

AGREEMENT

between

HERZOG TRANSIT SERVICES, INC.
(New Mexico Rail Runner Express Commuter Service)

and its Employees represented by the

**INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS
TRANSPORTATION DIVISION
(SMART-TD)**

(Effective _____, 2017)

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ARTICLE 1 GENERAL

A. Herzog Transit Services, Inc., ("HTSI" or "Company") and the International Association of Sheet Metal, Air, Rail and Transportation Workers Transportation Division (SMART-TD or "Union") recognize that they have a mutual interest in serving our New Mexico Rail Runner Express commuter customers and the affected communities. Therefore, a working system of harmonious relationships is necessary to maintain a rapport between the Company and the Employees covered by this Agreement, and jointly with the New Mexico Rail Runner Express customers and public. All concerned will benefit by continued peaceful and harmonious relationships, and any differences must be settled through rational common sense methods as provided under this Agreement.

B. Employees covered by this Agreement shall be governed by all Company adopted rules, policies, practices and procedures that are not in conflict with the terms and conditions of this Agreement.

The use of such words as he, his, and him, as they appear in this Agreement are not intended to restrict the application of the Agreement or a particular article to a particular gender, but are used solely for the purpose of convenience and clarity.

C. As provided in ARTICLE 43- Duration of Agreement, this Agreement shall terminate in the event that the Company's contract with the Rio Metro Regional Transit District to operate the New Mexico Rail Runner Express expires or is terminated, provided that any accrued or run out benefits of an Employee covered by this Agreement will be fully protected by applicable law, Company policy, or applicable provisions of this Agreement.

ARTICLE 2 REPRESENTATION, RECOGNITION AND SCOPE

This Agreement will apply to all rail Engineers, Conductors and Ticket Agents employed by Herzog Transit Services, Inc. working on the New Mexico Rail Runner Express (the "Employees") and will govern the rates of pay and working conditions of all such Employees as provided in this Agreement.

A. Train and engine service employees may be required to perform duties such as operating locomotives, coupling and uncoupling cars, inspecting cars and locomotives, throwing switches, locking and unlocking derails, coupling and uncoupling air hoses, assisting in training new train and engine service employees, receiving mandatory directives, operating Company vehicles, performing air brake tests, assisting other employees to clear the main line or perform other functions as may be necessary in an emergency situation; use computers, mobile phones and other communication devices.

B. Ticket Agents may be required to perform duties such as fare and revenue collections, including properly and securely handling ticket sales, maintaining a case balance of their "Working Fund" in their bank bag at all times, and reconciling and submitting train ticket sales to the Accounting office at the end of each shift.

ARTICLE 3 UNION SECURITY AND DUES CHECKOFF

A. It is understood and agreed by and between the parties hereto that as a condition of employment or continued employment, all persons who are hereafter employed by the Company in the unit which is subject to this Agreement shall become members of the Union not later than the thirty-first (31st) day following the beginning of their employment or execution of this Agreement, whichever is later.

B. The Company will withhold and deduct from wages due to employees represented by the Union amounts equal to periodic dues, assessments, and insurance premiums (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in the Union.

C. No such deduction will be made except from the wages of an employee who has executed and furnished to the Company a written assignment of such periodic dues, assessments and insurance premiums. Such assignment will be on the appropriate form and will, in accordance with its terms, be irrevocable unless the employee subsequently notifies the Company in writing to rescind his authorization to deduct periodic dues and assessments from his wages.

D. Deductions, as provided for herein, will be made by the Company in accordance with a typewritten deduction list furnished by the Union. Such list will be furnished on the appropriate form to the director, Payroll Operations, of the Company on or before the 20th day of the month, preceding the month in which the deductions listed thereon are to become effective. Thereafter, a list containing any additions or deletions of names, or changes in amount, will be so furnished to the Company on or before the 20th day preceding the month in which the deduction will be made.

E. Deductions, as provided in this Rule, will be made monthly by the Company from wages due to employees from a complete pay period in each calendar month in which the Company does not make deductions for health insurance and the Company will pay, by draft, to the Officer designated by the Union, the total amount of such deductions, and shall be paid on or before the 28th day of the month in which such deductions are made. (Health insurance deductions will be spread out among other pay periods in the month when deductions provided in this Rule are not made.) With said draft, the Company will forward to the Officer designated by the Union a list setting forth the deductions made and containing a computation of the sum withheld.

F. No deduction will be made from the wages of any employee who does not have due to him for the pay period specified an amount equal to the sum to be deducted in accordance with this Rule, after all deductions for the following purposes have been made:

1. Federal, State, and Municipal Taxes.
2. Other deductions required by law, such as garnishment and attachment.
3. Amounts due to Company.

G. Responsibility of the Company under this Rule will be limited to remitting to the Union amounts actually deducted from the wages of employees pursuant to this Rule, and the Company will not be responsible financially or otherwise for failure to make proper deductions. Any question arising as to the correctness of the amount deducted will be handled between the employee involved and the Union, and any complaints against the Company in connection therewith will be handled by the Union on behalf of the employee concerned.

H. An employee who has executed and furnished to the Company an assignment may revoke said assignment by executing the appropriate revocation form and both the assignment and revocation of assignment forms will be reproduced and furnished as necessary by the Union without cost to the Company. The Union will assume the full responsibility for the procurement of the execution of said forms by employees, and for the delivery of said forms to the Company. Assignment and revocation of assignment forms will be delivered with the deduction list herein provided for to the Company not later than the 20th of the month preceding the month in which the deduction or the termination of the deduction is to become effective.

I. No part of this Rule will be used in any manner whatsoever, either directly or indirectly, as a basis for a grievance or time claim by or on behalf of any employee; and no part of this or any other agreement between the Company and the Union will be used as a basis for a grievance or time claim by or on behalf of any employee predicated upon any alleged violation of, or misapplication or noncompliance with, any part of this Rule.

J. The Union will indemnify, defend and save harmless the Company from any and all claims, demands, liability, losses or damage resulting from the entering into or complying with the provisions of this Rule.

ARTICLE 4 UNION PRIVILEGES

A. Authorized officers and business representatives of the Union and/or International Union who are not employees of the Company shall have access to the Company's premises, to the extent the Company may grant such access, during working hours for the purpose of adjusting disputes, investigating working conditions and ascertaining that the Agreement is being adhered to, or other sound Union business. The Union Representative shall, prior to entering the Company's premises, first call at the office and/or attempt to make his presence known to the Manager or his Assistant. Such authorized Union Representative shall be allowed to transact necessary business, provided there shall be no interference with or interruption of work in carrying out such Union responsibilities. The Union Representatives agree to follow the Company's prescribed safety and security regulations while on the Company's premises, such as wearing a safety vest.

B. To the extent the Company has authority, the Company will make available to the Union a mutually agreed size of locked bulletin board permanently located in the Operator's area. The Company will permit the Union or its representatives to distribute Union literature. Postings may not be derogatory or offensive toward the Company or any individual employee.

C. The Company shall recognize, and the Union shall have the right to designate, pursuant to its own procedures, employees to serve as Committee of Adjustment Officers, Union

Officers and Representatives (up to three (3) people on the Committee of Adjustment and up to five (5) people as Local Officers). The Union shall notify the Company in writing of all elected and appointed Officers and Representatives. All Union business shall be conducted in non-work areas unless permission is specifically granted by the Company to conduct business in work areas. Union Officers, Representatives and Local Chairpersons shall not interfere with the Company's operations when conducting official Union business, and shall carry out their duties on non-working time, with the exceptions of official grievance meetings with Company's representatives, participation in investigatory interviews as requested by an employee, and any meetings the Officer is requested to attend by the Company relating to contract administration. Non-working time shall include breaks, lunch, and before and after the employee's work time.

D. With advance notice to the Company, and the Company's consent, the Chair of the Committee of Adjustment to be released from work, without compensation, to conduct union business.

ARTICLE 5 COMPLIANCE WITH APPLICABLE LAWS

It is the intent of the Company and Union that all provisions of this Agreement be interpreted to comply with any applicable law. If at any time a provision of this Agreement violates applicable law, the provision will be void and the Company and Union agree to negotiate substitute language that will comply with applicable law, if necessary.

ARTICLE 6 NO STRIKE/ NO LOCKOUT

A. During the life of this Agreement there shall be no picketing, strikes of any kind, work stoppages, slowdowns, or concerted refusal to work engaged in by the Union, its officers, agents, members, or the employees covered by this Agreement for any cause whatsoever. Additionally, during the life of this Agreement, the Union, its officers, agents, members and all employees covered by this Agreement shall refrain from any communication with the public that has the purpose or effect of discouraging members of the public from doing business with the Employer or New Mexico Rail Runner Express.

B. During the life of this Agreement, there shall be no lockouts by the Employer. The term "lockout" does not refer to the suspension, discharge, termination or layoff of employees or the suspension of operations by the Employer for any business reason (e.g., equipment breakdown, lack of material, acts of God, absence of key personnel etc.) in the exercise of its rights as set forth in any provisions of this Agreement, nor does "lockout" include the owner's decision to terminate or suspend work on the site or any portion thereof.

C. The Union and the Employer shall have the right to enforce this clause by restraining order and injunction in the courts of the State of New Mexico upon proof of the existence of such strike or lockout.

D. An employee authorizing, engaging in, encouraging, sanctioning, recognizing or assisting any strike, slowdown, picketing or other concerted interference in violation of this provision, shall be subject to immediate dismissal or other discipline at the discretion of the Employer. The existence of a violation of this provision shall be subject to grievance, but the

degree of discipline where a violation exists shall not be subject to grievance under the provisions of this Agreement.

ARTICLE 7 NO DISCRIMINATION

A. No employee shall be discriminated against by the Employer or the Union for living up to and observing the provisions of this Agreement, nor will the Employer or the Union discriminate against any employee for lawfully engaging in or refraining from engaging in Union activities.

B. The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment or termination of employment because of such individual's race, color, religion, age, sex, pregnancy, national origin or ancestry, veteran's status, handicap or disability which does not interfere with the performance of essential job functions (with or without reasonable accommodation that does not impose undue hardship on the Employer), genetic information or other legally protected status.

C. Any employee who feels that he or she is the victim of discrimination in the workplace shall have the responsibility to report the same to his or her supervisor; or, if he or she feels uncomfortable reporting the matter to such person, then to report it to the general manager or to the EEO officer of the Employer. Such complaints shall be subject to resolution under the arbitration provisions of ARTICLE 30.

ARTICLE 8 CLASSIFICATIONS, JOB DUTIES AND BASIS OF PAY

- A. Ticket Agent- \$19.199
- B. Conductor/ Train Attendant- \$25.896
- C. Train Operator Intermediate- \$30.654
- D. Train Operator/ Engineer- \$36.064

Employees shall receive the following annual increases, which will occur on the first full pay period after June 1 of each year:

2017- 3% increase

2018- 2% increase

2019- 2.5% increase

2020- 2% increase

2021- 2.5% increase

ARTICLE 9 MANAGEMENT RIGHTS

Prior to the time when the Union became the representative of the employees covered by this Agreement, the Employer had the right to run its business and deal with its employees with complete freedom, except as its rights were bound and limited by law. By this Agreement, the Employer has agreed to certain express limitations on those rights. However, it is the intention of the parties hereto that the Employer retain, and the Employer does retain, each and every right and privilege that it ever had and enjoyed, whether or not such right was exercised in the past, except insofar as it has, by specific provision of this Agreement, agreed to limit such rights. All management rights, powers, authority and functions, whether heretofore or hereafter exercised, shall remain vested exclusively in the Employer, including but not in any way limited to the right to make, revise and enforce reasonable safety rules and reasonable work rules.

ARTICLE 10 PROMOTIONS

A. When new employees are hired for service under this Agreement, they will participate in a training program applicable to the job classification for which they were hired. New employees with a valid certification from another railroad will be required, at a minimum, to attend orientation and complete any portion of the training program deemed appropriate by the Company.

B. The Company will establish a procedure, which will: (1) ensure that such employees have knowledge of training program opportunities; and (2) provide an application process for such training opportunities. Employees who meet the criteria of the position, including but not limited to: safety record, rules compliance, compliance with the Company's drug and alcohol program, attendance, etc. will be offered an opportunity to be interviewed for the training opportunity. Applicants who successfully complete all the requirements to be selected, including the interview process, to become certified will be placed in the training program in seniority order.

C. Should there be insufficient time to train current employees to become certified Conductors or Engineers, or if there are insufficient applicants for promotion to Conductor or Engineer the Company is then free to hire certified Conductors or Engineers.

D. An employee, who, after starting the training program for promotion is unable to continue the training due to illness, which has been verified by a physician or approved leave of absence will not be regarded as having failed, provided that upon return the candidate reenters the training program as designated by the Company. The decision as to whether the employee must start the program from the beginning or at another point in the training will be made by the designated carrier representative. The Union will be advised of this decision.

E. A Ticket Agent who is undergoing training for potential promotion to a Conductor or Engineer position in accordance with this Article shall retain seniority standing and all other rights as a Ticket Agent until such time as he or she is promoted into the position of Conductor or Engineer, at which time he or she must transfer into that position. He or she will maintain his or her prior seniority rankings, but will no longer be able to exercise seniority in those rankings, except in the event of a furlough in the higher classification.

F. A Conductor who is undergoing training for potential promotion to an Engineer position in accordance with this Article shall retain seniority standing and all other rights as a Conductor until such time as he or she is promoted into the position of Engineer, at which time he or she must transfer into that position. He or she will maintain his or her prior seniority rankings, but will no longer be able to exercise seniority in those rankings, except in the event of a furlough in the higher classification.

G. An employee failing to satisfactorily complete every phase of the Engineer or Conductor Training Program and/or failure to satisfactorily pass the final examination (with a second final examination provided within fifteen (15) days from the date of the first examination if requested by the trainee) shall result in such trainee relinquishing existing seniority and establishing a new seniority date at the bottom of the Employee's prior craft seniority roster. If this would result in the Employee being placed in furlough status on the Conductor's seniority roster, then the Employee would temporarily be placed on the bottom of the Ticket Agent seniority roster until such time as the Employee can hold a position in the Conductor's craft. While waiting to make the second attempt at passing, the Employee will return to his or her prior craft as an extra board employee.

H. A supervising Conductor or Engineer assigned a trainee during his tour-of duty will continue to be responsible for the operation of the train in compliance with all operating rules for the purpose of safe train operation. When trainees are operating the train, the supervising Engineer will not be held responsible for problems or delays as a result of the following:

- Station Stops – Stopping short or long of passenger platforms.
- Ride Quality – Rough ride resulting from trainees handling of equipment.
- Penalty Applications – Delays resulting from trainees delay in responding to alerter.
- Train Handling Delays – Loss of time in stops and starts.

ARTICLE 11 SENIORITY

A. Individuals hired by the Company to work on the New Mexico Rail Runner Express in the job classifications of Engineer, Conductor and Ticket Agent covered by this Agreement will establish seniority within each job classification. The seniority of individuals in the bargaining unit who are promoted from within the Company to another position will be established in the classification to which they are promoted as of their date of certification. Certified individuals who are hired from outside the Company will establish seniority as of the time and date the employee completes the Physical. If more than one non-certified individual is hired into the same classification and they are in the same certification class, and one individual is new to the New Mexico Rail Runner Express and the other is promoted from within, the individual who worked in the bargaining unit for the New Mexico Rail Runner Express previously will be ranked more senior. If both individuals previously worked in the bargaining unit for the New Mexico Rail Runner Express in the same classification, they will be ranked in

terms of seniority to reflect the seniority rankings from their prior classification. If one individual previously worked in the bargaining unit for the New Mexico Rail Runner Express as a Ticket Agent and the other worked as a Conductor, the Conductor will be ranked senior.

B. Except as otherwise required by applicable law, employees will lose their seniority standing in the following situations:

1. Employee resignation.
2. Termination other than furlough.
3. Furloughed employee not responding to a return of service notice within ten (10) days.
4. Employee furloughed in excess of one (1) year.
5. Employee not actively working for the Company for any reason in excess of one (1) year.
6. Employee fails examination for promotion pursuant to Article 10(G).

C. In the event the Company temporarily assigns a Ticket Agent to a Conductor or Engineer position, the Ticket Agent will retain seniority standing and all other rights when returned to a Ticket Agent Position. In the event the Company temporarily assigns a Conductor to an Engineer position, the Conductor will retain seniority standing and all other rights when returned to a Conductor position.

ARTICLE 12 SENIORITY ROSTER

A. An Employee's seniority date within a classification will prevail in bidding for assignments within the Employee's classification.

B. A roster showing seniority dates and seniority standing will be posted in a conspicuous place at 100 Iron Ave SE, Albuquerque, NM 87102 with a copy to the General Chairman and Local Chairman.

Note: The initial seniority roster of Employees is set forth as Appendix 1 to this Agreement.

C. The seniority roster will be revised and posted in January of each year and will be open to protest for a period of thirty (30) calendar days from date of posting. Protests regarding seniority dates will be limited to names added or changes made to the seniority roster since the posting of the prior year's seniority roster. Upon an Employee's presentation of satisfactory proof of error regarding the seniority roster, such error will be corrected and a revised roster posted.

ARTICLE 13 ASSIGNMENTS

A. Each regular assignment will be bulletined to work not less than 40 hours per week. Monday shall be the beginning of the pay period.

B. Each regular assignment will have the daily reporting location, on duty (reporting) time, normal off duty time, and regular duties for the work days, and the rest days.

C. The regular duties designated on an assignment will be the operation of any combination of trains (revenue, deadhead, work, special events, etc.), revenue collection, yard switching, flagmen work, training or stand-by. Note: Flagmen work is the work of the MOW subcontractor, but Company reserves the right to use properly trained employees as service requires.

ARTICLE 14 ASSIGNMENT RE-BULLETINS

A. To be effective on the first day of the first full pay period of April, August and December, all regular assignments will be re-bulletined at least two weeks prior to the effective date.

B. When necessary to change regular assignments at other times during the year due to schedule or operational changes, assignments will be re-bulletined not less than two weeks prior to the effective date.

C. Awards will be posted the Wednesday prior to the effective Monday of the job award.

D. An attempt will be made to contact employees on vacation, marked off, or on suspension so as to participate in the re-bulletin process.

E. Employees on Leave of Absence will not be permitted to participate in the re-bulletin process.

F. Vacancies caused by sickness, temporary disability, suspension or leave of absence, when it is known that the employee will be off for a period of 10 or more days or when such employee will have been off duty for a period of 10 days, will be advertised in accordance with paragraph "B" of this Rule. On the return of the employee off for a period of ten or more days, assignments will be advertised in accordance with paragraph "B" of this Rule.

ARTICLE 15 REDUCING AND INCREASING FORCES

A. When there is a reduction of service causing the abolishment of assignment(s), at least five (5) calendar days advance notice will be posted on bulletin boards, with a copy to the Union.

If the assignment(s) affected are not held by the most junior Employee(s), those Employees affected by the reduction in service and those Employees junior to the affected Employees will

be contacted in seniority order to select a new assignment, which will take effect on the day of the reduction. Any Employees unable to hold an assignment will be furloughed.

B. Furloughed Employees will promptly notify the Company in writing, by a verifiable form of delivery, of any change of name, address, or phone number, and provide a copy to the Local Chairman.

C. In the event that service is subsequently increased, any previously furloughed Employees will be notified in writing by a verifiable form of delivery, sent to the last address provided, with a copy also provided to the Local Chairman. Furloughed Employees will be returned to service in seniority order. A furloughed Employee must respond to such notice within ten (10) days to advise if he intends to return to service.

D. Furloughed Employees who fail to return to service within fifteen (15) calendar days after being notified in accordance with paragraph "C" of this Article will be considered as having resigned, unless they present sufficient proof that circumstances beyond their control prevented their return.

E. No advance notice shall be required before positions are temporarily abolished or forces are temporarily reduced where a suspension of the Company operation in whole or in part is due to a labor dispute between the Company and any of its employees.

F. Employees furloughed for more than 365 consecutive days will be terminated. If the individual subsequently applies for a position for which he or she is qualified, the Company will give such individual first consideration in hiring.

ARTICLE 16 ANNULMENT OF ASSIGNMENTS

A. Advance notice before annulling assignments is not required under emergency conditions such as, but not limited to, flood, snow and/or ice storm, hurricane, tornado, earthquake, fire, derailment, major blockage of main line or suspension of operation not under control of the Company, provided that such conditions also result in suspension of the Company's operation of the New Mexico Rail Runner Express service, in whole or in part. Such emergency annulments will be confined solely to those work assignments directly affected by any suspension of operation.

B. Employees who are affected by an emergency annulment and report for work without having been previously notified not to report will receive four (4) hours' pay at their applicable base hourly rate of pay. Employees reporting for work and held for more than two (2) hours will be paid a minimum of eight (8) hours. If an Employee actually works any portion of the day when assignments are annulled, he will be paid pursuant to ARTICLE 8- Classifications and Basis of Pay. Upon termination of the emergency conditions and restoration of the service, all positions and incumbents thereof will be restored to the status prevailing prior to the emergency.

ARTICLE 17 EMERGENCIES AND MAINTENANCE OF SERVICE

Notwithstanding the intent of the Company and the Union that bargaining unit classification employees generally will perform bargaining unit work, the Company and Union agree that maintaining levels of service is paramount. In emergencies and situations that could otherwise result in service disruptions, the Company may use any available staffing, including, but not limited, to supervisors and managers.

ARTICLE 18 FILLING TEMPORARY VACANCIES

A. Regular scheduled assignment that will not be protected by a regularly assigned Employee for any reason, will be protected using the following sequence to fill the vacancy

1. Employees on the Extra Board.
2. Employees on the Relief Day List.
3. Employees on their rest day.
4. Re-arrangement of other Employees on duty or scheduled to work that day.
5. Qualified supervisors.

ARTICLE 19 EXTRA BOARD

A. Except as noted below, an employee assigned to an extra board and who is available for service during an entire weekly period or who does not lay off or miss a call, will be guaranteed a money equivalent of 40 straight time hours each weekly period. The term "weekly period" means a period of seven consecutive days, starting with Monday. The Company will determine the number of employees assigned to an extra board. Extra board positions will be advertised with a specific relief day.

B. After these positions are awarded, the following procedures will govern relief days on the extra boards:

1. Employees will be marked up at the bottom of the extra board following completion of their relief day.
2. Employees who desire to remain available on their relief day may elect to do so by notifying a Transportation Supervisor no later than 5:00 p.m. the day preceding their scheduled relief day, unless remaining available on their relief day would make them unavailable for the next regularly scheduled work day or would violate hours of service limitations
3. Employees who elect to remain available on their relief day will retain their relative standing on the extra board.

C. Extra employees will be called first in, first out, as registered on the extra board. Employees assigned to an extra board must be qualified to work any assignments protected by the extra board.

D. Extra employees will be registered to the extra board on the scheduled tie up time of their assignment. Employees who go off duty beyond their scheduled tie up time will report to their supervisor.

E. Except as indicated below, extra employees missing a call for an assignment for which they stand or who mark-off, will remain off the board for a period of eighteen (18) hours, after which, they will be allowed to mark-up for service at the bottom of the extra board.

Exceptions:

1. In order to satisfy the service requirements, an extra board employee may be used prior to the expiration of the eighteen hour period with the understanding the employee does not have to remain available to protect service under such circumstances.

F. Except in emergencies, extra employees will be called at least 90 minutes before the time required to report for duty. At the discretion of the Company, extra employees may be called up to 24 hours prior to the time required to report for duty.

G. Extra employees will not be called to fill vacancies unless they have sufficient rest to complete the assignment being called, regardless of their standing on the extra board. If the employee is not rested, it is the employees' responsibility to bring it to the attention of the designated Company officer.

H. Extra employees who are not called in their turn will be paid four hours and will retain their place on the extra board. Employees will be paid four hours for such runaround after confirmed by the designated Company officer that such runaround did occur. Only one four hour payment per employee per day will be paid.

ARTICLE 20 HOLD DOWN

A. In the event of a five day or greater vacancy, the entire vacancy may be filled on a first come first serve basis by the extra board of the craft where the vacancy occurs in seniority order.

B. This provision shall not impede the full displacement rights of any Engineer, Conductor or Ticket Agent exercising seniority as a result of being in displaced status.

C. Extra Engineers, Extra Conductors or Extra Ticket Agents assigned in the application of this Article will be treated as if regularly assigned. Except as previously stated, Extra Engineers, Extra Conductors or Extra Ticket Agents as such, will assume all relief days on the assignment being worked and will not be required to protect the extra board on such days. Engineers, Conductors and Ticket Agents assigned to a hold down may work the relief day(s) of the assignment.

D. An extra board employee about to start a hold down; for example on a Monday, will not be called for work on Sunday if it appears he or she will not be rested to work the hold down on Monday. If however, the employee is called for work on Sunday and, as a result is not rested to commence the hold down, he or she will be compensated in accordance with ARTICLE 21- Hours of Service. He or she will then commence the hold down on Tuesday.

ARTICLE 21 HOURS OF SERVICE

A regularly assigned employee who is unable to work in service to which entitled as a result of working on the preceding trip and not being available due to the Hours of Service Law will be allowed eight hours of pay for the missed assignment. Extra employees will not be deducted guarantee for time unavailable due to the Hours of Service regulations.

ARTICLE 22 RELIEF DAY LIST

Employees on regular assignments who desire to work on the rest day(s) of their assignments shall be permitted to make themselves available for such service in advance of each calendar quarter (January, April, July, and October) under the following conditions:

A. Employees who desire to be called for service on their rest day(s) must make written application to the Company. Such Employees may voluntarily remove themselves from the Relief Day List for the remainder of a calendar quarter with written notification to a Designated Company Officer and must make written application to again be placed on the List in the next or any subsequent quarter.

B. Employees will initially be marked up on the Relief Day List in seniority order and will be called first in, first out for assignments on which they are qualified. Employees called to perform service from the Relief Day List shall be paid at the rate of the assignment worked subject to any applicable overtime rules.

C. Employees who fail to accept or miss a call will be held off the Relief Day List for the remainder of their rest day(s). Employees will be given ten minutes to return phone messages before being shown as having missed a call. Employees who fail to accept or miss a call in two (2) successive weeks will be removed from the Relief Day List for the remainder of the calendar quarter and must make written application to again be placed on the List.

D. Employees who are not called in their proper turn, based on seniority order, will be paid four (4) hours, and will retain their place on the Relief Day List.

E. Employees will be called for service as near as possible to 90 minutes prior to their reporting time.

ARTICLE 23 ADVANCING OR DEFERRING REPORTING TIME

When it is desired on any day to advance or defer the reporting time of an Employee due to operating conditions, advance notice, as near as possible to two (2) hours prior to usual reporting time, will be given. The advance notice will specify the new reporting time, and the

affected Employee's tour of duty will not begin until that time. An Employee may have his starting time deferred only once in a work day.

ARTICLE 24 LAYING OFF/REPORTING

A. Regularly assigned Employees laying off must notify a Designated Company Officer in sufficient time, but in no event less than four (4) hours, for the Company to call a replacement. Employees who desire to lay off for personal reasons may do so only when such absence is authorized in advance by a Designated Company Officer.

B. A regularly assigned Employee who has laid off will mark up for his regular assignment not less than eight (8) hours in advance of his reporting time.

ARTICLE 25 TRAINING, QUALIFYING, AND EXAMINATIONS

A. Employees will be required to attend training classes and pass examinations connected with their duties. Examination may be written, computer based, or oral and include territorial qualification examinations and other operations based examinations.

B. Subject to the exceptions listed below, Employees required to attend a training class or an examination will be compensated for the time engaged in such training or examination. If required to lose time, Employees will be paid an amount not less than what they would have earned on the assignment they would have worked. If no time is lost, Employees will be compensated for the actual time consumed in such training class or examination at the straight time base hourly rate.

NOTE: Employees required to attend a training class immediately prior to or immediately following a tour of duty, will be paid for attending the class on the basis of continuous time with the work day

C. On the Job Instructors:

1. On the Job Instructors will be selected by the Company after consultation with the Labor Organization.

2. On the Job Instructors will receive one hour of additional pay at the applicable base hourly rate for each day they serve as instructors.

ARTICLE 26 ATTENDING COURT OR CORONER'S INQUEST

A. Employees attending court or inquest or giving a deposition or stenographic statement in connection with legal proceedings as a witness on behalf of the Company at the direction of the General Manager of the Company or his designee, will be paid for the time actually lost on his or her assignments each day. Necessary expenses, including necessary travel expenses, will be paid when away from home.

B. Employees attending court or inquest as a witness on behalf of the Company or giving a deposition or stenographic statement in connection with legal proceedings at the

direction of the General Manager of the Company or his designee, when no time is lost, will be paid eight hours for each day at the base hourly rate of the last service worked. Necessary expenses, including necessary travel expenses, will be paid when away from home.

C. Any witness fees and mileage allowance will be remitted to the Company, by the Employee, promptly after receipt.

ARTICLE 27 BEREAVEMENT LEAVE

A. The Company will provide paid time off up to three consecutive working days for making arrangements, settling family affairs, and/or attending the funeral or memorial service of a member of an Employee's immediate family. Immediate family is defined here as an employee's brother, sister, parent, grandparent, child, grandchild, spouse, or spouse's parent. This rule is also applicable to an immediate family relationship through the legal adoption process.

B. All Employees who wish to take time off due to the loss of a family member must notify his/her supervisor as soon as possible. The Company reserves the right to require documentation, such as an obituary or proof of death, before paying the employee for time off for bereavement leave.

C. Should the Employee be otherwise entitled to holiday pay for one of the paid days off, that day will be paid as a holiday. If the death of an Employee's immediate family member occurs while an Employee is on vacation, approved bereavement days will be substituted for the approved vacation.

ARTICLE 28 JURY DUTY

A. Jury duty is an important civic responsibility. In compliance with federal and state laws, the Company protects its Employees' right to serve as a juror and will not prohibit, threaten or coerce any Employee who is summoned for duty. The Employee should notify his supervisor upon receipt of notification from the state or federal courts of an obligation to serve on a jury or to act as a court witness and provide copies of the jury summons to his immediate supervisor.

B. An Employee summoned for jury duty will be excused to serve, and for up to fifteen (15) work days shall be paid at their regular base hourly rate for lost time for a maximum of 8 hours per day. Employee will remit promptly any jury duty fees to the Company for any days paid by the Company. The Company will then issue payment back to the employee for any portions of the check covering mileage, meals or other expenses. For an Employee serving on a jury in which service extends beyond fifteen (15) paid work days, his absence will be excused but unpaid leave until the service is completed.

C. Employees not required to be in court or released from jury duty during the course of the day are expected to resume their regular duties as soon as released. Upon returning to work from jury duty, Employees must present documentation of those days served on jury duty to their immediate supervisor.

ARTICLE 29 DISCIPLINE

A. An employee who has completed his probationary period shall not be disciplined without just cause. Discipline, if imposed, depending on the nature of the incident, can range from a written reprimand, to suspension, to dismissal.

B. In matters where the discipline issued results in suspension, the discipline shall become a permanent part of the employee's file. All other discipline not resulting in suspension shall not be considered in future disciplinary action provided the employee has at least two (2) continuous years of service, discipline free.

C. An employee may be held out of service with pay pending decision. When an employee is alleged to have committed any of the following offenses, he or she may be held out of service without pay pending decision:

1. Dishonesty, including falsification of reports or other documents.
2. Extreme negligence.
3. Use or possession of alcoholic beverages, intoxicants, drugs and/or narcotics.
4. Disorderly or immoral conduct or any offense bringing discredit upon the Company or New Mexico Rail Runner Express.
5. Theft.
6. Revenue and Revenue Procedure Violations.
7. Insubordination.

ARTICLE 30 CLAIM AND GRIEVANCE PROCEDURE

A. A grievance is defined as an alleged violation of an express provision of this Agreement that involves the interpretation of, or compliance with, the provisions of the Agreement. A grievance may be initiated by the Union or the employee.

B. Should any grievance arise, there shall be no suspension of work on account thereof, but an earnest effort shall be made to settle it promptly in the manner set forth below. The procedure shall be as follows:

STEP ONE: A Union Representative or employee shall immediately, within no longer than five (5) days of the act or occurrence, discuss with the supervisor involved, the alleged cause for grievance and try to resolve the matter. If the Employee is satisfied with the answer or solution, the matter is then dropped and will not be considered further.

STEP TWO: If the dispute is not settled at Step One, the grievance shall be reduced to writing and shall be presented by the Union to the General Manager or his designee within ten (10)

calendar days after the Company responds to the Step One Grievance. A meeting shall be held between the General Manager or his designee and the employee, who shall be accompanied by the designated representative of the Union. In reducing a grievance to writing, the following information shall be provided by the Union: The nature of the grievance, the act or acts complained of and when they occurred, the identity of the grievant, the specific section or provision of this Agreement that the grievant claims the Company has violated, and the remedy sought. The Company shall respond in ten (10) calendar days of the meeting.

STEP THREE: If the dispute is not settled at Step Two, the grievance may be appealed by the Union in writing to the Vice-President of Operations or his designee, with a copy to the General Manager, within ten (10) calendar days after the Company's response to the Step 2 meeting. Any grievance not presented in writing and appealed in writing within the time limits provided shall be waived for all purposes. A meeting or teleconference shall be held between the Vice President-Operations or his designee and the employee who shall be accompanied by the designated representative of the Union.

If no settlement is reached at Step Three, the grievance may be appealed by the Union in writing to arbitration within ten (10) calendar days after the Step Three meeting. Any grievance not presented in writing and appealed in writing within the time limits hereinbefore provided shall be waived for all purposes.

C. The Arbitrator shall be selected by mutual agreement between the Company and the Union, and if no agreement is reached within ten (10) days after notice of appeal, either party, with notice to the other, may request the Federal Mediation and Conciliation Service ("FMCS") to submit a list of seven arbitrators. The Arbitrator shall be selected by the Company and the Union by alternately striking names from the list until one name is left. Either party may request one new panel of arbitrators.

D. Decisions of the Arbitrator shall have the authority only to rule on the interpretation and application of this Agreement and shall have no power to either add to, modify or detract from the Agreement.

E. The arbitrator's award shall not be retroactive beyond the date of ten (10) calendar days prior to the filing of the grievance or the actual date of the occurrence of the grievance, whichever period of time is the shortest.

F. The Arbitrator's salary or fee and expenses shall be borne equally and paid by the parties to this Agreement.

G. Either the Union or the Company may elect to use a court reporter for the hearing. The expense of the court reporter and the transcript for the arbitrator shall be borne equally by the Union and the Employer.

H. The times specified in this provision shall be of the essence and failure to take action as required within any time period as specified herein shall result in the grievance being dropped and not subject to arbitration, unless the time periods are waived by written mutual agreement.

ARTICLE 31 LEAVE OF ABSENCE

A. An Employee shall be required to apply, and submit paperwork as required by the Company, for a leave of absence, not to exceed 30 days, in writing to the General Manager in any circumstance, including an extended illness, when the Employee needs to be away without pay in excess of seven days or in any instance of leave covered by the FMLA or ADA or a state counterpart.

B. The granting of a leave of absence by the Company shall be based on the nature of the request and operational requirements of the Company. Requests for leave of absence and extensions of the leave of absence may be granted at the option of the Company.

C. Upon or prior to expiration of an employee's leave of absence, the employee must immediately report to the General Manager for return to work instructions. Failure to do so shall constitute termination of employment.

D. An Employee who has been granted a leave of absence shall be considered as having terminated his employment without notice if, while on such leave, the Employee engages in, or applies for, other employment.

E. Employees promoted to management positions with the Company and duly accredited representatives employed exclusively by the Union shall be granted leave of absence and may return to their former positions or exercise seniority rights within thirty (30) days after release from such employment.

F. Other duly accredited representatives of the Employees shall be granted necessary time off without pay from the Company for hearings, consideration and adjustment of grievances, negotiations, to attend meetings of Employees or other matters connected with the interests of the Employees. Representatives must provide forty eight (48) hours' notice to a Company official. For the purpose of attending meetings such as Union conventions not less than thirty (30) days' notice will be given to a Company Officer.

G. This Article does not apply to employees granted a leave of absence to enter military service of the United States. The law in effect at the time of discharge will govern such case.

ARTICLE 32 RETURN TO DUTY FOLLOWING LEAVE

An employee who has been off duty due to personal illness or injury or for thirty-days or more for any reason must furnish any required medical reports related to the illness or injury and pass a return to duty Company physical and drug test. The Company will then make a determination regarding fitness to return to duty.

ARTICLE 33 APPROVAL OF APPLICATION OF EMPLOYMENT

A. New Employees shall be considered to be probationary Employees for a period of one hundred and eighty (180) days from the first day of compensated service, during which time, they shall be entitled to all benefits of this Agreement except for wages and such other provisions

as are specifically detailed within this Article. During such probationary period, the probationary Employees may be discharged at any time and for any reason, which shall be deemed sufficient to the Company. Such discharge shall not be the subject of a grievance or proceeding in any forum. The probationary period may be extended by mutual agreement between the Company and the Union.

B. In the event applicant omits or gives false information, the Company will have the right to disapprove such application after the probationary period in A above has expired if the information involved was of such a nature that the applicant would not have been hired if the Company had timely knowledge of the omitted or false information.

ARTICLE 34 MEDICAL EXAMINATION

A. Employees will be subject to periodic medical examinations (including hearing and vision) in accordance with Company policy. Employees will be given sufficient notice to arrange for examinations without the loss of time. Employees may be scheduled for a physical examination immediately prior to during or immediately following a tour of duty, and will be paid on the basis of continuous time with the work day. If the employee must take his periodic medical examination during off duty time, he will be paid for the time consumed.

B. When it is obvious that an Employee is medically (physically or mentally) impaired in a way that affects his service, the Company may hold that Employee out of service pending the outcome of a medical examination. Employees held out of service by the Company because they are medically unable to perform service may have an examination by a doctor of their own choosing without expense to the Company. In the case of disagreement on the Employee's fitness to work, the two doctors will select a third doctor, who is a specialist in the medical area involved, and the decision of the majority of the three as to the Employee's fitness will be final. The expense of the third doctor will be shared equally by the parties. If it is determined that the Employee's condition does not warrant being held out of service, such Employee will be returned to service, and if it is determined that the Employee was medically fit to perform service at the time he was held out of service, the Employee will be paid for all time lost.

C. An Employee who has accepted medical disqualification or who was found to be properly disqualified by a neutral physician may, if there has been a change in his medical condition as evidenced by a report of his personal physician, request a reexamination. There will be no claim for time lost in such case, unless the Company refuses to grant the reexamination or there is unreasonable delay in applying the terms of this paragraph.

ARTICLE 35 HOLIDAYS

A. Employees will observe the following seven fixed paid holidays based on the schedule set by the Company:

New Year's
Labor Day
Veteran's Day

Memorial Day
Thanksgiving

Fourth of July
Christmas

B. To be eligible for holiday pay, Employees must either work or be available for work on the last work day before and the first work day after the holiday. If scheduled to work the holiday, Employees must protect their assignments in order to be eligible for holiday pay. Employees who are on vacation or bereavement leave on those days are considered to have met this requirement and are eligible for holiday pay provided they work or are available for work on the last work day before and the first work day after vacation or bereavement leave. If the holiday falls on the last day of an employees' workweek, the first workday following this employee's "days off" will be considered the workday immediately preceding the holiday. When one or more designated holidays fall during the vacation period of an employee, the qualifying days for the holiday pay purposes will be his workdays immediately preceding and following vacation period.

C. Holiday Pay will be paid to each Employee based on a day's pay at each Employee's base rate of pay at eight hours per day. In addition to Holiday Pay, an Employee required to work on a fixed holiday will receive pay at the rate of time and one half for hours actually worked provided all conditions have been met to receive "Holiday Pay" as in the above.

D. If qualifications are met, an extra employee whose service status changes from an extra employee to a regularly assigned employee or vice versa on one of the qualifying days will receive eight hours holiday pay, except that a regularly assigned employee who voluntarily changes his service status to an extra employee on any of the three qualifying days will not be entitled to receive the holiday pay.

E. An Employee on short-term or long-term leave without pay is not entitled to holiday pay.

F. Paid time off for holidays is not counted as hours worked for the purposes of determining overtime.

G. The eight (8) hours holiday pay is over and above the 40 straight time hours guaranteed when the other requirements of Article 19- Extra Board, are met.

H. Nothing in this policy will be considered to create a guarantee or to restrict the right of the Company to annual assignment on the specified holiday.

ARTICLE 36 PAID TIME OFF

A. DOH – (Jan through June, 12 PTO's) (July through December 6 PTO's) effective January 1st the following year.

B. After one year of employment, 12 PTO days, to be taken in two blocks of five days each, which can be taken consecutively, and two single days, which can be taken consecutively.

C. After two years of employment, 13 PTO days to be taken in two blocks of five days each, which can be taken consecutively, and three single days, which can be taken consecutively.

D. After four years of employment, 14 PTO days to be taken in two blocks of five days each, which can be taken consecutively, and four single days, which can be taken consecutively.

E. After eight years of employment, 19 PTO days to be taken in three blocks of five days each, which can be taken consecutively, and four single days, which can be taken consecutively.

F. After seventeen years of employment, 25 PTO days to be taken in four blocks of five days each, which can be taken consecutively, and five single days, which can be taken consecutively.

G. PTO days off will be paid at eight hours at the employees job classification rate.

H. Blocks of five PTO days must be scheduled prior to January 1 of each year and authorized by the employee's designated supervisor based on employee longevity. Employees who fail to schedule any PTO blocks by January 1 will have one block of vacation scheduled automatically.

I. Single PTO days must be scheduled a minimum of ten days in advance (except in case of verified illness or personal or family emergency) and will be authorized by designated supervisor based on service requirements and first come first serve.

J. PTO days will not be carried from one year into the next. Unused PTO days at the end of the calendar year will be paid out at 8 hours straight time pay.

K. For the purpose of eligibility, increases in the number of PTO days will become effective in the year of the employee's respective anniversary.

L. For the purpose of eligibility, an employee must have rendered 100 days of service in the previous year to be eligible for PTO and PTO accrual.

ARTICLE 37 HEALTH AND WELFARE BENEFITS

A. Employees covered by this Agreement shall have the opportunity to participate in the Company's Group Health, Dental, Life, Accidental Death and Dismemberment, Long and Short Term Disability. The Plans may be changed or amended during the duration of this Agreement, with the understanding that such changes or amendments applicable to the employees covered by this agreement are consistent with any changes or amendments applicable to non-bargained and/or management employees.

B. Employees covered under the health plan are required to participate in the Corporate Wellness program communicated each enrollment period.

The Union agrees that after expiration of the current agreement, and before agreement on a new agreement, the Company may unilaterally make changes to the Company's Group Health, Dental, Life, Accidental Death or Dismemberment, and Long and Short Term Disability Plans.

ARTICLE 38 CRITICAL INCIDENT STRESS PLAN

The Company and the Union have adopted a Critical Incident Stress Plan and incorporate that plan by reference into this Agreement.

ARTICLE 39 401(K)

A. Employees will be offered a company sponsored 401(k) Plan with a Company Matching Contribution of 25% of every \$1.00 of employee contribution, up to a maximum of 8% of Eligible Compensation (2% maximum Company Matching Contribution). Company contributions will have a 5 year vesting schedule where the participant will earn a year of vesting service for each calendar year worked.

B. New hires:

1. An Employee must be employed 180 days before being considered eligible.
2. Open Enrollment is the January 1st or July 1st after completion of the eligibility period.
3. Newly eligible employees who do not take any action at Open Enrollment will be automatically enrolled in the 401k plan at 4%.
4. An employee wishing to enroll at an amount other than the 4% or who wishes to decline enrollment, must do so directly through the Plan provider.

C. Already eligible employees:

1. An Employee may change deferral amounts one of two times per year during Open Enrollment at January 1st or July 1st.
2. An Employee who has previously declined to participate and would now like to join the 401k plan can join during Open Enrollment at January 1st or July 1st.
3. An Employee who does not want to make any changes does not need to do anything.

D. The Union agrees that after expiration of the current agreement, and before agreement on a new agreement, the Company may unilaterally make changes to the Company's Company sponsored 401(k) Plan.

ARTICLE 40 ALBUQUERQUE FACILITIES

Lockers, toilet and lavatory facilities will be provided at location where employees go on and off duty.

ARTICLE 41 UNIFORMS

A. The Company shall prescribe, supply, and clean the uniform, accessories, badges and insignia, if any, to be worn by Engineers, Conductors & Ticket Agents at all times when on duty.

B. Engineers, Conductors and Ticket Agents must wear boots of sturdy construction with a definite heel and slip resistant sole to be furnished at the expense of the employee.

C. Engineers, Conductors and Ticket Agents will be required to procure a new uniform when it is determined by the Transportation Supervisor or his designee on the property that the condition of the old uniform is such that it should be replaced.

D. When it is necessary to replace worn or damaged uniforms or parts thereof, such purchase will be made consistent with the terms of this Agreement.

ARTICLE 42 FAMILY MEDICAL LEAVE

From time to time the Company will implement personnel policies and will provide in advance to the union. Employees will not be required to use scheduled Paid Time Off for FMLA leave.

ARTICLE 43 DURATION OF AGREEMENT

A. This Agreement becomes effective on the first day of the first full pay period following the date of notification to the Company by the Union that the Agreement has ratified and remains in effect until 11:59 P.M. on September 21, 2021, except should Herzog's Agreement to operate the New Mexico Rail Runner Express service expire or be terminated beforehand, in which case this Agreement shall terminate as of the same date.

B. Not earlier than March 22, 2021, either party can serve notice on the other to modify the terms of this Agreement to be effective not earlier than September 22, 2021.

Signed at _____ this _____ day of _____, 2017.

For SMART - TD:

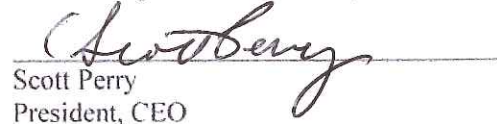


Dirk Sampson
General Chairman



John England
Vice President- Transportation Division

For Herzog Transit Services, Inc.:



Scott Perry
President, CEO

APPENDIX 1

Transportation Roster 2017										
ENGINEER		ENG Date	DOH	CONDUCTOR		CON Date	DOH	Ticket Agent		DOH
1	Melissa Mackel	28-Oct-08	10-Jul-06	1	Jeffrey Alejo Jr.	14-Jul-08	16-Jul-07	1	Bobby Trujillo	1-Feb-07
2	Tim Reed	28-Oct-08	20-Mar-06	2	Brian Kuchar	19-May-08	12-Nov-07	2	Elizabeth Alonzo	20-Oct-08
3	Mike Stabnow	3-Nov-08	3-Nov-08	3	Crystal Payne	9-Jun-08	8-Dec-08	3	Liz Ulibarri	5-Aug-10
4	Lance Northrop	19-Oct-09	19-Oct-09	4	Jerome Armijo	28-Nov-11	14-Feb-11	4	Sheldon Trujillo	6-Oct-11
5	Nathan Dudley	8-Jul-10	9-Jun-08	5	Anson Waugh	12-May-12	15-Apr-12	5	David Garcia	14-Dec-09
6	Travis Atwell	20-Jan-12	25-Aug-08	6	Joe Archuletta	1-Jun-12	8-Nov-10	6	Sandra Lee	11-Jan-11
7	Eric Tolliver	20-Dec-12	19-May-08	7	Dustin Stauffer	19-Aug-13	26-Dec-12	7	Tracy Capote	3-Dec-13
8	Jody Fly	9-Sep-13	24-Jul-13	8	Marcos Chavez	4-Sep-14	15-Apr-12	8	Greg Ortiz	2-Jun-14
9	J.J. Arrington	27-Jan-14	31-Aug-09	9	Karissa Offut	5-Jan-15	30-Dec-13	9	Casar Rangel	5-Jan-15
10	Jacob Blewett	2-Jun-14	9-Mar-09	10	Keith Orr	5-Jan-15	5-Jan-15	10	Laura Gabaldon	23-Feb-15
11	Jebidiah Osborn	2-Jun-14	2-Jun-14	11	Kristy Blystone	5-Oct-15	2-Jun-14	11	Marcus Baca	16-Feb-16
12	Jerry Hunter	5-Jan-15	5-Jan-15	12	Robert Wilder	5-Oct-15	23-Feb-15	12	Edward Vargas	18-Jul-16
13	Devanal Nash	5-Oct-15	5-Oct-15	13	Luis Vela	5-Oct-15	5-Oct-15	13	Kevin Krisco	19-Jul-16
14	Tanya Barela	23-Feb-16	31-Aug-09	14	Zach Dennenbaum	9-Sep-16	14-Sep-15			
				15	Pablo Salazar		5-Dec-16			
	Student Engineer				Student Conductor					