

LEASE AGREEMENT

THIS LEASE, made and entered into this 24th day of April, 1998,

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA BARBARA, a body public and politic, hereinafter referred to as "AGENCY",

and

NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act and operating as a District of Columbia corporation with offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002, hereinafter referred to as "AMTRAK",

W I T N E S S E T H:

WHEREAS, AGENCY has acquired the land and improvements at Santa Barbara Railroad Station in Santa Barbara, California including the railroad station building and surrounding site, hereinafter referred to as "Facilities", described in Exhibit A, attached hereto and made a part of this Lease; and

WHEREAS, AMTRAK presently uses a portion of the Facilities located at 209 State Street and desires to lease a portion of the Facilities for the purposes of operating a passenger railroad station, which shall include the railroad station building, waiting rooms, restrooms, ticket offices, baggage room, crew lounge, offices, and parking lots at the Santa Barbara Railroad Station building and surrounding area hereinafter referred to as "Premises", described in Exhibit B, pages 1 and 2, attached hereto and made a part of this Lease; and

WHEREAS, AMTRAK acknowledges and consents to the historic renovation of the railroad station building and the construction of certain parking lots as part of the Facilities; and

WHEREAS, AGENCY is willing, under terms and conditions hereinafter set forth, to lease the Premises to AMTRAK.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree that:

1. **PREMISES.** The Premises, located at 209 State Street, shall include only the interior of the passenger depot building (approximately 6,140 sq. ft.), the second floor area and the outdoor passenger waiting areas within the eaves of the Santa Barbara Railroad Station building. AMTRAK expressly understands and hereby acknowledges that the parking lots and platforms adjacent to the Premises are not a part of the Premises.

2. **TERM.** The term of this Lease shall be for ten (ten) years commencing on April 21, 1998 and continuing until April 21, 2008 unless sooner terminated upon thirty (30) days written notice should AMTRAK relocate or terminate its rail passenger service to Santa Barbara.

3. **RENTAL TERMS.** AMTRAK shall pay to AGENCY base rent at the rate of ONE DOLLAR (\$1.00) per year, payable in advance on the first day of each year.

4. **MAINTENANCE.** The maintenance of the railroad station building, grounds, adjacent platform areas and the adjacent parking lots shall be as follows:

a. **BUILDING REPAIR AND REPLACEMENT OF FIXTURES:** AGENCY shall be responsible for the cost of maintaining the building utility systems, building structure, foundation, roof, interior and exterior walls and flooring. Such maintenance shall be the same as provided by the City of Santa Barbara at its other publicly owned facilities. The responsibility for the cost of such maintenance does not include the cost to repair any damage to the Premises caused by the willful acts or misconduct of AMTRAK, its agents or customers.

b. **OPERATIONAL MAINTENANCE:** AMTRAK shall be responsible for all other maintenance concerns relating to AMTRAK operations on the Premises. Such maintenance shall include, but not be limited to, repair of accidental damage to Premises, repair and maintenance of restroom plumbing valves, toilets and fixtures, and other operational maintenance of a similar nature. All repairs shall be made in good and workmanlike manner to the condition in which it existed prior to the accidental damage.

c. **CUSTODIAL SERVICES:** AGENCY shall contract for all custodial services for the cleaning and servicing of the interior of the railroad station building, including the restrooms, and for the cleaning and servicing of the platform areas. Such custodial services shall be comparable to the levels provided by the City of Santa Barbara to its other publicly owned facilities and consistent with the Maintenance Standards as described in Exhibit C, pages 1, 2 and 3, attached hereto and made a part of this Lease. AMTRAK shall reimburse AGENCY on a monthly basis for

custodial service costs within thirty (30) days of the receipt of each request for reimbursement from the Agency. At any time during the term of this Lease, AMTRAK may contract directly for the provision of custodial services, provided that the custodial services are consistent with the Maintenance Standards. AMTRAK shall provide AGENCY ninety (90) days written notice of its intention to contract for such services and AMTRAK shall obtain approval of AGENCY, which approval shall not be unreasonably withheld or delayed, prior to contracting for such services.

5. UTILITIES. AMTRAK shall be responsible for and pay all charges for utilities used by AMTRAK on the Premises. Responsibility and payment for all utility service charges generated shall be as follows:

a. **ELECTRICAL:**

1. AMTRAK is responsible for and shall pay for all electrical service required for the Premises, the railroad platform and exterior station building lights.

2. AGENCY is responsible for and shall pay for all electric costs for the parking lot.

b. **WATER:**

1. AMTRAK is responsible for and shall pay for all water costs for interior use and any other water utility service provided for AMTRAK operations.

2. AGENCY is responsible for and shall pay for all water costs associated with landscaping at the railroad station building, the parking lots and other landscaped areas appurtenant to the railroad station building.

c. **COMMUNICATION:** AMTRAK is responsible for and shall pay for all its own telephone, facsimile and other communication services used for AMTRAK operations on the Premises.

6. TRASH. AMTRAK is responsible for and shall pay for all trash service required for disposal of trash generated by AMTRAK operations on the Premises.

7. PARKING LOT. AGENCY shall provide four (4) exclusive parking spaces for AMTRAK personnel, and parking for AMTRAK passengers at a maximum rate of \$2.00 per day for each 24 hour period pursuant to a written agreement between the AGENCY and the City of Santa Barbara. The City of Santa Barbara will operate and maintain the parking lot as a paid parking lot available to the general public. AMTRAK employee parking spaces shall be conveniently located near the Premises. AGENCY shall also provide convenient

handicap parking spaces for the general public near the Premises. AMTRAK agrees to cooperate with AGENCY and City of Santa Barbara in establishing a mutually acceptable ticket stamp or voucher program for parking validation in order to provide adequate parking for AMTRAK passengers.

8. AIR RIGHTS. This Lease does not extend to the air rights above or around the station building.

9. PERMITTED USE.

a. **TRANSPORTATION FACILITY.** AMTRAK shall continuously use the Premises exclusively as a railroad passenger transportation facility, to include ticketing, baggage, Amtrak Express and the U. S. Mail in connection with AMTRAK's railroad operation adjacent to the Premises. AMTRAK shall not use the Premises for any other use or purpose without the express written consent of AGENCY, which consent shall not be unreasonably withheld or delayed.

b. **COVENANT FOR CONTINUED SERVICE.** AMTRAK understands and acknowledges that AGENCY'S agreement to lease the Premises is based upon an expectation that AMTRAK will provide passenger rail service to the Premises of not less than ten (10) trains arriving and departing each day. In the event AMTRAK passenger rail service to the Premises falls below five (5) trains arriving and departing per day, AGENCY retains the right to terminate this lease upon providing AMTRAK with not less than 180 days written notice of such termination.

10. HISTORIC RENOVATION. During the historic renovation of the railroad station building AGENCY shall provide alternative facilities for AMTRAK operation on the property adjacent to the railroad tracks, just westerly of Chapala Street. AGENCY shall be responsible for all costs to relocate AMTRAK'S operation to the temporary facilities except as specified below:

a. **OPERATING EQUIPMENT AND FURNITURE.** AMTRAK shall be responsible for and shall pay for all costs to relocate AMTRAK operating equipment and furniture to the temporary facilities upon notice that facilities are available. AMTRAK shall be responsible for and shall pay for all costs to relocate AMTRAK operating equipment and furniture back to the railroad station building upon completion of the renovation.

b. **COMMUNICATION LINES.** AGENCY shall provide connections for all communication lines (i.e. telephones, GTE, advance light signal system, computer lines, etc.) to a location adjacent to the temporary facilities. AMTRAK is responsible for and shall pay for connection of all communication lines (i.e. telephones, GTE, advance light signal system, computer lines, etc.) to the temporary facilities from the AGENCY provided connections. As a component of the station renovation, AGENCY shall provide new underground electrical and communication service lines that will

provide service to AMTRAK work areas. AMTRAK shall be responsible for connecting AMTRAK operating equipment to these lines.

c. PUBLIC ADDRESS, VIDEO MONITOR SYSTEMS AND TELEVISION SERVICES. AMTRAK shall be responsible for and shall pay all costs to install any public address system, video monitoring system or television service at the temporary facilities.

11. **TAX EMEMPT.** AGENCY understands and acknowledges that, notwithstanding any other provision of law, AMTRAK is exempt from any taxes or other fees imposed by any State, political subdivision of a State, or local taxing authority which are levied on AMTRAK, or any railroad subsidiary thereof, after September 30, 1982. Provided, however, that notwithstanding any provision of law, AMTRAK shall not be exempt from any taxes or other fees that it was required to pay as of September 10, 1982. Taxes and fees levied on AMTRAK or any railroad subsidiary thereof by States, political subdivisions of States, or local taxing authorities with respect to periods Amtrak was required to pay as of September 10, 1982 shall be payable in proportion to the part of the relevant tax period which elapsed prior to such date. Notwithstanding the provision of section 1341 of Title 28, the United States district courts shall have original jurisdiction over any civil actions brought by AMTRAK to enforce the exemption conferred hereunder and may grant equitable or declaratory relief as requested by AMTRAK.

12. **CONCESSIONS.** AGENCY shall have the right to review and conditionally approve or deny any and all concessions (food, beverage, etc.) which may be provided by Amtrak on the Premises. AGENCY reserves the right to participate in concession revenues which may be generated by on-site concessionaires on the Premises. AMTRAK may not sublease any portion of the Premises without the express written consent of AGENCY, which consent shall not be unreasonably withheld, delayed or conditioned.

13. **TELEPHONE REVENUES.** AGENCY will contract directly for the installation of all pay telephones on the Premises.

14. **COMPLIANCE WITH LAWS.** AMTRAK acknowledges that no trade or occupation shall be conducted on the Premises or use made thereof which will be unlawful or contrary to any applicable law, municipal law or ordinance in force in the City of Santa Barbara.

AGENCY and AMTRAK will comply with the requirements of all applicable state and federal law including specifically, but not limited to, the Americans with Disabilities Act.

15. **LIABILITY INSURANCE.** AMTRAK shall at all times during the term hereof, maintain and keep in effect, comprehensive general liability insurance written on an "occurrence" basis with an insurer satisfactory to AGENCY, insuring both the AGENCY and AMTRAK against all liability for damages to person or property in or about said Premises.

The amount of such liability insurance shall be not less than \$1,000,000 for injury to one person, including death and disease, \$5,000,000 for injuries arising out of any one accident and not less than \$1,000,000 for property damage. Such insurance shall be without prejudice to coverage otherwise existing and include coverage for auto, operations, products, completed operations, negligent acts, all operations of contractors and subcontractors, and AMTRAK'S failure to comply with any covenant of this lease on AMTRAK'S part to be performed, and including the expense to defend the AGENCY against any and all suits or actions arising out of such negligence, actual or alleged and all appeals therefor and shall satisfy and discharge any judgement which may be awarded against AGENCY in any such suit or action.

AMTRAK shall, prior to commencement of this Lease, provide a Certificate of Insurance naming the Redevelopment Agency and the City of Santa Barbara, and each of their respective officers, agents and employees as additional insureds. The Certificate shall provide that coverage afforded will not be canceled without at least thirty (30) days prior written notice to AGENCY. The amount or amounts of said policy or policies shall not be deemed a limitation of AMTRAK'S agreement to indemnify and hold harmless AGENCY, and in the event AGENCY should become liable in an amount in excess of the amount or amounts of said policy or policies, then AMTRAK shall save AGENCY harmless from the whole thereof.

Approval of the insurance by AGENCY or acceptance of the certificate of insurance by AGENCY, shall not relieve or decrease the extent to which AMTRAK may be held responsible for payment of damages resulting from AMTRAK'S services or operation pursuant to this Lease, nor shall it be deemed a waiver of AGENCY'S rights to insurance coverage hereunder. Notwithstanding the foregoing AMTRAK may maintain the above insurance coverage through its self-insurance program. The self-insurance maintained by AMTRAK shall provide the coverage specified herein.

The AGENCY shall require all of its contractors to comply with the provisions set forth in Appendix A during the renovation of the station and during all times of major repair.

The AGENCY shall require at all times, its maintenance and janitorial contractors to comply with the provisions of Appendix B.

16. INDEMNIFICATION.

a. Except to the extent caused by AGENCY'S (or AGENCY'S employee's, agent's or contractor's) negligent or willful acts, AMTRAK shall indemnify and hold AGENCY and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees (collectively referred to in this Section 16 as "claims against AGENCY"), which may be imposed upon or incurred by or asserted against the AGENCY or its respective officers,

agents and employees by reason of any of the following occurrences during the term of this Lease:

1. Any work or thing done in, on or about the Premises, or any part thereof, including, without limitation, the construction of any subsequent improvements by or at the direction of AMTRAK or by any party whatsoever other than AGENCY;

2. Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises, or any part thereof;

3. Any negligent or wrongful act on the part of AMTRAK or any of its agents, contractors, servants, employees, sublessees, operators, licensees or invitees;

4. Any accident, injury or damage to any person or property occurring within the Premises, or any part thereof;

5. Any failure on the part of AMTRAK to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against AGENCY or its respective officers, agents and employees by reason of any such claim involving the Premises, AMTRAK, upon written notice from the AGENCY, shall at AMTRAK's expense resist or defend such action or proceeding by counsel approved by the AGENCY in writing.

b. Except to the extent caused by AMTRAK'S (or AMTRAK'S employee's, agent's or contractor's) negligent or willful acts AGENCY shall indemnify and hold AMTRAK and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable architects' and attorneys' fees (collectively referred to in this Section 16 as "claims against AMTRAK"), which may be imposed upon or incurred by or asserted against AMTRAK or its respective officers, agents and employees by reason of any of the following occurrences during the term of this Lease:

1. Any work or thing done in, on or about any area on or around the Premises, including, without limitation, the construction of the initial rehabilitation improvements or any subsequent Premises improvements by or at the direction of AGENCY or by any party whatsoever other than AMTRAK;

2. Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises, or any part thereof, or any alley, sidewalk, curb, vault or surrounding area, passageway or space adjacent thereto;

3. Any negligence or wrongful act on the part of AGENCY or any of its agents, contractors, servants, employees, sublessees, operators, licensees or invitees;

4. Any accident, injury or damage to any person or property occurring in, on or about the parking lot site, or any part thereof, or any alley, sidewalk, curb, vault, passageway or space adjacent thereto;

5. Any failure on the part of AGENCY to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against AMTRAK or its respective officers, agents and employees by reason of any such claim, AGENCY, upon written notice from AMTRAK shall at AGENCY's expense resist or defend such action or proceeding by counsel approved by AMTRAK in writing.

17. TERMINATION FOR DEFAULT. If AMTRAK defaults in fulfilling any of the covenants of this Lease, other than the covenants for the payment of rent or additional rent, or if the Premises become vacant or abandoned, then in any one or more of such events, upon AGENCY serving a written thirty (30) day notice upon AMTRAK specifying the nature of said default, and upon the expiration of said thirty (30) days, if AMTRAK shall have failed to cure such default, or if the said default or omission complained of shall be of such a nature that the same cannot be completely cured within said thirty (30) day period, and AMTRAK shall not thereafter with reasonable diligence and in good faith, proceed to cure such default, then AGENCY may serve a written thirty (30) days notice of termination of this Lease upon AMTRAK, and upon the expiration of said thirty (30) days, unless the default has then been cured, this Lease and term hereunder shall end and expire as fully and completely as if the date of expiration of such thirty (30) day period were the day herein fixed for the end and expiration of this Lease, and the term thereof, and AMTRAK shall then quit and surrender the Premises to AGENCY. AMTRAK'S liability under this Section shall survive the expiration or other termination of this Lease.

18. QUIET ENJOYMENT. AGENCY will not interfere with AMTRAK's quiet and peaceful enjoyment of the Premises, or with that of AMTRAK's patrons and invitees.

19. NONDISCRIMINATION. AMTRAK shall comply with all the terms of the Contractor's Nondiscriminatory Employment Certificate described in Exhibit D, pages 1 and 2, attached hereto and made a part of this lease. For purposes of identification, AMTRAK shall be referred as "Contractor" in Exhibit D.

20. ASSIGNMENT OR SUBLETTING. Any assignment or subletting of any portion of the Premises, whether by operation of law or

otherwise, without the prior written consent of AGENCY is void and shall be a breach of this Lease, and at the option of AGENCY, shall terminate this Lease. AGENCY retains the right to lease portions of the Facilities which are not a part of the Premises provided that such leases shall not interfere with AMTRAK operations. This provision shall not apply to any entity whose management and operation is indirectly or directly controlling, controlled by or under common control with Amtrak or to any successor in interest by reason of merger, reorganization, consolidation, reincorporation or sale of all or substantially all of Amtrak's assets.

21. ENTRY. AGENCY reserves the right to enter the Premises at reasonable times with AMTRAK'S consent and supervision, which consent and supervision will not be unreasonably withheld or delayed, to carry out any building management or business purpose in or about the Premises.

22. SIGNS. All signs erected, placed or maintained by AMTRAK, or allowed to be erected, placed or maintained by AMTRAK, on the Premises shall relate to the business conducted by AMTRAK on the Premises and shall first be approved by AGENCY and any other appropriate governing bodies. AMTRAK agrees to keep its signs on the Premises in a good state of repair and to save the AGENCY harmless from any loss or damage resulting from the erection, maintenance, existence, or removal of any of AMTRAK's signs. AMTRAK shall not place any sign on the Premises in violation of any applicable law, ordinance or rule of any governmental agency.

23. NOTICES. All notices to be given by AMTRAK to AGENCY hereunder may be given by sending the same by registered mail addressed to the Redevelopment Agency of the City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA. 93102-1990, or at such other address as AGENCY may from time to time advise in writing.

All notices to be given by AGENCY to AMTRAK hereunder may be given by sending the same by registered mail addressed to AMTRAK at 530 Water St. 5th Floor, Oakland, CA. 94607 (Attention: Real Estate Department), or at such other address as AMTRAK may from time to time advise in writing.

24. LEGAL EFFECT. All obligations of AMTRAK are expressly made conditions of this Lease, any breach of which shall (after Agency has complied with applicable notice and opportunity to cure provisions set forth in Section 17), at the option of AGENCY terminate this Lease.

25. TITLES. The titles or headings to paragraphs shall have no effect on interpretation of provisions.

26. SUCCESSORS. The provisions of this Lease shall apply to and bind the heirs, successors, and assigns of the parties.

27. **WAIVER.** The failure of AGENCY to enforce a provision of this Lease shall not be deemed a waiver for any purpose.

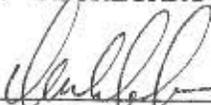
28. **ENTIRE AGREEMENT.** This Lease, together with each attached exhibit, shall constitute the entire agreement of the parties, and may be modified only by a writing signed by the parties.

29. **TIME OF THE ESSENCE.** Time is of the essence in the performance of AMTRAK'S obligations under this Lease.

30. **OBLIGATIONS TO STATE OF CALIFORNIA.** In recognition of the State of California Department of Transportation (CALTRANS) financing of the purchase of the rail passenger depot, the underlying real property and certain adjacent land parcels (Facilities) and the grant of state funds to AGENCY for rehabilitation of Facilities, AGENCY and AMTRAK agree that the primary dedicated use of Facilities is for rail passenger transportation purposes and any other uses will be subordinate to the use of Facilities for rail passenger transportation purposes. Nothing in this lease shall abridge or abrogate the State of California's right to require AGENCY to repay the state's investment in Facilities should the rail passenger transportation use of Facilities be substantially reduced to less than sixty-five percent (65%) of the Facilities space or terminated by the Agency.

IN WITNESS WHEREOF, the parties have executed this Lease as of this 21st day of April, 1998 at Santa Barbara, California.

ATTEST
AGENCY SECRETARY

BY: 
David D. Davis
Asst. Agency Secretary

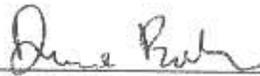
THE REDEVELOPMENT AGENCY
OF THE CITY OF SANTA BARBARA

BY: 
Sandra Tripp-Jones
Executive Director

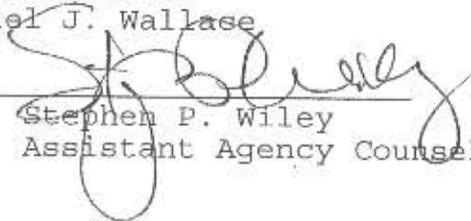
APPROVED AS TO CONTENT:
HOUSING AND REDEVELOPMENT
MANAGER

BY: 
David K. Gustafson
Housing & Redevelopment
Manager

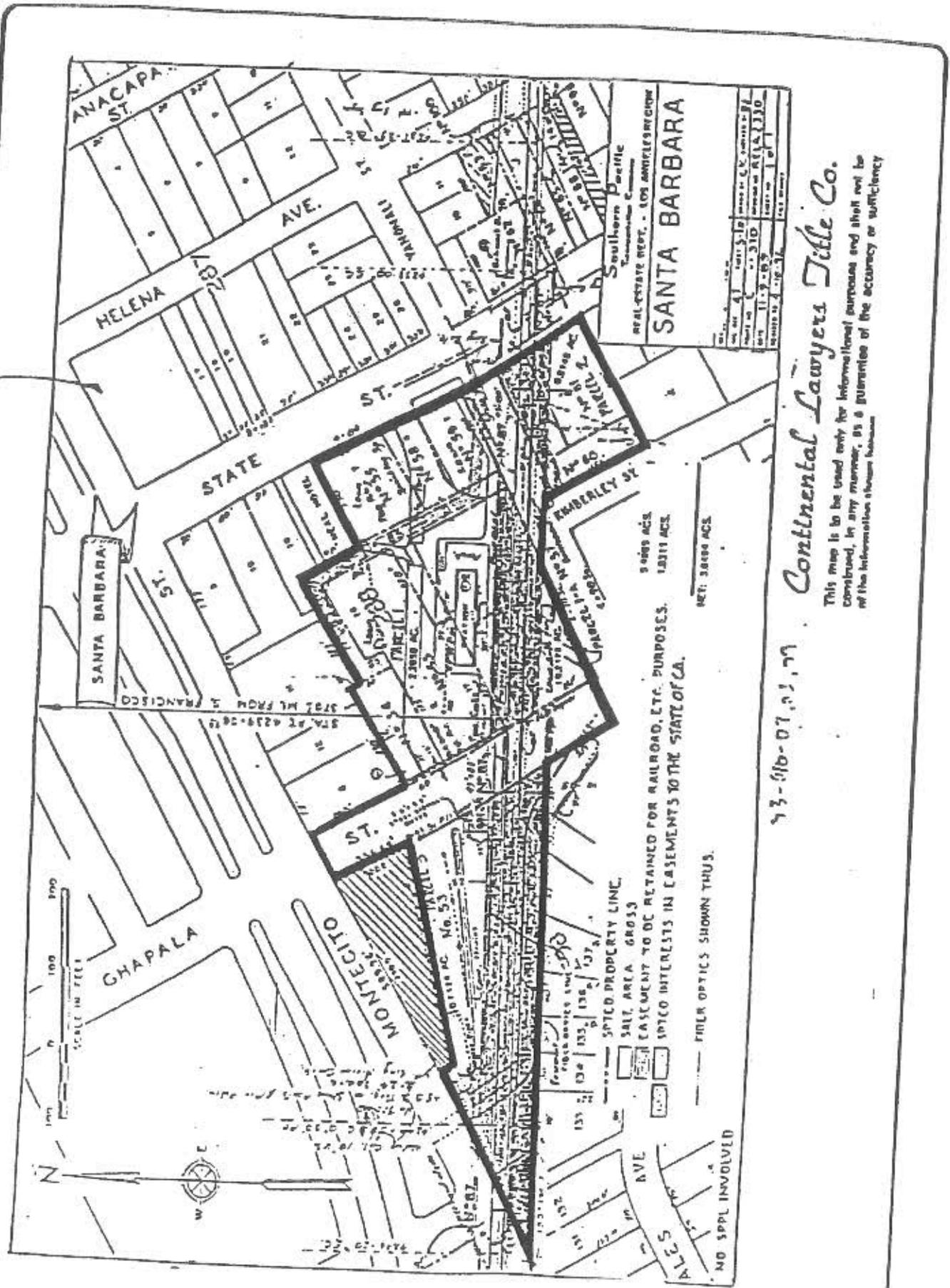
NATIONAL RAILROAD PASSENGER
CORPORATION - AMTRAK WEST

BY: 
Deno Bokas
Director of Finance

APPROVED AS TO FORM
AGENCY COUNSEL
Daniel J. Wallace

BY: 
Stephen P. Wiley
Assistant Agency Counsel

BY: 
Luba Drahoz
Manager
Real Estate Services



73-516-07.03.77

Continental Lawyers Title Co.

This map is to be used only for informational purposes and shall not be construed, in any manner, as a guarantee of the accuracy or sufficiency of the information shown hereon.

EXHIBIT A

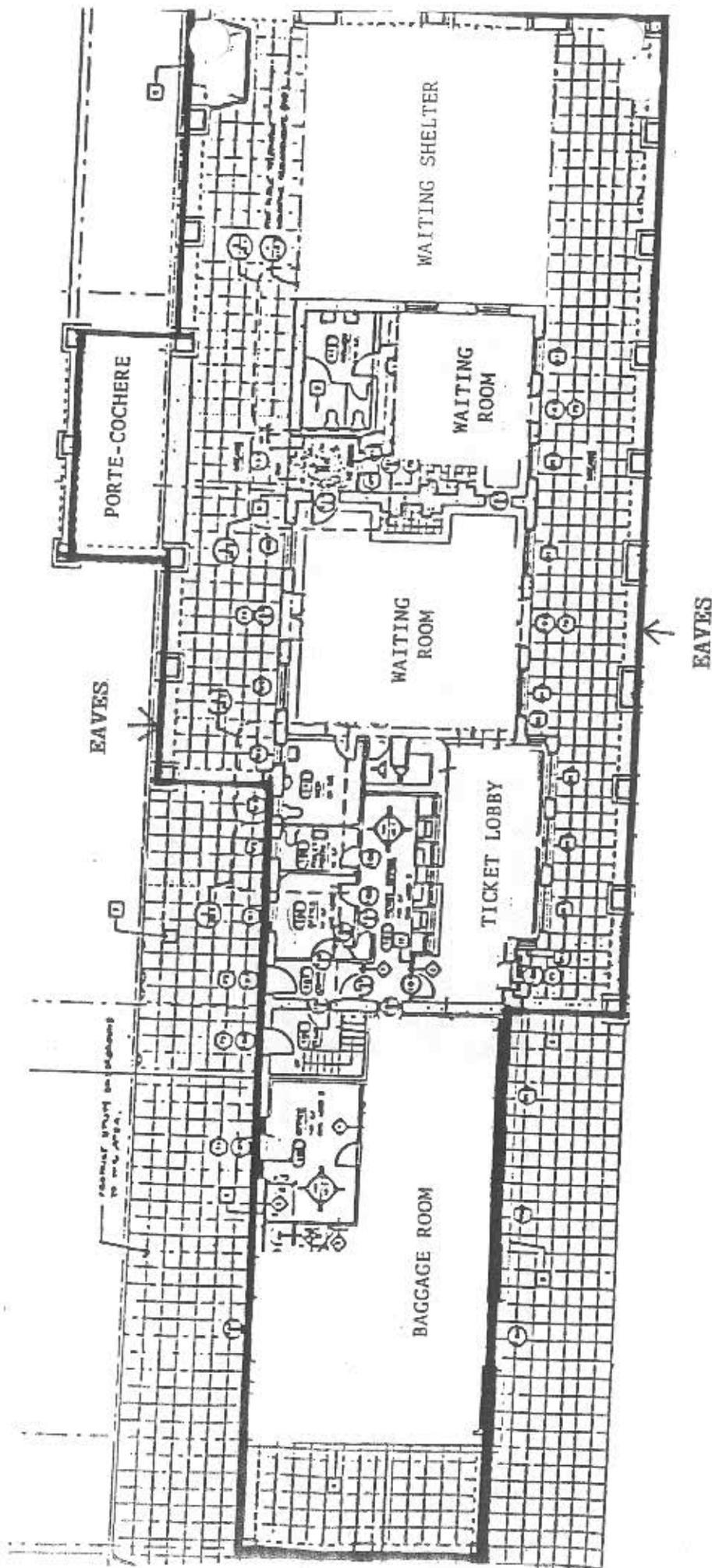
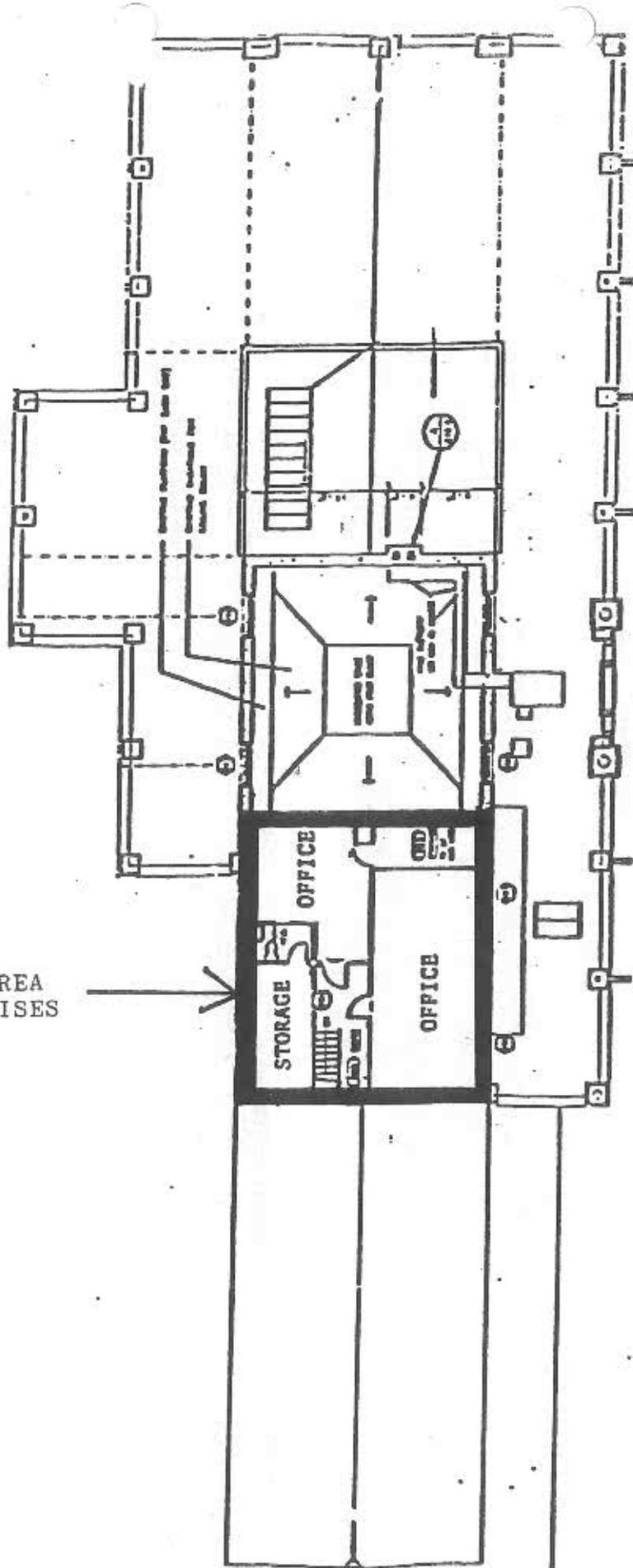


EXHIBIT B page 1

SECOND FLOOR AREA
OF LEASED PREMISES



SECOND FLOOR PLAN

Scope of Janitorial Services for Amtrak Station

Common areas, lobby areas or lounge [Public areas only]:

Thorough daily cleaning [7 times per week]:

1. Empty wastebaskets, spot clean receptacles inside & out and replace liners.
2. Light dust all horizontal surfaces to a height (80") including sills, ledges moldings, shelves, picture frames, ducts, radiators, benches, etc.
3. Damp wipe all telephones
4. Clean and sanitize drinking fountains. Remove water stains.
5. Spot clean reception lobby glass including front door and any other partition or door glass.
6. Clean and buff granite counters in the public areas.
7. Dust mop all hard surface floors.
8. Damp mop all hard surface floors in their entirety. Change the water between mopping of the restrooms and the lounge/lobby.
9. Spot clean benches. Inspect for and remove items such as gum (including under the bench seats)
10. Report daily any maintenance items[i.e. burned out light bulbs, squeaky doors...].
A call is required to the proper contact on a daily basis even if no maintenance items are noted.
11. Replace all burned out florescent light tubes and incandescent bulbs.

Weekly:

1. Clean and sanitize telephones.
2. Dust all horizontal surfaces including shelves, moldings and ledges above 80"
3. Remove dust and cobwebs from ceiling areas and light fixtures.
4. Scrub and sanitize door handles. Damp clean the portion of the wood doors adjacent to the push plates.

Monthly:

1. Wash all trash receptacles inside and out.
2. Wash the benches in the lounge and lobby.

Annual:

1. Strip and refinish the lounge and lobby floors.

Windows:

Semi-Annual:

1. Wash exterior side of windows.

Annual:

1. Wash insides of windows and partition glass.

Exterior of building and surrounding sidewalks:

Daily:

1. Pick up all trash and debris and perform general cleaning. Sweep the platform if needed.
2. Replace all burned out florescent light tubes and incandescent bulbs including platform lights.

Twice per week:

1. Complete sweeping of the platform areas.

Semi-Annual:

1. Pressure wash the building to bottom of eaves.
2. Pressure wash the sidewalk on all four sides of the building and concrete platform out to the first set of railroad tracks.

Custodial services to be provided three additional times each day [7 days per week] for a total of 4 services per day. The scope of service will include all items listed in the "thorough daily cleaning" schedule as required to maintain a clean and sanitary environment. The 4 daily services must be started and completed within the following schedule as these are times when no trains are arriving or departing the station:

- #1 7:30a.m. - 9:00a.m.
- #2 12:45p.m.-2:00p.m.
- #3 4:15p.m.-5:45p.m.
- #4 6:30p.m.-8:15p.m.

Notes:

1. All paper supplies such as toilet paper and hand towels as well as soap, trash liners and all equipment and chemicals used in the course of all cleaning processes must be furnished by the contractor.
2. no "on-site" storage will be available.
3. Contractor will be required to provide on-call services for unforeseen situations. A response time of no more than one hour will be allowed for emergency respons.

CONTRACTOR'S NONDISCRIMINATORY EMPLOYMENT CERTIFICATE
Santa Barbara Municipal Code § 9.126.020

A. Certificate Generally

Consistent with a policy of nondiscrimination in employment on contracts of the Redevelopment Agency of the City of Santa Barbara hereinafter referred to as "City" and in furtherance of the provisions of Section 1735 and 1777.6 of the California Labor Code a "contractor's obligation for nondiscriminatory employment certificate" as hereinafter set forth shall be attached and incorporated by reference as an indispensable and integral term of all bid specifications and contracts of the City for purchases, services, and the construction, repair, or improvement of public works.

B. Contents of Certificate

The Contractor's obligation for nondiscriminatory employment is as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. The Contractor will take positive action or ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification. 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 places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, national origin, ancestry, sexual orientation, political affiliation or beliefs, sex, age, physical handicap, medical condition, marital status or pregnancy (as those terms are defined by the California Fair Employment and Housing Act -- Government Code Section 12900-12996), except where such discrimination is based on a bona fide occupational qualification.
3. 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 by the City advising the said labor union or workers' representative of the Contractor's commitments under this provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will permit access to his records of employment, employment advertisements, application forms, and other pertinent data and records by the City, the Fair Employment Practices Commission, or any other appropriate agency of the State designated by the City for the purposes of investigation to ascertain compliance with the Contractor's Obligation for Nondiscriminatory Employment provisions of this contract, or Fair Employment Practices statute.
5. A finding of willful violation of the nondiscriminatory employment practices article of this contract or of the Fair Employment Practices Act shall be regarded by the City as a basis for determining that as to future contracts for which the Contractor may submit bids, the Contractor is a "disqualified bidder" for being "nonresponsive".

The City shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the Contractor has violated the Fair Employment Practices Act and has issued an order under Labor Code Section 1426 or obtained an injunction under Labor Code Section 1429.

Upon receipt of any such written notice, the City shall notify the Contractor that unless he demonstrates to the satisfaction of the City within a stated period that the violation has been corrected, he shall be declared a "disqualified bidder" until such time as the Contractor can demonstrate that he has implemented remedial measures, satisfactory to the City, to eliminate the discriminatory employment practices which constituted the violation found by the Fair Employment Practices Commission.

6. Upon receipt from any person of a complaint of alleged discrimination under any City contract, the City Administrator shall ascertain whether probable cause for such complaint exists. If probable cause for the complaint is found, the City Administrator shall request the City Council to hold a public hearing to determine the existence of a discriminatory practice in violation of this contract.

In addition to any other remedy or action provided by law or the terms of this contract, the Contractor agrees that, should the City Council determine after a public hearing duly noticed to the Contractor that the Contractor has not complied with the nondiscriminatory employment practices provisions of this contract or has willfully violated such provisions, the City may, without liability of any kind, terminate, cancel, or suspend this contract, in whole or in part. In addition, upon such determination the Contractor shall, as a penalty to the City, forfeit a penalty of \$25.00 for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance. Such moneys shall be recovered from the Contractor. The City may deduct any such penalties from any moneys due the Contractor from the City.

7. The Contractor certifies to the City that he has met or will meet the following standards for positive compliance, which shall be evaluated in each case by the City:

a. The Contractor shall notify all supervisors, foremen and other personnel officers in writing of the content of the nondiscrimination provision and their responsibilities under it.

b. The Contractor shall notify all sources of employee referrals (including unions, employment agencies, advertisements, Department of Employment) of the content of the nondiscrimination provision.

c. The Contractor shall file a basic compliance report as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also specify the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire.

d. The Contractor shall notify the City of opposition to the nondiscrimination provision by individuals, firms or organizations during the period of this contract.

8. Nothing contained in this Contractor's Obligation for Nondiscriminatory Employment Certificate shall be construed in any manner to prevent the City from pursuing any other remedies that may be available at law.

9. The Contractor certifies to the City that he will comply with the following requirements with regard to all subcontractors and suppliers:

a. In the performance of the work under this contract, the Contractor will include the provisions of the foregoing paragraphs (1) through (8) in all subcontracts and in any supply contract to be performed within the State of California, so that such provisions will be equally binding upon each subcontractor and each supplier.

b. Contractor will take such action with respect to any subcontract or purchase order as the City may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigations with a subcontractor or supplier as a result of such direction by the City, the Contractor may request the City to enter into such litigation to protect the interests of the City.

APPENDIX A INDEMNIFICATION AND INSURANCE REQUIREMENTS FOR
AGENCY CONTRACTORS

AGENCY shall insert in its contract with the General Contractor for rehabilitation and restoration of Santa Barbara Passenger Train station the following provisions:

1. Contractor agrees to defend, indemnify, and hold harmless AMTRAK and AGENCY their respective officers, directors, employees, and subsidiaries, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action and suits, and costs and expenses incidental thereto, including cost of defense and attorney's fees, that any or all of them hereafter may incur, be responsible for, or pay, as a result of injury, death, disease, or occupational disease, to any person, and for damage (including loss of use) to or loss of any property, including property of AMTRAK or arising out of or in any degree directly or indirectly caused by or resulting from the action or inaction in the performance of work by contractor or the contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of contractor.

The indemnification obligation under this article shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for contractor and any subcontractor and shall survive the termination of this Lease for any reason.

The Parties intend that an independent contractor relationship shall be created by this Agreement. As between the contractor, AMTRAK and the AGENCY, the contractor shall be responsible for any liability or third parties resulting from acts or omissions of the contractor, its agents, employees, or subcontractors arising from or occurring in the course of the performance of the contractor's work. No act or direction of AMTRAK or AGENCY shall be deemed to be the exercise of supervision or control of the contractor's performance that is contrary to such independent contractor relationship.

2. Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under this contract, the types of insurance specified below. Contractor shall submit to AGENCY a Certificate of Insurance giving evidence of the required coverages prior to commencing work. All insurance shall be procured from insurers authorized to do business in the jurisdiction in which contractor's operations take place. In no event shall work be performed until the required Certificate(s) of Insurance has been submitted. The insurance shall provide for 30 day's prior written notice to be given to AGENCY in the event coverage is substantially changed, canceled or non-renewed. If the insurance provided is not in compliance with the requirements listed below, AGENCY maintains the right to stop work until proper evidence is provided.

Workers' Compensation Insurance

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of the contractor. Employer's Liability coverage with limits of liability of not less than \$1,000,000 each accident or illness shall be included.

General Liability Insurance

A policy issued to and covering liability imposed upon the contractor with respect to all work to be performed and all obligations assumed by the contractor under the terms of this contract. Products-completed operations, independent contractors, and contractual liability coverages are to be included. AMTRAK and AGENCY are to be named as additional insureds with respect to operations to be performed and the policy shall contain a waiver of subrogation against AMTRAK and AGENCY and their respective employees and agents. Coverage under this policy, or policies, shall have limits of liability of not less than \$4 million per occurrence, combined single limit for bodily injury, (including disease or death), personal injury and property damage (including loss of use) liability.

Automobile Liability Insurance

A policy issued to and covering the liability of the contractor 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, and which are not covered under the contractor's General Liability Insurance. The policy shall name AMTRAK and AGENCY as additional insureds with respect to operations to be performed in connection with this contract, and shall contain a waiver of subrogation against AMTRAK and AGENCY and their respective employees and agents. Coverage under this policy shall have limits of liability of not less than \$1 million per occurrence, combined single limits for bodily injury, and property damage liability.

Railroad Protective Liability Insurance

Contractor shall provide, with respect to operations contractor or any of its subcontractors perform within 50 feet vertically or horizontally of railroad tracks, Railroad Protective Liability Insurance, (ISO/RIMA) Form, in the name of National Railroad Passenger Corporation (and any other railroad operating over the tracks). The policy shall have limits of liability of not less than \$2 million per occurrence, combined single limits, for Coverages A and B, for losses arising out of injury to or death of all persons, and for physical loss of damage to or destruction of

property, including the loss of use thereof. A \$6 million annual aggregate may apply.

Property Insurance

A policy issued to the contractor to protect its interest in the equipment to be used in performance of the contract, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits not less than the full replacement cost of the property. If desired, contractor may choose to self-insure this exposure, but in no instance shall AGENCY be responsible for such loss or damage.

Claims-Made Insurance

If any insurance specified above shall be provided on a claims-made basis, then in addition to coverage requirements above, such policy shall provide that:

1. Policy retroactive date coincides with or precedes the contractor's start of work (including subsequent policies purchased as renewals or replacements).
2. Contractor will make every effort to maintain similar insurance for at least two years following project completion, including the requirement of adding AGENCY and AMTRAK as additional insureds.
3. If Insurance is terminated for any reason, contractor agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this contract.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

APPENDIX B INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR AGENCY MAINTENANCE CONTRACTORS

LESSOR shall insert in each of its contracts for maintenance to be performed in connection with the Facilities:

1. Contractor agrees to defend, indemnify, and hold harmless AMTRAK AND AGENCY, and their respective officers, directors, employees, and subsidiaries, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action and suits, and costs and expenses incidental thereto, including cost of defense and attorney's fees, that any or all of them hereafter may incur, be responsible for, or pay, as a result of injury, death, disease, or occupational disease, to any person, and for damage (including loss of use) to or loss of any property, including property of AMTRAK or AGENCY, arising out of or in any degree directly or indirectly caused by or resulting from the action or inaction in the performance of work by Contractor or the Contractor's officers, employees, agents, servants, subcontractors, or any other person acting for or by permission of Contractor.

The indemnification obligation under this article shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor and any subcontractor and shall survive the termination of this Agreement for any reason.

The Parties intend that an independent contractor relationship shall be created by this Agreement. As between the contractor, AMTRAK and AGENCY, the Contractor shall be responsible for any liability to third parties resulting from acts or omissions of the Contractor, its agents, employees, or subcontractors arising from or occurring in the course of the performance of the contractor's work. No act or direction of AMTRAK or AGENCY shall be deemed to be the exercise of supervision or control of the contractor's performance that is contrary to such independent contractor relationship.

2. Contractor shall procure and maintain, at its own cost and expense, during the entire period of performance under this contract, the types of insurance specified below. Contractor shall submit to AGENCY a Certificate of Insurance giving evidence of the required coverages prior to commencing work. All insurance shall be procured from insurers authorized to do business in the jurisdiction in which Contractor's operations take place. Contractor shall require all subcontractors to carry the insurance required herein, or Contractor may, at his option, provide the coverage for any or all subcontractors, and if so, the evidence of insurance submitted shall so stipulate. In no event shall work be performed until the required Certificate(s) of insurance has been submitted. The insurance shall provide for 30 day's prior written notice to be given to AGENCY in the event coverage is substantially changed, canceled or non-

renewed. If the insurance provided is not in compliance with the requirements listed below, AGENCY maintains the right to stop work until proper evidence is provided.

Workers' Compensation Insurance

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the contract work will be performed, covering all employees of the Contractor. Employer's Liability coverage with limits of liability of not less than \$1,000,000 each accident or illness shall be included.

General Liability Insurance

A policy issued to and covering liability imposed upon the Contractor with respect to all work to be performed and all obligations assumed by the Contractor under the terms of this contract. Products – completed operations, independent contractors, and contractual liability coverages are to be included. AMTRAK and AGENCY are to be named as additional insureds with respect to operations to be performed and the policy shall contain a waiver of subrogation against AMTRAK and AGENCY and their respective employees and agents. Coverage under this policy, or policies, shall have limits of liability of not less than \$1 million per occurrence, combined single limit for bodily injury, (including disease or death), personal injury and property damage (including loss of use) liability.

Automobile Liability Insurance

A policy issued to and covering the liability of the contractor 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, and which are not covered under the Contractor's General Liability Insurance. The policy shall name AMTRAK and AGENCY as additional insureds with respect to operations to be performed in connection with this contract, and shall contain a waiver of subrogation against AMTRAK and AGENCY and their respective employees and agents. Coverage under this policy shall have limits of liability of not less than \$1 million per occurrence, combined single limits, for bodily injury, and property damage liability.

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destruction of property, including the loss of use thereof. A \$6 million annual aggregate may apply.

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A policy issued to the Contractor to protect its interest in the equipment to be used in performance of the contract, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits not less than the full replacement cost of the property. If desired, Contractor may choose to self-insure this exposure, but in no instance shall AGENCY be responsible for such loss or damage.

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3. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this contract.
4. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

