

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

By and Between

FLORIDA DEPARTMENT OF TRANSPORTATION

AND

CENTRAL FLORIDA COMMUTER RAIL COMMISSION

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**INTERLOCAL OPERATING AGREEMENT**

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

**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

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

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 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 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,

shall refer to this Interlocal Operating Agreement; the term "heretofore" shall mean prior to execution of this Interlocal Operating Agreement.

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

**SECTION 1.03. SECTION HEADINGS.** Any headings preceding the texts of the several Articles and Sections of this Interlocal Operating 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 Operating Agreement nor affect its meaning, construction, or effect.

## ARTICLE II

### REPRESENTATIONS

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

(A) FDOT has duly authorized the execution and delivery of this Interlocal Operating Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Operating 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



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:

(B) To the Commission'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 Commission, threatened against or affecting the Commission, 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 Operating Agreement.

## ACQUISITION, CONSTRUCTION AND OWNERSHIP

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.

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

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

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

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

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

(C) Simultaneously with conveyance of the Commuter Rail Easement, FDOT shall transfer to the Commission all of its right, title and interest in the rolling stock, equipment, tracks and other personal property of the Commuter Rail System, both tangible and intangible; provided however, that the initial six Diesel Multiple Units shall remain the property of FDOT. Such conveyance shall be 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.

(2) A Five-Year Capital Plan, based upon the projected capital requirements for the succeeding five years, shall be prepared for each Fiscal Year. During the FDOT Funding Period, each Five-Year Capital Plan shall be submitted first to the Technical Advisory Committee for its review and then to the Governing Board for comment prior to approval by FDOT. Following expiration of the FDOT Funding Period, each Five-Year Capital Plan shall be submitted to the Technical Advisory Committee for review prior to approval by the Governing Board.

(3) During the FDOT Funding Period, to enhance and ensure the effectiveness of the Commuter Rail System service, the Chief Executive Officer shall provide timely and comprehensive operational input to and coordination with the Contract Operator and FDOT, and simultaneously provide operational information to the Commission. After the FDOT Funding Period, the Chief Executive Officer shall provide timely and comprehensive operational input to and coordination with the Commission and Contract Operator.

(4) Periodic written reports shall be submitted to the Technical Advisory Committee, Governing Board and, during the FDOT Funding Period, FDOT, using data obtained from the Contract Operator as to operational performance on the Corridor, and, as appropriate, financial or operational data obtained from each individual Local Government Partner.

(5) Additional duties and responsibilities pertaining to the Commuter Rail System may be assigned to the Chief Executive Officer by FDOT, during the FDOT Funding Period, and by the Governing Board, following expiration of the FDOT Funding Period.

(B) During the FDOT Funding Period, the FDOT shall have a Chief Operating Officer who



480 may be either an employee or a contractor of the FDOT. Following expiration of the FDOT Funding  
481 Period, the Chief Operating Officer may be either an employee or a contractor of the Commission and  
482 shall report to the Governing Board. The Chief Operating Officer shall be responsible for the  
483 following tasks:

484 (1) Daily oversight of Commuter Rail System commuter rail operations and service  
485 to ensure compliance with service standards and budgets, including oversight of all contracted  
486 services.

487 (2) Coordinate with the appropriate staff of each individual Local Government  
488 Partner, LYNX, VOTRAN and CSXT in the event of an emergency (such as the need for bus  
489 bridges, public service announcements, security, or railroad property issues).

490 (3) Timely and comprehensive operational input to and coordination with the Chief  
491 Executive Officer and the Contract Operator in order to enable the FDOT (during the FDOT  
492 Funding Period) and the Commission (following expiration of the FDOT Funding Period) to  
493 effectively respond to the needs and requirements of the users of the Commuter Rail System  
494 and to enhance Commuter Rail System service and future expansions.

495 (4) Develop and implement a Commuter Rail System fleet management plan and  
496 safety program plan shall be developed and implemented. The initial fleet management plan  
497 and safety program plan shall be submitted to the Local Government Partners for review.  
498 During the FDOT Funding Period, modifications to the fleet management plan and safety  
499 program plan shall be approved in the same manner as the initial plans. Following expiration of  
500 the FDOT Funding Period, modifications shall be submitted to the Technical Advisory  
501 Committee for review prior to approval by the Governing Board, FTA and FRA.

(5) Maintain a high standard of customer relations with all users of the Commuter Rail System.

(6) Performance of additional duties and responsibilities pertaining to the Commuter Rail System may be assigned by the Chief Executive Officer or FDOT during the FDOT Funding Period and by the Chief Executive Officer or the Governing Board following expiration of the FDOT Funding Period.

(C) FDOT shall have such other positions, as the FDOT may deem necessary for the effective operation and administration of the Commuter Rail System. It is anticipated that a limited staff will be required, and that the FDOT can place many of the services in the third party operations, maintenance and dispatch procurement, if determined economically and fiscally reasonable. This includes, but is not limited to, budget/finance, marketing, grants, planning, and engineering. These positions can be contracted out to a third party provider, either through a comprehensive procurement package (operate, maintain, dispatch), or individually. In addition, the FDOT may contract with other governmental entities for these positions. Following expiration of the FDOT Funding Period, staffing shall be established by the Governing Board.

#### **SECTION 4.14. CONTRACT OPERATOR.**

(A) During the FDOT Funding Period, FDOT shall contract with a Contract Operator to perform certain or all of the operational functions and activities necessary to provide commuter rail service, consistent with the Central Florida Operating and Management Agreement, including, but not limited to, the following responsibilities or activities:

- (1) operation of the commuter rail trains in revenue and non-revenue service;
- (2) maintenance of rolling stock;

(3) maintenance of the Corridor right-of-way within 25 feet of the centerline of the mainline tracks, or as otherwise determined by FDOT;

(4) signalization and dispatching on the Corridor;

(5) maintenance and security of the buildings, grounds, yard tracks, shop equipment and tools;

(6) at the maintenance yard and layover facilities; and

(7) all other operational activities.

(B) Any contract entered into by FDOT with a Contract Operator shall provide that it expires upon the expiration of the FDOT Funding Period unless the contract is assigned to the Commission pursuant to an assignment that effects a novation and releases the FDOT from being a party to the contract, in which case, the contract will continue for a period of three years following the FDOT Funding Period. Such contract shall provide that it can be assigned to the Commission.

#### **SECTION 4.15. ADMINISTRATIVE FUNCTIONS.**

(A) During the FDOT Funding Period, FDOT shall manage the contract with the Contract Operator, as well as obtain assistance for specific areas of expertise as FDOT deems necessary or appropriate. It is anticipated that most or all personnel will be employed by Contract Operator or as independent contractors. The Chief Executive Officer and Chief Operating Officer shall be employed or contracted separately from the Contract Operator and shall not be affiliated with the Contract Operator; provided, however, that nothing in this Interlocal Operating Agreement shall be deemed to impose any limitations or restrictions on what duties or functions FDOT decides to assign to FDOT employees. Following expiration of the FDOT Funding Period, the Governing Board shall be responsible for employing or contracting with staff and the Contract Operator.

546 (B) Commuter Rail System related staff and/or consultants shall perform administrative  
547 functions in accordance with a plan developed by the Chief Executive Officer, which shall be  
548 developed initially in consultation with the Technical Advisory Committee and reviewed by the  
549 Governing Board. During the FDOT Funding Period, modifications to the administrative plan shall be  
550 approved in the same manner as the initial plan. Following expiration of the FDOT Funding Period,  
551 modifications shall be submitted to the Technical Advisory Committee for review prior to approval by  
552 the Governing Board. The administrative plan shall minimize the costs associated with these functions.  
553 All administrative indirect costs incurred by an individual Local Government Partner (including but not  
554 limited to staff review, legal review and Technical Advisory Committee participation) shall be  
555 absorbed by the respective individual Local Government Partner incurring same, unless otherwise  
556 agreed by the FDOT, during the FDOT Funding Period, or the Governing Board, following expiration  
557 of the FDOT Funding Period.

558 (C) During the FDOT Funding Period, procurements and contracts for the Commuter Rail  
559 System shall be processed and administered in accordance with the procurement policies and  
560 procedures of FDOT and contracts shall be awarded under the name and authority of FDOT. Each  
561 contract entered into by FDOT for the Commuter Rail System shall provide for assignment to the  
562 Commission upon expiration of the FDOT Funding Period to the extent that it has not expired as of that  
563 time; provided, however, that no assignment will be made unless a novation is effected and FDOT is  
564 released from being a party to the contract. FDOT shall consider the advice of the Governing Board  
565 for major procurement actions.

566 (D) The main administrative office for management of the Commuter Rail System shall be  
567 located within the jurisdiction of one of the Local Government Partners, except that during the FDOT

Funding Period, FDOT shall be entitled to house staff for the Commuter Rail System at such places as FDOT determines is necessary or appropriate.

**SECTION 4.16. EMERGENCIES.** During the FDOT Funding Period, FDOT shall handle emergency response. After the conclusion of an emergency, FDOT shall prepare a written report. FDOT shall provide a copy of the report to the Governing Board and the Technical Advisory Committee for their advice, within their respective roles, on any improved activities, methods, or equipment that could prevent or mitigate future emergencies.

## **ARTICLE V**

### **FINANCIAL OBLIGATIONS**

#### **SECTION 5.01. ANNUAL FUNDING OBLIGATION AND LIMITATION.**

(A) During the FDOT Funding Period, FDOT shall be entitled to retain the Total Operating Revenue of the Commuter Rail System and shall be obligated for payment of the Total Operating Cost of the Commuter Rail System, including any operating deficits.

(B) Following expiration of the FDOT Funding Period, the Commission shall be entitled to retain the Total Operating Revenue of the Commuter Rail System and shall be obligated for payment of the Total Operating Cost of the Commuter Rail System. The Share of Local Operating Support for each Local Government Partner shall be computed pursuant to Section 4.01 of the Interlocal Governance Agreement. Following expiration of the FDOT Funding Period, the Local Government Partners shall also be responsible for funding Debt Service on the FDOT Fixed-Guideway Bonds. The Share of FDOT Bond Debt Service for each Local Government Partner shall be computed pursuant to Section 4.03 of the Interlocal Funding Agreement.

**SECTION 5.02. FARES.** Fares, the collection of fare revenue and use of fare collection

590 equipment shall be as follows:

591 (A) During the FDOT Funding Period, FDOT, with advice from the Governing Board, shall  
592 establish the amounts and categories of all Commuter Rail System fares. Following expiration of the  
593 FDOT Funding Period, the amounts and categories of all Commuter Rail System fares shall be  
594 established by the Governing Board.

595 (B) The fare system shall be a self-service, proof-of-payment system.

596 (C) During the FDOT Funding Period, procedures for collection and handling of passenger  
597 fares shall be established by FDOT. Following expiration of the FDOT Funding Period, any  
598 modifications to procedures for collection and handling of passenger fares shall be made by the  
599 Governing Board. FDOT (during the FDOT Funding Period) or the Commission (following expiration  
600 of the FDOT Funding Period) shall monitor compliance of passengers to ensure compliance with the  
601 fare policy, and shall also be responsible for coordinating issues of fare evasion with local law  
602 enforcement officials.

603 (D) Ticket vending machines shall be capable of selling tickets for use throughout the  
604 LYNX and VOTRAN service areas if LYNX and VOTRAN machines have the same capability.

605 (E) FDOT (during the FDOT Funding Period) or the Commission (following expiration of  
606 the FDOT Funding Period) shall be solely responsible for the maintenance and the collection of  
607 revenue from ticket vending machines on the Station Platforms.

608 (F) In determining the source and amount of passenger fare revenue to be allocated to the  
609 Commuter Rail System by LYNX and VOTRAN as joint revenue, a survey of passengers shall be  
610 conducted on an annual basis or at some other frequency as determined by FDOT (during the FDOT  
611 Funding Period) or the Commission (following expiration of the FDOT Funding Period) to ascertain

where the passenger boarded the train, other modes of transportation service utilized, the type of fare utilized for their trip (e-pass, monthly pass, cash, etc.) and from which service provider (LYNX, VOTRAN or the Commuter Rail System) the fare was purchased. The data from these surveys shall be used to determine the percentage of total passenger trips to be allocated to each mode of service. FDOT, with advice from the Governing Board (during the FDOT Funding Period) or the Governing Board (following expiration of the FDOT Funding Period), shall approve an Average Fare based upon the results of these surveys and the methodologies and assumptions utilized to calculate the Average Fare. This Average Fare shall then be applied to joint ridership statistics to determine Commuter Rail System passenger fare revenue.

#### SECTION 5.03. ANNUAL BUDGETS.

(A) During the FDOT Funding Period the annual operating budget of the Commuter Rail System for each Fiscal Year shall be adopted by FDOT as follows:

(1) FDOT shall propose an annual operating budget and a Five-Year Capital Plan that shall be submitted to the Governing Board for review;

(2) any proposed amendments to the annual operating budget or the Five-Year Capital Plan shall also be submitted to the Governing Board for review;

(3) the operating budget and Five-Year Capital Plan shall be developed on a State fiscal year basis, which commences on July 1 and continues through the next succeeding June 30, in accordance with Florida law applicable to FDOT and the state budgeting process.

(B) Following expiration of the FDOT Funding Period, the operating budget and Five-Year Capital Plan shall be adopted by the Governing Board prior to July 1 of each year, on a county fiscal year basis, which commences on October 1 and continues through the next succeeding September 30,

634 in accordance with Florida law applicable to counties.

635 (C) Capital projects constructed for the primary purpose of serving the residents of a single  
636 Local Government Partner, for example, a new or improved Station, improvements to the Deland Spur  
637 or the Aloma Spur, shall be funded by such Local Government Partner and not included in the Five-  
638 Year Capital Plan.

639 **SECTION 5.04. ACCOUNTING AND REPORTING.**

640 (A) During the FDOT Funding Period, the Total Operating Revenue and Total Operating  
641 Cost of the Commuter Rail System shall be accounted for separately from all other FDOT funds.  
642 FDOT shall maintain all accounts and reports required by Florida law and shall provide all information  
643 and reports reasonably requested by the Governing Board or the individual Local Government Partners.

644 (B) FDOT (during the FDOT Funding Period) and the Commission (following expiration of  
645 the FDOT Funding Period) shall adhere to all applicable State, Federal, and FTA related reporting  
646 requirements, including but not limited to National Transit Data Base information. Boarding and  
647 alighting count information shall be collected in accordance with FTA reporting requirements, and  
648 provided as input to the operations and maintenance budgeting process.

649 (C) FDOT (during the FDOT Funding Period) and the Commission (following expiration of  
650 the FDOT Funding Period) shall ensure that the Local Government Partners timely receive sufficient  
651 accounting and financial information so as to enable these entities to fulfill their financial reporting and  
652 auditing obligations.

653 **SECTION 5.05. FDOT ANNUAL APPROPRIATIONS.** Notwithstanding any other  
654 provision of this Interlocal Operating Agreement, in compliance with Section 339.135(6)(a), Florida  
655 Statutes, the following language and provisions thereof are hereby made a part of this Interlocal



## 656 Operating Agreement:

657 The FDOT, during any fiscal year, shall not expend money, incur any liability, or enter  
658 into any contract which, by its terms, involves the expenditure of money in excess of the  
659 amounts budgeted as available for expenditure during such fiscal year. Any contract,  
660 verbal or written, made in violation of this subsection is null and void, and no money  
661 may be paid on such contract. The Department shall require a statement from the  
662 Comptroller of the Department that funds are available prior to entering into any such  
663 contract or other binding commitment of funds. Nothing herein contained shall prevent  
664 the making of contracts for periods exceeding 1 year, but any contract so made shall be  
665 executory only for the value of the services to be rendered or agreed to be paid for in  
666 succeeding fiscal years; and this paragraph shall be incorporated verbatim in all  
667 contracts of the Department which are for an amount in excess of \$25,000.00 and which  
668 have a term for a period of more than 1 year.

669 **ARTICLE VI**670 **GENERAL PROVISIONS**

671 **SECTION 6.01. TERM.** This Interlocal Operating Agreement shall become effective when  
672 fully-executed copies of the Interlocal Governance Agreement, the Interlocal Funding Agreement and  
673 this Interlocal Operating Agreement have been filed with the clerk of the circuit court, or as otherwise  
674 required by law, for each of the Local Government Partners and, unless terminated earlier pursuant the  
675 terms hereof, shall extend for a term of ninety-nine years.

676 **SECTION 6.02. TERMINATION.**

677 (A) Except as provided herein, this Interlocal Operating Agreement shall not be terminated

678 prior to conveyance of the Corridor, the Station Property, and the rolling stock, equipment and other  
679 personal property of the Commuter Rail System, as described in Section 3.05 hereof.

680 (B) Although all parties to this Interlocal Operating Agreement fully expect the Commuter  
681 Rail System to be successful and are committed to fulfilling any and all requirements of this Interlocal  
682 Operating Agreement for the entire ninety-nine year term, the parties are cognizant that certain  
683 unforeseen events may result in cessation of operation of the Commuter Rail System at an earlier date  
684 and desire to set forth the consequences of such event. For the purposes of this subsection "cessation  
685 of operation of the Commuter Rail System" shall mean that that the Commuter Rail System is no  
686 longer available for use by the public as a means of transportation. Termination of this Interlocal  
687 Operating Agreement and cessation of operation of the Commuter Rail System shall not occur except  
688 in accordance with the following:

689 (1) Mutual Consent. This Interlocal Operating Agreement may be terminated at  
690 any time, by the written agreement of FDOT and the Commission.

691 (2) Force Majeure. If an event of Force Majeure causes, continues, or is likely to  
692 cause the continuation of the Commuter Rail System to be impractical for a period of one year  
693 or more, the FDOT, during the FDOT Funding Period, or the Commission, after the FDOT  
694 Funding Period, may terminate this Interlocal Operating Agreement. Upon such termination all  
695 assets of the Commuter Rail System, the Corridor (including the Station Platforms), the Station  
696 Property, and all other facilities, equipment and supplies shall revert or be conveyed to FDOT  
697 and the assignment of the Central Florida Operating and Management Agreement to the  
698 Commission shall simultaneously be terminated. Said reverter shall become effective within  
699 thirty days of notice from the FDOT to the Commission and shall not require action of the

Commission; provided, however, that the Commission agrees to execute such documents as FDOT may reasonably request in the event that FDOT deems it convenient or necessary to confirm the reverter. Any such conveyance shall be made without payment of additional compensation to the Commission or Local Government Partners by FDOT. FDOT may elect, in its sole discretion, to continue operating the Commuter Rail System or dispose of the Commuter Rail System assets in accordance with law. If FDOT elects to dispose of the Commuter Rail System assets, 50 percent of any net funds remaining after payment of other obligations and expenses shall be shared with the Local Government Partners in proportion to each Local Government Partner's Initial Capital Contribution. The requirements set forth in this clause (2) shall survive the termination of this Interlocal Operating Agreement.

(3) Failure of Conditions. If the conditions for termination as set forth in Section 3.02 occur, then this Interlocal Operating Agreement shall be terminated and the following shall apply:

(a) Any portion of the Preliminary Engineering Contributions made by the Local Government Partners that has not yet been expended, assuming the Preliminary Engineering Contributions constituted twenty-five percent of each expenditure for preliminary engineering, shall be returned by FDOT to the Local Government Partners.

(b) Any portion of the Station Property Contributions made by the Local Government Partners that has not yet been expended, assuming the Station Property Contributions constituted twenty-five percent of the total expenditures for the acquisition of Station Property, shall be returned by FDOT to the Local Government Partners. FDOT shall sell any Station Property that has been acquired and 25 percent of

the net proceeds remaining after payment of other obligations and expenses shall be used to reimburse the Local Government Partner whose Station Property Contribution was applied to such acquisition.

(c) Any portion of the Final Design Contributions made by the Local Government Partners that has not yet been expended, assuming the Final Design Contributions constituted twenty-five percent of the total expenditures for Final Design, shall be returned by FDOT to the Local Government Partners.

The requirements set forth in subclauses (a), (b) and (c) of this clause (3) shall survive the termination of this Interlocal Operating Agreement.

(4) Phase I Contingency.

In the event of any one of the following:

(a) FTA does not approve FDOT's entry into the final design process for Phase I prior to July 31, 2008; or

(b) Funding for the Commuter Rail System has not been included in the President's budget prior to July 31, 2008; or

(c) FDOT is unable to enter into a guaranteed maximum design-build or other firm-fixed price contract for Phase I equal to or less than 105 percent of the Phase I Cost Estimate, and the parties cannot agree upon either (i) a reduction in scope agreed to by the contractor that reduces the price to an amount that is equal to or less than 105 percent of the Phase I Cost Estimate, or (ii) additional funding sufficient to cover the price is not obtained in accordance with the Interlocal Funding Agreement;

then this Interlocal Operating Agreement shall be terminated and the provisions of Subclauses

6.02(B)(3)(a), (b), and (c) shall apply. The requirements set forth in this clause (4) shall survive the termination of this Interlocal Operating Agreement.

(5) Phase II Contingency. In the event that Phase II does not proceed through construction and Commissioning, the FDOT, the Commission, and the Local Government Partners agree to discuss the impacts and renegotiate this Interlocal Operating Agreement and the Interlocal Funding Agreement.

(6) Other Events. In the event (a) any party to this Interlocal Operating Agreement or the Commission shall fail to pay any funds when due, or shall fail to issue when required any securities, guarantees, or credit enhancements required by this Interlocal Operating Agreement, or shall otherwise be in material breach of this Interlocal Operating Agreement, and in each case all applicable cure rights have been exhausted, and sufficient funds to replace such unpaid funds are not forthcoming from other sources, (b) the Commuter Rail System cannot be successfully operated with an annual System Operating Deficit less than or equal to the amounts specified in Section 4.01(F) of the Interlocal Governance Agreement or (c) operation of the Commuter Rail System is suspended or terminated for a period longer than 180 days (other than as the result of a Force Majeure event, for which the time period shall be one year), unless otherwise agreed by the parties, then the FDOT, during the FDOT Funding Period, or the Commission, after the FDOT Funding Period, may terminate this Interlocal Operating Agreement. Upon such termination all assets of the Commuter Rail System, the Corridor (including the Station Platforms), the Station Property, and all other facilities, equipment and supplies shall revert or be conveyed to FDOT and the assignment of the Central Florida Operating and Management Agreement to the Commission shall simultaneously be terminated.

Said reverter shall become effective within thirty days of notice from the FDOT to the Commission and shall not require action of the Commission; provided, however, that the Commission agrees to execute such documents as FDOT may reasonably request in the event that FDOT deems it convenient or necessary to confirm the reverter. Any such conveyance shall be made without payment of additional compensation to the Commission by FDOT. FDOT shall elect, in its sole discretion, to continue operating the Commuter Rail System or dispose of the Commuter Rail System assets in accordance with law. If FDOT elects to dispose of the Commuter Rail System assets, 50 percent of any net funds remaining after payment of other obligations and expenses shall be shared with the Local Government Partners in proportion to each Local Government Partner's Initial Capital Contribution. The requirements set forth in this clause (6) shall survive the termination of this Interlocal Operating Agreement.

(C) FDOT and the Commission expressly acknowledge that the Local Government Partners are directly and substantially benefited by the termination provisions set forth in this Section 6.02 and agree that the terms of this Section 6.02 may be enforced by each of the Local Government Partners.

**SECTION 6.03. ASSIGNMENT.** Following conveyance of the Corridor and the rolling stock, equipment and other personal property of the Commuter Rail System, as described in Section 3.05 hereof, this Interlocal Operating Agreement may be assigned to a successor agency created to own and operate the Commuter Rail System, provided that:

(1) The successor agency has been created in such a manner and with such powers, duties, and responsibilities as to not, in the reasonable judgment of FDOT, impair the position of FDOT or impair the ability of the successor agency to fully assume the position of the Commission under this Interlocal Operating Agreement; and

(2) The successor agency executes a written assignment of this Interlocal Operating Agreement from the Commission to the successor agency; and

(3) The successor agency executes a written assignment of the Central Florida Operating and Management Agreement from FDOT to the successor agency pursuant to which the successor agency agrees to assume and fully comply with the obligations of FDOT under the Central Florida Operating and Management Agreement, except to the extent of FDOT's retained rights.

#### **SECTION 6.04. ADVISORY RELATIONSHIPS.**

(A) During the FDOT Funding Period, the Governing Board shall serve primarily in an advisory capacity to FDOT; provided however, that FDOT shall not be empowered to make any decision materially affecting the long-term funding for the Commuter Rail System (limited to capital investment decisions that would extend beyond the FDOT Funding Period or increases in the Base Service) without consent from the Governing Board. The Governing Board shall advise FDOT on decisions in respect to the Commuter Rail System including, but not limited to, service, fare policy, funding, procurement, operations, maintenance, and capital programs, reviewing the annual budget, and financing. FDOT shall give careful thought, consideration, and appropriate weight to the findings and recommendations of the Governing Board.

(B) Not later than six months prior to expiration of the FDOT Funding Period, the Governing Board shall complete a transition and implementation plan that will ensure a safe and orderly transition of the management and operation of the Commuter Rail System and Corridor.

(C) Upon expiration of the FDOT Funding Period, FDOT shall serve in an advisory capacity to the Commission. FDOT shall advise the Governing Board on decisions in respect to the Commuter

810 Rail System including, but not limited to, service, fare policy, funding, procurement, operations,  
811 maintenance, and capital programs, reviewing the annual budget, and financing. The Governing Board  
812 shall give careful thought, consideration, and appropriate weight to the findings and recommendations  
813 of FDOT.

814 (D) Disagreements between the Governing Board and FDOT shall be subject to the dispute  
815 resolution procedures set forth in Section 6.05 hereof.

816 **SECTION 6.05. RESOLUTION OF DISPUTES.** It is the desire and intent of the parties to  
817 avoid, if possible, the expense and delay inherent in litigation; therefore, the FDOT and the  
818 Commission agree that whenever any individual party cannot resolve an issue with any other party, the  
819 affected parties will in engage in the alternative dispute resolution process described below prior to  
820 resorting to litigation.

821 (A) Any party may give another party written notice of any dispute not resolved in the  
822 normal course of business. Within ten business days after delivery of the notice, the receiving party  
823 shall submit to the disputing party a written response. The notice and the response shall include (1) a  
824 statement of the position of the party delivering the notice of dispute or the response, as the case may  
825 be, and a summary of arguments supporting its position and (2) the name and title of the executive who  
826 will represent that party in the negotiation to resolve the dispute and of any other person who will  
827 accompany the executive.

828 (B) Within ten business days after delivery of the disputing party's notice, the executives of  
829 both parties shall meet at a mutually acceptable time and place, and thereafter as often as they  
830 reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information  
831 made by one party to the other will be honored. In an effort to facilitate the negotiation process, such



832 executives may agree to have an unrelated third party moderate and facilitate the negotiations. If a  
833 negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at  
834 least three business days notice of such intention and may also be accompanied by an attorney.

835 (C) If the dispute has not been resolved within thirty calendar days after delivery of the  
836 disputing party's notice, or if the parties fail to meet within twenty calendar days, either party may give  
837 written notice to the other party declaring the negotiation process terminated.

838 (D) The parties regard the obligations to notify the other party of a dispute and to negotiate  
839 such dispute pursuant to this Section as an essential provision of this Interlocal Operating Agreement  
840 and one that is legally binding on each of them. In case of a violation of such obligation by either  
841 party, the other may bring an action to seek enforcement of such obligation in any court of law having  
842 jurisdiction thereof.

843 (E) Each party shall each bear its own costs and expenses incurred in connection with any  
844 negotiations and dispute resolution.

845 (F) Upon failure to resolve any dispute in accordance in this Section 6.05, the parties may  
846 engage in mediation, arbitration, or other dispute resolution processes at their discretion, or pursue  
847 other legal remedies.

848 **SECTION 6.06. FORCE MAJEURE.** It is expressly understood and agreed by the  
849 parties to this Interlocal Operating Agreement that if the performance of any provision of this Interlocal  
850 Operating Agreement is delayed by reason of war, civil commotion, act of God, governmental  
851 restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances  
852 which are reasonably beyond the control of the party obligated or permitted under the terms of this  
853 Interlocal Operating Agreement to do or perform the same, the party so obligated or permitted shall be

excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

**SECTION 6.07. INSURANCE AND LIABILITY.**

(A) During the FDOT Funding Period, the FDOT shall carry such insurance and have such liability as is set forth in the Central Florida Operating and Management Agreement. The Commission and the Local Government Partners as well as their respective elected or appointed officials, management, employees, agents and assigns will be additional named insureds under any insurance policies. After the FDOT Funding Period, the Commission, as required by the assignment referred to in Section 3.05 hereof, shall carry such insurance and have such liability as is set forth in the Central Florida Operating and Management Agreement, and FDOT will be an additional named insured under any such insurance policy.

(B) Execution of this Interlocal Operating Agreement by the Commission is not intended and shall not be construed as an assumption by the Local Government Partners of any liability incurred by FDOT or the Commission. The Commission and FDOT acknowledge that Local Government Partners do not assume any direct obligation for payment of any amounts not expressly required by this Interlocal Governance Agreement or the Interlocal Funding Agreement, including, but not limited to obligations or liabilities incurred in connection with operation of the Commuter Rail System or assigned by FDOT and accepted by by the Commission under the Central Florida Operating and Management Agreement.

**SECTION 6.08. THIRD PARTY CONTRACTORS.** If any portion of the Commuter Rail Service is contracted to another party, FDOT during the FDOT Funding Period and the

876 Commission after the FDOT Funding Period, will require the contracted party to indemnify the FDOT  
877 and the Commission against negligent acts or omissions of the contracted party and shall require the  
878 contracted party to carry such insurance as is reasonable under the circumstances. The Commission,  
879 the FDOT, and the Local Government Partners shall be named insureds under such policies..

880       **SECTION 6.09.       CHANGED CIRCUMSTANCES.** If future Federal, State or local  
881 statute, ordinance, regulation, rule or action render this Interlocal Operating Agreement, wholly or in  
882 part, illegal, invalid, unenforceable or impractical, the parties agree to delete and/or to modify such  
883 portions of the Interlocal Operating Agreement as are necessary to render it valid, enforceable and/or  
884 practical. Each section, paragraph or provision of this Interlocal Operating Agreement shall be  
885 considered severable, and if for any reason any section, paragraph, or provision herein is determined to  
886 be invalid under current or future law, regulation or rule, such invalidity shall not impair the operation  
887 of or otherwise affect the valid portions of this instrument. In the event that a future Federal, State or  
888 local statute, ordinance, regulation, rule or action renders this Interlocal Operating Agreement in whole  
889 illegal, invalid, unenforceable or impractical and either one or more of the parties to this Interlocal  
890 Operating Agreement agree that it is impossible or impractical to continue to operate the Commuter  
891 Rail System, then this Interlocal Operating Agreement, if not already terminated by operation of law,  
892 may be terminated.

893       **SECTION 6.10.       NOTICES.** Whenever this Interlocal Operating Agreement requires or  
894 permits any consent, approval, notice, request, proposal, or demand from one party to another, the  
895 content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be  
896 delivered to and received by the party intended to receive it (A) by hand delivery to the person(s)  
897 hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the

898 United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and  
899 received by facsimile telephone transmission or other electronic transmission (provided that an original  
900 of the electronically transmitted document is delivered within five (5) days after the document was  
901 electronically transmitted) upon the date so delivered to and received by the person to whom it is at the  
902 address set forth opposite the party's name below:

Party	Principal & Address	With a copy to:
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COMMISSION:

FDOT:	District Five Secretary 719 South Woodland Boulevard DeLand, Florida 32720 Telephone: (386) 943-5476 FAX: (386) 740-2675	District Five General Counsel 719 South Woodland Boulevard Deland, FL 32720 Telephone: (386) 943-5492 FAX: (386) 736-5500
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903

904 Any of the above parties may, by notice in writing given to the others, designate any further or  
905 different addresses to which subsequent notices, certificates or other communications shall be sent.  
906 Any notice shall be deemed given on the date such notice is delivered by hand or facsimile  
907 transmission or three days after the date mailed.

908 **SECTION 6.11. ENFORCEMENT.** If any party initiates an action to enforce any  
909 provision of this Interlocal Operating Agreement or for damages by reason of an alleged breach of any  
910 provision hereof, FDOT, the Commission, and each Local Government Partner shall pay its own costs,  
911 and expenses, and attorneys' fees and costs incurred in connection with such action.

912 **SECTION 6.12. COUNTERPARTS.** This Interlocal Operating Agreement may be  
913 executed in multiple counterparts. Each such counterpart shall be deemed an original of this Interlocal

914 Operating Agreement, so that in making proof of this Interlocal Operating Agreement, it shall only be  
915 necessary to produce or account for one such counterpart.

916       **SECTION 6.13.       CONCURRENT AGREEMENTS.**       This Interlocal Operating  
917 Agreement is being entered into in conjunction with the Interlocal Funding Agreement between FDOT  
918 and Orange County, Osceola County, Seminole County, the County of Volusia, and the City of  
919 Orlando, and these two agreements, being pari materia, must be construed with reference to one  
920 another and neither agreement shall have precedence over the other. Furthermore, these two  
921 Agreements encompass all prior negotiations, correspondence, conversations, agreements, and  
922 understandings of the parties relating to the subject matter, supersede all prior understandings and  
923 agreements regarding such subject matter, and may not be amended, modified, or supplemented except  
924 by an instrument or instruments in writing executed by all of the parties.

925       **SECTION 6.14.       SEVERABILITY.** In the event any one or more of the provisions  
926 contained in this Interlocal Operating Agreement shall for any reason be held to be invalid, illegal or  
927 unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other  
928 provision hereof, and this Interlocal Operating Agreement shall be revised so as to cure such invalid,  
929 illegal or unenforceable provision to carry out as nearly as possible the original intent of the parties.

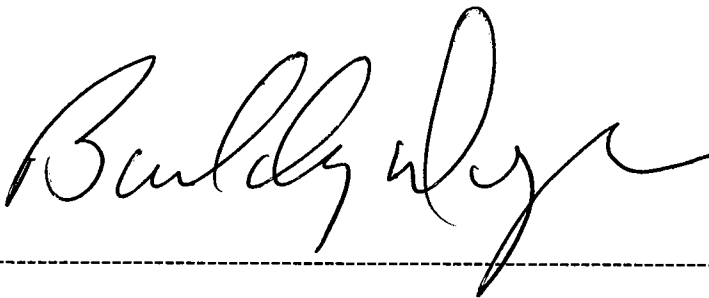
930       **SECTION 6.15.       CONTRACTUAL RELATIONSHIP.** It is specifically understood and  
931 agreed that the relationship described in this Interlocal Operating Agreement by and between the  
932 FDOT and the Commission is contractual in nature and is not to be construed to create a partnership or  
933 joint venture or agency relationship between the parties. Nor, shall FDOT and the Commission liable  
934 for any debts or liabilities incurred by the other party to this Interlocal Operating Agreement except as  
935 provided herein, or for non-commuter rail service operations or activities.

**SECTION 6.16. GOVERNING LAW AND VENUE.** This Interlocal Operating Agreement and all agreements entered into in connection with the transactions contemplated by this Interlocal Operating Agreement are, and will be, executed and delivered, and are intended to be performed in Orange County, Osceola County, Seminole County and the County of Volusia. The laws of Florida shall govern the validity, construction, enforcement, and interpretation of this Interlocal Operating Agreement. In the event of litigation among the parties hereto, their successors or assigns, with regard to this Interlocal Operating Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in the county where the administrative offices of the Commuter Rail System are located.

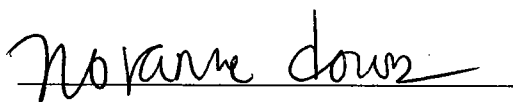
**SECTION 6.17. FURTHER ASSURANCES.** Each party agrees to perform any further acts and to sign and deliver any further documents that may be reasonably necessary to carry out the provisions of this Interlocal Operating Agreement.

**EXECUTED** by the following to be effective upon the date as herein provided:

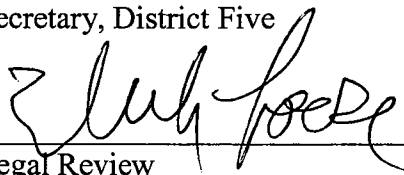
By and For the Central Florida Commuter Rail Commission:



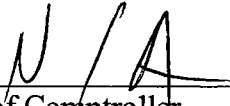
By and For The State of Florida Department of Transportation:



Date: 8/29/07

959 Secretary, District Five  
960  
961   
962  
963 Legal Review

Date: 8/29/07

964  
965   
966  
967 Office of Comptroller

Date: \_\_\_\_\_

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**APPENDIX A**

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**MASTER GLOSSARY**

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**MASTER GLOSSARY OF TERMS FOR  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM AGREEMENTS**

**DEFINITIONS**

As used in the Interlocal Governance Agreement, the Interlocal Operating Agreement and the Interlocal Funding Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires.

**"Average Fare"** means the average fare paid for passage on the Commuter Rail System, as calculated pursuant to Section 5.02(F) of the Interlocal Operating Agreement.

**"Base Service"** means commuter rail service provided in accordance with the standards set forth in Section 4.05 of the Interlocal Operating Agreement, as adjusted pursuant to Sections 4.06 and 4.07 of the Interlocal Operating Agreement.

**"Boarding Share"** means the share of passenger boardings computed for each Local Government Partner pursuant to Section 4.01(A) of the Interlocal Governance Agreement.

**"Capital Cost"** means costs properly attributable to the acquisition of the Station Property and the construction, installation and equipping of Phase I and Phase II under generally accepted accounting principles applicable to the Commuter Rail System.

**"Central Florida Operating and Management Agreement"** means that certain Central Florida Operating and Management Agreement between CSXT and FDOT, in substantially the form attached to the Interlocal Operating Agreement as Appendix F, delineating the rights and responsibilities of FDOT and CSXT for the control, dispatch, operation, maintenance, and management of the Corridor and for freight and passenger rail service on the Corridor.

**"Chief Executive Officer"** means the chief executive officer of the Commuter Rail System appointed pursuant to Section 4.13(A) of the Interlocal Operating Agreement.

**"Chief Operating Officer"** means the chief operating officer of the Commuter Rail System appointed pursuant to Section 4.13(B) of the Interlocal Operating Agreement.

**"City of Orlando"** means the City of Orlando, a municipal corporation organized under the laws of the State of Florida.

**"Commuter Rail System"** means the Central Florida Commuter Rail Transit System, a Fixed Guideway Transit System that shall operate within the Corridor, as described in the Interlocal Operating Agreement.

**"Commission"** means the Central Florida Commuter Rail Commission created by the Interlocal Governance Agreement.

**"Commissioning"** means the control, operation, management and maintenance of Commuter Rail System from completion of construction through all Federal and State governmental approvals up to the point in time that Commuter Rail System is ready to transport paying passengers and be placed into a revenue generating mode by the FDOT according to FTA and FRA guidelines.

**"Commuter Rail Easement"** means the easement for use of the Corridor (including the Station Platforms), maintenance facility, layover facility, and other real property used or held for use by the Commuter Rail System, attached to the Interlocal Operating Agreement as Appendix D, which will be executed and delivered by FDOT to the Commission pursuant to Section 3.05(B) of the Interlocal Operating Agreement.

**"Construction Contribution"** means, for each Local Government Partner, the amount shown for Phase I and/or Phase II Construction in Section 4.01(B) of the Interlocal Funding Agreement.

**"Contract for Sale and Purchase"** means certain Contract for Sale and Purchase between CSXT and FDOT, in substantially the form attached to the Interlocal Operating Agreement as Appendix E, which, subject to certain conditions precedent, provides for acquisition of the Corridor by FDOT, subject to a retained perpetual easement for Rail Freight Services.

**"Contract Operator"** means a third-party, independent contractor or contractors procured to operate, maintain and dispatch the Commuter Rail System's commuter passenger trains and maintain the Corridor.

**"Corridor"** means the railroad corridor formerly 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 through which the Commuter Rail System will operate, as depicted in Appendix B. The term "Corridor" includes the Station Platforms.

**"Corridor Access Management"** means managing, directing, and controlling the occupation, use, and access to the Corridor in a manner consistent with freight and passenger rail services in accordance with this Interlocal Agreement and the Central Florida Operating and Management Agreement.

**"County of Volusia"** means the County of Volusia, a charter county and political subdivision of the State.

**"CSXT"** means CSX Transportation, Inc., a corporation organized and existing under the laws of the State of Virginia and authorized to do business in the State.

**"Customer Advisory Committee"** means the advisory committee created pursuant to Section 3.08 of the Interlocal Governance Agreement.

**"Debt Service"** means an amount equal to the sum of the principal of (either at the stated maturity or by an advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the FDOT Fixed-Guideway Bonds during each Fiscal Year of the Local Government Partners as such payments become due (provided that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments shall be deemed to become due in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration) during or prior to such Fiscal Year.

**"Diesel Multiple Unit"** means a steel wheel on steel rail transit vehicle that is self-propelled, with the capacity to operate independently and pull non-powered cars. The Commuter Rail System intends to utilize FRA compliant (49 CFR Part 238 specifications for compression testing) Diesel Multiple Units, which pass the FRA 800,000-pound structural buff load test and have the ability to run in mixed freight service on existing track.

**"District Secretary"** means the FDOT District Secretary for District 5, in which the Commuter Rail System is located.

**"Extended Service"** means the provision of service to any Station not listed in Appendix C to the Interlocal Operating Agreement.

**"Expanded Service"** means increased headways and service frequencies, additional peak and off peak service, additional night, weekend or Holiday service, special event service and other service increases.

**"Farebox Revenue"** means fares paid for passage on the Commuter Rail System.

**"FDOT"** means the State of Florida Department of Transportation, an agency of the State of Florida.

**"FDOT Fixed-Guideway Bonds"** means the debt obligations initially issued by FDOT to acquire the Corridor and relocate the Taft Yard Facility, as described in Section 4.03(A) of the Interlocal Funding Agreement and any obligations issued for purposes of refunding pursuant to Section 4.05 of the Interlocal Funding Agreement.

**"FDOT Funding Period"** means the period commencing on the Revenue Operation Date and ending on the first day of the calendar month following expiration a seven-year period, during which FDOT is obligated to fund operating deficits of the Commuter Rail System and Debt Service on the FDOT Fixed-Guideway Bonds.

**"Final Design Contribution"** means, for each Local Government Partner, the amount shown for Phase I and/or Phase II Final Design in Section 4.01(B) of the Interlocal Funding Agreement.

**"Fiscal Year"** means (A) during the FDOT Funding Period, the fiscal year for State government, which commences on July 1 and continues through the next succeeding June 30, or (B) following expiration of the FDOT Funding Period, the fiscal year for county government, which commences on October 1 and continues through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for either level of government.

**"Five-Year Capital Plan"** means a five-year capital plan for capital improvements to the Commuter Rail System including, but not limited to: new track materials and installation (including rails, ties, ballast, switches, fasteners, etc); bridge and culvert upgrades and replacements (supply, fabricate and install); signals and communications equipment upgrades and replacements; at-grade crossing improvements; vehicle storage and maintenance facility

improvements and equipment; maintenance of way equipment and vehicles; control center improvements; station improvements, amenities and equipment upgrades; fare collection equipment and upgrades; Diesel Multiple Unit upgrades; additional Diesel Multiple Units; and parking lot improvements and expansions.

**"Fixed Guideway Transit System"** means a system used for the transportation of people and goods by means of, without limitation, a street railway, an elevated railway having a fixed guideway, a commuter railroad, a subway, and includes a complete system of tracks, stations, and rolling stock necessary to effectuate passenger service to or from the neighboring regional communities.

**"FRA"** means the Federal Railroad Administration.

**"FTA"** means the Federal Transit Administration.

**"FTA Funds"** means Federal grant funds provided by FTA under the Full Funding Grant Agreement.

**"Full Funding Grant Agreement"** means the Full Funding Grant Agreement to be entered into by FTA and FDOT pursuant to 49 U.S.C. Section 5309, pursuant to which FTA will provide Federal funds for acquisition and construction of the Commuter Rail System.

**"Funding Determination Year"** means the 12-month period ending on March 31.

**"Governing Board"** means the governing body of the Commission established pursuant to Section 3.03 of the Interlocal Governance Agreement.

**"Holiday"** means a holiday designated by law (currently, Section 110.117, Florida Statutes) as paid holidays observed by all State branches and agencies.

**"Initial Capital Contribution"** means, for each Local Government Partner, the Preliminary Engineering Contribution, the Station Property Contribution, the Final Design Contribution and the Construction Contribution.

**"Interest Payment Date"** means the date on which each payment of principal and/or interest becomes due on the FDOT Fixed-Guideway Bonds.

**"Interlocal Agreement"** means this Interlocal Agreement for Development and Operation of the Central Florida Commuter Rail Transit System and Creation of the Central Florida Commuter Rail Commission, among Orange County, Osceola County, Seminole County, the County of Volusia, the City of Orlando and FDOT.

**"Local Capital Cost"** means the Capital Cost of implementing the Five-Year Capital Plan following expiration of the FDOT Funding Period, after deducting State and Federal contributions.

**"Local Farebox Revenue"** means the amount computed for each Local Government Partner pursuant to Section 4.01(C) of the Interlocal Governance Agreement.

**"Local Government Partner"** means Orange County, Osceola County, Seminole County, the County of Volusia and the City of Orlando.

**"Local Station Revenue"** means any Station revenue described in Section 3.02(B) of the Interlocal Funding Agreement.

**"Maintenance of Way"** means those labor, materials and equipment that are required to maintain the Corridor, including but not limited to mowing, replacing and repairing ballast, replacing and repairing rails, signals and switches, undertaking minor bridge maintenance and performing other activities required to safely operate the rail service.

**"Member"** means a member of the Governing Board, as designated in Section 3.03 of the Interlocal Governance Agreement.

**"Non-Peak Hours"** means 5:00 a.m. – 5:30 a.m., 8:30 a.m. – 3:30 p.m. and 6:30 p.m. to midnight, Monday through Friday.

**"Non-Ad Valorem Funds"** shall mean all revenues of the Local Government Partner derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments required herein, but only after provision has been made by the Local Government Partner for the payment of all essential or legally mandated services; provided however, that unless otherwise agreed to by FDOT, the term "Non-Ad Valorem Funds" does not include Federal funds.

**"Operating Revenue Without Farebox"** means Total Operating Revenue less Farebox Revenue.

**"Orange County"** means Orange County, a charter county and political subdivision of the State.

**"Osceola County"** means Osceola County, a charter county and political subdivision of the State.

**"Peak Hours"** means 5:30 a.m. – 8:30 a.m. and 3:30 p.m. – 6:30 p.m., Monday through Friday, excluding Holidays.

**"Phase I"** means acquisition of the Corridor and construction of the portion of the Commuter Rail System expected to be operational in 2009, as described in Appendix C to the Interlocal Operating Agreement.



**"Phase I Cost Estimate"** means \$388,184,000, which includes the estimated cost of preliminary engineering for Phase I and Phase II, acquisition of Station Property for Phase I and Phase II, final design for Phase I and construction of Phase I.

**"Phase II"** means construction of the portion of the Commuter Rail System expected to be operational in 2013, as described in Appendix C to the Interlocal Operating Agreement.

**"Phase II Cost Estimate"** means \$217,216,000, which includes the estimated cost of final design for Phase II and construction of Phase II.

**"Preliminary Engineering Contribution"** means, for each Local Government Partner, the amount shown for Phase I and/or Phase II Engineering in Section 4.01(B) of the Interlocal Funding Agreement.

**"Rail Freight Service"** means the transportation by rail of property and movable articles of every kind, character and description over the Corridor, as permitted under the perpetual easement retained by CSXT pursuant to the Contract for Sale and Purchase.

**"Responsible Local Government Partner"** means, with respect to Article V and Article VI hereof, the County within which a Station is located, except that the Responsible Local Government Partner shall mean the City of Orlando (and not Orange County) with respect to any Station located within the jurisdiction of the City of Orlando.

**"Revenue Operation Date"** means the date that the Commuter Rail System, after having received all State and Federal approvals for operation, is placed in commuter service for fare paying passengers to ride and shall have the same meaning as used by the FTA.

**"Seminole County"** means Seminole County, a charter county and political subdivision of the State.

**"Share of Local Capital Cost"** means the amount computed for each Local Government Partner pursuant to Section 4.02(B) of the Interlocal Governance Agreement.

**"Share of Local Operating Support"** means the amount computed for each Local Government Partner pursuant to Section 4.01(D) of the Interlocal Governance Agreement.

**"Share of Local Operating Support Without Farebox"** means the amount computed for each Local Government Partner pursuant to Section 4.01(B) of the Interlocal Governance Agreement.

**"Share of FDOT Bond Debt Service"** means the amount computed for each Local Government Partner pursuant to Section 4.03(B) of the Interlocal Funding Agreement.

**"State"** means the State of Florida.

**"State of Good Repair"** means performance of all necessary maintenance, including preventative maintenance, replacement of all infrastructure components on a schedule consistent with their life expectancy, and compliance with all applicable FRA and FTA regulations.

**"Station"** means a commuter rail passenger station on the Commuter Rail System, including the commuter rail passenger stations listed in Appendices C, D and E of the Interlocal Operating Agreement and any additional commuter rail passenger station added as Extended Service pursuant to Section 4.07 of the Interlocal Operating Agreement. The term "Station" includes the "Station Platform" and the "Station Property."

**"Station Platform"** means the Station loading platform located within the Corridor, including any improvements made thereto.

**"Station Property"** means the Station parking area and other Station property located outside the Corridor, including any improvements made thereto, that was acquired with Federal funds, proceeds of the Initial Capital Contributions of the Local Government Partners or as part

of the Five-Year Capital Plan. The term "Station Property" does not include any other property acquired by the Local Government Partners with their own funds.

**"Station Property Contribution"** means, for each Local Government Partner, the amount shown for Phase I and/or Phase II Station Property in Section 4.01(B) of the Interlocal Funding Agreement.

**"System Net Revenue Without Farebox"** means, for any Fiscal Year, the amount computed by deducting the budgeted Operating Revenue without Farebox from the budgeted Total Operating Cost.

**"System Operating Deficit"** means, for any Fiscal Year, the amount computed by deducting the Total Operating Revenue from the Total Operating Cost.

**"Technical Advisory Committee"** means the advisory committee created pursuant to Section 3.07 of the Interlocal Governance Agreement.

**"Total Operating Cost"** means all expenses incurred in connection with operation and maintenance of the Commuter Rail System including, but not limited to, the following: (A) during the FDOT Funding Period, the cost for FDOT staff and contractors working for the Commuter Rail System, including indirect costs computed in accordance with a cost allocation plan meeting FRA and FTA requirements; (B) payments made to the Contract Operator; (C) the direct cost of Corridor Access Management; (D) the direct cost for Maintenance of Way; (E) the cost to maintain the Commuter Rail System's rolling stock, including the "capital maintenance cost," as defined in the agreement with the Contract Operator; (F) the direct cost to insure and provide risk management for the Commuter Rail System; (G) during the FDOT Funding Period, the cost incurred by FDOT, including indirect costs computed in accordance with an indirect cost allocation plan meeting FRA and FTA requirements; and (H) any other cost directly related to

the Commuter Rail System. The term "Total Operating Cost" does not include Debt Service on the FDOT Fixed-Guideway Bonds or expenses related to operation of the Station Property. During the FDOT Funding Period, the term "Total Operating Cost" does not include any cost associated or incurred by the Local Government Partners or other governmental entities regarding the Commission, Governing Board, Technical Advisory Committee or Customer Advisory Committee.

**"Total Operating Revenue"** means all revenues arising from the operation of the Commuter Rail System including, but not limited to, (A) revenue generated by and received from freight railroads operating on the Corridor (including the car charge payable pursuant to the Central Operating and Management Agreement, (B) liquidated damages paid by the Contract Operator, (C) financial contributions by other entities in support of Commuter Rail System operations including, but not limited, to Federal grant funds, (D) any other revenues arising as a result of the operation of Commuter Rail System, and (E) interest or investment earnings; provided however, that the term "Total Operating Revenue" does not include Local Station Revenue.

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**APPENDIX B**

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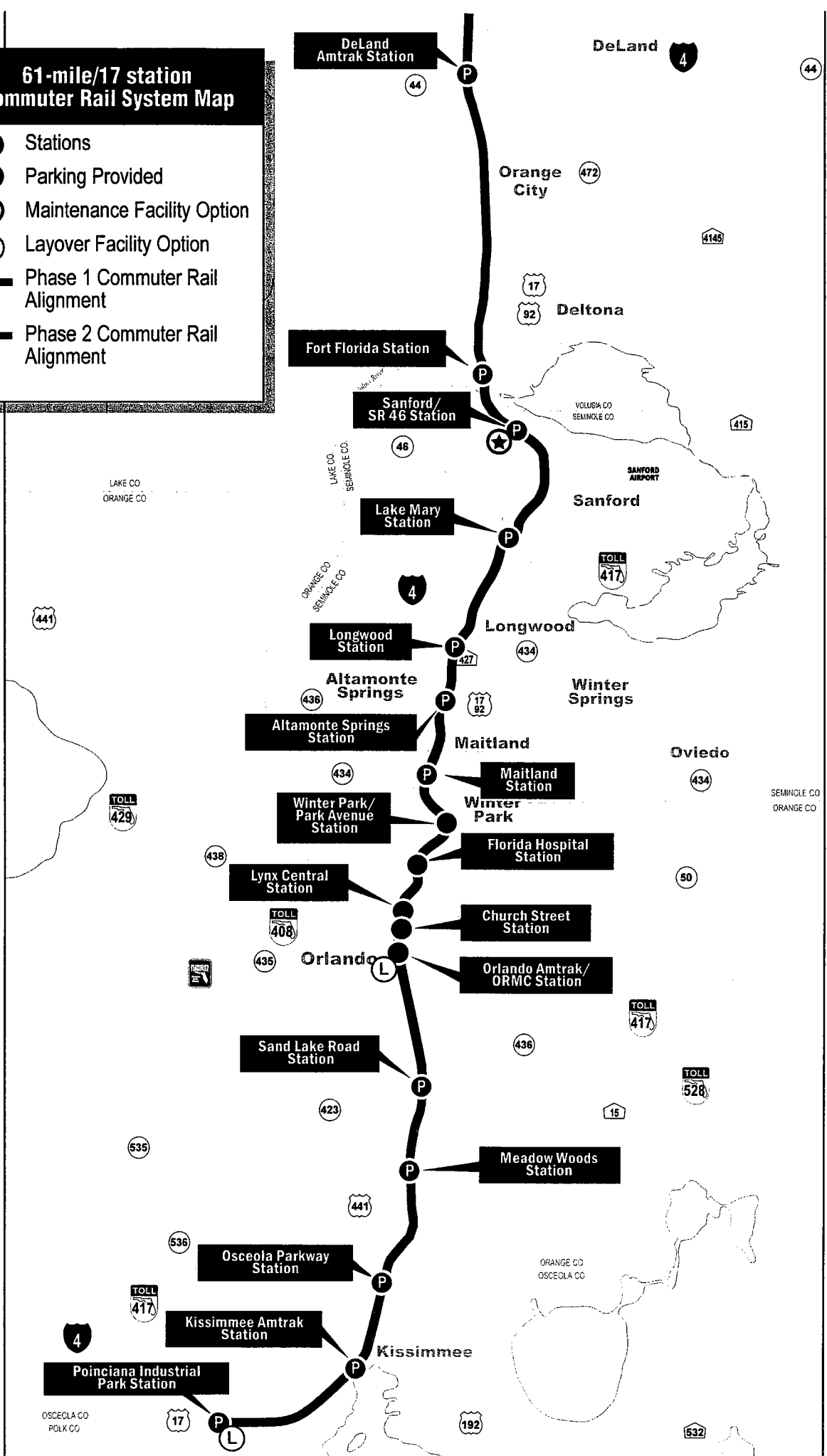
**DEPICTION OF THE CORRIDOR**

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# 61-mile/17 station Commuter Rail System Map

- Stations
- P Parking Provided
- ★ Maintenance Facility Option
- L Layover Facility Option
- Phase 1 Commuter Rail Alignment
- Phase 2 Commuter Rail Alignment



**APPENDIX C****DESCRIPTION OF THE PHASE I AND PHASE II IMPROVEMENTS**

1. The Central Florida Commuter Rail Transit Project is proposed to operate on the existing CSX Transportation, Inc. (CSXT) A-line rail corridor from the existing Deland Amtrak Station in Volusia County, south through downtown Orlando and Kissimmee until its terminus at the Poinciana Industrial Park at the intersection on US 17-92 and the CSXT tracks in Osceola County, a distance of 60.8 miles.

2. The project is proposed to be built in two phases, the north corridor in Phase I, and the south corridor in Phase II. Phase I would extend approximately 32.54 miles from the Fort Florida Road station (DeBary) to Sand Lake Road station. Twelve stations are anticipated to be included in Phase I located at Fort Florida Road (DeBary), Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park, Florida Hospital, LYNX Central Station, Church Street (downtown Orlando), and Orlando Amtrak/ORMC. Phase I has a proposed 14 miles of additional 2nd track being added to the existing 13 miles of double track.

3. The south corridor, Phase II, would extend from Sand Lake Road to Poinciana Industrial Park. There are approximately 5 miles of double track in the south with 19 miles proposed. Four stations will be included in Phase II located at Meadow Woods, Osceola Parkway, Kissimmee Amtrak, and Poinciana Industrial Park.

4. At the request of Volusia County, Phase II would also include the extension of the Commuter Rail System from the Fort Florida Road station (DeBary) to the DeLand Amtrak station, an

999 additional eleven miles. One station would be included in this segment of Phase II located at the  
1000 DeLand Amtrak Station. In addition, it is proposed that approximately 11 miles of double tracking will  
1001 be added.

1002 5. The primary infrastructure requirements include a new signal system, approximately 35  
1003 miles of new 2nd track, 16 stations, a Vehicle Storage and Maintenance Facility, and two end-of-  
1004 the-line midday layover facilities. Commuter rail service would be operated with Federal  
1005 Railroad Administration (FRA) compliant Diesel Multiple Unit (DMU) cars.

1006 6. The foregoing description is that which is contemplated to be constructed as of the date of this  
1007 Interlocal Operating Agreement. However, the parties understand and agree that due to changed  
1008 circumstances that the project may be modified from time to time in accordance with the terms of this  
1009 Agreement.

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**APPENDIX D**

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**FORM OF COMMUTER RAIL EASEMENT**

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## APPENDIX D

## COMMUTER RAIL EASEMENT

THIS PERPETUAL EASEMENT made this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by the State Of Florida Department Of Transportation, grantor, to the Central Florida Commuter Rail Commission, its successors and assigns, grantee;

## WITNESSETH:

That the grantor for and in consideration of the sum of One Dollar and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the grantee, its successors and assigns, a perpetual easement:

- (a) for the purpose of operating and maintaining the Commuter Rail System as more particularly set forth in that certain Interlocal Operating Agreement between grantor and grantee, dated \_\_\_\_\_, and
- (b) for all other uses not inconsistent with the uses of grantor under the terms and conditions of the Interlocal Operating Agreement,

in, over, under, upon and through the following described land, viz:

See attached Exhibit A

TO HAVE AND TO HOLD the same unto said grantee, its successors and assigns forever;

PROVIDED, that if operation of the Commuter Rail System is suspended or terminated for a period longer than one hundred and eighty days (other than as the result of a Force Majeure event, for which the time period shall be one year), this Perpetual Easement will expire and the interest shall revert to and become the property of grantor. Said reverter shall become effective within 30 days of notice from grantor to grantee and shall not require action of grantee; provided, however, that grantee agrees to execute such documents as grantor may reasonably request in the event that grantor deems it convenient or necessary to confirm the reverter; and

PROVIDED FURTHER, that this Perpetual Easement is subject to, limited by, and conditioned on the terms and conditions of the Interlocal Operating Agreement and the terms and conditions of that certain Central Florida Operating and Management Agreement between the grantor and CSX Transportation, Inc., pertaining to the Line of Railroad Between DeLand, Florida and Poinciana, Florida and Related Properties, dated \_\_\_\_\_; and

PROVIDED FURTHER that this Perpetual Easement is made subject to existing uses, and any unpaid taxes, assessments, liens, or encumbrances of any nature whatsoever and grantor

43 makes no representations or warranties of seisin, good right to convey, quiet enjoyment, defense  
44 of title, or any other matter.

45  
46 IN WITNESS WHEREOF, the said grantor has signed and sealed these presents the day  
47 and year first above witness.

48 Signed, sealed and delivered in  
 49 the presence of: (Two witnesses  
 50 required by Florida Law)

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 57  
 58  
 59  
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Print Name:

Print Name:

61 State of Florida  
 62 Department of Transportation

63  
 64  
 65

66 By: \_\_\_\_\_

67

68 Name:  
 69 Title:  
 70 Address:

71

72 Attest:

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77 Executive Secretary

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 80 STATE OF FLORIDA  
 81 COUNTY OF VOLUSIA

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The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of  
 \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as District Secretary  
 for District Five of the Department of Transportation. Said person is personally known to me or  
 has produced \_\_\_\_\_ identification.

\_\_\_\_\_  
 Name:

Title or rank:

Serial No.:



1015

1016

**APPENDIX E**

1017

**FORM OF CONTRACT FOR SALE AND PURCHASE**

1018

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**CONTRACT FOR  
SALE AND PURCHASE**

**Between State of Florida Department  
of Transportation and CSX Transportation, Inc.**

**Pertaining to the  
Railroad A-Line Between Deland, Florida and Poinciana, Florida  
and Related Properties**

**Dated: \_\_\_\_\_, 2007**





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List of Exhibits

- Exhibit 1 – General Map of Subject Property
- Exhibit 2 --- Description of Subject Property
- Exhibit 3 – Intangible Inventory
  - SP Intangibles
  - EP Intangibles
  - Transferred Joint Use Intangibles
  - Retained Joint Use Intangibles
- Exhibit 4 – Deed
- Exhibit 5 – Excluded Property
- Exhibit 6 – Included Tangible Personal Property Inventory
- Exhibit 7 – Excluded Tangible Personal Property Inventory
- Exhibit 8 – Bill of Sale
- Exhibit 9 – Transferred Intangibles
- Exhibit 10 - Assignment of Transferred Intangibles
- Exhibit 11- Memorandum of Transferred Intangibles
- Exhibit 12- Joint Notification Letter of Transferred Intangibles
- Exhibit 13 - Joint Use Agreement(s)
- Exhibit 14 - Aloma Spur and Deland Spur Option Agreement
- Exhibit 15- Memorandum of Aloma Spur and Deland Spur Option Agreement
- Exhibit 16 – Opinion of CSXT’S Counsel
- Exhibit 17 – Opinion of State’s Counsel
- Exhibit 18 – Environmental Agreement

**CSXT 12/21/06 Draft Contract For Sale and Purchase  
Confidential Non-Binding Term Sheet Material  
exempt from Chapter 119, Florida Statutes,  
pursuant to Section 815.045, Florida Statutes.**



CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT, made as of the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT").

WITNESSETH THAT:

WHEREAS, CSXT has interests in certain properties including a line of railroad between Deland and Poinciana, FL over which rail freight and intercity rail passenger service are presently conducted (the "A-Line"); and

WHEREAS, pursuant to authorization by \_\_\_\_\_ **[appropriate appropriations act provisions to be inserted here before execution]** the State desires to acquire CSXT's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight and intercity rail passenger service; and

WHEREAS, State believes it is entitled to condemn that portion of the A-Line necessary for the purpose of accommodating such need; and

WHEREAS, State and CSXT maintain their respective positions but elect not to endure a court challenge of the contested issue and have instead elected to transfer the properties described below upon threat of condemnation; and

WHEREAS, State and CSXT have agreed that State shall cooperate with CSXT in CSXT's accomplishing I.R.C. Section 1031 exchange(s); and

WHEREAS, the parties desire that CSXT retain, and not transfer to the State, a perpetual easement over the easement area therefor set forth in the Deed attached as **Exhibit 4** hereto limited for the

purpose of the exclusive provision of rail freight service subject to the rights of the National Railroad Passenger Corporation ("Amtrak") under the Agreement dated June 1, 1999, and all A-Line Operating Agreement permitted supplements thereto, which agreement and supplements being between CSXT and Amtrak (the "Amtrak Agreement"), it being the intention of the parties that CSXT remain, and the State not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties; and

WHEREAS, reserving all rights with respect to the contested issue of condemnation, CSXT will sell and State will acquire the involved properties and the parties hereto desire to provide for the continued operation, use and maintenance thereof, all upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

#### **Section 1. Purchase and Sale.**

- 1.1 Agreement of Sale/Lieu of Condemnation. Upon the terms and subject to all of the conditions herein set forth and the performance by each of the parties hereto of their respective obligations hereunder, CSXT agrees, under threat of condemnation, to sell, transfer and convey to State on the Closing Date and State agrees in lieu of condemnation to accept and purchase from CSXT on the Closing Date:

- (a) All of CSXT's right, title and interest in and to the following land, real property, rights-of-way and associated property: (i) that portion of CSXT's A-Line starting at Milepost A749.7 (Sta. 39409 +00), at or near Deland, FL and ending at Milepost A814.1 (Sta. 42718 +10), at or near Poinciana, FL, a distance of approximately 61.5 miles; and (ii) certain specified properties contiguous to such line; all as shown on Exhibit 1 hereto and as more specifically described in Exhibit 2 hereto; subject to (x) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described in Exhibit 3 hereto, (the "Intangible Inventory"), (y) the rights of Amtrak under the Amtrak Agreement and (y) a



perpetual easement over the easement area therefor set forth in the Deed attached as **Exhibit 4** hereto limited for the purpose of the exclusive provision of rail freight service to be retained by CSXT (hereinafter collectively referred to as the "CSXT Easement") as set forth in the deed appearing as **Exhibit 4** hereto (the "Deed") and excluding and excepting those parcels, rights and interests listed or described on **Exhibit 5** hereto (the "Excluded Property"), all of which are excluded or excepted from the sale, transfer and conveyance to State contemplated by this Contract;

(b) All of CSXT's right, title and interest in and to tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed, as of the Closing Date, to the real property shown on **Exhibit 1** and described in **Exhibit 2** hereto; but excepting any items of the kind described above which are on the properties listed or described in **Exhibit 5** hereto, all of which are hereby reserved by CSXT and excepted from the sale, transfer and conveyance to State contemplated by this Contract;

(c) All of CSXT's right, title and interest in and to the items of tangible personal property (the "Included Tangible Personal Property") listed or described in **Exhibit 6** hereto (the "Included Tangible Personal Property Inventory") accompanied by maintenance records, warranties and other pertinent records pertaining thereto to the extent available, but without any representation or warranty as to completeness, accuracy, assignability, or any other matter, but excluding the following items of tangible personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery (except as listed or described in **Exhibit 6** hereto), office and computer equipment, radios and radio control equipment, furniture, tools, switch locks and keys, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to State under the provisions of Sections 1.01(b) and 1.01(c)

hereof and which is not affixed to the Subject Property on the Closing Date (the "Excluded Tangible Personal Property") listed in Exhibit 7 (the "Excluded Tangible Personal Property Inventory"). Any tangible personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Inventory shall be deemed to be included in the Excluded Tangible Personal Property Inventory;

- (d) All of CSXT's right, title and interest in and to the items of Transferred Intangibles listed on Exhibit 9 as provided in Section 7.08 of this Contract; and
- (e) The Option Agreement, as defined in Section 3 hereof, from CSXT to State as to those certain spurs known as the Aloma Spur running to the Orlando/Sanford International Airport shown and designated as the Aloma Spur on Exhibit 1 hereto (the "Aloma Spur") and the Deland Spur running to downtown Deland shown and designated as the Deland Spur on Exhibit 1 hereto (the "Deland Spur").

The aforesaid properties, real and personal, which are to be sold, transferred and conveyed to State under this Contract are hereinafter collectively referred to as the "Subject Property."

- 1.2 Conveyance. The sale, transfer and conveyance to State of any interest of CSXT in the land, real property and fixtures under this Contract shall be made by Deed as set forth in Exhibit 4 hereto and shall be with the warranties set forth therein and subject to the matters set forth therein as well as the Permitted Exceptions as defined in Section 7.01 of this Contract, a counterpart of which shall be recorded in Volusia County, Seminole County, Orange County and Osceola County, Florida. The sale, transfer and conveyance to State of any interest of CSXT in the tangible personal property under this Contract shall be evidenced by a Bill of Sale (the "Bill of Sale") as set forth in Exhibit 8 hereto, and shall be made without any express or implied warranty whatsoever, other than as otherwise expressly provided in this Contract and other matters set forth therein as well as the Permitted Exceptions. The sale, transfer and conveyance to

State of any interest of CSXT in the Transferred Intangibles listed on Exhibit 9 attached hereto as provided in Section 7.08 of this Contract, shall be evidenced by an Assignment of Transferred Intangibles as set forth in Exhibit 10 hereto and the Memorandum of Transferred Intangibles as set forth in Exhibit 11 hereto, both subject to the matters set forth therein as well as the Permitted Exceptions, with a counterpart of the Memorandum of Transferred Intangibles to be recorded in Volusia County, Seminole County, Orange County and Osceola County, Florida. In addition, as to any Transferred Joint Use Intangibles, as listed on Exhibit 3 and provided for in Section 7.08 of this Contract, the Joint Use Agreement(s) shall be executed between CSXT and the State in form attached as Exhibit 13 hereto. Said Joint Use Agreement(s) shall also be applicable to the Retained Joint Use Intangibles listed in Exhibit 3 and shall be executed by CSXT and State at Closing. Other than warranties of title free and clear of all mortgages, deeds of trust, financing statements, judgment liens, materialmen liens and liens arising out of CSXT's employee pension obligations, the Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Transferred Intangibles and the Joint Use Agreement(s) each shall be made without any express or implied warranty whatsoever except as otherwise expressly provided therein or in this Contract. State acknowledges that CSXT may endeavor to have the Title Company insure over certain liens based upon CSXT's indemnification agreements with the Title Company. As to any matter which the Title Company agrees to delete from the Title Policy to be delivered at the Closing, State shall have no objection or right to object to such matter, and State will, as to any claim pertaining to any matter which the Title Company has agreed to insure over and upon any lienor or judgment creditor seeking to execute upon any portion of the Subject Property, State will first pursue the Title Company through litigation and/or arbitration, but to the extent any such claim remains unsatisfied after such litigation and/or arbitration is free from further appeal, State shall have recourse against CSXT.

## **Section 2. Purchase Price.**

Subject to the terms and conditions of this Contract, and in consideration for the sale, transfer and conveyance of the Subject Property to State, State shall pay to CSXT the sum of One Hundred Fifty Million and no/100 Dollars (\$150,000,000.00) (hereinafter referred to as the "Purchase Price") for the Subject Property. The Purchase Price shall be paid on the Closing Date in cash or its equivalent in immediately available United States funds, [subject to the withholding, if any, established in Section 14.02 of this Agreement and the withholding, if any, established under the provisions of Section 15.02 hereof and in the Environmental Agreement attached as Exhibit 18 hereto].

### **Section 3.Option To Purchase Aloma and Deland Spurs.**

At Closing, CSXT and State shall execute and deliver the Aloma Spur and Deland Spur Option Agreement attached hereto as Exhibit 14 (the "Option Agreement") and the Memorandum of Aloma Spur and Deland Spur Option Agreement attached hereto as Exhibit 15 with the latter to be recorded in the public records of Volusia and Seminole Counties, Florida.

### **Section 4.Statutory Limitations**

Notwithstanding any other provision hereof, this Contract is subject to the provisions of Section 339.135 (6) (a), Florida Statutes, to wit:

"The department [Florida Department of Transportation], during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

## **Section 5.Federal Regulatory Matters.**

- 5.1 STB Jurisdiction. State and CSXT shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board (“STB”) that it has no jurisdiction over the transaction contemplated in this Contract, or in any transaction contemplated in any Ancillary Agreement as defined in this Contract.
- 5.2 FRA Notification. State shall provide notification to the Federal Railroad Administration (“FRA”) pursuant to 49 C.F.R. § 213.5(c), if applicable, at least thirty (30) days prior to the Closing Date.

## **Section 6.Closing.**

- 6.1 Exchange of Documents. The Purchase Price [subject to the withholding, if any, established in Section 14.02 of this Agreement and the withholding, if any, established under the provisions of Section 15.02 and in the Environmental Agreement], Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Transferred Intangibles, Joint Use Agreement(s), Aloma Spur and Deland Spur Option Agreement, Memorandum of Aloma Spur and Deland Spur Option Agreement, Environmental Agreement, and the Opinions referenced herein shall be exchanged, together with all other deliverables under this Contract at a closing (the “Closing”) to be held at the headquarters of CSXT in Jacksonville, FL or at such other location as the parties hereto may mutually agree upon. Subject to the right of termination expressly provided under Section 17 of this Contract, the Closing Date shall occur on [\_\_\_\_\_], or upon such other date as the parties hereto may mutually agree upon.
- 6.2 Settlement Statement. At the Closing, the apportionments under Section 9 of this Contract between the parties shall be made and reflected on the Settlement Statement as charges or credits to each party, as appropriate.
- 6.3 Allocation of Closing Costs. CSXT shall pay the cost and expense of (i) the Title Commitment and Title Policy including the premium for the Title Policy and all search, copy, printing and other charges of

the Title Company with respect to said Title Commitment, Title Policy and the furnishing of copies of title documents required to be furnished herein; (ii) any documentary stamp taxes, interest, and penalties on the Deed; (iii) the attorneys' fees and consultant fees of CSXT and (iv) other costs of the transactions under this Contract and the Ancillary Agreements incurred by CSXT. State shall pay the cost and expense of (i) the Survey, as herein defined; (ii) recording counterparts of the Deed (exclusive of Documentary Stamp taxes thereon) and the Memorandum of Assignment of Transferred Intangibles in Volusia, Seminole, Orange and Osceola counties, Florida, and the cost of recording the Memorandum of Aloma Spur and Deland Spur Option Agreement in Volusia and Seminole counties, Florida; (iii) the attorneys' fees and consultant fees of the State and (iv) other costs of the transactions under this Contract and the Ancillary Agreements incurred by State.

#### **Section 7. Instruments of Transfer and Conveyance.**

7.1 Permitted Exceptions/Deed/Bill of Sale. At the Closing, in exchange for the Purchase Price, CSXT shall deliver to State CSXT's Deed and Bill of Sale subject to the following which are herein referred to as the "Permitted Exceptions":

- (a) The exceptions, reservations, rights and privileges of CSXT set forth in this Contract, including, without limitation, the CSXT Easement;
- (b) Building, Zoning, Subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;
- (c) Subject to the apportionment provisions of Section 9 herein, liens for ad valorem real and personal property and governmental assessments, both general and special, which may become due or payable on the Subject Property on or after the Closing Date excepting any assessed on the CSXT Easement which shall be the responsibility of CSXT;

(d) Reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights; public utility and other easements; and easements, crossings, occupancies and rights-of-way, howsoever created;

(e) Encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Subject Property;

(f) All other existing roads, streets, ways, alleys, party walls, privileges, rights, appurtenances and servitudes, howsoever created;

(g) Mortgage liens pertaining to the Subject Property which liens CSXT shall cause to be released, at no cost or expense to State within sixty (60) days of the recording date of the Deed;

(h) The matters set forth in Section 8.01 herein; and

(i) As to each of the Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Assignment of Transferred Intangibles, Aloma Spur and Deland Spur Option Agreement, Memorandum of Aloma Spur and Deland Spur Option Agreement, and the Joint Use Agreement(s), the matters appearing in said documents.

7.2 Additional Closing Documents. In addition, at the Closing, the parties shall execute and deliver the following:

(a) A Settlement Statement signed by each party evidencing the Purchase Price, reserves or hold backs from the Purchase Price, the apportionments and the closing costs with the appropriate credits and charges to the parties;

(b) The Assignment of Transferred Intangibles attached as "Exhibit 10";

- (c) Memorandum of the Assignment of Transferred Intangibles attached as "Exhibit 11", a counterpart of which is to be recorded in Volusia, Seminole, Orange and Osceola Counties, Florida;
- (d) The Aloma Spur and Deland Spur Option Agreement attached as "Exhibit 14";
- (e) Memorandum of Aloma Spur and Deland Spur Option Agreement attached as "Exhibit 15", a counterpart of which is to be recorded in Volusia and Seminole Counties Florida;
- (f) The Joint Use Agreement(s) attached as "Exhibit 13";
- (g) The Environmental Agreement attached as "Exhibit 18";
- (h) CSXT shall deliver to State an opinion of CSXT's counsel substantially in the form of Exhibit 16 hereto; and
- (i) State shall deliver to CSXT an opinion of State's counsel substantially in the form of Exhibit 17 hereto.

In rendering the foregoing opinions in Section 7.02 (h) and (i), such counsel may rely as to factual matters upon certificates or other documents furnished by officers, officials and other counsel of the respective parties, and upon such other documents and data as such officers, officials and counsel may deem appropriate for their opinions.

- 7.3 Title Commitment. CSXT has arranged with Fidelity National Title Insurance Company ( the "Title Company") for the preparation of a Title Insurance Commitment (the Title Insurance Commitment initially consists of four Title Insurance Commitments, one for each of Volusia, Seminole, Orange and Osceola Counties, Florida which, by Closing, will be combined into one ) covering the Subject Property to be issued to and for the benefit of State in the full amount of the Purchase Price (the "Title Commitment") agreeing to issue an ALTA Owner's Title Insurance Policy (10-17-92) ( with Florida modifications) (the "Title Policy"). CSXT has requested the Title Company to deliver to the State (i) the Title Commitment, (ii) a legible copy of every document referenced therein, (iii) a legible copy of the title derivation documents (deeds, easements, leases, and other instruments) vesting CSXT with the estate



being insured by the Title Commitment and (iv) a legible copy of each recorded conveyance out by CSXT of any portion of the land of which the Subject Property was a part whether shown on Valuation Maps or not. It is expressly understood by the parties hereto that CSXT shall have no liability or responsibility under or beyond said Title Policy or as a consequence of any failure of any obligation, term or condition of said policy, howsoever arising, including, without limitation, the insolvency or bankruptcy of the Title Company issuing said policy and/or the Title Company's failure, inability or refusal to perform under said policy, but any such failure, inability, refusal, insolvency or bankruptcy occurring before Closing shall constitute grounds for the termination of this Contract should the same occur on or prior to Closing.

7.4 Survey. State is arranging for surveys of the Subject Property (the "Survey") by Florida licensed land surveyors which shall provide metes and bounds description(s) of the Subject Property (the "Survey Description") and will provide a copy thereof to CSXT and the Title Company. State acknowledges that while the Survey providing the description of the Subject Property shall be used in the transaction documents contemplated herein, the Survey shall not be binding on CSXT in any manner, and any agreement regarding the binding nature of the Survey in connection with the transactions contemplated hereby shall be solely between State and the Title Company, State acknowledging that subject to the foregoing exception, no aspect of the Survey shall either bind CSXT in any manner or obligate CSXT to take any actions whatsoever. State further acknowledges that CSXT has not reviewed and shall not be obligated to review the Survey and that CSXT does not warrant the accuracy, correctness or legal sufficiency of the Survey.

7.5 INTENTIONALLY OMITTED.

7.6 Recording. State shall cause a counterpart of the Deed (which shall include therein the CSXT Easement) and a counterpart of the Memorandum of Transferred Intangibles to be recorded in the public records of Volusia County, Seminole County, Orange County and Osceola County, Florida within five days of

Closing and State shall cause a counterpart of the Memorandum of Aloma Spur and Deland Spur Option Agreement to be recorded in the public records of Volusia County and Seminole County, Florida within five days of Closing.

- 7.7 Conveyance Subject to Intangibles. The Subject Property shall be sold, transferred and conveyed subject to all contracts, agreements, leases, licenses, and easements and all amendments and supplements thereto, pertaining to the Subject Property, or any portion thereof ( "Intangible" ), which are listed or described in Exhibits 3 and 9 hereto. Nothing contained in this Section shall be construed to: (a) limit or restrict any exception, reservation, right or privilege of CSXT under Section 8 of this Contract; (b) limit or restrict CSXT's right to enter into any contract, agreement, lease or license pertaining to the provision by CSXT of rail freight service on the Subject Property, subject to the terms and conditions set forth in the A-Line Operating Agreement; (c) require CSXT to cancel, terminate or amend any existing contract, agreement, lease, license or easement listed or described in Exhibits 3 or 9 hereto to the extent permitted herein or in the A-Line Operating Agreement or (d) require CSXT to cancel or terminate any amendment to an existing or additional contract, agreement, lease, license or easement to which the terms and conditions of Section 8 of this Contract may apply, or (e) impose any obligation on CSXT with respect to Labor Protection, any Labor Challenge or Environmental Matters.
- 7.8 Assignment of Transferred Intangibles. At the Closing, CSXT shall assign to State all of CSXT's rights and interests and State shall assume all of CSXT's obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses and easements listed or described in Exhibit 9 hereto which shall include the SP Intangibles and the Transferred Joint Use Intangibles listed in Exhibit 3 (collectively, the "Transferred Intangibles"), but exclude the EP Intangibles and Retained Joint Use Intangible listed in Exhibit 3 pursuant to the Assignment of Transferred Intangibles attached as Exhibit 10 hereto effective from and after Closing and shall execute the Memorandum of Transferred Intangibles

attached as Exhibit 11 hereto, a counterpart of which State shall cause to be recorded in the public records of Volusia County, Seminole County, Orange County and Osceola County, Florida. The conveyance or retention of an intangible shall carry with it the right to renew, modify, alter, amend and terminate the same, provided the Transferred Intangibles shall not be renewed, modified, altered, and amended in such a way as would interfere with the rights of CSXT under the CSXT Easement and provided, further, that the EP Intangibles and Retained Joint Use Intangibles as well as any contract, agreement, lease license, and easement which pertains to any portion of the Subject Property and is omitted from Exhibit 3 attached hereto (an "Omitted Intangible") shall not be renewed, modified, altered, and amended in such a way as to interfere with State's reasonable utilization of the Subject Property for its intended use as a commuter and passenger rail system. All amounts due under or received by CSXT prior to Closing and relating to the Retained Joint Use Intangibles and Omitted Intangibles, shall remain the property of CSXT and shall not be subject to proration or adjustment of any sort. From and after the Closing Date, CSXT shall pay to State on a periodic basis the amounts received by CSXT under any Omitted Intangible after the Closing which pertains only to some portion of the Subject Property. Further, from and after the Closing Date, CSXT shall pay to State on a periodic basis prorated amounts received by CSXT after the Closing under any (i) any Omitted Intangible which pertains both to the Subject Property and any of the CSXT rail line which is not part of the Subject Property (the "Joint Use Omitted Intangibles") and (ii) the Retained Joint Use Intangibles, both on a per mile proration (that is, if a Joint Use Omitted Intangible and/or Retained Joint Use Intangible, relates to 200 miles of rail corridor, and 43 miles of said rail corridor is contained within the Subject Property, CSXT shall deliver to State on a periodic basis 43/200 of amounts received by CSXT relating to said Joint Use Omitted Intangible and/or Retained Intangible and due after the Closing Date). It is understood by the parties hereto that the aforesaid contracts, agreements, leases, licenses and easements, inter alia, may grant or confer to others, not party to this Contract, including, without limitation, the National Railroad Passenger Corporation,

fiber optic occupancies, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing Date, State shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in such contracts, agreements, leases, licenses and easements listed or described in Exhibits 3 and 9 hereto, and State shall not cause or suffer any breach of such contracts, agreements, leases, licenses and easements. At least thirty (30) days before Closing, CSXT shall use reasonable efforts to obtain and deliver to State the written consent to such assignment from any party to said agreements required to give consent under the terms thereof. At least thirty (30) days before Closing CSXT shall furnish the State the current mailing addresses of the other parties to the agreements constituting the Transferred Intangibles and at Closing CSXT and State shall execute and State shall send out the Joint Notification Letter of Transferred Intangibles attached as Exhibit 12 hereto, to each party to the agreements constituting the Transferred Intangibles other than CSXT at the notice addresses furnished State by CSXT advising such parties of the assignment. Notwithstanding the foregoing, nothing contained in this Contract shall impose upon CSXT an obligation to assign to State any contract, agreement, lease, license or easement listed or described in Exhibit 9 hereto which expires, terminates or is cancelled in accordance with the terms thereof on or prior to the Closing Date. Any such expiration, termination or cancellation shall not be construed as a breach of this Contract and shall not constitute grounds for termination or rescission of this Contract.

- 7.9 Failure of Consent to Assignment. In the event that CSXT is unable, for any reason(s), including, without limitation, its inability or failure to obtain any consent to assignment of an Transferred Intangible required by the provisions thereof, to effect, on the Closing Date, the assignment of any contract or agreement constituting the Transferred Intangibles to State, then such failure or inability shall constitute grounds for termination of this Contract.

- 7.10 Searches. To the extent that a tax, title or United States District Court search, a Uniform Commercial Code search, local tax certificates and/or soil tests are desired by State, the State shall have obtained, reviewed and found the same acceptable at State's sole cost and expense prior to the Closing Date and the foregoing shall constitute grounds for the termination of this Contract if not obtained and/or satisfactory to State.
- 7.11 Subdivision Approvals. In the event that any subdivision approval is either desired by State or is necessary for the completion of the sale, transfer and conveyance contemplated by this Contract, said approval may be applied for by State, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plats, the filing of same with governmental body(ies), recordation thereof and legal fees. Nothing contained herein shall be construed as a covenant by CSXT that the Subject Property, or any portion thereof, will be approved for subdivision, and CSXT assumes no obligation or liability for any cost or expense howsoever arising in the event subdivision approval is not secured. Failure to obtain any State applied for subdivision approval before Closing shall constitute grounds for the termination of this Contract.

**Section 8. CSXT's Further Exceptions and Reservations.**

- 8.1 Additional Conveyance Exceptions. In accordance with Sections 1.01 and 7.01 hereof, and subject to the provisions of this Section 8, State shall accept and purchase the Subject Property subject to: (a) the CSXT Easement; (b) the A-Line Operating Agreement; and (c) the Transferred Intangibles listed on Exhibit "9" hereto and the Retained Joint Use Intangibles listed on Exhibit "3" hereto.
- 8.2 Sidetracks. The rights, interests and obligations of CSXT and State with respect to sidetracks shall be governed by the terms and conditions of the A-Line Operating Agreement.

- 8.3 Amtrak. The rights, interests and obligations of the parties hereto, or their respective successors or assigns with respect to the Amtrak Agreement shall be governed by the terms and conditions of the A-Line Operating Agreement, including, without limitation, Section 3(l) thereof. This provision shall survive Closing and the delivery of the Deed.
- 8.4 Assignment of CSXT Easement. State shall have the right to disapprove any conveyance, transfer, assignment, or grant of operating rights to another freight carrier, of the CSXT Easement, provided State will not unreasonably withhold, condition or delay its approval. This provision shall be included in the Deed and shall survive the Closing and delivery of the Deed.

#### **Section 9.Apportionments .**

- 9.1 Sales/Use Tax. CSXT and State shall each bear and pay one-half of any and all sales and/or use taxes and charges arising out of or connected with the sale, transfer, or conveyance contemplated by this Contract.
- 9.2 Post Closing Taxes, Liens and Charges. It is the intent and understanding of the parties hereto that from and after the Closing Date CSXT shall not be responsible for any taxes, fees, charges, liens, or assessments associated with the State's ownership of the Subject Property and/or the State's interests therein; provided, however, that nothing contained herein shall relieve CSXT from any tax liability which it may have for its retained interests in the Subject Property including, but not by way of limitation, the CSXT Easement.
- 9.3 Utility Charges. Utility charges pertaining to the Subject Property shall be prorated, adjusted and apportioned between CSXT and State as of the Closing Date.
- 9.4 Real Estate and Personal Property Taxes. Any ad valorem real and personal property taxes as to the Subject Property shall be prorated as of the date of Closing and shall be based upon the net tax bill for

the applicable year of proration with allowance for discount for November payment and any other available discounts. Such taxes for the years prior to the year of Closing shall be paid by CSXT. If, however, the amount of such taxes for the year of Closing cannot be ascertained, the rates, millages and assessed valuations for the previous year, with known changes, if any, shall be used as an estimate and tax prorations based on such estimate and the estimate shall be readjusted upon the request of either party made within sixty (60) days after the tax collector's mailing of the actual tax bills for the year of Closing. In arriving at an estimated tax proration due allowance shall be made for exemptions and discounts if allowed for the applicable year.

- 9.5 General Assessments. At the time of Closing CSXT shall pay, or prior to Closing shall have paid, all special governmental assessments and liens for public improvements which are as of the Closing certified liens, in full but as to special governmental assessments and liens for public improvements which are not certified liens as of the Closing but are merely pending as of Closing, State shall assume payment of such pending, but uncertified, special governmental assessments and liens for public improvements. At the time of Closing, certified, confirmed or ratified pending special governmental assessment liens against or in respect to the Subject Property where the work has been substantially completed as of Closing shall be paid in full at the Closing by CSXT.

#### **Section 10. Further Agreements and Instruments.**

- 10.1 CSXT Indemnification. CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, cost and expense arising out of or connected with CSXT's ownership and operation on the Subject Property prior to the Closing Date; provided, however, that nothing contained herein shall be construed as modifying or amending any provision of this Contract, including, without limitation, any other provision of this Section 10, Sections 12 and 13 hereof or any other agreement by or between State and CSXT; provided, further, that nothing contained herein shall be construed as creating any

responsibility or liability on the part of CSXT with respect to any fault, defect or condition of the Subject Property; and, provided, further, that nothing contained herein shall be construed as applying to any occurrence created or caused by the State in whole or in part by any act or omission of the State.

10.2 Labor Protection. CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the transfer contemplated in this Contract. As used herein, "Labor Protection" shall mean the costs, if any, incurred by CSXT as a result of the sale of the Subject Property, which costs may be incurred pursuant to the provision of a collective bargaining agreement bargained by CSXT as a result of the sale of the Subject Property or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. Notwithstanding the above, the parties agree that each shall be solely responsible for their respective risks and costs (including defense costs and liability) associated with any challenge to the transactions pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge").

10.3 INTENTIONALLY OMITTED.

10.4 CSXT Excluded Property Undertaking. CSXT shall cooperate in all respects with State in the identification of CSXT property included in the conveyance, and shall not knowingly exclude from the conveyance to State, any of CSXT's existing property, whether real, personal, or intangible, the exclusion of which will interfere with State's intended use of the Subject Property of owning, operating, and maintaining a commuter and other passenger rail service on the Subject Property, provided however, if the property that has not been specifically excluded shall be discovered to be essential to such intended use and could be transferred by CSXT to State without adverse impact to CSXT's freight operations and without adverse economic consequences to CSXT, then CSXT, upon written request of State, shall convey or transfer the



same to State without additional consideration, on the same basis as set forth herein for conveyance of the Subject Property, whether or not before or after Closing with this provision to survive Closing and the delivery of the Deed.

10.5 Sanford Auto Train Facilities Placeholder. [PLACEHOLDER FOR SANFORD AUTO TRAIN AGREEMENT AS TO ACCESS, USE OF WASH FACILITY AND MAINTENANCE SHOP IF NOT TO GO IN ALOA].

10.6 [PLACEHOLDER FOR RAND YARD PROVISIONS].

10.7 Further Instruments. From time to time after the Closing Date, CSXT and State shall execute and deliver such other contracts, agreements, consents and instruments of conveyance, transfer, conformance and assignment and take such other action(s) as may be reasonably necessary to effect the purposes of this Contract, including, without limitation, the enjoyment and use of the exceptions, reservations, rights and privileges contained in Section 8 of this Contract.

#### **Section 11. Representations and Warranties.**

11.1 CSXT's Representation and Warranties. Nothing in this Section 11 shall apply to any Labor Challenge described in Section 10 of this Contract or Environmental Matters described in Section 15 of this Contract. As a material inducement to State to execute this Contract including, without limitation, the Exhibits hereto (exclusive of Exhibit 18 pertaining to Environmental Matters) and to perform its obligations hereunder including without limitation the obligations set forth in the other instruments to be executed hereunder, CSXT hereby represents and warrants to State, as follows:

(a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by CSXT

without the intervention of any broker, finder or other person, and CSXT has not incurred any obligation that would result in State's liability to pay any brokerage, finder's fee or similar fee in connection with such transactions;

(b) The execution of this Contract and the agreements attached hereto and the performance by it of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents required hereunder, have been duly authorized by requisite corporate authority of CSXT;

(c) CSXT is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly licensed or qualified and in good standing and qualified to own and lease property in the State of Florida;

(d) This Contract, when executed and delivered, will be valid and legally binding upon CSXT and enforceable in accordance with its terms, subject to limitation by bankruptcy, insolvency or laws of general application affecting enforcement of creditors' rights;

(e) Neither the execution of this Contract and the other instruments to be executed hereunder by CSXT, nor the performance by CSXT of the various terms and conditions hereto will violate the Articles of Incorporation or By-Laws of CSXT or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage (subject to the release of liens required under Section 7.01(g) hereof), lease or any other agreement to which CSXT is a party or by which it is bound except as may be provided in the contracts, agreements, leases, licenses and easements listed or described in **Exhibits 3 and 9** hereof, and CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, loss, cost or damage resulting from any such breach or default of the aforesaid

instruments listed or described in Exhibit 3 hereof and in Exhibit 9 hereof; other than a failure after reasonable effort to obtain an assignment or consent.

- (f) When duly recorded among the land records of Volusia, Seminole, Orange and Osceola Counties, Florida, the Deed issued by CSXT pursuant to this Contract will create a valid and enforceable conveyance of the Subject Property in favor of State of the interests therein stated, subject only to the matters described in said Deed.
- (g) Except as disclosed by CSXT to State in writing prior to Closing, there is no action or proceeding pending or, to CSXT's best knowledge, threatened challenging CSXT's right, title and interest in and to the Subject Property at law or in equity or the consummation and performance of the transactions contemplated by this Contract, which challenge, if successful, would result in any material adverse effect upon any such transaction;
- (h) Except as disclosed by CSXT to State in writing prior to Closing, CSXT has not received notice of any material breach associated with any contract, agreement, lease, license or easement listed or described in Exhibits 3 and 9 from a party permitted to give notice under such instrument;
- (i) Except as disclosed by CSXT to State in writing prior to Closing and excluding environmental matters, CSXT has not received notice from any governmental body having jurisdiction over the Subject Property of a material violation of any building, zoning, subdivision, federal, state, county, municipal or local law, ordinance or regulation affecting the Subject Property;

11.2 State's Representations and Warranties. As a material inducement to CSXT to execute this Contract including, without limitation, the Exhibits hereto and to perform its obligations hereunder including,

without limitation, the other instruments to be executed hereunder, State hereby-represents and warrants to CSXT, as follows:

- (a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by State without the intervention of any broker, finder or other person, and State has not incurred any obligation that would result in CSXT's liability to pay any brokerage, finder's fee or similar fee in connection with such transaction;
- (b) The execution of this Contract and the other instruments to be executed hereunder by State and the performance by it of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents required hereunder, have been duly authorized by the State of Florida and fully comply with the laws of such State;
- (c) State of Florida Department of Transportation is an agency of the State of Florida, duly organized under the laws of such State, and is qualified to own and lease property in such State pursuant to Chapter 334 of the Florida Statutes (200\_); and
- (d) This Contract, when executed and delivered, will be valid and legally binding upon State, enforceable in accordance with its terms; and neither the execution of this Contract and the other instruments to be executed hereunder by State, nor the performance by it of the various terms and conditions hereto will violate the laws of the State of Florida or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage, lease or any other agreement to which State is a party or by which it is bound.

**Section 12.Disclaimer of Warranty.**

Except as otherwise provided in Exhibit 18 hereto, State represents that it has or by the Closing

Date will have fully inspected the Subject Property and is relying on such inspection for all purposes whatsoever, including, without limitation, the determination of the character, size, condition, state of repair and suitability of the Subject Property. IN ADDITION, EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE, ASSIGNMENT OF TRANSFERRED INTANGIBLES, ALOMA SPUR AND DELAND SPUR OPTION AGREEMENT, JOINT USE AGREEMENT(S) AND THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, EXHIBIT 18 HERETO), STATE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO STATE BY CSXT OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

### **Section 13. Condition of Property.**

Subject to the right of termination expressly set forth herein that are exercisable prior to the Closing and subject to CSXT's compliance with the provisions of [Exhibit 18] hereto and any warranties, representations and undertakings of CSXT in the Deed, Bill of Sale, Assignment of Transferred Intangibles, Joint Use Agreement(s), Aloma Spur and Deland Spur Option Agreement, the Environmental Agreement and this Contract, State agrees to accept and purchase the Subject Property, without warranty, "as is, where is," and in the condition in which it finds the Subject Property as of the Closing Date.

### **Section 14. Other Agreements.**

- 14.1 Ancillary Agreements. In conjunction with the transactions contemplated by this Contract, CSXT and State will enter into the following agreements on or before the Closing Date (the execution and delivery of

each of which on or before the Closing Date shall be a condition precedent to the obligation of each party to Close): (i) the A-Line Operating Agreement; (ii) the Transitional Services Agreement; (iii) the Joint Use Agreements; (iv) the Projects Agreement; and (v) the Lease Agreements (collectively, the "Ancillary Agreements"), all as may be amended, from time to time, or cancelled or terminated in accordance with the provisions of the respective Ancillary Agreement, and any such amendment(s), cancellation(s) or termination(s) shall not constitute grounds for the termination of this Contract, or rescission if occurring after Closing in accordance with the provisions of said Ancillary Agreements.

14.2 Train Diversion Holdback. Subject to the terms and conditions of any Ancillary Agreement concerning the prepayment provisions relating to CSXT's performance of engineering, construction and design work as may be more fully described in such Ancillary Agreement, State shall be entitled to withhold from the Purchase Price to be paid at Closing the sum of [Twenty Five Million and no/100 dollars (\$25,000,000.00)], subject to a set-off for the aforesaid payments to CSXT for engineering, construction and design work described in said Ancillary Agreement, pending the diversion of the trains identified in [Exhibit D to the Term Sheet; Exhibit [ ] to the Transitional Services Agreement]. Any such withholding shall be held by State in trust for CSXT pending the performance of the terms and conditions of the Transitional Services Agreement and shall be paid to CSXT in cash or its equivalent, with interest thereon from the Closing Date until payment to CSXT, calculated in the same manner as set forth in Section 55.03, Florida Statutes, in accordance with the payment provisions of the Transitional Services Agreement.

14.3 CSXT Sales and Other Transactions. From time to time after the Closing Date, CSXT may sell, transfer or convey any of its personal property, may sell, transfer, convey any of its real property or modify, abandon or discontinue rail operations thereon including, without limitation, lines of railroad that may now or hereafter connect with the Subject Property, and CSXT may sell, transfer, convey, abandon or

discontinue rail operations on the Subject Property. Any such sale, transfer, conveyance, abandonment or discontinuance of operations by CSXT after Closing shall not constitute grounds for the termination of this Contract, and, except as is otherwise expressly provided in an Ancillary Agreement, any such action shall not relieve or release either party hereto from any or all of its liabilities, obligations or responsibilities under this Contract or any Ancillary Agreement.

#### **Section 15. Inspection and Environmental Matters.**

- 15.1 Inspections. Prior to the Closing Date, CSXT has made available from time to time for State's inspection the deeds and other instruments evidencing CSXT's right, title and interest in the Subject Property and all contracts, agreements, leases, licenses or easements listed or described in Exhibits 3 and 9 hereto. Such inspection, in certain respects is continuing at the time of the execution of this Contract and is expected to continue to Closing, including, but not limited to title review, review of the Exhibit 3 documents, the Survey and any environmental matters set forth in Exhibit 18 hereto. On or before Closing, to the extent it has not already done so, CSXT shall deliver to State (a) originals of (i) all the title derivation documents (deeds, easements, leases, and other instruments) vesting CSXT with the estate being insured by the Title Commitment, except where CSXT is retaining any part of the property conveyed by such instrument, in which case a copy shall be provided, and (ii) the documents constituting the Transferred Intangibles listed on Exhibit 9 as well as (b) copies of the executed documents (i) listed as EP Intangibles and Retained Joint Use Intangibles on Exhibit 3, (ii) a legible copy of each recorded conveyance out by CSXT of any portion of the land of which the Subject Property was a part whether shown on Valuation Maps or not that CSXT may possess, (iii) originals of Valuation Maps relating to the Subject Property which CSXT has in its possession after diligent inquiry where print outs are not legible so that the State may have more legible copies made from the originals which shall be returned to CSXT and (iv) any further documents in support thereof that State may reasonably require.

15.2 Environmental Agreement. Prior to the Closing CSXT has provided State certain access to the Subject Property as provided in Right of Entry Agreements with State and its consultants in order for State to conduct due diligence and make investigations and inspections, including, without limitation, environmental tests. Exhibit 18 to this Contract contains the agreement of CSXT and the State (the "Environmental Agreement") as to the responsibility and liability of CSXT and State as to (i) environmental conditions (collectively, "Environmental Assessment Matters"), identified by State in its environmental assessment of the Subject Property, (ii) environmental conditions existing as to the Subject Property before Closing not disclosed in said environmental assessment (collectively, "Other Existing Environmental Matters"), (iii) environmental conditions arising from post Closing freight operations and (iv) environmental conditions arising from post Closing commuter and/or passenger rail operations. The liability and responsibility of CSXT and State as to all of the foregoing shall be exclusively and expressly as described in the Environmental Agreement. The performance by CSXT of its obligations, if any, under the Environmental Agreement pertaining to the Environmental Assessment Matters described in clause (i) of this (and not any pertaining to either clause (ii) or clause (iii) of this Section or otherwise), shall be secured by a standby letter of credit described in the Environmental Agreement in the amount set forth therein (the "Environmental Security") to be applied as provided in the Environmental Agreement within the time period specified therein, after which time any unused portion of the Environmental Security shall be cancelled or allowed to lapse or expire according to its terms, as the case may be, and as is more fully set forth in the Environmental Agreement.

#### **Section 16. Arbitration.**

Arbitration is not contemplated for the resolution of controversies under this Contract, except as is otherwise provided under an Ancillary Agreement.



## **Section 17. Termination and Rescission.**

17.1 Right of CSXT to Terminate. CSXT shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, in the event of any of the following:

- (a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature and likelihood of success as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless;
- (b) State has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing;
- (c) The voluntary or involuntary filing by or against CSXT of any petition, petitions or similar proceedings under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property;
- (d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the Subject Property, or any portion thereof;
- (e) The Closing has not occurred by [ ], for any reason;
- (f) State's failure or inability to deliver the written opinion of counsel as provided in Section 7.02 (i) hereof;
- (g) The Ancillary Agreements have not been executed and available for delivery on or before Closing by State; or
- (h) State shall not have provided notification to the FRA pursuant to Section 5.02 of this Contract at least thirty (30) days prior to the Closing Date.

17.2 Right of State to Terminate State shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, in the event of any of the following:

- (a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless;
- (b) CSXT has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing;
- (c) The voluntary or involuntary filing by or against CSXT of any petition, petitions or similar proceedings under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property;
- (d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the Subject Property, or any portion thereof;
- (e) The Closing has not occurred by [ ], for any reason;
- (f) CSXT's failure or inability to deliver the written opinion of counsel as provided in Section 7.02 hereof,;
- (g) CSXT's disclosure pursuant to Sections 11.01(g) and/or (h) hereof, of any state of facts unacceptable to State;
- (h) The State failing to receive formal funding commitments from Federal, State and local authorities for the institution of commuter rail service on the Subject Property including, without limitation, the receipt by

State of a Full Funding Grant Agreement from the Federal Transit Administration ("FTA") for commuter and other passenger rail service on the Subject Property;

- (i) Any failure of any obligation, term or condition of the Title Commitment, howsoever arising before Closing, including, without limitation, the insolvency or bankruptcy of the Title Company and/or said Title Company's failure, inability or refusal to perform under said Title Commitment before Closing;
- (j) Any termination, cancellation, or modification as to the agreements constituting the Transferred Intangibles not permitted in this Contract which occurs prior to Closing;
- (k) CSXT's failure to obtain any consent to the assignment of any of the Transferred Intangibles from CSXT to State at Closing required by the documents constituting the Transferred Intangibles;
- (l) Any tax, title or United States District Court search, a Uniform Commercial Code search, local tax certificates and/or soil tests obtained by the State are found unacceptable to State prior to Closing;
- (m) Any subdivision approval either desired by State or is necessary for the completion of the sale, transfer and conveyance contemplated by this Contract is not obtained and finalized by the Closing Date and evidenced by recorded subdivision plats containing all required governmental approvals;
- (n) The Title Commitment, documents referenced in the Title Commitment, title derivation documents, any document referenced in the Valuation Maps pertaining to the Subject Property, the Valuation Maps, or other title matter or document as to the Subject Property are unacceptable to State in any respect or should State not complete its review of the foregoing by the Closing Date;
- (o) State is not able to complete the Survey by Closing, the Survey is unacceptable to State in any respect, or there is any matter revealed by the Survey which is unacceptable to State in any respect, but CSXT shall not be required to take any steps to have any survey objection cured, omitted, or eliminated;

(p) State is not able to complete the appraisals of the Subject Property by Closing, the appraisals of the Subject Property obtained by State are unacceptable to State in any respect, or there is any matter revealed by the appraisals which is unacceptable to State in any respect;

(q) The legal description of the Subject Property and CSXT Easement being unacceptable to State and/or the Title Company due to the same being legally insufficient, not supported by the Survey or for other reasons, or the documents which are attached to this Agreement are not satisfactory to State when presented for execution and/or as executed;

(r) State is not able to complete any due diligence it desires to complete by Closing whether title examination, examination of the Survey, identification, inspection, and documentation of personal property to be transferred to State, tax, financial, environmental, commercial, regulatory or other due diligence or should any of such due diligence reveal any matter unacceptable to State in any respect; or

At the time of Closing any of the representations and warranties of CSXT in this Contract and in the Ancillary Agreements is not true and correct and/or there is a breach or breaches as to same.

17.3 Right of Either CSXT or State to Terminate. Either party shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, if:

(a) the STB has not dismissed the petition contemplated by Section 5.01 of this Contract,

(b) The STB shall have found that it has jurisdiction over the transaction contemplated in this Contract, and/or shall have imposed any conditions, including labor protective conditions, which either party in its sole and absolute discretion deems unacceptable;

(c) The parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to Closing;

- (d) The transaction shall have been stayed or enjoined by the STB or by any court;
  - (e) The State and CSXT fail to receive all necessary regulatory approvals from all regulatory bodies and agencies having jurisdiction over any element of the transactions in this Contract and Ancillary Agreements and for the establishment and operation of commuter and passenger rail service on the Subject Property, all on terms and conditions acceptable to State and CSXT;
  - (f) Any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with the transaction contemplated in the Non-Binding Consolidated Term Sheet, this Contract, any Ancillary Agreement or any agreement between CSXT and State related to the Subject Property;
  - (g) Any Ancillary Agreement is, without the advance written consent of both parties to this Contract, amended, cancelled or terminated before the Closing;
- The Ancillary Agreements have not been executed and delivered by the parties thereto on or before Closing in form and content acceptable to CSXT and State with all Exhibits attached thereto; or
- (i) There is any default existing and uncured at Closing by any party to an Ancillary Agreement;

17.4 Post Termination Liability. In the event that either party hereto terminates this Contract in accordance with this Section 17, then, except as is otherwise expressly provided in this Contract, neither party hereto shall have any liability or further obligation hereunder to the other party hereto.

17.5 Notice of Termination. CSXT or State, as the case may be, shall provide notice to the other in the event that CSXT or State shall elect to terminate and/or rescind this Contract pursuant to Sections 17.01, 17.02 or 17.03.

- 17.6 No Post Closing Rescission. Subsequent to Closing, the remedy of rescission shall not be available to the parties hereto, in any event or under any circumstance.

#### **Section 18.Extension, Waiver and Amendment.**

- 18.1 Modifications. This Contract may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto.
- 18.2 Extensions/Waivers. In each instance in which either CSXT or State is entitled to any benefit hereunder, CSXT or State, as the case may be, may: (a) extend the time for the performance of any of the obligations or other acts of the other party hereto; (b) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (c) waive, in whole or in part, compliance with the terms and conditions of this Contract by the other party hereto. Any agreement on the part of either CSXT or State to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of the party making such extension or waiver.

#### **Section 19.Notices.**

- 19.1 Notice Provisions/Addresses. Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified mail, postage prepaid, upon the date so delivered or so deposited in the United States mail to the persons at the following addresses:

If to CSXT, to

President  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

with copy to

Peter J. Shudtz  
CSX Corporation  
Suite 560 National Place  
1331 Pennsylvania Avenue, N.W.  
Washington DC 20004

If to State, to  
Secretary of Transportation  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

with copy to

Director, Division of Public Transportation Operations  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

with copy to

State Public Transportation and Modal Administrator  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

- 19.2 Changes in Notice Addresses. Either party to this Contract may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Contract in the same manner as provided above for all other notices.

## **Section 20. Governing Law.**

It is the intention of the parties hereto that the laws of the State of Florida shall govern the validity of this Contract, the construction of its terms and the interpretation of the rights and duties of the parties hereto. Venue for any legal proceedings under this Contract shall be in Leon County, Florida.

## **Section 21. Counterparts.**

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

## **Section 22. Interpretation.**

State and CSXT acknowledge that the language used in this Contract is language developed and chosen by both parties to express their mutual intent, and no rule of strict construction shall be applied against either party hereto. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. All personal pronouns used in this Contract shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder" and "hereinafter" refer to this Contract as a whole and not to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Contract shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, or otherwise in accordance with their plain meaning. Whenever reference is made to a Section of this Contract, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section.

## **Section 23. Exhibits.**

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Contract.

## **Section 24. Survival.**

The terms, conditions, representations, warranties and covenants of this Contract shall survive the delivery of the Deed and the other instruments herein contemplated, and shall not be deemed merged therein or terminated thereby.

## **Section 25. Entire Agreement.**



This Contract constitutes the entire agreement among the parties hereto, and, except as otherwise expressly provided herein or in an Ancillary Agreement, supersedes all other prior agreements and understandings, both written or oral, between or among the parties hereto, or any of them, with respect to the subject matter of this Contract, including, without limitation, that certain Non-Binding Term Sheet exchanged as of August 2, 2006.

**Section 26. Waiver.**

Neither the failure to exercise nor any delay in exercising on the part of either party hereto of any exception, reservation, right, privilege, license, remedy or power under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Contract preclude any other or further exercise of the same or of any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

**Section 27. Expenses.**

Except to the extent otherwise expressly provided in this Contract, any and all expenses incurred by either party hereto in connection with this Contract and the transactions contemplated hereby shall be borne by the party incurring such expenses.

**Section 28. Further Assurances, Cooperation in Tax Deferred Exchanges.**

Both parties hereto shall exert their reasonable best efforts to cause the transactions contemplated by this Contract to be consummated and to fulfill all conditions and obligations of such party under this Contract. State shall cooperate with CSXT at Closing and thereafter in connection with one or more tax deferred exchanges, provided State shall bear no material expense or incur any material liability in connection with such exchanges.

**Section 29. Time of the Essence.**

It is understood and agreed by the parties that the prompt and timely performance of all obligations, responsibilities and conditions under this Contract, including, without limitation, those pertaining to Section 8 hereof, is of the essence of this Contract.

**Section 30. Prohibition of Third Party Beneficiaries.**

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Contract; provided, however, that nothing contained in the foregoing provisions shall be construed to limit or restrict the enjoyment and use of the exceptions, reservations, rights and privileges contained in Section 8 of this Contract and the Exhibits referred to therein or any other party's(ies) enjoyment or use of any and all of the exceptions, reservations, rights or privileges that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s), license(s) or easement(s) entered into between CSXT and such other party(ies) pursuant to Section 8 hereto and the Exhibits referred to therein.

**Section 31. Successors and Assigns.**

This Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that, except as otherwise expressly provided in this Contract, this Contract may not be assigned, in whole or in part, by State other than to any State agency, political subdivision, municipality, county, authority, public body corporate or instrumentality of the State without the prior written consent of CSXT.

[Signature Page Follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, and the seal of each, duly attested, to be hereunto affixed.

**“CSXT”**

**CSX TRANSPORTATION, INC.,** a Virginia corporation

Signed, Sealed and delivered in the Presence of:

Signed Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signed Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signed Name)

Print Name: \_\_\_\_\_

ITS: \_\_\_\_\_

[Corporate Seal]

**"STATE"**

**STATE OF FLORIDA DEPARTMENT OF  
TRANSPORTATION**

Signed, Sealed and delivered in the Presence of:

Signed Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signed Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

BY: \_\_\_\_\_

(Signed Name)

Print Name: \_\_\_\_\_

ITS: \_\_\_\_\_

Attest: \_\_\_\_\_

Print Name: \_\_\_\_\_

THE AFOREMENTIONED CONTRACT FUNDS ARE APPROVED AND  
HAS BEEN REVIEWED AND APPROVED AVAILABLE  
AS TO FORM

\_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County, personally came \_\_\_\_\_, to me known, and known to me to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did depose, acknowledge and say that: he resides in \_\_\_\_\_, \_\_\_\_\_ County, Florida; he is a duly authorized agent and attorney-in-fact of CSX Transportation, Inc., the corporation described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said corporation, the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; he signed his name thereto for said corporation pursuant to such authority; and the execution of this instrument is the free act and deed of said corporation; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_ day of \_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County, personally came \_\_\_\_\_, to me known, and known to me to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did depose, acknowledge and say that: he resides in \_\_\_\_\_, \_\_\_\_\_ County, Florida; he is Deputy Assistant Secretary of Transportation of the Florida Department of Transportation, the State agency described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of the Florida Department of Transportation; the seal affixed to said instrument is such seal; it was duly affixed; he signed his name thereto for said State pursuant to his authority; and the execution of said instrument is the free act and deed of said State of Florida Department of Transportation..

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_ day of \_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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**APPENDIX F**

1021

**FORM OF CENTRAL FLORIDA**

1022

**OPERATING AND MANAGEMENT AGREEMENT**

1023

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CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

Between State of Florida Department  
of Transportation and CSX Transportation, Inc.

Pertaining to the Line of  
Railroad Between Deland, Florida and Poinciana, Florida  
and Related Properties

Dated: February , 2007

# CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

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CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT made as of the \_\_\_\_ day of February, 2007 (the "Execution Date") by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT").

WHEREAS, by Contract For Sale and Purchase dated as of [\_\_\_\_\_] \_\_\_\_, 2007 (hereinafter referred to as "Contract") State agreed to acquire and CSXT agreed to sell certain properties therein described (comprising a portion of CSXT's A-Line) upon which railroad freight, commuter and other passenger rail services are to be conducted; and

WHEREAS, under such Contract, CSXT retained, and did not transfer to State, a perpetual easement over the properties acquired by State limited to reserving to CSXT the exclusive right to provide Rail Freight Service; and

WHEREAS, in the Projects Agreement dated \_\_\_\_\_, 2007 (hereinafter referred to as the "Projects Agreement"), State agreed to fund certain improvements to CSXT's S-Line as specified therein to create additional capacity on such line, and among other things, facilitate the transfer of certain CSXT freight trains from the A-Line to the S-Line and thereby facilitate State's provision of Commuter Rail Service and other passenger rail service on the A-Line, and CSXT agreed to transfer such freight trains from the A-Line to the S-Line as described in the Transitional Services Agreement dated \_\_\_\_\_, 2007 (hereinafter referred to as the "Transitional Services Agreement") which shall, among other things, cover operations,

maintenance and construction on the State Property during the period between the Commencement Date and the start up of the Commuter Rail Service; and

WHEREAS, State and CSXT desire to establish in this Agreement the terms and conditions governing the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the mutual intention of the parties hereto that State shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and State shall not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad freight transportation on the properties subject to the CSXT Easement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

DEFINITIONS: The terms and phrases defined in Appendix A to this Agreement shall have the meaning set forth therein. Capitalized terms and phrases not defined herein shall have the meaning given to them in any Ancillary Agreement.

#### SECTION 1. DESCRIPTION OF USE

- a) Subject to the terms and conditions hereinafter set forth, as of the Commencement Date, the State Property shall be used for the conduct of Rail Freight Service, Commuter Rail Service and Intercity

Rail Passenger Service, such services being sometimes collectively referred to herein as "Railroad Operations."

In addition to the foregoing, State may use the State Property for any other public or private purpose as hereinafter provided or as may be otherwise mutually agreed to by the parties hereto from time to time during the term of this Agreement.

CSXT shall have the exclusive right to use the State Property for the provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars and rail equipment thereon with its own crews.

- b) Except as is otherwise expressly provided in Section 8 hereof, State shall manage, direct and control the occupation, use and access to the State Property in accordance with the

provisions of Section 3 herein.

- c) It is understood by the parties hereto that, under its management, direction and control, State shall furnish CSXT adequate facilities, including, without limitation, tracks and bridges, for (i) CSXT's provision of Rail Freight Service on the State Property and (ii) CSXT's performance of its obligations to Amtrak under the Amtrak Agreement or as provided by law, in at least substantially the same condition and in substantially the same manner as provided prior to the Commencement Date hereof (as modified by the Transitional Services Agreement).

## SECTION 2. COMPENSATION

[TBD]

## SECTION 3. MANAGEMENT AND OPERATION

- a) Subject to the terms and conditions

of this Agreement, from and after the Commencement Date hereof, State shall manage, direct and control all Railroad Operations on the State Property and State shall control the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of same to, from and over the State Property. Except as is otherwise expressly provided herein, all rules, special instructions, timetables, practices, regulations, and orders governing operations on the State Property shall be promulgated and issued by State and may be modified and amended by State from time to time during the term of this Agreement; provided, however, that in so promulgating, issuing, modifying or amending any such matters State shall not apply

any restriction that would unreasonably interfere with CSXT's provision of Rail Freight Service on the State Property as contemplated under Section 1(a) of this Agreement or CSXT's operations on the CSXT Property. CSXT and State shall each designate a single representative for purposes of coordinating activities between State and CSXT under this Agreement.

- b) State shall furnish, at its sole cost and expense, any and all supervisory personnel, operators, dispatchers and bridge tenders as may be necessary for the conduct of Railroad Operations by CSXT, State and Amtrak on the State Property.
- c) State shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the



provision of Commuter Rail Service on the State Property and CSXT shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Rail Freight Service on the State Property. CSXT shall equip, at its sole cost and expense, its trains, locomotives, rail cars and rail equipment with radios and such other communication and signal devices that comply with the reasonable requirements established by State from time to time during the term of this Agreement for the conduct of Railroad Operations on the State Property. CSXT and State shall comply with any and all provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental

matters, promulgated by any municipality, state or federal board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to State or the State Property, respecting the operation and use of the State Property and the operation, condition, inspection and safety of their respective trains, locomotives, rail cars and rail equipment while such trains, locomotives, rail cars and rail equipment are being operated on the State Property. In the event that any fine, penalty or liability is imposed upon a party hereto or its officers, agents and employees under any such laws, rules and regulations by any such public authority or court having jurisdiction in the premises which is attributable to the failure of such party to comply

with its obligations hereunder, then the party upon whom such fine is imposed shall pay any and all fines, penalties and/or liabilities so imposed.

- d) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property, and State shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property. All of CSXT's and State's employees who shall operate trains, locomotives, rail cars and rail equipment over the State Property shall be qualified by State for operation thereover, and CSXT shall pay to State, promptly upon receipt of bills therefor, any cost incurred by

State in connection with the qualification of such employees of CSXT as well as the cost incurred by State for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of State to be properly qualified for operation as herein contemplated. As used herein, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the State Property in accordance with State's operating rules and practices. For purposes of this Section 3(d), any employee of CSXT qualified to operate over the State Property on a date prior to the Commencement Date shall be deemed qualified by State for operation over the State Property as herein contemplated as of the

Commencement Date. On a date prior to the Commencement Date, CSXT shall provide to the State a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the State Property as of that date.

- e) If an employee of CSXT working on State Property is alleged to have violated State's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable CSXT labor agreement rules, CSXT, shall, unless State has actual notice of such alleged violation, provide notice of such alleged violation to State and, when appropriate, shall conduct an investigation. An officer of State may be present during such investigation. After the investigation

is concluded, CSXT shall promptly furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee from operating over State Property in lieu of dismissal.

- f) (1) If such employee is barred by CSXT from service on the State Property, CSXT shall be responsible for any and all claims and expenses because of such action. (2) In a major offense, such as a violation of Rule "G," dishonesty, insubordination, or a serious violation of operating rules, wherein State desires to bar such employee from service on the State Property pending an investigation by CSXT,

immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee, and CSXT shall bar the employee from the State Property. (3) It is understood that State shall reimburse CSXT for all payments CSXT is required to make as a result of a successful challenge (hereinafter "Claim") being made by the employee or his representative as to the discipline when, at the written request or direction of State, as the case may be, such employee has been barred from the State Property prior to an investigation. CSXT agrees to notify State before making any required payment on any such Claim. In the event such Claim is progressed to an Adjustment Board, State shall be given an opportunity to review

CSXT's submission. Any payments required to be made to employees, as a result of an investigation being "overturned," shall include not only actual wages, but in addition, shall include expenses which CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits, and the employee shall be permitted to return to the State Property.

- g) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive, rail car or rail equipment of State or CSXT becomes unable to proceed under its own power, or fails to maintain the speed required by State on the State Property, or, if in



emergencies, crippled or otherwise defective rail cars or locomotives are set out of State's or CSXT's trains, then State may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move such trains, locomotives, rail cars or rail equipment, provided however that in the event that State is unable to assist, CSXT shall, at its own cost and expense, promptly make such repairs or furnish such motive power as may be necessary to expeditiously haul, help, push or move CSXT trains, locomotives, rail cars or rail equipment off of the State Property and may furnish such motive power as it may have available or such other assistance, including, without

limitation, the making of repairs, as may be necessary to haul, help, push or move State trains, locomotives, rail cars or equipment. CSXT shall bear and pay to State the cost and expense incurred by State of rendering any such assistance for CSXT and State shall bear the cost and expense incurred by State of rendering any such assistance for itself. Except as provided in Section 19, the party bearing the cost and expense as aforesaid, shall be responsible for any and all liability, cost and expense arising out of or connected therewith. Any assistance provided by State to CSXT under this provision shall not be considered providing common carrier freight service by State.

- h) In the event State and CSXT agree that State should provide additional

employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear and pay any and all cost and expense for any such additional employees provided, including, without limitation, all cost and expense associated with the labor costs, if any, which may be incurred by State and/or CSXT and which would not have been incurred had the additional employees not been provided.

- i) Except as is otherwise expressly provided in this Subsection (i), the trains, locomotives, rail cars and rail equipment of CSXT, State and any other present or future user of the State Property shall, in the absence of emergency situations, or as otherwise described in this Agreement, be operated within the

following operating windows:

Seven days a week:

1. 5:00 a.m. to 10:00 a.m. (0500 to 1000 hours) and 3:00 p.m. to 10:00 p.m. (1500 to 2200 hours) - exclusive passenger operation with no limit on the number of commuter or intercity rail passenger trains.
2. 10:00 a.m. to 3:00 p.m. (1000 to 1500 hours) and 10:00 p.m. to midnight (2200 to 2400 hours) - mixed passenger rail and freight rail. All trains operated during this window shall be handled pursuant to a mutually agreed to dispatch protocol which shall take into account the type of train, time of day and on time performance of passenger trains. The CFCRT Freight Service Plan (Revision 5) jointly developed by the parties hereto and attached hereto as Exhibit 1 (the "Service Plan") is a mutually agreed to initial operating plan, based upon the proposed build-out by State and the simulation described in Appendix 1 to the Service Plan. The Service Plan is intended to be representative of expected local operations and shall be amended from time to time upon the written request of one party to the other, no less than annually, to determine whether any changes to the Service Plan are necessary to accommodate local rail customer requirements and commuter operations and recognizing the need for future passenger and/or freight growth. Any changes to the Service Plan shall be by mutual agreement of the parties hereto. In the event that the parties hereto cannot agree on the need for any changes to the Service Plan, the dispute shall be resolved pursuant to Section 17 hereof.

3. Midnight to 5:00 a.m. (2400 to 0500 hours the following day) - exclusive freight operation with no limit on the number of freight trains.
4. Betterments and additions, curfew and program work, construction and signal suspension will be performed between the hours from 5:00 a.m. until midnight (0500 to 2400 hours), including weekends. Other than in case of emergency, bridge, track and signal inspection and maintenance shall be fairly spread over each party's operating window.

From time to time during the term of this Agreement, State and CSXT shall allow reasonable flexibility in extraordinary circumstances to accommodate the movement of each other's trains on a portion of the State Property during the other party's operating windows to ensure that freight and passenger customer needs and non-revenue passenger train needs are met, provided, however, that no priority shall be assigned to the train being accommodated. The parties agree that Amtrak movements over the State Property shall be accommodated in accordance with the Amtrak Agreement or any successor agreement between State and Amtrak. Except with the prior written consent of State, CSXT special and/or excursion trains permitted under Section 3(m) hereof shall be operated during the mixed and exclusive freight operating windows only and each such train shall be counted as a freight movement for purposes of Section 3(i)(2).

- j) State and CSXT understand that operations on the State Property may be interrupted or delayed from time to time during the term of this

Agreement due to maintenance of or improvements to the State Property performed in accordance with Section 3(i)(4) of this Agreement or Force Majeure as defined in Section 22 of this Agreement. Except as expressly provided in this Subsection (j), neither party shall have any liability to the other for any loss or damage arising out of or resulting from any such interruption or delay. Except as expressly provided in this Subsection (j), CSXT shall be responsible for any such interruption or delay to Rail Freight Service and State shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Commuter Rail Service. In the event that the State desires to perform: (i) additions and betterments not in conformity

with Section 5 that would interrupt or delay CSXT's Rail Freight Service on the State Property, then prior to the performance or making of such maintenance or improvements, State shall notify CSXT thereof and obtain CSXT's consent therefor, which consent will not be unreasonably withheld or delayed; provided, however, that such consent shall not be required in emergency situations which pose immediate threat to life or property or prevent the expeditious passage of trains. Failure by State to obtain consent when required under the preceding sentence shall cause State to be responsible for any costs and expenses incurred by CSXT resulting from interruption or delay to Rail Freight Service caused by State performing such maintenance or

additions and betterments not in conformity with Section 5.

k) It is understood by the parties hereto that the State intends to utilize an agent to conduct Commuter Rail Service on the State Property. State shall cause such agent, at no cost or expense to CSXT, to comply with the provisions of this Agreement pertaining to the operation of Commuter Rail Service on the State Property. State shall be responsible for any and all liability, cost and expense arising out of or connected with any act or omission of said agent and said agent shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement.

l) State and CSXT understand that



Intercity Rail Passenger Service and the provision of ancillary services with respect thereto by Amtrak on the State Property are governed by the Amtrak Agreement, a copy of which agreement has been furnished to State. State and CSXT hereby understand and agree that CSXT may modify or amend the Amtrak Agreement from time to time during the term of this Agreement and may enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service, all without the consent of State, except as otherwise expressly provided below. CSXT shall obtain the prior written consent of State (which consent shall not be unreasonably withheld, conditioned or delayed) to any such modification, amendment or new agreement in the event that any such action extends

the term of the aforesaid Amtrak Agreement governing Amtrak's use of the State Property beyond termination or replacement of the current Amtrak Agreement or results in a material decrease in the compensation paid by Amtrak for its use of the State Property, provided, however, that such consent shall not be required in the event that any such action is otherwise required by law or any agreement in effect as of the Commencement Date. CSXT shall also notify and consult with State in the event of any change to Amtrak schedules for Amtrak trains operating on the State Property during the periods specified in Section 3(i) hereof where such change would result in interruption or delay to Commuter Rail Service on the State Property. It is the

understanding of the parties hereto that any agreement for renewal or extension of Amtrak's use of the State Property beyond termination or replacement of the current Amtrak Agreement shall be a matter between State and Amtrak, and that State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with any such agreement between State and Amtrak. CSXT shall have no interest in or right of participation in any revenue or income howsoever derived by State from Amtrak for its use of the State Property under any such agreement, and CSXT shall not be responsible for any cost or expense that may result from any such agreement. In the event that State and Amtrak enter into any such

agreement, then the terms and conditions of this Agreement shall be amended to reflect the changes arising out of or resulting from such agreement. The foregoing provisions apply only to Intercity Rail Passenger Service as provided by Amtrak, its successors or assigns.

- m) From time to time during the term of this Agreement following the Commencement Date, CSXT shall have the right subject to the provisions of Section 3(i) hereof to operate non-revenue special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees and/or passengers, provided however that CSXT shall not make such special or excursion trains available to members of the general public. CSXT shall be entitled to or

responsible for, as the case may be, any and all fees, rents or charges arising out of or connected with such special and/or excursion trains, and such trains shall be considered as trains of CSXT for all purposes under this Agreement, including, without limitation, the provisions of Sections 2(a) and 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid employees, invitees and/or passengers of CSXT shall be considered as CSXT's employees. From time to time during the term of this Agreement following the Commencement Date, State shall have the exclusive right to operate special and/or excursion trains on the State Property carrying State's employees, invitees and/or passengers including members of the general public. Except in

emergencies, third party detours over the State Property shall be by mutual agreement of the parties. State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with such detour and/or special trains, and such trains shall be considered as trains of State for all purposes under this Agreement, including, without limitation, the provisions of Section 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid State's employees, invitees and/or passengers shall be considered as Rail Commuter Passengers. It is understood by the parties hereto that the rights herein granted with respect to special and/or excursion trains shall not be used to expand or modify the provisions of

this Agreement pertaining to Rail Freight Service, Commuter Rail Service, or Intercity Rail Passenger Service contemplated under this Agreement.

#### SECTION 4. MAINTENANCE

(a) Except as is otherwise expressly provided herein, from and after the Commencement Date hereof, State shall have management, direction and control of, and shall perform, or cause to be performed all work of maintaining and repairing the rights-of-way, tracks, bridges, communications, signals, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof, normal wear and tear excepted. CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property in a condition deemed appropriate by CSXT in its sole judgment and discretion. State shall have no obligation to maintain or repair the CSXT Property and any Sidetracks that are not on State Property.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, bridges, communications, signals, and all appurtenances to a level consistent with then current CSXT standards, including CSXT's track geometry standards, the American Railway Engineering Maintenance-of-Way Association (A.R.E.M.A.) Manual for Railway Engineering, the best generally accepted industry standards, and all applicable FRA track and signal standards. Where specific conflicts arise between a lower FRA standard and a higher CSXT or generally accepted industry standard, then the higher CSXT or generally accepted

industry standard shall be applied. State agrees to maintain the mainline on the State Property to achieve at least the FRA Class 4 track standard for freight and passenger trains under the FRA's regulations, as amended. The aforesaid standards shall be applied in a manner that generally permits authorized track speeds, subject to temporary and permanent slow orders and speed restrictions that may be reasonably imposed by the State or other lawful authority from time to time in a manner consistent with generally accepted industry standards.

(c) The maximum authorized track speeds may be changed from time to time during the term of this Agreement by the State, provided, however, that freight and passenger track speeds shall not be lowered without the consent of CSXT. It is understood by the parties hereto that circumstances warranting a change to such track speeds shall include situations in which no further upgrading of the track is necessary (e.g., the modification or removal of local speed restrictions) or in which the parties otherwise agree to a capital improvement.

(d) The maintenance of the State Property in accordance with the aforesaid standards and maximum and minimum authorized track speeds shall be accomplished by the State based on the State's sole determination of the necessity and scope of work necessary for the maintenance and repair of the State Property, provided, however, that such maintenance and repair conforms with the aforesaid standards and lawfully permits the authorized track speeds.

(e) From time to time, CSXT, may conduct such inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection (b) hereof, provided, however, CSXT shall endeavor in good faith to schedule its inspections in a way that will enable it, upon prior written notice to State, to accompany State on its inspection of the State Property and in the event such inspection discloses any defect(s) from the standards set



forth in said Section 4(b), CSXT may give State notice thereof, in which event State shall correct such defect(s) within the time provided under applicable laws or regulations.

(f) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment. CSXT shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment. It is understood by the parties hereto that State, with notice to CSXT but without the approval of CSXT, may enter into agreements from time to time with the South Florida Regional Transportation Authority, Amtrak, or others for the maintaining, servicing, fueling, and repairing of State's trains, locomotives, rail cars, and rail equipment, provided, however, that in the event any such maintenance, service, fueling, or repair is performed on the State Property by a party other than Amtrak, then State shall be responsible for any and all liability, cost and expense arising out of or connected with such maintenance, service, fueling, or repair and said party shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement.

(g) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, improving or repairing the buildings, structures and facilities on the State Property.

(h) As provided in Section 7.08 of the Contract, upon the Closing Date as specified therein, CSXT shall assign to State and State shall assume all of the agreements listed or described in Exhibit 9 therein and all rights and obligations under such agreements pertaining to

the maintenance, repair, and operation of existing roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities on the State Property and thereafter State may renegotiate, renew, terminate, cancel, or modify any such agreements subject to the terms and conditions of Section 8 hereof. It is understood by the parties hereto that the State shall have the right to grant new crossings on the State Property subject to the terms and conditions of Section 8 hereof.

(i) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provisions of Section 19 hereof.

#### SECTION 5. ADDITIONS, BETTERMENTS, RETIREMENTS AND ALTERATIONS

- a) Subject to the provisions of Section 8 hereof, State, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the State Property: first, as shall, in State's sole judgment, be necessary or desirable for the economical or safe operation thereof; provided, however, that any such addition, betterment, retirement or alteration shall not unreasonably interfere with CSXT's provision of Rail Freight

Service and/or Amtrak's provision of Intercity Rail Passenger Service on the Subject Property as contemplated in Section 1(a) of this Agreement or CSXT's operations on the CSXT Property, and any retirement to the State Property, including, without limitation, Sidetracks shall be subject to the mutual agreement of State and CSXT; or, second, as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the State Property and such retirements shall be excluded from the State Property. The design and construction standards for the foregoing shall be subject to the mutual approval of the parties hereto. Such changes, additions and

betterments shall be made during such times of the day and week as the parties shall agree notwithstanding the provisions of Section 3(i) hereof pertaining to maintenance of the State Property.

- b) If the parties mutually agree that changes in or additions and betterments to the State Property, including changes in communication or signal facilities, are required to accommodate CSXT's operations beyond that required by State to accommodate its own operations, State shall construct, or have constructed, the additional facilities or betterments and CSXT shall pay to State the cost and expense thereof, including the annual expense of maintaining, repairing and renewing such additional facilities or betterments.

## SECTION 6. REVENUES

- a) CSXT shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Freight Service on the State Property and the CSXT Property.
- b) State shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Commuter Rail Service and other passenger rail service provided by State on the State Property.
- c) The parties hereto understand that Amtrak shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Intercity Rail

Passenger Service by Amtrak on the State Property.

- d) In addition to the aforesaid entitlements, State and CSXT shall be entitled to revenues derived from the State Property and the CSXT Property as hereinafter provided in Sections 7 and 8 hereof.

SECTION 7. EXISTING AGREEMENTS PERTAINING TO THE STATE PROPERTY AND THE CSXT PROPERTY

- a) The parties have addressed in the Contract the manner in which any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, intangible rights and easements listed or described in the Contract shall be governed.
- b) From and after the Commencement Date, CSXT may renegotiate, renew, terminate, cancel or modify any of its contracts or agreements pertaining to Sidetracks. CSXT also

may enter into new agreements pertaining to Sidetracks without the consent of State, subject to the provisions of Sections 3(i) and 8(f) hereof. Any rental income from Sidetracks that is derived from and after the Commencement Date by CSXT from such contracts or agreements shall be paid to the State.

SECTION 8. FUTURE AGREEMENTS PERTAINING TO AND USES OF THE STATE PROPERTY

It is understood by the parties hereto that State may use, grant to others the right to use, and convey interests in the State Property, in whole or in part, for various private or public purposes, in addition to the Railroad Operations on the State Property contemplated under Section 1(a) of this Agreement. Such additional uses and conveyances of the State Property will be subject to the provisions of the Contract, this Agreement, including Section 1(a), and the CSXT Easement (to the extent that it may apply) and will be undertaken by State in its sole discretion and in a manner consistent with the then current Rail Freight Services and Intercity Rail Passenger Service on the State Property.

- a) Except as is otherwise expressly provided in this Agreement and except as is otherwise expressly

provided under any contract, agreement, lease, license, easement, reservation or restriction of or pertaining to the State Property in existence as of the date hereof, whether or not of record including, without limitation, **[fiber optic occupancies]**, State shall have the exclusive right: first, to use the State Property on its own behalf for any lawful purpose; and/or, second, to grant and convey to others any and all interests, easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the State Property, or any portion thereof; provided, however, that the aforesaid rights of State shall not be used to permit any form of Rail Freight Service on the State Property, or any portion thereof, without CSXT's prior written



consent; provided, further, that the aforesaid rights of State shall be exercised in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Section 1(a) of this Agreement or CSXT's operations on the CSXT Property, and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, Sections 8(c) and (d) and 38 hereof. State shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with State's rights under this Section 8(a) and CSXT shall have no interest or right of participation in any revenue or

income howsoever derived from the enjoyment and use of such rights.

- b) State shall provide CSXT sixty (60) days' written notice prior to each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Section 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Section, that requires or permits any construction, erection or installation on the State Property, or any portion thereof.
- c) In each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Section 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Section that requires the performance

of any work on the State Property, including, without limitation, the construction, modification, alteration or relocation of railroad tracks, signals, fiber optic transmission systems or communication facilities on the State Property, then State shall use its best efforts to cause or permit such work to be effected in a manner consistent with the requirements of the subject interest, easement, lease, license or right of occupancy or the aforesaid exercise of any right, privilege or license; provided, however, that all such work shall be effected in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Section 1(a) of this Agreement

or CSXT's operations on the CSXT Property and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, this Subsection (c) and Section 8(d) hereof. Unless otherwise mutually agreed to by the parties hereto, to the extent any of the aforesaid work on the State Property involves the construction, modification, alteration or relocation of railroad tracks, signals or communication facilities used by CSXT and/or Amtrak for Railroad Operations, then State shall bear, pay, or cause to be paid, the entire cost and expense of the aforesaid work, including, without limitation, any and all cost and expense incurred by CSXT and others for the relocation of railroad tracks, signals, fiber optic transmission systems or

communications facilities and for the provision of services, materials, employees or equipment in connection with such work. In the event **[a fiber optic occupant]** bears and pays for any relocation of the fiber optic transmission systems when such relocation is for railroad operational purposes then State shall not be responsible for the cost and expense of such relocation to the extent such cost and expense is borne and paid by **[a fiber optic occupant.]** The CSXT Easement shall be adjusted, at the sole cost and expense of State, to reflect any changes to the location of the railroad tracks, signals or communication facilities on the State Property resulting under the foregoing provisions.

- d) Notwithstanding any other provision

of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (i) grant or convey to others any interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 10 feet from either side of the centerline of any main track and adjacent sidings and 9 feet from either side of the centerline of any sidetrack; and (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track; or (ii) cause or permit the building, construction, alteration, erection, installation, demolition or removal of

any structure or facility on the State Property within the following clearances of any track now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 12 feet from either side of the centerline of any track; and (B) Vertical clearances for the entire lateral clearance width of any such track of not less than 23 feet above the top of rail of any such track. Nothing in this Subsection (d) shall require State to alter, replace or remove any structure or facility on the State Property that as of the Closing Date as defined in the Contract does not comply with such clearances.

It is understood by State and CSXT that State shall construct certain platforms for Commuter Rail Service, provided, however, such platforms shall be constructed in accordance with the clearances set forth above and those permitted under the laws of the State of Florida on the date of this Agreement. State shall submit all plans and specifications for any facilities to be

built under the tracks on the State Property for CSXT's review and approval in accordance with CSXT's then current engineering specifications for facilities of like type and condition on CSXT's railroad properties. CSXT shall respond with written comments within ninety (90) days of State's submission. The parties will further refine the scope of the review in the Transitional Services Agreement, which shall be applicable to this Agreement.

- e) CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining the State's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, convey, transfer or assign the CSXT Easement or grant any operating rights over all or any portion of the State Property, to any third party (other than such rights as currently



exist pertaining to interchange or locomotive run-through); second, with Amtrak, its successors and assigns, pertaining to Amtrak's provision of Intercity Rail Passenger Service on the State Property and the CSXT Property (subject to the provisions of Section 3(1) hereof); and, third, with **[fiber optic occupants,]** or their successors and assigns pertaining to fiber optic transmission systems (subject to the provisions of Section 7(a) hereof). CSXT shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and State shall have no interest or right of participation in any revenue or income howsoever derived from such

contracts, agreements, leases and licenses.

- f) In each instance in which CSXT desires to relocate railroad tracks on the State Property or to construct, erect or install any facility on the State Property, including, without limitation, additional Sidetracks, then prior to the performance of any such work, CSXT shall submit the plans and specifications for same to State for its written approval. State shall provide its written approval of such plans and specifications within sixty (60) days of its receipt of same in the event that the proposed work satisfies the following criteria: first, the proposed work does not unreasonably interfere with the provision of Commuter Rail Service and/or Intercity Rail Passenger Service on the State Property and/or

any reasonably foreseeable use of State Property by State, such uses including, without limitation, light rail (within the City of Orlando, from approximately milepost 787 to milepost 792.5, at State's sole risk and expense, and without impairment to rail freight operations remaining on the State Property or at Kaley Yard, such system to be designed and constructed to provide adequate clearances and the necessary physical separation from the "conventional" rail system utilized by freight and intercity and commuter passenger trains and shall comply with mutually agreed design and construction standards), high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by the State; second, the proposed work is

necessary or desirable for the provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property; and, third, CSXT pays, or causes to be paid, any and all cost and expense of the proposed work. In the event that State determines that the proposed work will unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses, then within sixty (60) days of its receipt of the aforesaid plans and specifications, State shall provide written notification thereof to CSXT, which notification shall first, to the extent possible, specify the reasonable conditions, including, without limitation, duration of use and modification(s) to the submitted plans and specifications, that are

necessary to permit such work to be performed in a manner that will not unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses or, after exhausting such conditions or modifications, State's reasons for denial of such request, such denial only then being final and not subject to Section 17 hereof. To the extent that the plans and specifications are approved subject to modification(s), then the plans and specifications as so modified shall be submitted to State for its written approval, which approval State shall provide within thirty (30) days of its receipt of such modified plans and specifications if same comply with State's aforesaid notification to CSXT. Upon completion of any work, CSXT shall notify State thereof and certify to

State that the work was performed in accordance with the approved plans and specifications before the relocated tracks or other facilities can be placed into rail service. It is understood by the parties hereto that the purpose of the aforesaid approval process is to ensure that any work performed on the State Property is done in a manner consistent with State's reasonably foreseeable use(s) for the State Property; that the approval process specified herein shall not be used to unreasonably prohibit CSXT's development of railroad freight business on the State Property; that the CSXT Easement shall be adjusted to reflect the relocation, construction, erection or installation of any tracks or Sidetracks so occurring; and that no additional compensation shall be

paid by CSXT or others to State for the use of any State Property under the foregoing provisions.

- g) Except as may be otherwise provided under Section 19 hereof, in each instance during the term of this Agreement in which State either grants or conveys an interest, easement, lease, license or right of occupancy or uses the State Property on its own behalf under the provisions of this Section 8, State shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith. Except as may be otherwise provided under Section 19 hereof, in each instance during the term of this Agreement in which CSXT exercises any right under this Section 8, CSXT shall be responsible for any and all obligations, liabilities,

costs and expenses howsoever arising out of or connected therewith.

- h) Nothing contained in this Section 8 shall be construed as granting or conferring to State any right or privilege to use, or permit the use of, CSXT Property for any of the purposes contemplated in this Section 8.

#### SECTION 9. TAXES, ASSESSMENTS AND UTILITIES

- a) It is the intent and understanding of the parties hereto that all services performed by State for CSXT under this Agreement, including, without limitation, those performed under Sections 3, 4 and 5 hereof, are railroad transportation services, and accordingly are exempt from the payment of sales, use or other taxes by either State or CSXT. In the event any taxes, fees, charges, liens or assessments are imposed upon State



for such performance of railroad transportation services for CSXT or on the acquisition of property for CSXT by State in conjunction therewith, then same shall be borne and paid by CSXT in their entirety, including, without limitation, any and all interest and penalties thereon.

- b) From and after the Commencement Date hereof, State shall initiate, contract for and obtain, in its name, all utility services required on the State Property for the Railroad Operations contemplated under Section 1 of this Agreement, including gas, electricity, telephone, water and sewer connections and services. The cost and expense for such services shall be considered as a cost of maintenance of the State Property.

#### SECTION 10. CASUALTY LOSSES.

In the event that any portion of the State Property is damaged or destroyed by accident, flood, fire, civil disturbance, vandalism, earthquake, storm, terrorism, sabotage or act of God, and in the further event that repair or replacement is required by State or CSXT for the continued provision of their respective Railroad Operations contemplated under this Agreement, then, in the event the parties hereto determine to make the repair or replacement and to bear the cost and expense thereof, State either: (i) shall repair, or cause to be repaired, that portion of the State Property so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction or (ii) shall replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be allocated and apportioned between State and CSXT as follows:

- a) The cost and expense of any repair or replacement required for the exclusive use or benefit of the State or CSXT shall be borne, paid and arranged entirely by the party so requiring same.
- b) The cost and expense of any repair or replacement required for the joint use or benefit of State and CSXT shall be borne, paid and arranged by State and CSXT on a mutually agreeable basis.

## SECTION 11. ABANDONMENT AND/OR DISCONTINUANCE

a) From time to time during the term of this Agreement and notwithstanding any other provision of this Agreement to the contrary, CSXT may seek from the STB appropriate regulatory authority, including without limitation, exemption from the requirements to obtain such authority, to abandon and/or discontinue service over all or any portion of the State Property. In the event CSXT seeks and obtains such regulatory authority, then the following terms and conditions shall apply.

i. State may offer financial assistance to CSXT, in accordance with applicable statutory and regulatory provisions, to enable Rail Freight Service to be continued over the State Property or portion thereof so involved with such abandonment or discontinuance. In the event that such offer of

financial assistance complies with applicable statutory and regulatory provisions governing such offers, then CSXT shall accept such offer and shall continue Rail Freight Service on the State Property or portion so involved pursuant to the terms and conditions of such offer. In the event that CSXT believes that such offer does not comport with such applicable statutory and regulatory provisions, then CSXT shall promptly advise State of CSXT's non-acceptance of such offer, and State shall either: (A) seek to have the STB establish the terms and conditions governing the offer of financial assistance, subject to CSXT's participation in any such establishment, or (B) withdraw its offer of financial assistance. In the event that State so seeks to have the terms and conditions established by the STB and the terms and conditions so established are acceptable to State, then State shall so advise CSXT, and CSXT shall continue Rail Freight Service on the State Property or portion thereof so involved in accordance with the terms and conditions so established by the STB. In the event that CSXT should receive an offer

as aforesaid from State and one (1) or more offer(s) to purchase the CSXT Easement or subsidize the provision of Rail Freight Service on the State Property, or portion involved, from any other person, then CSXT shall exercise its statutory right to select State as the offeror with whom CSXT desires to transact business, subject to all of the aforesaid provisions governing the acceptability of State's offer and the STB's establishment of terms and conditions in the event of CSXT's non-acceptance of State's offer, provided, however, that if such offer is to purchase the CSXT Easement or portion involved, State shall have the right, without the consent of CSXT, to transfer the CSXT Easement or portion involved to a third party in compliance with any STB requirements.

- ii. In the event that: (A) State declines or fails to make an offer of financial assistance to CSXT, as aforesaid; (B) State declines or fails to accept the terms and conditions established by the STB, as aforesaid; (C) State withdraws its offer of financial assistance; or (D) the agreement governing the continuation of rail

freight operations under such financial assistance terminates by expiration of its term or otherwise, then CSXT may exercise, in whole or in part, the regulatory authority obtained by it for the abandonment or discontinuance of service on the State Property, or portion thereof, so involved. In the event that CSXT exercises the regulatory authority so obtained, then this Agreement and the CSXT Easement shall automatically terminate and be of no further force and effect with respect to the State Property, or portion thereof, with respect to which CSXT exercises such regulatory authority and, except to the extent so terminated, this Agreement and the CSXT Easement shall remain in full force and effect.

- b) Nothing contained in this Section 11 shall be construed as precluding CSXT's assignment of this Agreement and the CSXT Easement, in lieu of CSXT's aforesaid abandonment or discontinuance, to any person in accordance with the provisions of Section 37 hereof,

provided, however, that any such assignment shall be made subject to the provisions of this Section 11.

c) As used in this Section 11, the term “applicable statutory and regulatory provisions” means 49 U.S.C. § 10903 et seq. and 49 C.F.R. §1152 and the STB’s interpretations thereof as of the date of this Agreement. In the event that during the term of this Agreement such statutory and/or regulatory provisions are modified or amended in substantial respect or are repealed, then the parties hereto shall supplement and amend the provisions of this Section 11 in order to continue in effect substantially the same rights and obligations herein contained.

d) The foregoing provisions of Sections 11(a) through 11(c), inclusive, pertain to abandonments or

discontinuances subject to the STB's jurisdiction. As of the date hereof, the abandonment or discontinuance of sidetracks are statutorily exempt from the need to obtain abandonment or discontinuance authority from the STB. In the event that at any time during the term of this Agreement any Sidetrack located on the State Property is not used by CSXT for the purpose of providing Rail Freight Service or Amtrak's provision of Intercity Rail Passenger Service for a period of thirty (30) consecutive months, State may so notify CSXT and State may elect to have such Sidetrack removed. In the event State so elects, then CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and upon the date said contract or



agreement is cancelled, this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force and effect. If no such contract or agreement exists, then upon the date of State's aforesaid election, this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force and effect. Except to the extent so terminated, this Agreement and the CSXT Easement, shall remain in full force and effect. Nothing contained herein shall preclude State and CSXT from mutually agreeing to the removal of any such Sidetrack prior to the expiration of said thirty (30) month period.

#### SECTION 12. COMPLIANCE WITH LAWS

- a) During the term of this Agreement, State and CSXT shall comply with all laws, orders, rules and regulations governing the maintenance and repair of the State Property, including, without limitation, those pertaining to environmental matters, that are promulgated by any municipality, state or federal government, board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to State or the State Property, and the cost and expense thereof shall be borne and paid by the party hereto responsible for such compliance.
- b) Either party shall have the right to contest by appropriate legal proceedings, at its sole cost and expense, the validity and applicability of any law, order, rule

or regulation of a nature referred to above. To the extent permissible, compliance with such law, order, rule or regulation may be postponed until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch on the part of the party hereto contesting same, and, provided, further, that the party contesting same shall be responsible for any and all liability, cost and expense arising out of or connected with any such contest.

- c) Neither party hereto shall permit the State Property to be used by the public without restriction or in such manner as might reasonably tend to impair State's title to the State Property or CSXT's rights and interests therein as contemplated under this Agreement and the CSXT

Easement. The foregoing: (i) shall not be construed to limit or restrict the rights and interests of the parties hereto as provided in this Agreement; and (ii) shall not in any way restrict the public use of the State Property or the CSXT Property in the normal conduct of the Railroad Operations contemplated under Section 1(a) of this Agreement.

- d) Whenever State or CSXT enters into any new instrument referred to in Sections 7 or 8 hereof that grants to others a right to occupy or use the State Property, then the party hereto entering into such new instrument shall provide therein that the person so occupying or using the State Property shall comply with all applicable federal, state and local laws, regulations and ordinances

respecting such occupancy or use.

- e) Notwithstanding any other provision of this Agreement, in compliance with Florida Statutes, Section 339.135(6)(a), the following language and provisions thereof are hereby made a part of this Agreement:

The department [Department of Transportation], during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the Comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.

#### SECTION 13. LIENS AND CHARGES

- a) CSXT shall not cause or create any lien, claim, mortgage or charge of any nature whatsoever, including, without limitation, mechanics' or materialmen's liens (hereinafter in this Section collectively referred to

as “charge”) to be asserted against or claimed against the State Property for any reason and State shall not cause or create any charge to be asserted against the State Property which would interfere with or restrict the CSXT Easement. If any such charge shall at any time be claimed against the State Property, then the following provisions shall apply:

(i) The party hereto causing or creating such charge shall cause same to be discharged of record within thirty (30) days of the later of either: (A) the filing or attachment of same; or (B) the date that the creating party has actual notice of such filing or attachment. If the party causing or creating such charge fails to discharge same within such period, then, except as is otherwise expressly provided in Subsection (ii) hereof, the other party hereto may discharge the same by paying the amount claimed to be due without inquiry into the validity of the same. Any amount paid by the party discharging the charge and all cost and expense incurred in connection therewith, including, without limitation, reasonable attorney’s fees, together with interest thereon at the maximum rate allowed by law from the date of payment, shall be paid by the party causing or creating the charge to the party discharging same within thirty (30) days of the discharging party’s submission of a bill therefor.

(ii) Notwithstanding the foregoing provisions, the party causing or creating a charge

shall have the right to contest or settle any such charge, provided, however, that within thirty (30) days of the later of either: (A) the filing or attachment of the charge, or (B) the date that the causing or creating party has actual knowledge of such filing or attachment, the causing or creating party shall give written notice to the other party hereto of the causing or creating party's intention to contest or settle such charge; provided further, that the causing or creating party shall be responsible for any and all liability, cost and expense arising out of or connected with such charge, including, without limitation, reasonable attorney's fees; and, provided, further, that the causing or creating party shall diligently prosecute the contesting or settlement of such charge. In the event that the party causing or creating the charge complies with the foregoing provisions, then the other party shall not pay, remove or otherwise proceed to discharge any such charge.

#### SECTION 14. EMINENT DOMAIN

The parties hereto understand that the exercise of any lawful authority for condemnation, expropriation or seizure with respect to the State Property, at least insofar as it pertains to the CSXT Easement, would be subject to the jurisdiction of the STB under 49 U.S.C. §10903, et seq., prior to the occurrence of any taking as hereinafter described. In the event that at any time during the term of this Agreement the whole or any part of the State Property shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

- a) Taking of Whole. If such proceeding shall result in the taking of the whole, then each party hereto shall have the unilateral right, upon

written notice to the other and subject to the securing of any and all necessary governmental approvals, to terminate this Agreement in its entirety and the term hereof shall terminate and expire on the date title to the State Property vests in the condemning authority, and the [Fee] and any other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.

- b) Taking of Part. If such proceeding shall result in the taking of less than all of the State Property and does not materially interfere with either State's or CSXT's use of the State Property as contemplated under Section 1(a) hereof, then this Agreement shall continue for the balance of its term as to the part of the State Property remaining, and the



[Fee] and any other sums or charges provided in this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring.

- c) Temporary Taking. If the temporary use of the whole or any part of the State Property shall be taken at any time during the term of this Agreement for any public or quasi-public purpose, the party receiving notice thereof shall give prompt notice thereof to the other party and this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring. For purposes of this Subsection (c), temporary taking shall include all use or occupation of all or any portion of the State Property that shall not exceed ninety (90) consecutive days of use or occupation. In the event that such temporary taking shall

exceed such ninety (90) day period, then either State or CSXT may elect to treat such taking in accordance with the provisions of Sections 14(a), (b) and (d) hereof.

- d) Awards. Except as otherwise expressly provided in this Section 14, State shall be entitled to any and all funds payable for the total or partial taking of the State Property without any participation by CSXT; provided, however, that nothing contained herein shall be construed to preclude CSXT from prosecuting any claim directly against the condemning authority for loss of its business, or depreciation to, damage to, or cost of removal of, or for the value of the CSXT Easement, and any other interests or properties belonging to CSXT, including, without limitation, the CSXT Property; and, provided,

further, that nothing contained herein shall be construed to create any interest or entitlement in State to any and all funds payable to CSXT for such total or partial taking of the State Property or any taking of the CSXT Property.

- e) Each party hereto shall provide prompt notice to the other party of any eminent domain proceeding involving the State Property. Each party shall be entitled to participate in any such proceeding, at its own cost and expense, and to consult with the other party, its attorneys, and experts. State and CSXT shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure the continued use of the State Property for the Railroad Operations contemplated

under Section 1(a) of this Agreement.

f) The provisions of this Section 14 shall apply to and govern all takings involving the State Property by exercise of the right of eminent domain as aforesaid.

g) Nothing contained herein shall preclude State from exercising its eminent domain powers for any purpose with respect to the State Property, provided, that, such exercise shall not modify, amend, limit or restrict the CSXT Easement or the rights and obligations of the parties hereto under this Agreement and, provided, further, that any such exercise shall be done at no cost or expense to CSXT.

#### SECTION 15. PAYMENT OF BILLS AND RECORDS

a) All State payments to CSXT called for under this Agreement shall be

made by State in accordance with State's standard vendor invoice payment procedures. Except as otherwise expressly provided in this Agreement, all CSXT payments to State called for under this Agreement shall be made by CSXT within thirty (30) days after its receipt of a bill therefor. In cases of a bona fide dispute, those portions of the billings which are undisputed shall be paid in accordance with the time period set forth above, and any dispute reconciled by the parties hereto shall be promptly adjusted in the accounts of the subsequent months. All bills submitted shall be in sufficient form for pre-audit and post-audit thereof of the services performed pursuant to Section 287.058, Florida Statutes, and shall indicate, to the extent applicable, the dates of the

occurrences and time expended therefor. All bills shall be signed by a person who can represent that the costs and expenditures contained in said bill are true and correct to the best of that person's knowledge or belief.

- b) The books, records and accounts of each party hereto, insofar as they pertain to the State Property and this Agreement, shall be open to inspection by the other, upon reasonable request during normal business hours, at the offices of the parties hereto. If so instructed by State, CSXT shall allow public access to all such books, records and accounts subject to the provisions of Chapter 119, Florida Statutes, and made or received by CSXT on behalf of State in conjunction with this Agreement.

## SECTION 16. DEFAULT AND BREACH

- a) In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 16 shall be construed to modify or amend the provisions of Section 19 hereof or to limit or restrict either party's rights thereunder.

b) The parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; including, without limitation, any breach with respect to a party's operating windows under Section 3(i) of this Agreement, and that equitable relief, such as injunction, mandatory or otherwise, including specific performance, may be necessary in the event a party fails to cure a breach or default so occurring; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the



provisions of Section 17 hereof.

Nothing contained in this Section 16

shall be construed to limit or restrict

the parties' rights and obligations

under Section 36 hereof.

#### SECTION 17. DISPUTE RESOLUTION AND ARBITRATION

It is the desire and intent of the parties hereto to avoid, if possible, the expense and delay inherent in litigation; therefore, CSXT and the State agree that whenever a party cannot resolve an issue with the other party, both parties will engage in the alternative dispute resolution process described below. This dispute resolution process consists of two steps: executive level resolution of disputes as set forth in Subsection 17(a) and arbitration as set forth in Subsection 17(b).

##### (a) Executive Level Resolution of Disputes

(1) **Notice and Response.** A party may give the other party written notice of any dispute not resolved in the normal course of business. Within five (5) business days after delivery of the notice, the receiving party shall submit to the disputing party a written response. The notice and the response shall include (i) a statement of the position of the party delivering the notice of dispute or the response, as the case may be, and a summary of arguments supporting its position, and, (ii) the name and title of the executive who will represent that party in the negotiation to resolve the dispute and of any other person who will accompany the executive.

(2) **Negotiation Process.** Within ten (10) business days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time

and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The parties will cooperate with respect to reasonable requests for information made by one party to the other, subject to each party's discretion with respect to confidential, proprietary or other non-public information. In an effort to facilitate the negotiation process, such executives may agree to have an unrelated third party moderate and facilitate the negotiations, or may refer the matter to a panel of experts for resolution or recommendation. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three (3) business days notice of such intention and may also be accompanied by an attorney.

**(3) Termination of Negotiations.** If the dispute has not been resolved within ninety (90) calendar days after delivery of the disputing party's notice; or if the parties fail to meet within twenty (20) calendar days after delivery of the disputing party's notice; or if a panel of experts, having been determined to be appropriate as provided in this Subsection 17(a) fails to provide a recommendation within sixty (60) days of the parties' request for a recommendation; or if within sixty (60) days after receipt of a recommendation of a panel of experts the parties fail to resolve the dispute, either party may give written notice to the other party declaring the negotiation process terminated.

**(4) Obligation of Parties.** The parties regard the obligations to notify the other party of a dispute and to negotiate such dispute pursuant to this Subsections 17(a) and (b) hereof as an essential provision of this Agreement and one that is legally binding on each of them. In case of a violation of such obligation by either party, the other may bring an action to seek enforcement of such obligation in any court of law having jurisdiction thereof.

**(5) Payment of Fees And Costs.** Each party shall each bear its own costs and

expenses incurred in connection with any negotiations and dispute resolution.

(6) **Failure to Resolve Dispute.** Upon failure to resolve any dispute in accordance with this Subsection 17(a), the parties shall engage in arbitration pursuant to Subsection 17(b), unless the parties otherwise agree to engage in mediation or other dispute resolution processes at their discretion.

(b) Arbitration

(1) Except as is otherwise provided in Subsection 17(a) hereof, any controversy under this Agreement shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held at a mutually convenient location, and in the event the parties cannot agree, then at a location specified by the arbitrator(s). It is the intent of the parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, shall extend to disputes as to whether particular disagreements are arbitrable, and shall be specifically enforceable by either of the parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the State of Florida. In the event of arbitration, each party hereto shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by State and CSXT.

(c) It is understood and agreed by State and CSXT that the provisions of Subsection 17(b) are not applicable to and shall not be used: first, to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by

State and CSXT in the submission of the matter to arbitration; second, to resolve any matter subject to the judgment or discretion of one party to this Agreement; and third, except as is otherwise expressly provided herein, to resolve any matter reserved for mutual agreement of State and CSXT.

#### **SECTION 18. CLEARING OF WRECKS**

Whenever State's or CSXT's use of the State Property requires re-railing, wrecking service or wrecking train service, State shall be responsible for the performance of such service, including, without limitation, the repair and restoration of roadbed, track and structures. CSXT shall assist State in the performance of such service to the extent requested by State. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 19 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. State shall perform the services under this Section in an expeditious manner in order to restore rail service on the line.

#### **SECTION 19. LIABILITY[Subject to further State review]**

(a)Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 19.

The term "Rail Commuter Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using Commuter Rail Service on the State Property: first, while on board

trains, locomotives, rail cars or rail equipment employed in Commuter Rail Service and/or entraining and detraining therefrom; and, second, while on or about the State Property for any purpose related to the Commuter Rail Service, including, without limitation, parking, inquiring about Commuter Rail Service or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars or rail equipment. The term Rail Commuter Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(b)Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 19, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost and expense assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitor, indemnitee or its or their officers, agents and employees, and/or any other person or persons whomsoever.

(c)Except as is otherwise expressly provided by the last sentence of this Subsection (c), whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the State Property, including, without limitation, any loss, damage, destruction, injury or death of or to State's contractors, agents or employees, Rail Commuter Passengers,

trespassers on the State Property and/or any other person on, about or crossing the State Property at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the loss, damage, destruction, injury or death so occurring shall be borne entirely by State. The foregoing provisions of this Subsection (c) shall not apply to or govern occurrences covered by Section 19(d) hereof.

(d)The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the State Property:

- i. It is the specific and express intent of CSXT and State that State shall be solely responsible for liability, howsoever arising, without limitation, to Rail Commuter Passengers, and as between CSXT and State whenever Rail Commuter Passengers suffer any loss, damage, injury or death arising out of, resulting from or connected with any occurrence covered by this Section 19(d), State shall be solely responsible for and assume, without recourse against CSXT, any and all liability, cost and expense therefor.
- ii. Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only State being involved, State shall assume all liability therefor, and bear all cost and expense in

connection therewith, including, without limitation, all cost and expense referred to in Section 18 hereof.

iii. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Rail Commuter Passengers, the liability, cost and expense for which will be solely assumed by State, as aforesaid in Subsection 19(d)(i)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 18 hereof.

iv. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both State and CSXT being involved, then: (A) State and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them; (B) State shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers and State's officers, agents and employees; (C) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's

officers, agents and employees; and (D) State and CSXT shall equally assume and bear all liability, cost and expense for loss of, damage to and destruction of all other property (including, without limitation, the State Property) so occurring, including, without limitation, all cost and expense referred to in Section 18 hereof.

- v. Except as provided in paragraph (vi) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both CSXT and any other railroad using the State Property being involved (including, without limitation, FCEN, Amtrak and/or any detouring railroad), or both State and any other railroad using the State Property being involved, then FCEN and/or Amtrak and/or any other such railroad, shall be considered as State for the purpose of determining between State and CSXT, CSXT's assumption and apportionment of liability, cost and expense under paragraph (iv) above.
- vi. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, State, CSXT and any other railroad (including, without limitation, FCEN, Amtrak and/or a detouring railroad) using the State Property being involved, then FCEN and/or Amtrak



and/or any other such railroad shall be jointly considered as State and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between CSXT and State under paragraph (iv) above; provided, however, that CSXT's share of that liability, cost and expense that is to be borne equally by State and CSXT under said paragraph (iv) shall be reduced by the amount paid by any railroad involved that is jointly considered with State to be a single party under Section 19(d) hereof. Nothing contained in the aforesaid proviso shall be construed as limiting or modifying CSXT's obligation to assume and bear all liability, cost and expense for: (A) loss of, damage to or destruction of the trains, locomotives, rail cars and rail equipment operated by CSXT; and (B) injury to and death of CSXT's officers, agents, and employees; all as provided in said paragraph (iv).

vii. Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Section 19(d), the term "rail equipment" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the State Property at the time of any occurrence under said Section 19(d).

viii. For purposes of this Section 19(d), pilots furnished by State to CSXT pursuant to Section 3(d) of this Agreement shall be considered as the employees of CSXT.

ix. For purposes of this Section 19(d), the term “person” shall include, without limitation, the employee(s) of a party hereto and the term “employee(s)” shall mean and include: (A) employees of a party hereto as defined in Appendix A to this Agreement; (B) for each party hereto the invitee(s) to the State Property of each such party, which shall include the employees of parties to agreements referred to in Section 7(a) hereof as further described in the Contract, excluding Rail Commuter Passengers.

(e) In every case of death or injury suffered by an employee of either State or CSXT, when compensation to such employee or employee’s dependents is required to be paid under any workmen’s compensation, occupational disease, employer’s liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

(f) The parties hereto understand that liability pertaining to interruptions and delays is governed by Section 3(j) hereof.

(g) Each provision of this Section 19 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 19 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then

this Section 19 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 19 and the intentions of the parties with respect thereto.

- (h) Nothing expressed or implied in this Section 19, including, without limitation, Subsections 19(d)(v) and (vi) hereof is intended to or shall be construed to: (A) confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 19, or (B) limit or restrict either party hereto from seeking damages, indemnification, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

#### SECTION 20. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost and expense therefor under the provisions of this Agreement, including, without limitation, State's obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers.

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of

CSXT's employees, for which either CSXT or State solely or CSXT and State jointly may have any liability under the provisions of this Agreement.

(c) The party hereto receiving notice of the filing of a claim will promptly notify the other party of such filing where liability therefor may be joint or that of the other party hereto. State and CSXT will cooperate with each other in all such investigations, adjustments and defenses, and State and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any party which is another's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit, and the party relieved of duties in respect of such claim or suit shall cooperate as requested by the party investigating, adjusting or defending said claim or suit.

(e) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which State has any liability under this Agreement without the concurrence of State if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 20 shall modify or waive the

conditions, obligations, assumptions, or apportionments provided in Section 19 or elsewhere in this Agreement.

**SECTION 21. INSURANCE [Subject to further State insurance review].**

It is understood by the parties hereto that the provisions of this Section 21 are designed to establish parity between the parties and are based upon their financial ability to meet various obligations for which each of them is responsible under the various liability provisions of this Agreement. Toward this end, the parties shall review, on an annual basis, the provisions of this Section 21 and use their reasonable best efforts to agree upon any modifications thereto that may be appropriate due to changed circumstances. In the absence of any such agreement, the provisions of this Section 21 shall remain in full force and effect.

- a) Notwithstanding any provision of this Agreement to the contrary, the parties hereto understand that State as a sovereign creature cannot contractually indemnify and save harmless CSXT or any other party without an express waiver of sovereign immunity by the Florida legislature. As of the date of this Agreement, no such waiver exists except and to the extent as allowed under Section 768.28, Florida Statutes (2006). State is permitted by law, however, to purchase commercial insurance for protection in amounts above those limits stated in Section 768.28, Florida Statutes (2006). Accordingly, and notwithstanding any provision of this Agreement to the contrary, State shall purchase insurance and establish and maintain an adequate, segregated self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising

out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof, which insurance shall be in lieu of a specific contractual obligation by State to indemnify and save harmless CSXT as otherwise prohibited by law. The parties hereto recognize that said insurance and fund shall be the sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity contained in the aforesaid Florida Statutes. The obtaining of such policy of insurance and the establishment of said fund by State is a condition precedent to the commencement of Commuter Rail Service on the State Property, and the obtaining and maintenance of said insurance and fund in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of Commuter Rail Service on the State Property. In the event said insurance policy is canceled for any reason and/or the deductibles or self-assumed amounts of said insurance policy is unfunded, in the opinion of CSXT, then State shall replace said policy during the notification period with another policy in like amount and coverage protection or, in the case of the fund, State shall replenish the fund and, should State fail in its performance of these contractual obligations to CSXT, then State shall immediately cease operation of any and all Commuter Rail Service on the State Property until such time, if

any, that State shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 21 and/or replenish the fund, as the case may be. It is understood and agreed by the parties hereto that State's cessation of Commuter Rail Service on the State Property, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT Easement or CSXT's rights hereunder with respect to the provision of Rail Freight Service and/or Intercity Rail Passenger Service on the State Property, and shall not modify or amend any other obligation of State under this Agreement.

- b) State, at its sole cost and expense, shall procure and shall maintain during the entire term of this Agreement, liability insurance covering CSXT as a named insured as agreed and provided in the terms and conditions of Section 21(a) hereof. The said liability insurance shall have a limit of not less than Two Hundred Million and No/100 Dollars (\$200,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Five Million and No/100 Dollars (\$5,000,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage, and shall not exclude punitive damages. Coverage shall provide employer's liability coverage for liabilities incurred by State to employees involved under any applicable employee liability regime, including without limitation, the Federal

Employer's Liability Act.

- c) State shall furnish CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval will not be unreasonably withheld. The policy shall be endorsed to provide for not less than sixty (60) days' notice to CSXT prior to termination of or change in the coverage.
- d) In the event that any operating practice of CSXT jeopardizes the obtaining and maintaining of the insurance policies required of State hereunder, then, upon reasonable request and notice from State (which notice shall include all communications with respect to the offending operating practice between State and its insurance carrier), CSXT shall modify the offending operating practice in a manner sufficient to obtain or maintain such insurance, provided that in no event shall CSXT be required to adopt a practice that is not consistent with generally accepted operating practices in the railroad industry. As used herein, the term "operating practice" shall exclude any practice that would require CSXT to modify any facilities and/or equipment, unless the cost and expense of such modifications to facilities and /or equipment are borne and paid entirely by State.
- e) The amount of insurance required of State under this Section 21 shall be adjusted from time to time during the term of this Agreement to reflect the effects of inflation and such other matters as may be mutually agreed upon by the parties hereto. The parties hereto recognize that the amount of



insurance required of State herein reflects the risks attendant with Commuter Rail Service and such amount shall be adjusted by mutual agreement of the parties during any period during the term of this Agreement that such Commuter Rail Service may be suspended or cancelled. The parties hereto also recognize that the amount of insurance required herein of State reflects the risks attendant with the limited waiver of sovereign immunity under the aforesaid Florida Statutes in effect as of the date of this Agreement and that should such limited waiver be changed, then such amount of insurance shall be adjusted by mutual agreement of the parties hereto consistent with the risks of Commuter Rail Service at the time of such change.

- f) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its Rail Freight Service on the State Property) with a limit in excess of Two Hundred Million and No/100 Dollars (\$200,000,000.00) and deductibility or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). It is understood by the parties hereto that from time to time during the term of this Agreement CSXT may, at its option, change the limits, coverage and deductibility or self-assumed amounts of its aforesaid insurance. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 37 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the amount of insurance required of State under

Subsections (a) and (b) hereof may, at State's option, be reduced to a limit of Ten Million and No/100 Dollars (\$10,000,000.00), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the State Property, State may, at its option, require such entity to maintain during the remainder of the term of this Agreement insurance having a limit of Ten Million and no/100 Dollars (\$10,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million and no/100 Dollars (\$1,000,000.00). To the extent and in the event mutually agreeable to State and such other entity, the aforesaid limits and/or amounts of insurance required of State and such other entity may be changed from time to time during the term of this Agreement

#### SECTION 22. FORCE MAJEURE

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, said party shall not be liable or responsible for any delays due to strike, embargo, derailment, lockout, casualty, fire, flood, weather condition, earthquake, act of God, war, terrorism or threatened acts of terrorism, court order, work stoppage, nuclear incident, riot, civil disturbance, public disorder, criminal act of other entities, governmental regulation or control, governmental or judicial restraint or other such causes beyond the reasonable control of said party (collectively, "Force Majeure"); and in any such event of Force Majeure, said time period shall be extended for the amount of time said party is so delayed, provided that this

Section 22 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such event of Force Majeure has been removed.

#### SECTION 23. EXTENSION, WAIVER AND AMENDMENT

- a) This Agreement may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto.
- b) In each instance in which either State or CSXT is entitled to any benefit hereunder, State or CSXT, as the case may be, may: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto; (ii) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (iii) waive, in whole or in part, compliance with any of the terms and conditions of this Agreement by the other party hereto. Any agreement on the part of either State or CSXT to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of such party.

#### SECTION 24. NOTICES

(a) Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or through the United States Postal Service, certified mail postage prepaid, or received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered

to or received by the person to which it is addressed at the following addresses:

If to CSXT, to:

President  
CSX Transportation, Inc.  
500 Water Street  
Jacksonville, FL 32202

with a copy to:

Peter J. Shudtz  
CSX Corporation  
Suite 560, National Place  
1331 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

If to State:

Secretary of Transportation  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

with copy to:

State Public Transportation and Modal Administrator  
Florida Department of Transportation  
Haydon Burns Building  
605 Suwannee Street  
Tallahassee, FL 32399-0450

- b) Either party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other notices.

#### SECTION 25. GOVERNING LAW

It is the intention of the parties hereto that the laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. Venue for any legal proceedings under this Agreement shall be in

Leon County, Florida.

SECTION 26. COUNTERPARTS

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

SECTION 27. INTERPRETATION

State and CSXT acknowledge that the language used in this Agreement is language developed and chosen by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as “herein”, “hereof”, “hereby”, “hereunder” and “hereinafter” refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, provided that in the event of any inconsistency between such definition and any definition set forth in Appendix A hereto, the latter shall govern. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section.

#### SECTION 28. EXHIBITS

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

#### SECTION 29. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, including, without limitation, that certain Non-binding Term Sheet dated as of August 2, 2006.

#### SECTION 30. WAIVER

Neither the failure to exercise nor any delay in exercising on the part of either party hereto any exception, reservation, right, privilege, license, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Agreement preclude any other or further exercise of the same or of any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

#### SECTION 31. EXPENSES

Except to the extent otherwise expressly provided in this Agreement, any and all expenses incurred by either party hereto in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

#### SECTION 32. FURTHER ASSURANCES

Both parties hereto shall exert their reasonable best efforts to fulfill all conditions and obligations of such party under this Agreement.

#### SECTION 33. TIME OF THE ESSENCE

It is understood and agreed by the parties hereto that the prompt and timely performance of all obligations, responsibilities and conditions under this Agreement is of the essence of this Agreement.

#### SECTION 34. PERFORMANCE OF AGREEMENT

Except as is otherwise expressly provided in this Agreement, where any service is required or permitted of either party to this Agreement, the performance of such service may be delegated to such agent, contractor or employee as either such party may designate; provided, however, that nothing contained herein shall be construed as creating or diminishing any right in State or CSXT or to cause a transfer, release or discharge of any or all of State's or CSXT's obligations under this Agreement. State understands that a substantial portion of CSXT's employees are covered by collective bargaining agreements that govern the terms and conditions of their employment with CSXT, including, without limitation, rates of pay and scope of work.

#### SECTION 35. PROHIBITION OF THIRD PARTY BENEFICIARIES

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors or assigns any right or benefit under or by reason of this Agreement; provided, however that nothing contained in the foregoing provision shall be construed to limit or restrict the enjoyment and use of the rights contained in Sections 7 and 8 of this Agreement and the Exhibits hereto or any other party's(ies') enjoyment

and use of any and all of the rights that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s) license(s) or easement(s) entered into between State or CSXT and such other party(ies) pursuant to Sections 7 and 8 hereof and the Exhibits hereto.

#### SECTION 36. TERM

(a) This Agreement shall become effective on the Commencement Date, and shall continue in effect until such time as CSXT, its successors or assigns, secures and exercises appropriate regulatory authority to abandon and/or discontinue all Rail Freight Service on the State Property, or in the event that such authority is not required, until such time as CSXT, its successors or assigns, gives six (6) months' prior written notice of termination of this Agreement. It is understood by the parties hereto that this Agreement may be terminated, in part, upon the securing of the aforesaid authority or the giving of the aforesaid notice, as the case may be, as it pertains to a portion of the State Property.

(b) Termination of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

#### SECTION 37. SUCCESSORS AND ASSIGNS

(a) This Agreement and all of its terms, conditions, covenants, rights and obligations herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, subject to the following: at any time during the term of this



Agreement: (i) State shall not convey any interest in the State Property underlying the CSXT Easement to any person, firm, partnership, corporation or governmental entity unless State has first complied with Section 38 of this Agreement and, (ii) as a condition to such conveyance, this Agreement is assigned to the party acquiring such property to the extent of the conveyance so involved. CSXT shall not transfer the CSXT Easement, in whole or in part, to any person, firm, partnership, corporation or governmental entity unless CSXT shall have first obtained the prior written consent of State (which consent shall not be unreasonably withheld, conditioned or delayed) and as a condition to such transfer, this Agreement is assigned to the party acquiring such Easement to the extent of the transfer so involved.

(b) The provisions of this Agreement pertaining to State's prior consent to any assignment by CSXT shall not apply to any assignment by CSXT of this Agreement, in whole or in part, or any of CSXT's rights, interests or obligations hereunder to any person, firm, partnership or corporation now or hereafter affiliated with CSXT; provided, however, that CSXT unconditionally guarantees to State the performance of all obligations of CSXT under this Agreement by any such affiliate. The provisions of this Agreement pertaining to CSXT's right of first refusal shall not apply to any assignment by State of this Agreement, in whole or in part, or any of State's rights, interests or obligations hereunder to any other agency of State or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent applicable at the time of such assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency or any other assignee hereunder.

(c) Except as is otherwise provided in Subsection (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall forever release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment; provided, however, that any such assignment shall be made in strict accordance with and subject to the provisions set forth in this Section 37 relating to the assignment of this Agreement, including, without limitation, the provisions governing the State's right to consent to such assignment, provided such consent may not be unreasonably withheld, conditioned or delayed.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both parties.

#### SECTION 38. CSXT'S RIGHT OF FIRST REFUSAL

(a) If at any time or from time to time during the term of this Agreement, State receives from a ready, willing and able purchaser a bona fide written offer acceptable to State for the acquisition of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, then State shall formally notify CSXT

of such offer and provide CSXT with a true copy of such offer. (If State believes that negotiations with a prospective offeror may lead to State's receipt of a bona fide offer for the aforesaid acquisition, then State shall advise CSXT to that effect prior to State's giving CSXT the aforesaid formal notification.) As a consequence of State's acceptance of such offer, CSXT shall have a right of first refusal to acquire State's rights, interests and obligations in the property underlying the CSXT Easement and this Agreement, upon the same terms and conditions, including, without limitation, compensation, set forth in the aforesaid bona fide offer acceptable to State. (In the event that the aforesaid offer's terms and conditions include an exchange of property in lieu of cash, then a cash equivalent acceptable to the offeror and State shall also be set forth in said bona fide offer.) CSXT shall exercise its aforesaid right of first refusal herein granted by giving written notice thereof to State within forty-five (45) days of State's aforesaid formal notice to CSXT. CSXT's aforesaid right of first refusal shall be subject to any preferential right(s) for the acquisition of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement that may exist from time to time during the term of this Agreement under any and all federal, state or local law(s).

(b) In the event that CSXT declines or fails, for any reason, to exercise its aforesaid right of first refusal, or in the event that CSXT exercises said right but is unable, for any reason, to consummate the acquisition and/or assignment in accordance with the terms and conditions of the bona fide offer, then CSXT's aforesaid right of first refusal as it pertains to such offer shall automatically terminate and be of no further force and effect.

(c) CSXT's aforesaid right of first refusal shall not apply to any transfer or assignment of State's rights, interests and obligations in the State Property underlying the CSXT

Easement and this Agreement, in whole or in part, to any other agency of the State of Florida or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent applicable at the time of such transfer or assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency.

(d) The rights, interests and obligations of State and CSXT under this Section 38 shall be in addition to their respective rights, interests and obligations under Section 11 hereof.

(Signature page follows)

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority,  
have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized,  
and the seal of each, duly attested, to be hereunto affixed.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

\_\_\_\_\_  
\_\_\_\_\_

**STATE OF FLORIDA DEPARTMENT  
OF TRANSPORTATION**

By: \_\_\_\_\_

Attest: \_\_\_\_\_

THE AFOREMENTIONED CONTRACT  
HAS BEEN REVIEWED AND APPROVED  
AS TO FORM

\_\_\_\_\_

FUNDS ARE APPROVED AND  
AVAILABLE

\_\_\_\_\_

## **APPENDIX A**

### **DEFINITIONS**

The following terms and phrases shall be defined as follows for the purposes of this Agreement:

- a) “Amtrak” shall mean the National Railroad Passenger Corporation, its successors and assigns.
- b) “Amtrak Agreement” shall mean that certain agreement dated June 1, 1999 as supplemented, between CSXT and Amtrak.
- c) “Ancillary Agreements” shall have the meaning given to it in the Contract.
- d) “Commuter Rail Service” shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee.
- e) “Commencement Date” shall be that date upon which all of the conditions in this Agreement have been satisfied, or waived by the party entitled to performance thereof, and each of the parties, in their sole and absolute discretion, mutually agree that State is prepared to assume, and CSXT is prepared to turn over, their respective obligations under and in accordance with this Agreement in a manner that will allow the safe, economical and efficient continuation of Railroad Operations without interruption or termination thereof. The parties shall cooperate to accomplish the development of the operating rules and other practices applicable to the Subject Property.
- f) “Contract” shall mean that certain Contract For Sale and Purchase dated

as of [\_\_\_\_\_] \_\_, 2007, by and between State and CSXT.

- g) “CSXT Easement” shall mean the perpetual easement retained by CSXT over the properties acquired by the State (as set forth in the Deed dated as of \_\_\_\_\_) limited to reserving to CSXT the exclusive right to provide Rail Freight Service on the State Property.
- h) “CSXT Property” shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and property that connect with the State Property and are owned, controlled or used by CSXT, being properties contiguous to the State Property that were not acquired by State under the Contract.
- i) “EOT Unit” shall mean a caboose or other non-revenue rail car in a freight train for the use of the train’s crew during certain switching operations.
- j) “Deed” shall have the meaning given to it in the Contract.
- k) “Employees” shall include, in addition to those regular or part-time persons in the employ of either party hereto, the independent contractors or agents used by a party hereto to perform services contemplated by this Agreement relating to the State Property and the invitees of such party.
- l) “FCEN” shall mean the Florida Central Railroad Company, its

successors and assigns, which operates over a portion of the State Property pursuant to certain agreements between CSXT and FCEN.

- m) “Force Majeure” shall have the meaning given to it in Section 22 of this Agreement.
- n) “Intercity Rail Passenger Service” shall mean the transportation of intercity passengers by rail provided by Amtrak on the State Property.
- o) “Rail Commuter Passenger(s)” shall have the meaning given to it in Section 19(a) of this Agreement.
- p) “Rail Freight Service” shall mean the transportation by rail of property and movable articles of every kind, character and description over the State Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the State Property, and supporting activities, over the Subject Property pursuant to the CSXT Easement and this Agreement, but excluding detour movements of other railroads permitted by State pursuant to Section 3(m) hereof.
- q) “Railroad Operations” shall have the meaning given to it in Section 1(a) of this Agreement.
- r) “Sidetracks” shall mean tracks on the State Property for which State shall have no financial obligation and used exclusively by CSXT to provide Rail Freight Service to industries, customers and facilities located along the State Property.



- s)       “State Property” shall mean all of the rights-of-way and associated property and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures thereto, being all of the properties that State acquired under the Contract (all as described in Exhibit 1 to the Contract).
  
- t)       “STB” shall mean the federal Surface Transportation Board.

**EXHIBITS**

Exhibit 1      CFCRT FREIGHT SERVICE PLAN (REVISION 5)

# 4040892\_v10

**CFCRT Freight Service Plan (Revision 5)      October, 2006**

The following Freight Operations Service Plan was developed jointly by FDOT and CSXT up to revision 4 and reflects the implementation of the CFCRT corridor capital upgrades to the A – Line for commuter rail service and the relocation of through freights to the upgraded S - Line.

Revision 5 reflects the additional following mutually agreed to changes and modifies the plan with the relocation of the K928/K929 Fly Ash trains to the S– Line, the deletion of a proposed local A800 for deliveries to Harwood Brick and the termination of the Q455/Q455 train from Barberville at Rand Yard rather than Taft Yard and the introduction of new local train transfer runs replacing truncated Q455/6 south of Rand Yard to move cars between Rand and Taft yards.

**Section 1: Local/Switcher Operating Plan**

- Typical Train Make-up -- 1 Switcher Locomotive (1500/3000 HP) and 10 - 15 cars 60 tons/60 feet per car (600/900 ton train of 600/900 feet length)

**A766** - Two operating patterns, pattern 1 reflects operation on Mon, Wed and Fri and pattern 2 reflects operation on Tue and Thu

**A766 – Pattern 1 – Mon, Wed and Fri**

- On duty at 7 AM at Rand
- Two hours and 20 minutes at Rand for switching and to make up its trains
- Southbound shove move - depart Rand at **9:20 AM** from Blvd Track and using crossovers at 765.7 – 765.9 run on main track to MP 767.7.
- Train occupies the main for one hour at MP 767.7 to switch Sunlight Foods (Sunlight Foods switch is at 767.4).
- Northbound pull move - depart from MP 767.7 and go to DeLand Spur.
- Work industries on DeLand spur for 3 hours (clear off the main) and R/A the train for southbound move.
- Southbound pull move on the main from Deland spur connection to Blvd Track Rand yard.
- Switch Transflo for 1 hour
- End of duty.

**A766 – Pattern 2 – Tue and Thu**

- On duty at 7 AM at Rand

- Two hours and 20 minutes at Rand for switching and to make up its trains
- Southbound shove move on the main - depart Rand at 9:20 AM from Blvd Track and using crossovers at 765.7 – 765.9 run on main track to MP 767.7.
- Train occupies the main for one hour at MP 767.7 to switch Sunlight Foods (Sunlight Foods switch is at 767.4).
- Northbound pull move - depart from MP 767.7 and go to Blvd Track.
- Pull down into yard, run-around train, pull southward from Boulevard Track to main track (HT XO) and pull into Aloma Spur.
- Stay on Aloma Spur switching industries for 2 hrs 30 minutes clear of main.
- Northbound pull move from Aloma spur (after being away for 2:30 hours) to clear north switch at Sanford approx MP 763.5 and stop
- Southbound shove move from MP 763.5 to Blvd track into Rand Yard.
- Switch Transflo for 1 hour.

**A775-** Two operating patterns, pattern 1 Mon, Wed and Fri and pattern 2 Tue and Thu

**A775 – Pattern 1 – Mon, Wed and Fri**

- On duty at 7 PM at Taft – Manifest yard
- One and a half hours at Taft for switching and to make up its trains
- Northbound pull move from Taft to MP 795.5 - depart Taft at – 8:30 PM from manifest yard.
- Train occupies the main for one hour at MP 795.5 to switch Inland Container (Inland Container switch is at MP 795.4).
- Northbound pull move - depart from MP 795.5 and go to MP 793.5 and stop south of switch to Boise Cascade 1 & 2
- Train occupies the main for one hour at MP 793.5 to switch Boise Cascade 1 & 2 (Boise Cascade 1 & 2 switch is at 793.4/793.6)
- Northbound pull move from MP 793.5 to MP 792.6 to work Southern Warehouse North
- Train occupies the main for one hour at MP 792.6 to switch Southern Warehouse North (Southern Warehouse North switch is at MP 792.5)
- Northbound pull move from MP 792.6 over crossover at MP 792.4 from main to service track and stop after clearing switch.
- Southbound shove move on service track into Pine Loch yard
- Work Southern Warehouse West for one hour and then pull into Kaley Yard.
- Work Great Western Meat in (Yard Track #4) in Kaley Yard for one hour and leave train at Kaley
- Southbound pull move with industry cars over the crossover at MP 792.4 to MP 792.8
- Train occupies the main for one hour at MP 792.8 to switch Southern Warehouse South (Southern Warehouse south switch is at MP 793.0)
- Northbound shove move over the crossover into Kaley Yard. In Kaley for 45 minutes.
- Return Southbound pull move from Kaley to Taft manifest yard.

## **Deleted Harwood Brick Train A800**

### **A775 – Pattern 2 – Tue and Thu**

- On duty at 7 PM at Taft – Manifest yard
- One and a half hours at Taft for switching and to make up its trains
- Northbound pull move from Taft to MP 793.5 - depart Taft at **8:30 PM** from manifest yard.
- Train occupies the main for one hour at MP 793.5 to switch Boise Cascade 1 & 2 (Boise Cascade 1 & 2 switch is at 793.4/793.6)
- Northbound pull move from MP 793.5 to MP 792.6 to work Southern Warehouse North
- Train occupies the main for one hour at MP 792.6 to switch Southern Warehouse North (Southern Warehouse North switch is at MP 792.5)
- Northbound pull move from MP 792.6 over crossover at MP 792.4 from main to service track and stop after clearing switch.
- Southbound shove move on service track into Pine Loch yard
- Work Southern Warehouse west for one hour and then pull into Kaley Yard.
- Train/switcher is in Kaley Yard for 3 to 4 hours to work Great Western Meat (one hour), Commercial Iron (1 hour) and CKS Packaging (1hour).
- About 45 minutes to assemble train and then pull from Kaley and return to Taft with train

**A779 - Two operating patterns, Pattern 1 reflects operation on Mon, Wed and Fri and Pattern 2 reflects operation on Tue and Thu**

### **A779 – Pattern 1 – Mon, Wed and Fri**

- On duty at 10 AM at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound pull move - depart Taft at **11 AM** from manifest yard (yard south lead switch is at MP 797.2/792.3) to MP 798.2
- Northbound push move over crossover at approx MP 797.8 from trk # 2 to trk # 1 and then to the TOFC yard. This transfer move from manifest to TOFC yard, located on the opposite side of the main, takes about 30 minutes.
- Switcher works – 8/9 hours in TOFC yard.
- The reverse transfer move from TOFC to manifest yard occurs at **20:00** hours and also takes about 30 minutes.

### **A779 – Pattern 2 – Tue and Thu**

- On duty at – 10 AM at Taft Yard
- Two and half hours at Taft for switching and to make up its trains

- Southbound pull move - depart Taft at **12:30 hrs** from manifest yard (yard lead south switch at MP 797.2/792.3) to MP 806.6 trk # 2.
- Train occupies the # 2 main for one hour at MP 806.6 to switch Team Track (Team Track switch is at 806.6).
- Southbound pull move on # 2 main - depart from MP 806.6 and go off the main at at MP 813.8 to Poinciana Industrial Track spur.
- Work industry on Poinciana Industrial Track spur for **6 hours** (clear off the main) and R/A the train for northbound move.
- Northbound pull move from MP 813.8, trk #2 to MP 805.0, trk #1 to work at 84 Lumber.
- Train occupies the # 1 main for one hour at MP 805.0 to switch 84 Lumber (84 Lumber switch is at 805.0).
- Northbound pull move on the main from MP 805.0, trk #1 to Taft yard.

**A784 – Mon, Tue and Wed**

- On duty at 8 PM ( 20:00 hrs) at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound pull move - depart Taft at **21:00** hrs from manifest yard (yard south lead switch is at MP 797.2/792.3) to MP 798.2
- Northbound push move over crossover at approx MP 797.8 from trk # 2 to trk # 1 and then to the TOFC yard. This transfer move from manifest to TOFC yard, located on the opposite side of the main, takes about 30 minutes.
- Switcher works 7 / 8 hours in TOFC yard.
- The reverse transfer move from TOFC to manifest yard occurs at **05:00** hours and also takes about 30 minutes.

**A786 – Mon, Tue, Wed, Thu and Fri**

- On duty at 11 PM (23:00 hrs) at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound/westbound pull move - depart Taft at **24:00** hrs from manifest yard from yard track to Sexton Branch (does not require use of the main).
- Stays on Sexton Spur about 4 hours
- Do SO/PU at yard .. one hour.
- Southbound pull move from Taft yard MP 797.3 to MP 799.2 on main track #1 to go to Regency Park spur
- Work industry on the Regency Park spur for 4:00 hours and return to Taft yard
- Northbound move on main track #1 from MP 799.2 to Taft yard at around 09:00 hours.
- Works in yard 45 minutes before going off duty

**A798 – Tue and Fri**

- On duty at 22:00 at Taft Yard. Works main track locations AM Wednesday and Saturday
- Two hours at Taft for switching and to make up its train
- Southbound/westbound shove move - depart Taft at 00::00 hrs from manifest yard to MP 797.5 to switch Amerigas.
- Train occupies the # 1 main for one hour at MP 797.5 to switch Amerigas (Amerigas switch is at 797.5 off trk # 1).
- Northbound move from MP 797.5, trk # 1 to MP 796.2 trk # 2 to work Constar
- Switcher currently works off the service track that will become number 2 main. Train occupies the # 2 main for a total period of 3 hours, one hour at MP 796.2 to switch Constar, one hour to switch Chemical Central and one hour to switch Howard Fertilizer.
- Must run-around train using mains to work Constar
- To cross back into the manifest yard - northbound move to the single track section to clear the switch at MP 796.0 and shove move into the manifest yard at the north end.

**A776 and A 777 are Taft yard switchers.. and do not occupy the main.**

**NEW TRANSFER RUNS REPLACING TRUNCATED Q455/6 SOUTH OF RAND YARD**

**A455a - Mon, Tue, Wed, Thu, and Fri**

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train Starts in Rand Yard, off the main, at 11:30, builds train and performs brake test.

Train departs Rand Yard at 13:00 +/- 15 minutes and proceeds southbound to Taft Yard.

Train occupies #1 Main Track at Taft for 30 minutes to put the train in short yard tracks.

**A455b – Mon, Tue, Wed, Thu, and Fri**

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train starts at Rand Yard, off the main, at 01:30 AM, builds train and performs brake test for 01:30 hours

Train departs Rand Yard between 03:00 AM and 03:30 AM and proceeds southbound to Taft Yard.

Train occupies #1 Main Track at Taft for 30 minutes to put the train in short yard tracks.

**A456a – Mon, Tue, Wed, Thu, and Fri**

Loco HP Cars ft tons

1 4000 45 2250 3600

Train starts between Midnight and 00:30 AM.

Train occupies Main Track #1 at Taft to build the train and perform brake test for 01:30 hours before departing for Rand Yard before 02:00 AM.

Train arrives at Rand Yard by 03:00 AM, leaves Main, and terminates.

**A456b – Mon, Tue, Wed, Thu, and Fri**

Loco HP Cars ft tons

1 4000 45 2250 3600

Train starts between 02:00 AM and 02:30 AM.

Train occupies Main Track #1 at Taft to build the train and brake test for 01:30 hours before departing by 04:00 AM. for Rand Yard.

Train arrives at Rand Yard by 05:00 AM, leaves Main, and terminates.

**O682 – Mon, Tue, Wed, Thu and Fri**

- On duty at 7 PM at Tampa. Transfer move between Tampa and Taft.
- Local enters simulation at Davenport at **11:45 PM**
- Northbound pull move from Davenport to Taft manifest yard.
- Works Taft yard to SO/PU for 2 hours
- Southbound pull move from Taft to Davenport after working for 2 hours at Taft

**Z915 FCEN – Mon, Tue, Wed, Thu and Fri**

- Local enters simulation at MP 790 at **21:00** hours at FCEN connection off track #1 at MP 790.0 (Robinson Street)
- Southbound pull move from MP 790.0 to Taft manifest yard.
- Works Taft yard to SO/PU for 2 hours
- Northbound return move from Taft manifest yard to MP 790.0. Leaves Taft around **23:30** and is clear of the main track by about 24:00 hours.



## **Section 2: Rock/Fly Ash Trains Operating Plan**

### **Rock Trains**

- Typical Train Make-up -- HP/ton ratio 0.8 - 1.0 loads and 1.5 - 2.0 to hp/ton for empty 70 cars per train 115 tons/55 feet per car (8450 ton train of 4000 feet length)

### **K791/K792 – 4/4 trips per week**

#### **K791 (Load) – Mon, Tue, Wed and Thu**

- Train enters simulation at Barberville MP 738.7 at 22:00 hrs
- Southbound pull move from MP 738.7 to Benson Junction, 761.2
- Train occupies the # 2 main during the switching operation (about 1 hr). Cut 35 cars pull 35 cars south for tail end to clear switch for shove move into the Conrad Yelvington
- Locomotive return, hook up, brake test etc. for the southbound move.
- Southbound pull move with remaining 35 cars to Kaley Yard.
- Train occupies the # 1 main during the switching operation (about 1 hr) and shove move into Conrad Yelvington.

#### **K792 (Empty) – Tue, Wed, Thu and Fri**

- Train enters simulation at Kaley Yard MP 791.2 at 13 hrs on Tue and Thu and 22 hrs departure on Wed and Fri
- Train occupies the # 1 main during the switching operation (about 30 mins) and for locos to run around the train for the pull move.
- Northbound pull move from Kaley yard, MP 791.2 to Benson Junction, MP 760.5, track # 2
- Locomotives P/U 35 empty cars from Conrad Yelvington Train occupies the # 2 during the switching operation (about 1 hour).
- Locomotive return with cut of cars, hook up, brake test etc, for the northbound move.
- Northbound pull move from Benson Junction, MP 760.5 , track #2 to Barberville.

### **K940/K941 – 3/2 trips per week**

#### **K940 (Load) – Mon, Wed and Fri**

- Train enters simulation at Davenport MP 825 at –10AM
- Northbound pull move from MP 825 to Taft Yard, 796.5 .

- Train is in the yard during the switching operation (about one hour). Leave a cut of 35 cars in the yard.
- Hold train in the yard till 13:00 for northbound pull. Northbound pull move with remaining 35 cars to Sanford Yard.

**K941 (Empty) – Tue and Thu**

- On duty at 22 hrs at Rand Yard and dwell of hour
- Train departs Rand Yard, MP 765 at 23 hrs
- Southbound pull move from Rand Yard to Taft Yard, MP 760.5,
- Locomotives P/U 35 empty cars from Taft Yard. Train is in the yard during the switching operation (about 1 hour).
- Locomotive return with cut of cars, hook up, brake test etc, for the southbound move.
- Southbound pull move from Taft Yard to Davenport.

**K948/K947 – Florida Rock 3/3 trips per week**

**K948 (Load) – Mon, Wed and Fri**

- Train enters simulation at Davenport MP 825 at 9AM
- Northbound pull move from MP 825 to Taft Yard, MP 796.5 .
- Train enters the yard from the south end and pulls up to the north end.
- Shove move from the yard track to the Sexton Branch.

**K947 (Empty) – Mon, Tue and Thu**

- On duty at 21:00 hrs at Taft Yard
- Two hours to pull empties from Sexton Brach - using the yard track, R/A train in the Taft yard for southbound move.
- Southbound pull move/departure at 23:00 hrs from Taft Yard to Davenport.

**Fly Ash**

**K928/K929 – Fly Ash Moved to S - Line**

### Section 3: Freight Trains Operating Plan

#### Intermodal

Q177 – Intermodal - train shifted to S-Line

Q178 - Intermodal - train shifted to S-Line

#### Manifest

Q455– Manifest - Barberville to Rand Yard. Arrival time at Barberville

Mon	Tue	Wed	Thu	Fri	Loco	HP	Cars	ft	tons
14:02	12:32	13:02	<b>10:00</b>	<b>10:30</b>	2	8000	90	5500	7200

Train leaves the main at Rand Yard and terminates.

Q456 - Manifest - Rand Yard to Barberville. Train start time at Rand.

Mon	Tue	Wed	Thu	Fri	Loco	HP	Cars	ft	tons
04:24	03:39	03:54	04:09	03:24					

Train Builds at Rand Yard for 01:30 hours

Train depart time from Rand:

Mon	Tue	Wed	Thu	Fri
05:54	05:09	05:24	05:39	04:54

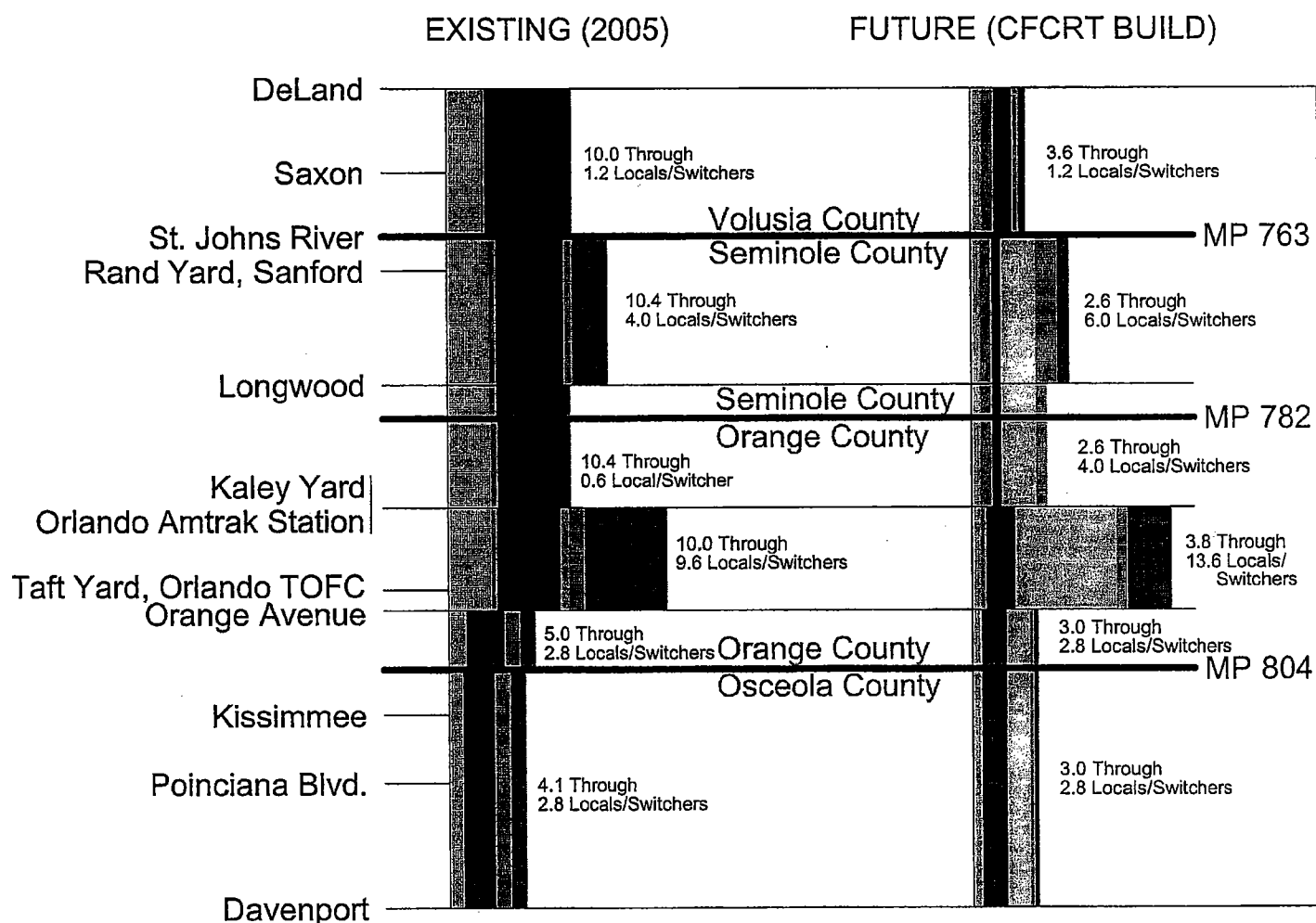
#### Coal

N170- Load Coal – Shows up at 02:00 AM with +/- 2 hrs variability at Davenport for Stanton Connection.

N171- Empty Coal –Return move from the power plant after 9 hrs with +/- 1 hr variability.

	Loco	HP	Cars	ft	tons
N170- Load Coal	2	8800	95	5200	13200
N171- Empty Coal	1	4400	95	5200	2500

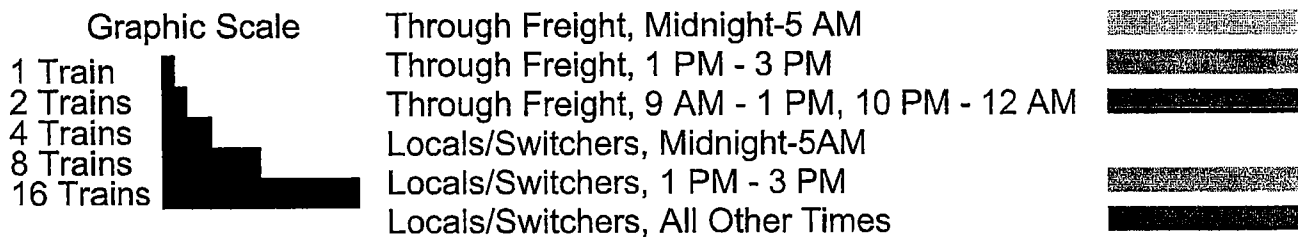
Revisions on December 2, December 6, December 9, and December 14, 2005



## CSXT "A" LINE

### Daily Weekday Through & Local/Switcher Freight By Location and Time of Day

#### Existing (2005) vs. Future (CFCRT Build)



1 SECTION 19. LIABILITY

2 (a) Notwithstanding any other provision of this Agreement to the contrary, the following words  
3 and terms shall have the following meanings for purposes of this Section 19.

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4 (i) The term "Rail Commuter Passenger(s)" shall mean and include any and all  
5 persons, ticketed or unticketed, using Commuter Rail Service on the State Property: first,  
6 while on board trains, locomotives, rail cars or rail equipment employed in Commuter  
7 Rail Service and/or entraining and detraining therefrom; and, second, while on or about  
8 the State Property for any purpose related to the Commuter Rail Service, including,  
9 without limitation, parking, inquiring about Commuter Rail Service or purchasing tickets  
10 therefor and coming to, waiting for, leaving from and/or observing rail commuter or other  
11 trains, locomotives, rail cars or rail equipment. The term Rail Commuter Passenger(s)  
12 shall also mean and include any and all persons meeting, assisting or in the company of  
13 any person described in the immediately preceding sentence.

14 (b) Notwithstanding any other provision of this Agreement to the contrary, whenever any  
15 liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any  
16 of the provisions of this Section 19, then that party shall be responsible for said liability, cost or  
17 expense, regardless of whether or not the loss, damage, destruction, injury or death giving rise to  
18 any such liability, cost or expense is caused in whole or in part and to whatever nature or degree  
19 by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other  
20 party, or its or their officers, agents and employees, and/or any other person or persons  
21 whomsoever.

**Deleted:** forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost and expense assumed by that party or apportioned to it

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**Deleted:** indemnitor, indemnitee

22 | (c) Except as is otherwise expressly provided by the last sentence of this Subsection (c),  
23 | whenever any loss of, damage to or destruction of any property whatsoever or injury to or death  
24 | of any person or persons whomsoever occurs on or about the State Property, including, without  
25 | limitation, any loss, damage, destruction, injury or death of or to State's contractors, agents or  
26 | employees, Rail Commuter Passengers, trespassers on the State Property and/or any other person  
27 | on, about or crossing the State Property at highway or roadway crossings or elsewhere by  
28 | automobile, truck, foot or otherwise, then any and all liability, cost and expense for the loss,  
29 | damage, destruction, injury or death so occurring shall be borne entirely by State. The foregoing  
30 | provisions of this Subsection (c) shall not apply to or govern occurrences covered by Section  
31 | 19(d) hereof.

32 | (d) The following provisions shall govern the liability, cost and expense and the  
33 | responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from  
34 | or connected with the movement of trains, locomotives, rail cars and rail equipment on the State  
35 | Property:

36 | i. It is the specific and express intent of CSXT and State that State shall be solely  
37 | responsible for liability, howsoever arising, without limitation, to Rail Commuter  
38 | Passengers, and as between CSXT and State whenever Rail Commuter Passengers suffer  
39 | any loss, damage, injury or death arising out of, resulting from or connected with any  
40 | occurrence covered by this Section 19(d), State shall be solely responsible for and  
41 | assume, without recourse against CSXT, any and all liability, cost and expense therefor.

42 | ii. Whenever any loss of, damage to, or destruction of any property whatsoever, or  
43 | injury to or death of any person or persons whomsoever (including, without limitation,  
44 | Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail

equipment of, or in the account of, only State being involved, State shall assume all liability therefor, and bear all cost and expense in connection therewith.

iii. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Rail Commuter Passengers, the liability, cost and expense for which will be solely assumed by State, as aforesaid in Subsection 19(d)(i)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith.

iv. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both State and CSXT being involved, then: (A) State and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them; (B) State shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers and State's officers, agents and employees; (C) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents and employees; and (D) State and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any persons not referenced in subparagraph 19(d)(iv)(B) or 19(d)(iv)(C) and for loss of, damage to and destruction of all other property not referenced in subparagraph 19(d)(iv)(A) (including, without limitation, the State Property) so occurring.

68 | v. Except as provided in paragraph (vi) below, whenever any loss of, damage to or  
69 | destruction of any property whatsoever, or injury to or death of any person or persons  
70 | whomsoever (including, without limitation, Rail Commuter Passengers), occurs with the  
71 | trains, locomotives, rail cars or rail equipment of, or in the account of, both CSXT and  
72 | any other railroad using the State Property being involved, or both State and any other  
73 | railroad using the State Property being involved, then any other such railroad, shall be  
74 | considered as State for the purpose of determining between State and CSXT, CSXT's  
75 | assumption and apportionment of liability, cost and expense under paragraph (iv) above.

76 | vi. Whenever any loss of, damage to or destruction of any property whatsoever, or  
77 | injury to or death of any person or persons whomsoever (including, without limitation,  
78 | Rail Commuter Passengers), occurs with the trains, locomotives, rail cars or rail  
79 | equipment of, or in the account of, State, CSXT and any other railroad using the State  
80 | Property being involved, then any other such railroad shall be jointly considered as State  
81 | and a single party to this Agreement for the purpose of determining the assumption and  
82 | apportionment of liability, cost and expense between CSXT and State under paragraph iv.  
83 | above; provided, however, that the respective shares of that liability, cost and expense  
84 | that is to be borne equally by State and CSXT under said paragraph (iv) shall be reduced  
85 | equally by the amount paid by any railroad involved that is jointly considered with State  
86 | to be a single party under Section 19(d) hereof. Nothing contained in the aforesaid  
87 | proviso shall be construed as limiting or modifying CSXT's obligation to assume and  
88 | bear all liability, cost and expense for: (A) loss of, damage to or destruction of the trains,  
89 | locomotives, rail cars and rail equipment operated by CSXT; and (B) injury to and death  
90 | of CSXT's officers, agents, and employees; all as provided in said paragraph iv.

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**Deleted:** Notwithstanding the foregoing provisions, whenever there is clear and convincing evidence of any loss of, damage to or destruction of any property whatsoever, or injury to or death of Rail Commuter Passengers, occurs with the trains, locomotives, cars, or equipment of, or in the account of, either one or both parties to this Agreement being so involved, with or without the trains, locomotives, cars or equipment of, or in the account of, any other user being involved, and in the event such loss, damage, destruction, injury or death is attributable to the gross negligence, or wanton or willful misconduct of the employee(s) of CSXT, on or off the train(s), locomotive(s), car(s), or equipment, where such gross negligence, or wanton or willful misconduct is the active or proximate cause of such loss, damage, destruction, injury, or death, CSXT shall assume and bear all liability, cost, and expense in connection with injury to or death of Rail Commuter Passengers, and all cost and expense referred to in Section 18 hereof. ¶  
viii. .

vii. Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Section 19(d), the term "rail equipment" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the State Property at the time of any occurrence under said Section 19(d).

viii. For purposes of this Section 19(d), pilots furnished by State to CSXT pursuant to Section 3(d) of this Agreement shall be considered as the employees of CSXT.

ix. For purposes of this Section 19(d), the term "person" shall include, without limitation, the employee(s) of a party hereto and the term "employee(s)" shall mean and include: (A) employees of a party hereto as defined in Appendix A\* to this Agreement; (B) for each party hereto the invitee(s) to the State Property of each such party, which shall include the employees of parties to agreements referred to in Section 7(a) hereof as further described in the Contract, excluding Rail Commuter Passengers.

(e) In every case of death or injury suffered by an employee of either State or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such

\* Appendix A, Definition k) provides:

"Employees" shall include, in addition to those regular or part-time persons in the employ of either party hereto, the independent contractors or agents used by a party hereto to perform services contemplated by this Agreement relating to the State Property and the invitees of such party.

111 future installments are to be paid.

112 (f) The parties hereto understand that liability pertaining to interruptions and delays is  
113 governed by Section 3(j) hereof.

114 (g) Each provision of this Section 19 shall be interpreted so as to be effective and valid. In  
115 the event, however, that any provision of this Section 19 shall, for any reason, be held invalid,  
116 illegal or unenforceable in any respect, then this Section 19 shall be construed as if such  
117 provision had never been contained herein in order to effect to the fullest extent the purposes of  
118 this Section 19 and the intentions of the parties with respect thereto.

119 (h) Nothing expressed or implied in this Section 19, including, without limitation,  
120 Subsections 19(d)(v) and (vi) hereof is intended to or shall be construed to: (A) confer upon or to  
121 give any person, firm, partnership, corporation or governmental entity other than the parties  
122 hereto, their respective legal representatives, successors or assigns any right or benefit under or  
123 by reason of this Section 19, or (B) limit or restrict either party hereto from seeking damages,

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124 redress or other relief from any person, firm, partnership, corporation or governmental entity

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125 other than the parties hereto, their respective legal representatives, successors or assigns. (k) No

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126 provision in this Agreement shall constitute or be construed to constitute a waiver of the State's

127 sovereign immunity. The parties hereto recognize and agree that the insurance and self-retention

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128 fund required under Section 21 below shall be the sole source upon which State's liability under

129 this Section 19 rests beyond that provided under the limited waiver of sovereign immunity

130 contained in Section 768.28, Florida Statutes (2006).

131 (l) The parties recognize that the State does not presently have the statutory authority to enter

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132 into the liability allocation provisions contained in this Section 19, and agree to use their best

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133 efforts to have legislation adopted by the Florida Legislature to establish that the State has such

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134 | authority.

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## 1 SECTION 21. INSURANCE [Subject to further State insurance review].

2 It is understood by the parties hereto that the provisions of this Section 21 are designed to  
3 establish parity between the parties and are based upon their financial ability to meet various  
4 obligations for which each of them is responsible under the various liability provisions of this  
5 Agreement. Toward this end, the parties shall review, on an annual basis, the provisions of this Section  
6 21 and use their reasonable best efforts to agree upon any modifications thereto that may be appropriate  
7 due to changed circumstances. In the absence of any such agreement, the provisions of this Section 21  
8 shall remain in full force and effect.

9 a) Notwithstanding any provision of this Agreement to the contrary, the parties hereto understand  
10 that State as a sovereign creature cannot contractually indemnify and save harmless CSXT or any other  
11 party without an express waiver of sovereign immunity by the Florida Legislature. As of the date of  
12 this Agreement, no such waiver exists except and to the extent as allowed under Section 768.28,

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13 Florida Statutes (2006). State is permitted by law, however, to purchase commercial insurance for  
14 protection in amounts above those limits stated in Section 768.28, Florida Statutes (2006). In addition,

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15 State has agreed to pursue enabling legislation to establish a self-insurance retention fund and purchase  
16 insurance for the purpose of paying the deductible limit established in insurance policies to be obtained  
17 for operation of Commuter Rail Service on the State Property. Accordingly, and notwithstanding any  
18 provision of this Agreement to the contrary, State shall purchase insurance and establish and maintain  
19 an adequate, segregated self-insurance retention fund which will cover claims and liabilities for loss,  
20 damage, injury or death arising out of or connected with this Agreement, including, without limitation,

21 State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection  
22 21(b) hereof, which insurance shall be in lieu of a specific contractual obligation by State to indemnify  
23 and save harmless CSXT as otherwise prohibited by law. The parties hereto recognize that said  
24 insurance and fund shall be the sole source upon which State's liability and/or indemnification under  
25 this Agreement rests beyond that provided under the limited waiver of sovereign immunity contained in  
26 the aforesaid Florida Statutes. The obtaining of such policy of insurance and the establishment of said  
27 fund by State is a condition precedent to the commencement of Commuter Rail Service on the State  
28 Property, and the obtaining and maintenance of said insurance and fund in full force and effect shall  
29 thereafter throughout the term of this Agreement be considered a condition subsequent to the  
30 continuation of Commuter Rail Service on the State Property. In the event said insurance policy is  
31 canceled for any reason and/or the deductibles or self-assumed amounts of said insurance policy is  
32 unfunded, in the opinion of CSXT, then State shall replace said policy during the notification period  
33 with another policy in like amount and coverage protection or, in the case of the fund, State shall  
34 replenish the fund and, should State fail in its performance of these contractual obligations to CSXT,  
35 then State shall immediately cease operation of any and all Commuter Rail Service on the State  
36 Property until such time, if any, that State shall obtain and thereafter maintain insurance in like amount  
37 and coverage protection to that described in this Section 21 and/or replenish the fund, as the case may  
38 be. It is understood and agreed by the parties hereto that State's cessation of Commuter Rail Service on  
39 the State Property, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT  
40 Easement or CSXT's rights hereunder with respect to the provision of Rail Freight Service and/or  
41 Intercity Rail Passenger Service on the State Property, and shall not modify or amend any other  
42 obligation of State under this Agreement.

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43 | b) State, at its sole cost and expense, shall procure and shall maintain during the entire term of this  
Agreement, liability insurance covering CSXT as a named insured as agreed and provided in the terms  
45 and conditions of Section 21(a) hereof. The said liability insurance shall have a limit of not less than  
46 Two Hundred Million and No/100 Dollars (\$200,000,000.00) combined single limit for personal injury  
47 and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Five  
48 Million and No/100 Dollars (\$5,000,000.00). The said liability coverage within its terms and  
49 conditions shall extend coverage to CSXT for third party personal injury and property damage, and  
50 shall not exclude punitive damages. Coverage shall provide employer's liability coverage for liabilities  
51 incurred by State to employees involved under any applicable employee liability regime, including  
52 without limitation, the Federal Employer's Liability Act.

53 | c) State shall furnish CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL  
54 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval will not  
55 be unreasonably withheld. The policy shall be endorsed to provide for not less than sixty (60) days'  
56 notice to CSXT prior to termination of or change in the coverage.

57 | d) In the event that any operating practice of CSXT jeopardizes the obtaining and maintaining of  
the insurance policies required of State hereunder, then, upon reasonable request and notice from State  
59 (which notice shall include all communications with respect to the offending operating practice  
60 between State and its insurance carrier), CSXT shall modify the offending operating practice in a  
61 manner sufficient to obtain or maintain such insurance, provided that in no event shall CSXT be  
62 required to adopt a practice that is not consistent with generally accepted operating practices in the  
63 railroad industry. As used herein, the term "operating practice" shall exclude any practice that would  
64 require CSXT to modify any facilities and/or equipment, unless the cost and expense of such

65 modifications to facilities and /or equipment are borne and paid entirely by State.

67 e) The amount of insurance required of State under this Section 21 shall be adjusted from time to  
68 time during the term of this Agreement to reflect the effects of inflation and such other matters as may  
69 be mutually agreed upon by the parties hereto. The parties hereto recognize that the amount of  
70 insurance required of State herein reflects the risks attendant with Commuter Rail Service and such  
71 amount shall be adjusted by mutual agreement of the parties during any period during the term of this  
72 Agreement that such Commuter Rail Service may be suspended or canceled. The parties hereto also  
73 recognize that the amount of insurance required herein of State reflects the risks attendant with the  
74 limited waiver of sovereign immunity under the aforesaid Florida Statutes in effect as of the date of this  
75 Agreement and that should such limited waiver be changed, then such amount of insurance shall be  
76 adjusted by mutual agreement of the parties hereto consistent with the risks of Commuter Rail Service  
77 at the time of such change.

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78 f) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its Rail  
79 Freight Service on the State Property) with a limit in excess of Two Hundred Million and No/100  
80 Dollars (\$200,000,000.00) and deductibility or self-assumed amounts of Twenty-five Million and  
81 No/100 Dollars (\$25,000,000.00). It is understood by the parties hereto that from time to time during  
82 the term of this Agreement CSXT may, at its option, change the limits, coverage and deductibility or  
83 self-assumed amounts of its aforesaid insurance. In the event that CSXT assigns this Agreement  
84 pursuant to the provisions of Section 37 hereof to any person, firm, partnership or corporation that is  
85 not affiliated with CSXT, then: first, the amount of insurance required of State under Subsections (a)  
86 and (b) hereof may, at State's option, be reduced to a limit of Ten Million and No/100 Dollars  
(\$10,000,000.00), and, second, as a condition to the conduct of operations by such person, firm,

87 partnership or corporation on the State Property, State may, at its option, require such entity to maintain  
88 during the remainder of the term of this Agreement insurance having a limit of Thirty Million and  
89 no/100 Dollars (\$30,000,000.00) combined single limit for personal injury and property damage per  
90 occurrence, with deductibles or self-assumed amounts not in excess of One Million and no/100 Dollars  
91 (\$1,000,000.00). To the extent and in the event mutually agreeable to State and such other entity, the  
92 aforesaid limits and/or amounts of insurance required of State and such other entity may be changed  
93 from time to time during the term of this Agreement.

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**APPENDIX G**

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**PROPOSED LEGISLATION**

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An Act to be entitled ....

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 341.301, Florida Statutes, is amended by adding Subsections 341.301(8) and 341.301(9):

**341.301 Definitions; ss. 341.302 and 341.303.**--As used in ss. 341.302 and 341.303, the term:

(1) through (7) No change.

(8) "Commuter rail service" shall mean the transportation of commuters and other passengers by rail pursuant to a rail program provided by the state or other governmental entities.

(9) "Rail commuter passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using commuter rail service on the State Property: first, while on board trains, locomotives, rail cars, or rail equipment employed in Commuter Rail Service or entraining and detraining therefrom; and, second, while rail service, including, without limitation, parking, inquiring about commuter rail service or purchasing tickets therefor and coming to, waiting for, leaving from or observing commuter rail or other trains, locomotives, rail cars or rail equipment.  
The term rail commuter passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

Section 2. Section 341.302, Florida Statutes, is amended by inserting a new Subsection 341.302(17), and renumbering thereafter, to read:

**341.302 Rail program, duties and responsibilities of the department.**--The

department, in conjunction with other governmental units and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, management, safety, revitalization, and expansion of the rail system to assure its continued and increased availability to respond to statewide mobility needs. Within the resources provided pursuant to chapter 216, and as authorized under federal law~~Title 49 C.F.R. part 212,~~ the department shall:

**(1) through (16) No change.**

(17) In conjunction with the acquisition, ownership, construction, operation, maintenance and management of a rail corridor have the authority to:

(a) Purchase by directly contracting with local, national, or international insurance companies to provide liability insurance which the department may be contractually or legally obligated to provide as to commuter rail services and other uses of the rail corridor, or which the department determines to be in the public interest and necessary to protect users of the rail corridor, and which insurance may provide coverage for all damages, including, but not limited to compensatory, special, and exemplary, the requirements of s. 287.022(1), notwithstanding; and to establish a self-insurance retention fund for the purpose of paying the deductible limit established in insurance policies it may obtain for commuter rail service, other uses of the rail corridor, or to protect users of the rail corridor, or in connection with the ownership, operation, maintenance, and management of a commuter rail transit system, to maintain an adequate fund to cover claims and liabilities for loss, damage, injury or death arising out of or connected with the ownership, operation, maintenance, and management of a commuter rail transit system; provided, however, that neither the purchase of insurance or establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity or to have increased the limits of its liability as a result of purchasing insurance or establishing a self-insurance retention fund.

(b) If necessary to institute commuter rail service, and irrespective of s. 768.28(5) or 768.28(9)(a), agree by contract to assume all liability for the death, injury, or loss to commuter

passengers resulting from negligence, and to allocate by contract other liabilities within the rail corridor resulting from negligence, in lieu of a determination of comparative fault on an incident by incident basis; however, such provision does not waive the sovereign immunity of the state or otherwise alter the requirements of s. 768.28.

(c) The provisions of this subsection 341.302(17) shall apply to any other governmental or legal entity, including but not limited to entities created under s. 163.01, providing commuter rail service on publicly owned right-of-way.

(17)(18) Have the authority to incur expenses for advertising, marketing, and promotion of commuter rail service.

(19) No change.

**Section 2. Section 768.28, Florida Statutes is amended by inserting the following new language in subsection (10)(d), to read:**

(d) For the purposes of this section, operators, dispatchers, and providers of security for rail services and rail facility maintenance providers in the South Florida Rail Corridor, Central Florida Rail Corridor, or any other publicly owned rail corridor, or any of their employees or agents, performing such services under contract with and on behalf of the ~~South Florida Rail Corridor~~ same or the Department of Transportation, or other governmental entity designated by the Department of Transportation, shall be considered agents of the state while acting within the scope of and pursuant to guidelines established in said contract or by rule.

**Section 3. This act shall take effect upon becoming a law.**