

INTERLOCAL OPERATING AGREEMENT
FOR OPERATION OF THE
CENTRAL FLORIDA COMMUTER RAIL SYSTEM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15

By and Between

FLORIDA DEPARTMENT OF TRANSPORTATION

AND

CENTRAL FLORIDA COMMUTER RAIL COMMISSION

Table of Contents

- INTERLOCAL OPERATING AGREEMENT 1
- ARTICLE I..... 3
 - DEFINITIONS AND CONSTRUCTION 3
 - SECTION 1.01. DEFINITIONS. 3
 - SECTION 1.02. INTERPRETATION..... 3
 - SECTION 1.03. SECTION HEADINGS..... 5
- ARTICLE II 5
 - REPRESENTATIONS 5
 - SECTION 2.01. REPRESENTATIONS OF FDOT..... 5
 - SECTION 2.02. REPRESENTATIONS OF THE COMMISSION..... 6
- ARTICLE III..... 6
 - ACQUISITION, CONSTRUCTION AND OWNERSHIP 6
 - SECTION 3.01. GENERAL COMMUTER RAIL SYSTEM DESCRIPTION..... 6
 - SECTION 3.02. ACQUISITION OF THE CORRIDOR..... 7
 - SECTION 3.03. CONSTRUCTION OF THE COMMUTER RAIL SYSTEM..... 9
 - SECTION 3.04. OWNERSHIP OF THE COMMUTER RAIL SYSTEM..... 11
 - SECTION 3.05. CONVEYANCE REQUIREMENTS..... 12
 - SECTION 3.06. CONDEMNATION..... 15
- ARTICLE IV 15
 - OPERATION AND MAINTENANCE 15
 - SECTION 4.01. GENERAL DESCRIPTION..... 15
 - SECTION 4.02. CORRIDOR ACCESS MANAGEMENT..... 16
 - SECTION 4.03. SERVICE POLICIES..... 16
 - SECTION 4.04. FARE POLICIES..... 16
 - SECTION 4.05. BASE SERVICE STANDARDS..... 17
 - SECTION 4.06. ADJUSTMENTS TO BASE SERVICE..... 17
 - SECTION 4.07. EXPANDED SERVICE AND EXTENDED SERVICE..... 18
 - SECTION 4.08. OPERATING RULES..... 18
 - SECTION 4.09. MAINTENANCE..... 18
 - SECTION 4.10. SECURITY..... 19
 - SECTION 4.11. MARKETING..... 19
 - SECTION 4.12. EXCURSION AND SPECIAL EVENT TRAINS..... 20
 - SECTION 4.13. STAFFING..... 20
 - SECTION 4.14. CONTRACT OPERATOR..... 23
 - SECTION 4.15. ADMINISTRATIVE FUNCTIONS..... 24
 - SECTION 4.16. EMERGENCIES..... 26
- ARTICLE V 26
 - FINANCIAL OBLIGATIONS 26
 - SECTION 5.01. ANNUAL FUNDING OBLIGATION AND LIMITATION..... 26
 - SECTION 5.02. FARES..... 26
 - SECTION 5.03. ANNUAL BUDGETS..... 28
 - SECTION 5.04. ACCOUNTING AND REPORTING..... 29
 - SECTION 5.05. FDOT ANNUAL APPROPRIATIONS..... 29
- ARTICLE VI..... 30
 - GENERAL PROVISIONS 30
 - SECTION 6.01. TERM..... 30
 - SECTION 6.02. TERMINATION..... 30
 - SECTION 6.03. ASSIGNMENT..... 35
 - SECTION 6.04. ADVISORY RELATIONSHIPS..... 36

SECTION 6.05. RESOLUTION OF DISPUTES.37

SECTION 6.06. FORCE MAJEURE.....38

SECTION 6.07. INSURANCE AND LIABILITY.....39

SECTION 6.08. THIRD PARTY CONTRACTORS.....39

SECTION 6.09. CHANGED CIRCUMSTANCES.40

SECTION 6.10. NOTICES.40

SECTION 6.11. ENFORCEMENT.41

SECTION 6.12. COUNTERPARTS.....41

SECTION 6.13. CONCURRENT AGREEMENTS.42

SECTION 6.14. SEVERABILITY.42

SECTION 6.15. CONTRACTUAL RELATIONSHIP.....42

SECTION 6.16. GOVERNING LAW AND VENUE.43

SECTION 6.17. FURTHER ASSURANCES.....43

16
17

APPENDIX A MASTER GLOSSARY

APPENDIX B DEPICTION OF THE CORRIDOR

APPENDIX C DESCRIPTION OF THE PHASE I AND PHASE II IMPROVEMENTS

APPENDIX D FORM OF COMMUTER RAIL EASEMENT

APPENDIX E FORM OF CONTRACT FOR SALE AND PURCHASE

APPENDIX F FORM OF CENTRAL FLORIDA OPERATING AND MANAGEMENT
AGREEMENT

APPENDIX G PROPOSED LEGISLATION

18 **INTERLOCAL OPERATING AGREEMENT**

19 **THIS INTERLOCAL OPERATING AGREEMENT** is made and entered into by and
20 between the State of Florida Department of Transportation, an agency of the State of Florida ("FDOT")
21 and the Central Florida Commuter Rail Commission, a legal entity and public body created by
22 Interlocal Operating Agreement pursuant to Section 163.01, Florida Statutes (the "Commission").

23 **WITNESSETH:**

24 **WHEREAS**, FDOT is undertaking the development and implementation of the Central
25 Florida Commuter Rail Transit System (the "Commuter Rail System") running from DeLand in the
26 County of Volusia through Seminole County and Orange County (including the City of Orlando) to
27 Poinciana in Osceola County; and

28 **WHEREAS**, FDOT and CSX Transportation, Inc. ("CSXT") expect to enter into a Contract
29 for Sale and Purchase which, subject to certain conditions precedent, provides for the acquisition
30 (subject to a retained perpetual easement for Rail Freight Services) by FDOT from CSXT of the
31 railroad corridor known as CSXT's A-Line between Milepost A749.7 near DeLand, Florida, and
32 Milepost A814.1 near Poinciana, Florida, a distance of approximately 61.54 miles, (the "Corridor") for
33 the use of the Commuter Rail System; and

34 **WHEREAS**, FDOT and CSXT expect to enter into a Central Florida Operating and
35 Management Agreement establishing operating windows for passenger rail and freight operations
36 within the Corridor and providing for use and maintenance of the Corridor; and

37 **WHEREAS**, FDOT is in the process of making application to the Federal Transit
38 Administration (FTA) and Congress for capital funds, commonly referred to as New Starts funding to
39 provide a portion of the funds necessary for the planning, design, right-of-way acquisition and

40 construction of the proposed commuter rail service on the Commuter Rail System; and

41 **WHEREAS**, Federal New Starts funding and other Federal funding will require a 50 percent
42 match of Federal funds with state and local funds for capital costs, which will be shared among FDOT,
43 Orange County, a charter county and political subdivision of the State of Florida ("Orange County"),
44 Osceola County, a charter county and political subdivision of the State of Florida ("Osceola County"),
45 Seminole County, a charter county and political subdivision of the State of Florida ("Seminole
46 County"), the County of Volusia, a charter county and political subdivision of the State of Florida
47 ("County of Volusia"), the City of Orlando, a municipal corporation of the State of Florida (the "City
48 of Orlando"), in the Interlocal Funding Agreement among such parties; and

49 **WHEREAS**, Orange County, Osceola County, Seminole County, the County of Volusia and
50 the City of Orlando (collectively, the "Local Government Partners") have agreed that the FDOT will be
51 the agency responsible for the design, permitting and construction of the Commuter Rail System, and
52 will be responsible for its funding, operation, management, and maintenance for a period seven years
53 (the "FDOT Funding Period") following the Revenue Operation Date (as hereinafter defined); and

54 **WHEREAS**, Local Government Partners have created the Central Florida Commuter Rail
55 Commission (the "Commission") to assume responsibility for funding, operation, management, and
56 maintenance of the Commuter Rail System upon expiration of the FDOT Funding Period; and

57 **WHEREAS**, FDOT has agreed to convey an easement in the Corridor and fee title to the
58 Station Property to the Commission in accordance with and under the conditions described in Section
59 3.05 hereof and Article III of the Interlocal Funding Agreement between FDOT and the Local
60 Government Partners; and

61 **WHEREAS**, the Commuter Rail System is contained in the Year 2025 Metroplan Orlando's

62 Orlando Urban Area Transportation Study "Financially Constrained Network," and the 2025 Volusia
63 County Long Range Transportation Plan; and

64 **WHEREAS**, implementation of the Commuter Rail System will result in overall social and
65 environmental benefits, improve the quality of life in the state, stimulate economic growth, create new
66 employment opportunities, and serve as a positive growth management catalyst; and

67 **WHEREAS**, the Commuter Rail System will greatly benefit all of the citizens of and visitors
68 to the Central Florida region, and is needed in order to relieve traffic congestion, and provide
69 transportation opportunities; and

70 **WHEREAS**, the Commuter Rail System will become an integral part of a Central Florida
71 balanced transportation system and, with concurrent development of improvements to roadways and
72 bus transit, will greatly enhance the mobility of the traveling public;

73 **NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements
74 contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties
75 mutually undertake, promise and agree for themselves, their successors and assigns as follows:

76 **ARTICLE I**

77 **DEFINITIONS AND CONSTRUCTION**

78 **SECTION 1.01. DEFINITIONS.** Except as otherwise expressly provided herein or unless the
79 context otherwise requires, capitalized terms have the meanings assigned to such terms in the Master
80 Glossary of Terms for the Florida Commuter Rail System Agreements attached hereto as Appendix A
81 and by the reference incorporated herein.

82 **SECTION 1.02. INTERPRETATION.** For the purposes of the interpretation, construction,
83 administration, and implementation of this Interlocal Operating agreement, unless otherwise stated in

84 this Interlocal Operating Agreement, the following rules of construction shall apply:

85 (A) Words importing the singular number shall include the plural, and vice versa, unless the
86 context clearly indicates to the contrary.

87 (B) In case of any difference of meaning or implication between the text of this Interlocal
88 Operating Agreement and any caption, illustration, summary table or illustrative table, the text shall
89 control.

90 (C) The word “shall” is mandatory, not discretionary; the word “may” is permissive and
91 discretionary.

92 (D) The word “person” includes an individual, a corporation, a partnership, an incorporated
93 association, or any other similar entity.

94 (E) Unless the context clearly indicates to the contrary, where a provision involves two or
95 more items, conditions, provisions or events connected by the conjunction “and,” “or” or “either . . .
96 or,” the conjunction shall be interpreted as follows:

97 a. *And* indicates that all the connected terms, conditions, provisions or events shall
98 apply.

99 b. *Or* indicates that the connected items, conditions, provisions or events may
100 apply singly or in any combination.

101 c. *Either . . . or* indicates that the connected items, conditions, provisions or events
102 shall apply singly but not in combination.

103 (F) The word “includes” shall not limit a term to the specific example but is intended to
104 extend its meaning to all other instances or circumstances of like kind or character.

105 (G) The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms,

106 shall refer to this Interlocal Operating Agreement; the term “heretofore” shall mean prior to execution
107 of this Interlocal Operating Agreement.

108 (H) This Interlocal Operating Agreement shall not be construed more strongly against any
109 party regardless that such party, or its counsel, drafted this Interlocal Operating Agreement.

110 **SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several
111 Articles and Sections of this Interlocal Operating Agreement and any table of contents or marginal
112 notes appended to copies hereof, shall be solely for convenience of reference and shall neither
113 constitute a part of this Interlocal Operating Agreement nor affect its meaning, construction, or effect.

114 **ARTICLE II**

115 **REPRESENTATIONS**

116 **SECTION 2.01. REPRESENTATIONS OF FDOT.** FDOT makes the following
117 representations as the basis for the undertakings on the part of Commission herein contained:

118 (A) FDOT has duly authorized the execution and delivery of this Interlocal Operating
119 Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this
120 Interlocal Operating Agreement constitutes a valid and legally binding obligation of FDOT,
121 enforceable in accordance with its terms, except to the extent that the enforceability thereof may be
122 limited by any applicable bankruptcy, insolvency, moratorium, reorganization, or other similar laws
123 affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general
124 principles of equity or public policy.

125 (B) To FDOT's knowledge, there is no action, suit, proceeding or investigation at law or in
126 equity before or by any court, public board or body pending or, to the best knowledge of FDOT,
127 threatened against or affecting FDOT, wherein an unfavorable decision, ruling or finding would

128 materially adversely affect the transactions contemplated hereby or which, in any way, would
129 materially adversely affect the validity of this Interlocal Operating Agreement.

130 **SECTION 2.02. REPRESENTATIONS OF THE COMMISSION.** The Commission
131 makes the following representations as the basis for the undertakings on the part of FDOT herein
132 contained:

133 (A) The Commission has duly authorized the execution and delivery of this Interlocal
134 Operating Agreement and assuming the due authorization, execution and delivery by the other parties
135 hereto, this Interlocal Operating Agreement constitutes a valid and legally binding obligation of the
136 Commission, enforceable in accordance with its terms, except to the extent that the enforceability
137 thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other
138 similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance
139 with general principles of equity or public policy.

140 (B) To the Commission's knowledge, there is no action, suit, proceeding or investigation at
141 law or in equity before or by any court, public board or body pending or, to the best knowledge of the
142 Commission, threatened against or affecting the Commission, wherein an unfavorable decision, ruling
143 or finding would materially adversely affect the transactions contemplated hereby or which, in any
144 way, would materially adversely affect the validity of this Interlocal Operating Agreement.

145 **ARTICLE III**

146 **ACQUISITION, CONSTRUCTION AND OWNERSHIP**

147 **SECTION 3.01. GENERAL COMMUTER RAIL SYSTEM DESCRIPTION.**

148 The Commuter Rail System will be a Fixed Guideway Transit System serving commuters within the
149 jurisdictions of the Local Government Partners, consisting of the following elements.

150 (A) The Corridor will consist of the former CSXT railroad corridor known as CSXT's A-
151 Line between Milepost A749.7 near DeLand, Florida, and Milepost A814.1 near Poinciana, Florida, a
152 distance of approximately 61.54 miles, including the Station Platforms and maintenance facility, as
153 depicted in Appendix B.

154 (B) Phase I will consist of the first 32.54-mile segment of the Corridor (between DeBary
155 through downtown Orlando and into Orange County), including the maintenance facility and currently
156 planned Stations at DeBary/Fort Florida Road, Sanford, Lake Mary, Longwood, Altamonte Springs,
157 Maitland, Winter Park/Park Avenue, Florida Hospital, LYNX Central, Church Street and Orlando
158 Amtrak/ORMC, and Sand Lake Road. The specific improvements to be constructed during Phase I are
159 described in Appendix C.

160 (C) Phase II will consist of (1) a 17.46-mile segment of the Corridor (between Orange
161 County and Poinciana), including Stations at Meadow Woods, Osceola Parkway, Kissimmee Amtrak
162 and Poinciana Industrial Park, (2) an 11-mile segment of the Corridor (between DeLand and DeBary),
163 including a Station at DeLand Amtrak and (3) approximately 0.54 miles of staging areas at the northern
164 and southern ends of the Corridor. The specific improvements to be constructed during Phase II are
165 described in Appendix C.

166 (D) The Commuter Rail System will use trains with diesel locomotive powered steel-
167 wheeled technology with one, two or three modern comfortable passenger cars. The number of trains
168 to be placed in service for Phase I and Phase II is included in Appendix C.

169 **SECTION 3.02. ACQUISITION OF THE CORRIDOR.** FDOT agrees to use its best
170 efforts to acquire the Corridor from CSXT for the benefit of the Commuter Rail System, Freight Rail
171 Service and intercity passenger rail service.

172 (A) FDOT agrees to use its best efforts to enter into the Contract for Sale and Purchase of
173 the Corridor. The Commission acknowledges that FDOT's acquisition of the Corridor will be subject
174 to the terms set forth in the Contract for Sale and Purchase, including certain conditions precedent that
175 may result in FDOT not acquiring the Corridor. If the executed Contract for Sale and Purchase is
176 modified from the form and substance attached to this Interlocal Operating Agreement as Appendix E
177 in a manner that imposes a material adverse financial or operational burden on the Commission or the
178 Local Government Partners, this Interlocal Operating Agreement shall be terminated pursuant to
179 Section 6.02(B)(3) hereof unless the FDOT and the Commission agree otherwise.

180 (B) FDOT agrees to use its best efforts to enter into the Central Florida Operating and
181 Management Agreement for the Corridor. If the executed Central Florida Operating And Management
182 Agreement is modified from the form and substance attached to this Interlocal Operating Agreement as
183 Appendix F in a manner that imposes a material adverse financial or operational burden on the
184 Commission or the Local Government Partners, this Interlocal Operating Agreement shall be
185 terminated pursuant to Section 6.02(B)(3) hereof unless the FDOT and the Commission agree
186 otherwise. By way of example, but not limitation, modifications that impose a material adverse
187 financial or operational burden shall include the following:

188 (1) the assumption of liability in excess of that amount specified in Appendix F; or

189 (2) a failure to charge a reasonable rate for Rail Freight Services within the Corridor.

190 (C) The FDOT will use its best efforts to have the Florida Legislature pass the proposed
191 legislation as set forth in Appendix G.

192 (D) If the legislation described in subsection (C) or something substantially similar which
193 accomplishes the same intent and purpose (and includes the provisions proposed by the Commission

194 and Local Government Partners) is not enacted or FDOT is unable to acquire the Corridor for any other
195 reason prior to December 31, 2008, this Interlocal Operating Agreement shall be terminated pursuant to
196 Section 6.02(B)(3) hereof.

197 (E) The Commission acknowledges that intercity passenger rail service is an appropriate use
198 of the Corridor and FDOT agrees that intercity passenger rail service (other than AMTRAK) shall not
199 be implemented until the parties to this Interlocal Operating Agreement have (1) agreed upon (a) a fair
200 and reasonable method of computing intercity passenger rail service's share of the operating and
201 maintenance cost of the Corridor, provided that no track access fee shall be charged, (b) an operating
202 window for such intercity passenger rail service, and (c) provisions relating to liability, and (2) FDOT
203 or any third-party operator of the intercity passenger rail service has entered into an agreement with the
204 Commission addressing such issues.

205 **SECTION 3.03. CONSTRUCTION OF THE COMMUTER RAIL SYSTEM.**

206 (A) FDOT shall be responsible for the design and construction of Phase I and Phase II of the
207 Commuter Rail System and agrees to initiate and diligently pursue such design and construction, based
208 on Federal, State and local governmental approvals. FDOT shall use its best efforts to complete Phase
209 I by December 31, 2010 and Phase II by December 31, 2013.

210 (B) Based upon previous actions taken by the individual Local Government Partners, as
211 well as Metroplan Orlando and Volusia MPO, FDOT has been advancing the regional rail program
212 since February 2003. As of the date hereof, FDOT has completed the Environmental Assessment and
213 has been granted entry into Preliminary Engineering by FTA for the system between DeBary in
214 Volusia County to Poinciana Boulevard in Osceola County. Once Preliminary Engineering is
215 complete, FDOT will make application to FTA to enter into Final Design for the Commuter Rail

216 System, which is anticipated to occur in the last quarter of 2007 or the first quarter of 2008.

217 (C) The Commuter Rail System shall be developed in a manner that will permit design,
218 acquisition, and construction of Phase I (in accordance with the description set forth in Appendix C)
219 within the Phase I Cost Estimate and construction of Phase II (in accordance with the description set
220 forth in Appendix C) within the Phase II Cost Estimate. Changes to Phase I and Phase II requested by
221 a Local Government Partner during Preliminary Engineering and Final Design will not be incorporated
222 into the design unless a funding source has been committed or all other parties to this Interlocal
223 Operating Agreement have agreed to the change.

224 (D) For Phase I and Phase II of the Commuter Rail System, FDOT shall enter into a
225 guaranteed maximum price design-build contract or other contract that establishes a firm fixed price for
226 the work.

227 (E) The FDOT shall construct Phase I and Phase II based upon the Final Design, subject to
228 Federal, State and local governmental requirements. The development, design, engineering,
229 preconstruction activities, construction and installation of all facilities shall be in accordance with State
230 and Federal standards. FDOT shall require, in accordance with Section 337.18, Florida Statutes, surety
231 bonds for all contractors undertaking any construction activity.

232 (F) Any contractor, subcontractor or other third party who may require access on or to the
233 Corridor during construction shall be required to obtain a policy or policies with coverages that
234 conform with the requirements of FDOT's Standard Specifications. The Commission and the Local
235 Government Partners shall be named as additional insureds on each policy of insurance, excluding
236 workers' compensation and professional liability insurance. Upon request, the FDOT shall provide the
237 Commission with a copy of the current certificate of insurance.

238 (G) Upon completing construction of each phase, FDOT will be responsible for the
239 Commissioning, according to FTA and FRA standards and procedures. FDOT shall conduct all
240 inspections and tests necessary to demonstrate compliance with State and Federal standards, rules, and
241 regulations, and upon successful completion of all required testing shall obtain all governmental
242 approvals so that the Commuter Rail System can accept paying passengers for transportation.

243 **SECTION 3.04. OWNERSHIP OF THE COMMUTER RAIL SYSTEM.**

244 (A) Subject to the conveyance requirements set forth in Section 3.05 hereof, (1) all right,
245 title, and interest, whether in fee simple, easement, leasehold, or other, in the real estate in the Corridor,
246 Stations and maintenance facility (including any agreement to use the existing AMTRAK maintenance
247 facility in Sanford), and (2) all personal property, such as rolling stock and other equipment, that is
248 acquired for the construction, operation, and maintenance of the Commuter Rail System shall be owned
249 by FDOT. Prior to the Commissioning of the Commuter Rail System, FDOT and the Responsible
250 Local Government Partners shall enter into joint use agreement for the Stations, which FDOT shall
251 assign to the Commission when the Station Property is conveyed to the Commission pursuant to
252 Section 3.05 hereof.

253 (B) Any sale of any part, interest, use, license, permit or of any other conveyance or right to
254 use, encumber, or impair the Corridor, any grant of an easement, or any other agreement for use of a
255 portion of the Corridor must be approved by the Governing Board pursuant to Section 3.05(E) of the
256 Interlocal Governance Agreement before being approved by FDOT; provided however, that permits
257 and licenses incidental to the ownership of the Corridor and the operation of the Commuter Rail
258 System that FDOT is required by law to issue shall not require approval by the Governing Board. With
259 the Governing Board's review during the FDOT Funding Period, FDOT may establish an application

260 fee and a standard use fee for certain uses of the Corridor by third parties. After the FDOT Funding
261 Period, the Commission may establish and receive an application fee and a standard use fee for certain
262 uses of the Corridor by third parties. The Commission acknowledges and agrees that certain
263 transactions with third parties may be subject to certain statutory and rule requirements and nothing
264 herein shall be deemed to change or override such requirements. To the extent that the provisions of
265 this Interlocal Operating Agreement are inconsistent with such statutory or rule requirements, the
266 statutory or rule requirements shall prevail.

267 (C) FDOT has separately contributed capital for the initial six Diesel Multiple Units
268 purchased for the Commuter Rail System, which shall remain the property of FDOT. These initial six
269 Diesel Multiple Units shall be committed by FDOT for use of the Commuter Rail System; provided
270 however, that any Diesel Multiple Unit no longer required by the Commuter Rail System because of an
271 adjustment in Base Service made pursuant to Section 4.06 of this Interlocal Operating Agreement shall
272 be released from any obligation created by this Interlocal Operating Agreement.

273 (D) The net proceeds remaining after payment of other obligations and expenses derived
274 from any sale of Commuter Rail System shall be applied to the reduction of Debt Service payable by
275 the Local Government Partners pursuant to Section 4.03 of the Interlocal Funding Agreement on the
276 next Interest Payment Date and subject to Section 3.05(A) of this Agreement.

277 **SECTION 3.05. CONVEYANCE REQUIREMENTS.**

278 (A) Any property or other assets purchased with Federal or State funds shall be subject to
279 applicable Federal and State laws, rules, and procedures regarding disposition of property and funds.

280 (B) Following expiration of the FDOT Funding Period, FDOT shall execute and deliver the
281 Commuter Rail Easement to the Commission, without payment of additional compensation to FDOT

282 by the Commission. The Commission acknowledges that the Commuter Rail Easement will be
283 encumbered by the Central Florida Operating and Management Agreement. Such conveyance shall be
284 subject to a provision that if operation of the Commuter Rail System is suspended or terminated for a
285 period longer than 180 days (other than as the result of a Force Majeure event, for which the time
286 period shall be one year), unless otherwise agreed by the parties, the Commuter Rail Easement will
287 expire and the interest shall revert to and become the property of the FDOT. Said reverter shall
288 become effective within thirty days of notice from the FDOT to the Commission and shall not require
289 action of the Commission; provided, however, that the Commission agrees to execute such documents
290 as FDOT may reasonably request in the event that FDOT deems it convenient or necessary to confirm
291 the reverter. At the time of the conveyance of the Commuter Rail Easement to the Commission, the
292 Commission and the FDOT shall execute a written assignment of the Central Florida Operating and
293 Management Agreement pursuant to which the Commission agrees to assume and fully comply with
294 the obligations of FDOT thereunder, except to the extent of FDOT's retained rights after the FDOT
295 Funding Period as set forth in this Interlocal Operating Agreement. Without limiting the generality of
296 the foregoing, the Commission, by virtue of this assignment, shall have all liability under the Central
297 Florida Operating and Maintenance Agreement as specified therein to the same extent as FDOT has
298 thereunder.

299 (C) Simultaneously with conveyance of the Commuter Rail Easement, FDOT shall transfer
300 to the Commission all of its right, title and interest in the rolling stock, equipment, tracks and other
301 personal property of the Commuter Rail System, both tangible and intangible; provided however, that
302 the initial six Diesel Multiple Units shall remain the property of FDOT. Such conveyance shall be
303 made without payment of additional compensation to FDOT by the Commission. Such conveyance

304 shall be subject to a provision that if operation of the Commuter Rail System is suspended or
305 terminated for a period longer than 180 days (other than as the result of a Force Majeure event), unless
306 otherwise agreed by the parties, these properties shall revert to and become the property of the FDOT.
307 Said reverter shall become effective within thirty days of notice from the FDOT to the Commission and
308 shall not require action of the Commission; provided, however, that the Commission agrees to execute
309 such documents as FDOT may reasonably request in the event that FDOT deems it convenient or
310 necessary to confirm the reverter.

311 (D) Following expiration of the FDOT Funding Period, FDOT shall convey all of its right,
312 title and interest in the Station Property (free and clear of any and all liens, encumbrances, mortgages,
313 claims or causes of action, but subject to any joint use agreement entered into pursuant to and subject to
314 the other provisions of Article III of the Interlocal Funding Agreement) to the Commission by deed,
315 lease assignment, bill of sale or other appropriate instrument; provided however, that if operation of the
316 Commuter Rail System is suspended or terminated for a period longer than 180 days (other than as the
317 result of a Force Majeure event, for which the time period shall be one year), unless otherwise agreed
318 by the parties, fee simple title to the Station Property shall revert to FDOT. Said reverter shall become
319 effective within thirty days of notice from the FDOT to the Commission and shall not require action of
320 the Commission; provided, however, that the Commission agrees to execute such documents as FDOT
321 may reasonably request in the event that FDOT deems it convenient or necessary to confirm the
322 reverter. Such conveyance shall be made without payment of additional compensation by FDOT to the
323 Commission. For purposes of this subsection (D), Stations located within the jurisdiction of the City of
324 Orlando shall be excluded from Stations located within the jurisdiction of Orange County. The
325 Commission and FDOT acknowledge that all transfers shall be subject to applicable Federal and State

326 regulations regarding the transfer of property purchased, in whole or in part, with Federal or State
327 funds.

328 (E) When components of the Commuter Rail System are conveyed to the Commission, all
329 such components shall be in a State of Good Repair, subject to normal wear, and all guarantees,
330 warranties, and similar rights held by FDOT relating to such components shall be assigned to the
331 Commission.

332 **SECTION 3.06. CONDEMNATION.** FDOT and the Commission agree to cooperate if the
333 exercise of eminent domain power becomes necessary to acquire property for the Commuter Rail
334 System in determining which agency would be the most appropriate governmental entity to exercise its
335 authority. In the event that any condemning authority institutes an action or proceeding for the
336 condemnation of a portion of the Commuter Rail System property, FDOT and the Commission agree to
337 jointly and equally defend such action and shall attempt to prevent any taking that would make it more
338 costly or less efficient to provide commuter rail service.

339 **ARTICLE IV**

340 **OPERATION AND MAINTENANCE**

341 **SECTION 4.01. GENERAL DESCRIPTION.** During the FDOT Funding Period, FDOT
342 will be solely responsible for the development, design, engineering, preconstruction activities,
343 construction and installation of all fixed facilities, procurement of rolling stock and other personal
344 property, operation (including train dispatching), and maintenance of the Commuter Rail System, in
345 accordance with applicable Federal, State and local governmental requirements and in accordance with
346 the Central Florida Operating and Management Agreement. Following expiration of the FDOT
347 Funding Period, the Commission shall be responsible for any future activities described above that are

348 necessary for the Commuter Rail System.

349 **SECTION 4.02. CORRIDOR ACCESS MANAGEMENT.** Prior to conveyance, as
350 described in Section 3.05 hereof, FDOT shall be responsible for Corridor Access Management.
351 Following execution and delivery of the Commuter Rail Easement, the Commission shall be
352 responsible for Corridor Access Management, other than functions FDOT is required to perform by
353 law.

354 **SECTION 4.03. SERVICE POLICIES.** During the FDOT Funding Period, the Commuter
355 Rail System service levels, including the number of trains and the number of cars per train, shall be
356 established by FDOT with input from the Governing Board, the Technical Advisory Committee and
357 the Customer Advisory Committee. Following expiration of the FDOT Funding Period, service levels
358 shall be established by the Governing Board with input from the Technical Advisory Committee, the
359 Customer Advisory Committee.

360 **SECTION 4.04. FARE POLICIES.** During the FDOT Funding Period, the fares to be
361 charged for Commuter Rail System service shall be determined by FDOT, with guidance from the
362 Governing Board. In order for the bus transit system and Commuter Rail System fares to be as
363 seamless as possible, and because operational subsidies for bus service will be included in the
364 Commuter Rail System operations and maintenance cost projections, FDOT (during the FDOT
365 Funding Period) and the Commission (following expiration of the FDOT Funding Period) will enter
366 into an agreement with LYNX and VOTRAN regarding transfers between service modes in the service
367 areas of both transit authorities so that customer fares and fare vending equipment are viewed by
368 customers as though they are part of one system. Following expiration of the FDOT Funding Period,
369 fare changes shall be approved by the Governing Board pursuant to Section 3.05(D) of the Interlocal

370 Governance Agreement.

371 **SECTION 4.05. BASE SERVICE STANDARDS.**

372 (A) The Commuter Rail System will provide Base Service to the Local Government
373 Partners, as described in the following subsection (B). Base Service shall only be adjusted pursuant to
374 Sections 4.06 or 4.12 hereof.

375 (B) Commuter rail service will be provided initially in Phase I and expanded to Phase II in
376 accordance with the schedule set forth in Section 3.03(A) hereof. The Commuter Rail System will
377 provide bidirectional train service at a 30-minute frequency during Peak Hours and a two-hour
378 frequency during Non-Peak Hours. The Commuter Rail System will not provide any train service
379 between midnight and 5:00 a.m., legal Holidays, and Saturdays and Sundays.

380 **SECTION 4.06. ADJUSTMENTS TO BASE SERVICE.** The Chief Executive Officer shall
381 report any train whose ridership falls below the minimum ridership threshold for three consecutive
382 months to FDOT during the FDOT Funding Period and to the Governing Board thereafter. Any train
383 failing to meet the established minimum ridership threshold for three consecutive months shall be
384 evaluated and considered for remedial action. During the FDOT Funding Period, remedial action shall
385 be taken by FDOT, with input from the Governing Board. Thereafter, remedial action shall be taken
386 by the Governing Board, with input from the Technical Advisory Committee and the Customer
387 Advisory Committee. If after an opportunity for the remedial action to correct the deficiency in
388 ridership the train continues to fall below the minimum rider threshold for a period of three months,
389 that train shall be discontinued unless otherwise agreed by the Commission with an unanimous vote of
390 the Governing Board, or unless one or more Local Government Partners elect to continue the
391 scheduling of the train and agree to unilaterally pay the full net costs of continuing the train (i.e., the

392 difference between the fares collected and/or allocated to that train and the fully allocated cost to
393 operate that train). For purposes of this Section, a "train" is a regularly scheduled trip originating at
394 one end of the Corridor at the respective time period of operations and terminating at the opposite end
395 of the Corridor at the respective time period of operations. This Section shall not be construed to
396 permit a reduction in Base Service to selected Stations.

397 **SECTION 4.07. EXPANDED SERVICE AND EXTENDED SERVICE.** Expanded Service
398 and Extended Service shall be approved pursuant to Section 3.05(E) of the Interlocal Governance
399 Agreement. Each proposal for Expanded Service or Extended Service shall include a specific funding
400 plan for the new service. During the FDOT Funding Period, Expanded Service and Extended Service
401 shall require the approval of FDOT. Contracts for excursion and special event trains complying with
402 the provisions of Section 4.12 hereof shall be exempt from the requirements of this Section.

403 **SECTION 4.08. OPERATING RULES.** FDOT shall develop initial operating rules for
404 Commuter Rail System service consistent with the Central Florida Operating and Management
405 Agreement and all Federal and State laws and regulations. Operating rules developed by FDOT after
406 the Commission and the Technical Advisory Committee have been established shall be reviewed by the
407 Technical Advisory Committee and the Governing Board before they are adopted and implemented;
408 provided however, Governing Board review shall not be required for issuance of operating bulletins,
409 speed restrictions, or other routine adjustments made for the daily operation of all trains on the Corridor
410 during the FDOT Funding Period. Following expiration of the FDOT Funding Period, all operating
411 rules shall be developed and approved by the Governing Board, subject to the Central Florida
412 Operating and Management Agreement and all applicable FRA and FTA regulations.

413 **SECTION 4.09. MAINTENANCE.**

414 (A) During the FDOT Funding Period, FDOT shall be responsible for maintenance of the
415 Commuter Rail System, other than the Station Property, which shall be maintained by the Local
416 Government Partner in whose boundaries the Station is located. Following expiration of the FDOT
417 Funding Period, the Commission shall be responsible for maintenance of the Commuter Rail System,
418 other than the Station Property. The Corridor shall be maintained in accordance with the standards set
419 forth in the Central Florida Operating and Management Agreement.

420 (B) During the FDOT Funding Period, all of the components of the Commuter Rail System
421 under FDOT control, including but not limited to the Corridor (including the Station Platforms), yards,
422 maintenance facility, layover facilities and rolling stock, shall be maintained in a constant State of
423 Good Repair.

424 **SECTION 4.10. SECURITY.** Prior to initiation of service, FDOT, in conjunction with the
425 other Local Government Partners and in consultation with local law enforcement, shall prepare a safety
426 and security plan which will include but not be limited to the various types of security required for the
427 Commuter Rail System, minimum levels of security, security responsibilities, security procedures, and
428 security coordination. During the FDOT Funding Period, FDOT shall be solely responsible for
429 security on the Corridor (including the Station Platforms) and on trains in service. Following
430 expiration of the FDOT Funding Period, the Commission shall be solely responsible for security on the
431 Corridor (including the Station Platforms) and on trains in service. Each Responsible Local
432 Government Partner shall be responsible for the costs of providing security for the Station Property.

433 **SECTION 4.11. MARKETING.** FDOT (during the FDOT Funding Period) and the
434 Commission (following expiration of the FDOT Funding Period) shall develop and implement an
435 annual plan for marketing the Commuter Rail System, which may include any and all forms of

436 advertising and promotion, including without limitation, all forms of media advertising (including
437 television, radio, print, billboard, brochure and internet), direct mail and direct marketing. Expenses
438 related to development and implementation of the annual marketing plan shall be paid by the
439 Commuter Rail System as part of the Total Operating Cost. The Commission acknowledges and
440 agrees that FDOT activities will be subject to applicable legal restrictions.

441 **SECTION 4.12. EXCURSION AND SPECIAL EVENT TRAINS.** The Chief Executive
442 Officer may contract for special excursion and special event trains on the Commuter Rail System,
443 provided that the party contracting for a special excursion or special event train pays the fully allocated
444 cost to operate that train and the agreement conforms to the policies and procedures developed for such
445 events, including provisions for insurance and indemnification.

446 **SECTION 4.13. STAFFING.**

447 (A) During the FDOT Funding Period, the FDOT shall have a Chief Executive Officer who may be
448 either an employee or a contractor of the FDOT. Following expiration of the FDOT Funding Period,
449 the Chief Executive Officer may be either an employee or a contractor of the Commission and shall
450 report to the Governing Board. The Chief Executive Officer shall be responsible for the following
451 tasks.

452 (1) Annual operating budgets shall be developed for the Commuter Rail System.
453 During the FDOT Funding Period, each annual operating budget shall be submitted first to the
454 Technical Review Committee for review and then to the Governing Board for comment prior to
455 approval by FDOT. Following expiration of the FDOT Funding Period, each annual operating
456 budget shall be submitted to the Technical Advisory Committee for review prior to approval by
457 the Governing Board.

