

Interlocal Funding Agreement
APPROVED

7/20/07

BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JUL 19 2007 *JWS/BS*

INTERLOCAL FUNDING AGREEMENT
FOR
ACQUISITION AND CONSTRUCTION OF THE
CENTRAL FLORIDA COMMUTER RAIL SYSTEM

By and Among

ORANGE COUNTY, FLORIDA

OSCEOLA COUNTY, FLORIDA

SEMINOLE COUNTY, FLORIDA

COUNTY OF VOLUSIA, FLORIDA

CITY OF ORLANDO, FLORIDA

AND

FLORIDA DEPARTMENT OF TRANSPORTATION

City Council Meeting: 7.23.07

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INTERLOCAL FUNDING AGREEMENT

THIS INTERLOCAL FUNDING AGREEMENT is made and entered into by and among Orange County, a charter county and political subdivision of the State of Florida ("Orange County"), Osceola County, a charter county and political subdivision of the State of Florida ("Osceola County"), Seminole County, a charter county and political subdivision of the State of Florida ("Seminole County"), the County of Volusia, a charter county and political subdivision of the State of Florida ("County of Volusia"), the City of Orlando, a municipal corporation of the State of Florida (the "City of Orlando"), and the State of Florida Department of Transportation, an agency of the State of Florida ("FDOT").

WITNESSETH:

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

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

WHEREAS, FDOT and CSXT expect to enter into a Central Florida Operating and Management Agreement establishing operating windows for passenger rail and freight operations

within the Corridor and providing for use and maintenance of the Corridor; and

WHEREAS, FDOT is in the process of making application to the Federal Transit Administration (FTA) and Congress for capital funds, commonly referred to as New Starts funding to provide a portion of the funds necessary for the planning, design, right-of-way acquisition and construction of the proposed commuter rail service on the Commuter Rail System; and

WHEREAS, Federal New Starts funding and other Federal funding will require a 50 percent match of Federal funds with state and local funds for capital costs, which will be shared among FDOT, Orange County, Osceola County, Seminole County, the County of Volusia and the City of Orlando in the manner set forth herein; and

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

WHEREAS, FDOT has agreed to issue Fixed-Guideway Bonds pursuant to Section 215.615, Florida Statutes, to partially fund acquisition of the Corridor and relocate the Taft Yard Facility, and has agreed to pay the debt service thereon during the first seven years of Commuter Rail System operation and the Local Government Partners have agreed to pay the debt service on the bonds thereafter until the bonds are paid in full; and

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

WHEREAS, FDOT has agreed to convey an easement in the Corridor and fee title to the

Station Property to the Commission in accordance with and under the conditions described in Section 3.05 of the Interlocal Operating Agreement between FDOT and the Commission; and

WHEREAS, the Commuter Rail System is contained in the Year 2025 Metroplan Orlando's Orlando Urban Area Transportation Study "Financially Constrained Network," and the 2025 Volusia County Long Range Transportation Plan; and

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

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

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

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

ARTICLE I

DEFINITIONS AND CONSTRUCTION

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

SECTION 1.02. INTERPRETATION. For the purposes of the interpretation, construction, administration, and implementation of this Interlocal Funding agreement, unless otherwise stated in this Interlocal Funding Agreement, the following rules of construction shall apply:

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

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

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

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

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

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

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

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

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

(G) The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms, shall refer to this Interlocal Funding Agreement; the term “heretofore” shall mean prior to execution of this Interlocal Funding Agreement.

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

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

ARTICLE II
REPRESENTATIONS

SECTION 2.01. REPRESENTATIONS OF ORANGE COUNTY. Orange County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

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

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

SECTION 2.02. REPRESENTATIONS OF OSCEOLA COUNTY. Osceola County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) Osceola County has duly authorized the execution and delivery of this Interlocal Funding Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Funding Agreement constitutes a valid and legally binding obligation of Osceola County,

enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

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

SECTION 2.03. REPRESENTATIONS OF SEMINOLE COUNTY. Seminole County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

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

(B) To Seminole County's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Seminole County, threatened against or affecting Seminole County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in

any way, would materially adversely affect the validity of this Interlocal Funding Agreement.

SECTION 2.04. REPRESENTATIONS OF THE COUNTY OF VOLUSIA. The County of Volusia makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

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

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

SECTION 2.05. REPRESENTATIONS OF THE CITY OF ORLANDO. The City of Orlando makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) The City of Orlando has duly authorized the execution and delivery of this Interlocal Funding Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Funding Agreement constitutes a valid and legally binding obligation of the City

of Orlando, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

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

SECTION 2.06. REPRESENTATIONS OF FDOT. FDOT makes the following representations as the basis for the undertakings on the part of the Local Government Partners herein contained:

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

(B) To FDOT's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of FDOT, threatened against or affecting FDOT, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would

materially adversely affect the validity of this Interlocal Funding Agreement.

ARTICLE III

STATIONS

SECTION 3.01. GENERAL PROVISIONS. Phases I and II of the Commuter Rail System will include seventeen Stations, each of which will be pedestrian accessible, have convenient connections for bus and other transportation services, and amenities designed with input from the Local Government Partners. Subject to the conveyance requirements set forth in Section 3.05 of the Interlocal Operating Agreement, the Stations, other than Amtrak Stations, shall be owned by FDOT for the benefit of the Commuter Rail System. Management of Amtrak Stations shall be subject to prior agreements with CSXT, and upon their expiration, future agreement between Amtrak and FDOT (during the FDOT Funding Period, provided that FDOT permits the Commission to offer input regarding such future agreement between Amtrak and FDOT) or the Commission (following expiration of the FDOT Funding Period). Operation and management of the Station Platforms and Station Property shall be delineated in a joint use agreement between FDOT and the Responsible Local Government Partner.

SECTION 3.02. JOINT USE AGREEMENTS.

(A) Prior to the Commissioning of the Commuter Rail System, FDOT and the Responsible Local Government Partner shall enter into a joint use agreement for the Station or Stations, which shall delineate the responsibilities of each party, and as a minimum include the following:

- (1) maintenance and operation standards for the Station;
- (2) control over the Station Platform and any structure or device or system located on the Station Platform;

(3) provision of adequate pedestrian access to the Station Platform and Station Property;

(4) requirements for housekeeping and appearance of the Station Platform and Station Property, for which the Local Government Partner shall be responsible from its own funds;

(5) security and law enforcement for the Station Platform and Station Property;

(6) access for vehicular or pedestrian traffic to the Station Platform and Station Property;

(7) provision of adequate lighting and parking; and

(8) the Local Government Partner's rights to develop ancillary facilities located near or on the Station site that are not inconsistent with this Interlocal Funding Agreement.

(B) Revenue generated at any Commuter Rail System Station maintained wholly or in part by a Responsible Local Government Partner that shall be retained by the Responsible Local Government Partner shall exclude revenue generated from parking operations on Station Property and joint fare revenues and shall include the following:

(1) non-fare vending or concession revenues;

(2) facility rental income;

(3) revenue generated from parking operations located on property that is not part of the commuter rail system;

(4) financial contributions by other entities to a particular Local Government Partner in support of such Station or as a contribution toward a particular Local Government Partner's Share of Local Operating Support payment; and

(5) advertising and naming rights.

To the extent Federal or State funds are used to construct parking facilities associated with the Commuter Rail System there shall be no charge for Station parking during the FDOT Funding Period. Thereafter any charge for such parking shall be approved pursuant to Section 3.05(E) of the Interlocal Governance Agreement.

SECTION 3.03. STATION IMPROVEMENTS. In the event it is determined that additional parking or other improvements to the Station Property need to be provided at any given Station location, FDOT and the Responsible Local Government Partner within whose jurisdiction the Station is located agree to work together to meet these needs.

SECTION 3.04. STATION AREA LAND USE AND DEVELOPMENT. FDOT and the Local Government Partners agree that maintaining a transit friendly atmosphere in the vicinity of Stations will encourage and foster use of the Commuter Rail System and increase ridership. Therefore, the parties agree that each Local Government Partner, to the extent permitted by law, shall encourage land use policies and restrictions, consistent with sound growth management principles and in accordance with applicable law, that encourage transit oriented land uses and enhance utilization of the Commuter Rail System by the general public. With respect to any right-of-way or other real estate owned by or under the control of FDOT contiguous with a Station, FDOT shall cooperate with the Responsible Local Government Partner in determining appropriate uses for such property so as to promote the Commuter Rail System and other public transit. Furthermore, the parties agree that the Responsible Local Government Partner shall have exclusive authority to establish ancillary facilities at the Station location, and to grant allowable development rights, or to enter into agreements with landowners in the vicinity of a Station that could produce revenue for the Responsible Local Government Partner. FDOT agrees to cooperate in using their authority with the Responsible Local Government Partners for development of the Station Platforms and Station Property.

SECTION 3.05. OTHER RIGHTS OF LOCAL GOVERNMENT PARTNERS.

The following specific policy areas have been reserved for the sole determination of each individual Local Government Partner, and therefore excluded from oversight, control or action by FDOT or any other Local Government Partner:

(A) any policy governing station amenity charges and other revenue sources, other than Commuter Rail System fares and parking charges at FDOT owned facilities, provided no such charge adversely affects the Commuter Rail System; and

(B) any policy governing development opportunities at or near a Station, provided that no such development adversely affects the Commuter Rail System, or restricts vehicular or pedestrian access to the Station.

SECTION 3.06. STATION MAINTENANCE AND SECURITY. Station Property shall be maintained by the Responsible Local Government Partner. Security for the Station Property shall be provided by the Responsible Local Government Partner.

SECTION 3.07. APPLICATION TO WINTER PARK AND MAITLAND.

Notwithstanding the foregoing, nothing in this Article III is intended to, nor shall it be construed to, give FDOT or a Local Government Partner any authority or control over land use or other municipal government decisions. Specifically, and without limitation of this Section, the City of Winter Park and the City of Maitland shall have the right to approve or disapprove Station improvements, Station land use area and development, lighting, parking and security related to any Station within its municipal boundaries. No Joint Use Agreement (as discussed in Section 3.01, 3.02 or otherwise) shall be binding on the City of Winter Park or the City of Maitland unless the City of Winter Park or the City of Maitland is respectively a signatory and party thereto. The parties to this Interlocal Funding Agreement understand and acknowledge that the building in Winter Park generally known as the "Amtrak Station"

is City of Winter Park property, and the City of Winter Park has not agreed to convey any of its property to either FDOT or the Commission.

ARTICLE IV

FINANCIAL OBLIGATIONS

SECTION 4.01. INITIAL CAPITAL FUNDING.

(A) The parties expect to receive FTA Funds for 50 percent of the Phase I Cost Estimate and 50 percent of the Phase II Cost Estimate. The remaining Capital Cost will be funded by FDOT and the Local Government Partners as described in this Section and Section 4.02 hereof.

(B) The Local Government Partners agree to contribute funds toward the Capital Cost for the construction, installation and equipping of Phase I and Phase II in the amounts shown in the following table:

	Volusia	Seminole	Orlando	Orange	Osceola
Engineering					
Phase I	\$80,000	\$763,000	\$228,000	\$369,000	\$0
Phase II	\$319,000	\$0	\$0	\$302,000	\$448,000
Station Property					
Phase I	\$808,000	\$7,700,000	\$0	\$1,950,000	\$0
Phase II	\$200,000	\$0	\$0	\$150,000	\$3,400,000
Final Design					
Phase I	\$191,000	\$1,823,000	\$544,000	\$879,000	\$0
Phase II	\$762,000	\$0	\$0	\$719,000	\$1,070,000
Construction					
Phase I	\$5,621,000	\$35,914,000	\$12,928,000	\$20,852,000	\$0
Phase II	\$18,519,000	\$0	\$0	\$15,129,000	\$22,182,000
Total	\$26,500,000	\$46,200,000	\$13,700,000	\$40,350,000	\$27,100,000

FDOT agrees to match the foregoing Initial Capital Contributions on a one-to-one basis with its own funds.

(1) The Preliminary Engineering Contributions for Phase I and Phase II shall be paid by each Local Government Partner on or prior to the thirtieth day following the date on which this Interlocal Funding Agreement has been fully executed by all of the parties hereto. FDOT shall use the Preliminary Engineering Contributions for design of the Commuter Rail System. The parties anticipate that the Preliminary Engineering Contributions will be sufficient to fund twenty-five percent of the thirty percent engineering for the Commuter Rail System.

(2) The Station Property Contributions for Phase I and Phase II shall be paid by each Local Government Partner on or prior to the sixtieth day following the date on which this Interlocal Funding Agreement has been fully executed by all of the parties hereto. FDOT shall use the Station Property Contributions to fund twenty-five percent of the Station Property acquisition cost.

(3) When thirty percent design of the Commuter Rail System has been completed, FDOT will notify the Local Government Partners in writing. The Final Design Contributions for Phase I shall be paid by each Local Government Partner within thirty days of the notice provided by FDOT (estimated to be November 1, 2007). FDOT shall use the Final Design Contributions to fund twenty-five percent of the Phase I Commuter Rail System design cost.

(4) The Construction Contributions for Phase I shall be paid by each Local Government Partner within 30 days before FDOT enters into the guaranteed maximum design-build or other firm-fixed price contract, as set forth in Section 4.02(A) hereof. FDOT shall use the Phase I Construction Contributions to fund twenty-five percent of the Phase I Commuter Rail System construction cost.

(5) FDOT shall notify the Local Government Partners in writing two months prior to the date it expects to request proposals for a guaranteed maximum price design-build or other

firm-fixed price contract for Phase II of the Commuter Rail System. The Final Design Contributions for Phase II shall be paid by each Local Government Partner within thirty days of the notice provided by FDOT (estimated to be October 1, 2010). FDOT shall use the Final Design Contributions to fund twenty-five percent of the Phase II Commuter Rail System design cost.

(6) The Construction Contributions for Phase II shall be paid by each Local Government Partner within 30 days before FDOT enters into the a guaranteed maximum design-build or other firm-fixed price contract, as set forth in Section 4.02(B) hereof. FDOT shall use the Phase II Construction Contributions to fund twenty-five percent of the Phase II Commuter Rail System construction cost.

(C) A Local Government Partner may elect to defer payment of any installment of its Initial Capital Contribution by providing an irrevocable commercial letter of credit to FDOT meeting the requirements set forth in Rule 14-116.002, Florida Administrative Code and in a form acceptable to the FDOT Comptroller. The deferred payment schedule shall be as agreed in writing by FDOT and the Local Government Partner electing to provide a letter of credit. The written agreement must be entered into by the Local Government Partner and FDOT, and the letter of credit must be obtained by Local Government Partner and approved by FDOT, at least thirty days prior to the installment due date for which payment is being deferred.

(D) The Department and the Local Government Partners agree that the Local Government Partners' capital contributions will be limited to 50% of the amount not funded by FTA Funds, and therefore, in the event that the final costs for Engineering, Station Property, Final Design, and Construction are less than estimated, any excess contribution will be refunded so as to not exceed the limit.

(E) To the extent that a Local Government Partner is obtaining a State Infrastructure Bank (SIB) loan to provide the funds for that Local Government Partner's contribution hereunder, the terms and conditions of the SIB loan documents are hereby incorporated by this reference and the Department agrees to fully cooperate so as to permit the Local Government Partner to be in compliance with the SIB loan requirements.

SECTION 4.02. CONSTRUCTION COST CONTINGENCIES.

(A) FDOT shall procure and contract a guaranteed maximum price design-build or other contract that establishes a firm-fixed price for the work, for Phase I of the Commuter Rail System in accordance with the Interlocal Operating Agreement as soon as practicable after FTA approves FDOT's entry into the final design process for Phase I and funding for the Commuter Rail System has been included in the President's budget. If FTA does not approve FDOT's entry into the final design process for Phase I and funding for the Commuter Rail System has not been included in the President's budget prior to July 31, 2008, or if FDOT is unable to enter into a guaranteed maximum design-build or other firm-fixed price contract for Phase I of the Commuter Rail System in accordance with the Interlocal Operating Agreement, this Interlocal Funding Agreement may be terminated pursuant to Section 6.02(B)(4) of the Interlocal Operating Agreement.

(1) If FDOT is able to enter into guaranteed maximum design-build or firm-fixed price contract for Phase I equal to or less than 105 percent of the Phase I Cost Estimate, FDOT shall notify the Local Government Partners of the difference in writing. In such event, FDOT agrees to pay 50 percent of the difference and the Phase I Construction Contribution for each Local Government Partner shall be increased proportionately and paid within forty-five calendar days of notification from the Department or prior to the posting of the accepted bid.

(2) If FDOT can only enter into a guaranteed maximum design-build or firm-fixed

price contract for Phase I greater than 105 percent of the Phase I Cost Estimate, FDOT will notify the Local Government Partners of the difference in writing. The parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to determine whether the Phase I scope can be reduced to bring the cost within 105 percent of the Phase I Cost Estimate or if additional funding will be provided for Phase I.

(a) If the parties agree to reduce the scope and FDOT successfully negotiates with the prospective contractor for a reduction in scope and price, FDOT shall enter into the guaranteed maximum design-build or other firm-fixed price contract for Phase I.

(b) If the parties agree to provide additional funding, each party agreeing to provide additional funds shall distribute a written offer to increase its Phase I funding (specifying the amount) to each of the other parties. Upon circulation of funding offers equal to the amount of the difference specified in the notice provided by FDOT, the offers shall be deemed accepted by the parties and made a part of this Interlocal Funding Agreement. FDOT shall then enter into the guaranteed maximum design-build or other firm-fixed price contract for Phase I.

(c) If the parties cannot agree upon a reduction in scope, FDOT is unable to successfully negotiate with the prospective contractor for a reduction in scope and price, and Phase I funding offers equal to the amount of the difference specified in the notice provided by FDOT are not circulated within forty-five days of the notice provided by FDOT, this Interlocal Funding Agreement may be terminated pursuant to Section 6.02(B)(4) of the Interlocal Operating Agreement.

(B) FDOT shall procure and contract for Phase II of the Commuter Rail System in accordance with the provisions of the Interlocal Operating Agreement, as soon as practicable after FTA

approves FDOT's entry into the final design process for Phase II. If in the event that FTA does not approve FDOT's entry into the final design process for Phase II, or in the event that funding for the Commuter Rail System has not been included in the President's budget prior to July 31, 2008, or in the event that Phase II does not proceed through construction and Commissioning, FDOT, and the Local Government Partners agree to discuss the impacts and renegotiate this Interlocal Funding Agreement.

(C) The parties recognize and agree that due to changed circumstances, increases in the cost of constructing and implementing the Commuter Rail System may need to occur following award of the guaranteed maximum design-build or other firm-fixed price contract. If the amount is such that it will not result in a cumulative increase of the contract price to more than 105 percent of the Phase I Cost Estimate, FDOT agrees to pay 50 percent of the difference and the Phase I Construction Contribution for each Local Government Partner shall be increased proportionately and paid within forty-five calendar days of notification from the Department. If the amount is such that it will result in a cumulative increase of the contract price to more than 105 percent of the Phase I Cost Estimate, FDOT will notify the Local Government Partners of the need and amount of the proposed increase in writing. The parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to determine whether the increase can be reduced, or if additional funding will be provided, or other appropriate course of action. Notwithstanding the foregoing, unless otherwise agreed by the FDOT and the Local Government Partners, the maximum contribution that the Local Government Partners will be obligated to make towards constructing Phase I will be 105 percent of the Phase I Cost Estimate and the payments to be made by the Local Government Partners under this subparagraph (C) will be limited by that total maximum contribution.

SECTION 4.03. FDOT BOND DEBT SERVICE.

(A) FDOT shall issue FDOT Fixed-Guideway Bonds pursuant to Section 215.615, Florida

Statutes, bearing interest at fixed rates consistent with prevailing market rates and having substantially equal annual Debt Service payments, in a total principal amount sufficient to fund FDOT's reasonable transaction costs (estimated at \$1,170,000) and yield \$173,000,000 of net proceeds to fund acquisition of the Corridor and relocate the Taft Yard Facility.

(B) Following expiration of the FDOT Funding Period, each Local Government Partner shall be responsible for paying its "Share of FDOT Bond Debt Service," which shall be computed by multiplying the Debt Service for each Interest Payment Date (reduced by the proceeds of any Commuter Rail System assets, as set forth in Section 3.04 of the Interlocal Operating Agreement) by the Local Government Partner's percentage of track miles, as shown in the following tables.

Before Phase II Opens for Service

Local Government Partner	Track Miles	Percentage of Track Miles
Orange County	9.10 miles	27.9656 percent
Seminole County	16.44 miles	50.5224 percent
County of Volusia	1.50 miles	4.6097 percent
City of Orlando	5.50 miles	16.9023 percent

After Phase II Opens for Service

Local Government Partner	Track Miles	Percentage of Track Miles
Orange County	16.30 miles	26.9243 percent
Osceola County	9.60 miles	15.8573 percent
Seminole County	16.44 miles	27.1556 percent
County of Volusia	12.70 miles	20.9779 percent
City of Orlando	5.50 miles	9.0849 percent

(C) Each Local Government Partner shall pay its respective Share of FDOT Bond Debt Service on each Interest Payment Date by wire transfer in immediately available funds in accordance with written instructions provided to the Local Government Partners by FDOT. Unless otherwise agreed to by FDOT, no Federal funds shall be used for these payments.

(D) Each Local Government Partner understands and agrees that its commitment to pay its

respective Share of FDOT Bond Debt Service shall survive any termination of the Interlocal Operating Agreement or the discontinuance of any service as provided for in the Interlocal Operating Agreement, unless otherwise agreed in writing by FDOT.

SECTION 4.04. COVENANT TO BUDGET AND APPROPRIATE.

(A) Each Local Government Partner hereby covenants and agrees to appropriate in its annual budget for each Fiscal Year, by amendment, if necessary, from Non-Ad Valorem Funds lawfully available in each Fiscal Year, amounts required to pay its Initial Capital Contribution and its Share of FDOT Bond Debt Service for each such Fiscal Year. Each Local Government Partner's Funds shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Funds or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing, the Local Government Partners do not covenant to maintain any services or programs, now provided or maintained by such Local Government Partners which generate Non-Ad Valorem Funds.

(B) The foregoing covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Funds, nor does it preclude a Local Government Partner from pledging its Non-Ad Valorem Funds in the future, nor does it require a Local Government Partner to levy and collect any particular Non-Ad Valorem Funds, nor does it give the parties to this Interlocal Funding Agreement a prior claim on the Non-Ad Valorem Funds as opposed to claims of general creditors of the Local Government Partner. The covenant to appropriate Non-Ad Valorem Funds is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Funds heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making Non-Ad Valorem Funds available for the

payment of amounts described in this Section, in the manner described in this Interlocal Funding Agreement and placing on each Local Government Partner a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the provisions of general law which provide that the governing body of each county or municipality shall not make appropriations in a Fiscal Year which exceed the amount to be received from taxation or other revenue sources during such Fiscal Year; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare, and safety of the inhabitants of the Local Government Partner or which are legally mandated by applicable law. Commencing in the fiscal year immediately preceding the fiscal year in which the first Local Government Partners' Contribution is due and continuing in each fiscal year thereafter, each Local Government Partner agrees that in preparing its annual budget it shall first provide for the Local Government Partner's Contribution coming due in the next fiscal year prior to programming or encumbering funds for any new pay-as-you-go capital projects as part of its Capital Improvement Program; provided, however, that this restriction shall not apply to projects already in the proposed budget or in the Capital Improvement Plan, or to projects affecting public health, safety or welfare.

(C) No provision of this Interlocal Funding Agreement shall be considered a debt obligation of any Local Government Partner within the meaning of any constitutional or statutory provision or limitation. Amounts payable hereunder are limited obligations of each Local Government Partner and neither the property, the full faith and credit nor the taxing power of the Local Government Partners, the State of Florida or any political subdivision is pledged as security for the obligations due hereunder.

SECTION 4.05. FDOT FIXED-GUIDEWAY BOND REFUNDING. If at any time there appears to be a cost saving by refunding the FDOT Fixed-Guideway Bonds, FDOT and the Local Government Partners shall investigate and determine the extent of such savings, and FDOT shall agree

