Railroad Passenger Corporation (“Amtrak”) as follows:

GENERAL OBJECTIONS

Metra incorporates herein objections previously stated in its answers to Amtrak’s First Interrogatories. Answers below are without prejudice to Metra’s later assertion of remedies under applicable law.

SECOND INTERROGATORIES

31. Do you contend that the Board does not have the authority under 49 USC § 24903(c)(2) to impose terms other than compensation?

ANSWER: No.

32. If your answer to Interrogatory No. 1 [sic] is anything other than an unequivocal “no,” state all legal and factual bases for your answer.

ANSWER: Not applicable. See Answer to No. 31.

33. If you contend that the Board does not have the authority under 49 USC § 24903(c)(2) to impose terms other than compensation, what terms would govern the relationship between Amtrak and Metra regarding the use by Metra of Chicago Union Station after the Board issues its Order in this matter?

ANSWER: Not applicable. See Answer to No. 31.

34. If you contend that the Board does not have the authority under 49 USC § 24903(c)(2) to impose terms other than compensation, what obligations would Amtrak owe Metra in exchange for the compensation to be determined by the Board?

ANSWER: Not applicable. See Answer to No. 31.

35. If you contend that the Board does not have the authority under 49 USC § 24903(c)(2) to impose terms other than compensation, what non-monetary obligations would Metra owe Amtrak in exchange for the compensation for Metra's use of Chicago Union Station?

ANSWER: Not applicable. See Answer to No. 31.

36. In the absence of terms agreed to between Metra and Amtrak or imposed by the Board, please explain in detail how each of the following will be determined or governed after the Board issues its Order:

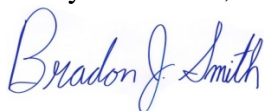
- a. Access or use by Metra employees, contractors, or agents of Chicago Union Station,
- b. Training of Metra employees, contractors, or agents accessing or using Chicago Union Station,
- c. Scheduling of Metra operations, including Metra commuter rail service,
- d. Changes to Metra service levels or schedules,
- e. Dispatching of Metra commuter rail service and use of the dispatching feed,
- f. Use of ground power,
- g. Police and security,
- h. Planning capital improvements,
- i. Emergency disruptions,
- j. Operation of special trains and test trains,
- k. Risk of liability and damage, indemnification,
- l. Insurance, including liability and property,
- m. Sharing of records and reports, including financial reports for compliance purposes, accident reports, emergency plans, and workplace policies,
- n. Dispute resolution, and
- o. Compliance with federal, state, and local laws.

ANSWER: Not applicable. See Answer to No. 31.

37. If you contend that the Board does have authority to impose terms, what terms do you seek to have imposed in this proceeding?

ANSWER: Metra has insufficient information to answer this Interrogatory at this stage of the proceeding. Notwithstanding this objection, to the extent Amtrak seeks to recoup costs defined in its Proposed Agreement, Metra seeks to have the Board impose terms requiring that – (1) Metra trains and passengers be permitted to access Chicago Union Station in perpetuity consistent with current usage and the parties’ course of dealing to date; (2) any future cost (including expansion of service) for which Amtrak seeks compensation be allocated in accordance with 49 U.S.C. § 24903(c)(2); and (3) future disputes to be adjudicated by the Board as necessary, consistent with its jurisdiction. Metra further avers that liability, indemnification and insurance obligations should be apportioned in such a manner where each party bears its own costs, so as to avoid cross-subsidization. More generally, Metra would seek to have the Board prescribe terms applicable to Metra’s use of Chicago Union Station, but only with respect to those terms, or elements thereof, upon which the parties are unable to agree in the course of negotiation.

Respectfully Submitted,



By: _____
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Robert A. Wimbish
Thomas J. Healey
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ATTORNEYS FOR METRA

Dated: December 16, 2019

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2019, a copy of the foregoing **Metra's Answer to Amtrak's Second Interrogatories** was served by electronic mail on:

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Bradon J. Smith

Opening Stmt.

Ex. 5

(Excerpted from Metra's First
Supplemental Answers to Amtrak First
Interrogatories)

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36332

NATIONAL RAILROAD PASSENGER CORPORATION –
PETITION FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)

**METRA’S SUPPLEMENTAL ANSWERS TO
AMTRAK’S FIRST INTERROGATORIES**

Respondents Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad (collectively “Metra”) hereby supplement their answers to Petitioner National Railroad Passenger Corporation’s (collectively “Amtrak”) Interrogatories as follows:

GENERAL OBJECTIONS

Metra incorporates its General Objections in its First Responses into these Supplemental Responses.

SUPPLEMENTAL ANSWERS

8. If you decline to accept the terms of Amtrak’s proposed Access Agreement dated June 4, 2019, please state all facts and identify all documents explaining your position.

ANSWER: Metra has insufficient information as to the basis of any purported declination of Amtrak’s proposed Access Agreement.

SUPPLEMENTAL ANSWER: Pursuant to discussion held with Amtrak counsel on December 23, 2019, Metra further objects to this Interrogatory on the basis of relevance insofar as any declination of Metra to accept the proposed Access Agreement in a commercial negotiation is irrelevant to the subject matter of this proceeding, which is the

appropriate allocation to Metra of costs incurred for transportation. Notwithstanding the foregoing objections and without prejudice to the sufficiency of its answer to date, Metra further states that at the time of the presentation of the proposed Access Agreement, Metra did not have adequate information regarding the costs Amtrak reviewed or utilized as the basis for the proposed Agreement, including what costs were incurred at Chicago Union Station; the basis of such costs; how Amtrak determined whether and how a given cost ought to be allocated to Metra; and whether such costs were reasonable.

9. Please state your position regarding the proposed allocation of costs between Amtrak and Metra. If you have a proposed Cost Allocation methodology, please include this in your answer.

ANSWER: Metra has insufficient information to propose allocation. Notwithstanding its objection, Metra's position is that the proposed allocation of costs between Amtrak and Metra should use factors that reasonably reflect the relative use of rail property, and that no single methodology (e.g., train counts, train movements, passenger counts, passenger movements, spatial allocation, or any combination thereof) is universally appropriate for every cost Amtrak may seek to allocate. Metra further states that any allocation must not result in the cross subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation. Metra has insufficient information to propose a Cost Allocation methodology for any particular cost.

SUPPLEMENTAL ANSWER: Pursuant to discussion held with Amtrak counsel on December 23, 2019, Metra further objects to this Interrogatory to the extent it requires Metra to disclose information protected by the attorney-client privilege and requires Metra to prematurely develop and state its legal theory of allocation prior to presentation of its opening statement. Notwithstanding these objections, at this time Metra does not have a

proposed Cost Allocation methodology with regard to Policing or Station Operations and Maintenance. As of the time of this supplemental answer, Metra generally agrees with the methodology—but not associated values—Amtrak used for Dispatch and Maintenance of Way calculations insofar as they rely on Metra’s proportion of Amtrak-defined “Train Movements.” However, any methodology Metra proposes will not be finalized until its opening statement.

11. Please state your position with respect to proposed compensation to Amtrak for Capital Projects, including whether Metra should compensate Amtrak for Capital Projects and/or a Recapitalization Program and, if so, how much and why.

ANSWER: Metra has insufficient information to propose compensation, and objects to the request to the extent compensation is over-inclusive beyond costs incurred. Notwithstanding this request, Metra’s position is that Amtrak may recover costs where a Capital Project or Recapitalization is a cost of transportation for the benefit of Metra that does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation. Metra further states as follows:

SUPPLEMENTAL ANSWER: Based on Amtrak’s definition of a Capital Project, Metra states that there should be no calculation of compensation for Capital Projects to the extent Metra has provided funding in whole or in part for the Capital Project or the Capital Project is subject to a written agreement with Metra. To the extent a Capital Project is not the subject of a Metra contribution or a written agreement, Amtrak Capital Project costs cannot be allocated to Metra until and unless they are specific, quantifiable, verifiable, and reasonable. In those instances, Metra’s contribution should be a suitable depreciation charge reflecting Metra’s proportionate use of the asset; upon complete depreciation, but where the asset has residual

15. Please state your position with respect to proposed compensation to Amtrak for Dispatching, including whether Metra should compensate Amtrak for Dispatching and, if so, how much and why.

ANSWER: Metra has inadequate information to state its position and objects to the vagueness of “compensation” as over-inclusive, beyond costs incurred. Metra’s position is that Amtrak may recover costs for Dispatching where the cost is for the benefit of Metra and does not result in cross-subsidization of intercity rail passenger, commuter rail passenger, and rail freight transportation.

(Interrogatory, cont.) Please include in your answer:

- a. Your proposed definition of “dispatching” if it differs from the definition provided above.

ANSWER: Metra agrees to Amtrak’s definition for the purposes set forth herein.

- b. A description of the composition and calculation of the compensation amount.

ANSWER: “Dispatching” costs are composed of the number of personnel-directed Train Movements resulting in a cost Amtrak incurs for the benefit of Metra. Metra has inadequate information to calculate compensation for Dispatching.

SUPPLEMENTAL ANSWER: Notwithstanding this objection, at the time of this supplemental response, Metra generally agrees with the methodology Amtrak used for allocating Dispatching cost, albeit not the values within the Proposed Agreement.

- c. The basis and a description for calculating shifts of Dispatching.

ANSWER: Metra objects to Petitioner’s interrogatories to the extent it seeks information beyond the requirements of the Board’s Rules of Practice, Metra has inadequate information to calculate Dispatching shifts under either definition.

Opening Stmt.

Ex. 6

(Excerpted from Amtrak's Responses to
Metra's First Interrogatories)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

AMTRAK’S RESPONSES TO FIRST INTERROGATORIES

Pursuant to 49 C.F.R. § 1114.26 and the Board’s Procedural Schedule in this matter, Amtrak submits these responses to the First Set of Interrogatories of the Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (Metra) served on November 4, 2019.

GENERAL OBJECTIONS

1. Amtrak objects to the Definitions and Instructions to the extent that such Definitions and Instructions exceed the scope of the Surface Transportation Board’s discovery rules, *see* 49 CFR §§ 1114.21–1114.31 and purport to impose on Amtrak undue burden and expense or raise issues untimely or inappropriate to the proceeding.

2. Amtrak objects to the Interrogatories to the extent the Interrogatories purport to require disclosure of information that was prepared in anticipation of litigation, constitutes attorney work product, reveals attorney-client communications, or is otherwise protected from disclosure under applicable privileges laws, or rules. In responding to these Interrogatories, Amtrak does not intend to waive, and shall not be construed as having waived, any privilege or protection, including but not limited to, the attorney-client, consultant, and work product privileges.

Notwithstanding its objections, Amtrak responds to Interrogatory No. 11 as follows:

Amtrak states that it has previously provided Metra voluminous information responsive to this request. That information is being produced and is more than sufficient for Metra to determine the bases for Amtrak's Proposed Agreement. Amtrak further states that it primarily used the following software to aid its calculation of compensation and composition of the Proposed Agreement: Excel and its general ledger system, SAP.

INTERROGATORY NO. 12:

Identify by day of week the average number of persons embarking on, connecting on, or terminating Amtrak services at Chicago Union Station based on the past five fiscal years.

RESPONSE TO INTERROGATORY NO. 12:

Amtrak incorporates its General Objections.

Notwithstanding its objections, Amtrak responds to Interrogatory No. 12 as follows:

Chicago Union Station handles approximately 10,000 Amtrak passengers on an average weekday. Average weekday ridership has been consistent for the past five years. Amtrak has sought more detailed information from the individuals most likely to possess such information but has been unable to locate more precise information (i.e., average ridership on each specific day of the week).

INTERROGATORY NO. 13:

Identify the annual number of persons embarking on connecting on, or terminating Amtrak services at Chicago Union Station for each of the past five fiscal years.

RESPONSE TO INTERROGATORY NO. 13:

Amtrak incorporates its General Objections. Amtrak further objects that ridership data is not available for FY 2019.

Notwithstanding its objections, Amtrak responds to Interrogatory No. 13 as follows:

Amtrak states that Amtrak's annual Chicago Union Station ridership for the past five fiscal years is as follows. Connecting passengers are counted in both the "Ons" and the "Offs".

FY14		
Ons	Offs	Total
1,694,031	1,683,228	3,377,259
FY15		
Ons	Offs	Total
1,651,653	1,643,977	3,295,630
FY16		
Ons	Offs	Total
1,626,193	1,620,924	3,247,117
FY17		
Ons	Offs	Total
1,698,648	1,689,403	3,388,051
FY18		
Ons	Offs	Total
1,651,288	1,642,352	3,293,640

INTERROGATORY NO. 14:

Identify whether the General Public can embark or terminate on non-Amtrak commercial motor coach service (not including Amtrak Thruway) at Chicago Union Station. If so, identify each motor coach carrier and any annual estimates, counts, or measures of persons traveling via commercial motor coach service to or from Chicago Union Station for the past five fiscal years.

RESPONSE TO INTERROGATORY NO. 14:

Amtrak incorporates its General Objections.

Notwithstanding its objections, Amtrak responds to Interrogatory No. 14 as follows:

Amtrak states that no non-Amtrak commercial motor coach (i.e., bus) service operates "at" Chicago Union Station. Greyhound and CTA bus service operates near Chicago Union Station, but buses load and unload outside Chicago Union Station. Greyhound tickets can be purchased

Opening Stmt.

Ex. 7

(Excerpted from METRA000160)

Commuter Rail System Station Boarding/Alighting Count



SUMMARY RESULTS Fall 2018

Division of Strategic Capital Planning

April 2019

Exhibit VIb – Downtown Station Boardings and Alightings by Service Period

Station Line	Weekday Outbound Boardings				TOTAL	Weekday Inbound Alightings				TOTAL
	AM Peak	Midday	PM Peak	Evening		AM Peak	Midday	PM Peak	Evening	
Chicago Union Station										
BNSF	572	2,670	20,893	2,170	26,305	24,527	1,430	844	298	27,099
HC		89	1,244		1,333	1,408				1,408
MD-N	687	764	7,956	919	10,326	8,060	1,316	805	112	10,293
MD-W	159	850	8,096	661	9,766	8,323	1,101	293	87	9,804
NCS	100	268	2,215	242	2,825	2,648	236	78	5	2,967
<u>SWS</u>	<u>24</u>	<u>353</u>	<u>3,483</u>	<u>467</u>	<u>4,327</u>	<u>3,945</u>	<u>359</u>	<u>88</u>	<u>16</u>	<u>4,408</u>
Sub-Total	1,542	4,994	43,887	4,459	54,882	48,911	4,442	2,108	518	55,979
LaSalle Street Station										
RI	96	1,277	10,666	567	12,606	11,633	847	204	55	12,739
Ogilvie Transportation Center										
UP-N	597	1,054	9,867	894	12,412	11,046	1,215	777	154	13,192
UP-NW	359	1,264	14,011	1,335	16,969	14,253	2,021	541	130	16,945
<u>UP-W</u>	<u>295</u>	<u>879</u>	<u>10,756</u>	<u>1,189</u>	<u>13,119</u>	<u>11,747</u>	<u>1,144</u>	<u>545</u>	<u>223</u>	<u>13,659</u>
Sub-Total	1,251	3,197	34,634	3,418	42,500	37,046	4,380	1,863	507	43,796
Millennium Station										
ME	358	1,295	6,903	736	9,292	6,756	1,218	625	156	8,755
Van Buren Street										
ME	44	269	2,176	233	2,722	2,904	429	112	39	3,484
Museum Campus/11th St.										
ME	34	75	213	39	361	276	103	57	22	458
Total	3,325	11,107	98,479	9,452	122,363	107,526	11,419	4,969	1,297	125,211

Note: The total outbound boardings in this table will not equal the total boardings in Table VIa because of inbound boardings at Van Buren Street Station and Museum Campus/11th St.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF CHRISTINE SUCHY

Date: May 20, 2020

Christine Suchy
Director, Business Development, National Network
National Railroad Passenger Corporation (Amtrak)
1 Massachusetts Avenue, NW
Washington, DC 20002

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF CHRISTINE SUCHY

I, Christine Suchy, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Virginia, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation ("Amtrak"). I have been an employee of Amtrak since 2006. My current job title is Director, Business Development, National Network.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide facts and analysis regarding the bases for the compensation in Amtrak's proposed agreement with Metra for access to and use of Chicago Union Station. The facts and analysis relate to: (i) the 1984 agreement between Metra and the Chicago Union Station Company ("CUSCO"); (ii) Amtrak's June 2019 proposal to Metra regarding the terms of a new access agreement; (iii) a spatial analysis of Chicago Union Station, including the identification of the areas available to Metra and/or Amtrak; and (iv) facts relevant to the necessary capital contributions by Metra.

A. The 1984 Agreement

5. On May 1, 1984, Metra entered into an agreement with CUSCO (the “1984 Agreement”), attached as Exhibit A to Amtrak’s July 22, 2019 Petition in this matter. The 1984 Agreement permitted Metra to access and use Chicago Union Station.

6. Amtrak is the successor-in-interest to CUSCO for purposes of the 1984 Agreement.

7. Metra and Amtrak entered into a Fourth Amendment to the 1984 Agreement dated March 6, 2019, attached as Exhibit C to Amtrak’s July 22, 2019 Petition. The Fourth Amendment extended the term of the 1984 Agreement to July 29, 2019.

8. The purpose of the Fourth Amendment was to give Metra and Amtrak time to further negotiate a new agreement governing Metra’s access to and use of Chicago Union Station.

9. Metra and Amtrak were not able to reach a negotiated resolution regarding the terms of a new agreement, necessitating this proceeding.

B. The June 2019 Proposal

10. In June 2019, Amtrak made an offer to Metra (the “Proposed Agreement”), attached as Ex. 1.

11. Amtrak0000189, attached as Ex. 1, is a true and correct copy of the Access Agreement proposed to Metra by Amtrak on June 4, 2019.

12. As outlined in the Proposed Agreement, Metra would pay Amtrak five primary categories of costs: dispatching, maintenance of way, station operations and maintenance, policing, and capital. The remainder of the payments and terms necessary for a full agreement are included in the Proposed Agreement.

C. The Spatial Analysis of Chicago Union Station

13. In order to calculate Metra's share of station operations and maintenance costs, Amtrak undertook a spatial analysis of Chicago Union Station. Chicago Union Station has 12 levels: Sub-Basement, Basement, Concourse, Street Level, Mezzanine, and Floors 2 through 8. Metra does not use or occupy any part of the Sub-Basement or Floors 2 through 8, but uses or occupies areas on the other four floors—the Basement, Concourse, Street Level, and Mezzanine (the "Shared Floors"). Chicago Union Station is divided not only horizontally, by floor, but also vertically, into the Headhouse and the Concourse. The Headhouse has floors Sub-Basement through Floor 8; the Concourse has only the Basement level, Concourse level, Mezzanine level, and Street level. My understanding is that Amtrak and Metra have agreed that only the Basement, Concourse and Mezzanine levels are relevant for purposes of the calculation of Metra's share of station operations and maintenance costs.

14. Amtrak identified each individual space in the Shared Floors. Amtrak listed the individual spaces in a spreadsheet produced to Metra. *See* Amtrak0005283, Tab Spatial (*sic*) Analysis (attached as Ex. 3 to N. Miller Verified Statement). That spreadsheet lists 308 individual areas on the Shared Floors. The spreadsheet notes each area's location (Columns B & C), its square footage (Column F), its use (Column G), and whether it benefits Amtrak, Metra, or both entities (Column H).

15. Amtrak designated areas as solely for Metra's benefit, solely for Amtrak's benefit, or for both parties' benefit based on which entity (or both) can access or use the area. Areas from which Amtrak derives revenue, such as areas occupied by tenants paying rent to Amtrak, were designated as solely benefiting Amtrak. These areas were designated as solely benefiting Amtrak

even though Metra passengers and personnel could, in many cases, derive a direct benefit from them—i.e., restaurants in the food court—or pass through them.

16. As an example of the areas listed in Amtrak0005283, Row [REDACTED] identifies [REDACTED]
[REDACTED] It is [REDACTED]
[REDACTED] It is designated as solely for the benefit of
Metra. Row [REDACTED] identifies [REDACTED]
[REDACTED] It is [REDACTED] square feet. Because it is available to employees and passengers of both Metra
and Amtrak, it is designated as being for the common benefit of both Metra and Amtrak.

17. Amtrak prepared this document in the ordinary course of business. I did not assist in the preparation of this document, but I have reviewed it thoroughly. With the caveats identified below, I concur with the “benefit” designations in Column H.

18. Amtrak based Metra’s proposed compensation for station maintenance and operations in the June 2019 Proposal on the spatial analysis contained in Amtrak0005283. Following the June 2019 Proposal, I participated in several walk-throughs of Chicago Union Station which have informed my view of the designation of areas as solely benefiting Metra, solely benefiting Amtrak, or benefiting both parties.

19. For instance, during the walk-throughs, I observed passengers using all areas of the Great Hall, both to simply traverse the area coming to and from the trains in the concourse to various station exits, as well as using benches and rest areas in the Great Hall. There was an increase of passengers without baggage traversing the Great Hall during rush hour, indicating that these passengers are likely Metra commuters. That fact reinforced Amtrak’s determination that the Great Hall should be designated a common-benefit area.

20. As another example, originally Amtrak had determined that a [REDACTED] [REDACTED] on the Concourse level was a common-benefit area. However, during my walk-throughs, Amtrak determined that a [REDACTED] square-foot [REDACTED] [REDACTED] should be designated as Amtrak sole-benefit, because Amtrak derives revenue from the [REDACTED] Amtrak adjusted its current allocation accordingly.

21. Amtrak also determined that the June 2019 proposal had not included a [REDACTED] [REDACTED] used by both Metra and Amtrak passengers. Amtrak adjusted its current allocation accordingly.

D. Calculation of Capital Expenditures Necessary to Ensure Assets Are in a State of Good Repair.

22. For Fiscal Year 2016, actual capital investment at Chicago Union Station was [REDACTED] See Amtrak 0005283, Tab Capital-Common, Cell D40. For Fiscal Year 2017, actual capital investment at Chicago Union Station was [REDACTED] See *id.* at Cell E40. That includes some costs related to the Great Hall, for which Amtrak did not seek reimbursement from Metra.

23. Based on an inventory of track assets, and each asset's projected life cycle and cost of replacement, Amtrak estimated a combined annualized replacement cost of [REDACTED] over a ten-year timeframe. See Amtrak 0000294, Tab Cost Summary, Cell E40, a true and correct copy of which is attached as Ex. 2.

24. The cost to ensure all assets are in a state of good repair are estimated at an additional [REDACTED] See *id.* at Cell F40.

25. On October 1, 1985, Metra and CUSCO entered into a Fixed Facilities Agreement ("FFA"), a true and correct copy of which is attached as Ex. 3.

26. Amtrak is the successor-in-interest to CUSCO for purposes of the FFA.

27. The FFA provides a framework under which Metra and Amtrak can plan and potentially implement projects requiring capital investment.

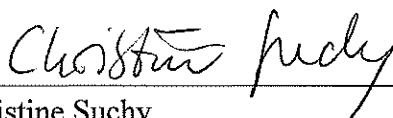
28. Under the FFA, Metra can unilaterally choose whether to participate in any particular project. Additionally, the FFA does not require Metra to pay for capital improvements from which it derives a benefit, unless Metra chooses to participate in the project.

29. Under the FFA, Metra reimburses Amtrak for a portion of the costs Amtrak incurs on a capital project, if Metra chooses to participate in that project. In Fiscal Years 2016-2018, Metra contributed an average of [REDACTED] per year to capital projects for Chicago Union Station.

VERIFICATION

I, Christine Suchy, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

Executed on May 19, 2020 in Alexandria, Virginia.

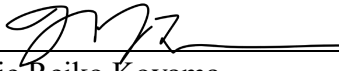


Christine Suchy

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

Thomas J. Litwiler
Bradon J. Smith
Robert A. Wimbish
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By: 
Perie Reiko Koyama

Suchy Stmt.

Ex. 1

ACCESS AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
THE NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD
(DOING BUSINESS AS METRA)

Effective as of May 1, 2019

TABLE OF CONTENTS

	Page
1. DEFINITIONS	5
2. ACCESS TO CHICAGO UNION STATION.....	8
3. SCHEDULE OF METRA OPERATIONS.	12
4. PLANNING AND SERVICE LEVEL CHANGES.	12
5. DISPATCHING.	13
6. OTHER SERVICES ASSOCIATED WITH ACCESS TO CUS.	13
7. CUS RECAPITALIZATION PROGRAM.	15
8. EMERGENCY DISRUPTIONS AT CUS.....	16
9. SPECIAL TRAINS AND TEST TRAINS.....	17
10. RISK OF LIABILITY AND DAMAGE.....	17
11. INSURANCE.....	19
12. COMPENSATION.....	20
13. TERMINATION OF THE 1984 AGREEMENT AND THE 1985 FIXED FACILITY AGREEMENT..	26
14. ANNUAL BUDGET AND ADVANCE MONTHLY PAYMENTS.	26
15. PAYMENT DISPUTES.....	27
16. RECORDS AND REPORTS.....	27
17. TERM AND TERMINATION.....	29
18. DISPUTE RESOLUTION.....	30
19. FORCE MAJEURE.	33
20. COMPLIANCE WITH LAWS.	33
21. NON-VIOLATION OF LABOR AGREEMENTS.	33
22. ADA COMPLIANCE.	34
23. AUDIT.....	34
24. NOTICES.....	35

25. ASSIGNMENT.....	36
26. GOVERNING LAW.....	36
27. SEVERABILITY.	36
28. ENTIRE AGREEMENT.	36

**ACCESS AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
THE NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD (DOING
BUSINESS AS METRA)**

Effective as of May 1, 2019

THIS AGREEMENT (“Agreement”) is made and entered into this first day of May, 2019, by and between the National Railroad Passenger Corporation (hereinafter “Amtrak”), a corporation organized under federal law and the laws of the District of Columbia and having its principal place of business at 1 Massachusetts Avenue, NW, Washington, DC 20001, and the Northeast Illinois Regional Commuter Railroad (doing business as Metra), an Illinois unit of government having offices at 547 W. Jackson Boulevard, Chicago, IL 60661 (hereinafter “Metra”).

WHEREAS, Metra, under the Regional Transportation Authority Act (70 ILCS 3615), is duly authorized to enter into agreements to obtain transportation services; and

WHEREAS, Metra and Amtrak, by and through its predecessor, the Chicago Union Station Company, are parties to a certain Agreement dated May 1, 1984 (the “1984 Agreement”), which allows Metra to have access to and use of Amtrak’s Chicago Union Station (“CUS”) for the operation of Metra Commuter Rail Service; and

WHEREAS, Metra (as the Commuter Rail Division of the Regional Transportation Authority), and Amtrak, by and through its predecessor, the Chicago Union Station Company, are parties to a certain Fixed Facility Agreement dated October 1, 1985 as amended (the “1985 Fixed Facility Agreement”), for the purpose of improving CUS by performing track

modernization and renewal, improvement of signaling, installation of standby facilities and various other improvements; and

WHEREAS, Metra has requested Amtrak to continue to provide, and Amtrak is willing to continue providing, access to and use of CUS for compensation, and to provide dispatching services, ground power, police and security services and such other services as may be agreed upon by the Parties, that are associated with Metra's access to and use of CUS for the operation of Metra Commuter Rail Service under the terms set forth herein; and

WHEREAS, 49 USC §24319(g) prohibits Amtrak from cross-subsidizing the operations of commuter rail passenger or freight rail transportation; and

WHEREAS, the Parties acknowledge the importance of providing a safe, efficient, reliable service for the benefit of Metra Commuter Rail Service passengers in accordance with the terms of this Agreement; and

NOW THEREFORE, in consideration of the mutual promises and undertakings and of the compensation set forth herein, the Parties hereto agree as follows:

1. **Definitions**

- 1.1. "AAR" shall mean the Association of American Railroads.
- 1.2. "ADA Costs" shall have the meaning set forth in Section 22.
- 1.3. "Amtrak" shall have the meaning set forth in the first paragraph above of this Agreement.
- 1.4. "Base CUS Usage Fee" shall be the amount computed pursuant to Section 12.1 of this Agreement.
- 1.5. "Contract Services" shall mean Amtrak ground power, training, Dispatching Feed, and such other additional services as may be agreed upon by the Parties under this

Agreement, other than those elements that comprise the Base CUS Usage Fee, Test Trains, Special Trains, Extra Moves, or the Recapitalization Program.

1.6. “Contract Year” shall mean the period beginning on October 1 of a calendar year and continuing through and including September 30 of the following calendar year, other than for the initial Contract Year which represents a period beginning May 1, 2019 and ending September 30, 2020.

1.7. “CUS” shall mean the real property and improvements known as Chicago Union Station having an address at 210 S. Canal Street, Chicago, IL, including the track, switches, interlockings, signals, platforms, systems, station concourse and headhouse, and all other infrastructure used by Metra Commuter Rail Service, as further described and depicted in Exhibit A.

1.8. “CUS Station Facility Capital Investment Plan” shall have the meaning set forth in Section 7.3.

1.9. “Dispatching Feed” shall have the meaning set forth in Section 6.3.

1.10. “Equipment” shall mean the rolling stock used in the operation of Metra Commuter Rail Service, including locomotives and passenger cars.

1.11. “Extra Move” shall mean any Metra train move that is operated outside of the normal operating schedule that supports Metra Commuter Rail Service for the purpose of (i) Equipment replacement due to a mechanical defect, including yard moves, or (ii) qualifying Metra’s third-party contractors.

1.12. “FELA” shall mean the Federal Employers Liability Act, 45 U.S.C. §51, et seq.

1.13. “FRA” shall mean the Federal Railroad Administration.

1.14. “FTA” shall mean the Federal Transit Administration.

1.15. “Joint Benefit Project” shall mean a project at CUS that, when completed, will provide substantive benefit to Metra and to Amtrak. The determination of whether a project is a Joint Benefit Project or a Sole Benefit Project does not depend upon the source of funds for the Project but the Parties upon whom the benefits are conferred upon completion of the Project.

1.16. “Metra” shall mean the Northeast Illinois Regional Commuter Railroad (doing business as Metra).

1.17. “Metra Commuter Rail Service” shall mean the commuter rail service operated under the auspices of the Northeast Illinois Regional Commuter Railroad (doing business as Metra) as of the date of this Agreement, in and out of CUS.

1.18. “Party” shall refer to either Amtrak or Metra.

1.19. “Parties” shall refer to Amtrak and Metra.

1.20. “Recapitalization Program” shall have the meaning set forth in Section 7.

1.21. “Reconciliation Statement” shall have the meaning set forth in Section 14.2.

1.22. “Sole Benefit Project” shall mean a project at CUS that, when completed, will provide substantive benefit to Metra but will provide little or no benefit to Amtrak. The determination of whether a project is a Joint Benefit Project or Sole Benefit Project does not depend upon the source of the funds for the Project but the parties upon whom the benefits are conferred upon completion of the Project. Examples of Sole Benefit Projects include, but are not limited to, construction or improvements to CUS that are used solely in the provision of Metra Commuter Rail Service.

1.23. “Special Train” shall mean any Metra train that is operated outside of the normal operating schedule, is not associated with a scheduled train number, and is not a Test

Train or an Extra Move. A “Special Train” is typically associated with an event (e.g., the Ravinia special train).

1.24. “Test Train” shall mean any Metra train that is operated outside of the normal operating schedule for the purpose of evaluating equipment clearances and performance.

1.25. “Unit(s)” shall mean a locomotive(s) and/or passenger car(s) used in the provision of Metra Commuter Rail Service.

2. **Access to Chicago Union Station.**

2.1 Amtrak hereby grants to Metra, its contractors and agents the right to enter upon and have access to and use CUS insofar as may be necessary to enable Metra, its contractors and agents to perform its or their duties with respect to the operation of Metra Commuter Rail Service to the extent specified in this Agreement.

2.1.1 **Metra Supervisory Personnel.** Metra shall provide Amtrak with a list of its employees, contractors and agents assigned to oversee the operation of Metra Commuter Rail Service. Such oversight shall require routine and frequent entry upon CUS. Such employees, contractors and agents shall be required to attend safety classes conducted by Amtrak if Amtrak so requires, and such oversight activities shall be considered part of Metra Commuter Rail Service for the purposes of the allocation of liability provisions of Section 10.

2.1.2 **Metra Operations Personnel.** Subject to the provisions of Section 21, Metra operations personnel shall also have the right to enter upon CUS for the purpose of performing ticket selling, turnaround servicing, train monitoring and/or customer services functions.

2.1.3. **Other Metra Personnel.** Metra may find it necessary or desirable to have other of its personnel enter upon CUS insofar as may be necessary to conduct inspections, studies, surveys and investigations related to Metra Commuter Rail Service and/or this Agreement. Such entry shall be subject to reasonable notice to Amtrak and subject to the other conditions as set forth in Amtrak's then current "Permit to Enter Upon Property" Agreement.

2.1.4. **Metra Operations and Other Contractors.** Amtrak acknowledges that Metra has agreements or may, during the term of this Agreement, enter into new agreements with third parties (BNSF and/or other third parties) for operation of Metra Commuter Rail Service. Amtrak agrees that the employees and officials of any such third-party contractor for the operation of Metra Commuter Rail Service shall be permitted to conduct those operations, subject to receipt by Amtrak of confirmation from Metra that such third-party contractor employees are qualified to operate on CUS territory that will be used in the operation of Metra Commuter Rail Service. Any such third-party operations and employees shall be considered Metra Commuter Rail Service for the purpose of the allocation of liability provisions of Section 10.

2.1.4.1. **Training Services.** Metra shall provide Amtrak with a list of the employees, contractors and agents assigned to engage in the operation of Metra Commuter Rail Service. Such employees, contractors and agents shall be required to attend safety classes conducted by Amtrak if Amtrak so requires, at Metra's sole expense. Compensation for such training services shall be in accordance with Section 12.4, as applicable. Amtrak

has the right but not the responsibility to approve of Metra's training programs for its third-party contractors engaged in operations at CUS. Upon request by Amtrak, Metra shall provide copies of such training programs. The granting of such approval by Amtrak shall not relieve Metra of any responsibilities or liabilities associated with its training programs. For Metra, BNSF or any other third-party contractors, upon reasonable advance notice from Metra, Amtrak will provide pilots and training as necessary for operation on Amtrak territory, and will assist Metra and the third-party contractor as necessary, including by allowing reasonable access to CUS to permit timely completion of training, at Metra's sole expense. Compensation for such pilots and training shall be in accordance with Section 12.4.

2.1.4.2. Metra understands and agrees that Amtrak may, for cause, require that any Metra or third-party contractor employees providing Metra Commuter Rail Service to be prohibited or removed from performance of such services at CUS.

2.1.4.3. Metra, its contractors and agents shall not engage in maintenance of equipment activities, including but not limited to coach cleaning, inspections and running repairs at CUS. Metra's engineering design consultants and construction contractors shall not access CUS without a separate, specific agreement with Amtrak to engage in such design or construction activity at CUS.

2.1.5. **Metra Equipment.** Metra has the responsibility for providing the necessary Equipment for Metra Commuter Rail Service. All Equipment operated in Metra Commuter Rail Service must meet applicable legal and regulatory requirements. Amtrak shall have the unilateral right to require removal from service any Unit of Equipment which does not meet applicable Amtrak written standards for safety and operation or applicable legal or regulatory requirements, as modified from time to time. In order to ensure safe, reliable operations, Amtrak shall have the right of review and comment, at least ninety (90) days prior to the commencement of Metra's procurement process, on the specifications for any new or overhauled equipment that Metra proposes to operate at CUS. In reviewing such proposed specifications, Amtrak shall advise Metra of any issues which Amtrak identifies that may adversely affect the ability of the equipment to be operated at CUS pursuant to this Agreement. In the event a federal, state or local law or regulation is enacted or promulgated after the effective date of this Agreement, that requires modifications or upgrades to the Equipment operated in Metra Commuter Rail Service, Metra shall be solely responsible for complying with such legal or regulatory requirements.

2.1.5.1. The Parties agree that Metra will not store any Unit of Equipment at CUS. Metra trains may dwell at platforms for boarding, detraining and other turnaround servicing as described in Section 2.1.2 above, for the following periods:

Weekday (Peak Hours) – No more than 8-10 minutes;
Weekday (Off-Peak) – No more than 1 hour;
Weekends/Holidays – No more than 5-6 hours.

2.2. Nothing in this Agreement shall preclude Amtrak from permitting third parties to use any portion of CUS, provided such use does not materially interfere with the contractual rights granted to Metra hereunder.

3. **Schedule of Metra Operations.**

The schedules for the operation of Metra Commuter Rail Service in and out of CUS, effective May 1, 2019, are attached hereto as **Exhibit B**. Amtrak shall advise Metra at the earliest possible date of anticipated changes in the schedules of Amtrak intercity passenger trains operated in and out of CUS if those changes will also affect Metra Commuter Rail Service schedules. Amtrak agrees that it shall not unnecessarily change the schedule of its operations in a way that requires a change in the schedule of a Metra commuter train without first considering reasonable alternatives to such a change. To the extent reasonably necessary to avoid conflicts with Amtrak's existing or future scheduled intercity rail passenger service, the schedules for Metra Commuter Rail Service shall be revised promptly after receipt of sixty (60) days written notice from Amtrak of a change that is to be made in accordance with the provisions of this Section 3.

4. **Planning and Service Level Changes.**

4.1. Should Metra wish to increase service levels or modify its current service schedules, Metra will provide Amtrak with a written request that includes sufficient level of detail on the proposed additional or modified service. The written request must be addressed to Amtrak's AVP Transportation North-Central. Within 90 days of receipt of the written request from Metra, Amtrak will provide a written response as to whether or not the request is granted. The Parties agree that any permanent schedule change will require an amendment to this Agreement.

4.2. The Parties agree that CUS is severely constrained at current service levels and that they will jointly evaluate the available facilities, the impact of existing services on efficient and reliable operations of both Parties and the potential need for improved facilities to accommodate increased or modified service that may be requested by Metra. Amtrak acknowledges that Metra may, from time to time, engage in planning efforts to expand service in and out of CUS. The Parties shall jointly engage in such planning efforts. Any such changes in Metra Commuter Rail Service will require the prior written approval of Amtrak.

5. **Dispatching.**

5.1. Amtrak shall dispatch Metra Commuter Rail Service trains operating in and out of CUS. Amtrak dispatchers shall take all reasonable steps to permit Metra Commuter Rail Service, Amtrak intercity service, and freight rail service to operate on time, safely and reliably.

5.2. On a monthly basis, the Parties will meet to review on time performance, dispatching performance and service disruptions. These meetings will include the Amtrak Superintendent of Operations and the Metra Superintendent of Operations.

6. **Other Services Associated with Access to CUS.**

6.1. **Ground Power.** Metra shall have the right to use the 480-volt standby electric power in CUS to minimize the amount of locomotive exhaust at CUS and to facilitate a fuel cost savings for Metra. In order to accurately capture and reimburse Amtrak for ground power costs, Metra will reimburse Amtrak for all costs to install ground power meters at all station tracks used by Metra. Metra shall reimburse Amtrak the actual cost

of electricity utilized by Metra based on metered readings for 480-volt ground power at CUS and any associated costs in accordance with Section 12.5 below.

6.2. **Police and Security.**

6.2.1. Amtrak police shall patrol CUS and any other areas that are jointly used by Amtrak intercity passenger rail service and Metra Commuter Rail Service.

Metra's police force may patrol and monitor areas used by Metra passengers and Metra Commuter Rail Service trains at Metra's discretion. The Parties agree that their respective police and security forces shall work cooperatively. This shall include direct assistance by Metra Police Officers for crowd control during service disruptions and major crowd surge events.

6.2.2. On a quarterly basis, the Parties will meet to coordinate efforts of Metra and Amtrak police and security forces.

6.3. **Dispatching Feed.** Amtrak shall provide to Metra real-time access to view the movement of Metra Commuter Rail Service operations in and out of CUS from the "glass house" locations established at the track level adjacent to tracks 4 and 19. Train data from the Amtrak CUS Dispatch Operations Center is fed directly to monitors accessed by Metra authorized personnel ("Dispatching Feed"). Metra recognizes that Dispatching Feed system outages may occur due to planned or unplanned work at CUS. Where feasible, Amtrak will endeavor to communicate to Metra in advance of any potential activities that may impact the Dispatching Feed. Metra agrees to reimburse Amtrak for all costs associated with the Dispatching Feed, including but not limited to, cost of Amtrak-provided equipment exclusively used by Metra, repair, replacement, licenses, software upgrades, cabling, installation, etc., in accordance with Section 12.6 below.

7. **CUS Recapitalization Program.**

7.1. Metra recognizes that Amtrak will incur capital costs related to recapitalization and system enhancements to maintain or increase reliability of passenger service operations at CUS. These costs are primarily intended to cover the replacement value of Amtrak's fixed assets. These assets are expensive and time consuming to rehabilitate and replace, and Metra recognizes that investment in CUS fluctuates significantly over long periods of time. Metra is committed to funding a share of such costs, which are included in the Recapitalization Program Contribution set forth in Section 12.3.2. Within 90 days of execution of this Agreement, the Parties will jointly develop and implement a CUS recapitalization program covering tracks, switches, interlockings, signals, platforms, systems, station concourse and all other infrastructure used by Metra Commuter Rail Service, other than the Headhouse ("Recapitalization Program"). The Recapitalization Program will consist of two levels of capital investment, jointly funded by each Party. First, a primary level of committed capital investment ("Tier 1 Investment"), which Metra will fund at a level consistent with the FY 2016 through FY 2018 average amounts paid to Amtrak under the 1985 Fixed Facility Agreement, or \$1,700,000 per year. Amtrak will fund an additional \$800,000 per year for a total Tier 1 Investment level of \$2,500,000 per year for each of the first five years of this Agreement, with a timeline for developing an investment plan for subsequent years. The secondary level of investment ("Tier 2 Investment") under the Recapitalization Program consists of an additional \$10 million annually for each of the first five years of this Agreement, with timeline for developing an investment plan for subsequent years. The Tier 2 Investment will be allocated between Amtrak and Metra based upon applicable railroad operating statistics

associated with the investment (i.e. trains operated, gross ton miles, passenger counts) and may be phased in during the first five years of this Agreement with increasing percentages, to be agreed upon by the Parties. Metra will pay Amtrak a monthly amount representing 1/12th of the estimated annual Recapitalization Program costs; statements of actual costs will be provided on a monthly basis, with reconciliation performed annually in accordance with Section 12.3.2. Any overfunding or underfunding of actual capital expenditure level will be adjusted via an annual credit or additional capital invoice.

Annual credits will be applied to the next fiscal year's obligation.

7.2. **Maintenance and Recapitalization of Sole Benefit Projects and Joint Benefit**

Projects. Unless otherwise agreed, for any Sole Benefit Project or Joint Benefit Project, Amtrak shall be responsible for maintenance and recapitalization of such improvements.

Metra shall reimburse Amtrak for Amtrak's costs incurred in performing such maintenance and recapitalization in accordance with Section 12.3.4.

7.3. **Joint Benefit Infrastructure and Capacity Improvements.** The Parties will establish a working group to expedite joint planning efforts for capital improvement projects relating to CUS station facility, other than the Headhouse, including the Great Hall, as identified in the CUS Master Plan and other formal planning documents ("CUS Station Facility Capital Investment Plan"). The Parties will continue with and conclude the prioritization effort for such projects, to include identifying a funding source(s), within the first year from the effective date of the Agreement.

8. **Emergency Disruptions at CUS.**

8.1. **Notification.** In the event of a disruption of Metra Commuter Rail Service or a condition that may result in a disruption of Metra Commuter Rail Service, or if it is

necessary to annul a Metra Commuter Rail Service train or cancel Metra Commuter Rail Service, Amtrak shall immediately contact Metra's Terminal Manager or designee to notify Metra of the potential or actual disruptions. For the purpose of ensuring a systematic approach to such disruptions, within [60 days of execution of this Agreement, Amtrak shall prepare for Metra's review and approval (which approval shall not unreasonably be withheld) an emergency communications protocol, which shall guide the actions and determine the required communications upon the occurrence of such a disruption.

9. **Special Trains and Test Trains.**

Metra may submit requests for operation of Special Trains and Test Trains using Metra-owned or leased equipment on a special basis, which requests shall not unreasonably be withheld. Unless otherwise agreed, such request shall be made in writing ninety (90) days prior to the date a Special Train is to operate and thirty (30) days prior to the date a Test Train is to operate. Amtrak shall make every reasonable effort to permit operation of such Special Trains and Test Trains, provided that the operation thereof shall not unreasonably interfere with existing operations of intercity passenger service. Metra will pay Amtrak the costs incident to such operation in accordance with Section 12.2 of this Agreement.

10. **Risk of Liability and Damage.**

10.1. Metra agrees to indemnify, defend and hold harmless Amtrak, its officers, agents, employees, subsidiaries, and third parties to the extent Amtrak is obligated to defend, indemnify or save harmless such third parties, irrespective of any fault of Amtrak or such persons, for all damage or for liability for personal injury or death or property damage

which would not have been incurred but for the existence of Metra Commuter Rail Service and/or the performance of associated Contract Services.

10.1.1. Notwithstanding the above, Metra shall have no responsibility to defend or indemnify Amtrak for injury or death to Amtrak employees performing services on behalf of Metra, for which Metra is compensating Amtrak, as outlined in Section 12.1. The risk of injury or death to and of claims by such employees is expressly assumed by Amtrak and Amtrak agrees to defend and indemnify Metra against claims with respect to injury or death of such employees. Compensation for such risk is included as an additive for FELA claims attributable to all such persons employed by Amtrak in the compensation payable by Metra in connection with the provision of such services.

10.1.2. For purposes of this Section, the Parties specifically agree that any injury or death to a person or damage to the property of a person at CUS in connection with Metra Commuter Rail Service for the purpose of purchasing a ticket, obtaining information, or meeting or assisting a Metra Commuter Rail Service passenger would not have been incurred but for the existence of Metra Commuter Rail Service. The indemnity of Amtrak pursuant to this Section is intended solely to ensure that Amtrak is made whole with respect to its operations for the benefit of Metra, and such indemnity shall not inure to the benefit of third parties, except to the extent that Amtrak separately owes an indemnity to such a third party.

10.2. Except for cases involving injury or death to Amtrak employees performing services on behalf of Metra as outlined in Section 10.1.1, Amtrak will promptly tender to

Metra the defense of all cases which would not exist but for the existence of Metra Commuter Rail Service, and Metra shall be responsible for defense of, settlement, and the payment of any judgments arising from such claims. Metra shall keep Amtrak informed concerning the handling of such cases. In the event Metra fails to diligently defend such cases and claims, Amtrak may provide its own defense at Metra's expense. Amtrak shall fully cooperate with Metra in the defense of such cases and claims.

10.3 The indemnity obligations set forth in this Section 10 shall survive the expiration or termination of this Agreement.

11. **Insurance.**

11.1. **Liability Insurance.** Metra shall procure and maintain for the duration of this Agreement, liability insurance, with combined single limits for bodily injury and property damage of at least \$325,000,000 per occurrence and in the annual aggregate, with Amtrak designated as an additional insured. Such insurance shall cover Metra's liability for injury or death of persons and damage to property, including coverage for punitive or exemplary damages, arising out of Metra Commuter Rail Service and shall waive all rights of subrogation against Amtrak. Such insurance shall also cover Metra's liability for injury or death to Metra employees in compliance with FELA. Such insurance shall not cover Amtrak's employer's liability for injury to Amtrak's employees for which Amtrak is responsible as provided in Section 10.1.1. Metra shall have the right to self-insure for any part of the insurance procurement. Amtrak shall have the right of approval that the insurance placements and self-insurance arrangements adequately protect Amtrak against liability for bodily injury, death and property damage, which approval shall not be

unreasonably withheld. A certified copy of this insurance policy or policies shall be provided to Amtrak upon request.

11.2. **Property Insurance.** Metra shall procure and maintain for the duration of this Agreement, property insurance covering the Equipment against all risks of physical damage usually covered in a railroad property insurance policy. Metra's property insurance shall carry limits sufficient to cover the replacement value of the Equipment used in Metra Commuter Rail Service. Metra and its property insurer shall waive all rights of subrogation against Amtrak. A certified copy of this insurance policy or policies shall be provided to Amtrak upon request.

12. **Compensation.**

Metra shall compensate Amtrak for the Base CUS Usage Fee, Recapitalization Program costs and Contract Services as provided for herein, including provisions for changes in payments based on changes in Metra Commuter Rail Service agreed to by the Parties.

12.1. **Base CUS Usage Fee.** Metra shall pay Amtrak an annual Base Usage Fee of \$13,813,233 for operation of Metra Commuter Rail Service at CUS, which is comprised of the following items:

Description	Annual	Monthly
Maintenance of Way	2,859,422	238,285
Station Operation and Maintenance	5,021,302	418,442
Dispatching	1,839,530	153,294
Police	4,092,980	341,082
Total Base CUS Usage Fee	13,813,233	1,151,103

12.1.1. In consideration of payment of this amount, Metra may operate 111,497 trains (scheduled revenue and deadheads) in and out of CUS annually. For the initial Contract Year, it is understood that the monthly amount of \$1,151,103 will apply to each month in the initial Contract Year (May 1, 2019-September 30,

2020). In the event that the number of trains operated in Metra Commuter Rail Service changes from that level due to approved changes to schedules for the Metra Commuter Rail Service subject to Section 4, the amount paid by Metra for the portion of the Contract Year that this Agreement was in effect shall be adjusted by \$123.89 per train more or less than 111,497 trains in and out of CUS.

12.2. **Compensation for Special Trains, Test Trains And Extra Moves.** Metra shall pay Amtrak a rate per train operated for CUS access for Special Trains, Test Trains and Extra Moves. The rate for Special Trains, Test Trains and Extra Moves shall be derived by dividing the then-current Base CUS Usage Fee established in Section 12.1 by the base allowable trains of 111,497 per Contract Year. The initial rate per train is \$123.89.

12.3. **Compensation for Recapitalization Program.** Metra recognizes that Amtrak will incur Recapitalization Program costs to maintain or increase reliability of passenger service operations at CUS that jointly benefit both Parties. Metra is committed to funding a share of such Recapitalization Program costs that is proportionate to Metra's use of CUS, consistent with the allocations applied to calculate the Base CUS Usage Fee in Section 12.1. Amtrak will fund its proportionate share of the Recapitalization Program costs.

12.3.1. **Annual Recapitalization Program Process.** The following process will apply to annual Recapitalization Program capital contributions by Metra. For Tier 1 Investment projects, Amtrak will determine the projects to be funded in each Contract Year and Amtrak agrees to spend such capital contributions in accordance with their intended uses. For Tier 2 Investment projects, the Parties will jointly develop an annual Tier 2 Investment Plan and determine how such

funds will be used each year, as follows: By July 1 of each year, Amtrak will provide Metra with a proposed Recapitalization Program Tier 2 Investment Plan for CUS for Amtrak's upcoming fiscal year (October 1 – September 30). By August 1 of the same year, the Parties shall meet to discuss Amtrak's proposed annual Recapitalization Program Tier 2 Investment Plan. Metra and Amtrak will agree upon a final list of Tier 2 Investment projects for the upcoming fiscal year by August 30 of each year. For Tier 1 projects, Metra shall have the opportunity to ask questions and to verify that its contribution is being spent in accordance with its intended use. For Tier 1 contributions, Metra will not have the ability to unilaterally reject projects or add new projects. Amtrak and Metra will fund their respective share of the Recapitalization Program costs in accordance with **Table 12.3.2** below.

12.3.2. Recapitalization Program Contribution.

Metra shall contribute to the Recapitalization Program costs as follows:

Contract Year	Metra Tier 1	Amtrak Tier 1	Total Tier 1
May 1, 2019 - September 30, 2020	\$ 1,700,000	\$ 800,000	\$ 2,500,000
October 1, 2020 - September 30, 2021	\$ 1,700,000	\$ 800,000	\$ 2,500,000
October 1, 2021 – September 30, 2022	\$ 1,700,000	\$ 800,000	\$ 2,500,000
October 1, 2022 – September 30, 2023	\$ 1,700,000	\$ 800,000	\$ 2,500,000
October 1, 2023 – September 30, 2024	\$ 1,700,000	\$ 800,000	\$ 2,500,000
Contract Year	Metra Tier 2	Amtrak Tier 2	Total Tier 2
May 1, 2019 - September 30, 2020	TBD	TBD	\$ 10,000,000
October 1, 2020 - September 30, 2021	TBD	TBD	\$ 10,000,000
October 1, 2021 – September 30, 2022	TBD	TBD	\$ 10,000,000
October 1, 2022 – September 30, 2023	TBD	TBD	\$ 10,000,000
October 1, 2023 – September 30, 2024	TBD	TBD	\$ 10,000,000

Beginning with Contract Year 2025, the annual Recapitalization Program payments will be indexed in accordance with Section 12.10 for the remaining five years of the Agreement. Metra will pay Amtrak a monthly amount representing 1/12th of the annual Recapitalization Program budget; statements of actual costs will be provided on a monthly basis, with reconciliation performed annually. It is understood that work on Joint Benefit Projects commenced or approved in one Contract Year may actually be performed in another year, and Metra's share of costs may therefore need to be paid in a year subsequent to the year for which it has agreed to make a contribution, including beyond the term of this Agreement. Funds that Metra agrees to provide in a period pursuant to this subsection shall remain available for projects authorized or commenced within the term of this Agreement.

12.3.3. **Compensation for Metra Sole Benefit Capital Projects.** Metra shall pay Amtrak for its actual costs to support Metra Sole Benefit Capital Projects, as well as maintenance and recapitalization of such Metra Sole Benefit Capital Projects, plus applicable overhead rates as set forth in Exhibit C as amended from time to time.

12.4. **Training Costs.** Metra shall pay Amtrak for the actual cost of training or other related services provided to Metra or its third-party contract employees pursuant to Section 2.1.1, 2.1.2, 2.1.3 and Section 2.1.4.1, plus Amtrak's applicable overhead rates as set forth in **Exhibit C** as amended from time to time.

12.5. **Ground Power.** In accordance with Section 6.1, Metra will pay Amtrak the actual cost of electricity based on metered readings for 480-volt ground power at CUS.

Metra will also pay Amtrak for any costs associated with the maintenance and meter reading for such ground power plus Amtrak's applicable overhead rates as set forth in **Exhibit C**, as amended from time to time. The Parties acknowledge that until the applicable meters are installed, Metra shall reimburse Amtrak a flat fee of \$10,000 per month for this service. The amount referred to in this Section 12.5 will be subject to annual indexing as set forth in Section 12.10.1 below

12.6. **Dispatching Feed.** Metra shall pay Amtrak \$500 per month for access to the Dispatching Feed referred to in Section 6.3 above. The amount referred to in this Section 12.6 will be subject to annual indexing as set forth in Section 12.10.1 below.

12.7. **Additional Services.** Should Metra request additional services from Amtrak to be performed at CUS that are not otherwise specifically identified in this Agreement, and should Amtrak agree to perform such additional services for Metra, Metra shall pay Amtrak for the actual cost of such additional services provided to Metra, plus Amtrak's applicable overhead rates as set forth in **Exhibit C**, as amended from time to time.

12.8. **Payment Terms.** Payments of invoices pursuant to this Agreement are due within thirty (30) days of receipt of invoice by Metra. Payments not made by Metra by the due date shall be subject to an interest charge of one and one-half percent (1.5%) per month. Payments shall be made in full without deduction, setoff or counterclaim.

12.9. **Prorated Contract Years.** In the event the Agreement terminates with one or more months remaining in the Contract Year, the annual costs specified in this Section 12 shall be prorated based on the number of months in the Contract Year the Agreement was effective. Access to CUS and/or performance of Contract Services provided on at least

one day in a month will be construed to require compensation for that month in accordance with this provision.

12.10. **Cost and Price Changes.**

12.10.1. The dollar amounts in Sections 12.1, 12.2, 12.3.2, 12.5 and 12.6 shall be adjusted October 1 of each year based on the percentage change in the AAR Quarterly Index of Chargeout Prices and Wage Rates (Table C), East, “material prices, wage rates and supplements combined (excluding fuel)” index in effect for the second quarter of that calendar year compared to the same index in effect for the second quarter of 2019. The 2019 second quarter index value is [REDACTED].

Commented [A1]: This value will be available after 7/1/2019.

The first adjustment will be made effective October 1, 2020. 12.10.2. The annual indexing described in Section 12.10.1 above shall be applied to the Base CUS Usage Fee amount in Section 12.1 for the initial 5 contract periods (i.e., May 1, 2019 through September 30, 2020; October 1, 2020 through September 30, 2021; October 1, 2021 through September 30, 2022; October 1, 2022 through September 30, 2023; October 1, 2023 through September 30, 2024). Prior to the commencement of the 6th Contract Year (i.e., October 1, 2024), Amtrak shall recalculate the Base CUS Usage Fee in order to reflect current price levels and any applicable operational changes. However, the Parties agree that the methodology that will be used to perform such recalculation will be consistent with **Exhibit D**. Thereafter, the recalculated Base CUS Usage Fee beginning in the 6th Contract Year shall be subject to annual indexing pursuant to Section 12.10. Should the term of this Agreement be extended by the Parties, the Base

CUS Usage Fee shall be recalculated in accordance with the process described above.

13. **Termination of the 1984 Agreement and the 1985 Fixed Facility Agreement.**

Metra and Amtrak agree that the 1984 Agreement described in the Recitals is terminated and superseded in its entirety and replaced by this Agreement, effective May 1, 2019. In addition, Metra and Amtrak agree that the 1985 Fixed Facility Agreement described in the Recitals is terminated and superseded in its entirety and replaced by this Agreement, effective May 1, 2019.

14. **Annual Budget and Advance Monthly Payments.**

No later than May 1 of each Contract Year, Metra shall provide Amtrak with its proposed operating plan and any anticipated Contract Services to be provided by Amtrak during the next Contract Year. Amtrak will provide Metra with a proposed annual budget for the next Contract Year that will include all amounts due to Amtrak including the applicable annual Recapitalization Program costs pursuant to Section 12.3.2. No later than August 1 of each year, the Parties shall agree upon an annual budget for the next Contract Year representing all compensation that will be due to Amtrak under Section 12.

14.1. **Monthly Payments.** Metra shall pay Amtrak on the fifteenth day of each service month an estimated amount which is one twelfth of the annual budget. Amtrak shall submit at least thirty (30) days prior to the due date for each estimated payment a statement of charges showing the amount to be paid pursuant to the previous sentence. All payments pursuant to this Section shall be made by electronic wire transfer in accordance with instructions to be provided separately by Amtrak to Metra.

14.2. **Monthly Reconciliation.** Within forty-five (45) days after the close of each calendar month, Amtrak shall provide a statement of actual charges for the Contract

Services, and any additional supporting documentation showing the actual costs payable pursuant to this Agreement (the “Reconciliation Statement”). If the Reconciliation Statement shows that Metra owes money to Amtrak, the next regular monthly payment to Amtrak shall be increased to account for the additional money owed according to the Reconciliation Statement. If the Reconciliation Statement shows that Amtrak owes money to Metra, the next regular monthly payment to Amtrak shall be decreased to account for the money owed according to the Reconciliation Statement.

15. **Payment Disputes.**

In the event that either Party shall disagree with an invoice with respect to the determination of actual costs which has been submitted in accordance with Section 12, or capital costs for recapitalization and system enhancements to CUS, the Party in disagreement shall promptly notify and provide to the other Party a written statement setting forth the nature and basis for the disagreement and also enumerating those aspects and amounts, if any, of such statements or determinations which are not in dispute. The Parties will confer promptly for the purpose of resolving any disputed amounts. Should no resolution be achieved, the Parties will submit the matter for resolution in accordance with Section 18 of this Agreement. Any disputed amount which is required to be paid or repaid by either Party as a result of such dispute resolution process shall be subject to an interest charge of one and one-half percent (1.5%) per month, which shall apply to late payments under this Agreement from both Metra and Amtrak.

16. **Records and Reports.**

16.1. **Amtrak Records.** Upon request of Metra, Amtrak will maintain and make available, to the extent practicable, such additional financial, accounting, and operational records as may be required to enable Metra to monitor and/or to comply with the

reporting requirements of any governmental entity having regulatory or financial responsibility with respect to Metra Commuter Rail Service. Upon written request, these records shall be provided to Metra in order to respond to a request from a funding or auditing agency (i.e. FRA, FTA), to the extent permissible under legal or labor requirements.

16.2. **Accident Reports and Audits by Other Agencies.** Upon written request, each Party shall provide copies to the other Party of all non-privileged accident reports and other incident reports involving damage or injury to persons or property, including Equipment, involving operation of Metra Commuter Rail Service in CUS. Upon request by Amtrak, Metra shall provide Amtrak with copies of any audits, reports or filings, unless privileged, made to the Federal Railroad Administration or any other federal regulatory agency with oversight authority over operations in CUS made by Metra or its contractor related to Metra Commuter Rail Service in CUS.

16.3. **Reports Submitted by Metra.** Upon thirty (30) days' advance written request, the following reports shall be submitted to Amtrak.

- Preliminary Report, Interim Report, and Final Incident/Accident Report for incidents in CUS
- Quarterly Results of Drug and Alcohol Tests
- System Safety Program Plan and updates
- Emergency Preparedness Plan
- Emergency Response Plan
- Contingency Plan
- Drug-free workplace policy

- Full investigative report, unless privileged, as a result of any applicable incidents in CUS

17. **Term and Termination.**

17.1. The term of this Agreement shall be May 1, 2019 through September 30, 2029.

This Agreement may be extended for an additional ten (10) year period upon mutual agreement of the Parties.

17.2. Either Party may terminate this Agreement for its convenience, upon 180 days' notice to the other Party.

17.3. Upon notice of termination by either Party as provided in Section 17.2, Metra will:

- (i) Take immediate action to discontinue its operations within CUS in an orderly fashion to minimize the recurring costs chargeable to Metra; and
- (ii) Metra shall pay to Amtrak all fees compensable under Section 12 for Metra Commuter Rail Service and Contract Services performed prior to the effective date of termination. If Metra provides notice of termination, Metra will also pay Amtrak's reasonable costs of termination and removal of Metra's personal property.

17.4. **Termination for Default.** In the event that Metra fails to make two consecutive monthly payments, not otherwise disputed, by the due dates required under this Agreement, or otherwise fails to meet its material obligations under this Agreement, including those violations or failures described in Sections 2 or 20, Amtrak may elect to terminate this Agreement for default. If Amtrak elects to terminate this Agreement for default, it shall notify Metra of its election and the basis for that action. The termination shall be effective ninety (90) days after the date of notice, except that a termination for

default shall not become effective if Metra (1) cures the default within fourteen (14) days of the date of notice for failure to make payments in accordance with Section 12; (2) commences to address the cause within thirty (30) days of the date of notice and diligently complete thereafter for all other failures; or (3) initiates the dispute resolution process in accordance with Section 18.

17.4.1. **Termination Costs.** In the event this Agreement is terminated for default, Metra shall pay to Amtrak all fees compensable under Section 12 for Metra Commuter Rail Service and Contract Services performed prior to the effective date of termination, plus Amtrak's reasonable costs of termination and removal of Metra's personal property.

17.4.2. **Cessation of Work.** Upon the effective date of a termination for default, Amtrak shall (1) promptly discontinue all Contract Services specified in the notice of intent to terminate (unless that notice directs otherwise),.

17.5. Upon termination of the Agreement, all rights and obligations of the Parties hereunder will terminate except for rights and obligations, whether liquidated, determined, contingent or otherwise, which had arisen prior to or as a result of such termination. To the extent that certain costs are incurred by Amtrak prior to or as a result of the termination pursuant to this Section 17, Metra shall be obligated to pay Amtrak costs of termination incurred thereafter which are directly attributable to the orderly cessation of Metra Commuter Rail Service and removal of Metra's personal property.

18. **Dispute Resolution.**

18.1. In the event of a dispute by the Parties over any issue arising under or related to this Agreement, the Parties shall first make every reasonable effort to resolve the dispute

by initiating discussions between individuals designated by each Party as appropriate. If discussions between the individuals designated by each Party do not lead to resolution of the dispute within (90) ninety days of the date the matter is first presented as a dispute, either Party may proceed with binding arbitration in the following manner:

18.1.1. The Party wishing to initiate arbitration shall notify the other in writing of its desire to submit the matter to arbitration no later than six (6) months after the date that it learns of the circumstances that give rise to the dispute. Such notice shall contain a statement of the issues and shall designate one arbitrator.

18.1.2. Within fifteen (15) business days of such notice, the other Party shall respond in writing by designating a second arbitrator.

18.1.3. Within thirty (30) business days of designation of the second arbitrator, the two arbitrators designated as aforesaid shall appoint a third arbitrator to serve as chairman. If the two arbitrators so designated fail to appoint a third arbitrator within the time provided herein, or if a Party fails to appoint an arbitrator within the time provided for herein, either Party may request the Chief Judge of the United States District Court for the Northern District of Illinois to appoint an additional arbitrator.

18.1.4. The arbitrators shall promptly hear and decide the issues submitted to them in accordance with the rules for commercial arbitration of the American Arbitration Association, giving to both Parties reasonable notice of the time and place of hearing.

18.1.5. The arbitrators, or a majority of them, shall promptly render their decision and award in writing to the Parties.

18.1.6. Any arbitration award rendered hereunder shall be final and binding upon the Parties. Judgment upon any such arbitration award may be entered in the United States District Court for the Northern District of Illinois.

18.1.7. Each Party shall bear its own costs and expenses of arbitration, including the cost of any expenses of the arbitrator designated by it. The fees of the chairman and any other remaining expenses of the arbitrators shall be borne equally by the Parties.

18.1.8. The Parties agree that every reasonable effort shall be made to obtain the prompt resolution of disputes which are submitted to arbitration pursuant to this Agreement. The Parties further specifically agree that neither Party shall be entitled to delay the arbitration process significantly by insisting on the application of extensive procedural steps or other actions which cannot clearly be expected to improve the ability of the arbitrators to render a reasonable and fair decision and agree further that reasonable discovery requests shall not be barred by the foregoing.

18.2. In the event of a dispute arising under or related to an invoice or request seeking payment of any kind under this Agreement the Party disputing that amount shall timely pay any undisputed amount of the invoice or requested fee, charge or cost.

18.2.1. In the event of such a dispute, only the disputed portion of the invoice and/or request for payment shall be subject to the dispute resolution process under this Section 18.2.

18.2.2. The Party disputing an amount set forth in an invoice shall not be required to pay the disputed amount pending resolution of the process described

in this Section 18.2. Payment of or receipt of the undisputed amount may not be construed to be any admission by either Party regarding any matter arising from the disputed amount. Further, payment of or receipt of the undisputed amount does not preclude recovery of any or all of the amount paid if it is subsequently determined that a dispute exists as to the paid portion.

18.3. Pending resolution of a dispute as set forth under this Section 18, the Parties shall proceed diligently with the performance of this Agreement in accordance with its terms.

19. **Force Majeure.**

Amtrak will be excused from performance of any of its obligations hereunder, where such non-performance is occasioned by any event beyond its control which shall include, without limitation, any order, rule, or regulation of any federal, state, or local government body, agent or instrumentality, work stoppage, accident, natural disaster, or severe weather.

20. **Compliance with Laws.**

Metra shall comply with all federal, state and local laws, rules and regulations, ordinances, directives, and notices in the operation of Metra Commuter Rail Service. Metra shall obtain and maintain all required permits, licenses, registrations, and shall comply with all then-current applicable health, safety, and environmental statutes, rules or regulations. Failure to do so may be deemed a default by Metra and cause for termination of this Agreement under Section 17.4.

21. **Non-violation of Labor Agreements.**

Nothing contained in this Agreement will require Amtrak to perform any service or take any action which would violate any term or condition of any then current labor agreement between Amtrak and any organization representing any of Amtrak's employees or applicable to Amtrak by reason of operation of law. Amtrak will not be in default of this Agreement or any covenant

or obligation contained herein by reason of any act or failure to act which is required by the terms of such agreements.

22. **ADA Compliance.**

Metra and Amtrak will reach agreement on Metra's proportionate share of the capital costs incurred by Amtrak to ensure accessibility of CUS as required by the Americans with Disabilities Act and implementing DOT regulations ("ADA Costs").

23. **Audit.**

23.1. Metra will have the right, at Metra's expense, to inspect, examine, and audit all financial books, records, and accounts of Amtrak which support the actual variable costs billed under this Agreement. Fixed payment amounts are not subject to audit, with the exception of the application of the AAR Index as set forth in Section 12.10 to such fixed payment amounts. Amtrak will retain all such books, records, and accounts for a period of three (3) years following the end of each Contract Year of this Agreement. This right to inspect, examine, and audit shall extend to auditors of FTA and any other government agencies requiring access to Amtrak records relating to the services provided by Amtrak in support of Metra's access to CUS under this Agreement, when requested by the Administration. Once an audit has been completed by Metra, a letter shall be sent to Amtrak setting forth the results of the audit. Items to which Metra does not take exception will be considered closed for the period unless Amtrak indicates in writing within ninety (90) days of the receipt of Metra's letter that certain cost items may be subject to future retroactive settlement(s) or adjustment(s). In this case, any items identified by Amtrak related to unionized labor agreements to be ratified shall be held open until the actual settlement(s) or adjustment(s) occurs, and such Amtrak claims for

retroactive unionized labor agreement settlements or adjustments shall survive termination of this Agreement.

23.2. The Parties shall work diligently to resolve and closeout audits in a timely manner. In the event the Parties are unable to resolve an open audit within 120 days of receipt of an audit report, the Parties will rely on the provisions of Section 18.

24. **Notices.**

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one Party by the other Party will be in writing and, other than e-mails, will be delivered by hand or be deposited in the mails of the United States, postage prepaid in an envelope addressed as follows:

If to Amtrak:

Assistant Vice President – Infrastructure Access and Investment
National Railroad Passenger Corporation
30th Street Station, 30th and Market Streets
Philadelphia PA 19104

With Copies to:

AVP Transportation North-Central
National Railroad Passenger Corporation
500 West Jackson Boulevard
Chicago, IL 60661

General Counsel
National Railroad Passenger Corporation
1 Massachusetts Avenue, NW
Washington, DC 20001

If to Metra:

General Counsel
Metra

547 W. Jackson Blvd.
Chicago, IL 60661

Either Party may change the address for receipt of notice by notifying the other Party in writing of such change.

25. **Assignment.**

This Agreement may not be assigned by Amtrak or Metra without the express written consent of the other Party.

26. **Governing Law.**

This Agreement shall be governed by applicable federal law, including Amtrak's enabling statute, 49 USC 28103(b), and the laws of the District of Columbia, and all legal proceedings other than those governed by Section 18, shall be adjudicated in the U.S. District Court for the District of Columbia.

27. **Severability.**

If any term, covenant, condition, or provision (or part thereof) of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part and the remaining parts shall be enforced as if such invalid, illegal or unenforceable part was not contained herein.

28. **Entire Agreement.**

No oral statement or prior written matter will have any force or effect with respect to Metra's use of CUS for operation of Metra Commuter Rail Service or the Contract Services provided hereunder. The Parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement will not be modified except in writing subscribed to by both Parties.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

NATIONAL RAILROAD PASSENGER CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

THE NORTHEAST ILLINOIS REGIONAL COMMUTER
RAILROAD (DOING BUSINESS AS METRA)

By: _____
Name: _____
Title: _____
Date: _____

List of Exhibits

- Exhibit A:** Description of CUS
- Exhibit B:** Metra Commuter Rail Service Schedules
- Exhibit C:** Amtrak Overhead Rates
- Exhibit D:** Base CUS Access Fee Calculation

Exhibit A: Description of CUS

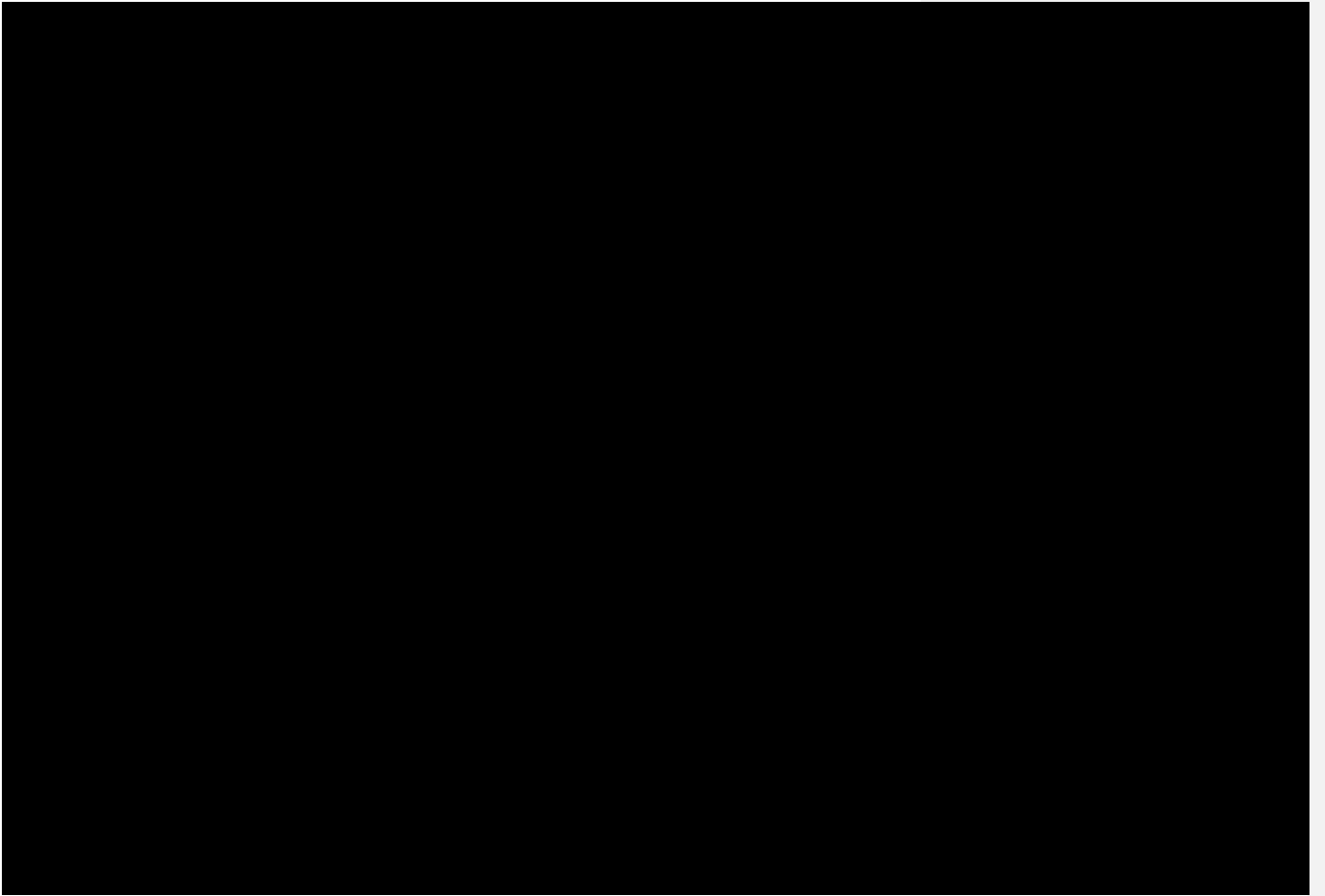
All Amtrak interest in real and personal property used in the operation of a railroad east from the west line of Canal Street, and west and north of the south branch of the Chicago River, inclusive of bridges crossing the Chicago River, to Roosevelt Road with the exception of parts of Amtrak's 14th Street Yard north of Roosevelt Road. Also includes the Station Headhouse west of Canal Street, bounded by Clinton Street, Jackson Boulevard, Canal Street, and Adams Street.

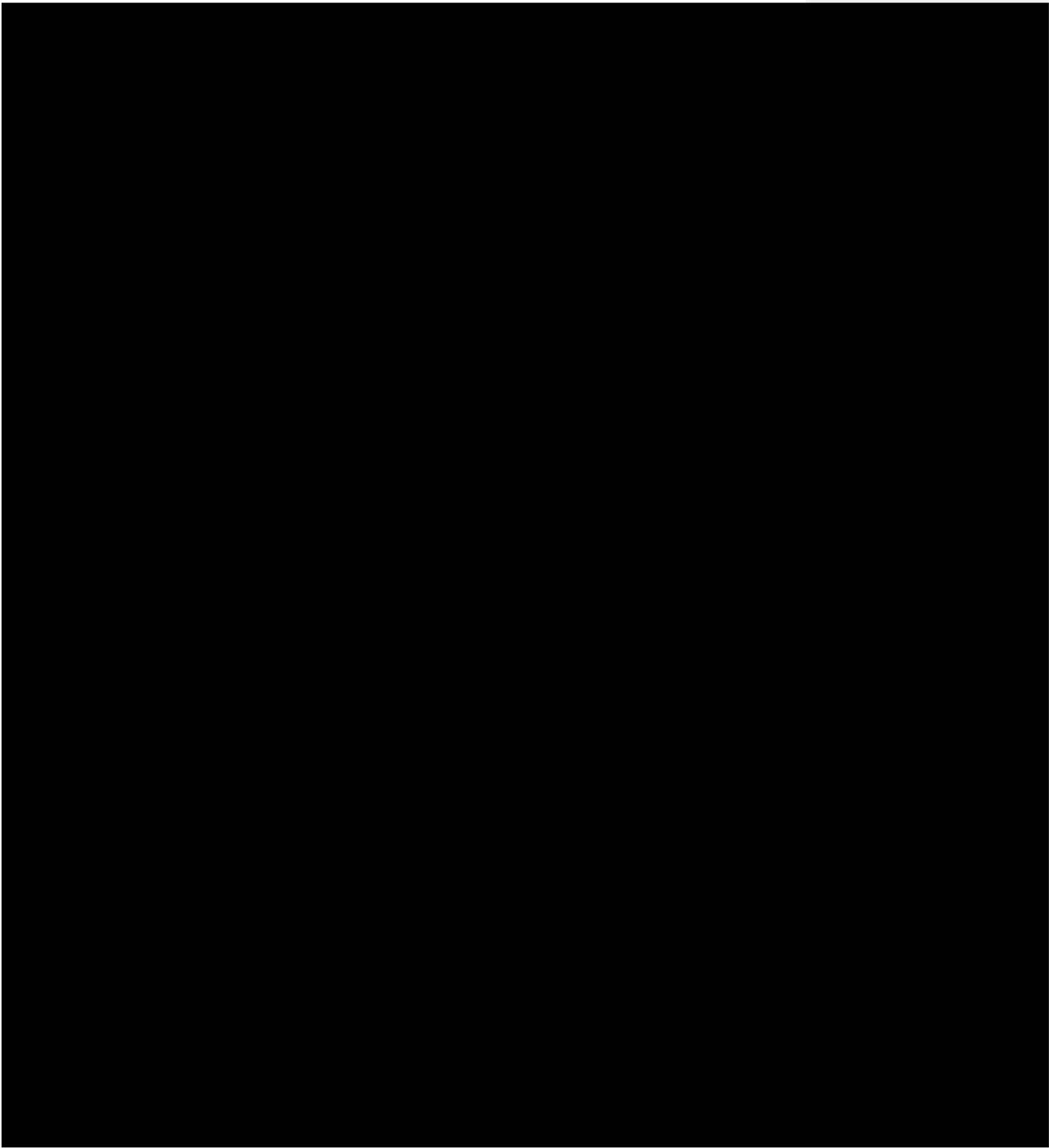
[Current Site Map under development]

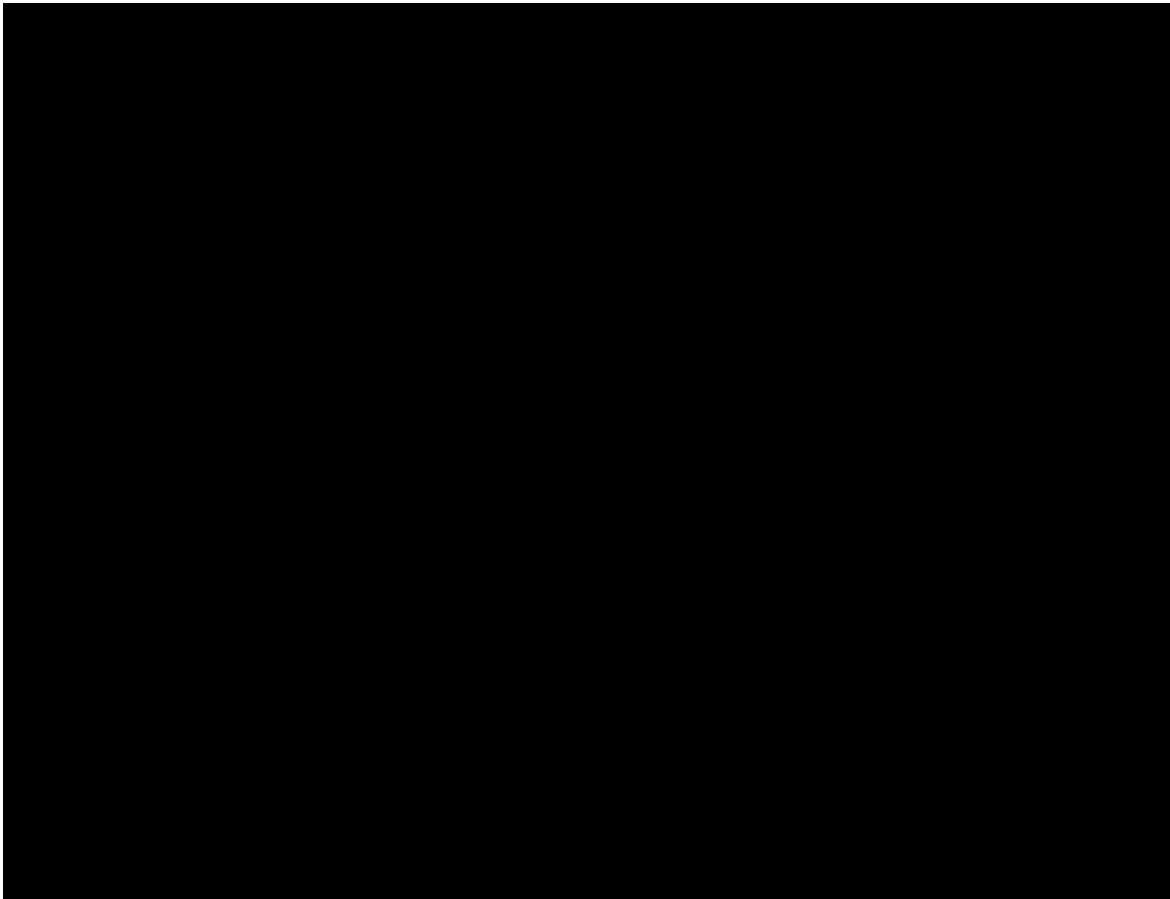
Exhibit B: Metra Commuter Rail Service Schedules

[Please insert current Metra schedules applicable to CUS]

<https://metrarail.com/maps-schedules/train-lines/MD-N>
<https://metrarail.com/maps-schedules/train-lines/MD-W>
<https://metrarail.com/maps-schedules/train-lines/NCS>
<https://metrarail.com/maps-schedules/train-lines/HC>
<https://metrarail.com/maps-schedules/train-lines/BNSF>
<https://metrarail.com/maps-schedules/train-lines/SWS>







Suchy Stmt.
Ex. 2

CONFIDENTIAL

(Filed under seal)

Suchy Stmt.

Ex. 3

17-2 HCB
AGREEMENT FOR CONSTRUCTION OF FIXED FACILITIES

AT CHICAGO UNION STATION

THIS AGREEMENT, made and entered into as of this 1st
day of OCTOBER, 1985 by and between the Commuter
Rail Division of the Regional Transportation Authority, an
Illinois municipal corporation ("CRD") and the Chicago Union
Station Company ("Company").

WITNESSETH:

WHEREAS, CRD and Company would like to improve Chicago Union
Station ("Station") by track modernization and renewal,
improvement of signalling, installation of standby facilities and
various other improvements; and

WHEREAS, the Commuter Rail Division was created by amendment
to the Regional Transportation Authority Act on November 9, 1983
and was thereby designated as the operating division of the
Regional Transportation Authority ("RTA") responsible for
providing public transportation by commuter rail; and

WHEREAS, the RTA has been granted funding for such Work by
the Urban Mass Transportation Administration ("UMTA") under grant
numbers IL-03-0076, IL-03-0073, IL-90-0008 and IL-03-0101 and by
the Illinois Department of Transportation ("IDOT") under grant
numbers CAP-78-117-FED, CAP-78--110-FED, CAP-83-212-FED,
CAP-84-219-FED, and under grant agreements made in connection
therewith with each of UMTA and IDOT (the "Grants") subsequently
assigned to CRD;

WHEREAS, Company is willing to accept installation of the Fixed Facilities by the CRD for the purpose of permitting such construction and the subsequent use thereof for Commuter Service;

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

1. Irrevocable License to Enter. Company hereby grants the CRD an irrevocable right of entry subject to the terms of this Agreement for the CRD or one or more of the CRD's Contractors to perform the construction described in Appendix F (the "Work"). The Work will be performed at the sites described in Appendix F.

2. Definitions. As used in this Agreement, the following terms, when capitalized as in this Section, shall have the following meanings:

Agreement -- This Agreement for Construction of Fixed Facilities and all exhibits and appendices hereto, as from time to time amended or modified pursuant to the terms hereof.

Authority -- The Regional Transportation Authority.

Commuter Service -- Public Transportation Services by rail within the Metropolitan Region as defined in the Regional Transportation Authority Act.

Company -- Chicago Union Station Company, an Illinois corporation.

Contractor -- A construction contractor hired by the CRD to perform part or all of the Work.

Cost(s) -- as defined in Section 7(e).

CRD -- The Commuter Rail Division of the Regional Transportation Authority as established by amendments to the Regional Transportation Authority Act, November 9, 1983.

Eligible Costs -- as defined in Section 7(f).

Fixed Facilities -- the facilities and related materials installed pursuant to this Agreement.

IDOT -- The Illinois Department of Transportation, Illinois Division of Public Transportation.

Plans -- as defined in Section 3.

Project Account -- as defined in Section 7(g).

Retired Facilities -- as defined in Section 11(b).

Station -- Chicago Union Station, located at Canal Street and Jackson Boulevard in Chicago, Illinois.

UMTA -- The United States Department of Transportation, Urban Mass Transportation Administration.

Use Period -- The period beginning on the date on which the Fixed Facilities are first used in Commuter Service and ending on the earlier of 20 years from such date except: (i) 15 years for standbys, escalator, and platforms (ii) 10 years for frogs and switchpoints, (iii) 12 years for rail from Randolph Street to Canal, or the end of the actual useful life of the Fixed Facilities.

Work -- The work to be performed under this Agreement described in Appendix F.

3. Design and Construction. (a) The parties have agreed that the documents governing the Work shall be the designs, surveys, plans, estimates (including costs, materials, and manpower requirements), working drawings and specifications hereinafter called "Plans" referred to in Appendix F hereof. CRD shall not proceed with any Work until written approval of the Plans is received from the Chief Engineer of the Company. After Company concurrence is received, no change shall be made in such documents without the prior written approval of Company except as provided in Section 31 (a). Except for Standby Plans, Company approval shall not be deemed to constitute any warranty or representation as to the adequacy, completeness, or safety of the Plans. Company shall make a final inspection of the completed Work and shall have a right of final acceptance of the installation of the Fixed Facilities. Said acceptance shall not be unreasonably withheld and Company shall immediately notify the CRD of any patent defects or unapproved variations from the Plans.

(b) After all necessary Grant approvals have been received by the CRD, and the CRD so notifies the Company in writing, the Company shall itself or through its subcontractors, as approved by the CRD based upon applicable state or federal standards, commence, carry on, perform and complete Company's portion of the

Work in a timely fashion, in the reasonable judgement of the Chief Engineer of the Company, and in a sound, economical manner, in accordance with standards regarding materials and workmanship representative of the railroad industry, and in accordance with the provisions of this Agreement, the Plans, and all applicable laws and guidelines. Company and its subcontractors shall comply with all applicable provisions of federal, state and local laws, regulations and requirements. Company shall also perform, or cause to be performed, its portion of the Work in accordance with the Company Activity budget limits contained in Appendix B, except that if Eligible Costs exceed such estimates, the remedies of the parties shall be only as provided in Section 7 (a).

(c) Company and the CRD shall immediately notify each other of any change in conditions or local law, or of any other event, which may significantly affect its ability to perform any or all of the Work in accordance with the provisions of this Agreement.

(d) The CRD shall not be liable for any obligations or liabilities 1) of Company to Company's contractors or subcontractors, or 2) of Company's contractors or its or their subcontractors to any person in connection with the performance of the Work pursuant to the provisions of this Agreement and notwithstanding the CRD's concurrence in or approval of the award of any subcontract or the solicitation thereof.

(e) Upon 7 days prior written notice, Company shall allow the CRD to examine and copy such data, reports, records,

contracts, subcontracts and other documents relating to the Work as the CRD may reasonably require. Company shall retain intact, for three years following each Project close-out, all Project documents, financial and payroll records and supporting documents. A Project close-out shall occur when the CRD notifies Company of the results of the final audit of a Project and forwards the final reimbursement or, in the case of an excess reimbursement by the CRD, when any required refund of reimbursement has been received from Company by CRD. Close-outs shall be subject to any continuing obligations imposed on Company or incurred by the CRD under this Agreement.

4. Work Forces. (a) The Work will be done by the respective work forces of the CRD, Company, and their respective contractors as agreed in the approved Plans.

(b) When Company elects to hire an independent contractor or item of equipment to perform any part of the Work and the contract price is \$5,000 or less, informal bidding procedures shall be followed. When Company elects to hire an independent contractor or item of equipment to perform any part of the Work, competitive bidding procedures shall be followed when the contract price exceeds \$5,000. The total amount of the specific service needed for performance of the Work shall be included for purposes of determining the applicability of this competitive bidding requirement and the \$5,000 standard. With the prior written approval of the CRD, UMTA, and IDOT, Company may hire an

independent contractor, lease equipment or hire professional services without the use of competitive bidding procedures. The CRD shall approve or deny any request for such approval as soon as may be reasonably practicable under the circumstance.

(c) Every contract between Company and a subcontractor shall be executed in such form as the CRD may approve, and shall comply in all respects with applicable government rules and regulations, including without limitation rules and regulations of UMTA, IDOT and CRD. The CRD's right to review and approve the form of subcontracts shall, however, be limited to the purpose of assuring compliance with law, applicable government rules and regulations, and this Agreement. Unless the CRD otherwise approves, each such contract above \$5,000 shall contain the provisions set forth in Appendix A.

5. Materials. (a) The CRD will purchase all materials except as provided in Section 5 (b), and will cause them to be delivered to the work site. All such materials shall comply with the most recent specifications for such materials (as of the date of purchase) issued by the American Railway Engineers Association and the American Association of Railroads, and shall comply with the Plans approved by the CRD and Company pursuant to Section 3 hereof. The CRD shall obtain the Company's prior written approval of the technical specifications for all such materials purchased by the CRD prior to the actual purchase of such materials. Company shall use such materials purchased by the CRD

to perform the Work. Information on the Cost of materials purchased by the CRD shall be furnished in writing to Company within 30 days after such purchase. Not later than 10 days prior to publication of the bid notice for such a purchase, Company shall specify in writing the locations to which materials to be purchased by the CRD for work to be performed by Company or Company's contractors are to be delivered and the scheduled dates of such deliveries. The CRD shall in its contracts with suppliers require delivery of such materials to such locations on such scheduled dates. Upon delivery of such materials, Company shall promptly notify the CRD of such delivery, shall visually inspect at the delivery site the materials for quantity, damage and compliance with the standards described in this paragraph and with any purchase agreement previously provided to Company by the CRD for such materials, and shall notify the CRD in writing within 15 days after delivery of any non-compliance. Company shall not be required to test such materials as part of such inspection. No failure of Company to inspect, or inspect timely, or to discover any non-compliance shall constitute a waiver of, or estoppel of enforcement of, such rights as the CRD may have against its suppliers. Company and the CRD shall conduct such inspection jointly in any case where the CRD so elects.

(b) To the extent the CRD does not purchase the materials required to perform the Work Company may elect to purchase them. When Company elects to purchase materials and the contract price

is \$5,000 or less, informal bidding procedures shall be followed. Competitive bidding procedures shall be used when the cost of such materials exceeds \$5,000. The total amount of a specific material to be purchased by Company needed for the performance of the Work shall be included for purposes of determining the applicability of this competitive bidding requirement and the \$5,000 standard. With the written approval of the CRD, UMTA and IDOT, Company may purchase materials without competitive bidding.

(c) When competitive bidding procedures are used, Company shall request bids in accordance with the bidding procedures of UMTA, IDOT and the CRD. The CRD's procedures are attached hereto as part of Appendix A. Company shall notify the CRD of its intent to request bids, and of the names of the suppliers to which Company proposes to send such requests. Within 10 days after publication of the bid notice, the CRD may require Company to request bids from additional suppliers. A copy of all bids received in response to any such request shall be submitted to the CRD for review and approval together with a recommendation by Company with respect to award. The CRD may direct Company to reject any or all bids received and take new bids or may approve the award of a contract or contracts. No contract shall be awarded without the prior written approval of the CRD. The CRD shall provide any directions concerning bid acceptance or rejection to Company not later than 7 days prior to the date on which bids would by their terms expire.

(d) Every contract between Company and a supplier shall be executed in such form as the CRD may approve, and shall comply in all respects with applicable government rules and regulations, including without limitation rules and regulations of UMTA, IDOT and CRD. The CRD's right to review and approve the form of subcontracts shall, however, be limited to the purpose of assuring compliance with law, governmental rules and regulations, and this Agreement.

(e) Company may bid on any purchases of materials or supplies in the same manner as any other supplier. In the event that a bid by Company is accepted by the CRD for the purpose of any materials or supplies, the cost of such materials or supplies shall be determined by the bid so submitted, notwithstanding the provisions of Section 7 (e).

(f) Company may, in an emergency, advance materials to the CRD for performance of the Work. In such case, the CRD shall replace such materials in Company's inventories as soon as practicable.

6. Permits. The obligation to obtain all necessary permits, licenses, consents and other approvals for the performance of the Work shall be that of the CRD at its cost. Company will cooperate with the CRD and its agents in the implementation of this Section.

7. Payment. (a)(i) For projects which are 100% funded by CRD, the CRD shall reimburse Company for all Eligible Costs in

accordance with the budget limits for the individual projects shown as Company Activity in Appendix B. Written CRD approval increasing budget limits is required before CRD incurs Eligible Costs which would exceed those budgets.

(a)(ii) For projects which are allocated between CRD and Company, the CRD shall reimburse Company for all Eligible Costs in accordance with the budget limits for the individual projects shown as Company Activity in Appendix B. Written CRD approval increasing budget limits is required before Company incurs Eligible Costs which would exceed those budgets. The budgets in Appendix B show only CRD's portion of funding divided between CRD Activity and Company Activity. "Activity" includes work done by or on behalf of the respective parties or purchases made by either in conformance with applicable provisions of this Agreement. Company shall reimburse CRD for all Eligible Costs representing Company's allocation of CUS/CRD Total Project Cost in each individual project as shown in Appendix B within 30 days of the date upon which payment requisition is received by Company. Written approval of Company is required to increase the Total Project Cost of projects allocated between Company and CRD.

(b) Where the Company has caused the Work to be stopped for reasons other than good cause, the Company shall not charge the CRD for any amounts necessary to restart the Work and such amounts shall not be Costs hereunder.

(c) The CRD and the Company shall cooperate and use their best efforts to cause the Work to be performed at the lowest overall cost practicable. The Company shall immediately notify the CRD in writing whenever the Company determines that the Cost of any individual Project described in Appendix B may exceed the approved budget amount for the Company Activity shown in any particular line item of Appendix B for such part of the Work.

(d) The Company may make monthly requests for payment from the CRD of preliminary Eligible Costs of the Work, and the CRD shall honor such requests in the manner set forth in this paragraph. In order to receive such estimated payments, the Company shall:

- (1) complete, execute and submit to the CRD payment requisition forms approved by the CRD;
- (2) submit to the CRD an explanation of the purposes for which costs have been incurred to date; and
- (3) have submitted all financial and progress reports currently required by this Agreement.

Upon receipt of the payment requisition form and the accompanying information in satisfactory form, the CRD shall process the requisition and the CRD shall then reimburse preliminary Eligible Costs incurred by the Company within 30 days of the date upon which such payment requisition form was timely received by it. Reimbursement shall be made only out of funds received by the CRD pursuant to the applicable portions of the Grants and out of

local matching funds required by UMTA and IDOT in connection with the Grants. Any costs for charges which are not included on a payment requisition provided to the CRD by the Company within 270 days after the close-out of the Project will not be reimbursable as Eligible Costs hereunder, provided, however, that nothing in this Section shall be construed to preclude the Company from recapturing any valid expense or cost for charges discovered in the course of any subsequent audit conducted pursuant to the provisions of this Agreement. Reimbursement of any cost item pursuant to this Section shall not constitute a final determination by the CRD that such cost item is an Eligible Cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by the Company.

(e) "Cost" or "Costs" shall include only the following:

(i) The cost of wages of directly assigned Company work forces, including additives applied in accordance with subparagraph (vi), below, (including the additives for supervision). For purposes of this agreement directly assigned Company work forces are defined as employees of the Company Engineering Department at the level of gang foreman and below. Each position is only reimbursable for time devoted on this project and in no event will these positions be reimbursable if the project is suspended, or after the project is completed.

(ii) The cost of wages of directly assigned Company work forces for subsequent audits (excluding, however, all fringe benefits and labor additives of any nature whatsoever as herein defined) if, and only if, UMTA reimburses the CRD for such costs.

(iii) The cost, excluding stores expense, of Company-furnished materials and supplies, including additives applied in accordance with subparagraph (vi), below.

(iv) The cost of renting in accordance with this Agreement any equipment necessary for the Work including the cost of fuel, supplies, replacements (where such equipment failure is due to normal wear and tear), or repairs (where such equipment has received a proper joint inspection by the Company and the CRD prior to its initial acceptance for use) actually incurred by the Company but not covered by any applicable rental agreement for such equipment.

(v) The cost of any independent contractors hired by the Company in accordance with this Agreement for performance of the Work.

(vi) To the actual cost of direct labor, materials and supplies furnished by the Company, additives shall be applied in accordance with Company rates provided such rates are developed in accordance with methodologies used to produce the previously used General Manager's Association of Chicago rates and would be subject to audit by CRD, UMTA and IDOT; to the price paid by the CRD for CRD-purchased materials which are installed by the Company under this Agreement, an additive at the rate of 7% of such price shall be paid to the Company, provided, however, that with respect to rail furnished by the Company or the CRD an additive of 5% of the cost of rail and special rail train service charge from the welding plant to the site of installation.

(vii) The direct cost of obtaining any necessary building or construction permits.

(viii) The cost of recording instruments of ownership at the CRD's request.

(ix) Sales, use or excise taxes required to be paid by the Company on Company-furnished materials or supplies.

(x) Any costs not specifically listed above which are reasonably incurred by the Company relative to the said Fixed Facilities and approved by the CRD, provided however that the CRD's approval shall not be required where such cost is less than \$1,000 and the aggregate of all such costs for which the Company seeks reimbursement under this Agreement is less than \$5,000.

The materials additive described in subparagraph 7(e)(vi), above, covers expenses for supervision, stores expense, inspection, accounting, purchasing and transportation to point of use or point from which handled by work train, and such expenses shall not otherwise be reimbursed.

(f) Eligible Costs are Costs incurred by the Company which meet all the requirements set forth below. They include only Costs (as that term is defined in Section 7(e)) which are:

(i) necessary or desirable in order to accomplish the Work;

(ii) actual net costs to the Company (i.e., the price paid minus any refunds or rebates received by the Company which have the effect of reducing the cost actually incurred) including fringe benefits and direct overhead and material handling additives in connection with labor and material furnished by the Company, and otherwise calculated in accordance with Section 7(e);

(iii) incurred for work performed after the date on which this Agreement, unless specific authorization from the CRD to the contrary is received;

(iv) satisfactorily documented in accordance with Section 7(g);

(v) treated uniformly and consistently applied in accordance with generally accepted accounting principles;

(vi) related to Fixed Facilities installed within the geographical limitations of a Project as described in Appendix F and in the drawings and specifications approved under Section 3;

(vii) incurred pursuant to and in conformity with subcontracts, Grantee Proposals, plans, specifications, drawings and related documents approved by the CRD in accordance with Section 3 hereof.

(g) The Company shall establish and maintain as an integral part of its current accounting system, separate accounts for each Project ("Project Account"), the form and content of which shall be subject to approval by the CRD. All costs charged to each Project, including costs of any approved services furnished or supplied by the Company or others, shall be supported by properly

prepared, maintained or executed payrolls, time records, invoices, contracts, purchase orders, supporting documents or vouchers evidencing in detail the nature and property of the charges. Any check or order drawn by the Company with respect to any item which is chargeable against a Project Account will be drawn only in accordance with a properly signed voucher then on file in the office of the Company stating in proper detail the purpose for which such check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders and other accounting documents (or the copies thereof) pertaining in whole or in part to the Work shall be clearly identified, readily accessible and, to the extent feasible, kept separate and apart from all other similar documents not relating to the Work.

8. Maintenance of Fixed Facilities. Except as may be otherwise provided by written agreement between the parties, Company shall maintain the Fixed Facilities, or cause them to be maintained, in a safe and operable condition in accordance with normal railroad industry procedures and standards throughout the Use Period. Upon reasonable notice CRD shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition and proper maintenance of the project equipment and facilities. UMTA shall have the right to accompany CRD on any such inspection. Any portion of the Fixed Facilities used by the public or by Company's employees shall also be maintained in a clean condition throughout the Use

Period. This Section shall not be construed to affect any other obligations Company may have with respect to maintenance of the Fixed Facilities. Company is not required by this Agreement to make capital replacements of, or improvements to, the Fixed Facilities, but shall make repairs. The CRD shall have the right, but not the obligation, to replace at its cost a Fixed Facility which becomes unserviceable or unsafe for whatever reason prior to the end of its minimum Use Period subject to the terms of this Agreement. If the CRD shall elect not to repair or replace the escalator installed in the concourse level of the Station to the east side of Canal Street, the CRD shall have an obligation to remove the escalator if it has become unserviceable or unsafe, for whatever reason, prior to the end of its minimum Use Period. Costs of removal of the escalator shall be allocated between CRD and Company in accordance with their respective proportion of locomotive units and cars using the Station during the full calendar year ending prior to such removal.

9. Insurance. Before commencing any Work, the CRD shall provide, or shall cause its contractor(s) to provide, the following insurance for the prior approval of the Company:

(a) Workmen's Compensation Insurance in the amount or amounts required by the laws of the State of Illinois.

(b) Comply with Company's Indemnity and Insurance requirements shown in Appendix H. Said policy shall be

maintained in force until the Work has been completed and accepted by the Company.

10. Indemnification. (a) Except as otherwise provided in other written agreements between the parties, CRD agrees to protect, indemnify, defend and forever save and keep harmless UMTA, IDOT, the Company and its directors, and their employees and agents and the Burlington Northern Railroad Company, Illinois Central Gulf Railroad Company, National Railroad Passenger Corporation, and the Norfolk and Western Railway company from, and to assume all liability and expense (including costs and attorneys' fees) as between the parties hereto for death or injury or any person or persons and all loss, damage or destruction to any property caused by, attributable to or resulting from CRD's Work prior to Company's final acceptance of the Work.

(b) Except as otherwise provided in other written agreements between the parties, Company agrees to protect, indemnify, defend and forever save and keep harmless UMTA, IDOT, the CRD and its directors, and their employees and agents from, and to assume all liability and expense (including costs and attorneys' fees) as between the parties hereto for death or injury to any person or persons and all loss, damage or destruction to any property caused by, attributable to or resulting from Company's Work, maintenance, repairs, alteration, replacement, operation, presence or use of the Fixed Facilities

or the failure of Company to comply with the provisions of this Agreement after Company has finally accepted the Work.

11. Ownership. (a) The parties' respective ownership interests in the Fixed Facilities shall be as set forth in Appendix G. The Fixed Facilities owned by the CRD, excepting, however, footings, earth work, grading, culverts and pipes below the track ballast: (i) shall remain the property of the CRD; (ii) they shall be considered personalty; (iii) Company agrees that the Fixed Facilities do not and will not constitute fixtures or become part of the real estate; (iv) Company shall not cause such Fixed Facilities to become subject to liens or encumbrances of any kind except for liens and encumbrances directly resulting from action of the CRD or any contractor or sub-contractor of the CRD. If any such lien shall be filed on property of the Company by the CRD or any contractor, subcontractor or supplier of the CRD, then, upon notice by the Company to the CRD, the CRD shall promptly take such steps as may be required to have the lien released and shall provide evidence thereof to the Company; (v) Company shall notify in writing each person or entity of any kind which has a security interest, mortgage, lien, encumbrance or claim in or on real property on which the Fixed Facilities are installed, or claim in or on real property on which the Fixed Facilities are installed, or in property replaced in whole or in part by Fixed Facilities, that the Fixed Facilities are the property of the CRD; (vi) Company shall permit the posting and

maintenance of notices on the Fixed Facilities sufficient to provide notice of the CRD's ownership to a person inspecting the real estate on which the Fixed Facilities are installed; (vii) Company shall execute all instruments necessary or desirable to evidence its acknowledgement that CRD's ownership interests in the Fixed Facilities are described in this Agreement, including Exhibit G hereof, and Company's agreement that the Fixed Facilities do not constitute fixtures or become part of the real estate. Company shall take all action reasonably requested by the CRD to assist in recording, in the appropriate records maintained by the county in which the Fixed Facilities are located, the State of Illinois, or any other governmental entity, this Agreement and any other record or notice of the CRD's ownership of CRD's Fixed Facilities and rights under this Agreement; (viii) Company shall take no action to remove or conceal any notice or record of the CRD's interest in the Fixed Facilities; and (ix) Company shall take no action inconsistent with this Section.

(b) The parties to this Agreement recognize UMTA's right to require CRD to transfer its title or ownership interest to UMTA or to directly dispose of any real or personal property financed with Federal assistance funds as may be appropriate in the event Fixed Facilities are no longer used for Commuter Service ("Retired Facilities"). However, with regard to such Retired Facilities necessary to Company's common carrier business, Company shall have the option of purchasing CRD's ownership

portion. To exercise this option, Company shall agree to pay to CRD and CRD shall pay to UMTA and IDOT an amount equal to the CRD portion of the average of the replacement cost and the original cost of each such Fixed Facility no longer used for Commuter Service reduced by 5% of such costs for all Fixed Facilities (except 6.7% for standbys, 8.3% for rail from Randolph Street to Canal, and 10% for frogs and switch points) for each such complete year of the Use Period before such Fixed Facility was removed from Commuter Service. Such payment will be made by Company to CRD within 90 days after a Fixed Facility is removed from Commuter Service. If Company does not exercise this option CRD will dispose of such Retired Facilities in accordance with Section 12 or Attachment N to OMB Circular A-102 or A-110 as may be appropriate.

(c) The Fixed Facilities owned by CRD, except the escalator, shall become the property of Company at the end of the Use Period. However, Company agrees that:

(i) in the event Federal funds are used to replace Fixed Facilities, any net salvage value of such Fixed Facilities shall be used to reduce the total cost of the replacement project; and

(ii) Company's ownership of such Fixed Facilities after the applicable Use Period shall not result in rental increase attributable to CRD's continued use of the Fixed Facilities under any operating agreement between Company and CRD.

12. Fixed Facilities Lease. The CRD agrees that it will lease the Fixed Facilities which it owns to Company, and Company

agrees to lease such Fixed Facilities from the CRD, at a rental of \$1 per year, commencing with the date of acceptance by the CRD of such Fixed Facilities and continuing for the Use Period. Such lease may be terminated by the CRD if Company ceases to use such Fixed Facilities for Commuter Service. Except as provided in 11(b), upon expiration or termination of such lease during its term pursuant to the preceeding sentence, the CRD or its designee shall have the right to demand by written notice that Company remove, at the CRD's sole cost and expense, the Fixed Facilities owned by the CRD. Without payment of any kind to Company therefor (except expenses of removal), Company shall promptly remove such facilities and promptly make such facilities available to the CRD. If the CRD does not demand the removal of a Fixed Facility under this Section within six (6) months after termination of the lease, the CRD shall have no further rights under this Section 12 with respect to such Fixed Facility, and Company may act accordingly, including removal or demolition of the same, subject, however, to the rights and obligations of the parties contained in the other provisions of this Agreement.

13. Use of Fixed Facilities. (a) Company shall use the Fixed Facilities for intercity rail service, provided that no intercity passenger operations on the Fixed Facilities, except for intercity passenger operations allowed under any operating agreement between the parties, shall unreasonably interfere with the provision of Commuter Service. However, in no event shall

the Fixed Facilities be used by any different class of service without prior written permission of CRD.

(b) Company reserves the right to construct and locate building and building support columns on and through Fixed Facilities. Company agrees that such construction will include ventilation and lighting in the areas used by commuters. Prior to construction, Company shall provide CRD plans showing the location and size of support columns. Company agrees to pay for all restoration and clean up work which may result from column construction. In the event CRD notifies Company that such column construction would significantly impair the intended purpose of the Fixed Facilities, Company may propose to construct, at Company expense, facilities which would replace the impaired Fixed Facilities or, if Company does not construct comparable facilities at Company expense, Company shall agree to purchase the impaired Fixed Facilities in accordance with 11(b).

(c) If any normal provider of Commuter Service advises Company of a termination of Commuter Service during the Use Period, Company will notify the CRD in writing of such planned termination within three (3) days of Company's obtaining such knowledge.

(d) If, during the Use Period, any Fixed Facilities are not used in Commuter Service, whether by planned withdrawal, misuse or casualty loss, Company shall immediately notify CRD who, in turn, shall immediately notify UMTA.

(e) In the event any Fixed Facility installed under this Agreement is replaced by Company prior to the expiration of its Use Period, for any reason other than safety or premature failure, Company shall not request capital funding from any public source including the CRD to replace such Fixed Facility prior to the date on which the Use Period thereof would have expired.

(f) The CRD shall not require the Company to use a Fixed Facility which has become unsafe for any reason.

14. Audit and Inspection of Records. (a) Company shall at all times before, during and after the performance of the Work, upon seven (7) days prior written notice to Company for a period of three (3) years after final payment under this Agreement permit the authorized representatives of the CRD, UMTA, IDOT, and the Comptroller General of the United States (i) to inspect and audit all data and records of Company relating to its performance under this Agreement, (ii) to have access to the site of construction and (iii) to inspect all work performed under this Agreement. Company shall furnish to the CRD monthly, with its invoices, progress reports and detailed billings containing such information as the CRD, UMTA or IDOT may reasonably request.

Company shall also provide, during normal business hours, reasonable office space to conduct any and all audits performed pursuant to this Section.

(b) The CRD shall provide Company with draft audit findings. If the Company should dispute any findings, Company shall provide rebuttal information to the CRD. The CRD shall then provide the Company with final audit findings. If the final audit findings are accepted by Company then any payments owed by either party shall be promptly remitted to the other party.

(c) The Company may choose to initiate arbitration proceedings to resolve any disputes with CRD's final audit. The Company shall initiate arbitration proceedings by providing written notice of such intent to CRD. The findings which are disputed shall be submitted to three competent arbitrators, one of whom shall be appointed by the Company and one of whom shall be appointed by the CRD. The two so appointed shall select a third disinterested and competent person and the decision of this Board or of a majority shall be final and conclusive between the parties. Should one of the parties neglect to appoint an arbitrator as aforesaid, for the period of twenty days after written notice to make such appointment, then and in that event the other party shall select another competent disinterested person and the three chosen shall hear and decide such differences, and their decision, or that of a majority, shall be final and conclusive between the parties. In case the two

arbitrators, chosen in either of said ways, fail to agree within thirty days on a third arbitrator, then the third arbitrator shall be appointed by the New York Regional Director of the American Arbitration Association and the three so chosen shall hear and decide such differences, and their decision or that of a majority, shall be final and conclusive between the parties. The CRD and Company shall each be responsible for and assume the expense of the arbitrator acting on its behalf, one-half of the expense of the third arbitrator, and one-half of the fee charged by the American Arbitration Association.

15. Reporting. The Company shall keep satisfactory records with regard to the use, condition and existence of the property and submit to the CRD no less frequently than biennially such information as is required in order to assure compliance with the project's intended use and shall immediately notify the CRD and UMTA in all cases where Fixed Facilities are used in a manner substantially different from their intended use.

16. Salvageable Materials. Any salvageable material removed in the course of the Work shall be owned by Company, except when such material was originally made available by UMTA. In such cases the salvage material shall be owned by CRD, subject to UMTA's financial interest.

17. Warranties. Company hereby represents, certifies and warrants to the CRD:

(a) Company has title to all right -of-way or other land upon which any of the Fixed Facilities will be installed sufficient to permit installation of said Fixed Facilities and use of the Fixed Facilities thereon in accordance with this Agreement without violating any existing contract, lease, covenant, agreement, laws or ordinances; provided, however, that if any mortgage or indenture requires the consent of the owner or holder of the indebtedness secured thereby, Company shall obtain such consent, however if such consent is not obtained prior to execution of this Agreement, the Company shall indemnify CRD from any loss or damage as a result of such consent not being obtained;

(b) None of the written information heretofore furnished or to be furnished to the CRD in connection with this Agreement contains or will at the time furnished contain, any untrue statement or misrepresentation of a material fact or will omit to state or represent any material fact necessary to make the statements or representations when made, in light of the circumstances under which they were made not misleading in any material respect, provided, however, that professional opinions, or estimates of costs made in good faith by Company shall be excluded from this warranty; and

(c) Company is not included in the U.S. Comptroller General's Consolidated List of Persons or Firms Currently Debarred for Violations of Various Public Contracts Incorporating

Labor Standards Provisions and will furnish the CRD with its affidavit to such effect upon request.

(d) Each party represents and warrants that its part of the Work will be performed in a good and workmanlike manner, and in accordance with the provisions of this agreement.

(e) For a period of one year from the date of completion of Company Work, as evidenced by the date of final acceptance of the Company Work by the CRD, Company warrants to the CRD that the Company Work conforms to the requirements of this Agreement and is free of any defect of equipment, material or workmanship performed by or supplied by Company or any of its subcontractors or suppliers, except that Company does not hereby warrant against defects in materials or equipment supplied by the CRD. Under this warranty, Company shall remedy at its own expense any such failure to conform any such defect.

18. Prohibited Interests. No member or delegate to the Congress of the United States and no member of the Illinois General Assembly shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

19. Non-Collusion. Company warrants and represents that it has not paid and it agrees not to pay any bonus, commission, fee or gratuity to any employee or official of the CRD for the purpose of obtaining this Agreement. No officer, director, or employee of the CRD during his term or for one year thereafter

shall have any interest, direct or indirect, in this Agreement or its proceeds.

20. Equal Employment Opportunity. (a) In connection with the execution and performance of this Agreement, Company shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Company shall take affirmative action to insure that employees are treated during employment with regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfers; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Company shall comply with the affirmative action provisions set forth at Part 60-4 of Title 41 of the Code of Federal Regulations and included in Appendix A hereto.

21. Project Sign. Company shall permit the CRD to erect and maintain signs satisfactory to UMTA, IDOT and the CRD identifying the Fixed Facilities and indicating federal, State of Illinois, and CRD participation. Company shall have a right to inspect and approve any and all project signs. Such approval shall not be unreasonably withheld.

22. Cooperation in Obtaining Government Funding. Company and CRD shall cooperate with each other in seeking and obtaining

from government sources other than the CRD such funds as may be available to either of them with respect to the Work.

23. Opinion of Counsel. When this Agreement is executed by Company, Company will furnish the CRD with an opinion of Company's counsel, dated on the date on which this Agreement is executed by Company and to the effect that: (i) Company is a corporation duly organized and existing and in good standing under the laws of its jurisdiction of incorporation, and has full corporate power to carry on its business as and where then conducted; (ii) Company is in good standing under the laws of the State of Illinois; (iii) the execution, delivery and performance of this Agreement by Company has been duly authorized by all requisite corporate action of Company; (iv) this Agreement has been duly executed and delivered by the Company in accordance with its terms; (v) the compliance by Company with the terms and conditions of this Agreement will not result in breach of, or default under, any judgment, decree, mortgage, indenture or other agreement applicable to Company known to such counsel; (vi) all such approvals as may be required to permit the performance by Company of its obligations under this Agreement have been obtained; and (vii) except as previously disclosed to CRD in writing, such counsel has no knowledge of any litigation or proceedings pending or threatened against Company which could materially or adversely affect the performance by it or any of its obligations under this Agreement.

24. Successors and Assigns and Assignments. This Agreement shall bind and inure to the benefit of the respective successors and assigns of CRD and Company. Any successor will be required to accede in writing to all of the terms, conditions and requirements of this Agreement as a condition precedent to such succession. Such assignment shall be made only to parties financially and operationally competent to perform all obligations under this Agreement.

25. Agreement Period. The terms of this Agreement shall begin as of the date hereof, and shall end upon the completion of all obligations hereunder. This Agreement may be terminated by the CRD at any time prior to completion of Work with or without cause, by written notice to Company, but this Agreement may be terminated subsequent to completion of the Work only for breach hereof or as otherwise expressly permitted by this Agreement. If the CRD terminates this Agreement prior to the completion of the Work through no fault of the Company, the CRD shall restore the area under construction to its original condition prior to construction.

26. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

27. Headings. The section headings of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement.

28. Amendments. Any proposed change in this Agreement shall be submitted to the CRD for its prior approval. No

modification, addition or amendment to this Agreement shall be effective unless and until such modification, addition or amendment shall be reduced to writing and executed by the authorized officers or agents of each party.

29. Notices. Except as otherwise specified in this Agreement, all requests, notices, demands, authorizations, directions, consents or waivers or other documents required or permitted under this Agreement shall be in writing and shall be delivered in person to, or deposited postage prepaid in the registered or certified mails of the United States, addressed to the CRD at:

COMMUTER RAIL DIVISION
547 West Jackson Boulevard
Chicago, Illinois 60606
Attn: Director, Office of Contract Management

or to Company at:

THE CHICAGO UNION STATION COMPANY
210 South Canal Street
Chicago, Illinois 60606
Attn: President

or at such other address as either party may at any time or from time to time designate for itself in writing. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a party when received at its address set forth or designated as above provided. CRD shall be responsible for notification to UMTA at:

URBAN MASS TRANSPORTATION ADMINISTRATION
300 South Wacker Drive, Suite 1720
Chicago, Illinois 60606

30. Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

31. Severability. The Parties agree that if any provision of this Agreement shall be held invalid for any reason whatsoever, the remaining provisions shall not be affected or impaired thereby if such remaining provision could then continue to conform with the purposes of this Agreement and the terms and requirements of applicable law.

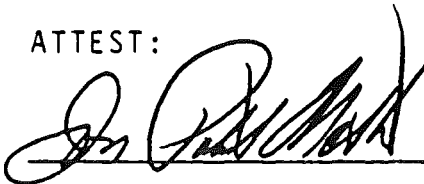
32. Company Requirements. (a) The CRD agrees that it will not construct the Fixed Facilities, or offer contracts to construct the Fixed Facilities, except in accordance with the Plans approved by Company pursuant to Section 3 hereof, provided, however, that minor variations not involving safety or Company's operations which become necessary during actual construction may be made by the CRD or its contractor after notifying Company of said minor variations.

(b) The CRD agrees that it will cause waivers of mechanics' and materialmen's liens to be collected, prior to partial or final payments, from its contractors, materialmen, subcontractors or other performing services at the Work site, and will indemnify and defend Company against any materialmen's or mechanics' liens with respect to Company's property which may arise or be claimed as a result of any of the Work.

33. Permitted Performance Variations. The failure of Company to perform, in whole or in part, any of the obligations of Company under this Agreement or any Contract, by reason of the occurrence of fire, flood, explosion, disaster, strike or labor work stoppage, materials unavailability or any other cause beyond the reasonable control of Company (herein called a "Force Majeure Occurrence") shall be excused for all purposes (including times of performance), provided that Company shall promptly resume normal performance of Company's obligations hereunder, as soon as reasonably possible.

IN WITNESS WHEREOF, the CRD and Company have caused this Agreement to be duly executed as of day and year first above written.

ATTEST:



COMMUTER RAIL DIVISION

BY:

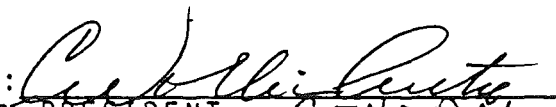

EXECUTIVE DIRECTOR

ATTEST:



THE CHICAGO UNION STATION COMPANY

BY:


VICE PRESIDENT & GENERAL MANAGER

ChgoUnionSta/8-1-85/JP:il/SD#17

AMENDMENT NO. 1 TO
FIXED FACILITY AGREEMENT I

This Amendment, entered into this _____ day of September, 1990, by and between the Chicago Union Station Company ("Company") and the Commuter Rail Division of the Regional Transportation Authority (CRD);

PRELIMINARY STATEMENT

The Company and CRD have previously entered into a Fixed Facility Agreement dated October 1, 1985; and

The Company and CRD wish to amend the Agreement to include new projects and a new basis for cost allocation.

Now Therefore, in consideration of the mutual promises and covenants contained herein, the Company and CRD hereby agree as follows:

1. Page 1, Paragraph 3 of the Fixed Facility Agreement shall be deleted and the following language inserted in lieu thereof: Whereas, the RTA has been granted funding for said Work by the Urban Mass Transportation Administration ("UMTA") and the Illinois Department of Transportation ("IDOT") under various grant numbers and grant agreements. All of the grant agreements made in connection with the Work to be performed hereunder have subsequently been assigned to CRD.
2. Page 7, Article 5, Sub (a), Line 1, the word "all" shall be deleted. Sub (a), Line 1 shall read "The CRD will purchase materials except as provided in Section 5(b), and will cause them to be delivered to the work site."
3. Page 14, Item 7, titled Payment, Subparagraph (e) shall be amended by the insertion of a new final paragraph which reads as follows:

omit
10/2 → ~~Where the cost of Work is allocated between the Company and CRD, "Cost" includes only CRD's portion of the cost of said Work.~~
Allocations of costs contained in Appendix B have been based on the Company's historical usage of facilities for Commuter Service and

okay

change "cost" only

omit

~~freight or~~ intercity passenger service; now, however, in the case of Project 1427, the Company has agreed to a cost allocation of 33.3 percent. ^{10/3} WITH RESPECT TO THE HARRISON ST. PORTION OF THE PROJECT. ^{OKAY}

4. Page 32, Item 29 -- Notices. The address of the Urban Mass Transportation Administration shall be amended to read:

55 East Monroe Street
14th Floor
Chicago, Illinois 60603 ^{10/3}

5. Appendices A, ~~B, F and G~~ of the Fixed Facility Agreement shall be deleted in their entirety. New Appendices A, ~~B, F and G~~ ^{10/3} as revised are attached hereto and by this reference made a part hereof.

6. All other terms and conditions of the Fixed Facility Agreement dated October 1, 1985, shall remain in full force and effect.

In Witness Whereof, the Company and CRD have caused this Amendment Number 1 to be duly executed on the day and year first written above.

CHICAGO UNION STATION
COMPANY

THE COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY

BY: _____
Vice President and
General Manager

BY: _____
Executive Director

ATTEST:

ATTEST:

BY: _____

BY: _____
Maureen McClelland
Assistant Secretary

UMTA/IDOT ADDENDUM
FOR CONSTRUCTION CONTRACTS

1. APPROVED EQUAL AND BRAND NAMES	PAGE	2
2. ENVIRONMENTAL PROVISIONS	PAGE	2
3. AUDIT	PAGE	2
4. MINORITY BUSINESS ENTERPRISE	PAGE	2
5. EMPLOYMENT	PAGE	2
6. TERMINATION AND SUSPENSION	PAGE	5
7. UNAVOIDABLE DELAYS	PAGE	7
8. MODIFICATIONS TO CONTRACT	PAGE	8
9. INTEREST OF MEMBERS OF CONGRESS	PAGE	8
10. PROHIBITED INTEREST	PAGE	8
11. FINANCIAL ASSISTANCE CONTRACT	PAGE	8
12. INELIGIBLE CONTRACTOR AND SUBCONTRACTORS	PAGE	9
13. CONTRACT CHANGES	PAGE	9
14. SUBCONTRACTING LIMITATION	PAGE	9
15. COPYRIGHT AND RIGHTS IN DATA	PAGE	9
16. NONDISCRIMINATION	PAGE	9
17. ASSIGNMENT	PAGE	9
18. GOVERNMENT INSPECTOR	PAGE	11
19. PATENT INFRINGEMENT	PAGE	11
20. DISPUTES	PAGE	11
21. CONSERVATION	PAGE	12
22. EMPLOYEE BENEFITS	PAGE	12

APPENDIX A

REQUIRED THIRD PARTY CONTRACT CLAUSES AND PROVISIONS

- UMTA/IDOT/CRD Addendum for Construction Contracts
- UMTA/IDOT Addendum for Material Procurement
- Federal Equal Employment Opportunity Requirements
- CRD Regulations Governing Public Bidding

U. S. Department of Transportation
Urban Mass Transportation Administration
("UMTA") and Illinois Department of
Transportation ("IDOT") Addendum
For Construction Contracts

1.0 Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words "or Approved Equal" are implied. All approvals and requests for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specifications shall not relieve Contractor from it's responsibility to design and construct the equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions.

2.0 Environmental Provisions. For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Clean Water Act and Environmental Protection Agency regulations which prohibit the use of facilities included on the EPA List of Violating Facilities.

3.0 Audit. Contractor shall permit the authorized representatives of Metra, IDOT, U. S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of Contractor relating to it's performance under the contract.

4.0 Disadvantaged Business Enterprise. Contractor must take all such action as may be necessary and reasonable to assure that disadvantaged business enterprises have an equitable opportunity to compete in all sub-contracting activities and shall cooperate with Metra in its program for the participation of disadvantaged enterprises.

5.0 Employment.

5.1 Equal Employment Opportunity and Fair Employment Practices. In connection with the execution and performance of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to assure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex or national origin. Such action shall include but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, terminations, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

5.2 U.S. Department of Transportation Regulations. Contractor for itself, its assignees and successors in interests, agrees that it will comply with the following regulations:

- (a) Compliance with Regulations. Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "IDOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- (b) Nondiscrimination. Contractor, with regard to work performed by it during this Contract, shall not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Regulations.
- (c) Solicitations for SubContracts (including Procurements of Materials and Equipment). In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under the Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (d) Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Metra or UMTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish information, Contractor shall so certify to Metra, or UMTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

- (e) Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of this contract, Metra shall impose such contract sanctions as it or UMTA may determine to be appropriate, including, but not limited to:
- (i) Withholding of payments to Contractor under this Contract until Contractor complies, and/or
 - (ii) Cancellation, termination or suspension of this Contract, in whole or in part.
- (f) Incorporation of Provisions. Contractor shall include the provisions of paragraphs (a) through (f) (of this Section 5.2) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurements Metra or UMTA may direct as a means of enforcing such provisions including sanctions of noncompliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metra to enter into such litigation, and Contractor may request the United States to enter into such litigation to protect the interests of the United States.

5.3 Equal Employment Opportunity. Contractor shall comply with, and assure that each subcontractor complies with, the following regulations of the Illinois Department of Human Rights:

5.3.1 Section 6.1. In the event of the Contractor's noncompliance with any provisions of the Equal Opportunity Clause, the Contractor may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or avoided in whole or in parts, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulations. During the performance of this Contract, the Contractor agrees as follows:

- (1) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are under-utilized and will take appropriate affirmative action to rectify any such under-utilization.
- (2) That, if it hires additional employees in order to perform this Contract or any portion hereof, it will determine that availability (in accordance with the Department's Rules and Regulations) of minorities and subcontractors and further it will promptly notify the contracting agency and the Department in the event any subcontractor fails or refuses to comply therewith. In addition, no contractor will utilize any subcontractor declared by the Department to be nonresponsible and therefore ineligible for contracts or subcontracts with the state of Illinois or any of its political subdivisions or municipal corporations.

5.3.2 Section 6.3 Subcontracts. Each contractor and subcontractor shall in turn include the Equal Employment Opportunity Clause set forth in Section 6.1 of these Rules and Regulations in each of its subcontracts verbatim or by reference so that provisions of Paragraphs 1 through 7 of said clause will be finding upon subcontractors of every tier, provided, however, that only paragraphs 1, 5, 6 and 7 need be included in every subcontract as defined in Section 1.1 (17) (a) of these Rules and Regulations.

6.0 Termination and Suspension.

6.1 Termination for Default.

- (a) Each of the following is an event of default:
 - (i) If Contractor shall fail to begin the work or abandons it;
 - (ii) If the Contract is assigned or the work sublet otherwise than as permitted by the Contract Documents;
 - (iii) If Contractor unreasonably delays performance of the Contract with excuse hereunder;

- (iv) if Contractor violates or breaches any of the provisions or covenants of the Contract Documents or does not comply therewith in good faith;
 - (v) if the Work or any part thereof is not completed within the time prescribed in the Contract of its delivery or within the time to which such delivery is extended by Metra;
 - (vi) (in view of the necessity for special skill and ample financial resources in the prosecution of the Work) if Contractor shall make an assignment for the benefits of creditors, or take advantage of any insolvency statute or debtor or creditor law now or hereafter enacted or amended, or if its property or affair shall be put in the hands of a receiver or receivers.
- (b) Upon the occurrence of any of event of default, Metra, upon written notice to Contractor, shall have the following rights:
- (i) the right to declare the Contractor in default and the Contract abandoned and to take over and complete the Work or any part thereof itself or through other Contractors, as agent for and at the expense of Contractor; and,
 - (ii) right to declare the Contractor in default and to terminate the Contract as to any Work not yet completed.

In either event, Metra reserves its rights to damages, liquidated or otherwise, arising out of any such default, and such other remedies as may be provided by the law, unless Contractor cures such default within seven (7) calendar days after receipt of written notification of default. In the event of cancellation or termination following the event of default, no cancellation charges shall be paid to Contractor.

6.2 Termination without Default. In the event UMTAS or IDOT financial assistance for the project of which this Contract is in whole or a part is suspended, abrogated, or terminated for any reason whatsoever, Metra shall have the right to terminate this Contract upon receipt of written notice by the Contractor, with no obligation other than payment to the Contractor of the following cancellation charges. In the event of cancellation other than for Contractor's

default, Metra agrees to pay, and Contractor agrees to accept as its sole remedy, cancellation charge equal to the cost (less salvage) if any, of materials, supplies, and labor expended or irrevocably committed to the work, plus a reasonable profit (not greater than 10%) based on a proportionate allocation of the profit which would have been earned had the entire Work been performed to the portion of Work than performed. Title to all property covered by such charges shall vest in Metra without additional charge. Payment of cancellation charges will be made within forty-five (45) calendar days after presentation of Contractor's invoice showing all cancellation charges accompanied by evidence substantiating each cost or expense claimed.

6.3 Post-Termination Obligations. After receipt of notice of termination, and except as otherwise directed by Metra the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the notice of termination;
- (b) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated; and
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.

7.0 Unavoidable Delays. If completion of the Work under this Contract should be unavoidably delayed, Metra shall extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, and was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers, or their agents, and was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

7.1 Notification of Delay. The Contractor shall notify Metra by telephone as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay the Work, within 5 calendar days, the Contractor shall confirm such notice in writing furnishing as much detail as is available.

7.2 Request for Extension. The Contractor agrees to supply, as soon as such data is available, any reasonable proofs that are required by Metra to make a decision on any request for extension. Metra shall examine the request and any

request for extension. Metra shall examine the request and any documents supplied by Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension or is subject to Liquidated Damages, or termination for default, as set forth elsewhere in the Contract. Metra shall notify the Contractor of the decision in writing.

It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays resulting from any cause under this provision.

8.0 Modification to Contract.

8.1 Written Change Orders. Oral change orders are not permitted. No change in this Contract shall be made except in writing signed by an authorized representative. The contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by Metra.

8.2 Change Order Procedure. The Contractor shall submit to Metra a written request for a contract modification with a detailed price and schedule breakdown for the work to be done. This request shall be accepted or modified by negotiations between the Contractor and Metra. At that time a detailed modifications shall be executed in writing by both parties. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract Disputes Clause.

8.3 Price Adjustment For Regulatory Changes. If the price adjustment is indicated, either upward or downward, it shall be negotiated between the Procuring Agency and the Contractor for changes that are mandatory as a result of legislation or regulations that are promulgated and become effective between the date of bid opening and the date of manufacture. Such price adjustment may be audited, where required.

9.0 Interest of Members of Congress. No member of or delegate to the Congress of the United States nor any member or delegate to the Illinois General Assembly shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

10.0 Prohibited Interest. No member officer or employee of Metra or of any local public body with a financial interest or control in this Contract during his tenure or one(1) year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof.

11.0 Financial Assistance Contract. This Contract is subject to the provisions of the financial assistance contracts between Metra and other sponsoring agencies which are identified in the Invitation for Bids and UMTA and IDOT.

12.0 Ineligible Contractor and Subcontractors. Any name appearing upon the Comptroller General of the United States' list of ineligible contractors for federally financed and assisted shall not be eligible to act as a subcontractor for the Contractor pursuant to this Contract. In the event the Contractor is on the Comptroller General's list of ineligible contractors for federally financed or assisted construction this Contract may be cancelled, terminated or suspended by Metra.

12.1 Contractor and subcontractors are required to certify that they are not included on the U. S. Comptrollers consolidated list of persons or firms currently debarred for violation of various Public Contracts incorporating labor standards provisions.

13.0 Contract Changes. Any proposed change in the Contract shall be submitted to Metra for its prior approval.

14.0 Subcontracting Limitations. The prime contractor shall perform, on site, with his own staff, work equivalent to at least thirty (30%) percent of the total amount of construction work at the site. Only pay items of the construction contract will be used in computing the total amount of the prime Contractor's work. "Pay Items" shall mean actual on site work, including purchase and installation of materials. Pay items shall exclude all general conditions, including but not limited to, insurance and bonding expenses, and non construction overhead expenses.

15.0 Copyright and Rights in Data. This Agreement shall be subject to the U.S. Urban Mass transportation Administration's (UMTA) policy on copyrights and rights in data, with respect to research reports and other technical materials developed with program funds. That policy, set forth in Section IIB of the UMTA External Operating Manual, permits the author or grantee to copyright the work, but UMTA reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the work for Government purposes.

16.0 Nondiscrimination. "During the performance of this Contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or, applicant for employment because of race, creed, color, or national origin. The

Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place, available to employees, and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (b) The Contractor will, in all solicitations or advertisements for employees by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The Contractor will comply with all provisions of the Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

- (g) The Contractor will include the portion of the sentence immediately proceeding paragraph (a) and the provisions of paragraph (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary issued pursuant to Section 204 of Executive order 11246 of September 24, 1965, so that provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States."

17.0 Assignment. This Agreement shall be binding upon and inure to the benefit of, the respective successors, assigns, heirs and personal representatives of Metra and Contractor. Any successor to the Contractor's rights under this agreement must be approved by Metra.

18.0 Government Inspection. Representatives of the United States Government and of the State of Illinois shall have access to the site of construction and shall have the right to inspect all project works.

19.0 Patent Infringement. The Contractor shall defend any suit or proceeding brought against Metra based on a claim that any equipment, or infringement of any patent, and the Contractor shall pay all damages and costs awarded therein, including incidental and consequential damages, against Metra. In case said equipment, or any part thereof, its in such suit held to constitute infringement and use of said equipment or parts is enjoined, the Contractor shall, at its own expense and at its option, either procure for Metra the right to continue using equipment of part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing.

20.0 Disputes.

- (a) In the event Contractor disagrees with a decision of Metra concerning any question or issue arising under the contract prior to acceptance of the last Work under the Contract, Contractor shall request arbitration by so advising Metra in writing within ten (10) business days after receiving notice of the decision of Metra with which it disagrees. When arbitration is requested by the

Contractor, the parties shall attempt to agree upon the appointment of one impartial arbitrator out of five (5) impartial arbitrators all of whom shall be members of the National Academy of Arbitrators. Either party shall have the right to reject one entire list and to request a submission of another panel. Thereafter, the Contractor shall strike two names, Metra shall then strike two names and the name of the last person remaining on the list will be designated as the arbitrator and his appointment and final decision shall be binding on both parties.

- (b) It is agreed, however, that the authority of an arbitrator shall be confined to the interpretation and application of the specific provisions of the Contract Documents. He shall have no right to add to, take from or modify any of the provisions thereof, and no issue arising out of or based upon Subparagraph D, or paragraph 7 of the general provisions of the contract shall be subject to arbitration.
- (c) The cost and the expenses of arbitration shall be divided equally between Metra and the Contractor.
- (d) Pending final disposition of a dispute hereunder, the Contractor shall carry on the work unless otherwise agreed to by Metra and the Contractor in writing.

21.0 Conservation. Contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC, Section 6321 et seq.).

22.0 Employee Benefits. (Metra) Contractor agrees to pay its employees all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and Contractor further agrees to make all required withholdings and deposits therefor. In addition, Contractor agrees to require all subcontractors for this project to pay their employees all their rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes and to further require all subcontractors for this project to make all required withholdings and deposits therefor. Such requirements shall be included by the Contractor in all its contracts and agreements with subcontractors for this project.

UMTA/IDOT ADDENDUM
FOR MATERIAL PROCUREMENT

1. APPROVED EQUALS AND BRAND NAME	PAGE	1
2. ENVIRONMENTAL PROVISIONS	PAGE	1
3. AUDIT	PAGE	1
4. MINORITY BUSINESS ENTERPRISE	PAGE	1
5. EMPLOYMENT	PAGE	2
6. TERMINATION AND SUSPENSION	PAGE	6
7. INTEREST OF MEMBERS OF CONGRESS	PAGE	8
8. PROHIBITED INTEREST	PAGE	8
9. FINANCIAL ASSISTANCE CONTRACT	PAGE	8
10. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS	PAGE	8
11. CONTRACT CHANGES	PAGE	8
12. SUBCONTRACTS	PAGE	8
13. COPYRIGHT AND RIGHTS IN DATA	PAGE	8
14. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS	PAGE	9
15. SURFACE TRANSPORTATION ASSISTANCE ACT	PAGE	9
16. REQUIRED IN BIDDING REQUIREMENTS	PAGE	10
17. CONSERVATION	PAGE	11

U. S. Department of Transportation
Urban Mass Transportation Administration
("UMTA") and Illinois Department of
Transportation ("IDOT") Addendum
For Material Procurement

1. Approved Equals and Brand Names. Where a feature, component, or item is specified by brand name in the Specifications, the words "or Approved Equal" are implied. All approvals and requests for approvals of proposed Approved Equals must be in writing. Specification by brand name of components or equipment in the Specification shall not relieve Contractor from its responsibility to design and construct the Equipment and perform the work in accordance with the general performance requirements of the Specifications and these General Provisions.
2. Environmental Provisions. For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act, Clean Water Act and Environmental Protection Agency regulations which prohibit the use of facilities included on the EPA List of Violating Facilities. *okay*
3. Audit. Contractor shall permit the authorized representatives of Metra, RTA, IDOT, U. S. Department of Transportation and the Comptroller General of the United States to inspect and audit all data and records of Contractor relating to its performance under the contract.
4. Minority Business Enterprise.
 - A. Metra. Contractor must take all such action as may be necessary and reasonable to assure that minority business enterprises have an equitable opportunity to compete in all subcontracting activities and shall cooperate with Metra in its program for the participation of minority enterprises in Metra Procurements.
 - B. U.S. Department of Transportation Regulations. Each contractor shall agree to abide by the statements in subparagraphs (1) and (2) below.
 - (1) Policy. It is the policy of the Department of Transportation that minority business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently the MBE requirements of 49 CFR Part 23 apply to this agreement.

- (2) MBE Obligation. The Contractor agrees to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard all Contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

5. Employment.

A. Equal Employment Opportunity and Fair Employment Practices.

In connection with the execution and performance of this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. Contractor shall take affirmative action to assure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

B. U.S. Department of Transportation Regulations. Contractor for itself, its assignees and successors in interests, agrees that it will comply with the following regulation:

- (1) Compliance with Regulations. Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this contract.

- (2) Nondiscrimination. Contractor, with regard to the work performed by it during this contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention subcontractors, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when this Contract covers a program set forth in Appendix B of the Regulations.

- (3) Solicitations for Subcontracts (including Procurements of Materials and Equipment). In all solicitations either by competitive bidding or negotiation made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under the contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- (4) Information and Reports. Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Metra or UMTA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information of another who shall so certify to Metra or UMTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance. In the event Contractor's noncompliance with the nondiscrimination provisions of this contract, Metra shall impose such contract sanctions as it or UMTA may determine to be appropriate including, but not limited to:
- (a) Withholding of payments to Contractor under this contract until Contractor complies, and/or
 - (b) Cancellation, termination or suspension of this contract, in whole or in part.
- (6) Incorporation of Provisions. Contractor shall include the of paragraphs (1) through (6) of this Section 5.C in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Contractor shall take such action with respect to any subcontract or procurement as Metra or UMTA may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request Metra to enter into such litigation to protect the interest of Metra, and in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. Equal Employment Opportunity - FEPC. Contractor shall comply with, and assure that each subcontractor complies with the following regulations of the Illinois Human Rights Commission:

- (1) In the event of the Contractor's noncompliance with any provision of this Equal Opportunity Clause, the Illinois Human Rights Act of the Illinois Human Rights Commission's Rules and Regulations, the Contractor may be declared nonresponsible and therefore ineligible for future contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations, and the contract may be cancelled or avoided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation. During the performance of this contract, the Contractor agrees as follows:
 - (a) That it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service; and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization.
 - (b) That, if it hires additional employees in order to perform this contract or any portion hereof, it will determine the availability (in accordance with the Commission's Rules and Regulations) of minorities and women in the area(s) from which it may reasonably recruit and will hire for each job classification for which employees are hired in such a way that minorities and women are not underutilized.
 - (c) That, in all solicitations or advertisements for employees placed by it or on its behalf, it will state that all applicants will be afforded equal opportunity with out discrimination because of race, color, religion, sex, national origin or ancestry, physical or mental handicap unrelated to ability, or an unfavorable discharge from military service.
 - (d) That it will send to each labor organization or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice advising such labor organization or representative of the Contractor's obligations under the Illinois Human Rights Act and the Commission's Rules and Regulations. If any such labor organization or representative fails or refuses to cooperate

with the Contractor in its efforts to comply with such Act and Rules and Regulations, the Contractor will promptly so notify the Illinois Human Rights Commission and the contracting agency and will recruit employees from other sources when necessary to fulfill its obligations thereunder.

- (e) That it will submit reports as required by the Illinois Human Rights Commission's Rules and Regulations, furnish all relevant information as may from time to time be requested by the Commission or the contracting agency, and in all respects comply with the Illinois Human Rights Act and the Commission's Rules and Regulations.
 - (f) That it will permit access to all relevant books, records, accounts and work sites by personnel of the contracting agency and the Illinois Human Rights Act and the Commission's Rules and Regulations.
 - (g) That it will include verbatim or by reference the provisions of paragraphs (a) through (g) of this clause in every performance subcontract as defined in Section 1.1(17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor; and that it will also include the provisions of paragraphs (a), (e), (f) and (g) in every supply subcontract as defined in Section 1.1(17) (a) of the Commission's Rules and Regulations so that such provisions will be binding upon every such subcontractor. In the same manner as with other provisions of this contract, the Contractor will be liable for compliance with applicable provisions of this clause by all its subcontractors and further it will promptly notify the contracting agency and the Illinois Human Rights Commission in the event any subcontractor fails or refuses to comply therewith. In addition, no contractor will utilize any subcontractor declared by the Commission to be nonresponsible and therefore ineligible for contracts or subcontracts with the State of Illinois or any of its political subdivisions or municipal corporations.
- (2) Each contractor and subcontractor shall in turn include the Equal Employment Opportunity Clause set forth in Section 6.1 of these Rules and Regulations in each of its subcontracts verbatim or by reference so that provisions of Paragraphs (a) through (g) of said clause will be binding upon subcontractors of every tier, provided, however, that only paragraphs (a), (e), (f) and (g) need be included in every subcontract as defined in Section 1.1(17) (a) of these Rules and Regulations.

6. Termination and Suspension.

A. Termination for Default

(1) Each of the following is an event of default:

- (a) if Contractor shall fail to begin the work or abandons it;
- (b) if the contract is assigned or the work sublet otherwise than as permitted by the Contract Documents;
- (c) if Contractor unreasonable delays performance of the contract without excuse hereunder;
- (d) if Contractor violates or breaches any of the provisions or covenants of the Contract Documents or does not comply therewith in good faith;
- (e) if the delivery of the Equipment or any part thereof is not completed within the time prescribed in the Agreement for its delivery or within the time to which such delivery is extended by Metra; and
- (f) (in view of the necessity for special skill and ample financial resources in the prosecution of the work) if Contractor shall become insolvent or bankrupt, or shall make an assignment for the benefit of creditors, or take advantage of any insolvency statute or debtor or creditor law now or hereafter enacted or amended, or if its property or affairs shall be put in the hands of a receiver or receivers.

(2) Upon the occurrence of any event or default, Metra upon written notice to Contractor, shall have the following rights:

- (a) the right to declare Contractor in default and the contract abandoned and to take over and complete the work or any part thereof itself or through other contractors, as agent for and at the expense of Contractor; and

- (b) the right to declare the contractor in default and to terminate the contract as to any units of the Equipment not yet delivered.

In either event Metra reserves its rights to damages, liquidated or otherwise, arising out of any such default, and such other remedies as may be provided by law, unless Contractor cures such default within seven (7) days after receipt of written notification of default. In the event of cancellation or termination following an event of default, no cancellation charges shall be paid to Contractor.

- B. Termination without Default. In the event UMTA or IDOT financial assistance for the project of which this contract is a whole or a part is suspended, abrogated, or terminated for any reason whatsoever, Metra shall have the right to terminate this contract upon receipt of written notice by the Contractor, with no obligation other than payment to the Contractor of the following cancellation charges. In the event cancellation other than for Contractor's default, Metra agrees to pay, and Contractor agrees to accept as its sole remedy, cancellation charges equal to the cost (less salvage), if any, of materials, supplies, and labor then expended or irrevocably committed to the work, plus a reasonable profit (not greater than 10%) based on a proportionate allocation of the profit which would have been earned had the entire work been performed to the portion of the work then performed. Title to all property covered by such charges shall vest in Metra without additional charge. Payment of cancellation charges will be made within forty-five (45) days after presentation of Contractor's invoice showing all cancellation charges accompanied by evidence substantiating each cost or expense claimed.
- C. Post-Termination Obligations. After receipt of a notice of termination, and except as otherwise directed by Metra, the Contractor shall:
- (a) stop work under the contract on the date and to the extent specified in the notice of termination;
 - (b) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and
 - (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination.

(d) Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail Term and Conditions Termination Clause. This termination section 6. supersedes paragraph 9, of the Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail's Term and Conditions.

7. Interest of Members of Congress. No member of or delegate to the Congress of the United States nor any member or delegate to the Illinois General Assembly shall be admitted to any share or part of this contract or to any benefit arising therefrom.
8. Prohibited Interest. No member, officer or employee of Metra or of a local public body with financial interest or control in this contract during his tenure or for one (1) year thereafter, shall have any interest, direct or indirect in this contract or the proceeds thereof.
9. Financial Assistance Contract. This contract is subject to the provisions of the financial assistance contracts between Metra and other sponsoring agencies which are identified in the Invitation for Bids as UMTA and IDOT.
10. Ineligible Contractors and Subcontractors. Any name appearing upon the Controller General of the United States' list of ineligible contractors for federally financed and assisted construction shall not be eligible to act as a subcontractor for the Contractor pursuant to this contract. In the event the contractors for federally financed or assisted construction, this contract may be cancelled, terminated or suspended by Metra.
11. Contract Changes. Any proposed change in the contract shall be submitted in writing to Metra for its prior approval.
12. Subcontracts. (Cooperative and Carrier Agreements) The (third party agency, carrier, contractor) shall not enter into any sub-contracts or agreements, or start any work by the work forces of (the third party), with respect to this contract, without the prior concurrence of the Illinois Department of Transportation. All such subcontracts, agreements, and force work and materials shall be handled as prescribed for third-party contracts, agreements and force-account work by the IDOT manual for Public Transportation Capital Improvement Grants. All requests for concurrence shall be submitted to Metra for approval prior to submittal to IDOT.
13. Copyright and Rights in Data. This Agreement, shall be subject to the U.S. Urban Mass Transportation Administration's (UMTA) policy on copyrights and rights in data, with respect to research reports and other technical materials developed with program funds. That policy, as set forth in Section III B of

the UMTA External Operating Manual, permits the author or grantee to copyright the work, but UMTA reserves a royalty-free nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

14. Cargo Preference - Use of United States - Flag Vessels.

The Contractor agrees--

- A. To utilize privately owned United States - flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo lines, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within 20 days following the date of loading, for shipment originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A above to the UMTA Administrator and grantee through the prime contractor in the case of subcontractor bill-of-lading and to the Division of National Cargo, Office of Market development, Maritime Administration, Washington, D.C. 20230.
- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this clause.

15. Surface Transportation Assistance Act.

- A. Pursuant to Section 165 (a) and (b) of the Surface Transportation Assistance Act of 1982, the Contractor acknowledges that federal funds shall not be appropriated or utilized for any contract awarded pursuant to this bid unless steel, cement and manufactured products used in such project are produced in the United States; provided however, that the foregoing provision shall not apply where the Secretary of Transportation has made one of the following determinations:
 - (1) That the application of the foregoing provision would be inconsistent with the public interest;

- (2) That such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (3) In the case of the procurement of bus and other rolling stock (including train control, communication and traction power equipment) under the Urban Mass Transportation Act of 1964, that (a) the cost of components which are produced in the United States is more than 50 per centum of the cost of all components of the vehicle or equipment described in this paragraph, and (b) final assembly of the vehicle or equipment described in paragraph has taken place in the United States.
- (4) That inclusion of domestic material will increase the cost of the overall project contract by more than 10 per centum in the case of projects for the acquisition of rolling stock and 25 per centum in case of all other projects.
- B. For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.
- C. Likewise, Contractor agrees, as a condition of responsiveness to and in order to induce the acceptance of this Bid Proposal, that it will submit with its Bid Proposal a completed Buy America Certificate, as set forth below:

* (see EXHIBIT L) Buy America Certificate

D. DEBARMENT CONDITIONS

E. BASIS OF AWARD

16. Required in Bidding Requirements

- A. "In the event a single bid is received, the Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail will conduct a price and/or cost analysis of the bid. A price analysis is the process of examining the bid and evaluating the separate cost elements. It should be recognized that a price analysis through comparison to other similar procurements must be based on an established or competitive price of the elements used in the comparison. The comparison must be made to a purchase of similar quantity and involving similar specifications. Where a difference exists, a detailed analysis must be made of this difference and costs attached thereto.
- B. Where it is impossible to obtain a valid price analysis, it may be necessary for the Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail to conduct a cost analysis of the bid price with the bidder's full cooperation.

must comply.

- C. The price and/or cost analysis shall be made by competent and experienced auditors or price analysts. An engineer's estimate or comparison of the prices involved is insufficient.
 - D. If the Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail does not have the capabilities to perform the needed analyses, UMTA will lend support in obtaining the services of the Defense Contract Audit Agency.
 - E. The Northeast Illinois Regional Commuter Railroad Corporation D/B/A Metra/Metropolitan Rail shall submit to UMTA all data and analyses of the determination prior to award of the contract."
17. Conservation. Contractors shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy Conservation Act (42 UDC, Section 6321 et seq.).

DEPARTMENT OF LABOR

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

41-CRF 60-4 CONSTRUCTION CONTRACTOR, AFFIRMATIVE ACTION
REQUIREMENTS (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOALS FOR MINORITY PARTICIPATION FOR EACH TRADE

Until further notice: 19.6% (Chicago SMSA)
(goal includes minorities and females)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs in the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specification set forth in 41 CFR 60-04.3(a), and its efforts to meet the goals. The hours of minority and female employment must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects.

The transfer of a minority or female employee or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction Subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor estimated dollar amount of the Subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.

As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is Chicago, Illinois SMSA.

Equal Opportunity Clause

During the performance of this Contract, the Contractor agrees to abide by all conditions set forth in the Equal Opportunity Clause as detailed in 41 CFR Part 60, including:

- (1) Non-discrimination of employees or applicants for employment because of race, color, religion, sex, or national origin;
- (2) Advise each labor union or representative of workers of the Contractor's commitments under Section 202 of Executive Order 11246 and any amendments thereof and shall post copies of required notices in conspicuous places available to employees and applicants;
- (3) Comply with all provisions of Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, and contracting agency;
- (4) Furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, and contracting agency, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purpose of investigation to ascertain compliance;
- (5) In the event of Contractor's non-compliance with the non-discrimination clause of this Contract or with any such rules, regulations, or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government Contracts in accordance with procedures authorized in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (6) Contractor will include the foregoing provisions in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, so that such provisions will be binding upon each Subcontractor or vendor. Further, Contractor will take such action with respect to any Subcontract or purchase order as the contracting agency may direct as a means of enforcement, including sanctions for non-compliance. Should Contractor become involved in, or is threatened with litigation with a Subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION

CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S Department Form 941.
 - d. "Minority" includes:
 - i. Black (all persons having origin in any of the Black African racial groups not of Hispanic origin);
 - ii. Hispanic (all person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Each Contractor or

Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractor toward a goal in an approved Plan does not excuse any covered Contractor's failure to take good faith efforts to achieve the Plan goals and time-tables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of the minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs Office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provision of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specification shall be based upon its effort to achieve maximum results from

its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organization when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including

upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice to these programs to the sources compiled under 7b above.

- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employee having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor obligations under these specifications are being carried out.
 - n. Ensure that facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contract associations and other business associates.
 - p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7 a through p). The efforts of a Contractor association, joint contractor union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are

reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetable or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations of these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy their requirements Contractor shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

COMMUTER RAIL BOARD

ORDINANCE NO. CRB 84-46

WHEREAS, the Board of Directors of the Commuter Rail Board of the Northeast Illinois Regional Commuter Railroad Corporation ("Corporation") periodically reviews the procurement rules and regulations of the Corporation to ensure the efficient functioning of the Corporation;

WHEREAS, the Board of Directors of the Commuter Rail Board of the Corporation has determined that certain amendments to the procurement rules and regulations of the Corporation will increase the efficiency and effectiveness of the purchasing procedures of the Corporation;

WHEREAS, the Board of Directors of the Commuter Rail Board of the Corporation has determined by a concurrence of two-thirds of its Directors that it is clear that in the course of commuter rail operations emergencies will occur which will require the immediate delivery of supplies, material or equipment or performance of service, directly related to the provision of public transportation services by the Corporation or a transportation agency, and the Board desires to allow the Executive Director sufficient authority to act in such emergencies;

September 27, 1984

NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION
REGULATIONS GOVERNING PUBLIC BIDDING

I. PURPOSE

1.01 These regulations have been adopted for the purpose of assuring full and fair competitive bidding in procurements and contracts.

II. COMPETITIVE BIDDING

2.01 Purchases. Except as otherwise provided in these Regulations, all contracts or purchase orders for the construction or acquisition of services or public transportation facilities (other than real estate) involving a cost of more than \$5,000 shall be let by free and open bidding, after public notice, to the lowest responsible bidder.

2.02 Sales. Except as otherwise provided in these Regulations, all contracts for disposition of any property of the Corporation or for any concession in or lease or easement of property of the Corporation for a term of more than one year shall be let by free and open bidding to the highest bidder; provided, however, the Executive Director of the Corporation is authorized to execute grants of easement and all necessary documentation accompanying such grants of easement on behalf of the Corporation to public utilities or governmental entities so long as such easements are granted for consideration of less than

*To amend
(no purchase)
notice
State allowance
no option*

\$5,000, and, further provided, the Assistant Secretary of the Corporation is hereby authorized to attest such grants of easement on behalf of the Corporation and the Executive Director of the Corporation is hereby authorized to take such action as he deems necessary or appropriate to implement, administer, and enforce the terms of such easements.

2.03 Exceptions. The competitive bidding requirements of these Regulations do not apply to:

(a) acquisitions of repair parts, accessories, equipment or services previously furnished or contracted for.

(b) the immediate delivery of supplies, material or equipment or performance of services, directly related to the provision of Public Transportation Services by the Corporation or a Transportation Agency, where the Executive Director has made a written determination that an emergency requires immediate delivery of supply thereof, provided that written determination be made to the Board within five working days and that that notification be made public.

(c) goods or services that are economically procurable from only one source.

(d) contracts for the maintenance or servicing of equipment which are made with the manufacturers or authorized service agent of that equipment where the maintenance or servicing can best be performed by the manufacturer or authorized service agent or such a contract would be otherwise advantageous to the Corporation. The exception provided in this subparagraph (d) shall not apply to contracts for plumbing, heating, piping, refrigeration and automatic temperature control systems, ventilating and distribution systems for conditioned air and electrical wiring.

(e) goods or services procured from a governmental agency.

(f) purchases and contracts for the use or purchase of data processing equipment and data processing systems software.

(g) the acquisition of professional or utility services. "Professional services" are services the quality and reliability of which depend in substantial part upon the individual skills, training, experience or ability of the person rendering such services.

(h) purchase of service agreements or other contracts, purchases or sales entered into by the Corporation with any transportation agency or unit of local government.

III. PROCEDURES

MD
3.01 Public Notice for Bids: Time. All proposals to award purchase orders or contracts subject to these Regulations shall be published at least once in a newspaper of general circulation in the Metropolitan Region at least ten (10) **calendar* days, *Requirement is for 10 working days.* excluding Saturdays, Sundays and legal holidays, in advance of the date announced for the receiving and opening of bids and shall simultaneously be posted at the principal office of the Corporation.

3.02 Content of Public Notice for Bids. Advertisements for bids shall describe the character of the proposed contract or agreement in sufficient detail to enable the bidders thereon to know what their obligations will be, either in the advertisement itself, or by reference to detailed plans and specifications on file at the time of the publication of the first announcement.

Such advertisement shall also state the date, time and place assigned for the opening of bids, and no bids shall be received at any time subsequent to the time indicated in the announcement. An extension of time may be granted for the opening of such bids upon publication in a newspaper of general circulation in the Metropolitan Region of the date to which the bid opening has been extended. The time of the bid opening extension shall not be less than five (5) days after the publication thereof, Saturdays, Sundays and legal holidays excluded.

3.03 Additional Notice. Nothing in these Regulations shall be construed to prevent the Corporation from providing additional notice for bids.

3.04 Earnest Money Deposits. Cash, cashier's check, a certified check, money order or bond of a surety satisfactory to the Corporation as a deposit of good faith, in a reasonable amount but not in excess of ten percent (10%) of the contract amount, may be required of each bidder by the Corporation. The advertisement for bids shall specify the deposit required.

3.05 Collusion. Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition by agreement to bid a fixed price, or otherwise, shall render the bids of such bidders void. Each bidder shall accompany his bid with a sworn statement, or otherwise swear or affirm, that he has not been a party to any such agreement. Any disclosure made or permitted by the Corporation in advance of the opening of bids, of the terms of the bids submitted in response to an advertisement, shall render the proceedings void and shall require re-advertisement. If two or more identical bids are received under these Regulations, the Corporation shall inform the Attorney General of the State of Illinois of such fact in writing within thirty (30) days following the disposition of all bids received in response to the advertisement for bids, whether by awarding of a contract or other action.

3.06 Opening of Bids. All bids under these Regulations shall be publicly opened. All such bids shall be open to public inspection.

3.07 Records Required. Each bid received under these Regulations shall be entered on a record showing the name of each bidder and indicating the successful bidder. After award of the contract, such record shall be open to public inspection at the offices of the Corporation. An official copy of each awarded purchase order or contract, together with all attachments, assignments and written consents thereto, shall be retained by the Corporation for such period of time after termination of the contract during which an action against the Corporation might ensue under applicable laws of limitation. Such file shall be open to the public.

3.08 Determining Responsible Bidders. In determining the responsibility of any bidder, the Corporation may take into account other factors in addition to financial responsibility and specification compliance, such as past records of transactions with the bidder, experience, adequacy of equipment, special or unique skills of performance, ability to complete performance within a specified time limit and other pertinent considerations.

3.09 Bonds of Bidders. Bond may be required of each bidder upon contracts involving amounts in excess of \$25,000 when, in the opinion of the Corporation, the public interest will be served thereby. Such bond shall be with sufficient sureties.

It shall be in such amount as shall be deemed adequate (a) to insure performance of the contract in the time and manner prescribed in the contract, and (b) to save, indemnify, and keep harmless the Corporation against all loss, damages, claims, liabilities, judgments, costs and expenses which may in anywise accrue against the Corporation in consequence of the granting of the contract, or which may in anywise result therefrom.

3.10 Rejection of Bids. Any bid, any part of any bid, or all bids may be rejected by the Corporation for any reason.

IV. CONTRACTS

4.01 Assignment of Contracts. Contracts or purchase orders shall not be assignable or sublet by the successful bidder without the prior, written authorization of the Corporation.

4.02 Authorization and Execution. All contracts subject to these regulations, described in Section 2.01 and 2.02 of these regulations, may be executed by the Executive Director of the Corporation except for contracts exempt from competitive bidding pursuant to Section 2.03(h) of these Regulations. Contracts which were exempted from competitive bidding pursuant to Section 2.03(h) of these Regulations to which the Corporation is a party shall be submitted to and authorized by the Board before being executed by the appropriate officer of the Corporation as provided by the Board. Contracts which were exempted from competitive bidding pursuant to the other relevant exceptions set forth in Section 2.03 of these Regulations to which the

Corporation is a party may be authorized and executed by the Executive Director of the Corporation subject to the approval of the Board. The Executive Director may delegate authority to execute any contract of purchase order less than \$25,000 to an appropriate officer of the Corporation.

4.03 Conflict of Interest. Members of the Board, officers and employees of the Corporation, their spouses, their children, their parents, their brothers and sisters and their children, are prohibited from having or acquiring any contract or any direct pecuniary interest in any contract which will be wholly or partially performed by the payment of funds or the transfer of property of the Corporation. Any firm, partnership, association or corporation from which any member of the Board, officer or employee of the Corporation is entitled to receive more than seven and one-half percent (7-1/2) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will be performed in whole or in part by payment of funds or the transfer of property of the Corporation.

Any firm, partnership, association or corporation from which members of the Board, officers, employees of the Corporation, their spouses, their children, their parents, their brothers and sisters and their children, are entitled to receive in the aggregate more than fifteen percent (15%) of the total distributable income, is prohibited from having or acquiring any contract or direct pecuniary interest in any contract which will

be performed in whole or in part by the payment of funds or the transfer of property of the Corporation. Nothing in this section invalidates the provisions of any bond or security hereto or hereafter offered for sale or sold by or for the Corporation.

4.04 Contracts Violating Regulations. Any purchase order or contract executed in violation of these Regulations shall be null and void as to the Corporation.

V. DEFINITIONS

5.01 Definitions. As used in these Regulations:

(a) "Corporation" means the Northeast Illinois Regional Commuter Railroad Corporation.

(b) "Board" means the Board of Directors of the Corporation.

(c) "Metropolitan Region" means all territory included within the territory of the Regional Transportation Authority as provided in the Act, and such territory as may be annexed to the Authority.

(d) "Act" means the Regional Transportation Authority Act.

NOW, THEREFORE, BE IT ORDAINED that the Board of Directors of the Commuter Rail Board of the Corporation hereby amends the Corporation's Regulations Governing Public Bidding and hereby adopts the amended Regulations Governing Public Bidding, attached hereto and specifically made a part hereof, and that such amended Regulations shall be effective immediately.

The Executive Director is hereby authorized and directed to take such action as he deems necessary or appropriate to execute, implement, administer and enforce said Regulations.

Commuter Rail Board Ordinance No. 84-14 is hereby repealed and the Regulations Governing Public Bidding adopted thereunder are hereby repealed and expressly made null and void.

APPENDIX B

**Cost Estimates For Work Performed Under
The Agreement**

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-03-0073/
CAP-78-110-FED

PROJECT
ELEMENT NO. A80547

COMPANY: CUS

PROJECT DESCRIPTION: Bi-directional Signaling

<u>CRD PORTION (100%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY</u> <u>ACTIVITY</u>	<u>CRD</u> <u>ACTIVITY</u>	<u>TOTAL</u>
A80547-53326004 Contract Purchases	\$ -0-	\$ 250,000	\$ 250,000
A80547-53340005 (E&D) Contract Engineering	-0-	20,000	20,000
A80547-53341005 (M&I) Contract Engineering	-0-	25,000	25,000
A80547-53326006 Contract Construction	<u>-0-</u>	<u>1,215,088</u>	<u>1,215,088</u>
TOTAL	<u>\$ -0-</u>	<u>\$1,510,088</u>	<u>\$1,510,088</u>

-COMPLETED-
Page 1 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT 1 - CUS/CRD

<u>GRANT NUMBER:</u>	IL-03-0076/ CAP-78-117 FED MET-102	<u>PROJECT ELEMENT NO.</u>	A90653/ L40653	<u>COMPANY:</u>	CUS
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PROJECT DESCRIPTION: CUS-Purchase/Installation of Electrical Standby Facilities for Tracks on North and South side of Station (Tracks 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22 and 24 on Southside and Tracks 17, 19 and 21 on Northside)

	<u>CURRENT FUNDING</u>		
<u>CRD PORTION (76.5%)</u>	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
A90653-53341005 (M&I) Contract Engineering	\$ -0-	\$ -0-	\$ -0-
A90653-53340005 (E&D) Contract Engineering	17,419	7,126	24,545
A90653-53316004 Contract Purchases	370,000	-0-	370,000
L40653-53316004 Contract Purchases	36,584	-0-	36,584
A90653-53316006 Contract Construction	430,500	-0-	430,500
L40653-53316006 Contract Construction	<u>76,618</u>	<u>-0-</u>	<u>76,618</u>
TOTAL	<u>\$ 931,121</u>	<u>\$ 7,126</u>	<u>\$ 938,247</u>

NOTE: CUS will contribute 23.5% of the funds needed to complete this project.

-COMPLETED-

Page 2 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-03-0076/
CAP-78-117 FED

PROJECT
ELEMENT NO. A90654

COMPANY: CUS

PROJECT DESCRIPTION: Pedestrian Exit Facilities.

	<u>CURRENT FUNDING</u>		
<u>CRD PORTION (100%)</u>	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
A90654-53340005 (E&D) Contract Engineering	\$ -0-	\$ 127,200	\$ 127,200
A90654-53357006 Contract Construction	<u>31,588</u>	<u>674,212</u>	<u>705,800</u>
TOTAL	<u>\$ 31,588</u>	<u>\$ 801,412</u>	<u>\$ 833,000</u>

Page 3 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-03-0076/ PROJECT
CAP-78-117 FED ELEMENT NO. A90655 COMPANY: CUS

PROJECT DESCRIPTION: CUS-Installation of additional Escalator from Concourse
Level to East Side of Canal Street

	<u>CURRENT FUNDING</u>		
<u>CRD PORTION (100%)</u>	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
A90655-53357004 Contract Purchases	\$ -0-	\$ -0-	\$ -0-
A90655-53340005 (E&D) Contract Engineering	-0-	10,190	10,190
A90655-53357006 Contract Construction	<u>-0-</u>	<u>214,880</u>	<u>214,880</u>
TOTAL	<u>\$ -0-</u>	<u>\$ 225,070</u>	<u>\$ 225,070</u>

-COMPLETED-

Page 4 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

<u>GRANT NUMBER:</u>	IL-03-0093/ CAP-82-194-FED IL-03-0115/ CAP-82-194-FED IL-03-0120/ CAP-82-194-FED	<u>PROJECT ELEMENT NO.</u>	D41229/ G91229/ H91229	<u>COMPANY:</u>	CUS
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PROJECT DESCRIPTION: Renovate 14th Street Yard (CUS Turnout Installation)

<u>CRD PORTION (100%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
D41229-53357004 Contract Purchases	\$ 15,095	\$ 417,034	\$ 432,129
D41229-53340005 (E&D) Contract Engineering	-0-	1,705,093	1,705,093
D41229-53357006 Contract Construction	69,515	1,562,025	1,631,540
G91229-53357004 Contract Purchases	-0-	700,000	700,000
G91229-53357006 Contract Construction	-0-	8,529,888	8,529,888
H91229-53357006 Contract Construction	-0-	<u>10,632,528</u>	<u>10,632,528</u>
TOTAL	\$ <u>84,610</u>	<u>\$23,546,568</u>	<u>\$23,631,178</u>

-COMPLETED-

Page 5 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT 1 - CUS/CRD

<u>GRANT NUMBER:</u>	IL-90-0008/ CAP-83-212-FED IL-90-X024/ CAP-83-212-FED	<u>PROJECT ELEMENT NO.</u>	E21427/ G31427	<u>COMPANY:</u>	CUS
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PROJECT DESCRIPTION: Modernization of Chicago Union Station's Lake Street
and Harrison Street Interlockings

<u>CRD PORTION (66.7%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
G31427-53366004 Contract Purchases	\$1,400,000	\$ -0-	\$1,400,000
E21427-53340005 Contract Engineering	5,420	194,580	200,000
G31427-53340005 (E&D) Contract Engineering	-0-	400,000	400,000
G31427-53341005 (M&I) Contract Engineering	-0-	100,000	100,000
G31427-53366006 Contract Construction	<u>100,000</u>	<u>-0-</u>	<u>100,000</u>
SUB-TOTAL	<u>\$1,505,420</u>	<u>\$ 694,580</u>	<u>\$2,200,000</u>

Page 6a of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

<u>GRANT NUMBER:</u>	IL-90-X049/ CAP-83-212-FED IL-03-0143/ CRD-023 IL-90-X141/ CRD-022	<u>PROJECT ELEMENT NO.</u>	H51427/ L21427/ L31427	<u>COMPANY:</u>	CUS
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PROJECT DESCRIPTION: Modernization of Chicago Union Station's
Lake Street and Harrison Street Interlockings

	<u>CURRENT FUNDING</u>		
<u>CRD PORTION (66.7%)</u>	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
H51427-53366004 Contract Purchases	\$ 1,500,000	\$ -0-	\$ 1,500,000
L31427-56401004 Contract Purchases	3,173,388	-0-	3,173,388
H51427-53366006 Contract Construction	500,000	-0-	500,000
L21427-56401006 Contract Construction	8,000,000	-0-	8,000,000
L31427-56401006 Contract Construction	<u>3,826,612</u>	<u>-0-</u>	<u>3,826,612</u>
SUB-TOTAL	<u>\$17,000,000</u>	<u>\$ -0-</u>	<u>\$17,000,000</u>
TOTAL	<u>\$18,505,420</u>	<u>\$ 694,580</u>	<u>\$19,200,000</u>

Page 6b of 11

NOTE: The total project cost of Element 1427 approximates \$54,711,000. Of this Metra will contribute 66.7% and CUS will contribute 33.3% of the funds needed to complete this project. Further detail of the current funding is available on Page 6c.

OW/JST/sr
CUS/CRD D/CUS-I
8 5/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

PROJECT NO. 1427

PROJECT DESCRIPTION: Modernization of Chicago Union Station's Lake Street and
Harrison Street Interlockings

Activity Based on Metra's Approved Budget of \$19,200,000

<u>Activity</u>	<u>METRA</u>	<u>CUS</u>	<u>TOTAL</u>
Metra FA/Engr.	\$ 199,666	\$ 99,683	\$ 299,349
Metra/Contract Eng.	494,914	247,086	742,000
CUS-Labor	12,432,032	6,206,697	18,638,729
CUS-Material/Equipment	6,073,388	3,032,142	9,105,530
CUS Contractor	<u>-</u>	<u>-</u>	<u>-</u>
TOTALS	<u>\$19,200,000</u>	<u>\$9,585,608</u>	<u>\$28,785,608</u>

CUS Allocation 33.3% of All Incurred Expenses
Metra Allocation 66.7% of All Incurred Expenses

Page 6c of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-90-0008/
CAP-83-212-FED

PROJECT
ELEMENT NO. E21428

COMPANY: CU

PROJECT DESCRIPTION: Renew Canal Street Crossing, Chicago Union Station

	<u>CURRENT FUNDING</u>		
<u>CRD PORTION (91.6%)</u>	<u>COMPANY</u> <u>ACTIVITY</u>	<u>CRD</u> <u>ACTIVITY</u>	<u>TOTAL</u>
E21428-53366004 Contract Purchases	\$ -0-	\$ 115,000	\$ 115,000
E21428-53341005 (M&I) Contract Engineering	-0-	20,000	20,000
E21428-53340005 (E&D) Contract Engineering	-0-	10,000	10,000
E21428-53366006 Contract Construction	-0-	100,000	100,000
TOTAL	\$ -0-	\$ 245,000	\$ 245,000

NOTE: CUS will contribute 8.4% of the funds needed to complete this project.

Page 7 of 11

OW/JST/sr
CUS/CRD D/CUS-I
8/15/90

*did META
remove \$ from
wrong column?*

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

<u>GRANT NUMBER:</u>	IL-90-0008/ CAP-83-212-FED IL-90-X024/ CAP-83-212-FED	<u>PROJECT ELEMENT NO.</u>	E21429/ G31429	<u>COMPANY:</u>	CUS
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PROJECT DESCRIPTION: ROW Rail Renewal Track 1 - Canal/Randolph Chicago
Union Station

*\$ TRAIL 2 & S. Tric #3.
Washington.*

<u>CRD PORTION (92.2%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY ACTIVITY</u>	<u>CRD ACTIVITY</u>	<u>TOTAL</u>
E21429-53366004 Contract Purchases	\$ 358,000	\$ -0-	\$ 358,000
E21429-53341005 (M&I) Contract Engineering	-0-	26,000	26,000
E21429-53366006 Contract Construction	272,000	-0-	272,000
G31429-53366006 Contract Construction	<u>154,000</u>	<u>-0-</u>	<u>154,000</u>
TOTAL	<u>\$ 784,000</u>	<u>\$ 26,000</u>	<u>\$ 810,000</u>

NOTE: CUS will contribute 7.8% of the funds needed to complete this project.

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-90-0008/
CAP-83-212-FED
IL-90-X024/
CAP-83-212-FED

PROJECT
ELEMENT NO. E21451/
G31451

COMPANY: CUS

PROJECT DESCRIPTION: Renew Signal Cable, Signal Transformers and Transfer Switches, ^{LAKE ST.}
Chicago Union Station - (Phase I - Bury Signal Cable)

<u>CRD PORTION (92.2%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY</u> <u>ACTIVITY</u>	<u>CRD</u> <u>ACTIVITY</u>	<u>TOTAL</u>
E21451-53326004 Contract Purchases	\$ 53,500	\$ 26,500	\$ 80,000
G31451-53326004 Contract Purchases	170,000	-0-	170,000
E21451-53341005 (M&I) Contract Engineering	-0-	30,000	30,000
E21451-53326006 Contract Construction	28,750	1,250	30,000
G31451-53326006 Contract Construction	<u>30,000</u>	<u>-0-</u>	<u>30,000</u>
TOTAL	<u>\$ 282,250</u>	<u>\$ 57,750</u>	<u>\$ 340,000</u>

NOTE: CUS will contribute 7.8% of the funds needed to complete this project.

APPENDIX "B" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NUMBER: IL-90-X159/
CAP-90-353-FED

PROJECT
ELEMENT NO. M12104

COMPANY: CUS

PROJECT DESCRIPTION: Rehabilitate Electrical Standby Facilities -
North Side Union Station

<u>CRD PORTION (100%)</u>	<u>CURRENT FUNDING</u>		
	<u>COMPANY</u> <u>ACTIVITY</u>	<u>CRD</u> <u>ACTIVITY</u>	<u>TOTAL</u>
M12104-55420004 Contract Purchases	\$ 151,000	\$ -0-	\$ 151,000
M12104-55420006 Contract Construction	<u>-0-</u>	<u>74,000</u>	<u>74,000</u>
TOTAL	<u>\$ 151,000</u>	<u>\$ 74,000</u>	<u>\$ 225,000</u>

APPENDIX "F" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NO.: IL-90-0008/CAP-83-212-FED
IL-90-X024/CAP-83-212-FED
IL-90-X049/CAP-83-212-FED
IL-03-0101/CAP-84-219-FED
IL-03-0143/CRD-023
IL-90-X141/CRD-022
IL-90-X159/CAP-90-353-FED

PROJECT NO.: E21427/G31427/H51427/L21427/L31427, E21428,
E21429/G31429, E21451/G31451, E11463, and
M12104

COMPANY: Chicago Union Station

DESCRIPTION:

E21427/: This project provides for the modernization of the
G31427/ Chicago Union Station Lake Street, and Harrison Street
H51427/ Interlockings.
L21427/
L31427

E21428: This project provides for the renewal of the Canal Street crossing, including tracks 1 and 2.

E21429/: This project provides for the renewal of rail and hardware
G31429 for track 1 on the curve between Randolph and Canal Streets.

E21451/: Phase I of this project provides for the replacement of
G31451 signal cable between Canal - Madison Streets and Lake Street. Phase II of this project provides for the replacement of signal transformers and transfer switches located at Roosevelt Road, Taylor Street, Polk Street, Harrison Tower, Harrison Street, Jackson Boulevard, Monroe Street, Washington Street and Lake Street.

E11463: This project provides for the extension of the kiosk at the head end of the Adams Street escalator. In times of inclement weather, the small kiosk area becomes rapidly crowded as commuters leave the station. The crowding spills over to the escalators causing a safety hazard. An extended kiosk (to the Adams Street sidewalk) will relieve this condition.

M12104: This project consists of the rehabilitation of electrical standby facilities for tracks on the north side of the CUS for commuter cars and locomotives. This will ensure continued layover protection for commuter cars and locomotives.

GRANT NO.: IL-03-0073/CAP-78-110-FED
IL-03-0076/CAP-78-117-FED
MET-102

PROJECT NO.: A80547, A90653/L40653, A90654 and A90655

COMPANY: Chicago Union Station

DESCRIPTION:

A80547: This project provides for the purchase and installation of bi-directional signaling from the North tracks of the Chicago Union Station to the Milwaukee Road Tower A-5.

A90653/: This project is an element of Phases I and II of a
L40653 program to provide terminal improvements to the Chicago Union Station. The project is for the purchase and installation of electrical standby facilities for 15 tracks on the north and south sides of the station. This will provide layover protection for commuter cars and locomotives.

A90654: This project consists of contract engineering, design, and construction of new pedestrian exits at Chicago Union Station, and is one of several components to provide improvements at CUS.

Included in the project will be: construction of a new exit at Madison Street directly across from all northside platforms; construction of a new exit kiosk at the northeast corner of Adams/Canal Streets and a new exit on the south side of Jackson/Canal Streets, both of which will provide access to the new "with-flow" CTA bus lanes; construction of a new elevator directly inside the Canal Street entrance; replacement of doors (some automatic) at all entrances, as needed; and renovation of the Adams Street kiosk (construction only). This project will result in convenient commuter access to exits leading to destinations in the south Loop, and reduced congestion in the CUS terminal area.

A90655: This project is an element of Phases I and II of a program to provide terminal improvements to the Chicago Union Station. This project calls for the addition of an escalator at the Canal Street exit which will improve passenger flow at this exit and at the concourse area.

APPENDIX "F" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NO.: IL-03-0093/CAP-82-194-FED
IL-03-0115/CAP-82-194-FED
IL-03-0120/CAP-82-194-FED

PROJECT NO.: D41229/G91229/H91229

COMPANY: Chicago Union Station

DESCRIPTION:

D41229/: This project involves the installation of a track
G91229/ turnout by CUS forces. The turnout, which will be
H91229 located on CUS property, is needed so that train sets
will have access to the new train washer that will be
built with the Burlington Northern's 14th Street Yard
Rehabilitation project.

APPENDIX "G" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NO.: IL-03-0073/CAP-78-110-FED
IL-03-0076/CAP-78-117-FED
IL-03-0093/CAP-82-194-FED
IL-03-0115/CAP-82-194-FED
IL-03-0120/CAP-82-194-FED
MET-102

PROJECT NO.: A80547, A90653/L40653, A90654, A90655 and
D41229/G91229/H91229

COMPANY: Chicago Union Station

OWNERSHIP PROVISIONS

A80547: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B.

A90653/: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B. ✱
L40653

A90654: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed or purchased pursuant to the completion of this project as described in Appendix B.

A90655: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B.

D41229/: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B.
G91229/
H91229

APPENDIX "G" - FIXED FACILITY AGREEMENT I - CUS/CRD

GRANT NO.: IL-90-0008/CAP-83-212-FED
IL-90-X024/CAP-83-212-FED
IL-90-X049/CAP-83-212-FED
IL-03-0101/CAP-84-219-FED
IL-03-0143/CRD-023
IL-90-X141/CRD-022
IL-90-X159/CAP-90-353-FED

PROJECT NO.: E21427/G31427/H51427/L21427/L31427, E21428,
E21429/G31429, E21451/G31451, E11463, and
M12104

COMPANY: Chicago Union Station

OWNERSHIP PROVISIONS

E21427/: The Commuter Rail Division shall retain 100% ownership
G31427/ in that portion of the materials and equipment
H51427/ installed under this project which is designated as
L21427/ the commuter rail portion (66.7%) of this project as
L31427 described in Appendix B.

E21428: The Commuter Rail Division shall retain 100% ownership
in that portion of the materials and equipment installed under this project which is designated as the commuter rail portion (91.6%) of this project as described in Appendix B.

E21429/: The Commuter Rail Division shall retain 100% ownership
G31429 in that portion of the materials and equipment installed under this project which is designated as the commuter rail portion (92.2%) of this project as described in Appendix B.

E21451/: The Commuter Rail Division shall retain 100% ownership
G31451 in that portion of the materials and equipment installed under this project which is designated as the commuter rail portion (92.2%) of this project as described in Appendix B.

E11463: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B.

M12104: The Commuter Rail Division owns 100% of the fixed facilities constructed, installed, or purchased pursuant to the completion of this project as described in Appendix B.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF NANCY J. MILLER, CPA, CFF

Date: May 20, 2020

Nancy J. Miller
Director of Financial Planning and Analysis
National Railroad Passenger Corporation (Amtrak)
30th and Market Streets, 5NW, Box 61
Philadelphia, PA 19104

VERIFIED STATEMENT OF NANCY J. MILLER, CPA, CFF

I, Nancy J. Miller, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Pennsylvania, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation (“Amtrak”). I have been an employee of Amtrak since April 1996. My current job title is Director of Financial Planning & Analysis.

3. I am familiar with the facts and circumstances set forth herein, based upon my own personal knowledge and experience, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this declaration is to provide facts and analysis regarding the bases for the compensation in Amtrak’s proposed agreement with Metra for access to Chicago Union Station. The facts and analysis relate to: (i) the calculation of costs incurred by Amtrak for the sole benefit of Metra, or the common benefit of Amtrak and Metra, at Chicago Union Station, (ii) a methodology for allocating to Metra a share of the common benefit costs proportionate to Metra’s operations at Chicago Union Station, (iii) a methodology for determining necessary capital contributions by Metra, and (iv) the determination of a cumulative base usage fee and inflation factor to be incorporated into a final access agreement between Amtrak and Metra.

5. The calculation of costs incurred by Amtrak relating to Chicago Union Station which I describe more fully below, utilizes Amtrak’s financial and enterprise reporting system, SAP.

6. The methodology for allocating “common benefit” costs that I applied in this matter, and describe more fully below, relies on the methodology jointly developed and adopted by the Northeast Corridor Commission (“NECC”) for fully allocating costs to Amtrak and state commuter rail authorities on the Northeast Corridor (“NEC”), under statutory language consistent with the statutory language governing this case.

I. Amtrak’s Accounting System

7. Amtrak uses SAP software as its general ledger and financial accounting system for reporting and management.

8. In SAP, each Amtrak financial transaction is associated with a data record. Each financial transaction data record is assigned distinct codes that provide information about the type of transaction (i.e. revenue or expense) as well as the amount, cost category, associated department, etc. When a transaction is entered into SAP, the relevant codes are assigned to the data record.

9. There are four financial transaction codes that are the key building blocks used in the Amtrak’s financial reporting process. Those transaction codes are:

- a. Cost Center. SAP maintains a database of Amtrak Cost Centers. Most Cost Centers are organizational units with a supervisor and staff where work takes place—e.g., San Antonio Station Services Cost Center. Each Cost Center is identified by a four-character code and an associated description.
- b. Cost Element. Cost Elements describe the type and category of costs. A cost element corresponds to a cost relevant item in Amtrak’s chart of accounts. SAP maintains a database of Cost Elements that identify various types of expenses (e.g., wages), revenue sources, and balance sheet items. Each Cost Element is identified

by a unique six-digit number and an associated description. Amtrak's accounting systems use approximately 2,000 Cost Elements.

- c. Internal Order. Internal Orders categorize expenses by purpose and identify the task, type, or nature of work performed—e.g., Ticketing, Operations, or Red Caps / Porters. Each Internal Order is identified by a four-digit number and an associated name. SAP uses approximately 175 Internal Orders.
- d. Work Breakdown Structure (WBS) Element. The WBS element captures cost by project task. SAP maintains a database of approximately 50,000 WBSs to track a project's expenses. WBSs have a multi-level coding structure. A higher-level code provides general information about a project, while a lower-level code provides more detail about the project's expenses (e.g., location, geographic segment, or specific equipment units).

II. Calculation of Operating Costs for Chicago Union Station

10. As part of contract negotiations between Amtrak and Metra, I was asked to determine the costs that Amtrak incurs for the sole benefit of Metra, or the common benefit of Amtrak and Metra, at Chicago Union Station. The types of costs Amtrak incurs at Chicago Union Station fall into five categories: Dispatching, Maintenance of Way, Station Operations and Maintenance, Police, and Capital. Amtrak also incurs other miscellaneous costs described below, including the cost of the ground power Metra uses to power its trains while they are on layover at Chicago Union Station.

11. I used SAP to calculate the relevant costs for each of these categories (other than ground power and capital, as explained below). SAP enabled me to calculate the total amount of costs that Amtrak incurs that are related to Chicago Union Station for each of these categories.

12. Amtrak uses the SAP codes discussed above to track the costs related to Chicago Union Station, whether those costs arise within the physical premises of the Station or beyond the physical premises of the Station. The cost center and WBS element identify whether the employee is working at Chicago Union Station or elsewhere and if the project work was associated with the Chicago Union Station facility.

13. Amtrak does not specifically record, account, or track via WBS Element, Cost Center, or other designation or entry into its books or records, costs that Amtrak believes are incurred specifically for the benefit of Metra.

14. I identified the costs for the operation and maintenance of Chicago Union Station that were incurred for the sole benefit of Metra, or the common benefit of Amtrak and Metra, by using the financial data compiled in SAP. The various excel spreadsheets referenced herein and attached as exhibits include the relevant data from Amtrak's SAP system that Amtrak maintains in the ordinary course of business.

A. Calculation of Maintenance of Way Costs

15. The relevant costs incurred by Amtrak in its Fiscal Years 2016 and 2017 for the cost area Maintenance of Way at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008161, a true and correct copy of which is attached as Exhibit 1.¹

16. I identified those costs by searching within SAP for WBS Elements relating to Chicago Union Station (e.g., those containing the terms CUS, CHI, Chicago, or something similar). I then reviewed the WBS descriptions to identify those related specifically to Chicago

¹ I used 2016 and 2017 because Amtrak and Metra began negotiating a new agreement in 2018 and that was the most recent information available. It is my understanding that Amtrak and Metra have agreed for purposes of this proceeding to utilize this 2016 and 2017 cost data, subject to an inflation adjustment. Updated cost data for FY 2018 and FY 2019 is reflected in Amtrak0000234, a true and correct copy of which is attached as Exhibit 2.

Union Station, and removed all other entries. I then reviewed the Account information for the remaining entries to confirm that they related to Maintenance of Way at Chicago Union Station.

17. The result of that process is Amtrak0008161. Amtrak0008161 comprises [REDACTED] rows, each of which represents a specific cost incurred by Amtrak at Chicago Union Station. For example, Row [REDACTED] represents [REDACTED] paid for [REDACTED] for Maintenance of Way on March 23, 2016. All other rows provide a similar level of detail. *See also* Amtrak0005283, Tab MOW Cost Allocation, a true and correct copy of which is attached as Exhibit 3.

B. Calculation of Dispatching Costs

18. The costs for Dispatching trains in and out of Chicago Union Station fall within two categories: facility maintenance costs and personnel costs.

19. The costs incurred by Amtrak in Fiscal Years 2016 and 2017 relating to maintenance of the dispatching facility at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008164, a true and correct copy of which is attached as Exhibit 4. I identified those costs by searching SAP for Chicago Union Station dispatching within the WBS field.

20. The result of that process is Amtrak0008164. This spreadsheet comprises [REDACTED] rows, each of which represents a specific direct cost incurred by Amtrak at Chicago Union Station. Additional maintenance costs associated with the dispatching facility were calculated using the methodology described in Paragraph 66 below. *See* Amtrak0005283, Tab Dispatching Facility Maint Cost (Ex. 3).

21. The Dispatching costs incurred by Amtrak at Chicago Union Station for the benefit of Metra also include the salaries and hourly wages of personnel in the Dispatching office. The personnel roster for Chicago Union Station train directors and assistant superintendents for train

movement is included on the spreadsheet bates-labeled Amtrak0008163, a true and correct copy of which is attached as Exhibit 5.

C. Calculation of Station Operations and Maintenance Costs

22. The relevant costs incurred by Amtrak in Fiscal Years 2016 and 2017 for Station Operations and Maintenance at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008162, a true and correct copy of which is attached as Exhibit 6.

23. Station Operations and Maintenance costs include items such as utilities, station cleaning, trash removal, and station maintenance.

24. I identified Station Operations and Maintenance costs by searching within SAP for WBS Elements relating to Chicago Union Station (e.g., those containing the terms CUS, CHI, Chicago, or something similar). I then reviewed the WBS descriptions to identify those related specifically to Chicago Union Station, and removed all other entries. I then reviewed the Account information for the remaining entries to confirm that they related to Station Operations and Maintenance at Chicago Union Station.

25. The result of that process is Amtrak008162. This spreadsheet comprises [REDACTED] rows, each of which represents a specific cost incurred by Amtrak at Chicago Union Station. For example, Row [REDACTED] represents [REDACTED] 4 posted on November 10, 2015 for [REDACTED]
[REDACTED] All other rows provide a similar level of detail.

26. The average of the 2016 and 2017 costs incurred by Amtrak for Station Operations and Maintenance at Chicago Union Station, after adding applicable G&A expenses and a 2018 inflation factor, is [REDACTED] See Amtrak0005283, Tab Station Cost Allocation (Ex. 3). Less

the operations and maintenance costs associated with Dispatching, this amount is \$12,801,311.

See id.

D. Calculation of Police Costs

27. The process for calculating the Police costs incurred at Chicago Union Station for the sole benefit of Metra or the common benefit of Amtrak and Metra is described in the following steps:

- a. The average of Amtrak's actual FY2016 and FY2017 applicable allocated costs;
- b. **Plus:** the expense associated with [REDACTED] additional officers that were anticipated to be added in 2018;
- c. **Less:** The cost of [REDACTED] that reflected the approximate expense of officers riding Amtrak trains or patrolling the Amtrak rail yard, because that is an Amtrak sole-benefit activity;
- d. **Plus:** The cost associated with the Amtrak K-9 unit and [REDACTED] detectives assigned to Chicago Union Station; and
- e. **Plus:** Applicable General and Administration (G&A) and inflation index expenses.

28. The relevant costs incurred by Amtrak in Fiscal Years 2016 and 2017 for Police at Chicago Union Station are included on the spreadsheet bates-labeled Amtrak0008166, a true and correct copy of which is attached as Exhibit 7. For example, Row [REDACTED] represents [REDACTED] [REDACTED] paid on June 19, 2016 for [REDACTED]. All other rows provide a similar level of detail.

29. Using the universe of Police costs in Amtrak0008166, I identified the costs to be allocated to Metra using the following steps:

- a. First, I reviewed two WBS Elements within SAP relating to Chicago Union Station:

[REDACTED]

[REDACTED]

- b. Second, I then reviewed the cost centers coded to the above WBS Elements and identified that cost center [REDACTED] reflected the expense of the officers assigned to Chicago Union Station. Other costs centers coded to the WBS elements, such as [REDACTED] and [REDACTED] [REDACTED] were not included in the Police calculation. I identified the direct costs associated with cost center [REDACTED].

- c. Third, I calculated applicable overhead, which includes fringe benefit costs, FELA, and vacation and holiday expenses. To determine applicable overhead costs for cost center [REDACTED], I calculated an overhead factor based on the overhead expense coded to the WBS Elements as a percentage of the direct labor coded to the WBS Elements. This overhead factor was [REDACTED] in Fiscal year 2016 and [REDACTED] in Fiscal Year 2017. The overhead factor was applied to the direct expenses in cost center [REDACTED], resulting in a total police expense for each year.

- d. Fourth, the total cost for each year was divided by [REDACTED] the number of officers authorized at Chicago Union Station in Fiscal Years 2016 and 2017 in order to calculate a cost per position. The cost per position was then multiplied by [REDACTED] representing the expense for the additional [REDACTED] officers anticipated to be added in 2018. This cost was added to the total police expense for each year, resulting in the total anticipated Police cost for Fiscal Year 2018.

- e. Fifth, the total anticipated Police cost for Fiscal Year 2018 was then reduced by the expense associated with [REDACTED] that reflected the approximate expense associated with [REDACTED] [REDACTED] resulting in the estimated police cost.
- f. Sixth, the costs associated with cost centers [REDACTED] [REDACTED] and associated overhead coded to the [REDACTED] Chicago Union Station-related WBS elements referenced in a. above were calculated and added to the estimated Police cost in order to reflect Station K9 expense unit related expense, resulting in the total police cost to be allocated to Metra.
30. The average of the 2016 and 2017 costs, after adding applicable G&A expenses and a 2018 inflation factor, is [REDACTED] See Amtrak0005283, Tab Police Cost Summary (Ex. 3).
31. The Police costs incurred by Amtrak at Chicago Union Station for the common benefit of Metra is composed largely of the salaries and hourly wages of police officers. The personnel roster as of August 1, 2017 is included on the spreadsheet bates-labeled Amtrak0008165, a true and correct copy of which is attached as Exhibit 8.
32. Certain additional costs of Police at Chicago Union Station, including labor costs associated with APD management ([REDACTED]), an administrative assistant, and APD's Intelligence and Counterterrorism unit; policing equipment; and training programs were not included in the calculation. See Amtrak0005283, Tab Police Cost Summary (Ex. 3).

III. Metra's Fully Allocated Operating Costs Associated with Chicago Union Station

33. I understand that the statute governing Metra's use of Chicago Union Station requires Metra to pay fully allocated costs.

34. I have calculated those fully allocated costs, using the allocation method adopted by the NECC as a guide.

A. The NECC's Consideration and Adoption of Allocation Methods.

35. I understand that the statute governing cost allocation for NEC operations requires the state commuter rail authorities to pay fully allocated costs.

36. The NECC was directed to develop a cost-sharing arrangement for NEC infrastructure used for commuter and intercity rail services. The NEC is a shared resource with multiple right-of-way and station owners and service providers. In addition to Amtrak's intercity service on the NEC, ten commuter authorities and six freight railroads operate over the NEC's main line and feeder corridors. Voting members of the NECC include representatives from the FRA, U.S. Department of Transportation, several state departments of transportation, and several state commuter rail authorities.

37. The NECC's efforts resulted in the NEC Commuter and Intercity Rail Cost Allocation Policy (the "Cost Allocation Policy").

38. The Cost Allocation Policy is specifically intended to ensure no cross-subsidization between commuter, intercity, and freight transportation, and to prescribe a standardized methodology to fully allocate costs to users that reflects their respective uses of NEC.

39. The Cost Allocation Policy provides the framework and methodology for identifying and allocating operating and capital costs incurred by the NEC's owners, including Amtrak and state commuter rail authorities that operate on the NEC.

40. On December 17, 2014, the NEC Commission adopted the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy, which was originally approved September 17, 2015, effective October 1, 2015 (as amended through June 19, 2019, effective October 1, 2019).

41. Amtrak and state commuter rail authorities that operate on the NEC use the cost allocation methodology prescribed in the Cost Allocation Policy to calculate the allocated cost-share values for NEC-related infrastructure.

42. The Cost Allocation Policy is consistent with the objective of 49 U.S.C. § 24903: the determination of the appropriate factors to fully allocate costs associated with state commuter rail authorities' use of Amtrak assets to provide transportation.

43. The Cost Allocation Policy identifies the following functional areas for cost sharing: Maintenance of Way, Train Dispatching, Police, Stations Operations and Maintenance, and Capital Renewal. These areas overlap the cost categories I identified in Paragraph 10.

44. The NECC determined that in selecting factors for cost allocation and to achieve cost effectiveness, the Cost Allocation Policy had to balance achieving the desired level of precision with the costs associated with precision.

45. To identify the appropriate factor for allocating costs within one of the five areas identified above, the NECC considered a variety of potential allocation factors (also called allocation statistics). The NECC determined that there must be a relationship between the cost category and the proposed allocation factor, to avoid arbitrariness.

46. The NECC recognized that it is important to use a factor that can be measured objectively, and is readily available to the parties, in order to ensure predictability and consistency.

47. In everyday life, an example would be using mileage as the basis for reimbursing employees for driving their private vehicles—it is not a precise measure of the costs the employee incurred, but the mileage is a driver of the costs, and has a strong relationship to the costs, and is therefore a reasonable proxy for the costs.

48. Amtrak utilized these principles in identifying appropriate factors for allocation of shared and sole benefit costs at Chicago Union Station.

B. Determination of Metra's Share of Maintenance of Way Costs

49. Because the number of train movements impacts Maintenance of Way costs (i.e., infrastructure wear and tear), Amtrak proposed that Maintenance of Way costs be allocated based on the proportionate share of train movements (i.e., the ratio of Metra trains to the combined total number of Amtrak trains and Metra trains). Amtrak's calculation divided costs into those incurred at the North concourse and the South concourse, and applied the train movement statistics for each to the applicable WBS expense.

50. In 2017, Metra operated [REDACTED] of trains at the North Concourse, and [REDACTED] of trains at the South Concourse. *See* Amtrak0000294, Tab Train Moves, Cells D57 & D58 (attached as Ex. 2 to the Verified Statement of Christine Suchy). In total, [REDACTED] of all trains at Chicago Union Station were operated by Metra.² *See id.*

51. Metra has agreed to use the train movements allocation method for determining allocation of Maintenance of Way costs.

² The underlying data for this calculation is attached as Amtrak0008167 (Passenger Traffic and Slotting Counts – September 2016 – Weekly Revenue Train Moves for CUS North/South), a true and correct copy of which is attached as Exhibit 9; Amtrak0008168 (FY 2017 Dispatch Statistics), a true and correct copy of which is attached as Exhibit 10; Amtrak0008169 (FY 2017 On-Time Performance), a true and correct copy of which is attached as Exhibit 11.

52. Train movements are one of the allocation factors that the NECC adopted for Maintenance of Way under the Cost Allocation Policy. *See* Cost Allocation Policy, § 5.3.1.

53. Metra has agreed to pay **\$2,950,000** (in 2020 dollars) for its fully allocated share of Maintenance of Way costs.

C. Determination of Metra's Share of Dispatching Costs

54. Amtrak proposed that Dispatching costs be allocated based in part on the number of train movements. Metra has agreed to use Amtrak's proposed method for determining allocation of Dispatching costs.

55. This is consistent with the allocation methods the NECC adopted for Dispatching costs under the Cost Allocation Policy for terminal zones (i.e., areas around a station). *See* Cost Allocation Policy, § 5.3.2.

56. Metra has agreed to pay **\$1,800,000** (in 2020 dollars) for its fully allocated share of Dispatching costs.

D. Determination of Metra's Share of Police Costs

57. Amtrak proposes that Police costs be allocated using a metric that represents an equal weighting of ridership (measured by passenger on-off counts) and station usage (measured by train movements). This mix reflects both the number of Amtrak and Metra passengers that board and de-board at Chicago Union Station as well as the approximate station usage of the Station and Station facilities and services by passengers measured by the number of trains that stop at the station.

58. Between September 2016 and August 2017, [REDACTED] of passengers boarding or de-boarding trains at Chicago Union Station were Metra passengers. *See* Amtrak0005283 at Rider Statistics Tab (Ex. 3).³

59. Using the mix of ridership ([REDACTED] Metra) and train movements [REDACTED] Metra) as the appropriate factor, Metra is allocated [REDACTED] of Police costs.

60. This is consistent with the allocation method the NECC adopted for station Police costs under the Cost Allocation Policy. *See* Cost Allocation Policy, § 5.4.

61. Amtrak calculated Metra's share of Police costs in 2020 dollars using an inflation factor. *See* Amtrak0005283 (Inflation Methodology tab) (Ex. 3).

62. Based on the costs and methodology described above, Metra's fully allocated share of Police costs is **\$4,092,980**.

E. Determination of Metra's Share of Station Operations and Maintenance Costs

63. Amtrak proposes that Station Operations and Maintenance costs be allocated to Amtrak and Metra primarily on a square footage basis, using a formula.

64. Metra's share of Station Operations and Maintenance costs is equal to the percentage of square footage at Chicago Union Station that benefits Metra (with square footage that benefits both Amtrak and Metra allocated based on ridership and train movements).⁴

³ The underlying data for this calculation is attached as Amtrak0008170 (Amtrak FY 2016–FY2019 Station Ridership), a true and correct copy of which is attached as Exhibit 12.

⁴ This is essentially the same methodology Amtrak proposed for Station Operations and Maintenance in its June 2019 proposal to Metra. The application of the methodology has been simplified for purposes of this proceeding. First, in the June 2019 proposal, Amtrak allocated janitorial costs separately based on a spatial analysis covering only those areas serviced by contracted janitorial cleaners. Second, in the June 2019 proposal, Amtrak allocated the costs for snow removal and platform maintenance separately, using the ridership/train movements factor (i.e., [REDACTED] of those costs to Metra). The station platforms were not included in the Chicago Union Station spatial analysis calculation because the platform maintenance does not consume the same proportion of building maintenance and operations (e.g., utilities, janitorial services) as the main

65. The calculation of Metra's share is based on a formula: Metra's sole-use square footage plus its share of common-use square footage, all divided by the total allocable square footage for which Amtrak incurs the costs.

- a. First, Amtrak calculated the square footage for all spaces of Chicago Union Station based on available station maps. *See* Amtrak0000184 (spatial analysis of Chicago Union Station), a true and correct copy of which is attached as Exhibit 13; Amtrak0008175 (CBRE Chicago Union Station Square Footage Schedule), a true and correct copy of which is attached as Exhibit 14. My understanding is that Metra and Amtrak have since reached an agreement for purposes of this proceeding that only the Basement, Concourse, and Mezzanine floors are relevant to the Station Operations and Maintenance calculation.
- b. Second, Amtrak designated spaces at Chicago Union Station as common or as providing benefit solely to either Amtrak or Metra.
 - i. Amtrak reviewed each area in Chicago Union Station, including spaces such as the Great Hall as well as individual janitorial closets. These areas and their square footage can be seen on building plans prepared by CBRE. *See* Amtrak0008171 (existing spatial plans for Chicago Union Station), a true and correct copy of which is attached as Exhibit 15.

floors of Chicago Union Station. Amtrak's current inclusion of the WBSs related to station platform maintenance costs in the spatial allocation results in a lower allocation of those costs to Metra (██████ instead of ██████). Third, in an attempt to reach a resolution, Amtrak's June 2019 proposal also allocated only 15% of the expenses associated with the Great Hall to Metra. The calculations herein allocate the Great Hall using the same criteria as all other space at Chicago Union Station.

- ii. Based on discussions with Chicago Union Station operating and station personnel, Amtrak determined whether each area was used solely for the benefit of Amtrak, solely for the benefit of Metra, or for the common benefit of both parties. *See* Amtrak0005283, Tab Saptial [sic] Analysis Data (Ex. 3). Amtrak also made these designations based on whether one or both parties use the area or have a right to use the area.⁵
 - iii. Amtrak calculated the operations and maintenance expenses associated with the dispatching facility separately. The costs incurred for maintenance and operation of the dispatching facility are included in the Dispatching allocation.
 - iv. During this process, Amtrak also prepared summary schedules that identified spaces as Amtrak sole-use, Metra sole-use, or shared use. *See, e.g.,* Amtrak0000179 (December 10, 2018 – Space Utilization Plans and Area Tabulations showing Metra sole use areas, Amtrak (or other tenant) sole use areas, and the shared areas at Chicago Union Station), a true and correct copy of which is attached as Exhibit 16.
- c. Third, Amtrak calculated the total square footage attributable to Metra for purposes of the allocation. The floor-by-floor totals, and the calculations discussed throughout the remainder of Paragraph 66, are included in the chart below:

⁵ Since its June 2019 proposal, I understand that Amtrak has refined the square footage allocation.

Level	Total Square Footage	Adj. Factor	Total Allocated	Common	Sole Benefit Metra	Sole Benefit Amtrak
Bas. - Headhouse	135,393					
Bas. - Concourse						
Concourse						
Mezzanine F. Court						
Mezzanine H.H.						
Total	489,555		360,932			
% of Total			100.00%			

- d. The square footage for the common-benefit areas () square feet) was divided between Amtrak and Metra based on the 50% ridership/50% train movements formula, and that amount () square feet) was added to Metra's sole-use square footage () square feet). This square footage number () square feet) represents the numerator in the ratio to determine Metra's share of Station Operations and Maintenance costs.
- e. Fourth, Amtrak calculated the total allocable square footage associated with the Station Operations and Maintenance costs are incurred. This number represents the denominator in the ratio to determine Metra's share of Station Operations and Maintenance costs.
- i. As stated above, Metra and Amtrak have stipulated that this calculation should include only square footage from the Basement, Concourse, and Mezzanine.
 - ii. In calculating total allocable square footage, Amtrak included all of the square footage for the Basement—Concourse, the Concourse, the Mezzanine Foodcourt, and the Mezzanine Headhouse.
 - iii. Amtrak applied a () adjustment factor to the square footage of the Basement—Headhouse. This adjustment factor accounts for the

fact that the area is primarily devoted to mechanical and other uses such as a ramp to loading docks that do not consume the same proportion of building maintenance and operations (e.g., utilities, janitorial services) as the main floors of Chicago Union Station.

iv. Based on this spatial analysis, the total allocable square footage for Chicago Union Station is 360,932 square feet.

f. Fifth, Amtrak used the ratio of the square footage attributable to Metra [REDACTED] divided by the total allocable square footage (360,932) to calculate the allocation factor for Metra's share of Station Operations and Maintenance costs: [REDACTED]

66. This is consistent with the allocation method the NECC adopted for Station Operations and Maintenance in the Cost Allocation Policy. *See* Cost Allocation Policy, § 5.4.1.

67. Amtrak applied this allocation factor to the total Station Operations and Maintenance costs for Chicago Union Station, less the costs allocated under Dispatching. The total allocable costs in 2018 dollars were \$12,801,311. Metra's share of those costs was [REDACTED]. In Fiscal Year 2020 dollars, that amount is [REDACTED]

IV. Determination of Metra's Fully Allocated Share of Capital Costs

68. Amtrak also proposes a method for determining Metra's share of the future Capital costs that benefit Metra.

69. Amtrak determined Capital costs based on a thorough analysis of ongoing capital projects, current state of good repair of assets, and forecasted costs based on historical levels of capital investment. *See* Amtrak0000233 (spreadsheet reflecting the status of assets at Chicago Union Station), a true and correct copy of which is attached as Exhibit 17. Amtrak determined that its Fiscal Year 2016 capital costs that provided a benefit to Metra were [REDACTED], and its

Fiscal Year 2017 capital costs that provided a benefit to Metra were [REDACTED] See Amtrak0005283, Tab Capital-Common, Cells D40 & E40 (Ex. 3).

70. The cost to ensure all assets are in a state of good repair is an additional [REDACTED]. See Amtrak0000294, Tab Cost Summary, Cells E40 & F40 (Ex. 2 to Suchy Stmt.).

71. For Fiscal Years 2016, 2017, and 2018, Metra contributed an average of approximately [REDACTED] towards capital costs.

72. Based on an inventory of track assets, and each asset's projected life cycle of replacement, Amtrak projected a combined annualized replacement cost of [REDACTED]. The cost to ensure all assets are in a state of good repair is an additional [REDACTED]. See Amtrak0000294, Tab Cost Summary, Cells E40 & F40 (Ex. 2 to Suchy Stmt.).

73. Amtrak's proposed capital plan is divided into Tier 1 Investment and Tier 2 Investment.

74. Tier 1 Investment is a primary level of committed capital investment that Metra would fund at a level consistent with the Fiscal Year 2016 through Fiscal Year 2018 average amounts: **\$1,700,000** annually. Amtrak would fund an additional \$800,000 of Tier 1 Investment.

75. Tier 2 Investment is a secondary level of investment consisting of an additional \$10 million annual for each of the first five years of the proposed agreement.

- a. Responsibility for Tier 2 investment would be based on relative train movements, specific to the North or South Concourse, depending on the location of the project at issue.
- b. Metra operates [REDACTED] of trains at the North Concourse, and [REDACTED] of trains at the South Concourse. See Amtrak0000294, Tab Train Moves, Cells D57 & D58 (Ex. 2 to Suchy Stmt.).

76. Metra would also be responsible for reimbursing Amtrak for its actual costs incurred for Metra sole-benefit capital projects, because under Section 24903 Metra must pay all of the costs Amtrak incurs for the sole benefit of Metra.

V. Calculations and Analysis Relevant to Proposed Terms for the Agreement

77. For ground power, Amtrak proposes a \$10,500 monthly flat fee. Amtrak determined the ground power costs incurred for the sole or common benefit of Metra by analyzing the actual cost of power used for the tracks on which Metra operates trains.

- a. Metra is the sole user of 13 tracks: Tracks 1 through 11, 13, and 15. Metra and Amtrak share seven tracks: 12, 14, 16, 17, 19, 21 and 23.
- b. Amtrak tracked the ground power costs for four of Metra's dedicated tracks (2, 4, 6, and 8) from August 7, 2018 through August 6, 2019, and then determined the average ground power cost per track, per month: \$635.94.
- c. Amtrak allocated that amount for each of Metra's 13 sole-use tracks (\$8,267.17 per month total), and half of that amount for each of Metra's seven shared-use tracks (\$2,225.78 per month total). Based on that calculation, the cost of Metra's monthly ground power is \$10,492.95. These are costs that Amtrak incurs solely because of Metra's use of ground power.

78. The compensation amounts Amtrak proposes are based on the expectation that the total number of trains that Metra is permitted to operate (scheduled revenue and deadheads) in and out of Chicago Union Station is 111,497 trains annually. This represents the number of trains operated by Metra in 2017. In the event that the number of trains operated by Metra changes from that level due to approved changes by Amtrak, the total operating costs will be adjusted, either up or down, by the total operating costs divided by 111,497 multiplied by the number of trains more

or less than 111,497 trains in and out of Chicago Union Station. This rate also applies to Special Trains and Test Trains operated by Metra that are not part of their regular operating schedule. Amtrak calculated this rate by dividing the total operating costs, as reflected in the June 2019 proposal, by the permissible number of trains, to determine a per-train cost, which will then be charged for each additional train.

79. Amtrak proposes that the Board adopt an inflation factor so that compensation does not have to be recalculated each successive year. Amtrak proposes the American Association of Railroads (“AAR”) Quarterly Index of Chargeout Prices and Wage Rates (Table C), East, “material prices, wage rates and supplements combined (excluding fuel)” index.

- a. The AAR index is a standard index used in agreements between railroads, because it is based on railroad costs and measures railroad inflation i.e., changes in the price level of inputs to railroad operations.
- b. This index is more appropriate than a consumer-price index, such as the PCE Index, because the PCE Index measures the prices paid by consumers for goods and services and does not reflect changes in wages or benefits.

80. Consistent with the June 2019 proposal, Amtrak is in this proceeding also requesting additional compensation terms, including but not limited to:

- a. Metra payment to Amtrak of \$500 per month for access to Amtrak’s dispatching feed that provides Metra with real-time access to view the movement of Metra Commuter Rail Service operations in and out of Chicago Union Station from the “glass house” locations established at the track level adjacent to tracks 4 and 19. That amount is consistent with the charge for dispatching feeds under similar

agreements with other commuter railroads. That amount does not include the cost of any hardware, software or maintenance costs.

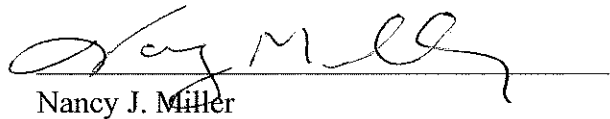
- b. Metra payment to Amtrak for actual training costs or other related services provided to Metra's employees or contractors, plus Amtrak's applicable overhead rates.
- c. Metra payment of the actual cost of any additional services required from Amtrak, plus Amtrak's applicable overhead rates. Amtrak's calculations of the overhead rates are included on the spreadsheet bates-labeled Amtrak0008318 (Ex. 18.)

VERIFICATION

I, Nancy J. Miller, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this verified statement.

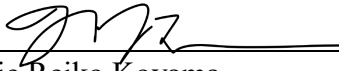
Executed on May 19, 2020 in Philadelphia, Pennsylvania.


Nancy J. Miller

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

Thomas J. Litwiler
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By: 
Perie Reiko Koyama

Miller Stmt.
Ex. 1

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 2

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 3

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 4

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 5

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 6

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 7

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(Filed under seal)

Miller Stmt.
Ex. 8

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(Filed under seal)

Miller Stmt.
Ex. 9

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(Filed under seal)

Miller Stmt.
Ex. 10

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(Filed under seal)

Miller Stmt.
Ex. 11

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Miller Stmt.
Ex. 12

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(Filed under seal)

Miller Stmt.
Ex. 13

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Ex. 14

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Ex. 15

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Miller Stmt.
Ex. 16

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Miller Stmt.
Ex. 17

CONFIDENTIAL

(Filed under seal)

Miller Stmt.
Ex. 18

CONFIDENTIAL

(Filed under seal)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF DEPUTY CHIEF JOSEPH PATTERSON

Date: May 20, 2020

Deputy Chief Joseph Patterson
Amtrak Police Department
210 S. Canal Street
Chicago, IL 60606

VERIFIED STATEMENT OF DEPUTY CHIEF JOSEPH PATTERSON

I, Joseph Patterson, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the State of Illinois, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation (“Amtrak”). I have been an employee of Amtrak since May 1, 2013. My current position is Deputy Chief of the Central and Western Divisions of the Amtrak Police Department (“APD”).

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide facts and analysis regarding APD as it relates to the determination of terms and compensation for an agreement governing the access to and use of Chicago Union Station by the Commuter Rail Division of the Regional Transportation Authority and Northeast Illinois Regional Commuter Railroad Corporation (“Metra”).

5. Amtrak is empowered under 49 U.S.C. § 24305(e) to “directly employ or contract with rail police to provide security for rail passengers and property of Amtrak.” APD officers have the same police authority as local or state law enforcement officials within their jurisdiction.

6. APD is a national police force committed to protecting the passengers, employees, patrons, equipment, and infrastructure of Amtrak and others who use Amtrak’s property. APD serves at all major Amtrak stations and facilities across the country.

7. Amtrak0006545, attached as Ex. 1, is a true and correct copy of the Amtrak Police Department 2018 Annual Report.

8. APD consists of the Central Division, Western Division, Mid-Atlantic South Division, Mid-Atlantic North Division, New England Division, and New York Division. The Central Division encompasses twenty-two States across the Midwest and Southwest and numerous major cities, including Chicago, Illinois, St. Louis, Missouri, Milwaukee, Wisconsin, and New Orleans, Louisiana.

9. The Central Division encompasses the Chicago Field Office headquartered in Chicago Union Station.

10. The vast majority of APD officers in the Central Division work out of Chicago Union Station.

11. Chicago Union Station is the fourth busiest station in Amtrak's national network. APD officers from other parts of the country often come to assist at Chicago Union Station, particularly during large events such as the Chicago Marathon, St. Patrick's Day, Lollapalooza, and major sporting events.

12. Metra is a commuter rail system that uses Chicago Union Station. Although Amtrak owns the Station, Metra is the primary user of Chicago Union Station. [REDACTED] of all trains at Chicago Union Station are operated by Metra, and [REDACTED] of all rail passengers at Chicago Union Station are Metra passengers.

13. Metra has at least ten times the passengers Amtrak does at Chicago Union Station. Metra has reported that it had 31,609,551 passengers boarding or alighting trains at Chicago Union Station in 2018. *See* Metra's Response to Interrogatory No. 1. Amtrak has reported that it

had 3,293,640 passengers boarding or alighting trains at Chicago Union Station in 2018. *See* Amtrak's Response to Interrogatory No. 13.

A. Policing and Crime at Chicago Union Station

14. APD officers fulfill traditional policing functions at Chicago Union Station. They patrol and secure the Station, respond to calls for service, maintain order, assist passengers and other members of the public at the Station, and otherwise seek to ensure the safety of those using the Station and the security of the Station itself.

15. APD officers patrol inside Chicago Union Station, on the perimeter of Chicago Union Station, on the railroad right-of-way feeding the Station, and sometimes on trains. While APD officers generally patrol on Amtrak trains, APD officers regularly work with Metra's dispatching and conductors to meet Metra trains as they come into the Station. APD officers are regularly called upon to handle situations and persons on Metra trains when trains arrive at or depart from Chicago Union Station.

16. As part of their official duties, APD officers respond to incidents, assist passengers, answer questions, maintain crowd control, investigate crime at and on the property of Chicago Union Station, make lawful arrests, and provide support and security during special events.

17. APD officers also act as first responders to medical emergencies and provide first aid, CPR, and other necessary medical treatment before paramedics arrive on the scene.

18. Based upon my experience, the physical presence of APD officers deters crime at Chicago Union Station, which is a benefit to all passengers.

19. APD officers respond to calls for service from all passengers and persons at Chicago Union Station.

20. APD officers address calls for thefts, pickpocketing, lost property, unattended bags, and other property-related issues. APD officers regularly help passengers identify lost and stolen property, such as luggage, purses, laptops, and briefcases.

21. APD officers address calls for trespassing in Chicago Union Station.

22. APD officers address calls for assaults, sexual harassment, sexual assaults, and other violent crimes at Chicago Union Station.

23. APD officers also help combat drug trafficking, terrorism, and other serious crimes at Chicago Union Station.

24. APD provides policing coverage to Chicago Union Station twenty-four hours a day, seven days a week, including holidays. Although the Station is closed from 1:00am–5:00am, APD is always patrolling and securing the Station.

25. Chicago Union Station is a very busy commuter station. The Station has approximately 110,000 people passing through it each day. Because more than [REDACTED] of the passengers using trains at Chicago Union Station are using Metra trains, the vast majority of the people who pass through Chicago Union Station are Metra passengers.

26. Not surprisingly, this large number of individuals in a relatively confined space leads to criminal behavior or attracts criminals looking to prey upon these passengers.

Accordingly, APD must vigilantly police Chicago Union Station.

27. Because Chicago Union Station has so many people moving through it at a fast pace, theft and pick-pocketing can and does occur. [REDACTED]

[REDACTED]

28. APD assists Metra trains entering and exiting Chicago Union Station. Metra dispatchers regularly call upon APD officers when a passenger on a Metra train is being disruptive or assaulting someone. APD officers will meet the train to assist.

29. APD officers also make arrests at Chicago Union Station. If APD arrests a Metra passenger on a Metra train, APD will contact the Metra Police Department and turn the passenger over to Metra Police. Within the Station, however, APD officers do not routinely question arrestees about their affiliation with either Amtrak or Metra.

30. APD officers do not only combat crime. As first responders to medical emergencies, APD officers save lives at Chicago Union Station. For example, on numerous occasions, APD officers have administered naloxone to a person overdosing on narcotics (often in the bathrooms) and saved that person's life. Many of these people have been Metra passengers.

31. APD officers are trained in CPR and first aid. APD also possesses and utilizes automated external defibrillators (AEDs), and APD officers have saved several people having heart attacks or similar emergency heart problems.

32. APD receives and responds to calls for service from Metra and Amtrak passengers at Chicago Union Station. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See Amtrak0006422 (attached as Ex. 1 to the Verified Statement of B. Tiernan).

However, APD officers also address weapons, assaults, fires, illicit drugs, vandalism, train accidents, fraud, and a variety of other issues. *Id.*

33. With respect to all of the services, activities, and responsibilities described in paragraphs 14 to 32 above, APD officers working at Chicago Union Station serve Amtrak and Metra passengers alike, they do not discriminate between Amtrak and Metra passengers when carrying out their official duties, and in many instances do not attempt to ascertain whether a person they are aiding is an Amtrak or Metra passenger.

34. The movement of passengers is very fluid at Chicago Union Station, there is much intermingling of Amtrak and Metra passengers, and, with the exception of Amtrak-only North and South boarding lounges, no public part of the station is “off limits” to Amtrak or Metra passengers. For this reason, it is very difficult to divide up any particular area of the Station in terms of policing. For example, Amtrak and Metra passengers regularly frequent the passenger concourse and food court—two of Chicago Union Station’s busiest areas.

35. In carrying out policing duties, it is not reasonable or even possible for APD officers to readily identify and distinguish among Amtrak and Metra passengers.

36. In addition to approaching APD officers for help, passengers or other members of the public at Chicago Union Station can call either 911 or the Amtrak Police Department number to speak to an operator who can dispatch an APD officer. Passengers may also report suspected criminal or suspicious activity through “Txt-a-tip,” by sending a text to APD11 from a smartphone or to 27311 from a standard cell phone.

37. According to a report prepared by the Amtrak Police Department Office of Intelligence and Analysis, there were [REDACTED] calls for service and [REDACTED] incidents in Chicago Union Station from January 1, 2016 and March 31, 2019. *See* Amtrak0006422 (attached as Ex. 1 to the Verified Statement of B. Tiernan). A “call for service” broadly encompasses any calls

between officers and APD's dispatching center, including reports of criminal activity, emergencies, medical issues, vandalism, requests for assistance, etc.

38. An "incident" includes CFS and other occurrences prompting the completion of an APD incident report and the assignment of an incident number. Many, but not all, incidents originate from a call for service. Incidents include but are not limited to crimes, lost persons, medical and other emergencies, fires, special events, etc.

39. The majority of the calls for service () and incidents () did not have a documented association to either Metra or Amtrak, as APD officers are not required, nor directed, to ask all individuals they encounter whether they are associated with Amtrak or Metra.

40. When completing reports, APD officers also do not have a dedicated field to indicate whether a person is associated with Metra or Amtrak.

41. It is only possible to attribute an incident to Amtrak or Metra passengers if the individuals volunteer that information, if the geolocation of call or incident can be attributed to Amtrak or Metra, or if the incident occurs on Amtrak or Metra trains.

42. From January 1, 2016 to March 31, 2019, only a total of calls for service (of total calls) could be attributed to either Metra or Amtrak. calls (of the total calls, of attributed calls) could be attributed to Metra, and calls (of the total calls, of attributed calls) could be attributed to Amtrak. *See* Amtrak0006422. However, these figures likely do not accurately reflect the actual proportion because of the sheer volume of Metra passengers at Chicago Union Station, and the fact that APD officers do not routinely question individuals whether they are associated with Amtrak or Metra.

43. From January 1, 2016 to March 31, 2019, incidents (of total incidents) could be attributed to either Metra or Amtrak. *See* Amtrak0006422. incidents

([REDACTED] of the total, [REDACTED] of attributed incidents) could be attributed to Metra, and [REDACTED] incidents ([REDACTED] of the total, [REDACTED] of attributed incidents) could be attributed to Amtrak. *Id.* Again, these figures likely do not accurately reflect the actual proportion because of the sheer volume of Metra passengers at Chicago Union Station, and the fact that APD officers do not routinely question individuals whether they are associated with Amtrak or Metra.

44. What is not measurable or easily quantifiable is the security, safety, and peace of mind that benefit Metra and Amtrak passengers from having a regular police presence at Chicago Union Station. Indeed, our work is measured by not only the incidents we respond to, but the incidents that never occur.

B. Roles of Amtrak Police

45. As of April 21, 2020, the Chicago Field Office had [REDACTED] members ([REDACTED] [REDACTED]), consisting of [REDACTED]
[REDACTED]

46. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

47. [REDACTED]
[REDACTED]

48. [REDACTED]
[REDACTED]

[REDACTED]. These APD employees provide a benefit to all persons (including Metra passengers) at Chicago Union Station through increased security and efficiency.

49. In my role as the Deputy Chief, I oversee and manage the day-to-day operations of the Central and Western Divisions. I respond to needs of the broader police force, and I supervise the detectives, investigators, sergeants, and patrol officers working in the Central and Western Divisions.

50. [REDACTED]

51. [REDACTED]

52. APD patrol officers are fully-certified police officers. Patrol officers have completed police training, and they are certified as law enforcement officials. Patrol officers provide a benefit to all persons (including Metra passengers) at Chicago Union Station. Patrol officers patrol Chicago Union Station, deter crime, provide security, maintain order, and respond to calls for service and medical emergencies.

53. Canine or “K9” teams consist of patrol officers and canines. After two years, patrol officers can apply to work on a K9 team. Chicago Union Station currently has six bomb detection canines and one narcotics canine. K9 teams provide a benefit to all persons (including Metra passengers) at Chicago Union Station. K9 teams help screen suspicious packages and identify explosives and illicit drugs within Chicago Union Station. The value of the K9 teams cannot be overstated.

54. After two years, a patrol officer can apply to become an investigator. Investigators are, in essence, patrol officers, but they work in civilian dress clothes and conduct follow-up investigations of incidents occurring at Chicago Union Station. Investigators provide

a benefit to all persons (including Metra passengers) at Chicago Union Station. Investigators investigate incidents on behalf of Amtrak and Metra passengers. Investigators also work special events that attract large numbers of passengers.

55. Sergeants supervise the patrol officers working at Chicago Union Station. After three years, a patrol officer can apply to become a sergeant. In their supervisory role, sergeants give out tasks and assignments. Sergeants provide a benefit to Metra and its passengers. Like patrol officers, sergeants also respond to calls and patrol the Station.

56. After two years, a patrol officer can apply to become a detective. Detectives are similar to investigators, but they typically handle incidents that are more serious. For example, in the event of a train accident, a detective would be assigned to the case. Detectives provide a benefit to Metra and its passengers. Detectives conduct interviews and collect evidence to investigate crimes and major incidents at Chicago Union Station.

C. Terrorism and Drug Trafficking at Chicago Union Station

57. [REDACTED] provide a benefit to all persons (including Metra passengers) at Chicago Union Station through increased security.

58. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

59. As a large transit hub, the potential for terrorism is omnipresent at Chicago Union Station, which is why a robust police force is needed.

60. APD is committed to fighting terrorism at Chicago Union Station. In addition to working closely with the JTTF, APD officers actively prevent terrorism from occurring at the Station. For example, in one instance, the JTTF alerted APD officers at Chicago Union Station that a male suspect on a train was making threats. Because APD officers received this intelligence, they were able to intervene and arrest the suspect as he was exiting a train coming into Chicago Union Station.

61. As a large transit hub, the potential for narcotics trafficking is also omnipresent at Chicago Union Station. Unlike at an airport, passengers do not have their bags screened before boarding an Amtrak or Metra train. For this reason, a vigilant police force is needed.

62. APD is committed to preventing the trafficking of narcotics and other illicit drugs at Chicago Union Station. [REDACTED]

63. In addition to working closely with the DEA, APD officers actively prevent drug trafficking by conducting appropriate searches or seizures at Chicago Union Station.

D. Staffing

64. It takes approximately [REDACTED] officers to fill the schedule at Chicago Union Station ([REDACTED]).

65. To illustrate, Amtrak0006421 (excerpted), attached as Ex. 2, is a true and correct copy of an hourly schedule for officers in Chicago Union Station (as well as the Central Division) for March 25–April 7, 2019.

66. Policing duties at Chicago Union Station are shared between patrol officers and several K9 teams during day, afternoon, and night shifts.

67. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. Minimum staffing requirements for special events are decided on a case-by-case basis. For example, more officers will be staffed during special local events, such as St. Patrick's Day when many more passengers, usually using Metra, pass through the Station.

69. [REDACTED]

[REDACTED]

[REDACTED]

E. Wages and Salaries

70. Annual salaries of APD officers range from approximately [REDACTED] depending upon seniority and experience. *See* Amtrak0006416.

71. Amtrak0006416, attached as Ex. 3, is a true and correct copy of an Excel spreadsheet listing salary information APD officers in Chicago.

72. The Agreement Between the National Railroad Passenger Corporation and the FOP Lodge 189 Labor Committee Representing Police Officers Before the Rank of Captain (the "Labor Agreement"), Amtrak0001117, [REDACTED]

[REDACTED]

73. Amtrak0001117 (excerpted), attached as Ex. 4, is a true and correct copy of excerpts from the Agreement Between the National Railroad Passenger Corporation and the FOP Lodge 189 Labor Committee Representing Police Officers Below the Rank of Captain.

74. [REDACTED]

[REDACTED] See Amtrak0001117 at 92. [REDACTED]

[REDACTED] *Id.* at 11.

75. [REDACTED]

[REDACTED]

[REDACTED] Amtrak0001117 at 13.

76. [REDACTED]

[REDACTED]

Amtrak0001117 at 39.

77. [REDACTED]

[REDACTED]

[REDACTED]

F. Training

78. APD officers complete a variety of initial and annual training to ensure that officers are interacting safely and effectively with members of the public, and they have the skills they need to protect the Station and provide security. Unsurprisingly, training presents substantial monetary costs to APD.

79. Training for APD officers provides a benefit to all persons (including Metra passengers) at Chicago Union Station through increased security.

80. APD officers complete a firearms training which includes a state-of-the-art, lifelike simulation system. [REDACTED]. In order to carry a Taser (an electrical weapon), APD officers also have to complete training.

81. APD officers further complete training in defensive tactics, including learning how to take a person into custody safely. APD officers complete Integrating Communications, Assessment, and Tactics (ICAT) training on de-escalation techniques, as well as crisis intervention training (CIT) to learn how to safely interact with persons with mental illness.

G. Equipment

82. APD officers utilize a variety of equipment to carry out their official policing duties. Like training, purchasing and maintaining proper equipment presents substantial monetary costs to APD.

83. Policing equipment provides a benefit to all persons (including Metra passengers) at Chicago Union Station through increased security.

84. The Chicago Field Office has three patrol vehicles. Detectives and captains also have vehicles.

85. The Chicago Field Office has [REDACTED]
[REDACTED]

86. All APD officers require uniforms [REDACTED]
[REDACTED]

87. APD officers also have [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

88. [REDACTED]
[REDACTED]
[REDACTED]

89. All APD officers have [REDACTED]

[REDACTED]

[REDACTED]

90. APD also uses the following technological systems at Chicago Union Station:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. Costs of Policing

91. As I have described in this verified statement, Amtrak incurs significant costs in connection with policing Chicago Union Station, including but not limited to wages, overtime, employee benefits, training, and equipment.

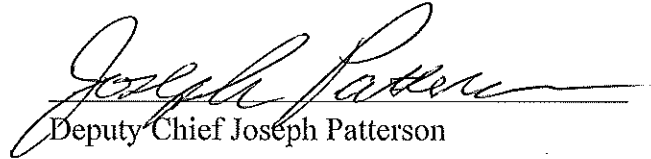
92. Based upon my experience as Deputy Chief and working as an officer at Chicago Union Station, I believe the costs described in this statement are appropriate and necessary to safely, effectively, and efficiently patrol and secure Chicago Union Station.

93. A well-functioning, adequately-funded police department at Chicago Union Station benefits all passengers using the Station.

VERIFICATION

I, Joseph Patterson, verify under penalty of perjury under the laws of the State of Illinois that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this verified statement.

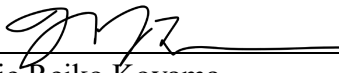
Executed on May 18, 2020 in Chicago, Illinois.


Deputy Chief Joseph Patterson

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

Thomas J. Litwiler
Bradon J. Smith
Robert A. Wimbish
Thomas J. Healey
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 800
Chicago, Illinois 60606-3208
tlitwiler@fletcher-sippel.com
bsmith@fletcher-sippel.com
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THealey@fletcher-sippel.com

By: 
Perie Reiko Koyama

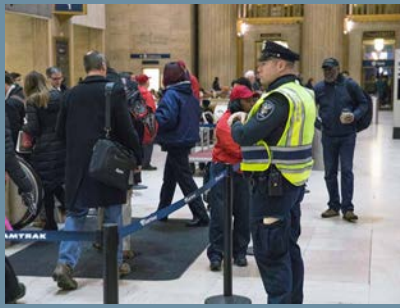
Patterson Stmt.

Ex. 1

Amtrak Police Department

2018

Annual Report



AMTRAK RAILROAD POLICE

Table of Contents

Mission and Vision	3
Message from the Chief	4
Overview	6
Staffing	8
Budget & Expenditures	10
Calls for Service	11
Group A&B Incidents	12
New England Division	13
New York Division	14
Mid-Atlantic Division North	15
Mid-Atlantic Division South	16
Central & Western Divisions	17
Special Operations Division - SOU	18
Special Operations Division - AIT	20
Special Operations Division - K-9 Unit	21
Office of Professional Responsibilities	22
Administration & Public Affairs	24
Special Events	25
Safety Initiatives	28
Specialized Training	30

Our Mission

Protecting America's Railroad.

Our Vision

Professionally safeguard Amtrak employees, customers, patrons and infrastructure through partnerships and best practices while displaying respect and pride.

Message from the Chief

I am proud to present the Amtrak Police Department (APD) 2018 Annual Report.

This report highlights the department's activities throughout the year, which included many important events and achievements, and the ongoing public safety and security services provided by our staff to all employees and customers of "America's Railroad".

I am proud of what the members of the department have accomplished and look forward to what the future brings.

Chief Neil Trugman
Amtrak Police Department





Overview



Like rail transportation systems worldwide and mass transit systems in the United States, Amtrak operates in a very “open” and therefore porous environment. Because of advantages such as easy access, convenient locations and intermodal connections, rail and mass transit systems are completely different from the structure and organization of the airline transportation and airport industry. As a result, the security framework that works in the airport setting is not easily transferable to the rail station system.

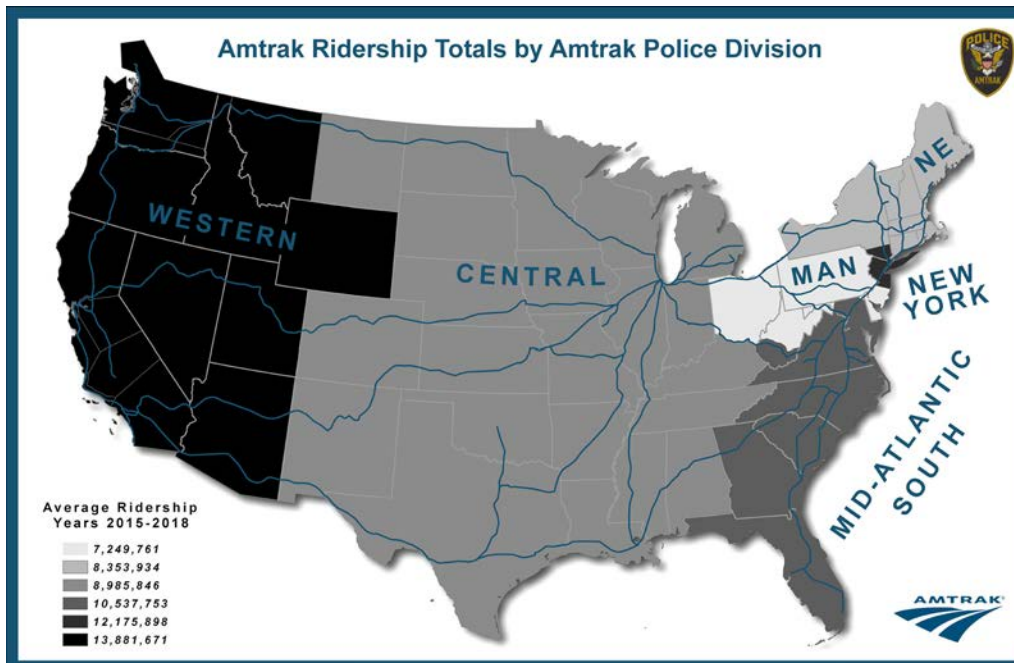
Additionally, the vastness of the Amtrak passenger rail system, spanning the entire country, adds another layer of openness not seen in other passenger systems. To mitigate the vulnerabilities associated with this open environment, Amtrak consistently evaluates its security measures, as well as industry standards and best practices, to employ security solutions that are effective in mitigating vulnerabilities.

The Amtrak Police Department (APD) is a national police force committed to protecting the customers, employees, and stakeholders of Amtrak. Our more than 500 sworn and civilian personnel located at more than 30 locations in 46 states conduct a range of behind-the-scenes and front line security measures to ensure Amtrak employee, customer, and infrastructure safety and security.

APD is responsible for ensuring the safety and security of over 30 million customers traveling to more than 500 destinations in 46 states, the District of Columbia and three Canadian provinces, on more than 21,400 miles of routes. APD partners with federal, state, local, rail and transit law enforcement agencies to provide a police presence at a majority of Amtrak stations and along the rights-of-way.

Patrol Officers fulfill traditional policing functions. Their job is to act as a deterrent to crime in the stations, on trains, in and around Amtrak facilities, and out on the railroad right-of-way by enforcing laws, conducting follow-up investigations and providing support at stations, on board trains, and during special events such as the Republican and Democratic National Conventions, NATO / G-8 Summits, presidential inaugural events, and large scale sporting events. The APD has also provided humanitarian aid in the aftermath of major weather events such as hurricanes, tornadoes and snowstorms.

The Special Operations Unit supports patrol operations by providing rapid response and enhanced capabilities to assist in keeping Amtrak customers and employees safe. The unit is prepared at any time to deploy



personnel and equipment for tactical response, to support warrant service, conduct low visibility counter-surveillance, investigations, and provide enhanced support for special events. In addition, the unit also conducts training on railroad-specific tactical response and procedures for fellow APD members and our external law enforcement partner agencies, random passenger baggage screening, and highly visible sweeps of stations and trains.

K-9 explosive detection teams are a psychological and physical deterrent to

potential threats from those who seek to deploy explosives. These teams are part of a collaborative inter-agency initiative that includes the Transportation Security Administration, federal and state Departments of Homeland Security, and state and local law enforcement agencies. Amtrak explosives detection teams are divided between standard explosives detection and vapor wake detection. Vapor wake detection dogs are trained to alert on a passing individual. Amtrak currently has the most K-9 units in the railroad industry with vapor wake capabilities. Additionally, The APD currently has two working narcotics detection K-9 teams.

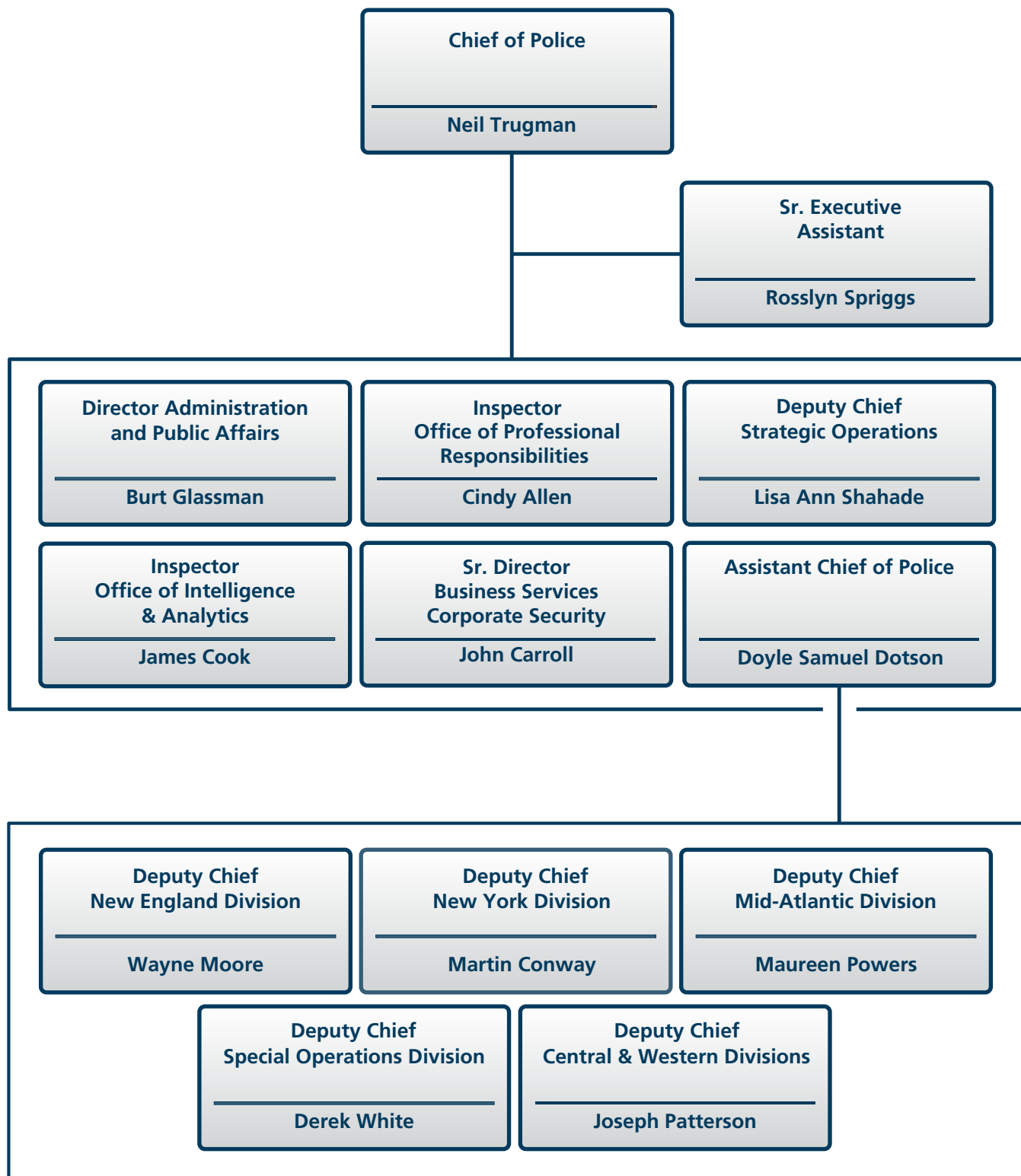
There are 16 Regional Liaison Detectives that are staffed in various locations throughout the United States. The detectives provide coverage to areas generally not served by major Amtrak Police field offices and may individually cover as many as seven states. The detectives are responsible for investigating major crimes, assisting with locating missing persons, following up on train accidents, and providing aid to passengers aboard disabled trains. Detectives also serve on inter-agency task forces that are designed to combat specific types of crime that threaten homeland security. The detectives are also responsible for developing mutual aid partnerships with local, state, and federal agencies located in their areas of responsibility.

The Amtrak Police Department Office of Intelligence and Analysis (OIA) serves as a critical support element for the patrol divisions, which serve as the front-line of the APD and seeks to increase the safety and security of our customers and personnel by increasing the department's insight into ongoing threats and potential terrorist acts through the analysis and dissemination of intelligence information.

The Office of Intelligence and Analysis is comprised of sworn detectives and non-sworn analytical personnel that enhance the security and safety of the Amtrak system, customers, and personnel through the real-time exchange of intelligence, investigative, and threat information across the country. The counter-terrorism analytical component support these operations through the review of classified federal briefings, as well as the preparation of analytical reports that provide analysis on threats, special events, and VIP movements.

The Criminal Intelligence component of the Office of Intelligence and Analysis provides timely and accurate tactical, strategic, administrative, and operational intelligence of analysis of crime data in support of the agency's goals and customer oriented policing efforts. The crime analysts are responsible for monitoring criminal activity and communicating that information to the sworn personnel through analytical reports designed to enhance criminal suppression activities while also aiding the investigative process and apprehension of offenders. The analysts develop daily, monthly, quarterly, and ad hoc reports to the command staff specifically designed to aid in the intelligence led deployment efforts of the department.

Staffing



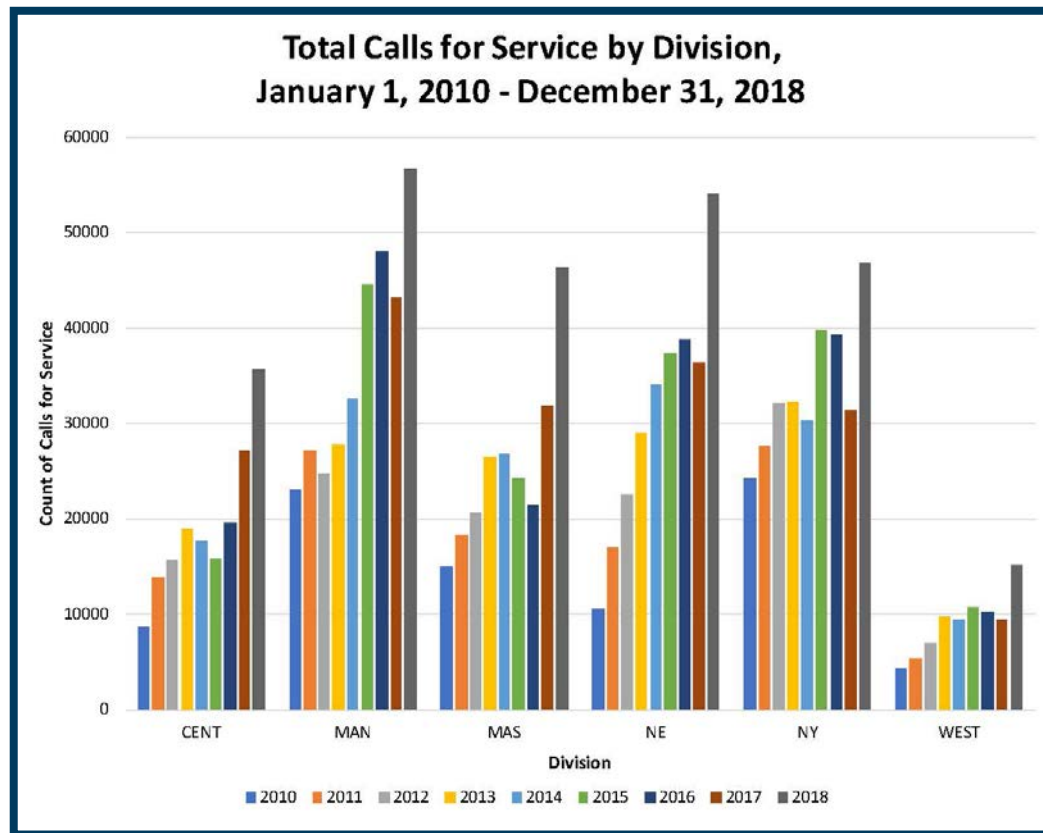
Current Staffing				
		Sworn	Civilian	Total
Chief of Police		1	1	2
Intel		10	2	12
Office of Professional Responsibility		3	0	3
Director Administration & Public Affairs		0	5	5
Corporate Security		0	12	12
Strategic Operations/Ops Support & NCC		16	25	41
Assistant Chief of Police		1	0	1
Patrol	New England	57	2	59
	New York	77	9	86
	Mid-Atlantic North	66	9	75
	Mid-Atlantic South	48	3	51
	Central/Western	73	4	77
Special Operations	Intel	10	2	12
	SOU	28	1	29
	K-9	54	0	54
Total		434	73	507

Sworn Demographics as of 9/30/2018				
	Male	Female	Total	
Asian	6	1	7	1%
Black/African American	69	14	83	19%
Hispanic/Latino	48	5	53	12%
Caucasian	274	20	294	67%
Two or more nationalities	2	0	2	Less than 1%
Unknown	1	0	1	Less than 1%
Total	400	40	440	100%

Budget & Expenditures

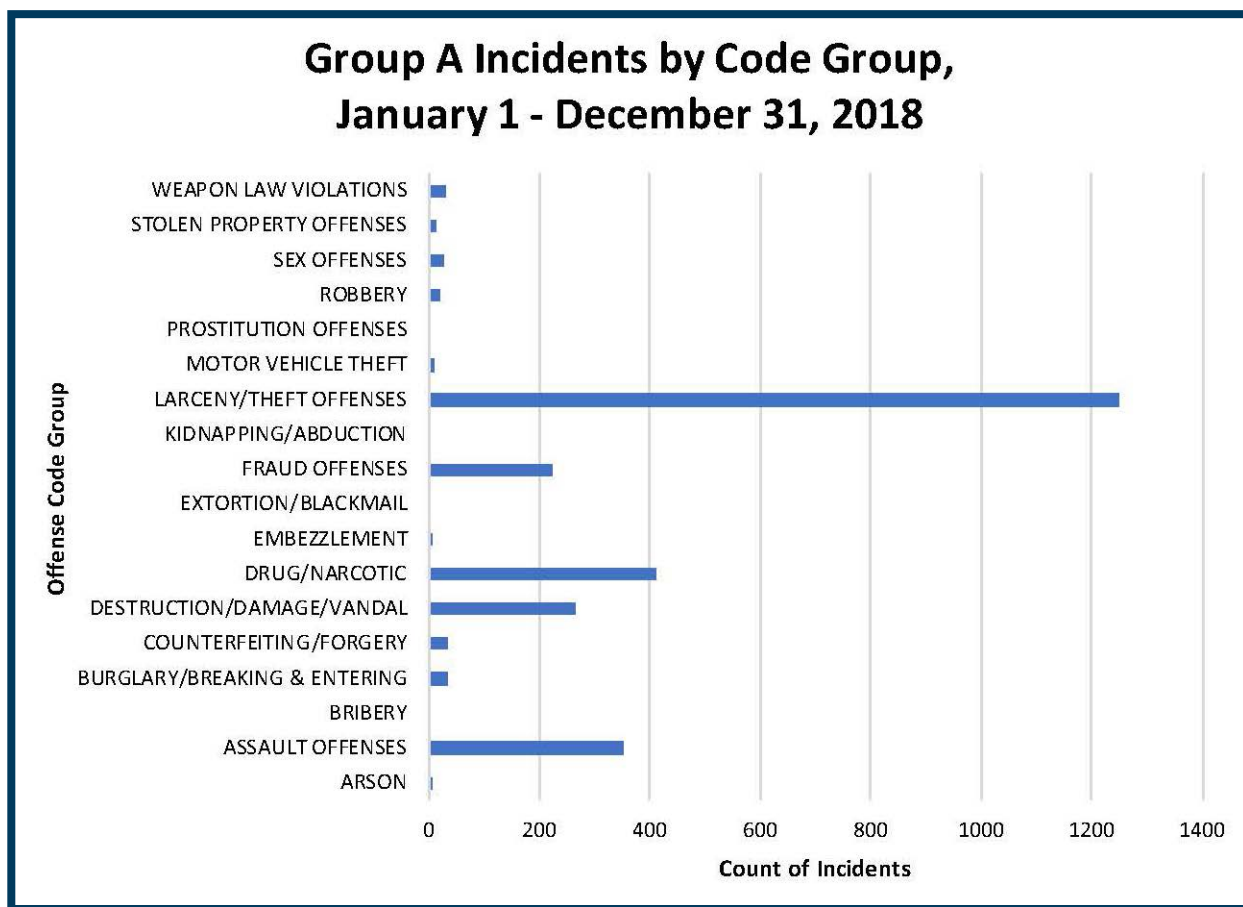
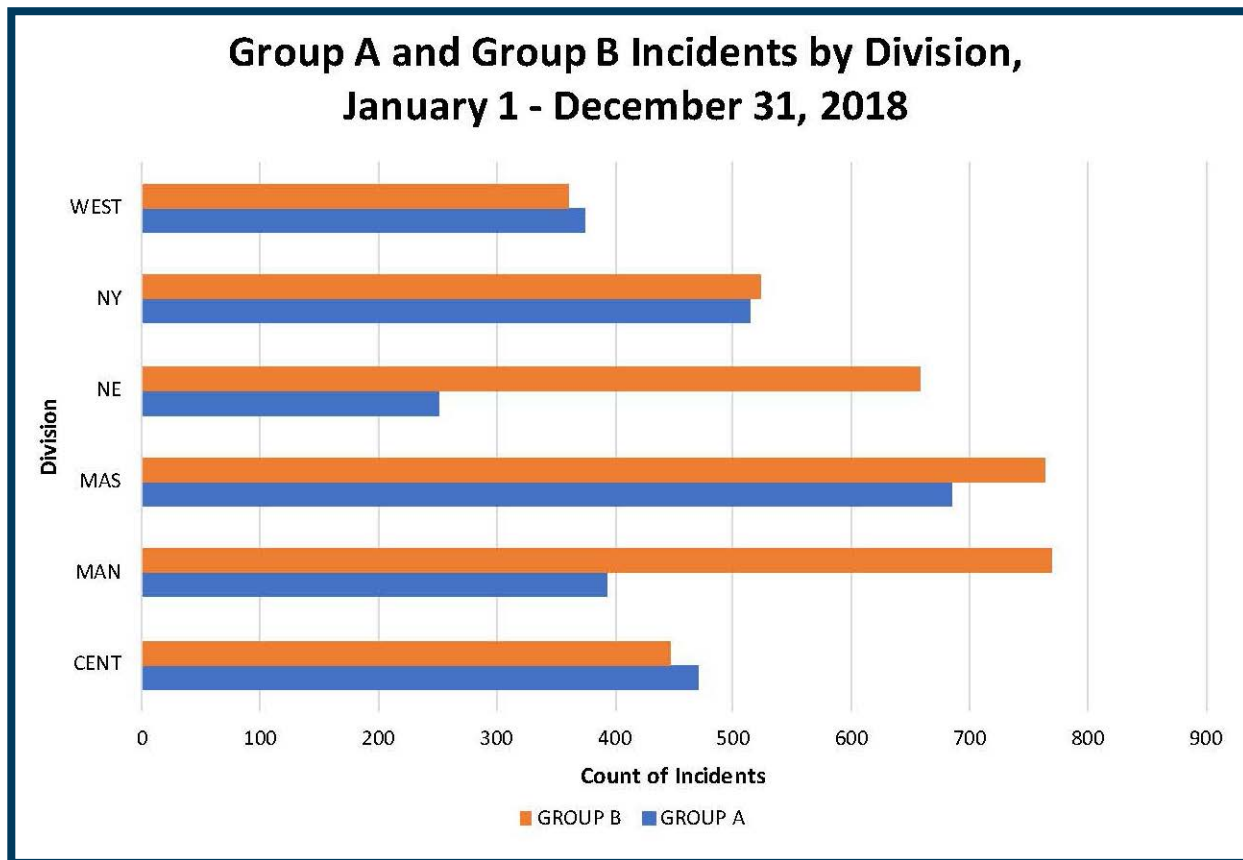
Division / Unit	Account	(\$k) Actual
New England	Salaries	460
	Wages Straight & Overtime	4,215
	Benefits	2,324
	Non-Labor Expense	355
	Total New England	7,354
New York	Salaries	487
	Wages Straight & Overtime	7,331
	Benefits	3,565
	Non-Labor Expense	597
	Total New York	11,979
Mid-Atlantic	Salaries	549
	Wages Straight & Overtime	10,913
	Benefits	5,387
	Non-Labor Expense	1,305
	Total Mid-Atlantic	18,154
Central/Western	Salaries	534
	Wages Straight & Overtime	6,722
	Benefits	3,473
	Non-Labor Expense	1,069
	Total Central/Western	11,798
Special Operations	Salaries	625
	Wages Straight & Overtime	8,035
	Benefits	4,288
	Non-Labor Expense	1,453
	Total Special Operations	14,402
Chief, Intel, Ops Support, NCC & Corporate Security	Salaries	5,291
	Wages Straight & Overtime	3,631
	Benefits	2,484
	Non-Labor Expense	3,999
	Total Chief, Intel, Ops Support, NCC & Corporate Security	15,405
Total Amtrak Police Department	Salaries	7,946
	Wages Straight & Overtime	40,847
	Benefits	21,521
	Non-Labor Expense	8,779
	Total Amtrak Police Department	79,093
	<i>FY'18 Training Expense included in above</i>	3,309

Calls for Service



Amtrak Police Department Calls for Service									
Section	2010	2011	2012	2013	2014	2015	2016	2017	2018
Criminal Investigations Unit	3026	4258	3485	2137	1796	1271	861	1016	1407
Criminal Investigations Unit - Headquarters	0	47	112	123	155	12	13	14	9
Regional Detectives	4846	5249	6871	9469	8998	8999	7334	7178	8967
Internal Affairs	192	37	438	204	131	119	42	30	31
Intelligence	308	670	462	89	38	57	18	17	117
K-9	12280	19381	18932	25000	26001	32735	31344	30082	38709
National Communication Center	1633	3022	4225	3686	4817	4357	2100	427	342
Patrol	60651	69485	80949	96763	103497	119265	129279	134479	190822
Security	134	152	65	80	65	62	36	129	134
Special Operations Unit	3206	4664	3423	4234	3726	3880	3442	2312	7794
Unknown	277	2753	3741	2697	1778	1747	2976	3899	6315
Total	86553	109718	122703	144482	151002	172504	177445	179583	254647
Central Division	8773	13921	15700	18947	17688	15729	19494	27200	35567
Mid-Atlantic Division North	23045	27145	24705	27691	32661	44621	48122	43158	56713
Mid-Atlantic Division South	15020	18335	20653	26483	26811	24284	21490	31902	46288
New England Division	10659	16976	22497	29036	33985	37322	38750	36481	54033
New York Division	24296	27582	32185	32397	30332	39706	39320	31391	46849
Western Division	4254	5413	6932	9874	9458	10798	10237	9426	15177
Unknown	506	346	31	54	67	44	32	25	20
Total	86553	109718	122703	144482	151002	172504	177445	179583	254647

Group A&B Incidents



APD Safeguards Amtrak Border Crossings

Deputy Chief Wayne Moore, Captain Lew Best and Detective Mike Smith, along with Amtrak Deputy General Manager of the Empire Service Kevin Chittenden and other Amtrak officials, met with U.S. and Canadian officials to discuss safeguarding Amtrak trains crossing the border between the two countries. Representatives from the U.S. Customs and Border Protection (CBP) and the Canada Border Services Agency (CBSA) were present along with representatives from VIA Rail and VIA Rail Police. Meetings were held on both sides of the border at Niagara Falls, where enhanced security measures were discussed, along with passenger screening and efforts to minimize train delays at the U.S./Canadian border.



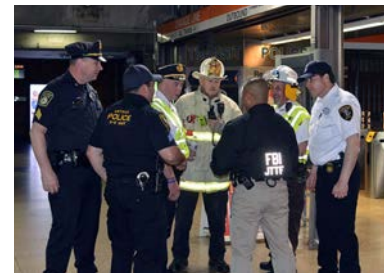
NED Officers Capture Homicide Suspect

Detective Rob Hanson and Officer Ryan Irons were presented with a letter of commendation from Captain Lew Best for their actions and subsequent arrest of a subject wanted in connection with a homicide by firearm in Chicago. An anonymous tip was received that a subject wanted for homicide might travel from Chicago, IL to Springfield, MA. Detective Hanson checked manifests and located a customer with a name similar to the suspect traveling on board Amtrak train 448. Further investigation revealed that the subject was in fact wanted by the U.S. Marshal's Service. Detective Hanson and Officer

Ryan Irons requested assistance and coordinated with officers from the Springfield Police Department and troopers from the Massachusetts State Police. The subject was taken into custody without incident when he arrived at Springfield Station.

Tunnel Exercise in Boston

Amtrak Emergency Management hosted an Emergency Response Tunnel Exercise at Back Bay Station in Boston. The exercise scenario involved a mock explosion on an Amtrak train as it was passing an MBTA Commuter train in the mainline tunnel, causing a mass-causality event with passengers on both trains. The drill, which began at 1:00 am, tested the emergency notification systems and response capabilities of emergency responders to an incident in the underground tunnel system near Back Bay Station. APD had a strong presence with officers and K-9 teams working alongside MBTA Transit Police, Boston Fire, and Boston EMS. The drill included the evacuation and triage of exercise volunteers.



APD Protects the Boston Marathon



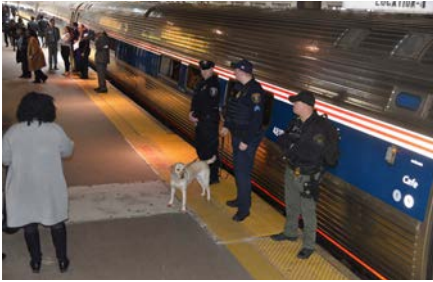
On April 16, the APD played a significant role in protecting the 2018 Boston Marathon. Officers maintained a high visibility presence in stations, on platforms and on board trains throughout the NED. The event attracts over 30,000 participants and over one million spectators. The Boston Marathon also draws world-wide media attention, and despite frigid temperatures and heavy rain throughout the day, the event was deemed a great success. APD once again received high praise from the public and outside agencies for the high-visibility coverage, inter-agency coordination, and safeguarding the traveling public that came to Boston to witness the event.

APD Safeguards Sailfest 2018

On July 13-15, APD maintained a high-visibility presence and safeguarded the 41st annual Sailfest, which was held in New London, CT. Sailfest is Connecticut's premier summertime event, which attracts over 300,000 people to the three-day festival and showcases one of the largest fireworks displays in the northeast. The event included free entertainment, amusement rides and over 200 vendors on the waterfront adjacent to the Amtrak station and the Amtrak owned right-of-way on the mainline. Attendees access the event through three busy railroad crossings. APD successfully moved the large crowds safely to and from the waterfront and received high praise from New London Police Chief Peter Reichard for the efforts and assistance provided throughout the event. The NED was augmented with support from the SOU and utilized the APD Mobile Command Center to coordinate police activities with outside agencies and railroad operations throughout the event.



New York Division



NJ Chamber of Commerce Train

On March 1, APD teamed up with New Jersey Transit Police to provide security for the annual NJ Chamber of Commerce train. Over 300 of the more than 700 passengers boarded Special train #855 at Newark Penn Station for the “Walk to Washington”. The remainder of passengers boarded at Metropark, New Brunswick, Trenton, Philadelphia and Wilmington for their travel to Washington, D.C. The annual event attracted law makers, business leaders, union leaders and other VIPs from throughout NJ. APD provided a security presence on the train and along the corridor.



Operation NY SECURE

On April 25, Operation NY SECURE was coordinated by Deputy Chief Martin Conway with assistance from Deputy Chief Wayne Moore. The deployment provided increased police presence along the New York Empire line from NYPS to the Albany-Rensselaer station and was supported by partner agencies including MTA Police, New York State Police, Yonkers, Croton-on-Hudson, Peekskill, Poughkeepsie, Hudson and Rensselaer Police Departments, and the New York State Office of Homeland Security and Emergency Services. APD Patrol, Special Operations and K-9 worked in coordination with the partner agencies to provide an enhanced security presence and visibility during the operation.

APD/Emergency Management Active Shooter Tunnel Exercise

The NYD along with SOU and K-9 participated in an Amtrak Emergency Management & Corporate Security (EMCS) full-scale exercise. The scenario involved an active shooter on a train disabled in the tunnel between NY and NJ. The MTA, NJ Transit, and NY Police Departments, NY Fire Department, and Amtrak rail operations personnel also participated in the exercise. This was an excellent training opportunity, with many lessons learned that can be shared with other first responders. APD greatly appreciates the great work by EMCS and all the Amtrak departments that help make this exercise a great success.



NYD K-9 Team Participated in Joint Training Exercise

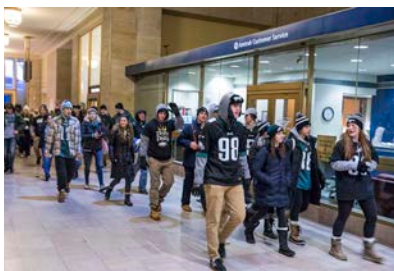
On June 27, Officer Rene Mercado and his canine partner Xarro attended a joint K-9 training exercise at Liberty State Park hosted by the FBI New York Office and the New Jersey State Park Police. Participating agencies included teams from the FBI, Customs Border Protection, ATF, USMS, Federal Protective Service, TSA, APD, New Jersey State Police, New Jersey State Park Police and the Monmouth County Sheriff's Office. Participating Marine Units were the New Jersey State Police Marine Unit, New Jersey State Park Police Marine Unit, Monmouth County Sheriff's Office Marine Unit and the FBI-NY Underwater Search and Evidence Recovery Team. FBI Special Agent Ryan J. Christie, who supervised the training, expressed gratitude to the APD for participating in this joint training exercise with many partner agencies and for helping to improve joint counter-terrorism efforts.

Unified Protection in NYPS

On Thanksgiving eve, Deputy Chief Martin Conway convened a meeting of high-ranking members from several partner agencies at NYPS to share intel and to discuss joint security efforts aimed at protecting rail passengers during the holiday season. In attendance was Chief Trugman and other command staff from APD, the New York City Police Department, New York State Police, New York National Guard, MTA Police, New Jersey Transit Police, New York State Division of Homeland Security and Emergency Services, Transportation Security Administration, and Amtrak Executive Vice President Stephen Gardner. Attendees received security briefings and a detailed presentation by the NYPD Counterterrorism Unit. Chief Trugman thanked the participating agencies for their unified efforts to protect the public and in preventing potential terrorist attacks.



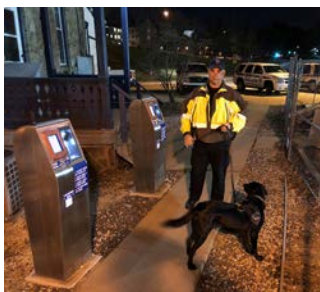
APD Officers Assist in Protecting Eagles Fans



On February 8, Eagles football fans traveled to Philadelphia to celebrate their team's Super Bowl victory. Hundreds of thousands of spectators lined the streets as the team traveled in a parade that began at 11 a.m. near Lincoln Financial Field and ended in a rally at the steps of the Philadelphia Museum of Art. APD officers, along with members of local and federal law enforcement agencies, employees from Amtrak Customer Service and Emergency Management, and Amtrak ambassadors worked to control the crowds as participants traveled to and from the event.



APD Assists During Villanova Celebrations



On March 31, April 2 and April 5, Patrol, K-9, and SOU Officers from the MADN, along with approximately 40 other agencies from the area, assisted the Villanova University and Radnor Police Departments with the large crowds of people celebrating during the NCAA Final 4 game, championship game, and the victory parade. Amtrak's main line west to Harrisburg, PA, passes directly through the middle of the Villanova campus. MADN officers directed thousands of happy students and alumni to local pedestrian bridges and underground tunnel as they traveled from the parking lot and dormitory areas to the main campus celebration. With assistance from APD, everyone remained safe, with no reported incidents of trespassing on the right-of-way.

APD Response to Flooding at Mount Joy



On August 31, an APD unit was dispatched to investigate a report of Train 42 becoming disabled at MP 79.8 in Mount Joy, PA, due to flooding on the railroad. While en route, it was also reported that Train 43 was experiencing mechanical issues at MP 79.1, due to the same condition. APD officers arrived on scene and observed that a mudslide had occurred, which was obstructing train traffic. A major service disruption occurred as a result of this incident. Train 43 was operated back to Lancaster station on its own, however Amtrak's Train 42 required to be towed to the station. Upon arrival, all passengers exited both trains without incident. Tracks were cleared for traffic and Amtrak's Train 619 carried passengers to Harrisburg station, which was left open only for ticketed passengers traveling in the direction of Pittsburgh. APD officers remained in the station overnight to provide protection for customers.

MADN Officers Conduct Special Detail in North Philadelphia

From August 22-24, a special detail was conducted in the area of North Philadelphia Station in response to reports of trains being struck by thrown objects in the area. Officers Sean Campbell and Daniel Leicht worked in plain clothes, while Officer William Clifton was stationed in the area as uniform support. During that period, six reports were generated that involved the arrest and release of 10 subjects. Seven adults were arrested, with five cited for drug related offense and two for trespass. Three juveniles were cited for trespass and released to a guardian. School information was collected for the juvenile offenders and the MADN CRO will visit those locations to discuss railroad safety and trespassing issues. The detail was continued on August 25, by three plain clothes officers from CID; Floyd Brinkley, Shawn McClister, and Joseph O'Keefe. Four reports were generated involving adults, with two being cited for disorderly conduct, one warned and ejected for trespass, and another arrested on an outstanding warrant.



APD/NSPD TAP in Reading

On November 8, Amtrak Police, along with Berks County Sheriff's Office, assisted Norfolk Southern Police with a Trespasser Abatement Program (TAP) in Reading, PA. The TAP program targets high-trespass areas along their system. The two-day program begins by informing the public about the dangers of trespassing by handing out pamphlets and by using the media. The next day, a three-mile stretch of track was patrolled to intercept trespassers. Throughout the course of the day, 40 individuals were stopped and educated on the dangers of trespassing and given other routes to get to their destinations.

Mid-Atlantic Division South



APD Mobilizes During Protest in D.C.

On March 24, the “March for Our Lives” gun control rally drew hundreds of thousands of protesters from across the country to Washington, D.C. Amtrak ridership swelled in association with this event and the APD mobilized to protect our customers, employees and the public in areas impacted by increased travel and to address crowding in station areas.



APD Participates in Tunnel Exercise

The Baltimore and Potomac Tunnel Exercise was conducted on March 18. APD, Emergency Management, Engineering, On Board Services, Mechanical, Operations, Safety, and Transportation, along with Baltimore Fire, EMS, Police and Office of Emergency Management, MARC, MTA, federal, state and private sector partners participated in the event. The objectives of the tunnel exercises are to examine operational coordination and information sharing between Amtrak departments and local first responders, evaluating the effectiveness of tunnel emergency response protocols, and to update or develop related on-board and tunnel operations protocols.



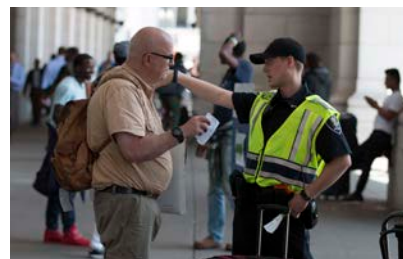
MADS Officers Apprehend Felon

On May 3, the NCC received a call that an individual on train 92 was suicidal and in possession of a handgun in his carry-on bag. At the time, the train was in South Carolina, and local law enforcement was contacted to meet the train. After interviewing the passenger, it was determined there was no issue at the time and they would permit him to stay on the train. During the interview process, the passenger stated he was not carrying a weapon or in possession of any carry-on bags.

Sergeant Glen Cosner and Investigator Shaunta Bond were assigned to conduct a follow up and check on the well-being of the passenger. CID coordinated with Detective Charles George, Richmond Station staff and the train crew. The conductor was provided a description of the individual and his seat location. After the train arrived in Washington, D.C., the passenger was observed walking on the platform carrying two bags as he proceeded into the station. CID members approached him to conduct a welfare check. During this encounter, the passenger was again asked if he was in possession of any weapons. The passenger responded that he had a knife and some “shells” in his possession, after which he consented to a search of his bags. During the search of the bag, officers recovered a revolver along with multiple rounds of ammunition. The passenger, who admitted he was a convicted felon, was placed in custody and processed accordingly.

Providing Security during Stanley Cup Celebration

Members of the Mid-Atlantic South K-9 team, Patrol Officers and Special Agents provided critical security services during the Washington Capitals hockey team Stanley Cup parade and celebrations in Washington, D.C. on June 12.



Protection During Public Rallies

On August 12th in response to the “Unite the Right” rallies in Baltimore, MD and Washington, D.C. officers from MADS and SOU were deployed to strategic areas establishing a visible presence in the main concourse areas, entrances/exits, stairways and provided additional train/platform protection at Baltimore Penn Station and Washington Union Station. APD was supported by MTAPD, BPD and FAMs in an effort to protect Amtrak customers, employees, facilities and assets during the events. There were no issues attributed to protests on Amtrak property during the events.

New Narcotics Detection Team for MADS

On October 26, Officer Brandt Bartman successfully completed a five-week Narcotics Detection Dog (NDD) training course at VWK9 in Anniston, AL. Officer Bartman trained with his canine partner Koda, a three-year-old Black Labrador Retriever, and the team successfully passed both VWK9 and NAPWDA (National Police Working Dog Association) certifications in Narcotic Detection. The training course was conducted by Trainer Rob Leonard of VWK9. Sergeant Micah received basic NDD Trainer instruction from Leonard, and assisted with Officer Bartman’s day-to-day training.



Central & Western Divisions



APD Protects NASCAR

From March 15-18, members of the APD Western Division K-9 Unit responded to a request from the San Bernardino Sheriff's Department by providing explosive detection canine support during the National Association for Stock Car Auto Racing (NASCAR) 2018 Auto Club 400 event. The event was held at the Auto Club Speedway of California in Fontana, CA, which is located near the Amtrak Ontario, CA station. The 2018 Auto Club 400 is Race 5 of 36 in the 2018 Monster Energy NASCAR Cup Series and attracted thousands of fans. During the event, APD K-9 teams searched over 1,800 RVs and trucks.



APD Assists During Tulip Festival

On May 12, Detective Brian Poynton and K-9 Officer Gerry Gustavson along with his canine partner Tim Cook, assisted the Holland Michigan Police Department with their Annual Tulip Time Festival and parade that draws an average 500,000-600,000 attendees. Amtrak ran a special Tulip Time train from Chicago to Holland for the day.

APD Protects the PGA Championship

On May 26, Detective Brian Poynton and Officer John Nies and his canine partner

Luke, assisted with security at the 2018 PGA Senior Championship held at the Harbor Shores Golf Club in Benton Harbor, MI. The event included a special Amtrak PGA train that brought attendees from Chicago to the championship.



Control Tactics Training in Northern CA

Detective Jake Mumford and Sergeant Madhu Kurup delivered a control tactics training course to Northern California detectives and officers. This training instructs officers in controlling the movements of violent or physically aggressive persons without exposing officers or others to excess risk of injury. Such programs lead to a higher level of professionalism and foster greater sense of trust between the police and the community.

Officers Attend National Night Out in Bradley, IL

On August 7, K-9 Handler Bob Crowley and Detective Doug Balk attended a National Night Out event in Bradley, IL.

The officers shared railroad safety and security information, and information about the APD with members of the public attending the event.



APD Provides Protection during Oktoberfest

APD Central Division personnel Officer Carlos Juarez, Detective Nick Binner, Investigator Mike MacDonald, Officers John Skiba and Mike Gruzka, and Detective Doug Balk conducted tactical train rides on October 20-21 to provide protection during the Oktoberfest in Hermann, MI.

Special Operations Division - SOU

Baggage Screening with TSA	Operations	Trains	Passengers Screened
New York	121	717	5,568
Washington, D.C.	108	443	5,708
Total	229	1,160	11,639

Activity	2018 Total	
	# Rides	Hours
Train Rides	2,683	3,507
Long Distance	667	999
State Supported	695	874
NEC Regional	805	927.5
Acela	1211	1580.5
Train Boarding	2018 Total	
	14,272	
Train Walk-through	2018 Total	
	2,521	
Right-of-Way Check	2018 Total	
	6,267	

MMTD Screening Totals		
Location	TRAINS	PASSENGERS
PHL	1,370	9,288
SOU	1,110	11,099
NED	1,028	5,684
TOTAL	3,508	26,071

TSA & APD Partner to Test PBIED Detection Device

During the week of February 26 - March 2, TSA partnered with APD to test a new security device that can help detect whether an individual is concealing an improvised explosive device, such as a suicide vest. The testing took place in the Amtrak concourse section of NYPS.

The passive system, known as a stand-off explosive detection unit, triggers an alarm if an individual carrying/wearing a person-borne improvised explosive device (PBIED) passes by the mechanism. It is a type of screening technology that can be used by Amtrak to detect potential threats, metallic or non-metallic, by identifying objects that block the naturally-occurring emissions emitted by a person's body. No radiation of any kind is emitted by the unit, and no anatomical details of a person are displayed. The operator of the equipment sees a green image of a person, known as a "green ghost," alongside of the actual image of the individual.

The use of such a device enables a rail or transit agency to help safeguard against terrorist threats in the mass transit environment. It is operated by employees of the agency, not by TSA. TSA is, however, supplying two models of the equipment for the purposes of the demonstration. One model is mounted on a tripod and another is contained in a trunk.

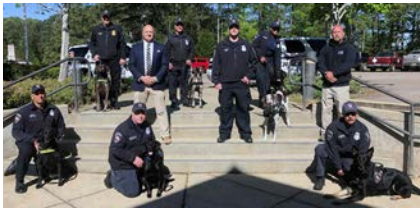
The equipment is mobile, which allows agencies to easily relocate it to different stations. Users operate it via a laptop computer in the station. The image that appears on the laptop will reveal concealed objects that block naturally occurring body emissions and indicate the location and size of those objects on a green image of an individual. Deputy Chief Derek White was the liaison and lead point of contact for the PBIED standoff detection technology project.



Special Operations Division - K-9

K-9 Teams Joint Training Exercise

APD K-9 teams participated in a joint training exercise at South Station in Boston, along with teams from the Massachusetts State Police. Nine APD teams assigned to the NED worked at various times throughout the day along with Massachusetts State Police K-9 teams from Troop F at Logan Airport and the Massachusetts State Fire Marshall's Office. The explosive detection exercise was led by APD Trainers Mel (Hawk) Hawkins, Matt Pierce and K-9 Sergeant Jim Forsyth. NED K-9 teams work on a regular basis with outside agencies for multi-agency incident response training, station familiarity and preparedness capabilities.



Advanced Explosive Detection Training

As part of APD's effort to continually increase the proficiency of its explosive detection canine teams, handlers cycled through a two-week Advanced Explosive Detection Dog (EDD) training course at VWK9's facility in Fort McClellan, AL. The first group, comprised of seven EDD teams, successfully completed the course and will be bringing their skills to Amtrak's operations. Some of the training included complex and challenging environmental searches that focused on real-world threats, conditioning the

dogs to experience gunfire, developing hands-on knowledge about the ease of making peroxide-based improvised explosive devices from over-the-counter materials, and searching for those devices in operational scenarios.

APD Canine Partner Receives Medal of Courage

Summer, a TSA dog assigned to Sergeant Micah Jones, was one of the recipients of the American Humane Lois Pope Life K-9 Medal of Courage. The award was presented in a ceremony on Capitol Hill in the foyer of the Rayburn House Office Building. The award honors retired military dogs who demonstrated exceptional valor in serving our country. Deputy Chief Derek White was in attendance, as well as several members of congress, top military leaders and VIP's including philanthropist Lois K. Pope. Mrs. Pope and American Humane created the American Humane Lois Pope Life K9 Medal of courage, an honor conferred to a select few military dogs for their extraordinary valor and service for our country. These awards were conferred upon the courageous canines by U.S. Navy Rear Admiral Thomas Kearney and United States Marine Corps Colonel Zachary White.

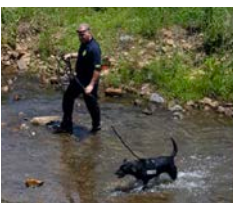


Partnership Advances K-9 Training

APD and the Illinois State Police worked in conjunction with the Chicago FBI field office on a test project involving vapor wake detection. This particular testing is an attempt to develop, advance and innovate future training for vapor wake and explosive detection dog (EDD) teams for the APD. This partnership will bring a new type of training not only to the APD, but to law enforcement agencies across the country and will aid in advancing K-9 teams in the field and providing additional knowledge regarding explosives and counter-terrorism.



Advanced Explosive Detection Canine Course



Amtrak explosive detection canine teams have been attending two-week sessions of the Advanced EDCT training course at the VWK9 training facility in Anniston, AL. VWK9 customized a training course around the unique needs of Amtrak's operational environment. Topics include terrorist techniques and tactics, preplanning sweeps for VIPs, large venue searches, and the development and dangers of improvised explosive devices. Teams also conduct open-area searches through rough, uneven terrain, and through waterways to simulate a search along an Amtrak mainline.

Joint Explosive Detection Training at NYPS

On November 7, APD K-9 hosted joint explosive detection canine training at NYPS. Sergeant Karen Schrof supervised the training, which was provided to officers from APD, CSX Railroad Police and MTAPD. Scenarios included a building search and a search of an Amtrak passenger train.



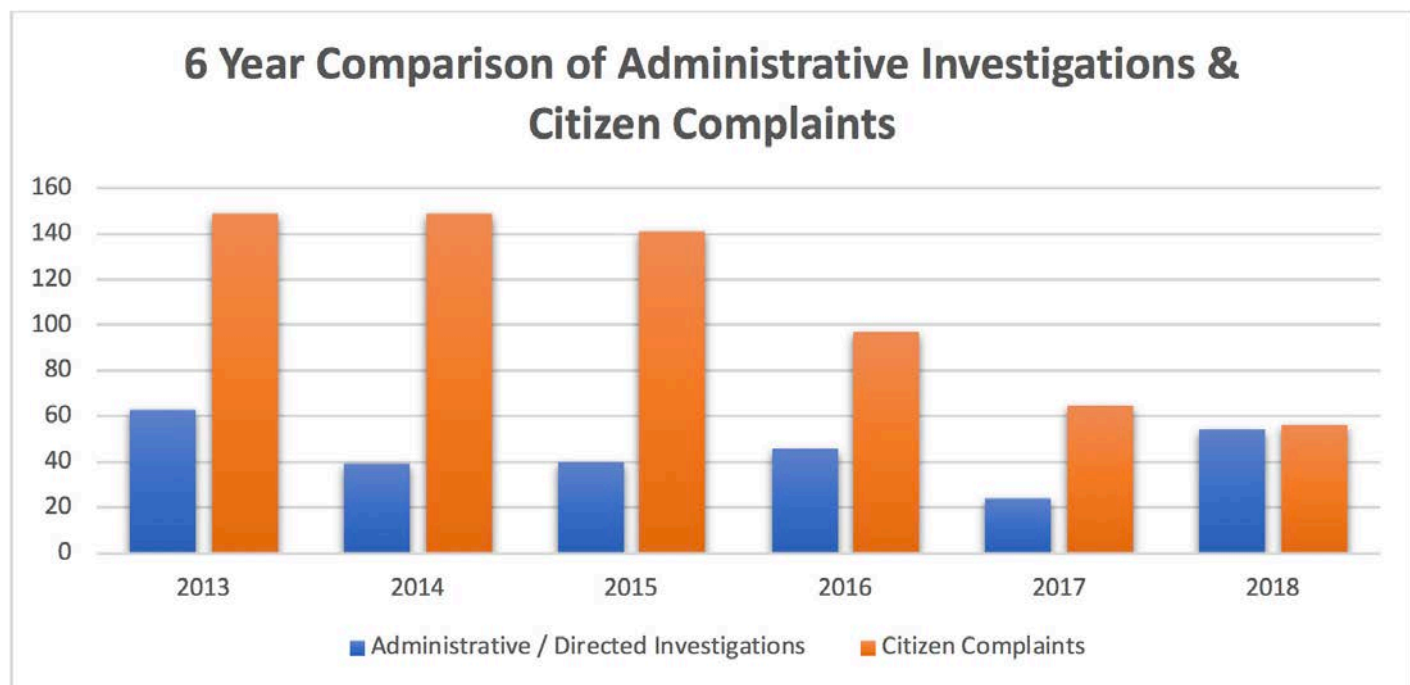
Office of Professional Responsibilities

The integrity and reputation of any police agency is its most valuable asset. Transparency and impartial treatment builds confidence and trust in an agency's ability to fairly and impartially serve and protect those they serve. The APD Office of Professional Responsibilities is a key spoke in the cog, which drives APD in its mission of making a positive difference in the protection and security of America's railroad community. The Office of Professional Responsibilities upholds the agency's standards of integrity and professional responsibility and oversees administrative investigations relating to the conduct of departmental personnel. Professional Responsibilities records and investigates all allegations of misconduct by APD employees generated from within the department or outside sources.

In 2018, the APD investigated 110 complaints against police personnel. Fifty-one percent (51%) of the complaints were citizen complaints and the remaining were internally generated investigations by management personnel or through the Amtrak Ethics and Compliance hot-line and/or the Amtrak Office of Inspector General.

Investigations by Type

Type	2013	2014	2015	2016	2017	2018
Administrative / Directed Investigations	63	39	40	46	24	54
Citizen Complaints	149	149	141	97	65	56



The APD experienced an increase in Administrative / Directed investigations and a decrease in Citizen Complaints in 2018.

Office of Professional Responsibilities

Disposition Classifications

The following disposition classifications are utilized by the APD Office of Professional Responsibilities.

1. Pending: The complaint is still under investigation or in the review process.
2. Administrative Closure: The complaint lacks sufficient information to conduct a follow-up investigation or was handled informally at the request of the complainant.
3. Exonerated: The investigation revealed that the actions taken by agency personnel were justified, lawful and proper.
4. Not Sustained: The investigation failed to discover sufficient evidence to clearly prove the allegation(s) made.
5. Policy Review: The allegation made is true, however the action of the officer was consistent with departmental policy, the policy will be reviewed to ensure it is up to date with current law enforcement standards.
6. Sustained: The investigation disclosed sufficient evidence to prove some or all of the allegations made in the complaint.
7. Unfounded: The investigation indicated the alleged act(s) did not occur.

Disposition	Count	% of Total
Pending	40	36%
Administrative Closure	19	17%
Exonerated	11	10%
Not Sustained	10	9%
Policy Review	20	18%
Sustained	9	8%
Unfounded	1	1%

Awards/Commendations

In addition to receiving and investigating complaints against personnel, the Office of Professional Responsibilities maintains record of commendations issued to Amtrak police officers. A total of 215 awards and commendations were issued to officers in Fiscal Year 2017. These include letter of appreciation and praise, Officer of the Month recognition, Customer Service, Life Saving, and Distinguished Unit Awards.

Office of Intelligence & Analysis

Inspector Delivers Presentation at the Los Angeles Sheriff's Department

On February 13, Inspector Jim Cook was invited to speak about the APD Intelligence Unit at the Los Angeles Police Officer's Intelligence Association quarterly meeting held at the LA Sheriff's Department in Monterey Park, CA. During the meeting Inspector Cook provided an overview of the current threats facing passenger rail, as well as an overview of the APD.



Detective Speaks at Anti-terrorism Conference



On February 15, Detective Glenn Rambo from the APD Intelligence Unit spoke at the 2018 Annual Army Worldwide Anti-terrorism Seminar in Orlando, FL. Detective Rambo spoke to a group of approximately 400 military personnel about the current threat to passenger rail and the Amtrak Police Department.

Northeast Corridor Intelligence Working Group

The Northeast Corridor Intelligence Working Group held a meeting at the APD National Communications Center.

Members

of the group received presentations from the National Counterterrorism Center on the current global threat picture, the FBI CJIS team on the LEEP and Virtual Command Center program, and the Metropolitan Police Department on the upcoming March for Our Lives scheduled for March 24 in Washington, D.C.

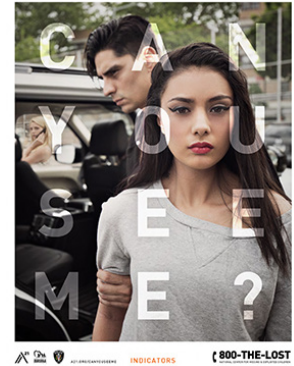
In addition to the formal presentations, a round table was held for all members to discuss current threats, upcoming major events, and other issues effecting agencies in the region. Representatives from the following agencies attended the quarterly meeting:

Amtrak Police Department, Baltimore City Police, Charles County Sheriff's Office, CSX Police, DHS – Office of Intelligence and Analysis, Delaware State Fire Marshal, Delaware State Police, Maryland Coordination and Analysis Center, Maryland Transportation Authority PD, New Jersey Office of Homeland Security, Transit Police and State Police, NYPD, New York State Police, Norfolk Southern Police, Pennsylvania State Police, Philadelphia Police, Prince George's County, MD Police, SEPTA Police, TSA, United States Capitol Police, United States Senate Sergeant at Arms, United States Secret Service, Washington Metropolitan Police Department, Washington Metropolitan Transit Authority Police and the Washington Regional Threat and Analysis Center.



APD, DOT & A21 Partner on Human Trafficking Awareness

On January 11, APD joined a new human trafficking awareness campaign in partnership with the Department of Transportation (DOT) and A21 (A non-profit, non-governmental organization working to fight human trafficking). The initial phase of the campaign includes the deployment of a new public service announcement (PSA) that focuses on trafficking in minors. A 30-second version of the video is now playing at 26 Amtrak stations that have the ASAN video system installed. The full-length PSA is posted at amtrakpolice.com/stophumantrafficking, along with documentation that explains the indicators of trafficking in minors. This new campaign will continue with further awareness materials being delivered throughout the year.



APD Participates in Facebook Live Discussion on Human Trafficking Awareness

On January 17, Amtrak Police Lead Communications Specialist James Lewis participated in a Department of Homeland Security (DHS) Blue Campaign Facebook Live panel discussion. The event, hosted by Mick McKeown, Executive Director of the DHS Blue Campaign, focused on efforts to raise awareness of human trafficking in the United States. Elisabeth Barna, Executive Vice President of Industry Affairs and Chief Operating Officer of American Trucking Associations, Scott Santoro, Acting Deputy Assistant Director of FLETC

Washington Operation, and Mimi Braniff, Managing Director Government Affairs for Delta Air Lines were also participating members of the panel.



2018 Operation Clear Track

Planned and coordinated by Lead Communications Specialist Barbara Petito, the second annual Operation Clear Track event, hosted by Amtrak and Operation Lifesaver, held on September 26. As part of National Rail Safety Week, Operation Clear Track remains the single largest railroad safety law enforcement initiative held throughout the U.S. This safety event included more than 520 local, state and federal law enforcement departments across 48 states. This year, these law

enforcement officials conducted a safety detail at more than 2,000 railroad grade crossings across the nation, during which they issued citations and warnings to violators of each state's grade crossing and trespassing laws. During the three-hour enforcement period, police officers also distributed pocket cards to educate the public on grade crossing safety.



Human Trafficking Advisory Council



As designated in the Combating Human Trafficking in Commercial Vehicles Act that was signed into public law on January 3, the Department of Transportation created the Advisory Committee on Human Trafficking. The role of the advisory committee is to make recommendations to the Secretary of Transportation Elaine Chao on actions the Department can take to combat human trafficking. Chief Trugman was selected to participate in a sub-committee devoted to training and public awareness.

On December 6, APD Lead Communications Specialist James Lewis delivered a presentation to the council and the public, that outlined Amtrak and the APD's efforts to train employees and raise public awareness on human trafficking. On December 7, James participated in the first sub-committee meeting. The advisory committee and the sub-committees will continue to meet through 2019, until the final draft of the report is completed and submitted to Secretary Chao in July 2019.

Special Events

APD Hosts Meeting with RAILPOL

On February 6, APD hosted a meeting with members of the European Network of Railway Police Forces (RAILPOL). RAILPOL is an international network of organizations responsible for policing the railways in EU Member States. Deputy Chief Lisa Shahade discussed Amtrak rail security operations with members of the group and highlighted functions such as Patrol, SOU and Intel.

During the K-9 portion of the presentation, members viewed a vapor wake detection demo and met Officer Cameron Dux's canine partner Kenya. Bert Westland of RAILPOL presented Chief Trugman with a token of gratitude for the department's unwavering support and cooperation with our European rail partners.



2017 Officer of the Year Ceremony



On June 5, a ceremony was held in Wilmington, DE, to recognize Shaunta Bond as the 2017 Officer of the Year for her significant contributions in keeping our customers, employees and the public safe. During the ceremony, Bond was also promoted to the rank of sergeant.

“Sgt. Bond’s commitment and sense of duty are worthy of great respect. It is obvious she takes a great deal of pride in being an Amtrak Police Officer,” Amtrak Police Chief Neil Trugman said. “It is an honor to recognize her dedication with our most prestigious award.”

A member of the Criminal Investigations Division (CID), Bond was integral in the multi-agency cooperative effort to address challenges with the public who dealt with substance abuse issues and

homelessness in and around Union Station in Washington, D.C. Bond’s intuitive skills and persistence have generated positive results and earned her Officer of the Month honors three times in 2017.

She investigated several burglaries, and after extensive efforts, identified suspects and issued eight separate felony warrants for three of them. All suspects were arrested due to Bond’s investigation proficiency.

In another incident, Bond, along with other members of CID, handled an issue involving a customer who was reported to be in distress while traveling on Amtrak. Onboard employees notified APD and reported the customer’s issues and how he had a handgun in a carry-on bag. When the train made a scheduled stop in South Carolina, local police interviewed the customer who said he didn’t have carry-on bags. As a result, the customer was permitted to remain on board.

When the train arrived in Washington, D.C., Bond followed up and checked on the customer’s well-being. Bond approached and questioned the customer, who admitted he had a weapon. The customer consented to a search of his carry-on bags, and a revolver and ammunition were discovered. It was determined the customer was a convicted felon and he was arrested.



Bond also investigated the case of a woman who was a victim of an assault. Bond reviewed video footage and located a suspect fleeing the area where the incident was reported. Through her exhaustive efforts, Bond solidified a case against a suspect and convinced the Office of the Attorney General to move forward.

Sergeant Bond began her law enforcement career with the APD on January 17, 2012, as a police officer and on November 2, 2015, was assigned to the Criminal Investigation Division as an investigator. Bond has received numerous commendations and awards throughout her career with APD to include multiple Officer of the Month Awards, Customer Service Award, Distinguished Unit Citation, and several letters of commendation.



APD Welcomes TSA Administrator

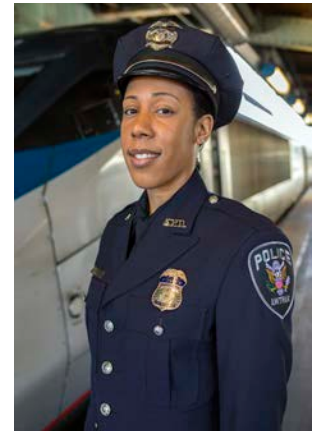
On June 22, Chief Trugman welcomed TSA Administrator David Pekoske and TSA Director of the Surface Division Sonya T. Proctor and provided them with a close-up view of the APD's counterterrorism efforts. The group traveled from Washington, D.C. to Philadelphia's 30th Street Station on board Amtrak 182 and observed K-9 and SOU conduct a proactive tactical patrol during their trip. Deputy Chiefs Maureen Powers and Derek White were also on-hand when 182 arrived at Philadelphia.

The group observed a K-9 Vapor Wake demo conducted by Officer Hugh McFarland and his canine partner Yaco, SOU Special Agents demonstrating a subject interdiction, and joint passenger screening conducted by TSA FAMS and supported by members of Patrol and SOU.



APD 2018 PSSA Recipients

Two members of the APD were chosen as recipients of a 2018 President's Service and Safety Award (PSSA). New York Division Investigator Adam Peterkin, was selected as a PSSA "Top Performer" award recipient. Investigator Peterkin has been a member of APD since April 2009, and has always performed in an exceptional manner. Investigator Peterkin's investigations led to numerous high-quality arrests including major credit card fraud cases. In addition to outstanding investigative work, Adam is the "go-to guy" for other members of the department looking for assistance in conducting computer related investigations. Investigator Peterkin is well respected within Amtrak, and also with numerous law enforcement agencies at the local, state and federal levels. Mid-



Atlantic South Division Sergeant Shaunta Bond, was also selected as a PSSA "Top Performer" award recipient. Sergeant Bond was also recognized as the 2017 APD Officer of the Year.



APD Participates in Postal Museum Program

On July 28-29, MADS K-9 Sergeant Micah Jones and his canine partner Summer participated in the National Smithsonian Postal Museum "Dog Days of Summer" event, showcasing the history and partnership between the Postal Service and the Railroad. The U.S. Postal Service partnered with Amtrak for many years and benefited from the diligent work of law enforcement and K-9 Units as they protected customers on board the trains, as well as cargo and mail. Over 5,000 people attended the event this year. Sergeant Jones and Summer conducted K-9 demonstrations, explained the duties and responsibilities of the APD and railroad safety and security measures to be aware of when traveling, and answered questions from the audience.

NYD Explorers Graduate Academy



APD NYD Explorers attended the 2018 NYC Law Enforcement Explorer Academy. The Academy is a three-week program designed to educate young people ages 14-20 about various careers available in law enforcement. The Academy operated at Fordham University in the Bronx from July 27-August 10. The third week of the Academy was a six-day camping trip to the

Ten Mile River Scout Camp (Keowa) in Narrowsburg, NY. On August 22, APD Explorers Nancy Melendez and Ivan Boncy, both members of Explorer Post 3000, graduated the NYPD Explorer Academy. The graduation ceremony was performed at the NYPD One Police Plaza auditorium and was hosted by NYPD's First Deputy Commissioner Benjamin B. Tucker.



Special Events

Dog Days of Summer



APD and Amtrak Corporate Communications partnered in a campaign to promote the department with a media pitch titled, “The Dog Days of Summer.” Leveraging the popularity of dogs with the general public, members of the media were being drawn to locations across the country to interview K-9 officers about their work.



The goal of the piece was to bring public attention to the APD and highlight the work of the department in protecting customers across the country. Interviews were conducted in Philadelphia, New York, New Haven, Baltimore, Los Angeles and San Diego.



APD Softball Team Plays in Tournament for Veterans

On September 29, the NED Softball Team played in the First Annual Mission 22 Charity Softball Tournament in Warwick, RI. The Rhode Island Brotherhood of Correctional Officers Association sponsored the tournament, which raises funds and awareness in an effort to end veteran suicides. Sadly, each day over 20 veterans take their own lives. Two members of the NYD also played for the NED team.

APD Is Chosen for First Place in Safety Video Contest

With video collected from every area of the country, the APD created and submitted an entry to the 2018 Amtrak Safety Video Challenge. Videos were judged on creativity, originality, safety messaging, production quality and overall presentation and the APD was chosen as the first place winner over all other entries. During the Amtrak Leadership Summit, Chief Trugman was presented with the 1st Place Amtrak Safety Video Challenge award for the APD Safety Video.



NED Officer Delivers OLI Presentations at University

Officer Ryan Irons delivered Operation Lifesaver presentations to Sigma Alpha Epsilon Fraternity members at the University of New Haven, CT, as part of the Education Expansion Experience Day for the Criminal Justice Program. Presentations were delivered to the students on varying topics including finance tips, networking strategies, resume reviews, interview techniques, criminal justice topics, and more. Officer Irons presented four presentations, each consisting of groups of 15 students.



Promoting Safety During National Reading Week

Officer Peter Whitaker visited with students at the Marieville Elementary School in North Providence, RI. As part of National Reading Week, Officer Whitaker read to students in several classrooms and spoke to the children about railroad safety.



Detective Participates in Safe Kids Day

Over 1,000 Kings County first-graders participated in Safe Kids Day, an event aimed to teach students about different aspects of safety. Detective Jim Martino talked to the children about railroad safety during the day's events.

Promoting Safety in New Hampshire

On April 23, Detectives Rob Hanson and Mike Lee assisted Amtrak Community Relations with the roll-out of the Station Host program in Claremont, NH. The Detectives presented on APD safety, Operation Lifesaver and other railroad safety components to assist the new station hosts in working safely in their volunteer positions. Station Host participants volunteer their time to assist the need of the community and the riding public at unstaffed stations.



APD Participates in Railroad Safety Operation

Officer Miguel Pintos and Detective Jim Martino partnered with the Union Pacific and Stockton Police Departments to conduct a UP CARES Operation in the city of Stockton, CA. A special pair of UP locomotives were operated in the city as officers monitored crossings and the right-of-way. During the two-hour period of the operation, 10 citations and five warnings were issued. Stockton officers rode the head-end of the locomotives and reported crossing violations to the officers stationed along the railroad. A local news reporter and camera crew also rode in the locomotive and provided a live coverage segment about railroad safety.

Detective Participates in Preparedness Day Event

Detective Mike Lee represented APD at the Northeastern University Annual Safety & Preparedness Day, held on the college campus in Boston. Detective Lee spoke with students about the mission of APD, and shared information about the text-a-tip program and career opportunities. Other law enforcement agencies that attended the event included Boston and MBTA Transit Police Departments and the Massachusetts State Police.



APD Promotes Safety on Crossing Awareness Day

On June 7, Detective Robert Hanson and Officer Matthew Carignan conducted several grade crossing safety campaigns at crossings along the Hartford Amtrak Line. This was in conjunction with International Level Crossing Awareness Day and the launch of new Amtrak commuter service at increased speeds beginning in the coming weeks. Several hundred railroad safety cards were distributed at various crossings on the line.

APD Participates in Safety Fair in Elk Grove, CA

Officer Mitchel Marquez and Detective Jim Martino teamed up with California Operation Lifesaver Volunteers Gary Valentinsen and Brian Meyers to promote railroad safety at the Elk Grove Police Department and Consumnes Fire District Safety fair held at Elk Grove Regional Park in Elk Grove, CA. First responders from the region attended the event as well as

Safety Initiatives



Air Units from the Sacramento Sheriff's and Sacramento Metro Fire Department, California Highway Patrol, Area SWAT Teams, K-9 units and other safety professionals.

Spreading the Rail Safety Message

Officer Mitchel Marquez and Detective Jim Martino teamed up with California Operation Lifesaver Volunteers Gary Valentinsen and

Brian Meyers to promote railroad safety at the Elk Grove Police Department and Consumnes Fire District Safety fair held at Elk Grove Regional Park in Elk Grove, CA. First responders from

the region attended the event as well as Air Units from the Sacramento Sheriff's and Sacramento Metro Fire Department, California Highway Patrol, Area SWAT Teams, K-9 units and other safety professionals.



Officers Deliver Railroad Safety Training

On June 29, Officer Pete Whitaker and Officer Paul Saraiva, accompanied by his canine partner Talley, conducted two half-hour presentations to preschool students at the Meadowbrook Farms School in East Greenwich Rhode Island. The event was titled "Safety Town" and topics discussed included Operation Lifesaver and the role of the APD K-9 unit. The main message delivered was "Tracks are for trains, not for kids". The children also received railroad safety material and a safety activity book.

Detectives Deliver OLI Classes to New Drivers

Throughout the summer, Detective Robert Hanson conducted Operation Lifesaver presentations for



new driver education classes in western MA. Over the course of ten weeks Detective Hanson delivered the class on railroad safety to an excess of 350 students. On September 24, Detective Doug Balk delivered Operation Lifesaver presentations to Drivers Ed students at the Bradley Bourbonnais Community High School in Bradley, IL.



National Rail Safety Week Events



On September 25, Detective Doug Balk was present for the signing of a proclamation at the Kankakee, IL station declaring September 23-29 as National Rail Safety Week. Others in attendance included, Canadian National Police Service Inspector Brandon Myers, Kanakakee County State's Attorney Jim Rowe, who signed the proclamation, Assistant State's Attorney Erika Parsons, Kankakee Police Chief Willie Hunt and other community leaders. On September 27, Detective Doug Balk shared Operation Lifesaver material with customers at the Milwaukee Station, along with Canadian Pacific Police Agent Ben Black.

From September 23-29, the NED participated in National Rail Safety Week, with daily educational and enforcement efforts in conjunction with strong partnerships with MassDOT, ConnDOT, RIDOT, MBTA Transit Police and numerous other law enforcement agencies across New England. Press conferences were held at South Station in Boston and at the Wallingford, CT station, which kicked off the week-long rail safety awareness initiative. In partnership with state DOTs and area law enforcement agencies, APD officers conducted grade crossing violation and trespassing enforcement/awareness initiatives as part of Operation Clear Track on September 25, and a high-visibility presence at stations.



APD Provides Back to School Safety Info in Boston

On September 18 and 20, APD Officers greeted the traveling public at North South stations in Boston, during Back to School Safety expositions in partnership with Mass DOT, the MBTA Safety and Transit Police Departments, and Keolis Commuter Services. Operation Lifesaver brochures and Amtrak safety material were distributed during the afternoon rush hour commutes at both stations.

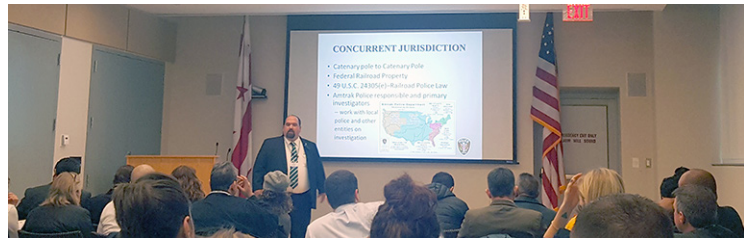
K-9 & Operation RAILSAFE Training in Sanford

Sergeant Micah Jones and Officer Andre Winston were deployed to assist Detective Kii Sullivan during the Operation RAILSAFE training class recently held in Sanford, FL. The officers provided K-9 training to partner agencies at the Sanford Amtrak station and on board train equipment. Detective Sullivan coordinated with partner agencies and over 27 handlers attended the eight-hour block of narcotics and explosive detection training. During the training, Sergeant Jones presented an overview of the APD K-9 Unit. Jones and Officer Winston provided hands-on training in three Superliner train cars and at the train station. The high-visibility of the Amtrak officers and those from the partner agencies was greatly appreciated by our passengers and Amtrak employees. Operation RAILSAFE training strengthens coordination and integration between Amtrak Police partners (e.g. emergency responders, host railroads, transit agencies, law enforcement officials, municipalities, etc.) and improve the safety and security of passengers, employees, and infrastructure from acts of terrorism. In 2018, Operation RAILSAFE training was conducted throughout the U.S., in seven locations that also included McComb, MS, San Jose, CA, Reno, NV, Springfield, MA, Santa Barbara, CA, and Niagara Falls, NY.



APD Training at Medical Examiner Conference

APD members attended a conference held by the District of Columbia Office of the Chief Medical Examiner titled "Homicide and Death Investigation," held from March 12-13. Sergeant Frank McBride, Investigator Shaunta Bond, and Officers Mark Chite and Justin Heidelberg were in attendance. During the conference, Sergeant Frank McBride delivered a presentation on investigating railroad deaths to a room full of medical examiners, coroners and investigators. This was conducted with the goal of education, improved networking, and to assist in reducing train delay time related to railroad incidents.



Detectives & Investigators Training Conference

Amtrak Police Detectives and Investigators gathered in Orlando, FL, from April 17-19, for their annual training conference. During the conference personnel received refresher training on the LInX and ACCURINT law enforcement databases, as well as briefings by the Amtrak Office of Inspector General, and the Claims department. Officers also received training on the Virtual Command Center, the FBI EGuardian program, a full briefing on the capabilities and mission of the National Center for Missing and Exploited Children, and training on fraud investigations by

Detective Nicholas Ingram, and Investigators Joseph O'Keefe and Adam Peterkin. In addition, briefings were given by Colonel Steve Kinsey of the Broward County Sheriff's Office on the Fort Lauderdale Airport active shooter incident in 2017, and on Domestic Terrorism from FBI Special Agent Tom O'Connor.

Training Exercises at Springfield Union Station

In mid-May, Detective Robert Hanson coordinated a variety of training exercises hosted at Springfield Union Station for law enforcement, fire departments EMS, EOD and K-9 teams. Throughout the 9 days of the event, APD trained 276 first responders in every community that Amtrak operates through in western MA, and northern CT.



Rail Tactics Training in Chicago

During the week of June 18 - 22, APD Special Agents William Conant, Ben Loomer and Kurt Kosterlitsky, headed by Sergeant Robert Underwood, conducted Rail Tactics Training in Chicago. The training consisted of two days for members of the FBI SWAT Team, and one for the Cook County Hostage Barricade Team, Illinois State Police SWAT Team, and APD Patrol. During the week over 75 officers were provided training on APD SOU tactics on board Amtrak trains. Many favorable comments were received from the participating agencies, as well as from the members of the APD.

Specialized Training



APD Provides Rail Tactics Training to FBI-HRT

Sergeant Robert Underwood along with members of the WAS SOU team, and also Special Agents William Conant and Marc Deslandes from the NYD provided Rail Tactics training to new members of the FBI HRT (Hostage Rescue Team), on August 27-28, at Ivy City in Washington, D.C. TS/HRT – Selection & Training Wing SSA Brian Maliszewski sent a note to extend his gratitude and appreciation to the APD team for their dedicated support and effort in the training of the HRT Operators. “I sincerely appreciate your professionalism, commitment to excellence, and exceptionally well developed and effective training package,” he said in his note. “We are grateful for your willingness to share your unrivaled expertise in this very unique and challenging mission profile and look forward to an expanded partnership in the future.”

Railroad Safety Training Provided to U.S. Army CID

On July 18, a Passenger Train Emergency Response (PETR) course was conducted at Fort McCoy for the 159th MP CID Battalion of U.S. Army. Topics covered during the training included railroad safety and first responders response to Amtrak and freight incidents, which included an overview of Amtrak and freight equipment. Army CID instructors set up crime scenes on designated rail equipment for the 159th Battalion to process, which ranged from mass casualty incidents to hostage situations. Most of the 159th Battalion members are police officers from the Midwest states.



Reno K911 Training Event

During the week of August 27, Sergeant Dennis Welch and Officer Mike Eib teamed up with the TSA in Reno, NV, for the annual RENO K911 multi-agency training event. A portion of the training took place at the Amtrak Reno, NV, and Truckee, CA stations as well as on board the California Zephyr (Trains 5 and 6). They began each day with Amtrak safety briefings, provided canine first aid training, and supervised training exercises at our stations and on board Amtrak trains. Participating agencies included TSA, ATF, Los Angeles

County Sheriff's Office, U.S. Park Police, California State Parks Police, San Francisco Police, BART Police, Dallas Airport Police, Minneapolis Airport Police, UC Berkeley Police, and US Air Force Military Working Dog handlers from Travis AFB.

PTER Training in Arkansas and Florida

Passenger Train Emergency Response (PTER) training is a classroom and hands-on emergency preparedness course delivered by Amtrak Regional Emergency Managers to external professionals, who may respond to an emergency on Amtrak property. This training complies with Federal Railroad Administration (FRA) regulation 49 CFR 239. On August 15-17, Regional Emergency Manager (REM) Michael McLean conducted in-classroom PTER training hosted by the North Little Rock, AR Fire Department. 116 firefighters, law enforcement, and office of emergency representatives, participated in the training to enhance the city of North Little Rock's local response to a rail emergency. On August 21-23, REM McLean trained a total of 167 firefighters in Sanford, FL. The training was hosted by the Sanford, FL Fire Department and included nearby county fire departments from the cities of Oviedo, Lake Mary, Longwood, and Seminole County. Hands-on training was conducted at the Sanford Maintenance Facility, with Superliner equipment to provide fire fighters first-hand familiarity with Amtrak equipment.



FBI Improvised Explosives & Threat Awareness Class

APD supervisors and officers from Patrol and K-9 from the NYD, MADN and MADS attended an FBI Improvised Explosives and Threat Awareness Workshop at the Middlesex County Fire Academy in Sayreville, NJ. The training was designed to increase first responder awareness of the threat posed by improvised explosives. During the workshop, lectures were delivered by the FBI Explosives Unit, FBI Weapons of Mass Destruction Team and the New Jersey State Police Bomb Unit. After the presentations were completed, students witnessed the detonation of a variety of improvised explosives, many of which were made by mixing common household chemicals. The demonstration underscored the potential danger of these chemicals, both in the hands of terrorists, as well as juvenile experimenters.



Department Contacts

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Deputy Chief Maureen Powers
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Deputy Chief Wayne Moore
Boston, MA
Phone: 617.345.7498

Deputy Chief Joseph Patterson
Chicago, IL
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Amtrak Police Department

Protecting "America's Railroad"

Patterson Stmt.
Ex. 2

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(Filed under seal)

Patterson Stmt.
Ex. 3

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Patterson Stmt.
Ex. 4

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF BETHANY TIERNAN

Date: May 20, 2020

Bethany Tiernan
Amtrak Police Department – Office of Intelligence and Analysis
900 2nd Street NE, Suite 110
Washington, DC 20002

VERIFIED STATEMENT OF BETHANY TIERNAN

I, Bethany Tiernan, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the [REDACTED], over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation (“Amtrak”). I have been an employee of Amtrak since March 2017. My current position is Criminal Intelligence Analyst of the Amtrak Police Department (“APD”) Office of Intelligence and Analysis (“OIA”).

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. I have a B.A. in Criminal Justice & Criminology. I have been a law enforcement analyst for eight years. I have a Master of Arts Degree in Security Studies, as well as a Graduate Certificate in Applied Intelligence.

5. In my role as a Criminal Intelligence Analyst, I apply statistical analysis to policing and crime data. I provide information on crime patterns and trends, and assist operational and administrative personnel in planning the deployment of resources for the prevention and suppression of criminal activities. I apply principles of intelligence analysis to interpret information regarding its impact on the criminal investigative process.

6. Amtrak0006422, attached as Ex. 1, is a true and correct copy of a report entitled “APD CFS and Incidents involving or associated with Metra in Chicago Union Station, January 1, 2016 – March 31, 2019” dated May 9, 2019 (hereinafter, the “Report”).

7. The purpose of this verified statement is to provide information regarding the Report.

8. OIA was asked to identify the total number of Calls for Service (“CFS”) and incidents in Chicago Union Station from January 1, 2016 to March 31, 2019. We were also asked to associate, to the extent possible, the CFS and incidents to either Amtrak or Metra.

9. A “CFS” broadly includes any instance of an APD officer calling or using a radio to contact the APD dispatching center (the National Communications Center) or vice versa. Reasons for a CFS include but are not limited to officer checking in, providing status updates, assisting a passenger, checking a platform, reporting incidents or criminal activity, and reporting medical emergencies. CFS include civilian-initiated calls, texts, and emails to the National Communication Center, and walk-ins to where the officer is located. Other law enforcement agencies can also call the National Communication Center requesting mutual assistance from APD, which would create a CFS. A CFS is also triggered when alarms are tripped.

10. An “incident” more narrowly includes CFS and other occurrences prompting the completion of an APD incident report and the assignment of an incident number. Many, but not all, incidents originate from a CFS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In large part, whether an incident report is needed is determined by the responding NCC dispatcher, NCC supervisor, field supervisor, field commander, or officer.

11. It is not APD's regular practice to assign or otherwise denote in its reporting whether CFS or incidents are associated with Amtrak or Metra (or any other commuter rail using Amtrak stations, including Virginia Railway Express, New Jersey Transit, or Southeastern Pennsylvania Transportation Authority). This particular request was highly atypical because it did not correspond to our regular methods of keeping data. However, we used our best efforts to respond to the request.

12. A request to associate crime and policing data at a station (including Chicago Union Station) to a particular rail agency is highly atypical for a number of reasons.

13. There is no designated field for either CFS or incident reports for an APD officer or dispatcher to denote whether a particular occurrence concerns an Amtrak or Metra passenger.

14. APD officers are not instructed to ask every individual they encounter whether they are an Amtrak or Metra passenger.

15. In my experience, I review many CFS and incidents where a person has been either unable or unwilling to provide certain identifying information (including why they are in the station) to APD officers. In addition, many people come into Chicago Union Station who are neither Amtrak nor Metra passengers.

16. It is only possible to attribute an incident to Amtrak or Metra passengers if the civilians or officers involved volunteer or report that information, if the geolocation of call or incident can be somehow attributed to Amtrak or Metra, or if the incident occurs on Amtrak or Metra trains.

17. To prepare the Report, OIA reviewed CFS and incidents from APD's Central Division for the specified time frame and, based on geolocation data, identified the number of CFS or incidents that reportedly occurred in Chicago Union Station.

18. We identified a total of [REDACTED] CFS and [REDACTED] incidents in Chicago Union Station during the specified time frame.

19. Based on the geolocation of the CFS or incident, we were able to associate a small percentage [REDACTED] of CFS, [REDACTED] of incidents) of the total with either Amtrak or Metra. For example, CFS or incidents originating in the Amtrak-only North and South boarding lounges were coded to Amtrak. CFS and incidents originating near Metra track numbers (North concourse) were coded to Metra.

20. Using geolocation is an approximation and is not always precise. Locations are assigned based upon the best information provided at the time of the CFS and during an incident. It is possible for a CFS to be geolocated to be inside Chicago Union Station, but found to be related to a different location once officers arrive. For example, a person may come inside Chicago Union Station for assistance, or report crimes that occurred on board a train after he or she has arrived in Chicago Union Station. An officer or dispatcher then inputs the information, which introduces potential human error.

21. After using geolocation data, I used a variety of filters (including key words such as "Amtrak" or "Metra") on the remarks of the CFS or narrative of the incident in an attempt to associate the CFS or incident with either Amtrak or Metra.

22. CFS remarks represent the dispatcher or officer's comments relative to that CFS. This varies by call but can include any pertinent information from an officer's description of his

or her activity, a caller's summation of an event, or copied notes from emails or texts to the dispatching center. Incident narratives are completed by the responding officer.

23. Because of the readily-identifiable key words for Amtrak, it was much easier to associate CFS and incidents with Amtrak than with Metra. Unlike Metra trains, Amtrak trains have known specific and consistent numbers. Unlike Metra passengers, Amtrak passengers have passenger name records (PNRs). Unlike Metra tickets, Amtrak tickets bear passengers' names.

24. In my experience, APD officers are also generally more inclined to specifically note Amtrak-specific details in their reporting, which makes it easier to associate a CFS or incident with Amtrak.

25. In addition, because of spelling errors, searching remarks or narratives for key words is imprecise (i.e. "Metra" v. "Metro").

26. After completing our analysis, we were unable to associate the majority of the calls for service (██████) and incidents (██████) to either Metra or Amtrak.

27. From January 1, 2016 to March 31, 2019, only ██████ CFS (██████ of total CFS) could be attributed to either Metra or Amtrak.

28. ██████ CFS (██████ of the total CFS, ██████ of attributed CFS) could be attributed to Metra.

29. ██████ CFS (██████ of the total CFS, ██████ of attributed CFS) could be attributed to Amtrak.

30. From January 1, 2016 to March 31, 2019, only ██████ incidents (██████ of total incidents) could be attributed to either Metra or Amtrak.

31. ██████ incidents (██████ of the total, ██████ of attributed incidents) could be attributed to Metra.

32. [REDACTED] incidents ([REDACTED] of the total, [REDACTED] of attributed incidents) could be attributed to Amtrak.


33. Based on my experience in reviewing and analyzing CFS and incidents that originate in Chicago Union Station, and in light of the overwhelming percentage of Metra passengers at Chicago Union Station (approximately [REDACTED]), I do not believe that the percentages indicated in the Report accurately reflect the reality of activity and policing at Chicago Union Station. I believe the CFS and incidents associated with Metra are actually much higher for the reasons I have stated in this verified statement.

VERIFICATION

I, Bethany Tiernan, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this verified statement.

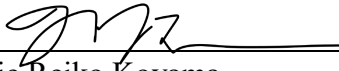
Executed on May 14, 2020 in [REDACTED]


Bethany Tiernan

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

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Thomas J. Healey
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Perie Reiko Koyama

Tiernan Stmt.
Ex. 1

CONFIDENTIAL

(Filed under seal)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF THOMAS MORITZ

Date: May 14, 2020

Thomas Moritz
Assistant Vice President of Infrastructure Access and Investment
National Railroad Passenger Corporation (Amtrak)
2955 Market Street
Philadelphia, PA 19104

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF THOMAS MORITZ

I, Thomas Moritz, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Pennsylvania, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation ("Amtrak"). I have been an employee of Amtrak since 2000. My current position is Assistant Vice President of Infrastructure Access and Investment.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide information regarding facts and analysis regarding the relationship between Amtrak and Metra (the Northeast Illinois Regional Commuter Railroad Corporation and the Commuter Rail Division of the Regional Transportation Authority) (Amtrak and Metra collectively, the "Parties") and the allocation of costs in this matter.

5. Amtrak owns Chicago Union Station. Chicago Union Station was originally owned by the Chicago Union Station Company (CUSCO), Amtrak's former wholly-owned subsidiary.

6. On May 1, 1984, CUSCO entered into an agreement with the Northeast Illinois Regional Commuter Railroad Company (the "1984 Agreement"), allowing Metra to access and use the Chicago Union Station facilities in exchange for payment to Amtrak.

7. Since the Parties originally entered into the Agreement in 1984, Metra has expanded service at Chicago Union Station at its discretion.

8. Today, Metra operates approximately 40 percent more trains today than it did in 1984, but there has been no increase (other than an increase for inflation) in Metra's contribution to station costs or funding for necessary capital investments.

9. Currently, approximately [REDACTED] percent of train movements in and out of Chicago Union Station are Metra trains and [REDACTED] percent of the passengers using Chicago Union Station are Metra passengers. *See* Amtrak0005283 at Train Moves and Rider Statistics.

10. Chicago Union Station is now operating at or near capacity with respect to train movements. Platform and Station space is at or above capacity during peak travel periods.

11. Current conditions have created overcrowding and delays to commuter and Amtrak trains. It has also limited Amtrak's ability to expand existing intercity service.

12. It is critical to the future of Chicago Union Station, that Metra compensate Amtrak for the increased costs to Amtrak arising from the increased percentage of riders and trains Metra has at the Station and contribute toward the recapitalization of station and railroad infrastructure. It is also critical that any expansion of the number of trains stopping at Chicago Union Station be done, if at all, only with the agreement of Amtrak and in a thoughtful way.

13. The Northeast Corridor (NEC) Commission was established by Section 212 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), codified at 49 U.S.C. § 24905.

14. Under PRIIA, the NEC Commission was tasked with developing a standardized methodology for allocating costs, revenues, and compensation among owners and operators providing commuter and intercity rail service along the NEC.

15. The NEC Commission developed the NEC Commuter and Intercity Rail Allocation Policy (the “Section 212 Cost Allocation Policy”) through an exhaustive process culminating in December 2015. I participated in this process as an Amtrak representative.

16. The NEC Commission worked diligently, over several years, to develop a method for fully allocating costs associated with state commuter rail authorities’ use of Amtrak infrastructure and services with respect to facilities used by both the commuter rail authority and Amtrak, without cross-subsidization, as required by PRIIA.

17. Voting members of the NEC Commission include representatives from the FRA, U.S. Department of Transportation, several state departments of transportation, several state commuter rail authorities, and Amtrak.

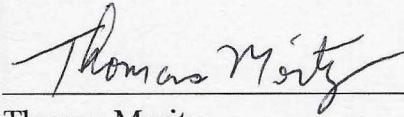
18. The views of all constituencies were considered and the final policy represents a reasonable allocation methodology for both Amtrak and commuter agencies.

VERIFICATION

I, Thomas Moritz, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on May 14, 2020 in Churchville, Pennsylvania

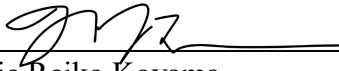
A handwritten signature in cursive script, reading "Thomas Moritz", is written over a horizontal line.

Thomas Moritz

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

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Thomas J. Healey
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By: 
Perie Reiko Koyama

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF PHILIP A. BALDERSTON

Date: May 20, 2020

Philip A. Balderston
Director, Risk Management
National Railroad Passenger Corporation (Amtrak)
1 Massachusetts Avenue, NW
Washington, DC 20001

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36332

**PETITION BY THE NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) FOR PROCEEDINGS UNDER 49 U.S.C. § 24903(c)(2)**

VERIFIED STATEMENT OF PHILIP A. BALDERSTON

I, Philip A. Balderston, hereby declare under penalty of perjury that the foregoing is true and correct.

1. I am a resident of the Commonwealth of Virginia, over the age of 18, and competent to make this verified statement.

2. I am an employee of the National Railroad Passenger Corporation (“Amtrak”). I have been an employee of Amtrak since September 2012. My current position is Director, Risk Management.

3. I am fully familiar with the facts and circumstances set forth herein, based upon my own personal knowledge, and from records and documents of Amtrak with which I am familiar.

4. The purpose of this verified statement is to provide information regarding the liability and insurance provisions of Amtrak’s June 2019 Proposal, which Amtrak seeks to have the Board impose in this matter.

5. Metra currently pays Amtrak a Liability Risk Charge to address Amtrak’s increased third-party liability due to Metra’s presence and operations in Chicago Union Station. The risk charge is comprised of three components. First, the Self-Insured Risk Charge (“SIRC”)

addresses Amtrak's increased risk of liability for injuries to Metra passengers, employees, and contractors at Chicago Union Station. A second component addresses Amtrak's potential liability for injuries sustained by its own employees and contractors who are performing work for Metra's benefit (the "FELA" charge). And finally, a third component, the Excess Risk Charge ("ERC"), addresses more catastrophic injuries. The SIRC charge is calculated based on an analysis of (i) a ten-year history of paid claims, including all costs and expenses incurred within those claims; and (2) a ten-year history of open claims, with an actuarial development of the estimated costs for the life-history of the claim. The ERC is based on an insurer's quote for claims exceeding \$100,000 (in essence, a policy with a \$100,000 deductible). The total Liability Risk Charge varies annually, but historically has been between [REDACTED] each year. Amtrak's current proposal eliminates the need for this multi-pronged liability risk charge. However, should the Board adopt a different liability approach, a risk charge may be necessary.

6. Over the course of the Liability Risk Charge history, both Parties have found the approach unsatisfactory. Due to its complexity, and the need for reliance on historical data, the annual calculations have created significant transaction costs as the Parties must review and debate historical claims data to determine not only the risk charge, but whether each individual claim is properly included within the risk charge. These disputes have created unnecessary and ongoing friction between the Parties.

7. An alternative might be to allocate liability according to the Parties' fault. While this is a superficially plausible methodology, it would create numerous problems. First and foremost it would lead to increased transactions and claims costs that would be borne by both Amtrak and Metra. The reason for this is that in many cases it would require Amtrak and Metra to have initial disputes about which entity was at "fault." Not only would this be an expensive

and time-consuming process, but it would also assist the claimant in proving their claim and thus inflate the value of the claimant's case. It also would delay the resolution of claims, which is neither in the public's interest nor that of the Parties. For example, awaiting fault determinations will inhibit the ability of the Amtrak Claims Department to settle cases with the injured party before they retain counsel or even if counsel is retained, before litigation is commenced.

8. An example would be a Metra passenger falling while dis-embarking from a train. Was this caused by Amtrak's failure to maintain the platform properly? Or was it caused by Metra's failure to maintain the train or a staffing issue? The likely answer is neither, but before the claim was adjudicated, Amtrak and Metra would be forced to prove otherwise just to determine which entity must handle the claim. Thus, a routine "trip and fall" case becomes a multi-step process before resolution can be achieved. Moreover, in addition to adding significant transaction costs, the delay does not help foster a good relationship between the Parties and their respective customers.

9. Amtrak's proposal for allocating the Parties' liability for claims is known as no-fault liability. This is a common approach used in agreements between Amtrak and other commuter rail agencies, as well as between Amtrak and nearly all the freight railroads upon whose tracks it operates throughout the country. No-fault liability arrangements have been used by the railroads for many decades because they simplify what otherwise would be complicated liability determinations due to the overlap of responsibilities between host and tenant railroads. Metra would be responsible for claims caused by Metra's presence at Chicago Union Station (other than claims related to injuries to Amtrak employees performing work for Metra's benefit). This provides a comprehensive way for Amtrak to be compensated for Metra's use of its

property. Additionally, because it is clear at the outset which entity is responsible for the claim, liability transaction costs are eliminated and prompt resolution of claims is achieved.

10. Amtrak's proposal also requires Metra to obtain liability insurance with limits of \$325 million per occurrence and in the annual aggregate for third party bodily injury and property damage with Amtrak designated an additional insured. The coverage must cover Metra's liability for injury or death of persons and damage to property, including coverage for punitive or exemplary damages, arising out of Metra Commuter Rail Service, and shall waive all rights of subrogation against Amtrak. Such insurance shall also cover Metra's liability for injury or death to Metra employees who pursue FELA claims. Metra can elect to self-insure any or all of the \$325,000,000 subject to Amtrak's approval, not to be unreasonably withheld. The proposal also requires Metra to obtain property insurance sufficient to cover its equipment used in the Metra Commuter Rail Service and such coverage shall waive all rights of subrogation against Amtrak. The precise terms of the required insurance are included in the June 2019 Proposal.

11. These provisions are based on the statutory requirements of 49 U.S.C. § 28103. That statute imposes a cap on Amtrak's rail passenger liability, currently at \$295 million. However, it does not address liability for FELA and other third party (non-passenger) claims, which is the reason for the additional amount.

12. Because the purpose of the insurance provision is to ensure that Metra's insurance covers the liability allocated to Metra, a no subrogation provision is necessary so that liability is not shifted back to Amtrak. Insurance companies who provide coverage for railroad and commuter agencies are familiar with this "no subrogation" provision, as it is the standard in the railroad industry.


13. Similarly, because 49 U.S.C. § 28103 permits punitive damages, if allowed under state law, coverage for punitive damages is also necessary.

VERIFICATION

I, Philip A. Balderston, verify under penalty of perjury that the foregoing is true and correct.

Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on May 18, 2020 in Haymarket, Virginia.

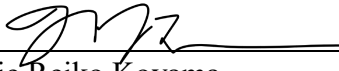


Philip A. Balderston

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2020, a copy of the foregoing was served by electronic mail on:

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By: 
Perie Reiko Koyama