

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
Office of Proceedings
May 4, 2018
Part of
Public Record

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
-AUTHORITY TO CONSTRUCT AND OPERATE-
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV -
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

PETITION TO REOPEN

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–AUTHORITY TO CONSTRUCT AND OPERATE –
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PETITION TO REOPEN

Pursuant to 49 U.S.C. § 1322(c) and 49 C.F.R. § 1115.4, Texas Central Railroad and Infrastructure, Inc. (“TCRI”) and Texas Central Railroad, LLC (“TCRR”) (collectively “Texas Central”) hereby petition the Board to reopen the above-titled proceeding on the basis of substantially changed circumstances.

In its July 18, 2016 Decision (the “*Decision*”), the Board held that it lacked jurisdiction over the construction and operation of a proposed passenger rail line between Dallas, Texas and Houston, Texas (the “Texas Central Line” or “Line”).¹ The Board’s *Decision* was premised on its determination that, based on the record then before it, Texas Central had not demonstrated sufficient “connections” between the Line and Amtrak’s interstate rail system to support a finding that the Line would be operated as “part of the interstate rail network.” *Decision* at 4. In particular, the Board found that Texas Central’s intent to coordinate its services with Amtrak “at a future point in time and a willingness to consider cooperative efforts with other

¹ *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., LLC – Auth. to Construct and Operate – Petition for Exemption from 49 U.S.C. §10901 and Subtitle IV – Passenger Rail Line Between Dallas, Tex. and Houston, Tex.*, STB Docket No. FD 36025 (served July 18, 2016).

passenger rail providers outside of Texas,” were “too speculative and undefined to make this intrastate line part of the interstate rail network ***based upon the information in the petition.***” *Id.* at 5 (emphasis added).

But the Board did not leave Texas Central to wonder about what additional evidence would be required to bring the Line within the Board’s jurisdiction. Rather, the *Decision* specifically stated that “concrete plans . . . such as an actual through ticketing arrangement with Amtrak” would be sufficient to make the Texas Central Line “part of the interstate rail network.” *Id.* at 6. The *Decision* also explicitly indicated that Texas Central could ask the Board to revisit the jurisdictional issue “[s]hould Texas Central develop [such] concrete plans.” *Id.*

Concrete plans of the type envisioned by the *Decision* are now in place. On October 13, 2017, Texas Central and Amtrak entered into a Reservation and Ticketing Agreement (the “Through Ticketing Agreement”) pursuant to which they will offer passengers traveling between points on their respective rail systems through tickets good for transportation on both Amtrak and Texas Central trains and for a transfer service connecting the Texas Central and Amtrak stations in Dallas and Houston.² The parties entered into the Through Ticketing Agreement in furtherance of a broader Voluntary Coordination Agreement (“VCA”) pursuant to which they have agreed to work cooperatively to promote through interstate passenger service on Amtrak and Texas Central trains.³

As a result of these agreements, the connection between the Texas Central Line and Amtrak’s interstate rail network is no longer “speculative” or “undefined.” *See Decision* at 5. To the contrary, the Through Ticketing Agreement is a “clearly

² A copy of the Amtrak-Texas Central Through Ticketing Agreement is attached to this Petition as Exhibit 1.

³ A copy of the Amtrak-Texas Central Voluntary Coordination Agreement is attached to this Petition as Exhibit 2.

defined arrangement to connect passengers using through ticketing” (*id.*) that renders the Line, and Texas Central’s operations on the Line, part of the interstate rail network pursuant to Section 10501(a)(2)(A). The Through Ticketing Agreement and VCA constitute a substantially changed circumstance that warrants reopening of this proceeding because an approval or exemption from the Board is now required to construct and operate the Line.

I. Background

On April 19, 2016, Texas Central filed a Petition for Exemption with the Board, seeking an exemption from the prior approval requirements of 49 U.S.C. § 10901 to construct and operate an approximately 240-mile high-speed passenger rail line between Dallas and Houston, Texas.⁴ The Line is intended to “provide needed connectivity to the interstate passenger rail network.” Exemption Petition at 9. The Exemption Petition further indicated that Texas Central intends to hold itself out to serve both intrastate and interstate rail passengers by coordinating with Amtrak and other future high-speed rail service providers. *Id.* at 6-10.

Based on the record before it in 2016, the Board concluded that the proposed construction and operation of the Texas Central Line was not subject to the Board’s jurisdiction. *Decision* at 6. At that time, Amtrak and Texas Central had expressed interest in coordinating rail service for interstate passengers, but they had not entered into any formal agreement regarding such arrangements. The Board accordingly cited the absence of “concrete plans today for through ticketing” or a

⁴ See Petition for Exemption, *Tex. Cent. R.R. & Infrastructure, Inc. & Tex. Cent. R.R., LLC – Auth. to Construct and Operate – Petition for Exemption from 49 U.S.C. §10901 and Subtitle IV – Passenger Rail Line Between Dallas, TX and Houston, TX*, STB Docket No. FD 36025 (filed Apr. 19, 2016) (“Exemption Petition”). Petitioners also requested an exemption from ongoing regulation under Subtitle IV of Title 49 once construction is completed and passenger service commences. *Id.* at 28-34.

direct connection with Amtrak as reasons why the facts set forth in the Exemption Petition were not sufficient to make the Line part of the interstate rail network. *Id.* at 4.

Texas Central is now presenting new evidence of substantially changed circumstances, in the form of an executed Through Ticketing Agreement and Voluntary Coordination Agreement with Amtrak. Pursuant to the Through Ticketing Agreement, Texas Central and Amtrak will offer interstate passengers the ability to travel on both Texas Central and Amtrak trains, and to transfer between Amtrak and Texas Central stations, on a single through ticket. The broader VCA between Amtrak and Texas Central provides for a variety of joint initiatives to promote and enhance through passenger travel on their respective lines.

II. The Through Ticketing Agreement and VCA constitute substantially changed circumstances warranting reopening of this proceeding.

The Board will reopen a decision to consider changed circumstances that materially affect the Board's initial decision. *Fla. Dep't of Transp. – Acquisition Exemption – Certain Assets of CSX Transp., Inc.*, STB Docket No. FD 35110 at 4 (served June 22, 2011). The Board has reopened proceedings where “the changed circumstance relates to a specifically identified and contested assumption in our prior decisions.” *Ariz. Pub. Serv. Co. & Pacificorp v. Burlington N. & Santa Fe Ry. Co.*, Docket No. FD 41185 at 4 (served May 12, 2003). The Board will also reopen a prior decision where there exists “newly available” evidence that could not have been presented in the prior proceeding. *Fla. Dep't of Transp.*, STB Docket No. FD 35110 at 4.⁵

⁵ *Cf., Friends of Sierra R.R. v. ICC*, 881 F.2d 663, 667 (9th Cir. 1989) (“*newly raised* evidence is not the same as *new* evidence” for purposes of reopening an administratively final decision) (emphasis in original).

The standard for reopening a Board proceeding is plainly met here. The Board made clear that its jurisdictional ruling might have been different if the record contained “more concrete details and plans about direct linkage to the interstate rail network than what Texas Central has presented here.” *Decision* at 6. It specifically identified a “through ticketing” agreement with Amtrak as an example of such “concrete details and plans” that would create a jurisdictional link to the interstate rail network. *Id.* Texas Central and Amtrak now have just such a Through Ticketing Agreement through which they will offer through ticketing services to interstate rail passengers.

Under the Through Ticketing Agreement, passengers traveling to Dallas or Houston on a Texas Central or Amtrak train, and connecting to a train operated by the other party from those cities, will be able to purchase a single through ticket good for transportation on both the Texas Central and Amtrak portions of their journey. *See* Exhibit 1, Through Ticketing Agreement at 1. Tickets for through transportation will be sold via Amtrak’s reservation and ticketing systems, including Amtrak’s website, mobile app, toll-free telephone reservation number, and at Amtrak-staffed stations. *Id.* § 1.2. The parties will also explore opportunities to make reservations and tickets for through transportation available in the future via Texas Central’s ticketing system (which is currently in development). *Id.* § 1.4.

The single through ticket issued by Amtrak will also be good for travel on a connecting transfer service between the Amtrak and Texas Central stations in Dallas and Houston. *Id.* at 1. The transfer service will be operated by Texas Central on a schedule that provides convenient connections in both directions with Amtrak trains arriving in Dallas and Houston, and will have the capability to accommodate persons with disabilities. *See* Exhibit 2, VCA ¶ 6. Through this arrangement, Texas Central and Amtrak will provide seamless interstate passenger service between Dallas and

Houston, on the one hand, and points throughout Amtrak's national network, on the other hand.⁶

The services to be performed by Texas Central, including both the operation of high-speed trains between Dallas and Houston and providing connecting transfer service between Texas Central and Amtrak stations, will be integral parts of an interstate through passenger service offered to the public in coordination with Amtrak's national network. Those services clearly constitute "transportation by rail . . . between a place in a state and another place in the same state" that is "carried out as 'part of the interstate rail network,'" and is therefore subject to the Board's jurisdiction. *Decision* at 4 (citing *DesertXpress Enters., LLC – Petition for Declaratory Order*, STB Docket No. FD 34914 at 9 (STB served May 7, 2010)); *see also Cape Cod & Hyannis R.R., Inc. – Exemption From 49 U.S.C. Subtitle IV*, ICC Docket No. FD 30859 (served Sept. 2, 1986) (ICC had jurisdiction over railroad lying entirely within one state, where it participated in movement of passengers with Amtrak under through ticketing agreement).

Texas Central's connection to the interstate passenger rail network will be further enhanced by the parties' VCA. The mutual objective of Texas Central and Amtrak in entering into the VCA is to "support the development and enhancement of intercity and high-speed passenger rail service as part of a national passenger rail system capable of meeting the nation's transportation needs." *See* Exhibit 2, VCA at 1. Pursuant to that objective, Texas Central and Amtrak will develop initiatives—such as joint advertising in connection with special events and utilizing their respective frequent traveler programs—to promote through travel on Texas Central

⁶ The Through Ticketing Agreement contains, among many other things, detailed provisions relating to the development and implementation of the proposed Texas Central-Amtrak through service. Texas Central and Amtrak each will be responsible for determining the fares, schedules and other terms applicable to the services they provide. *See* Exhibit 1, Through Ticketing Agreement § 1.1.

and Amtrak trains. *Id.* ¶¶ 4, 5. Amtrak and Texas Central have also agreed to “jointly evaluate other measures to facilitate connections and enhance the experience of passengers traveling on through tickets between points served by Texas Central and Amtrak trains.” *Id.* ¶ 6. Amtrak has agreed to support the development and operation of the Texas Central Line by providing a variety of services, which may include opportunities for Texas Central operating personnel to visit Amtrak’s national training center, consultation with Texas Central with respect to safety and security issues, and several other services related to the planning, construction and operation of the Texas Central Line. *Id.* ¶ 8. The cooperative efforts envisioned by the VCA are substantial—Amtrak has agreed to provide, and Texas Central has agreed to purchase, at least \$3 million of such services during the initial term of the VCA. *Id.*

In sum, the Texas Central-Amtrak Through Ticketing Agreement and VCA create precisely the type of connection between Texas Central and Amtrak that the Board indicated would support a finding that the Texas Central Line will be operated as part of the interstate rail network. Those definitive and detailed agreements constitute a substantially changed circumstance that warrant reopening of this proceeding. *See Ariz. Pub. Serv. Co. & PacifiCorp* at 4. Texas Central accordingly requests that the Board reopen this proceeding and assert jurisdiction over the construction and operation of the Texas Central Line.

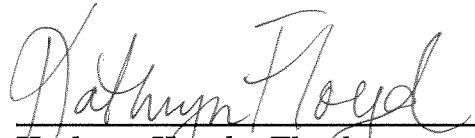
III. Texas Central withdraws its petition for clarification.

Although it is asking the Board to reopen this proceeding to address its Exemption Petition, Texas Central is withdrawing its separate Petition for Clarification regarding the scope of the term “construction” under the ICC Termination Act. The matters at issue in the Petition for Clarification will be addressed first by the Texas courts.

CONCLUSION

For the foregoing reasons, Texas Central requests the Board reopen this proceeding, assert jurisdiction over the Texas Central Line, and grant the exemptions requested by Texas Central's Exemption Petition.

Respectfully submitted,


Kathryn Kusske Floyd
Jay C. Johnson

Raymond A. Atkins
Terence M. Hynes
Louis P. Warchot
Hanna M. Chouest

Counsel to Texas Central Railroad
and Infrastructure, Inc. & Texas
Central Railroad, LLC

Dated: May 4, 2018

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2018, I caused a copy of the foregoing Petition to Reopen to be served on all parties of record by courier or first class mail, postage prepaid.

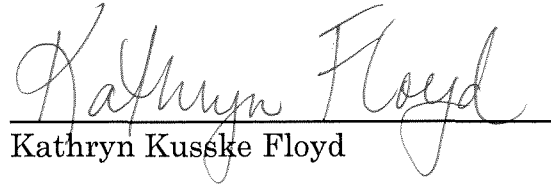

Kathryn Kusske Floyd

EXHIBIT 1

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
–AUTHORITY TO CONSTRUCT AND OPERATE –
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PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

PETITION TO REOPEN

AMTRAK AND TEXAS CENTRAL RAILROAD RESERVATION AND TICKETING AGREEMENT

This Reservation and Ticketing Agreement (“**Agreement**”) is entered into as of the 13th day of October, 2017 (the “**Effective Date**”), by and between (a) National Railroad Passenger Corporation (“**Amtrak**”), a corporation organized under 49 U.S.C. § 24101 et seq. and the laws of the District of Columbia, with its principal office located at 1 Massachusetts Avenue NW, Washington, DC 20001, and (b) Texas Central Rail Holdings, LLC, a Delaware limited liability corporation, Texas Central Railroad & Infrastructure, Inc., a Texas corporation, and Texas Central Railroad, LLC (“**TCRR**”), a Delaware limited liability corporation, each with its principal office located at 1409 South Lamar Street, Suite 1022, Dallas, TX 75215 (collectively, “**Texas Central**”), each of which may be referred to in this Agreement as a “**Party**”, and collectively as the “**Parties**.”

WHEREAS, Texas Central and Amtrak entered into a Voluntary Coordination Agreement, dated December 6, 2016, to facilitate high-speed, passenger rail service within the Dallas - Houston corridor (the “**TCRR Rail Service**”) and transfer service between the Amtrak and TCRR stations in Dallas and Houston, TX, in order to provide connectivity between TCRR Rail Service and Amtrak’s nationwide passenger rail service; and

WHEREAS, Texas Central and Amtrak agreed in the Voluntary Coordination Agreement to offer passengers traveling to Dallas or Houston, TX on TCRR or Amtrak trains, and connecting to trains of the other party in those cities, tickets (“**Through Tickets**”) for transportation on both TCRR and Amtrak trains, and on a connecting transfer service (“**Transfer Service**”) to be operated by Texas Central between the Amtrak and TCRR stations in Dallas and Houston, TX; and

WHEREAS, in the Voluntary Coordination Agreement, Texas Central and Amtrak agreed that, initially, the most cost efficient and effective way of making Through Tickets available to travelers is via Amtrak’s reservation and ticketing systems; and

WHEREAS, pursuant to the Voluntary Coordination Agreement, the Parties are entering into this Agreement for the provision of reservation and ticketing services; and

NOW, THEREFORE, Amtrak and Texas Central agree that the recitals are incorporated in and made a part of this Agreement and hereby agree as follows:

1. **Reservation and Ticketing Services**

- 1.1 Amtrak shall make available to consumers (a) fare and schedule information regarding the TCRR Rail Service and Transfer Service and (b) TCRR’s consumer policies related to such services. TCRR shall be solely responsible for determining the fares, schedules, and other terms and conditions for travel on the TCRR Rail Service and Transfer Service. TCRR shall provide to Amtrak up-to-date, complete and accurate information regarding

its fares and schedules and consumer policies in the manner mutually agreed upon by the Parties.

- 1.2 Amtrak shall make available to consumers the ability to reserve and book Through Tickets using Amtrak's reservation and ticketing channels. Such channels shall include Amtrak's website, mobile app, toll-free number and Amtrak staffed stations. TCRR shall accept all Through Tickets generated by Amtrak in accordance with the Reservation and Ticketing Services Technical Specifications, to be mutually agreed upon by the Parties. TCRR shall be solely responsible for providing the TCRR Rail Service and Transfer Service.
- 1.3 The services to be provided by Amtrak described in Sections 1.1 and 1.2 are collectively referred to as the **"Reservation and Ticketing Services."** The technical requirements and schedule for implementing and hosting the Reservation and Ticketing Services shall be mutually agreed upon by the Parties. Texas Central understands and agrees that provision of the Reservation and Ticketing Services is dependent upon compliance with the agreed-upon technical requirements.
- 1.4 The Parties agree to explore opportunities for providing (a) reservations and tickets for travel solely on TCRR Rail Service through Amtrak's reservations and ticketing channels, and (b) Through Tickets for transportation on both TCRR and Amtrak trains through the reservation and ticketing systems to be developed by TCRR. The fees and payments applicable to the sale of such tickets shall be upon such terms as the Parties may agree.

2. Pricing and Payment

- 2.1 Texas Central shall compensate Amtrak for the costs that Amtrak incurs in developing and implementing the Reservation and Ticketing Services, including but not limited to wage, salary, benefit, overhead and contracted costs attributable to programming and the backend accounting system plus an additional fee of ten percent (10%) (**"Implementation Fees"**). Prior to the development of Reservation and Ticketing Services, Amtrak and Texas Central shall agree upon the scope and cost of work required to develop and implement the Reservation and Ticketing Services, and Texas Central shall provide to Amtrak notice in writing to proceed with such development and implementation. Texas Central shall pay Amtrak the Implementation Fees within thirty (30) days of receipt of each invoice for such development and/or implementation costs incurred by Amtrak. Amtrak acknowledges that it has received Seventy-Five Thousand Dollars (\$75,000) from Texas Central to be applied to the Implementation Fees, as required by Section 3 of the Voluntary Coordination Agreement. Any upgrade or additional work after implementation of the Reservation and Ticketing Services shall be payable at the same rate and manner as the Implementation Fees.
- 2.2 In addition to the Implementation Fees set forth in Section 2.1, Amtrak shall be entitled to retain a commission (the **"Amtrak Through Ticket Commission"**) of fifteen percent (15%) of the share of Through Ticket revenue that is attributable to travel on TCRR Rail

Service and/or Transfer Service sold via Amtrak's reservation and ticketing channels ("**TCRR Through Ticket Revenues**"). Amtrak shall remit to TCRR the TCRR Through Ticket Revenues minus the Amtrak Through Ticket Commission (the "**Remittance Amount**") collected by Amtrak during each calendar month within thirty (30) days from the end of that calendar month. In addition, Amtrak shall provide to TCRR a monthly report (the "**Amtrak Monthly Through Ticketing Report**") setting forth for the prior calendar month: (a) the type and number of Through Tickets sold, (b) the total TCRR Through Tickets Revenues collected by Amtrak in connection with the sale of Through Tickets, (c) the amount of Amtrak Through Ticket Commission earned by Amtrak in connection with the sale of Through Tickets, (d) any necessary adjustments, and (e) the Remittance Amount. If TCRR does not notify Amtrak within ninety (90) days of an Amtrak Monthly Through Ticketing Report of any disputed items (other than items resulting from an audit pursuant to Section 12.1), then that Amtrak Monthly Through Ticketing Report shall be deemed complete, accurate, and uncontestable.

3. Use of a Party's Brand and Proprietary Materials; Approval and Notices

- 3.1 Subject to the terms and conditions herein, each Party (as a "**Licensor**") hereby grants to the other Party (as a "**Licensee**") a limited, non-exclusive, non-transferable and non-assignable license to use the trademarks and service marks of such other Party listed in **Attachment I - Licensed Marks** solely for the purpose of performing Licensee's obligations and/or exercising Licensee rights hereunder or as otherwise permitted by the Licensor in writing. The Licensee's use of a Licensed Mark is subject to the usage requirements set forth in Attachment I or otherwise provided by the Licensor. The Licensee shall not use a Licensed Mark in any manner that would disparage the Licensor or its products or services. Subject to the terms and conditions herein, each Party (as a Licensor) hereby further grants to the other Party (as a Licensee) a limited right to use, copy, distribute, and/or publicly display the copyrighted materials provided by the Licensor to the Licensee solely to fulfill Licensee's obligations hereunder or as otherwise provided by the Licensor in writing.
- 3.2 Before using the name, brand or copyrighted material of the Licensor, the Licensee shall submit for review and approval the intended use of the Licensor's licensed marks or copyrighted materials, including the portions of any and all content, artwork, copy, advertising, promotional materials, direct mail, inserts, press releases, newsletters, web pages or other communications or any other materials to be published or distributed by the Licensee (or at the Licensor's direction or authorization) that specifically reference this Agreement or the Licensor's name or that use any of the Licensor's Marks. Notwithstanding Section 7, "Notices," the Parties shall provide notices and other communications under this Section as mutually agreed to by the Parties.
- 3.3 Except as expressly provided herein, no right, property, license, permission or interest of any kind in or to the use of any intellectual property licensed by a Party is, or is intended to be, given or transferred to or acquired by the other Party by the execution, performance or nonperformance of this Agreement or any part thereof. Each Party acknowledges that

all goodwill resulting from the use of a Licensor's marks shall inure to the benefit of the Licensor.

4. Consumer Complaints

Any consumer complaints that are principally directed to the other Party's products or services shall be promptly forwarded to such other Party for disposition. Each Party will be responsible for responding to consumer complaints directed at its products or services. The Parties shall cooperate with each other in a reasonable manner to deal appropriately with any consumer complaints.

5. Indemnification and Limitation of Liability

- 5.1 Amtrak, its operating carriers, officers, employees, agents, contractors, and servants (the "**Amtrak Indemnified Parties**") shall not be liable for, and Texas Central agrees to defend, indemnify and hold harmless, the Amtrak Indemnified Parties from and against any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including reasonable attorneys' fees and expenses) of whatsoever nature and by whomsoever made, brought or recovered as a result of loss or damage to property or injury or death to persons, directly related to the TCRR Rail Service and Transfer Service.
- 5.2 Texas Central shall defend, indemnify, and hold harmless the Amtrak Indemnified Parties against and from any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including reasonable attorneys' fees and expenses) whatsoever which may arise or be alleged to arise out of: (a) any actual or claimed infringement or misappropriation of a third party right; and/or (b) any violation of applicable law or regulation, in each case directly relating to or arising from the TCRR Rail Service and/or Transfer Service.
- 5.3 Texas Central, its officers, employees, agents and servants (the "**Texas Central Indemnified Parties**") shall not be liable for, and Amtrak agrees to defend, indemnify and hold harmless the Texas Central Indemnified Parties from and against any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including attorneys' fees and expenses) of whatsoever nature and by whomsoever made, brought or recovered as a result of loss or damage to property or injury or death to persons, directly related to the passenger rail services of Amtrak.
- 5.4 Amtrak shall defend, indemnify, and hold harmless the Texas Central Indemnified Parties against and from any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including reasonable attorneys' fees and expenses) whatsoever which may arise or be alleged to arise out of: (a) any actual or claimed infringement or misappropriation of third party right; and/or (b) any violation of applicable law or regulation, in each case directly relating to or arising from the passenger rail services of Amtrak.

- 5.5 In the event that any claim is made or suit is commenced against either Party asserting a liability that is the responsibility of the other Party (the “**Responsible Party**”) pursuant to this Section 5, such Party shall give prompt written notice to the Responsible Party, and shall cooperate with the Responsible Party's management of such claim or suit and furnish all available communications, legal processes, data, papers, records, and other information material to such claim or suit as the Responsible Party may from time to time require.
- 5.6 The Responsible Party shall have the sole responsibility, at its expense, to defend and, at its sole discretion, to settle any claim for which it is responsible pursuant to this Section 5; provided that, if any settlement imposes a non-monetary obligation on any of the Amtrak Indemnified Parties or the Texas Central Indemnified Parties (as applicable), then such settlement shall require the prior written consent of all such indemnified parties, whose consent will not be unreasonably withheld, conditioned or delayed.
- 5.7 EXCEPT FOR ITS INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST REVENUES OR LOST PROFITS, AS A RESULT OF THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT. AMTRAK DISCLAIMS ANY WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, THAT AMTRAK’S RESERVATION AND TICKETING SERVICES AND/OR OTHER SERVICES AND SYSTEMS WILL BE ERROR FREE OR UNINTERRUPTED.

6. Insurance

- 6.1 Texas Central and Amtrak shall each procure and maintain, at its own cost and expense, at all times during the term of this Agreement the insurance coverages specified below (the “**Required Insurance**”). Each Party shall submit to the other Party evidence of the Required Insurance prior to the commencement of TCRP Rail Service and Transfer Service and upon the renewal of any of the required insurance thereafter. All Required Insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Parties operate passenger rail service and/or Transfer Service. The Required Insurance shall provide for thirty (30) day written notice to be given to the other Party in the event insurance coverage is substantially changed, canceled, or not renewed.
- a. **Workers’ Compensation Insurance.** A policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, covering all employees of the Party. Employer’s liability insurance with limits of one million dollars (\$1,000,000) each accident or illness. If either Party is a railroad subject to the Federal Employers Liability Act (FELA), that Party shall provide the required FELA coverage for employee injuries, in lieu of workers’ compensation insurance and employer’s liability insurance with limits of insurance of not less than \$2,000,000 per occurrence and in the annual aggregate.

- b. Commercial General Liability Insurance. An occurrence policy issued to and covering liability imposed upon the Party arising out of all obligations assumed by the Party under the terms of this Agreement. Products/completed operations liability, independent contractors' liability, contractual liability, personal injury liability and advertising liability coverages are to be included, and all Railroad and Explosion/Collapse/Underground (X-C-U) exclusions are to be deleted including exclusions for any work within 50 feet of railroad Right of Way. Coverage under this policy shall have limits of at least two million (\$2,000,000) per occurrence and in the annual aggregate. When the TCRR Rail Service begins, the required limits of railroad liability insurance shall increase to a per occurrence limit equal to the then-current Federal per incident cap on railroad passenger tort liability, currently as of the date of this Agreement two hundred ninety-five million dollars (\$295,000,000).
- c. Automobile Liability Insurance. An occurrence policy issued to and covering the liability of each Party arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear, or are required to bear, license plates according to the laws of the jurisdiction in which they are to be operated. Coverage under this policy shall have minimum limits of insurance of two million dollars (\$2,000,000) combined single limit for each occurrence. Upon the commencement of Transfer Service, the required limits of insurance for Texas Central (or its Transfer Service) will increase to five million dollars (\$5,000,000) combined single limit for each occurrence.
- d. Each Party shall include the other Party's Indemnified Parties, as defined in Sections 5.1 and 5.3 of this Agreement, as additional insured(s) on all Required Insurance policies with the exception of Workers' Compensation/Employer's Liability Insurance. Additional Insured coverage shall cover "liability caused in whole or in part arising out of" the services under this Agreement, shall be primary to and not require contribution from any other insurance maintained by or available to the Additional Insured(s), and shall provide coverage for claims arising out of both ongoing operations and products and completed operations. Coverage shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured Form CG 20 10 04 13 and CG 20 37 04 13.
- e. The Required Insurance shall waive rights of subrogation against the other Party and shall not exclude coverage for acts of terrorism
- f. Each Party shall provide and maintain such other insurance as may be required of either Party by applicable law.
- g. Amtrak will meet its Required Insurance coverage obligations through its corporate self-insurance program.

7. Notices

7.1 All notices must be in writing and will be deemed duly given on (a) the date of personal or courier delivery or (b) three (3) business days after the date of deposit in the United States mail, by postage paid, return receipt requested first-class mail at the address set forth below. Either Party may change its mailing address by written notice to the other Party in accordance with this Section.

7.2 Notices to Amtrak shall be sent to:

Christopher Zappi
Senior Strategy Manager, Amtrak Services
National Railroad Passenger Corporation
1 Massachusetts Ave NW
Washington, DC 20001

7.3 Notices to Texas Central shall be sent to:

Michael Finnegan
Managing Director
Texas Central Rail Holdings, LLC
1409 South Lamar Street
Suite 1022
Dallas, TX 75215
with a copy to:

Terence M. Hynes
Sidley Austin LLP
1501 K. Street, NW
Washington, D.C. 20005

8. Relationship of Parties

This Agreement shall not, and shall not be deemed to, create, constitute or give rise to a partnership between Amtrak and Texas Central. Amtrak and Texas Central (including TCRR) each will conduct all of its operations under the terms of this Agreement as an independent contractor and not as an agent for the other.

9. Severability

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, such provision shall be enforced to the maximum extent possible, and the remaining provisions shall remain in full force and effect.

10. Confidentiality and Passenger Information

- 10.1 Each Party (as the “**Recipient**”) shall regard as confidential and proprietary all of the information communicated to it by the other Party (as the “**Discloser**”) in connection with this Agreement, including information that is designated as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered confidential (“**Confidential Information**”).
- 10.2 The Recipient shall not, without the Discloser’s prior written consent, at any time: (a) use Confidential Information for any purpose other than in connection with the performance of its obligations under this Agreement; or (b) disclose any portion of Confidential Information to third parties, excluding the Recipient’s agents or subcontractors who are directly performing services for the Recipient in connection with this Agreement and who have agreed to the confidentiality requirements of this Agreement (or substantially similar requirements). The Recipient may disclose Confidential Information to the extent required to comply with applicable law or a valid court or governmental order. The Recipient shall, at the termination of this Agreement or at any other time requested by the Discloser, promptly return or destroy all Confidential Information.
- 10.3 The Recipient agrees that any breach of this Section 10 by the Recipient or its employees, agents or subcontractors may cause irreparable injury to the Discloser, that the Discloser may seek specific performance and injunctive or other equitable relief as a remedy for any such breach, and that the Recipient agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. The ability to seek injunctive relief shall not prohibit the non-breaching Party from seeking a remedy for actual damages.
- 10.4 Confidential Information does not include information that: (a) at the time of disclosure is, or after disclosure becomes, part of the public domain other than as a consequence of the Recipient’s breach; (b) was known or otherwise available to the Recipient prior to the disclosure by the Discloser; (c) was disclosed by a third party to the Recipient after the disclosure by the Discloser, if such third party’s disclosure neither violated any obligation of the third party to the Discloser nor was a consequence of the Recipient’s breach; (d) was independently developed by the Recipient without use of or reference to Confidential Information of the Discloser; or (e) the Discloser authorizes, in writing, for release. If any portion of the information provided by the Discloser falls within one of the above exclusions, the remainder of the information shall continue to be subject to the confidentiality requirements of this Section.
- 10.5 The Recipient shall promptly notify the Discloser in writing if it becomes aware of any misappropriation, unauthorized disclosure or use of Confidential Information by any person and shall take steps reasonably requested by the Discloser to stop, limit or otherwise remedy such misappropriation, unauthorized disclosure or use. The Recipient shall be liable for any act or omission in violation of this Section by any person who receives Confidential Information from the Recipient or on its behalf.

- 10.6 Information collected from customers by Amtrak relating to passengers purchasing TCR Rail Service and/or Transfer Service shall be deemed the Confidential Information of Amtrak. Texas Central may use such passenger information solely for purposes of providing and marketing the TCR Rail Service and Transfer Service. Use of customer and/or passenger information by a Party must be in compliance with applicable law.

11. Term, Termination and Survival

- 11.1 This Agreement shall commence as of the Effective Date and continue for an initial term ending on the third (3rd) anniversary of the commencement of TCR Rail Service, and shall continue in effect thereafter until terminated by either Amtrak or Texas Central by giving no less than ninety (90) days' advance written notice to the other Party. In the event that Texas Central ceases to pursue construction or operation of the TCR Rail Service, or Amtrak discontinues both its service to Dallas and its service to Houston, TX, this Agreement shall automatically terminate. Termination of the Agreement will not affect the Parties' obligations under this Agreement incurred prior to the termination date, including the obligation to make payments in accordance with Section 2 of the Agreement.
- 11.2 A Party may terminate this Agreement upon written notice if the other Party breaches this Agreement and fails to cure such breach within thirty (30) days after receiving notice of such breach, unless the breach is one that cannot be cured and, in such case, termination will be upon written notice thereof. Each Party may also terminate this Agreement if the other Party: (a) becomes insolvent; (b) is unable to pay its debts as they mature or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; (c) makes an assignment for the benefit of creditors; (d) is named in, or its property is subject to, a suit for appointment of a receiver; or (e) is dissolved or liquidated.
- 11.3 The following provisions shall survive termination of this Agreement: Section 2, "Pricing and Payment;" Section 3.3, "Use of a Party's Brand and Proprietary Materials;" Section 5, "Indemnification and Limitation of Liability;" Section 6, "Insurance;" Section 7, "Notices;" and Section 10, "Confidentiality and Passenger Information;" Section 12., "Records and Audit;" and Section 13, "Governing Law."

12. Records and Audit

- 12.1 During the term of this Agreement and for a period of one (1) year thereafter, Amtrak and Texas Central each shall have the right, at its own expense, to audit the records of the other Party pertaining to the obligations of the Parties pursuant to Sections 2.1 and 2.2 of this Agreement. Such audits may be conducted at any time within one (1) year of the end of the calendar month in which the Reservation and Ticketing Services to which such records apply were performed. All such audits shall be conducted at reasonable intervals, with advance notice and at reasonable locations and times. For the avoidance of doubt, all information disclosed to a Party or its representatives in connection with such an audit

will be subject to the terms of Section 10 of this Agreement. Any adjustment resulting from an audit conducted pursuant to this Section 12.1 with respect to which the Parties are in concurrence shall be reflected in a subsequent Amtrak Monthly Through Ticketing Report.

- 12.2 During the term of this Agreement and for a period of three (3) years thereafter, Texas Central acknowledges and agrees that Amtrak's Office of Inspector General (the "OIG") may, upon reasonable advance notice and times, inspect, copy and/or audit Texas Central's data and records (in hard copy and/or electronic format) related in any way to the Agreement, including without limitation, all data and records relating to its compliance with this Agreement. Texas Central agrees to maintain all such data and records throughout the term of the Agreement for three (3) years thereafter, and agrees to cooperate with all audit activities. In connection with audit and inspection activities, Amtrak and the OIG shall be afforded, upon request: (a) access to Texas Central's facilities and to data and records relating to this Agreement; (b) the opportunity to interview Texas Central's employees concerning any matter relating to the Agreement; and (c) adequate and appropriate workspace. Texas Central agrees to reimburse Amtrak, within sixty (60) days after receipt of a written request, the full amount of any undisputed audit findings, unless otherwise agreed by Amtrak. Nothing in this Agreement shall be construed to limit or derogate the rights, obligations, authority, or responsibilities of the OIG pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena.

13. Governing Law and Compliance with Laws

This Agreement shall be governed by and construed in accordance with the substantive laws, but not the choice or conflict of laws, of the District of Columbia. Each Party shall comply with all applicable laws and regulations.

14. No Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party. Any purported assignment in breach of this provision shall be null and void.

15. Entire Agreement, Conflicts and Modifications

This document and Attachment I constitute the entire agreement and understanding between the Parties regarding the subject matter hereof. This Agreement supersedes all prior discussions and agreements (other than the Voluntary Coordination Agreement) between the Parties relating to the provision of Reservation and Ticketing Services. If there is a conflict between this Agreement and the Voluntary Coordination Agreement, this Agreement shall prevail. No modification or amendment to this Agreement will be valid unless in writing and signed by the authorized representative of all of the Parties.

16. Execution in Counterparts

This Agreement may be executed in any number of counterparts and by different Parties hereto on separate counterparts, each of which executed counterpart shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

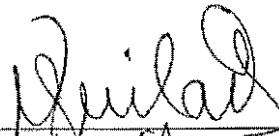
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

**NATIONAL RAILROAD PASSENGER
CORPORATION**

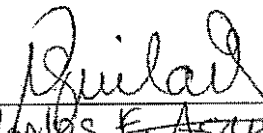
TEXAS CENTRAL RAIL HOLDINGS, LLC

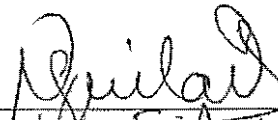
By: _____
Name:
Title:
Date:

By: 
Name: ~~Carlos F. Aguilar~~
Title: ~~CEO~~
Date: 10/16/2017

**TEXAS CENTRAL RAILROAD
AND INFRASTRUCTURE, INC.**

TEXAS CENTRAL RAILROAD, LLC

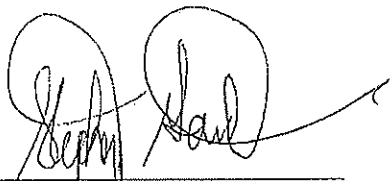
By: 
Name: ~~Carlos F. Aguilar~~
Title: ~~CEO~~
Date: 10/16/2017

By: 
Name: ~~Carlos F. Aguilar~~
Title: ~~CEO~~
Date: 10/16/2017

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

NATIONAL RAILROAD PASSENGER
CORPORATION

TEXAS CENTRAL RAIL HOLDINGS, LLC

By: 
Name: STEPHEN J. GARDNER
Title: EXECUTIVE VICEPRESIDENT
Date: 18 OCTOBER 2017

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

TEXAS CENTRAL RAILROAD
AND INFRASTRUCTURE, INC.

TEXAS CENTRAL RAILROAD, LLC

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

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

**Attachment I
Licensed Marks**

For Amtrak:

1. AMTRAK
US PTO Registration Number 960,643
2. AMTRAK and Vertical Travelmark Design
US PTO Registration Number 2,602,178



3. AMTRAK and Horizontal Travelmark Design
US PTO Registration Number 2,632,665



EXHIBIT 2

Finance Docket No. 36025

**TEXAS CENTRAL RAILROAD AND INFRASTRUCTURE, INC. &
TEXAS CENTRAL RAILROAD, LLC
–AUTHORITY TO CONSTRUCT AND OPERATE –
PETITION FOR EXEMPTION FROM 49 U.S.C. § 10901 AND SUBTITLE IV–
PASSENGER RAIL LINE BETWEEN DALLAS, TX AND HOUSTON, TX**

PETITION TO REOPEN

VOLUNTARY COORDINATION AGREEMENT

Between

Texas Central Rail Holdings, LLC, Texas Central Railroad & Infrastructure, Inc.,

Texas Central Railroad, LLC

And

National Railroad Passenger Corporation

This Voluntary Coordination Agreement (the "Agreement") dated as of December 6, 2016, is by and among Texas Central Rail Holdings, LLC, Texas Central Railroad & Infrastructure, Inc., and Texas Central Railroad, LLC (collectively, "Texas Central") and the National Railroad Passenger Corporation ("Amtrak").

WHEREAS, Texas Central and Amtrak support the development and enhancement of intercity and high-speed passenger rail service as part of a national passenger rail system capable of meeting the nation's transportation needs; and

WHEREAS, Amtrak currently operates a national network of intercity passenger train routes serving over 500 destinations in 46 states, the District of Columbia, and three Canadian provinces, including a route between Chicago, IL and San Antonio, TX with an intermediate station stop in Dallas, TX (the "*Texas Eagle*" service) and a route between New Orleans, LA and Los Angeles, CA with an intermediate station stop in Houston, TX (the "*Sunset Limited*" service); and

WHEREAS, Amtrak does not currently provide direct passenger rail service between Dallas and Houston, TX; and

WHEREAS, Amtrak's Northeast Corridor from Boston to Washington is the only high-speed rail line in the United States, and Amtrak has unique experience and expertise in constructing, operating and maintaining high-speed rail lines in compliance with U.S. safety and other regulatory requirements; and

WHEREAS, Texas Central plans to construct and operate an approximately 240-mile high-speed passenger rail line between Dallas and Houston, TX with an intermediate station stop serving Bryan-College Station/Huntsville, TX (the "Texas Central Line"); and

WHEREAS, Texas Central will hold itself out to serve passengers traveling both within Texas and interstate; and

WHEREAS, Texas Central and Amtrak desire to facilitate the ability of interstate and intrastate rail passengers to travel between points on the Texas Central Line and points throughout Amtrak's national network by providing convenient connections between Texas Central and Amtrak trains in Dallas and Houston, TX, and offering through ticketing for such travel; and

WHEREAS, Texas Central desires to utilize, and Amtrak desires to provide, certain expertise possessed by Amtrak to facilitate the development of the Texas Central Line.

NOW THEREFORE, the parties to this Agreement hereby agree as follows:

1. Through Ticketing. Texas Central and Amtrak hereby agree to offer through ticketing to passengers traveling between points on their respective rail systems. Passengers traveling to Dallas or Houston, TX on Texas Central or Amtrak trains, and connecting to trains of the other party in those cities, will be able to purchase a through ticket valid for transportation on both Texas Central and Amtrak trains, and on a connecting transfer service between the Amtrak and Texas Central stations, from their origin to their destination. To the extent provided by Texas Central, such connections, ticketing, and rail passenger services are referred to collectively the "Services."

2. Fares and Schedules. Texas Central and Amtrak each shall be solely responsible for determining the fares, schedules and other terms and conditions applicable to travel on their respective trains serving Dallas and Houston, TX. Texas Central and Amtrak each shall make available to the other party current information regarding schedules and other terms and conditions for travel on their respective trains. Texas Central shall provide Amtrak with the fares to be charged to through ticketed passengers for travel on Texas Central (including the connecting Transfer Services in Dallas and Houston, TX).

3. Through Ticket Sales. Texas Central and Amtrak agree that, initially, the most cost efficient and effective way of making tickets for through travel available is via Amtrak's reservation and ticketing systems. Use of those systems will enable passengers to make reservations for and purchase through tickets via Amtrak's distribution channels, including Amtrak's website and 800 number, and at rail stations on Amtrak's national network. Amtrak and Texas Central shall cooperate in establishing terms and conditions for through tickets and in developing through ticketing procedures. Texas Central will pay the costs that Amtrak incurs to make through ticketing available via Amtrak's reservation and ticketing systems, including wage, salary, benefit, overhead and contracted costs attributable to programming and the backend accounting system, plus a 10% management fee (collectively "Amtrak costs"). Within thirty (30) days of the Effective Date, as defined below, Texas Central will remit to Amtrak a payment of Seventy-Five Thousand Dollars (\$75,000.00) that will be applied to the first Seventy Five Thousand Dollars (\$75,000.00) of costs incurred by Amtrak in making through ticketing available. Thereafter, Texas Central will reimburse Amtrak for any additional costs as they are incurred. If Texas Central desires to have Amtrak ticketing kiosks installed to sell through tickets at Texas Central's stations, Texas Central will bear the costs associated with those kiosks. On a monthly basis, Amtrak shall remit to Texas Central the portion of through ticket revenues collected by Amtrak that is attributable to travel on Texas Central's trains, net of a 15% fee for Amtrak's hosting of Texas Central reservations and ticketing on its systems and for Amtrak accounting and administration.

4. Marketing of Connecting Passenger Service. The parties agree to cooperate in marketing through passenger service on Amtrak and Texas Central trains, including:

a. advertising the availability of connecting service on their respective websites and through other sales channels, in train schedules, and in other marketing materials; and

b. promoting Texas Central/Amtrak connecting service in connection with special events such as Mardi Gras and major sporting events.

5. Frequent Traveler Programs. Texas Central and Amtrak agree to explore opportunities to utilize Amtrak's Guest Rewards program and a frequent traveler program to be developed by Texas Central to promote through travel on their respective trains. This may include honoring travel points earned in connection with transportation on one party's trains for award travel on the other party's trains.

6. Connections Between Services. To facilitate passenger connections between the rail passenger services of Texas Central and Amtrak, Texas Central agrees to provide, at its expense, a transfer service (the "Transfer Service") between the stations served by Texas Central and Amtrak in Dallas and Houston, TX. The Transfer Service will be timed to provide convenient connections in both directions with the Amtrak trains serving those cities, will commence concurrent with the initiation of Texas Central passenger rail service, and shall have the capability to accommodate passengers with disabilities including passengers traveling with/in mobility devices (wheelchairs, etc.). Any revenue collected in connection with the provision of the Transfer Service between Texas Central and Amtrak stations will accrue to Texas Central. Texas Central and Amtrak will jointly evaluate other measures to facilitate connections and enhance the experience of passengers traveling on through tickets between points served by Texas Central and Amtrak trains.

7. Sale of Texas Central Tickets by Amtrak. The parties agree to explore opportunities for providing reservations and tickets for travel solely on the Texas Central Line through Amtrak's reservations and ticketing systems and all of Amtrak's distribution channels, including those that target international sales. Compensation for the sale of such tickets shall be upon such terms as the parties may agree.

8. Additional Services. Amtrak hereby agrees to offer to Texas Central, and Texas Central agrees to purchase from Amtrak, additional services in connection with the development of the Texas Central Line ("Additional Services") subject to the terms of this Section 8. Such Additional Services may include training of Texas Central operating personnel at Amtrak's national training center or elsewhere; marketing, distribution and sales services (other than the ticketing services described in Sections 3 and 7); consulting with respect to project development, safety, security, and compliance with federal regulations; and other services associated with the planning, construction, and operation of the Texas Central Line that the parties may mutually agree are necessary or desirable; provided, however, that Texas Central shall not be required to purchase any particular Additional Services. Texas Central shall compensate Amtrak for Additional Services at the rates customarily charged by Amtrak for the provision of those services to commercial customers. For Additional Services not provided to other commercial customers, Amtrak's charges will, unless otherwise agreed by Texas Central and Amtrak, equal the full cost Amtrak incurs to provide the Additional Services, including wage, salary, benefit, overhead and contracted costs, plus a 12.5% management fee (collectively "Amtrak charges").

Unless otherwise agreed, the total Amtrak charges for the Additional Services that Texas Central will purchase pursuant to this Section 8 shall not be less than Three Million Dollars (\$3,000,000.00) during the Initial Term of this Agreement as defined in Section 11. Texas Central will remit to Amtrak an initial payment of Two Hundred and Fifty Thousand Dollars (\$250,000.00) (the "Additional Services Down Payment") within sixty days after the later of (i) the date upon which the Federal Railroad Administration ("FRA") issues a Record of Decision ("ROD"), or a determination that an ROD is not required, in connection with the Environmental Impact Statement for the Texas Central Line, and (ii) the date upon which FRA approves the Project Rule of Particular Applicability ("RPA"), or issues a determination that an RPA is not required, for the Texas Central passenger service. The Additional Services Down Payment will be applied to the first Two Hundred and Fifty Thousand Dollars (\$250,000.00) of Amtrak charges for Additional Services provided to Texas Central. In the event that FRA does not issue the ROD or the RPA (or alternatively a determination that the ROD or the RPA is not required), or Texas Central abandons or discontinues the development or operation of the Texas Central Line, Texas Central's obligation under this Section to purchase not less than \$3,000,000.00 of Additional Services from Amtrak shall terminate; provided, however, that Texas Central shall nevertheless be required to pay the Additional Services Down Payment (if not paid previously) within sixty days after the earlier of the date on which Texas Central abandons or discontinues the development or operation of the Texas Central Line or three (3) years from the Effective Date, and Amtrak shall not be required to refund any portion of the Additional Services Down Payment paid previously, unless prior to such payment being due Amtrak has discontinued both its service to Dallas and its service to Houston, TX.

9. Coordination Between Amtrak and Texas Central. Within 60 days after the Effective Date, representatives of Amtrak and Texas Central responsible for marketing, sales, reservations/information technology, and construction and operations planning will meet in Washington to discuss issues associated with the development of through ticketing; the opportunities for Amtrak's provision of the Additional Services; cooperation with regard to frequent traveler programs and the sale of Texas Central tickets by Amtrak discussed above; and other mutually beneficial opportunities for coordination and enhancement of their services. Thereafter, Amtrak and Texas Central will meet in person or via conference call as necessary to coordinate the development of Amtrak-hosted through ticketing with the development of Texas Central's reservations and ticketing systems, and to advance other opportunities for coordination and cooperation they mutually agree to pursue.

10. Indemnity and Insurance.

a. Amtrak, its operating carriers, officers employees, agents and servants, shall not be liable for, and Texas Central agrees to defend, indemnify and hold harmless, Amtrak, its operating carriers, its officers, employees, agents and servants, from and against any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including reasonable attorneys' fees and expenses) of whatsoever nature and by whomsoever made, brought or recovered as a result of loss or damage to property or injury or death to persons, directly related to the Transfer Service and the passenger rail services of Texas Central, or arising out of Amtrak's provision of Additional Services.

b. Texas Central, its officers employees, agents and servants, shall not be liable for, and Amtrak agrees to defend, indemnify and hold harmless, Texas Central, its officers, employees, agents and servants, from and against any and all claims, demands, actions, proceedings, suits, costs, expenses, judgments, damages and liabilities (including attorneys' fees and expenses) of whatsoever nature and by whomsoever made, brought or recovered as a result of loss or damage to property or injury or death to persons, directly related to the passenger rail services of Amtrak.

c. In the event that any claim is made or suit is commenced against either party hereto asserting a liability that is the responsibility of the other party pursuant to this Section 10, such party shall give prompt written notice to the responsible party, and shall cooperate with the responsible party's management of such claim or suit and furnish all available communications, legal processes, data, papers, records, and other information material to such claim or suit as the responsible party may from time to time require.

d. Texas Central and Amtrak each shall procure and maintain, at its own cost and expense during the entire period of performance under this Agreement, the types of insurance specified below. Both parties shall submit to the other evidence of the required coverage, prior to the commencement of Transfer Services and on an annual basis thereafter. All insurance shall be procured from insurers authorized to do business in the jurisdiction(s) where the Transfer Services are to be performed by Texas Central. The insurance shall provide for thirty (30) day written notice to be given to the other party in the event coverage is substantially changed, canceled, or not renewed. Amtrak shall meet these insurance requirements through its corporate self-insurance program.

- i. Worker's Compensation and Employers Liability Insurance, complying with the requirements of the statutes of the jurisdiction(s) in which the transportation services will be performed, covering all employees providing the Services specified in the Agreement, including contractors of any tier. Employer's Liability coverage with limits of liability of not less than \$1,000,000 each accident or illness shall be included. If either party or any of its contractors is considered a railroad subject to the provisions of the Federal Employers Liability Act (FELA) rather than state Workers Compensation laws (in the case of Texas Central after the commencement of the passenger rail services), the party shall provide the required FELA coverage for employee injuries and the required limits shall be not less than \$2,000,000 per occurrence and in the annual aggregate.
- ii. Commercial General Liability Insurance (on the most current ISO form CG 00 01), covering liability with respect to all services to be provided and all obligations assumed by either party under the terms of this Agreement, including contractual liability, personal injury liability and advertising liability coverage. All Railroad exclusions are to be deleted. Each party shall name the other party as an additional insured with respect to their services to be provided under this Agreement. Coverage under this policy, or policies, shall have limits of liability of not less than

\$2,000,000 per occurrence and in the annual aggregate, combined single limit for bodily injury, property damage (including loss of use) liability and, when applicable, product liability and completed operations.

- iii. Such other insurance or additional insurance coverage as may be required of either party by applicable law, or that Amtrak may require in conjunction with the provision of specific Additional Services.
- iv. Both parties and their respective contractors of any tier, and the parties' respective insurers, shall waive subrogation against the other party with respect to any insurance provided under this Agreement.

11. Effective Date and Term. This Agreement shall be effective as of the date first written above (the "Effective Date"). This Agreement shall remain in effect until the third anniversary of the commencement of Texas Central passenger rail service (the "Initial Term"), and shall continue in effect thereafter until terminated by either party by giving no less than ninety (90) days written notice of such termination to the other party. In the event that Texas Central ceases to pursue construction or operation of the Texas Central Line, or Amtrak discontinues both its service to Dallas and its service to Houston, TX, this Agreement shall automatically terminate. Termination of the Agreement will not affect the parties' obligations under this Agreement incurred prior to the termination date, including the obligation to make payments in accordance with Sections 3 and 8 of the Agreement.

12. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which executed counterparts shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized officers, as of the date first written above.

Texas Central Rail Holdings, LLC
By: Timothy B. Keith, President



National Railroad Passenger Corporation
By: Charles W. Moorman IV, President
and CEO

Texas Central Railroad & Infrastructure, Inc.
By: Timothy B. Keith, President

Texas Central Railroad, LLC
By: Timothy B. Keith, President

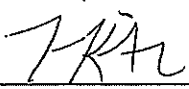
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