

**AGREEMENT IN PRINCIPLE BETWEEN STATE OF FLORIDA
AND
NATIONAL RAILROAD PASSENGER CORPORATION
IN SUPPORT OF FFY 2010 PRIIA GRANT PROGRAM**

THIS AGREEMENT IN PRINCIPLE (“AIP”) made as of the Sixth day of August 2010, by and between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (recodified at 49 U.S.C. § 24101 et seq.) and the laws of the District of Columbia and having its principal office and place of business in Washington, DC (hereinafter referred to as “Amtrak”), and the State of Florida, acting by and through its Department of Transportation (hereinafter referred to as “State”).

WHEREAS, the Federal Railroad Administration (“FRA”) has established a grant application process to fund projects for high-speed and intercity passenger rail authorized by the Passenger Rail Investment and Improvement Act of 2008 (“PRIIA”) and the FFY 2010 Consolidated Appropriations Act (Title I of Division A of Pub. L. 111-117, December 16, 2009) (“FFY 2010 DOT Appropriations Act”), (“FRA Grant Process”), and, on July 1, 2010, has issued interim program guidance governing the FRA Grant Process (75 Fed. Reg. 38344, et seq.) (“FRA Interim Guidance”); and

WHEREAS, the State desires to submit one or more grant applications pursuant to the FRA Grant Process (“the Application(s)”); and

WHEREAS, a prerequisite for grants is that the applicant reach, at a minimum, agreements in principle with the railroad that operates or will operate the benefiting high-speed or conventional speed intercity passenger rail service, and with the host railroads upon whose property construction improvements may be performed (“Host Railroad Agreement”); and

WHEREAS, the State has requested that Amtrak enter into this AIP in support of State’s Application(s) pursuant to the FRA Grant Process, thereby stating its commitment to take all steps within its control to ensure the achievement of the public benefits (and particularly all operational benefits) of the Service Development Program and Individual Project that are described in the State’s application(s); and

WHEREAS, Amtrak is authorized by 49 U.S.C. § 24101 et seq. to operate intercity passenger rail service in the United States; and

WHEREAS, Amtrak is willing to provide the requested intercity passenger rail operations, subject to the terms and conditions contained herein; and

WHEREAS, the State is authorized by applicable State law to enter into this AIP on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Services to be Provided by Amtrak

- (a) Subject to the conditions set forth herein, Amtrak will provide the following service (“New Service”):

New Passenger Rail Service providing two round trips per day, 351 miles between Jacksonville and Miami, FL consisting of; (a) a section of Amtrak Train Nos. 91 / 92, providing intra-Florida corridor service between Jacksonville and Miami as well as interstate long-distance service between New York and Miami, and, (b) an intra-Florida corridor train service between Miami and Jacksonville.

- (b) Amtrak’s support for the Application(s), and its commencement of the operation of the New Service, are conditioned on the following:

- (1) Submission by the State of Application(s) that comply with applicable requirements of PRIIA, FFY 2010 DOT Appropriations Act, and the FRA Interim Guidance, including the cost sharing provisions in Section 3.3, of the FRA Interim Guidance, including provision of a proportionate share of costs and identification of a viable funding source to absorb any cost overruns, and FRA’s award of sufficient funds to the State pursuant to such Application(s);
- (2) Execution by the State and Amtrak of agreements governing
 - (i) the provision by the State of stations, rolling stock as described in Section 1(c) below, equipment maintenance facilities, and other facilities required for the New Service;
 - (ii) the terms under which any Amtrak-owned equipment to be utilized for the New Service will be provided, including State payments for any associated capital costs and for use of such equipment;
 - (iii) implementation of the New Service, including mobilization, satisfaction of safety requirements, regulatory compliance, training and qualification of employees, and State funding of associated costs incurred by Amtrak; and
 - (iv) terms and conditions for operation of the New Service by Amtrak, including State funding of costs associated with the New Service in accordance with Amtrak’s then-current state supported service pricing policy as supplanted by the costing methodology developed under Section 209 of PRIIA;

- (3) Execution by the State and host railroad(s), and Amtrak, if applicable, of Host Railroad Agreement(s), such agreements to include: (a) a description of project(s) to be completed by the host railroad(s) related to the New Service as described in Section 1(a) ("Project(s)"); and (b) clearly defined service outcomes associated with the investment to be made in host railroad(s) infrastructure, including number of frequencies, scheduled trip times, and maximum delay minutes per trip, that are consistent with any then-current on-time performance and delay standards issued by the FRA or other agencies with regulatory authority (sample service outcomes provisions are appended as Exhibit A);
 - (4) Execution of agreements, or amendments to agreements, between Amtrak and the host railroad(s) regarding operation of the New Service, the State having indicated its support to host the New Service between West Palm Beach and Miami, FL over rail line(s) owned by the State;
 - (5) Satisfactory completion of stations, facilities and other infrastructure improvements identified, in the agreements referenced above, as necessary for operation of the New Service; and
 - (6) Completion of hiring, training and qualifying Amtrak crews deemed by Amtrak as necessary to support the New Service, and satisfaction of all legal, regulatory, safety and other prerequisites to initiation of the New Service.
- c. The State is also applying for FFY 2010 DOT Appropriations Act funding for a project or projects ("the Project(s)") for the acquisition of, or lease from Amtrak's existing equipment pool of two (2) locomotives, eleven (11) coach cars, four (4) baggage cars, four (4) sleeper cars, one (1) food service/business class cars and two (2) cab cars or non-powered locomotives ("New Equipment") to support the New Service. Amtrak will operate and maintain the New Equipment, and utilize it on the Jacksonville to Miami service to be operated by Amtrak under agreement with State, conditioned on the following:
- (1) Submission by the State of Application(s) that comply with applicable requirements of PRIIA, FFY 2010 DOT Appropriations Act, and the FRA Interim Guidance, including Section 3.5.6 and the cost sharing provisions in Section 3.3, including provision of a proportionate share of costs and identification of a viable funding source to absorb any cost overruns, and FRA's award of sufficient funds to the State pursuant to such Application(s);

- (2) Satisfactory completion of the Project including the facility construction and/or improvements necessary to accommodate the Projects, as jointly determined by the State and Amtrak;
 - (3) Representation by the State that the Projects will comply with all applicable laws and regulations;
 - (4) Execution by the State and Amtrak of an agreement providing for payment of Amtrak costs associated with review and approval of final equipment specifications, final testing and final acceptance of the Project; the deployment of the Project including provisions for a deployment plan, labor, parts, materials, and spare parts availability; any facility modifications necessary to accommodate the Project; warranty administration (if applicable); training of Amtrak employees on the operation and maintenance of the New Equipment; and relationship with State equipment vendors;
 - (5) Agreement by Amtrak and the State that any additional costs to Amtrak as a result of the operation and maintenance of the Project will be borne by the State. Reimbursement for Amtrak's operation and maintenance of the Project by the State shall be consistent with the then-current Amtrak state supported pricing policy as supplanted by the costing methodology developed under Section 209 of PRIIA.
 - (6) Acceptance of the condition of New Equipment by Amtrak, to include the New Equipment's operational compatibility with Amtrak's existing equipment pool, Amtrak's approval of the final Specification for the New Equipment, and Amtrak's concurrence with and participation in, to the extent deemed necessary by Amtrak, the State's final testing and acceptance program for the New Equipment;
 - (7) Composition of Future Fleet. The State understands and agrees that, subject to the operating agreement between Amtrak and the State in force at the time, in order for Amtrak to efficiently maintain and manage the fleet, the New Equipment may be added to Amtrak's existing equipment pool that serves several Amtrak routes, including the New Service. As a result, the New Equipment or equivalent leased equipment may not be solely dedicated to the New Service.
2. Reimbursement of Pre-Award Costs. Pursuant to Section 3.5.5 of the FRA Interim Guidance, the State agrees that it will include in its Application(s) a request for reimbursement of pre-award costs that may be incurred by Amtrak in support of the Application(s) but for which the State has not otherwise agreed to reimburse Amtrak.
 3. Term and Termination. The parties agree that the purpose of this AIP is to support FFY 2010 Applications. Consequently, this AIP shall automatically

in those cases, Amtrak cannot, at this time attest to the accuracy of such information or other anticipated service outcomes included in the State's Application(s). The parties agree to continue to work together to provide for the reasonable review of all such information, and update any and all such information as required and recognize that any commitments made by Amtrak in this Agreement based upon this not-yet-reviewed or validated information are subject to change upon further review and validation.

7. Modification. This AIP constitutes the entire agreement between the parties and supersedes any and all prior representations, understandings or agreements between the parties, whether oral or written, concerning the subject matter hereof. This AIP or any part hereof may not be changed, amended or modified, except by written agreement of the parties as signed by duly authorized representatives of both parties.

8. Special Requirement. FDOT agrees that within the application submitted to the U.S. Department of Transportation and the FRA for [FEC] Project funding under the FRA's High Speed and Intercity Passenger Rail program, it shall warrant that it will not commence implementation of the [FEC] Project and that it shall request that the Secretary withhold any funds granted for the [FEC] Project unless and until: (i) FDOT is authorized under Florida law to enter into an enforceable "No-Fault" liability agreement with Amtrak consistent with existing law pertaining to FDOT and railroads, (ii) FDOT obtains adequate insurance and a self-insurance retention fund to fulfill its obligations under such an agreement; and (iii) Amtrak and FDOT enter into such a "No-Fault" agreement.. Notwithstanding any other provision of this agreement, Amtrak shall have no obligation to operate or provide services in connection with the additional Amtrak service resulting from the [FEC] Project until such time as FDOT is authorized to enter into, and FDOT and Amtrak have executed, such a "No- Fault" agreement.

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SERVICE OUTCOMES FOR INTERCITY PASSENGER SERVICE [SAMPLE]

As the projects identified in the table below are completed, Host commits that the following service outcomes shall be achieved for each intercity passenger train operating on Host between X and Y:

[[Note: Numbers are illustrative only; table to be completed based on modeling results agreed to by the parties. Complete a separate table for each Amtrak service and train origin/destination on the route receiving investment]]

Phase No.	Description (Upon Completion of Listed Projects)	Round Trips per Day	Scheduled Trip Time (X to Y)	Delay Ceiling (Maximum Host-Responsible Delay Minutes per Trip)
1	<i>Baseline – Current Service</i>	2	3h 30m	17
2	Operating Improvements	2	3h30m	14
3	Maintenance Improvements	2	3h30m	12
4	Projects 1, 2, and 3	3	3h30m	11
5	Projects 3 and 4	3	3h15m	9
6	Projects 5, 6, 7, and 8	4	3h15m	8
7	Projects 9 and 10	4	3h0m	7

“Host Responsible Delay Minutes” – shall be as measured using Amtrak’s Conductor Delay Reports (CDRs) for the following delay categories: Freight Train Interference (FTI), Passenger Train Interference (PTI), Commuter Train Interference (CTI), Routing (RTE), Slow Orders (DSR), Signals (DCS), Maintenance of Way (DMW), and Detour (DTR).

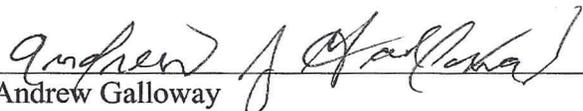
“Delay Ceiling” – shall be defined as the maximum allowable Host-Responsible Delay Minutes per one-way Amtrak trip. Host's compliance with the Delay Ceiling will be determined by comparing the Delay Ceiling to the “Monthly Actual Average Host-Responsible Delay Minutes per Trip” for each Amtrak Train, which shall be calculated monthly for each train as the total of Host-Responsible Delay Minutes for each calendar month divided by the number of trips operated during the calendar month. Temporary adjustments to the Delay Ceiling may be negotiated by the parties due to major track maintenance projects.

If, in any calendar month, the Monthly Actual Average Host-Responsible Delay Minutes per Trip on any Amtrak train operating between X and Y exceeds the Delay Ceiling in the table above, Host shall make, at Host’s sole expense, any operational, maintenance, or capital improvements necessary to reduce Monthly Actual Average Host-Responsible Delay Minutes per Trip on intercity passenger trains to or below the Delay Ceiling within two calendar months following the initial failure to achieve the Delay Ceiling.

Upon completion of each of the projects included in Phase xx above, Host and Amtrak shall amend Appendix I and Appendix V of the _____ (the “Amtrak-Host Operating Agreement”) as required to reflect the infrastructure improvements and service outcomes in the above table.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first hereinabove written.

NATIONAL RAILROAD PASSENGER CORPORATION

By: 
Andrew Galloway
Assistant Vice President Policy and Development

STATE OF FLORIDA

By: 
for Kevin J. Thibault, P.E.
Title: Executive Director, Florida Rail Enterprise



Florida Department of Transportation

CHARLIE CRIST
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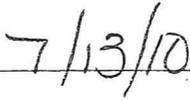
STEPHANIE C. KOPELOUSOS
SECRETARY

DELEGATION OF AUTHORITY

I, Stephanie C. Kopelousos, Secretary of the Florida Department of Transportation, delegate to Ananth K. Prasad, as the Assistant Secretary for Engineering and Operations, Lora B. Hollingsworth, as the Assistant Secretary for Finance and Administration, and Deborah L. Hunt, as the Assistant Secretary for Intermodal Systems Development, the authority and responsibility to take action on my behalf at anytime during my absence from the Department headquarters in Tallahassee. I also rescind any prior delegations to the contrary.



Stephanie C. Kopelousos, Secretary
Florida Department of Transportation



Date