

AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

THE FLORIDA DEPARTMENT OF TRANSPORTATION

Dated: December 30, 2010

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**AGREEMENT
BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATION
AND
THE FLORIDA DEPARTMENT OF TRANSPORTATION**

THIS AGREEMENT (hereafter referred to as the "Agreement") is between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act now codified at Title 49 US Code Section 24101 et seq. (hereafter referred to as the "RPSA"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 (hereafter referred to as "Amtrak"), and the Florida Department of Transportation, having offices at 719 Woodland Boulevard, DeLand, Florida 32702 (hereafter referred to as "FDOT").

WHEREAS, FDOT intends to purchase from CSX Transportation, Inc. ("CSXT"), the rail lines and related facilities between DeLand and Poinciana, Florida (hereinafter referred to as the "Corridor") pursuant to an agreement under which CSXT retains a freight easement; and

WHEREAS, as of June 1, 1999, CSXT entered into an Agreement with Amtrak, pursuant to the RPSA, with respect to the provision of services and facilities for intercity rail passenger operations by Amtrak, including such operations on the Corridor, which Agreement has subsequently been amended and consolidated; and

WHEREAS, FDOT intends to operate Commuter Service over all or portions of the Corridor; and

WHEREAS, Amtrak's service on the Corridor remains subject to the requirements of the RPSA; and

WHEREAS, the parties acknowledge that, during the Construction Period, FDOT will be engaging in infrastructure projects on the Corridor; and

WHEREAS, the parties further acknowledge that, during the Construction Period, there will at various times be delays in train operations as well as occasional cancellations of Amtrak service; and

WHEREAS the parties have negotiated this Agreement to provide for continued Amtrak operation of Intercity Rail Passenger Service (as defined below) on the Corridor;

NOW, THEREFORE, effective on the "Ownership Date" as defined below, the parties agree as follows:

ARTICLE I

DEFINITIONS

- 1.1 **Amtrak.** "Amtrak" means the National Railroad Passenger Corporation.
- 1.2 **Amtrak Train.** "Amtrak Train" means an intercity passenger train operated over the Corridor by or for the account of Amtrak.
- 1.3 **Commencement Date.** The date on which Commuter Service operations begin.
- 1.4 **Commuter Service.** "Commuter Service" means commuter rail passenger service operated by or for the account of FDOT on the Corridor that is available for use by the public.

- 1.5 **Construction Period.** "Construction Period" means the period during which Amtrak Train operations are affected due to construction activity on the Corridor, as set forth in Appendix VII attached hereto and incorporated herein.
- 1.6 **Corridor.** "Corridor" means the Rail Line and adjacent facilities (as described in Article II below) between DeLand and Poinciana, Florida.
- 1.7 **CSXT.** "CSXT" means CSX Transportation, Inc.
- 1.8 **FDOT.** "FDOT" means the Florida Department of Transportation and/or FDOT's successor to which FDOT has assigned responsibility to perform Commuter Rail Services on the Corridor. Successor, as used herein, includes the Central Florida Commuter Rail Commission.
- 1.9 **FDOT Train.** "FDOT Train" means a rail passenger train operated over the Corridor by or for the account of FDOT.
- 1.10 **Freight Service.** "Freight Service" means rail freight service operated by CSXT or any other railroad on the Corridor.
- 1.11 **Intercity Rail Passenger Service.** "Intercity Rail Passenger Service" means rail passenger service operated by Amtrak on the Corridor under the terms of this Agreement.
- 1.12 **Ownership Date.** "Ownership Date" means the date on which legal title to the Corridor is conveyed to FDOT.
- 1.13 **RPSA.** "RPSA" means the Rail Passenger Service Act (49 USC 24101 et. seq.), including amendments that may be made during the term of this Agreement.

ARTICLE II

DESCRIPTION OF CORRIDOR

The Corridor consists of the rail line, structures, signals, signal systems, switches, crossovers, interlocking devices and related rail facilities, including stations and other fixed ancillary facilities owned by FDOT extending from Milepost A749.61 at or near DeLand, Florida to Milepost A813.82 at or near Poinciana, Florida. On and after the Ownership Date, (i) FDOT will be responsible for dispatching and maintaining the Corridor, (ii) CSXT will operate Freight Service over the Corridor pursuant to a perpetual easement it has negotiated with FDOT, and (iii) Amtrak will operate Intercity Rail Passenger Service pursuant to this Agreement. On and after the Commencement Date, FDOT intends to operate Commuter Service over the Corridor beginning in July 2013.

ARTICLE III
THE SERVICES

Section 3.1. Right to Services.

Subject to and in accordance with the terms and conditions of this Agreement, FDOT agrees to provide Amtrak with access to the Corridor for and in connection with the operation of Amtrak's Intercity Rail Passenger Service, including the carrying of mail and express on passenger trains, to the extent authorized by the RPSA. The schedules and consists of Amtrak Trains shall be consistent with those in effect as of the date of this Agreement. For purposes of this Agreement, FDOT may designate to any other party the responsibility to perform any services it may be obligated to provide Amtrak under the terms of this Agreement. Such designation does not relieve FDOT of the responsibility to provide such services or of any liability or obligation under this Agreement.

Section 3.2. Schedule Changes and Modification of Services.

During the term of this Agreement, FDOT or Amtrak may request increases, reductions or modifications in, to, or of any of the services, time schedules, consists, property or performance standards in connection with their respective passenger services on the Corridor, including non-recurring special trains. Amtrak will be entitled to implement changes requested under this section, subject to the physical capabilities of the Corridor and the efficiency of other operations which will include, but not be limited to, high speed rail services. Amtrak and FDOT shall each appoint a representative who shall be responsible for the coordination of all changes contemplated by this Section.

When either FDOT or Amtrak desires to change an existing schedule or operate additional service on the Corridor, other than special trains, a minimum of sixty (60)

day's written notice shall be given to the other party specifying the desired change in service. Every reasonable effort shall be made by each party to adjust its operations to accommodate the requested change.

If Amtrak and FDOT are unable to reach agreement on the implementation of the requested change within forty-five (45) days of receipt of the initial notice, either party may submit the matter to arbitration in accordance with Article VI of this Agreement.

Section 3.3. Standards of Performance.

A. FDOT, or its designee, shall make every reasonable effort to ensure that the Corridor is operated in a manner that will make it possible:

1. To deliver Amtrak Trains to all scheduled passenger stops on the Corridor by the scheduled time therefore; and
2. To avoid excessive delays to Amtrak Trains and, consistent with safety, to make up delays incurred on the Corridor or on rail lines of other railroads.
3. To not require an Amtrak Train to depart a station prior to completion of customary operations, passenger services or emergency mechanical work.

B. FDOT shall cooperate in good faith with Amtrak in permitting the operation of Amtrak Trains in a manner which will contribute to the success of Amtrak's Intercity Rail Passenger Service.

Section 3.4. FDOT Control and Supervision.

A. In the performance of services referred to in this Agreement, commencing on the Ownership Date, FDOT, or its designee, shall have sole control of the dispatching of Amtrak's Intercity Rail Passenger trains while on the Corridor. All personnel rendering any services which involve responsibility for FDOT's operating facilities or for

the handling or movement of any Intercity Rail Passenger Train shall be subject to the direction, supervision and control of FDOT, or its designee, and such services performed by or for Amtrak shall be governed by and subject to all then current operating and safety rules, orders, procedures and standards governing operation of the Corridor.

B. FDOT's control of Amtrak's trains on the Corridor is in no way intended to decrease or diminish Amtrak's responsibility to provide competent personnel capable of operating Amtrak Trains on the Corridor in a manner compliant with the highest standard of operations and care. All equipment and employees utilized by Amtrak on the Corridor shall be in compliance with all applicable State and Federal laws and regulations. It is further understood that the terms of this Agreement shall not be construed in any way to diminish the rights, duties and responsibilities of the Rail Safety Inspector employed by FDOT pursuant to Section 351.35, Florida Statutes.

C. In the event FDOT, or its designee, observes or is aware of improper conduct or violation of the rules by any Amtrak employee performing services pursuant to this Agreement, they shall notify Amtrak who shall hold an investigation and take disciplinary action for the reported incident, if warranted, pursuant to Amtrak's policies and procedures.

Section 3.5. Train Priorities.

FDOT and Amtrak agree that train dispatching and priority shall be conducted in accordance with Appendix VI of this Agreement.

ARTICLE IV

CORRIDOR

Section 4.1. Corridor.

FDOT shall not voluntarily dispose of or abandon any portion of its Corridor used in the operation of Amtrak Trains without Amtrak's prior written approval, which shall not unreasonably be withheld or delayed, for as long as such use continues or for the term of this Agreement, whichever period is the shorter, provided that seasonal changes or suspensions of service shall not be deemed discontinuance of use. Nothing herein shall prevent FDOT from modifying, changing, or relocating any facility or any segment of the Corridor, provided that with respect to tracks covered by this paragraph, the continuity of the tracks is retained.

In the event FDOT desires to dispose of fixed ancillary facilities on the Corridor, as retention of same is no longer in the best interest of FDOT, such as but not limited to stations, platforms, canopies, parking areas, and servicing facilities, which are owned, leased or otherwise controlled by it and which are then being used in and necessary to the operation of services rendered by FDOT, or its designee, pursuant to this Agreement, FDOT will notify Amtrak. In such a situation, FDOT shall furnish a substitute facility reasonably equivalent in utility, provided that Amtrak demonstrates that said facility is essential to its operation of Intercity Rail Passenger Service and the parties shall agree to financial arrangements with regard to the cost of replacement of such facilities.

Under no circumstances will assignments, conveyances, transfers, or other transactions specifically authorized by or contemplated under the Contract for Sale and Purchase Between State of Florida Department of Transportation and CSX.

Transportation, Inc., dated November 30, 2007; the Central Florida Operating and Management Agreement between State of Florida Department of Transportation and CSX Transportation, Inc., dated November 30, 2007; the 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, executed August 29, 2007; and the Interlocal Funding Agreement for Acquisition and Construction of the Central Florida Commuter Rail System by and among Orange County, Florida, Osceola County, Florida, Seminole County, Florida, County of Volusia, Florida, City of Orlando, Florida, and Florida Department of Transportation, effective as of the final execution thereon on August 28, 2007, be considered a voluntary disposition, an abandonment, or a disposal of fixed ancillary facilities that would require consultation, notice, or the furnishing of substitute facilities under this Section 4.1.

Section 4.2. Maintenance of the Corridor.

Between the Ownership Date and the Commencement Date, the Corridor, used in Amtrak Intercity Rail Passenger Service pursuant to this Agreement, shall be maintained at not less than the level of utility existing as of the Ownership Date. On and after the Commencement Date, the Corridor shall be maintained at not less than the level of utility existing as of the Commencement Date. The parties agree that the first track geometry run conducted after the execution of this Agreement is a reasonable representation of the track condition in place as of the Ownership Date. The parties further agree that following the Commencement Date, a track geometry run shall be conducted, and the conditions measured during that run shall be deemed to be a reasonable representation of the track condition as of the Commencement Date. Amtrak agrees that FDOT may

adjust speeds at various locations when conditions, maintenance requirements and production work require; provided that FDOT will restore speeds as soon as possible. The speeds in effect as of as of the Ownership Date and the Commencement Date shall be as set forth in Appendix I.

Section 4.3. Additional Maintenance and Improvements.

Amtrak may request reasonable improvements to the Corridor and/or modifications in Corridor maintenance. If FDOT agrees to have work performed, the parties will amend this Agreement upon terms and conditions agreeable to both parties. Amtrak will compensate FDOT, or its designee, for all incremental costs incurred as a result of any Corridor maintenance change or improvements undertaken pursuant to Amtrak's request.

Section 4.4. Lease of Facilities.

Amtrak shall enter into lease agreements with FDOT for the use and occupation of the station facilities adjacent to the Corridor owned by FDOT at Orlando and Kissimmee, Florida. These leases shall be generally in the form contained in Appendix II hereto.

ARTICLE V

ACCOUNTS AND PAYMENTS

Section 5.1. Basis of Payment.

As full and complete compensation for the services and activities performed and the facilities made available to Amtrak under this Agreement and for FDOT's provision of management and corporate resources necessary to enable FDOT to provide the services, activities, and facilities specified in an efficient manner, Amtrak will pay FDOT as specified in Appendix IV. The amounts calculated pursuant to Appendix V shall be deducted from amounts due pursuant to Appendix IV.

If non-routine services, which are not otherwise covered in the Appendix of this Agreement, are rendered by FDOT or its designee, at Amtrak's request, Amtrak will pay FDOT for all incremental costs incurred by FDOT in performing such services.

Section 5.2. Modified or Additional Service.

Amtrak will compensate FDOT for all incremental costs associated with any modified or additional service that FDOT or its designees provide pursuant to this Agreement. In the event of any dispute between the parties relative to said modified or additional service, said dispute shall be resolved pursuant to the procedures set forth in Article VI of this Agreement.

Section 5.3. Termination of Services.

Amtrak may notify FDOT by providing advance written notice, of not less than five (5) days, that it no longer desires FDOT to perform or furnish specific services, activities, or facilities for which Amtrak compensates FDOT, and FDOT shall cease to

perform or provide the same as soon as practicable. Such notice shall include a schedule of the services, activities, or facilities to be terminated. Amtrak shall no longer be required to make payment to FDOT once the service, activities, or facilities have been terminated. Amtrak agrees, however, to reimburse FDOT, or its designee, for all incremental costs incurred by FDOT, or its designee, as a result of the termination of such services, activities and/or facilities usage. In the event of any dispute between the parties relative to the termination of services, activities or facilities usage, said dispute shall be resolved in accordance with the procedures in Article VI of this Agreement.

Section 5.4. Payment by Amtrak

Within thirty (30) days after the last day of each calendar month, Amtrak shall make payment to FDOT of the net amount due as calculated pursuant to Section 5.1 and pursuant to Appendices IV and V of this Agreement. Amtrak shall wire transfer payment to the Florida Department of Transportation's Comptroller's Office.

Section 5.5. Right of Review and Audit.

Any payment by Amtrak or settlement between Amtrak and FDOT shall be subject to an audit and evaluation of operations, performance, and costs by each party. The scope of such audits and evaluation may be both financial and operational and may include, in addition to costs and wages reimbursed by Amtrak to FDOT, the controls, practices, and procedures that govern operations on the Corridor and their effect upon the efficiency and quality of performance that is the subject of the payment.

Section 5.6. Records

Both parties shall maintain supporting accounting records and any other related data which may reasonably concern the performance of services for Amtrak pursuant to this Agreement, and such documents shall be available for review and audit at points where such records are ordinarily kept. Where pertinent, such records shall include the designated train number and/or locomotive number and/or car numbers, and shall be maintained and accumulated on a location-by-location basis. Such records shall be retained not less than thirty-six (36) months and shall be available for inspection and copying during the regular business hours of the location where the record is retained. Specification of such minimum retention period shall not limit the right of review and audit of any records that exist. Notwithstanding the foregoing, the parties agree that, to the extent any documents described in Section 5 constitute public records under Florida Law, the Florida Public Records Law will control the inspection, copying and retention of those records.

Section 5.7. Audit Adjustments.

In the event either party believes it has made a payment which exceeds (or has received a payment which is less than) the amount required by the provisions of this Agreement or a settlement between the parties of a matter covered by this Agreement, such party shall formally submit its claim in reasonable detail to the other party. Within sixty (60) days of receipt of a claim, the party receiving the claim shall respond in writing to the party submitting the claim indicating whether it agrees or disagrees with the claim. Undisputed claims shall be paid promptly by the other party. In the event that a party disagrees with the proposed claim, such party shall provide a written statement of the

basis of its disagreement and the facts supporting that basis in a form which will permit the claiming party to evaluate the merits of the other party's position. Any claim which is unresolved 90 days after having been formally presented shall, at the request of either party, be submitted to arbitration for resolution in accordance with Article VI. Interest shall be paid in accordance with Sections 215.422 and 55.03(1), Florida Statutes. Nothing in this Agreement is intended to derogate any right, duty or obligation of Amtrak's Office of Inspector General under the Inspector General Act of 1978, as amended.

Section 5.8. Contract Advance.

A contract advance equal to thirty (30) days estimated incremental costs shall be paid to FDOT on the effective date of this Agreement and shall be retained by FDOT until forty five (45) days after the last day of the last month for which this Agreement provides the basis of payment. At that time, such advance shall be credited against any amount then properly owing from Amtrak to FDOT under this Agreement and any remaining amount shall be refunded to Amtrak, or Amtrak shall pay FDOT within thirty (30) days the difference between the advance and the payments due and owing under the Agreement for the last month's operation, as the case may be. The amount of the advance on the effective date of this Agreement is \$84,600.00 and shall be appropriately adjusted in the event of an addition, deletion, or substantive modification of Amtrak's passenger operations over the Corridor.

ARTICLE VI

DISPUTE RESOLUTION

Section 6.1. Settlement of Disputes.

The parties shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to arbitration. In the event the parties are unable to resolve any dispute arising out of the interpretation, application or implementation of this Agreement, either party may submit said dispute to final and binding arbitration in accordance with the procedures set forth in this Article VI.

Section 6.2. Arbitration Procedure.

Any controversy between or among the parties which cannot be resolved within thirty (30) calendar days or such other time as the parties to the dispute may agree in writing, shall be submitted to a panel of arbitrators, one of whom shall be appointed by Amtrak, one of whom shall be appointed by FDOT and the third who shall be selected by the two arbitrators so chosen. The thirty (30)-day period described in the preceding sentence shall begin upon receipt by a party of notice from another party that a dispute or controversy has arisen that cannot be otherwise resolved.

The decision of a majority of the arbitrators shall be final and conclusive between the parties. In case either of the parties fails or refuses to appoint an arbitrator within 30 calendar days after written notice is given by either party to make such appointment, the arbitrator that has been appointed shall request that the Chief Judge of the United States District Court in which the principal office of the applying party is located, appoint a competent and disinterested arbitrator for the defaulting party, and the two arbitrators, so appointed shall select a third arbitrator and the three so chosen shall hear and decide the

dispute. The arbitrators shall issue a written decision which shall be final and conclusive upon the parties to the dispute.

In the event that the two appointed arbitrators are unable to agree upon a third arbitrator within 30 days after the appointment of the second arbitrator, the third arbitrator shall be appointed, upon the application of either party hereto, upon reasonable notice to the other party, by the Chief Judge of the United States District Court in which the principal office of the applying party is located. If any arbitrator shall decline or fail to act, the party or person by whom he or she was chosen, as the case may be, shall appoint another to act in his or her place.

Section 6.3. Pending Resolution.

Unless otherwise specifically provided in other sections of this Agreement, while such arbitration proceeding is pending, the business, the operations to be conducted, the physical plant to be used and the compensation under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

Section 6.4. Cost of Arbitration.

Each party to the dispute shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it or on its behalf, and both parties shall share equally in all other costs and expenses, including those attributable to the services of the third arbitrator.

Section 6.5. Enforcement.

Upon failure of a party to comply with an arbitration award issued pursuant to this Article, the other party may refer the matter to a court of competent jurisdiction for enforcement of the said award.

ARTICLE VII

RISK OF LIABILITY

Section 7.1 Risk of Liability.

Except as provided in the last sentence of this paragraph, to the extent permitted by law, FDOT shall be responsible for any damage or liability arising from the Commuter Rail Service. Except as provided in the next sentence, Amtrak shall be responsible for any damage or liability arising from the Amtrak operations on the Corridor. In the event of an accident involving operations of both parties, each party (i.e. Amtrak on the one hand and FDOT on the other hand) shall bear the share of damage or liability caused by its negligence as determined by a court of appropriate jurisdiction.

Section 7.2 Transition Period

During the Transition Period, as defined in the November 30, 2007 Transition Agreement between FDOT and CSXT ("Transition Agreement"), FDOT shall require its contractor, subcontractor, or other third party ("Contractor") who may have access to the Sun Rail Corridor to a) comply with Section 7 of the State of Florida's published Standard Specifications for Road and Bridge Construction 2007 ("Specifications"); b) defend, indemnify and hold harmless Amtrak to the same extent that Contractor may be obligated to defend, indemnify and hold harmless CSXT; c) defend, indemnify and hold

harmless Amtrak to the same extent that Contractor may be obligated to defend, indemnify and hold harmless FDOT for FDOT's obligations to defend, indemnify and hold harmless CSXT; and d) cause Amtrak to be named as an Additional Insured on the Contractor's insurance policies required by the Specifications. FDOT represents that i) Contractor has no indemnity obligations as to CSXT under Section 7 of the Specifications or under the Contractor's pending design, build and maintain contract with FDOT, and ii) no modification of said Section 7 of the Specifications or of the Contractor's indemnity obligations under the pending design, build and maintain contract with FDOT is contemplated.

Section 7.3. Amtrak No-Fault Legislation.

A. Amtrak and FDOT shall jointly seek, support and make all good faith efforts to secure enactment of legislation in the Florida Legislature authorizing substantially the same contractual No-Fault liability and insurance provisions between FDOT and Amtrak as are presently authorized between FDOT and CSXT. In recognition that such No-Fault liability provisions are required by Amtrak for its continued operation of Amtrak Trains over the Corridor, Amtrak, with FDOT's active participation, will take the lead role in explaining and articulating the need for this legislation to the Florida Legislature and other appropriate entities.

B. A copy of amended Sections 341.301 and 341.302, Florida Statutes, to be proposed and supported by Amtrak and FDOT is appended hereto as Appendix VIII (collectively, "the Liability Amendments").

C. If the Liability Amendments are enacted by the Florida Legislature, beginning on the date on which they take effect the liability provisions in Appendix IX (the "Amended Liability Provisions") shall replace Section 7.1 of this Agreement. While the Liability Amendments shall take effect upon enactment without any other act or action being necessary thereto, the parties nevertheless agree to timely formalize such thereafter by formal amendment to this Agreement for purposes of future reference and clarity, and without including any other topic or amendment as part thereof, unless otherwise expressly agreed upon by both parties.

D. In the event that the legislation enacted by the Florida Legislature differs from the provisions of the Liability Amendments set forth in Appendix VIII, at Amtrak's option, the Parties shall negotiate in good-faith such changes to the Amended Liability Provisions as may be necessary to conform those provisions to the Liability Amendments as enacted and the conformed provisions shall replace Section 7.1 of this Agreement.

ARTICLE VIII

GENERAL

Section 8.1. Information.

Either party to this Agreement shall have the right to inspect the books and records of the other party pertaining to the performance of this Agreement upon reasonable notice to the other party. Amtrak shall have the right upon reasonable conditions and notice to examine the Corridor at its own expense. Amtrak and FDOT shall make available any existing reports pertaining to the operation and maintenance of

the Corridor that are necessary for the administration and application of the provisions of this Agreement.

Section 8.2. Contract Administration.

FDOT and Amtrak shall each appoint individuals who will be responsible for coordinating activities between FDOT and Amtrak, who shall have the responsibility for ensuring the performance by FDOT and Amtrak, respectively, of their obligations under this Agreement.

FDOT and Amtrak appoint the following individuals for such purposes:

FOR FDOT:

Florida Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720-6834
Attention: Manager, Central Florida Rail Corridor

FOR AMTRAK:

Senior Director Host Railroads
National Railroad Passenger Corporation
30th Street Station – 4 North Box 20
2955 Market Street
Philadelphia, PA 19104

Notification of any change in the Contract Administrator for either party shall be made in accordance with Section 8.7.

Section 8.3. Force Majeure.

The obligations of the parties hereunder, other than payment, shall be subject to force majeure (which shall include strikes, riots, hurricanes, floods, accidents, acts of God, and other causes or circumstances beyond the reasonable control of the party

claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 8.4. Successors and Assigns.

All the covenants and obligations of the parties hereunder shall bind their successors and assigns whether or not expressly assumed by such successors and assigns.

Section 8.5. Interpretation of Agreement.

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof. This Agreement shall be construed in accordance with and governed by the laws of Florida. All appendices attached hereto are integral parts of this Agreement and the provisions set forth in the appendices shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement. Nothing expressed or implied herein shall give or be construed to give to any person, firm or corporation other than Amtrak or FDOT any legal or equitable right, remedy or claim under or in respect of this Agreement. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by Amtrak and FDOT, unless a provision hereof expressly permits either of said parties to effect termination, amendment, supplementation, waiver or modification hereunder, in which event such action shall be taken in accordance with the terms of such provisions.

Section 8.6. Severability.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

Section 8.7. Notices.

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

National Railroad Passenger Corporation
30th Street Station -- 4 North Box 20
2955 Market Street
Philadelphia, PA 19104

Attention: Senior Director, Host Railroads

and if to FDOT, in an envelope addressed as follows:

Florida Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720-6834

Attention: Manager, Central Florida Rail Corridor

and:

Attention: Rail Transit Project Manager

Each party may change the address at which it shall receive notification hereunder by notifying the other of such change, in writing.

Section 8.8. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original.

Section 8.9. Term.

This Agreement shall become effective on the Ownership Date and remain in effect for a period of ten (10) years, and shall continue in effect thereafter unless terminated by either party by providing twelve (12) months written notice. Such notice may be given at any time beginning nine years after the Ownership Date.

Section 8.10. Equal Employment Opportunity.

FDOT shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. FDOT will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 8.11. Rights Reserved.

Notwithstanding anything to the contrary, FDOT specifically reserves the following powers and rights with respect to the Corridor to the extent that they are not inconsistent with the rights and obligations of the Parties pursuant to this Agreement: (a)

to permit and to conduct commuter rail service and to permit others to conduct freight rail operations under, across and over the Corridor and adjacent properties; (b) to enter into service and trackage rights agreements for freight, commuter and high speed rail service on the Corridor with any other party that are not inconsistent with the obligations of FDOT pursuant to this Agreement; (c) to sell or otherwise dispose of the Corridor pursuant to Section 4.1 of this Agreement; (d) consistent with Section 4, to modify, change or relocate any facilities or segments of track on the Corridor; and (e) to implement any other public facilities within the Corridor.

Section 8.12. Relationship of Parties.

In rendering any service or in furnishing any equipment, materials or supplies hereunder, FDOT or its designees are acting solely pursuant to this Agreement with Amtrak and not in any other capacity.

IN WITNESS WHEREOF, Amtrak and FDOT have caused this Agreement to be
duly executed by their respective officers thereunto duly authorized on the date below.

NATIONAL RAILROAD PASSENGER CORPORATION

By

Date

FLORIDA DEPARTMENT OF TRANSPORTATION

By

Date

Amtrak - Approved as to Form:

By:

NAME:

TITLE:

FDOT - Legal Review:

By:

NAME:

TITLE:

APPENDIX I

MAXIMUM PASSENGER TRAIN SPEEDS

Effective November 1, 2010

MAXIMUM AUTHORIZED PASSENGER TRAIN SPEEDS ¹			
MILE POST		OWNERSHIP DATE	COMMENCEMENT DATE
From	To	EXISTING CSXT EMPLOYEE TIMETABLE	PLANNED CENTRAL FLORIDA CORRIDOR
749.61	751.1	79	79
751.1	751.5	50	50
751.5	752.8	79	79
752.8	753.1	75	75
753.1	757.0	79	79
757.0	757.2	70	70
757.2	759.8	79	79
759.8	761.5	65	65
761.5	763.1	60	60
763.1	763.7	45	45
763.7	765.9	60	60
765.9	766.8	30	30
766.8	772.0	60	60
772.0	773.1	50	50
773.1	773.8	45	45
773.8	774.4	70	70
774.4	777.9	79	79
777.9	780.3	60	60
780.3	782.0	50	50
782.0	784.3	40	40
784.3	784.7	35	35
784.7	791.7	25	30

¹ Maximum Authorized Passenger Speeds

FDOT has been awarded a grant through the Federal Transit Administration of the U.S. Department of Transportation to fund certain track and other improvements on the Corridor that are expected to increase the Maximum Authorized Passenger Speeds as indicated in this Appendix I. Following the completion of such publicly-funded track upgrades, and the joint operation of a Track Geometry Car over the line, FDOT and Amtrak agree that the Maximum Authorized Passenger Speeds contained herein shall be modified to reflect any improvements. The parties further agree to follow a similar process in the event that future public funding is awarded to provide further upgrades to the Corridor that increase the Maximum Authorized Passenger Speeds.

MAXIMUM AUTHORIZED PASSENGER TRAIN SPEEDS ¹			
MILE POST		<u>OWNERSHIP DATE</u>	<u>COMMENCEMENT DATE</u>
From	To	EXISTING CSXT EMPLOYEE TIMETABLE	PLANNED CENTRAL FLORIDA CORRIDOR
791.7	793.6	40	40
793.6	794.6	79	79
794.6	795.5	60	60
795.5	796.8	79	79
796.8	797.0	79	60
797.0	799.3	79	79
799.3	799.8	70	70
799.8	803.8	79	79
803.8	807.0	65	65
807.0	808.8	45	45
808.8	812.3	79	79
812.3	812.8	70	70
812.8	813.82	79	79

APPENDIX II

STATION LEASE

LEASE AGREEMENT

(_____ Station)

This Lease Agreement ("Lease") is made and entered into as of this _____ day of _____, 20__, by and between the Florida Department of Transportation, having offices at 719 Woodland Boulevard, DeLand, Florida 32702 ("LESSOR"), and National Railroad Passenger Corporation, a corporation organized under the former Rail Passenger Service Act and the laws of the District of Columbia, with offices at 60 Massachusetts Ave., NE, Washington, DC 20002 ("AMTRAK").

BACKGROUND

WHEREAS, LESSOR owns certain real property in the City of _____, Florida, which property is known as the _____ Station (the "Station"), being more particularly shown on Exhibit A attached hereto and made a part hereof; and,

WHEREAS, AMTRAK desires to lease a portion of the Station as defined in Section 1 below.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, LESSOR and AMTRAK do hereby agree as follows:

1. PREMISES

a. LESSOR hereby leases to AMTRAK and AMTRAK leases from LESSOR for the term upon all the conditions set forth herein _____ square feet of space in the Station as delineated on the plan attached and incorporated herein as Exhibit "B", attached hereto and made a part hereof, (the "Premises").

b. LESSOR also hereby grants to AMTRAK, its employees, agents, licensees, contractors, passengers and invitees, the nonexclusive right in common with LESSOR and all others designated by LESSOR for the use of the common areas and common facilities in the Station and on the land on which the Station is located. The Station and the land on which it is located are collectively referred to herein as the "Property". Common areas and common facilities include sidewalks, plazas, parking areas, driveways, hallways, stairways, elevators, public bathrooms, loading docks, common entrances, lobbies, other public portions of the Property and the pipes, ducts, conduits, wires and appurtenant meters and equipment serving the Premises ("Common Areas").

2. TERM

a. The initial term of this Lease shall be for ten (10) (the "Term") and shall continue in effect thereafter unless terminated by either party by providing twelve (12) months written notice. Such notice may be given at anytime beginning nine (9) years after the date hereof.

3. RENT

AMTRAK shall pay rent in the amount of One Dollar (\$1.00) per Term and any continuation thereof ("Rent"), receipt of the Rent is hereby acknowledged by LESSOR.

a. Audit Rights

AMTRAK, the Federal Railroad Administration or LESSOR, their respective agents, designees and accountants shall have the right at any time or from time to time after advance notice to the other parties to make any examination or audit of Amtrak's or LESSOR's books and records which relate in any way to the Station. If it is determined that there are any errors, then appropriate payment shall be made between the parties to remedy such errors.

4. USE

AMTRAK may occupy and use the Premises for any lawful purpose reasonably related to the operation of a rail passenger station and AMTRAK's business operations, including ticketing, waiting area for passengers, related mail, package, baggage, and express services and office, mechanical and/or engineering facilities, connecting bus service and operations incidental to AMTRAK's business (collectively "USE").

5. PARKING

AMTRAK shall have the exclusive right to use, free of charge, _____ () reserved parking spaces in the parking area located at the Property as shown on Exhibit "A", attached hereto and made a part hereof.

6. HOURS OF OPERATION

AMTRAK shall have the right to keep the Premises open at all such times as it desires.

7. UTILITIES

AMTRAK shall make all arrangements for the provision of and pay for all utilities necessary for its occupancy and use of the Premises. LESSOR shall cause the Premises to be submetered for utility consumption such that AMTRAK may pay for the costs of such utility consumption directly to the providing utility.

8. LESSOR'S WORK

Reserved

9. SIGNS

AMTRAK's business signs, including all signs designed, erected, placed or maintained by AMTRAK, or allowed to be erected, placed, or maintained by it, on the Property prior to the date hereof ("Existing Signs") are deemed approved by LESSOR. AMTRAK may (a) keep and maintain Existing Signs on the Property throughout the Term of this Lease, and (b) replace any or all Existing Signs with new signs of similar content, or install new signs, when such replacement or installation is warranted in AMTRAK's sole discretion (any such replacement or new signs shall be deemed Existing Signs). Prior to replacing any Existing Signs with signs of substantially different content or erecting or installing any new signs in addition to Existing Signs, AMTRAK must notify LESSOR of its intention to do so. AMTRAK shall not erect or install any sign in the Station in violation of any applicable law, ordinance, rule or regulation of any governmental agency.

10. MAINTENANCE, REPAIR AND SERVICES

a. Except as otherwise specifically provided herein, LESSOR and AMTRAK shall be responsible for their respective pro rata share of the maintenance, repair and upkeep of the Property, including the maintenance, repair, replacement and alteration of the interior and exterior of the Station and all fixtures, equipment, components and systems that are a part of the Station or necessary to and for the operation of the Station and AMTRAK's use and occupancy of its Premises, including structural and roof repairs and maintenance and exterior landscaping, paving and maintenance.

b. LESSOR and AMTRAK shall pay their respective pro rata share of all costs, expenses, fees, taxes and sums related to its ownership, operation and maintenance of the Station before delinquency.

c. LESSOR and AMTRAK shall provide their respective pro rata share of the following:

(i) Heating, ventilation and air conditioning ("HVAC") for the Station, including the Premises, during all hours of scheduled passenger train (and bus) operations, to maintain temperatures in the interior portions of the Station at commercially reasonable levels, provided that in no event shall the heating settings be maintained below 68 degrees DB. or air conditioning settings above 72 degrees DB. 50 % relative humidity, as appropriate depending on the outside weather conditions.

Throughout the Term, AMTRAK shall keep a current written schedule of AMTRAK's passenger train (and bus) operations at the Station and available for LESSOR's review upon LESSOR's request. LESSOR may stop the heating and cooling systems when necessary by reason of accident or emergency or for repairs, alterations, replacements or improvements, which, in the reasonable judgment of LESSOR, are desirable or necessary. LESSOR agrees to make any necessary repairs, alterations, replacements or improvements to the heating and cooling systems as quickly as possible, with due diligence, and with the minimum interference with AMTRAK's use of the Premises.

(ii) Janitorial services to the Property (including the Premises) as specified in Exhibit C;

(iii) Hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes to be drawn from approved fixtures in the Premises or Common Areas;

(iv) Electricity to the Premises in quantities necessary for AMTRAK's purposes and use permitted hereunder and lighting of uniform illumination of an intensity equal to no less than 50 footcandles.

(v) Replacement of lighting tubes, lamp ballasts, starters and bulbs;

(vi) Extermination and pest control as often as may be deemed necessary in the exercise of prudent management practices, and in no event less than semi-annually, in accordance with the terms of Exhibit C. To the greatest extent possible, such work shall be performed at times other than when passenger train and bus operations are scheduled;

(vii) Maintenance, cleaning and upkeep of Common Areas and the Property in a first-class manner. Such maintenance shall include without limitation cleaning as specified in Exhibit C, HVAC, illumination, repairs, replacements, lawn care and landscaping;

(viii) A building manager or engineer capable of responding to AMTRAK's requests for service within two (2) hours during all times when AMTRAK's passenger train (and bus) operations are scheduled.

(ix) Security which shall include at a minimum: (1) a police or security guard patrol of the Property, including the interior and exterior of the Station, the parking lot and the platform(s) at least twice daily; and (2) panic button(s) under the AMTRAK ticket counter at locations as specified by AMTRAK. Any security guards must have obtained any and all applicable governmental licenses and permits. LESSOR shall ensure that all panic buttons are connected directly to and will contact directly the nearest local police station.

d. LESSOR shall cause utilities (pay telephones in Common Areas, electricity, water, sewer, etc.) to be supplied to the Property sufficiently for the operation of a first-class commercial facility, including provision of such utilities to the Premises at levels and in amounts sufficient for AMTRAK's use and occupancy of the Premises as provided in Section 4 of this Lease.

e. AMTRAK shall be responsible for the maintenance and repair of any trade fixtures, equipment or other personal property of AMTRAK located on or

within the Premises and charges for any services for AMTRAK's sole use and benefit arranged for by Amtrak separately from the services provided by or to be provided by LESSOR under this Lease.

f. Notwithstanding anything to the contrary in this Lease, if LESSOR fails in any of its obligations under this Section 10, and such failure continues for more than three (3) consecutive days after notice from AMTRAK of such failure, AMTRAK may provide any such maintenance, repairs and services or arrange for the provision of such. In the event AMTRAK provides any such maintenance, repairs or service, LESSOR shall reimburse AMTRAK for its respective pro rata share of the cost and expense of such maintenance, repairs and services within forty-five (45) days of notice from AMTRAK for such payment. Upon request of LESSOR, AMTRAK shall supply LESSOR with verification of all costs.

11. ALTERATIONS AND IMPROVEMENTS

AMTRAK shall have the right to make alterations and improvements to the Premises subject to the following terms and conditions:

a. No alterations or improvements made by AMTRAK shall in any way impair the structural stability of the Premises.

b. AMTRAK shall request LESSOR's approval prior to making any alterations or improvements and all alterations or improvements must be approved in writing by LESSOR. LESSOR's approval shall not be unreasonably withheld, conditioned or delayed.

c. AMTRAK shall keep the Premises and every part of the Station free and clear of any mechanic's lien or materialmen's liens arising out of the construction of any such alterations or improvements and further agrees to hold LESSOR harmless from any liability or liens therefor.

d. All alterations and improvements that are permanently affixed to the Station shall become the property of the LESSOR and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this Lease or any extension of the Term of this Lease.

e. AMTRAK's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of AMTRAK and may be removed by AMTRAK at any time during the Term or upon the expiration or sooner termination of this Lease (including any extension term). AMTRAK shall repair any damage to the Premises or Station caused by AMTRAK's removal of its personal property, trade fixtures, or equipment, but AMTRAK shall have no obligation to remove such items from the Station at any time.

12. INSURANCE AND INDEMNIFICATION

a. AMTRAK shall indemnify, defend, and hold harmless LESSOR from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the sole and direct willful misconduct of AMTRAK, its employees or agents, in connection with this Lease.

b. AMTRAK shall cover its indemnity obligations hereto under its corporate-wide self-insurance program.

c. AMTRAK shall cause all its subcontractors who perform work at the Station to add LESSOR and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

d. To the extent permitted by law, LESSOR shall indemnify, defend and hold harmless AMTRAK, its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the negligence, or willful misconduct of LESSOR its officers, officials, directors, its employees or agents in connection with this Lease, or LESSOR's failure to comply with any of its obligations contained in this Lease, or arising out of its ownership of the Station and the Property, except for any loss or damage or portion of loss or damage that is caused by the sole and direct willful misconduct of AMTRAK. The parties hereto recognize that any insurance LESSOR may obtain pursuant to this Agreement shall be the extent and sole source upon which LESSOR's liability and/or indemnification obligation under this Agreement rests beyond that provided under the limited waiver of sovereign immunity for tort contained in Section 768.28, Florida Statutes. LESSOR shall obtain commercially reasonable insurance to support its obligations under this subsection 12.d.

e. LESSOR shall cause all its subcontractors who perform work at the Station or on the Property to add LESSOR and AMTRAK as additional insureds on subcontractors' general and auto liability insurance policies.

f. LESSOR shall procure and maintain throughout the Term of this Lease property insurance on the Station for its full replacement value, with AMTRAK designated as an additional insured.

13. DAMAGE OR DESTRUCTION

In the event of destruction, or substantial damage, to the Station or Property during the Term of this Lease which renders the Premises unusable to AMTRAK, in AMTRAK's sole discretion, LESSOR shall have the option of:

a. Within one hundred eighty (180) days after such damage or destruction, replacing or rebuilding the Station, including the Premises, and in such manner and according to such plans and specifications which would restore the Station, including the Premises, to substantially the same condition as immediately before its

destruction or substantial damage, in which event LESSOR shall provide suitable temporary facilities while such replacement or rebuilding is ongoing; or

b. Declining to replace or rebuild, in which event AMTRAK shall have the option of terminating this Lease Agreement by written notice.

c. LESSOR shall notify AMTRAK within thirty (30) days after such damages or destruction of LESSOR's decision to rebuild the Station including the Premises or declining to rebuild. During the 180 day repair or replacement period identified in Subsection (a) above, AMTRAK shall have no obligation to: (1) Pay any costs or expenses associated with the Station, including the Premises, required under this Lease; or (2) Provide any services including janitorial services to the Premises required under this Lease.

14. EMINENT DOMAIN

Eminent domain proceedings resulting in the condemnation of any part of the Station or Property that leave the Premises usable by AMTRAK for purposes of the business for which the Premises are leased, in AMTRAK's sole opinion, will not terminate this Lease Agreement. If AMTRAK, in its sole opinion, determines that the Premises is not usable by AMTRAK, AMTRAK may terminate this Lease by giving written notice of termination to LESSOR no more than ninety (90) days after the notice of condemnation or taking. The effect of such condemnation, should AMTRAK not terminate this Lease, will be to terminate this Lease Agreement as to the property condemned and leave it in effect as to the remainder, and the expenses provided for herein shall be adjusted accordingly. Compensation awarded as a result of such condemnation shall be that of LESSOR, except to the extent that part of the award is allocated as damages to fixtures on the Station which were furnished by AMTRAK, damages for the value of AMTRAK's leasehold estate or relocation expenses for AMTRAK.

15. ACCEPTANCE

AMTRAK hereby acknowledges that when it occupies the Premises it shall be deemed to have received the Premises in good order and condition unless AMTRAK notifies LESSOR of defects or problems with the Premises within one (1) year after AMTRAK takes occupancy. If AMTRAK notifies LESSOR as aforesaid, LESSOR shall correct and repair any defects or problems identified by AMTRAK within thirty (30) days after the date of the notice.

16. SUBLEASE AND ASSIGNMENT

a. AMTRAK shall not assign or sublet the whole or any part of the Premises without LESSOR's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned. This provision requiring LESSOR's consent shall not apply, and AMTRAK shall be permitted to assign or sublet to any entity whose management and operation is indirectly or directly controlling, controlled by or

under common control with AMTRAK or if such assignment or subletting is due to or arises out of any judicial or legislative action or mandate, and any such transfers shall not be deemed an assignment or subletting.

b. Notwithstanding the proceeding paragraph, AMTRAK shall have the right to sublet or license the use of space within the Premises (excluding any SunRail platforms) for the uses and purposes set forth in the following sentence without obtaining the prior written consent of LESSOR and retain any revenue from such subleases and licenses. Such sublets and licenses may include, but will not be limited to, agreements for newsstands, concessions, coin-operated vending machines, telephones, automated teller/ticketing machines, ATM's, direct telephone line connections for local hotel, restaurants, taxis, entertainment, sports and convention centers and car rentals.

17. DEFAULT BY AMTRAK

The failure of AMTRAK to perform substantially or keep or observe any of the terms, covenants and conditions which it is obligated to perform, keep or observe under this Lease Agreement within thirty (30) days (or such longer time if correction cannot reasonably be completed within said thirty (30) days) after written notice from LESSOR identifying the specific term, covenant, or condition and requesting AMTRAK to correct or to commence correction, shall constitute an "Event of Default" by AMTRAK.

18. RIGHTS OF LESSOR AFTER DEFAULT BY AMTRAK

a. If an Event of Default by AMTRAK occurs, as provided in Section 17, LESSOR shall have the right (unless otherwise specified in the termination notice), in addition to any rights of the LESSOR at law or in equity and after written notice to AMTRAK, to terminate this Lease and enter and take possession of the Premises and expel, oust and remove any and all parties who may occupy any portion of the Premises and any and all goods and chattels belonging to AMTRAK, which do not have a lien on them and which may be found in or upon the Premises, all in accordance with all applicable laws and procedures.

b. In case of any termination, re-entry, and/or dispossession by the LESSOR in accordance with lawful proceedings:

(1) The Rent shall become due thereupon and be paid up to the time of such reentry, dispossession and/or expiration; and/or

(2) LESSOR may relet the Premises or any part or parts thereof, either in the name of LESSOR or otherwise, for a term or terms which may at LESSOR's option be less than or exceed the period which would otherwise have constituted the balance of the Term of the Agreement.

19. LESSOR'S DEFAULT

In the event LESSOR fails to perform any covenant or obligation required

to be performed under this Lease, and such failure continues for more than thirty (30) days after notice from AMTRAK identifying such failure, such failure shall constitute an "Event of Default" by LESSOR. If an Event of Default by LESSOR occurs, AMTRAK, at its sole option and discretion, may: (1) perform such covenant or obligation on behalf of LESSOR in which event the LESSOR shall reimburse AMTRAK all costs and expenses associated with AMTRAK's performance (including attorney's fees) within twenty (20) days after AMTRAK presents an invoice to LESSOR for such performance; (2) terminate this Lease; or (3) pursue any and all rights and remedies available at law or in equity.

20. QUIET ENJOYMENT

If and so long as AMTRAK shall keep all the covenants and agreements required by it to be kept under this Lease, LESSOR covenants and agrees that it and anyone claiming by through or under LESSOR shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by AMTRAK.

21. RIGHT OF ENTRY UPON PREMISES

LESSOR and its agents and employees shall have the right to enter upon the Premises, if accompanied by an AMTRAK employee, to inspect the same to determine if AMTRAK is performing the covenants of this Lease, on its part to be performed, to post such reasonable notices as LESSOR may desire to protect its rights, and to perform service and maintenance pursuant to its obligations under this Lease.

22. TAXES

Pursuant to 49 U.S.C. §24301(l), AMTRAK is exempt from all state and local taxes, surcharges, or fees.

23. COMPLIANCE WITH LAWS, ORDINANCES, AND RULES

AMTRAK agrees to conform to and not violate any applicable laws, ordinances, rules, regulations, and requirements of federal authorities now existing or hereinafter created affecting AMTRAK's use and occupancy of the Premises. In no event shall AMTRAK be required to make physical changes in the Premises unless the physical changes are necessitated by AMTRAK's acts or omissions. LESSOR agrees to conform and comply with all applicable laws, ordinances, rules, regulations and requirements of federal, state, county or other governmental authorities and various departments thereof now existing or hereinafter created regarding LESSOR's ownership and maintenance of the Station, including the Americans with Disabilities Act. Nothing in this Lease shall be interpreted as making AMTRAK a responsible party for purposes of accessibility requirements under the Americans with Disabilities Act.

24. CONDITION OF PREMISES UPON SURRENDER

When AMTRAK vacates the Premises at the expiration of the Term or earlier termination of this Lease, whichever occurs first, AMTRAK shall leave the Premises in the same condition as when AMTRAK received possession, ordinary wear and tear, damage by fire or other casualty, or condemnation excepted and as may be altered, modified or improved in accordance with the terms of this Lease.

25. NON-WAIVER

Any waiver of any breach of covenants or conditions herein contained to be kept and performed by either party shall be effective only if in writing and shall not be deemed or considered as a continuing waiver. Any waiver shall not operate to bar or prevent the waiving party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

26. PARTNERSHIP DISCLAIMER

It is mutually understood and agreed that nothing in this Lease is intended or shall be construed in any way as creating or establishing the relationship of partners or joint venturers between the parties hereto, or as constituting AMTRAK as an agent or representative of LESSOR for any purpose or in any manner whatsoever.

27. PARTIES BOUND

Except as otherwise specifically provided in this Lease, this Lease shall bind and inure to the benefit of the parties hereto and their respective administrators, legal representatives, successors and assigns.

28. NOTICES

Notices given under the terms of this Lease must be in writing and shall be deemed properly served if such notice is hand delivered or mailed by certified mail, return receipt requested, or sent by an established overnight commercial courier for delivery on the next business day with delivery charges prepaid, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

AMTRAK:

AMTRAK
30th Street Station, 5th Floor South
Philadelphia, PA 19104
Attn: Assistant Vice President Real Estate Development

LESSOR: Florida Department of Transportation
719 South Woodland Boulevard
DeLand, Florida 32720-6834
Attention: Manager, Central Florida Rail Corridor

Notice mailed in accordance with the provisions hereof shall be deemed to have been given as to the date of hand delivery or the third business day following the date of such mailing, whichever is earlier.

29. LEGAL CONSTRUCTION

In the event any one or more of the provisions contained in this Lease Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Lease Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

30. TIME OF ESSENCE, BINDING UPON HEIRS, ETC.

Time is of the essence of each and all the terms and provisions of this Lease and the terms and provisions of this Lease Agreement shall extend to and be binding upon and inure to the benefit of the, administrators, successors and assigns of the respective parties hereto.

31. NUMBER AND GENDER

All words used herein in the singular number shall include plural and the present tense shall include the future, and the masculine gender shall include the feminine and neuter.

32. ENTIRE AGREEMENT

This Lease contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect.

33. LANGUAGE CONSTRUCTION

The language of each and all paragraphs, terms, and/or provisions of this Lease shall, in all cases and for any and all purposes, and any and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity or status of any person or persons who drafted all or any portion of this Lease.

34. HOLDING OVER

If AMTRAK shall hold over the Premises, after expiration of the Term or any extension thereof, such holding over shall be construed to be only a tenancy from month to month subject to all of the covenants, conditions and obligations contained in this Lease provided, however, that nothing in this paragraph shall be construed to give AMTRAK any rights to so hold over and to continue in possession of the Premises without the consent of LESSOR.

35. AMENDMENT

This Lease, including any exhibits hereto, shall not be amended, except in writing signed by the parties. Any amendment or addendum to this Lease shall expressly refer to this Lease.

36. SEVERABILITY

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

37. 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.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the day and year first above written.

"LESSOR"

"AMTRAK"

STATE OF FLORIDA,
DEPARTMENT OF
TRANSPORTATION

NATIONAL RAILROAD PASSENGER
CORPORATION

By _____
Name: _____
Title: _____

By _____
Name: _____
Assistant Vice President
Real Estate Development

APPENDIX III

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APPENDIX IV

PAYMENT FOR OPERATION OF AMTRAK TRAINS ON THE CORRIDOR

Item 1. Trip Payment:

Until such time as Section 7.1 of the Agreement is replaced pursuant to Section 7.3.C or 7.3.D, , Amtrak shall pay FDOT \$1 per one way trip for each Amtrak Train operated in either direction on any portion of the Corridor between MP A749.61 at or near DeLand, Florida, to MP A813.82 at or near Poinciana, Florida. Thereafter, Amtrak shall pay FDOT \$470 per one way trip for each Amtrak Train operated in either direction on any portion of the Corridor between MP A749.61 at or near DeLand, Florida, to MP A813.82 at or near Poinciana, Florida. These payments are intended to cover all costs of Amtrak's use of FDOT facilities (except for payments made in accordance with leases entered into in accordance with Section 4.4 and made pursuant to Sections 4.3 and 5.2 of this Agreement) and include, but are not limited to, the use, operation and maintenance of the rail lines. Switching movements of five (5) miles or less shall be excluded from such calculations.

Item 2. Price Level Adjustment Method

The rates specified above shall be adjusted annually for price level changes beginning January 1, 2012, based on the relationship of the most recent Quarter's Association of American Railroads Quarterly Indices of Chargeout Prices and Wage Rates (Table C) - East "Material prices, wage rates and supplements combined (excluding fuel)", to comparable indices of the Quarter one year previous. The adjustment to be

made on January 1, 2012, shall be based on the comparison of the 3rd Quarter 2011 index value (the most recent Quarter) to the 3rd Quarter 2010 index value (Quarter one-year previous). If the Association of American Railroads, or any successor organization, discontinues publication of the Quarterly Indices of Chargeout Prices and Wage Rates, the parties shall negotiate an appropriate substitute index for determining the percentage of increase or decrease or resolve the matter in accordance with the terms of Article VI of the Agreement. Notwithstanding the above, until such time as Section 7.1 of the Agreement is replaced pursuant to Section 7.3.C or 7.3.D, Amtrak shall pay FDOT \$1 per one way trip for each Amtrak Train operated in either direction on any portion of the Corridor between MP A749.61 at or near DeLand, Florida, to MP A813.82 at or near Poinciana, Florida.

APPENDIX V

PENALTY FOR LATE TRAINS

Pursuant to the rules of this Appendix V, for each train considered late, FDOT shall pay Amtrak a late train penalty:

A. Performance Calculation

A trip of a train will be considered late if its actual running time from its Corridor Origin to the arrival at its Corridor Destination, less the sum of the times allowed pursuant to A.1, A2 and A3 below, is more than its Allowed Running Time. Running time for northbound trains shall be measured from departure at MP A813.82 (Poinciana) to arrival at MP A749.61 (DeLand). Running time for southbound trains shall be measured from arrival at MP A749.61 (DeLand) to arrival at MP A813.82 (Poinciana). The origin (Corridor Origin), destination (Corridor Destination), allowed running time (Allowed Running Time), and allowed station dwell (Allowed Station Dwell) for each train are specified in Appendix V, Table 1. The following amounts of time are allowed in measuring on-time operation of a train:

1. A standard tolerance of five minutes per trip (not reflected in Table 1 below).
2. The amount of time that the sum of actual dwell times for a trip of a train exceeds the sum of the Allowed Station Dwell times for the scheduled station stops between the Contract Origin and Contract Destination. The Allowed Station Dwell time for each train is specified in Appendix V, Table 2, of this Agreement. For purposes of

this paragraph, during the Construction Period, any time lost due to causes attributable to the FDOT or its contractors shall be excluded.

3. The amount of time a train is delayed due to an equipment failure of an Amtrak car or locomotive (excluding delays for stopping to investigate equipment defect detector reports when no defective condition is found).

B. Trips Not Counted

1. A trip of a train that is annulled or is terminated by Amtrak before reaching the Destination on the Corridor for reasons not related to conditions on the Corridor, or by another railroad before arriving on the Corridor, will not be counted as late.

2. If, due to emergency conditions on the rail lines, a train is terminated, or annulled, and fails to operate, the first train in each direction will be considered late. If subsequent train trips are terminated or annulled for the same reason, they will not be counted as late.

3. A train that is late for reasons stated below will not be counted as late provided the train would not otherwise have been late had the occurrence stated below not occurred.

(a) The train has struck a pedestrian or vehicle or is blocked by a vehicle.

(b) The train is blocked by fire hoses, emergency vehicles or held by civil authorities.

(c) The train is delayed due to extraordinary weather conditions or natural disasters, such as floods, tornadoes, high winds requiring special precautions, etc., that significantly disrupt operation of the Corridor.

- (d) The train is delayed due to acts of vandalism which require the Amtrak Train to stop or be operated at reduced speed for a portion of its trip.
- (e) The train is delayed by the opening of a drawbridge.
- (f) The train is delayed en route due to Uniform Efficiency Testing required by the Federal Railroad Administration.
- (g) A train fails to operate at or reasonably close to the prescribed maximum authorized speeds when safe conditions permit.
- (h) A train has less available locomotive horsepower or a larger quantity of trailing cars than as shown in Appendix V, Table 3.
- (i) A train is delayed by another Amtrak Train experiencing delays described in (a) through (h), above.

4. For each train "counted as late" pursuant to this Appendix V, FDOT shall pay Amtrak \$350, except that, until such time as Section 7.1 of the Agreement is replaced pursuant to Section 7.3.C or 7.3.D the total of the amounts paid by FDOT to Amtrak under this Section 4 shall not exceed the total payments made by Amtrak to FDOT under Appendix IV.

C. Limit on Payment

Payments calculated pursuant to this Appendix V shall only be made to the extent they do not exceed the payment for trains operated in that month calculated pursuant to Appendix IV, Item 1 of this Agreement.

D. Price Level Adjustment

All rates and amounts specified in this Appendix V shall be adjusted annually as specified in Item 2, Price Level Adjustment Method of Appendix IV to this Agreement.

E. Programmed Maintenance of Way Work

In order to facilitate programmed maintenance of way work, the parties agree to negotiate each project in good faith and to modify this Appendix V as appropriate in order to minimize interference or disruption to Amtrak service while allowing maximum production by maintenance of way forces. FDOT will give Amtrak at least thirty (30) days advance notice, that will permit issuing modified schedules (with or without modifications to Allowed Running Times on the Corridor shown in Appendix V, Table 1) when appropriate, and notifying passengers in advance of potential delays. The parties will negotiate the financial impacts of Amtrak Train delays or cancellations caused by the programmed maintenance of way work in a fashion consistent with the provisions of Appendix VII.

F. Revision of Schedule Data

The Allowed Running Time for each train covered by this Appendix V is set forth in Table 1. Such time is based on the consist for the train shown in Table 3, and includes the Allowed Station Dwell shown in Table 2. Subject to the provisions of Section 3.2 of this Agreement, FDOT shall promptly implement operation of any train with a revised consist as Amtrak may request. In the event that the consist or type of equipment operated is to be materially changed for a sustained period in a manner which is not specifically contemplated and dealt with in this Appendix V, the parties agree to determine an appropriate new Allowed Running Time for the train using the same methodology used to develop the times currently reflected in Table 1. Allowed Running Time shall also be revised by the parties in the event that the authorized speeds established by federal, state, or local regulation are decreased in a way which is likely to

have a significant impact on the operation of a train. Subject to the provisions of Section 3.2., upon request of Amtrak, station stops or services shall be added, deleted, or modified in connection with the operation of a train as it existed on the effective date of Table 2; provided, however, any such addition, deletion, or modification of schedules or services (including, but not limited to schedules herein and public timetables) for Amtrak Trains shall not be made without FDOT's approval, which approval shall not be unreasonably withheld. When changes pursuant to the two preceding sentences require a net change in time of operation (including dwell time) which exceeds 5 minutes, the parties shall adjust the Allowed Running Time to reflect such differences in operating time (unless such adjustment has previously been effected) at the next Amtrak timetable change. For the purposes of the foregoing sentence, upon the request of either party, the parties shall jointly conduct a field test to determine the proper amount of time to be added or deleted as a result of the change in stops. On an ongoing basis the tables may require refinement to account for changes in the operation of Amtrak Trains. Therefore, it is agreed that as joint studies are performed which produce more accurate data for Allowed Running Time and Allowed Station Dwell, the figures in this Appendix V shall be amended to reflect the results of such joint studies. The various items shall be agreed upon by Amtrak and FDOT and shall be calculated as follows:

1. Allowed Running Time shall equal pure running time, plus recovery time, plus Allowed Station Dwell time. Pure running time shall be established by a joint FDOT / Amtrak riding program. Recovery time shall be determined by multiplying the pure running time by 6%.

2. Allowed Station Dwell Time shall be established jointly by the parties, utilizing all available sources of data such as Arrow, conductor delay reports and riding programs.

G. Payment by FDOT to AMTRAK

Whenever under this Agreement FDOT is obligated to make payments to Amtrak, FDOT will have five (5) working days to approve any services or work performed. FDOT will have twenty (20) days to deliver a request for payment (voucher) to the State of Florida's Department of Financial Services (hereafter referred to as "Department of Financial Services") measured from the later of the date the invoice is received from Amtrak or the services are approved. If a payment is not available for forwarding to Amtrak within forty (40) days, a separate interest penalty at a rate as established pursuant to *Section 55.03(1), F.S.*, will be due and payable, in addition to the invoice amount. Interest penalties of less than one dollar (\$1.00) will not be enforced unless Amtrak requests payment. Invoices that have to be returned to Amtrak because of Amtrak's preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to FDOT.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Participants, such as Amtrak, who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Hotline at 1-877-693-5236.

The provisions of *Section 339.135(6)(a), F.S.*, are hereby incorporated in this Agreement as follows:

FDOT, 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. FDOT shall require a statement from the Comptroller that such 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 FDOT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year.

FDOT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

APPENDIX V, TABLE 1

ALLOWED RUNNING AND STATION DWELL TIME

Train No.	Corridor Origin	Corridor Destination	Allowed Running Time (Includes Allowed Station Dwell, in Minutes) ²	Allowed Station Dwell (See Table 2)
91 (Silver Star)	MP A749.61 near DeLand, FL	MP A813.82 near Poinciana, FL	111	26
92 (Silver Star)	MP A813.82 near Poinciana, FL	MP A749.61 near DeLand, FL	104	21
97 (Silver Meteor)	MP A749.61 near DeLand, FL	MP A813.82 near Poinciana, FL	108	23
98 (Silver Meteor)	MP A813.82 near Poinciana, FL	MP A749.61 near DeLand, FL	102	19
53 (Auto Train Southbound)	MP A749.61 near DeLand, FL	MP A766.0 near Sanford, FL	22	N.A.
52 (Auto Train Northbound)	MP A766.0 near Sanford, FL	MP A749.61 near DeLand, FL	25	N.A.

Note: Running Times for northbound trains are from departure at Poinciana to arrival at DeLand Station. Running times for southbound trains are from arrival at DeLand Station to arrival at Poinciana.

² Allowed Running Time does not include 5-minute schedule tolerance provided in Appendix V.A.1.

APPENDIX V, TABLE 2

STATION DWELL TIMES
(in minutes)

Station	Train 91	Train 92	Train 97	Train 98	Auto Train
DeLand, FL	2	-	3	-	N.A.
Winter Park, FL	5	2	2	2	N.A.
Orlando, FL	14	16	15	14	N.A.
Kissimmee, FL	5	3	3	3	N.A.
TOTAL	26	21	23	19	N.A.

APPENDIX V, TABLE 3

TRAIN CONSISTS

Train No.	Locomotive Consist	Cars
91 & 98	2 P42 (or equivalent)	10
92 & 97	2 P42 (or equivalent)	10
52 & 53	2 P42 (or equivalent)	Up to 50 cars

The data in Appendix V, Table 1 is based on the consists contained in Appendix V, Table 3.

APPENDIX VI

TRAIN DISPATCHING AND PRIORITY

A. Train Priorities.

The parties acknowledge that previous agreements for operating windows have been executed between FDOT and CSXT, and FDOT agrees that it will use all good efforts to renegotiate these operating windows to accommodate Amtrak Trains. The parties further acknowledge that Commuter Rail Service and Intercity Rail Passenger Service shall have priority over Freight Service. FDOT and Amtrak agree that on-time passenger trains of either party shall be given priority, as follows:

1. On-time FDOT Trains shall be given priority over Amtrak Trains if such intercity trains are operating five (5) or more minutes behind their published schedules.
2. On-time Amtrak Trains shall be given priority over FDOT Trains if such FDOT Trains are operating five (5) or more minutes behind their published schedules.
3. When both trains are operating five (5) or more minutes behind their respective published schedules, the meet will be handled to provide for the most efficient movement of both trains and in accordance with good train dispatching principles.
4. When both Intercity Rail Passenger Service and Commuter Rail Service are operating less than five (5) minutes later than their respective published schedules, dispatching will be handled to provide for the most efficient movement of Amtrak and FDOT Trains in accordance with generally accepted industry train dispatching principles.
5. Amtrak's Auto Train shall have priority over commuter trains on entering and exiting the Sanford Amtrak Facility via the Aloma Spur.

6. Amtrak will make reasonable efforts to minimize the impact of its operations on planned maintenance activities and other rail operations between the hours of Midnight and 5:00 AM (2400 to 0500 hours the following day).

7. In the event of an emergency where normal train operations are significantly disrupted, the dispatcher may use his or her best judgment to move all passenger trains in the most expeditious manner possible.

APPENDIX VII

CONSTRUCTION PERIOD

A. Construction Period.

This Appendix VII shall govern the conduct of the rail operations, maintenance and dispatching of trains on the Corridor during the Construction Period and includes provisions to compensate Amtrak in the event Amtrak Trains need to be cancelled during the Construction Period. During the Construction Period, the other terms of this Agreement shall be in full force and effect, except as otherwise set forth in this Appendix VII. In the event of a conflict between the provisions of this Appendix VII and any other provision of this Agreement, the provisions of this Appendix VII shall control.

B. Use, Operation and Dispatch of the Corridor.

Following the Ownership Date, FDOT shall be responsible for dispatching, operating and maintaining the Corridor.

1. Use of the Corridor. FDOT shall, subject to the terms of this Appendix VII, provide Amtrak with access to FDOT facilities for the provision of Amtrak Train service in substantially the same condition and manner as provided prior to FDOT's acquisition of the Corridor; provided, however, the parties acknowledge that Amtrak Trains may be subject to reasonable delays in order to accommodate Corridor improvement construction for Commuter Rail Service.

The parties also acknowledge that, in some instances, it will be necessary to cancel or terminate Amtrak Trains in which case the parties have agreed to appropriate substitute services to be provided to passengers and compensation to be paid by FDOT to Amtrak for such cancellation of services set forth in Sections C and D below.

2. Train Operations. Train operations may be modified during the Construction Period to accommodate the construction and related activities that may

occur on the Corridor as set forth herein and FDOT may cause rail operations on the Corridor to be delayed or cancelled during the Construction Period, as provided herein.

3. Construction Operations. FDOT will be responsible for the construction work during the Construction Period.

a. Construction Curfews. During the Construction Period, daily and extended curfew periods established to facilitate construction will be agreed upon in advance. During extended curfews, trains will not be permitted to operate on the designated section of track. The daily curfews will allow for the passage of daily Amtrak Trains, subject to reasonable delays due to the construction, unless the parties have previously determined a Train will be cancelled. FDOT will provide Amtrak at least sixty (60) days advance notice of extended curfews, unless otherwise agreed. The notice of extended curfew shall include:

- (i) Identification of the section of track that is to be out of service.
- (ii) Description of the work to be completed.
- (iii) An explanation as to why the work requires a curfew.
- (iv) The duration of the curfew.
- (v) The date and time the curfew will commence.

4. Operating Rules. During the Construction Period, FDOT shall adopt CSXT's Operating Rules and Roadway Safety Rules and may supplement such Rules with Rules specific to the Corridor.

C. Bus Bridge Service.

1. FDOT shall make a good faith effort to plan and implement its construction on the Corridor in a manner that is least disruptive to Amtrak Trains. The Construction Period is estimated to continue for a period of approximately twenty-six (26) months following the Ownership Date. In the event it becomes necessary from time

to time during the Construction Period for FDOT to request Amtrak to cancel or terminate passenger service to points in Florida south of Jacksonville, Bus Bridge service (consisting primarily of substitute bus service) shall be provided by Amtrak for affected passengers and train crews at the sole expense of FDOT on a reimbursement basis as set forth herein. The parties acknowledge that the estimated duration of the Construction Period set forth above may be amended prior to actual commencement of construction and FDOT will notify Amtrak promptly of such changes if they occur.

2. Prior to commencement of the Construction Period, FDOT will provide to Amtrak, for its review and approval, a proposed work schedule setting forth pre-scheduled curfew times agreed upon between CSXT and FDOT during which FDOT construction crews will be working on the Corridor. Such review and approval by Amtrak shall be limited to the issue of whether the proposed work schedule will interfere with travel to or from Florida on Amtrak Trains. Amtrak's approval shall not be unreasonably withheld or delayed in the instance of any such proposed interference. Following Amtrak's approval, Amtrak and FDOT will prepare a tentative Bus Bridge plan based on the approved work schedule, including identification of specific time periods during which there will be no interruption of Amtrak Train service. During the Construction Period, Amtrak and FDOT will communicate on a no less than monthly basis (or more frequently as may be needed) to update the work schedule. FDOT will provide Amtrak with forty-five (45) days' advance written notice of the specific dates (not to exceed more than fifty-four (54) contiguous hours within any seven (7)-day period) on which Amtrak should be prepared to implement the Bus Bridge plan. Amtrak will notify FDOT of its acceptance or disagreement as to such dates within two (2) business days of receipt of FDOT's notice. In the event FDOT does not receive a reply from Amtrak within such two (2)-day period, FDOT will notify Amtrak's Southern Division General Superintendent by telephone at 904-245-6620. If no acceptance or disagreement to such dates is forthcoming from Amtrak within two (2) business days thereafter, the dates will be deemed agreed to by Amtrak. In the event Amtrak disagrees with the dates provided by FDOT, the parties agree to consult promptly to finalize dates acceptable to the parties.

FDOT will also make a good faith effort to provide Amtrak with a minimum of seventy-two (72) hours advance notice that work schedules will not require implementation of the Bus Bridge plan on a given day and time. Once Amtrak is notified to implement the Bus Bridge plan, all costs associated with the implementation, cancellation or modification of such plan shall be at FDOT's sole cost, regardless of whether such Bus Bridge service is actually provided to Amtrak passengers and crews.

3. When the agreed-upon schedules require, Bus Bridge service shall be provided by Amtrak for its *Silver Service* trains to and from all stations between Jacksonville ("JAX") and Tampa ("TPA") and Jacksonville ("JAX") and Miami ("MIA"). FDOT acknowledges that significant costs are incurred each time a train is cancelled or terminated due to FDOT's construction activities and that each cancellation or termination will necessarily mean that two (2) trains must be cancelled or terminated (one northbound and one southbound). The estimated itemized costs for cancellation or termination of each train and the associated Bus Bridge services are set forth in Exhibit 1, to this Appendix. The total estimated cost should a cancellation or termination be agreed upon is \$2,036 per day. In addition, the estimated cost associated with each train and the associated Bus Bridge services is \$29,368 per train for a *Silver Meteor* train (Trains 97 and 98) and \$31,339 per train for a *Silver Star* train (Trains 91 and 92). FDOT agrees to reimburse Amtrak for actual costs incurred in cancellation or termination of each train and provision of associated Bus Bridge services. Upon each cancellation or termination of a train, FDOT shall pay Amtrak the appropriate estimated amounts set forth above (i.e., \$29,368 or \$31,339, plus \$2,036/day). Actual costs, for the items specifically noted on Exhibit 1, shall subsequently be reconciled and paid as set forth in Section 6 below.

4. Amtrak shall make a good faith effort to minimize the expense to FDOT for Bus Bridge services. FDOT acknowledges that Amtrak may operate additional scheduled service or special train service during the Construction Period which may require Bus Bridge service at FDOT's expense. Amtrak will provide FDOT with reasonable advance notice of additional planned scheduled service or special trains and will not implement plans to operate such trains without prior consultation with FDOT.

5. The Bus Bridge service described above, and the fees and actual costs paid therefore by FDOT, are all inclusive. Amtrak shall be solely responsible for providing the Bus Bridge service contemplated herein and for responding to all complaints or claims related thereto.

6. FDOT payments to Amtrak for Bus Bridge service shall be made by FDOT in accordance with FDOT's standard vendor invoice payment procedures. Amtrak shall invoice FDOT for the total estimated amount set forth in Section 3 above each time Amtrak cancels or terminates a *Silver Service* train and provides associated Bus Bridge services. Subsequent to the end of each calendar year, Amtrak shall provide FDOT with a final invoice for such calendar year setting forth, for each Amtrak Train cancellation or termination and associated Bus Bridge service, and for the cancellation or modification of any Bus Bridge plan, the actual costs incurred broken out for each "actual" cost item set forth in Exhibit 1, indicating whether the actual cost was above or below the estimated cost for those items and, for costs claimed in excess, providing reasonable substantiation therefore. The parties agree to meet to discuss reconciliation of the overcharges and undercharges indicated on Amtrak's final invoice and arrive at a final amount due for such calendar year to Amtrak or FDOT as the case may be. All invoices submitted shall be in sufficient form for pre-audit and post-audit of the services performed pursuant to Section 287.058, Florida Statutes and shall be signed by an Amtrak representative who can represent that the costs and expenditures contained in said invoices are true and correct to the best of that person's knowledge or belief.

D. Auto Train Cancellation.

1. FDOT shall make a good faith effort to plan and implement its construction on the Corridor in a manner that does not require Amtrak to cancel any Auto Trains. In furtherance of this effort, Amtrak has requested that the FDOT perform any construction work that might affect the Auto Train during the months of February and September. FDOT agrees to make a good faith effort to do so. FDOT will provide Amtrak with a minimum of sixty (60) days' advance notice in the event FDOT requires Amtrak to cancel an Auto Train and, thereafter, FDOT shall be obligated to reimburse

Amtrak for the costs related to such cancellation as set forth in Section 2 below. FDOT acknowledges that each such cancellation will necessarily mean that two Auto Trains must be cancelled (one northbound and one southbound).

2. For each Auto Train cancelled hereunder, FDOT shall reimburse Amtrak \$25,000, as further described in Exhibit 1. This amount is all inclusive. FDOT's payment to Amtrak for any Auto Train cancellation shall be made by FDOT in accordance with FDOT's standard vendor invoice payment procedures. Amtrak shall be solely responsible for all complaints and/or claims in any way related to cancellation of any Auto Train. No further reconciliation of "actual" costs associated with the cancellation of an Auto Train will be required.

Exhibit 1

ESTIMATE OF ITEMIZED COSTS FOR BUS BRIDGE SERVICE AND CANCELLATION OF TRAINS

FOR SILVER SERVICE TRAINS:

Costs Per Day:

Switch Crew - Sanford FL (SFA)	\$1,028
Communications	100
Security *	150
Catering Transportation *	644
Sub-Total	\$1,922
General & Administrative @ 5.93%	\$114
Total	\$2,036

<u>Cost Per Train:</u>	<u>Silver Meteor Trains 97/98</u>	<u>Silver Star Trains 91/92</u>
Food Cost For Busing*	\$1,750	\$2,130
Passenger Transportation*	9,270	12,096
OBS Transportation	650	650
T&E Transportation	1,200	1,000
T&E Lodging SFA*	240	180
Fuel Savings	(4,200)	(5,400)
Mechanical Labor*	4,000	4,000
CSX Mileage Rate	(666)	(861)
Net Loss of Revenue*	15,480	15,790
Sub-Total	\$27,724	\$29,585
General & Administrative @5.93%	\$1,644	\$1,754
Total	\$29,368	\$31,339

Example – Costs billable for the cancellation of one Silver Meteor train and one Silver Star train for one day will be \$62,743 (\$2,036+\$29,368+\$31,339).

* Actual costs/revenue loss detail will be provided for these items during the reconciliation process outlined in Appendix VII, Section C.6. All other costs will be assumed as actual expenses.

FOR AUTO TRAIN SERVICE:

Amtrak will charge and FDOT will pay a flat rate of \$25,000 for each Auto Train cancelled. This reflects Amtrak's revenue loss and is based on Amtrak's ability to re-schedule Auto Train passengers to alternative booking dates with advanced notice and coordination of Auto Train cancellations. This flat rate is fixed and will not be subject to any reconciliation process.

APPENDIX VIII

LIABILITY AMENDMENTS TO FLORIDA STATUTES

Amended Section 341.301, Florida Statutes

341.301

Definitions; ss. 341.302-341.303.

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As used in ss. 341.302-341.303, the term:

(1)

"Ancillary development" includes any lessee or licensee of the department, including other governmental entities, vendors, retailers, restaurateurs, or contract service providers, within a department-owned rail corridor, except for providers of commuter rail service, intercity rail passenger service, or freight rail service. The term includes air and subsurface rights, services that provide a local area network for devices for transmitting data over wireless networks, and advertising.

(2)

"Branch line continuance project" means a project that involves branch line rehabilitation, new connecting track, rail banking, and other similar types of projects, including those specifically identified in the federal Railroad Revitalization and Regulatory Reform Act of 1976, and subsequent amendments to that act.

(3)

"Commuter rail passenger" or "passengers" means all persons, ticketed or unticketed, using the commuter rail service on a department-owned rail corridor:

(a)

On board trains, locomotives, rail cars, or rail equipment employed in commuter rail service or entraining thereon and detraining therefrom;

(b)

On or about the rail corridor for any purpose related to the commuter rail service, including parking, inquiring about commuter rail service, or purchasing tickets therefor, and coming to, waiting for, leaving from, or observing trains, locomotives, rail cars, or rail equipment; or

(c)

Meeting, assisting, or in the company of any person described in paragraph (a) or paragraph (b).

(4)

"Commuter rail service" means the transportation of commuter rail passengers and other passengers by rail pursuant to a rail program provided by the department or any other governmental entity.

(5)

"Governmental entity" or "entities" has the same meaning as provided in s. 11.45, including a "public agency" as defined in s. 163.01.

(6)

"Intercity rail transportation system" means the network of railroad facilities used or available for interstate and intrastate passenger and freight operations by railroads, whether or not on a schedule or whether or not restricted.

(7)

"Limited covered accident" means (i) a collision directly between the trains, locomotives, rail cars, or rail equipment of the department and the freight rail operator only, where the collision is caused by or arising from the willful misconduct of the freight rail operator or its subsidiaries, agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of the freight rail operator or its subsidiaries, agents, licensees, employees, officers, or directors, or (ii) a collision directly between the trains, locomotives, rail cars, or rail equipment of the department and National Railroad Passenger Corporation only, where the collision is caused by or arising from the willful misconduct of National Railroad Passenger Corporation or its subsidiaries, agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of National Railroad Passenger Corporation or its subsidiaries, agents, licensees, employees, officers, or directors.

(8)

"Rail corridor" means a linear contiguous strip of real property that is used for rail service. The term includes the corridor and structures essential to railroad operations, including the land, structures, improvements, rights-of-way, easements, rail lines, rail beds, guideway structures, switches, yards, parking facilities, power relays, switching houses, rail stations, any ancillary development, and any other facilities or equipment used for the purposes of construction, operation, or maintenance of a railroad that provides rail service.

(9)

"Rail corridor invitee" means all persons who are on or about a department-owned rail corridor:

(a)

For any purpose related to any ancillary development thereon; or

(b)

Meeting, assisting, or in the company of any person described in paragraph (a).

(10)

"Rail programs" means those programs administered by the state or other governmental entities which involve projects affecting the movement of people or goods by rail lines that have been or will be constructed to serve freight or passenger markets within a city or between cities.

(11)

"Rail service development project" means a project undertaken by a public agency to determine whether a new or innovative technique or measure can be utilized to improve or expand rail service. The duration of the project funding shall be limited according to the type of project and in no case shall exceed 3 years. Rail service development projects include those projects and other actions undertaken to enhance railroad operating efficiency or increased rail service, including measures that result in improved speed profiles, operations, or technological applications that lead to reductions in operating costs and increases in productivity or service.

(12)

"Railroad" or "rail system" means any common carrier fixed-guideway transportation system such as the conventional steel rail-supported, steel-wheeled system as well as the high-speed rail system defined in s. 341.8203.

(13)

"Railroad capital improvement project" means a project identified by the rail component of the Florida Transportation Plan, which project involves the leasing, acquisition, design, construction, reconstruction, or improvement to the existing intercity rail transportation system or future segments thereof, including such items as locomotives and other rolling stock, tracks, terminals, and rights-of-way for the continuance or expansion of rail service as necessary to ensure the continued effectiveness of the state's rail facilities and systems in meeting mobility and industrial development needs.

(14)

"Railroad operations" means the use of the rail corridor to conduct commuter rail service, intercity rail passenger service, or freight rail service.

(15)

"Train" means any locomotive engine that is powered by diesel fuel, electricity, or other means, with or without cars coupled thereto, and operated upon a railroad track or any other form of fixed guideway, except that the term does not include a light rail vehicle such as a streetcar or people mover.

Amended Section 341.302, Florida Statutes

341.302

Rail program; duties and responsibilities of the department.

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The department, in conjunction with other governmental entities, including the rail enterprise and the private sector, shall develop and implement a rail program of statewide application designed to ensure the proper maintenance, 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, the department shall:

(1)

Provide the overall leadership, coordination, and financial and technical assistance necessary to assure the effective responses of the state's rail system to current and anticipated mobility needs.

(2)

Promote and facilitate the implementation of advanced rail systems, including high-speed rail and magnetic levitation systems.

(3)

Develop and periodically update the rail system plan, on the basis of an analysis of statewide transportation needs.

(a)

The plan may contain detailed regional components, consistent with regional transportation plans, as needed to ensure connectivity within the state's regions, and it shall be consistent with the Florida Transportation Plan developed pursuant to s. 339.155. The rail system plan shall include an identification of priorities, programs, and funding levels required to meet statewide and regional needs. The rail system plan shall be developed in a manner that will assure the maximum use of existing facilities and the optimum integration and coordination of the various modes of transportation, public and private, in the most cost-effective manner possible. The rail system plan shall be updated no later than January 1, 2011, and at least every 5 years thereafter, and include plans for both passenger rail service and freight rail service, accompanied by a report to the Legislature regarding the status of the plan.

(b)

In recognition of the department's role in the enhancement of the state's rail system to improve freight and passenger mobility, the department shall:

1.

Work closely with all affected communities along an impacted freight rail corridor to identify and address anticipated impacts associated with an increase in freight rail traffic due to implementation of passenger rail.

2.

In coordination with the affected local governments and CSX Transportation, Inc., finalize all viable alternatives from the department's Rail Traffic Evaluation Study to identify and develop an alternative route for through freight rail traffic moving through Central Florida, including the counties of Polk and Hillsborough, which would address, to the extent practicable, the effects of commuter rail.

3.

Provide technical assistance to a coalition of local governments in Central Florida, including the counties of Brevard, Citrus, Hernando, Hillsborough, Lake, Marion, Orange, Osceola, Pasco, Pinellas, Polk, Manatee, Sarasota, Seminole, Sumter, and Volusia, and the municipalities within those counties, to develop a regional rail system plan that addresses passenger and freight opportunities in the region, is consistent with the Florida Rail System Plan, and incorporates appropriate elements of the Tampa Bay Area Regional Authority Master Plan, the Metroplan Orlando Regional Transit System Concept Plan, including the SunRail project, and the Florida Department of Transportation Alternate Rail Traffic Evaluation.

(4)

As part of the work program of the department, formulate a specific program of projects and financing to respond to identified railroad needs.

(5)

Provide technical and financial assistance to units of local government to address identified rail transportation needs.

(6)

Secure and administer federal grants, loans, and apportionments for rail projects within this state when necessary to further the statewide program.

(7)

Develop and administer state standards concerning the safety and performance of rail systems, hazardous material handling, and operations. Such standards shall be developed jointly with representatives of affected rail systems, with full consideration given to nationwide industry norms, and shall define the minimum acceptable standards for safety and performance.

(8)

Conduct, at a minimum, inspections of track and rolling stock; train signals and related equipment; hazardous materials transportation, including the loading, unloading, and labeling of hazardous materials at shippers', receivers', and transfer points; and train operating practices to determine adherence to state and federal standards. Department personnel may enforce any safety regulation issued under the Federal Government's preemptive authority over interstate commerce.

(9)

Assess penalties, in accordance with the applicable federal regulations, for the failure to adhere to the state standards.

(10)

Administer rail operating and construction programs, which programs shall include the regulation of maximum train operating speeds, the opening and closing of public grade crossings, the construction and rehabilitation of public grade crossings, and the installation of traffic control devices at public grade crossings, the administering of the programs by the department including participation in the cost of the programs.

(11)

Coordinate and facilitate the relocation of railroads from congested urban areas to nonurban areas when relocation has been determined feasible and desirable from the standpoint of safety, operational efficiency, and economics.

(12)

Implement a program of branch line continuance projects when an analysis of the industrial and economic potential of the line indicates that public involvement is required to preserve essential rail service and facilities.

(13)

Provide new rail service and equipment when:

(a)

Pursuant to the transportation planning process, a public need has been determined to exist;

(b)

The cost of providing such service does not exceed the sum of revenues from fares charged to users, services purchased by other public agencies, local fund participation, and specific legislative appropriation for this purpose; and

(c)

Service cannot be reasonably provided by other governmental or privately owned rail systems.

The department may own, lease, and otherwise encumber facilities, equipment, and appurtenances thereto, as necessary to provide new rail services; or the department may provide such service by contracts with privately owned service providers.

(14)

Furnish required emergency rail transportation service if no other private or public rail transportation operation is available to supply the required service and such service is clearly in the best interest of the people in the communities being served. Such emergency service may be furnished through contractual arrangement, actual operation of state-owned equipment and facilities, or any other means determined appropriate by the secretary.

(15)

Assist in the development and implementation of marketing programs for rail services and of information systems directed toward assisting rail systems users.

(16)

Conduct research into innovative or potentially effective rail technologies and methods and maintain expertise in state-of-the-art rail developments.

(17)

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

(a)

(i) Assume the obligation by contract to forever protect, defend, indemnify, and hold harmless the freight rail operator, or its successors, from whom the department has acquired a real property interest in the rail corridor, and that freight rail operator's officers, agents, and employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether 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 such freight rail operator, its successors, or its officers, agents, and employees, or any other person or persons whomsoever, or (ii) assume the obligation by contract to forever protect, defend, indemnify, and hold harmless National Railroad Passenger Corporation, or its successors, and that National Railroad Passenger Corporation's officers, agents, and employees, from and against any liability, cost, and expense, including, but not limited to, commuter rail passengers and rail corridor invitees in the rail corridor, regardless of whether 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 National Railroad Passenger Corporation, its successors, or its officers, agents, and employees, or any other person or persons whomsoever; provided that such assumption of liability of the department by contract as to either (i) or (ii) shall not in any instance exceed the following parameters of allocation of risk:

1.

The department may be solely responsible for any loss, injury, or damage to commuter rail passengers, or rail corridor invitees, or trespassers, regardless of circumstances or cause, subject to subparagraphs 2., 3., 4., 5., and 6.

2.

(i) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify the freight operator for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident exists only if the freight operator agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

(ii) In the event of a limited covered accident, the authority of the department to protect, defend, and indemnify National Railroad Passenger Corporation for all liability, cost, and expense, including punitive or exemplary damages, in excess of the deductible or self-insurance retention fund established

under paragraph (b) and actually in force at the time of the limited covered accident exists only if National Railroad Passenger Corporation agrees, with respect to the limited covered accident, to protect, defend, and indemnify the department for the amount of the deductible or self-insurance retention fund established under paragraph (b) and actually in force at the time of the limited covered accident.

3.

When only one train is involved in an incident, the department may be solely responsible for any loss, injury, or damage if the train is a department train or other train pursuant to subparagraph 4., but only if (i) when an incident occurs with only a freight train involved, including incidents with trespassers or at grade crossings, the freight rail operator is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees, or (ii) when an incident occurs with only National Railroad Passenger Corporation train involved, including incidents with trespassers or at grade crossings, National Railroad Passenger Corporation is solely responsible for any loss, injury, or damage, except for commuter rail passengers and rail corridor invitees.

4.

For the purposes of this subsection, (i) any train involved in an incident that is neither the department's train nor the freight rail operator's train, hereinafter referred to in this subsection (i) as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and the freight rail operator only, but only if the department and the freight rail operator share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a freight rail operator train, and the allocation as between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or (ii) any train involved in an incident that is neither the department's train nor National Railroad Passenger Corporation's train, hereinafter referred to in this subsection (ii) as an "other train," may be treated as a department train, solely for purposes of any allocation of liability between the department and National Railroad Passenger Corporation only, but only if the department and National Railroad Passenger Corporation share responsibility equally as to third parties outside the rail corridor who incur loss, injury, or damage as a result of any incident involving both a department train and a National Railroad Passenger Corporation train, and the allocation as between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident. The involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

5.

When more than one train is involved in an incident:

a.

(i) If only a department train and freight rail operator's train, or only an other train as described in subparagraph 4.(i) and a freight rail operator's train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers,² and rail corridor invitees, but only if the freight rail operator is responsible for its property and all of its people, and the

department and the freight rail operator each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; or (ii) if only a department train and National Railroad Passenger Corporation's train, or only an other train as described in subparagraph 4.(ii) and a National Railroad Passenger Corporation train, are involved in an incident, the department may be responsible for its property and all of its people, all commuter rail passengers, and rail corridor invitees, but only if National Railroad Passenger Corporation is responsible for its property and all of its people, all National Railroad Passenger Corporation rail passengers and the department and National Railroad Passenger Corporation each share one-half responsibility as to trespassers or third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident.

b.

(i) If a department train, a freight rail operator train, and any other train are involved in an incident, the allocation of liability between the department and the freight rail operator, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and the freight rail operator as to such payment shall not in any case reduce the freight rail operator's third-party-sharing allocation of one-half under this paragraph to less than one-third of the total third party liability; or (ii) if a department train, a National Railroad Passenger Corporation train, and any other train are involved in an incident, the allocation of liability between the department and National Railroad Passenger Corporation, regardless of whether the other train is treated as a department train, shall remain one-half each as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; the involvement of any other train shall not alter the sharing of equal responsibility as to third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident; and, if the owner, operator, or insurer of the other train makes any payment to injured third parties outside the rail corridor who incur loss, injury, or damage as a result of the incident, the allocation of credit between the department and National Railroad Passenger Corporation as to such payment shall not in any case reduce National Railroad Passenger Corporation's third-party-sharing allocation of one-half under this paragraph to less than one-third of the total third party liability.

6.

Any such contractual duty to protect, defend, indemnify, and hold harmless such a freight rail operator or National Railroad Passenger Corporation shall expressly include a specific cap on the amount of the contractual duty, which amount shall not exceed \$200 million without prior legislative approval, and the department to purchase liability insurance and establish a self-insurance retention fund in the amount of the specific cap established under this subparagraph, provided that:

a.

No such contractual duty shall in any case be effective nor otherwise extend the department's liability in scope and effect beyond the contractual liability insurance and self-insurance retention fund required pursuant to this paragraph; and

b.

The freight rail operator's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit

of the freight rail operator. National Railroad Passenger Corporation's compensation to the department for future use of the department's rail corridor shall include a monetary contribution to the cost of such liability coverage for the sole benefit of National Railroad Passenger Corporation.

(b)

Purchase liability insurance, which amount shall not exceed \$200 million, and establish a self-insurance retention fund for the purpose of paying the deductible limit established in the insurance policies it may obtain, including coverage for the department, any freight rail operator as described in paragraph (a), National Railroad Passenger Corporation, commuter rail service providers, governmental entities, or any ancillary development, which self-insurance retention fund or deductible shall not exceed \$10 million. The insureds shall pay a reasonable monetary contribution to the cost of such liability coverage for the sole benefit of the insured. Such insurance and self-insurance retention fund may provide coverage for all damages, including, but not limited to, compensatory, special, and exemplary, and be maintained to provide an adequate fund to cover claims and liabilities for loss, injury, or damage arising out of or connected with the ownership, operation, maintenance, and management of a rail corridor.

(c)

Incur expenses for the purchase of advertisements, marketing, and promotional items.

Neither the assumption by contract to protect, defend, indemnify, and hold harmless; the purchase of insurance; nor the establishment of a self-insurance retention fund shall be deemed to be a waiver of any defense of sovereign immunity for torts nor deemed to increase the limits of the department's or the governmental entity's liability for torts as provided in s. 768.28. The requirements of s. 287.022(1) shall not apply to the purchase of any insurance under this subsection. The provisions of this subsection shall apply and inure fully as to any other governmental entity providing commuter rail service and constructing, operating, maintaining, or managing a rail corridor on publicly owned right-of-way under contract by the governmental entity with the department or a governmental entity designated by the department. Notwithstanding any law to the contrary, procurement for the construction, operation, maintenance, and management of any rail corridor described in this subsection, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to s. 287.057 and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7).

(18)

Exercise such other functions, powers, and duties in connection with the rail system plan as are necessary to develop a safe, efficient, and effective statewide transportation system.

APPENDIX IX

AMENDED LIABILITY PROVISIONS

(a) Notwithstanding any other provision of this Agreement to the contrary, upon the effective date of the Florida Statutes referenced in Paragraph 7.3.B of the Agreement, the following words and terms shall have the following meanings for purposes of this Section:

(i) The term "Rail Commuter Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the Commuter Service or any Incidental Use on the Corridor: first, while on board trains, locomotives, rail cars, or rail equipment employed in Commuter Service and/or entraining and detraining therefrom; second, while on or about the Corridor for any purpose related to the Commuter Service, including, without limitation, parking, inquiring about Commuter 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; and, third, while on or about the Corridor for any purpose related to any Incidental Use thereof. 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.

(ii) The term "Incidental Use" shall mean certain ancillary uses of the Corridor conducted for the convenience and comfort of users of Commuter Service which shall include, without limitation, such activities as restaurants, kiosks and retail facilities, the purpose and function of which are to serve the needs of users of Commuter Service.

(iii) The term "Other Invitee" shall mean any person or persons granted by FDOT the right to use the Corridor other than those persons on the Corridor for Railroad Operations or Incidental Use as defined in Paragraphs (a)(ii) and (a)(vi), hereof. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(iv) The term "Limited Covered Accidents" means a collision directly between the trains, locomotives, rail cars, or rail equipment of FDOT and Amtrak only, where the collision is caused by or arises from the willful misconduct of Amtrak or its subsidiaries, its agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of Amtrak or its subsidiaries, its agents, licensees, employees, officers, or directors.

(v) The term "Intercity Rail Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the Intercity Rail Passenger Service: first, while on board trains, locomotives, rail cars, or rail equipment employed in Intercity Rail Passenger Service and/or entraining and detraining therefrom; second, while on or about the Corridor for any purpose related to the Intercity Rail Passenger Service, including, without limitation, parking, inquiring about the Intercity Rail Passenger Service or purchasing tickets therefor and coming to, waiting for, or leaving from Intercity Rail Passenger Service trains. The term Intercity Rail 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.

(iii) The term "Other Invitee" shall mean any person or persons granted by FDOT the right to use the Corridor other than those persons on the Corridor for Railroad Operations or Incidental Use as defined in Paragraphs (a)(ii) and (a)(vi), hereof. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(iv) The term "Limited Covered Accidents" means a collision directly between the trains, locomotives, rail cars, or rail equipment of FDOT and Amtrak only, where the collision is caused by or arises from the willful misconduct of Amtrak or its subsidiaries, its agents, licensees, employees, officers, or directors or where punitive damages or exemplary damages are awarded due to the conduct of Amtrak or its subsidiaries, its agents, licensees, employees, officers, or directors.

(v) The term "Intercity Rail Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the Intercity Rail Passenger Service: first, while on board trains, locomotives, rail cars, or rail equipment employed in Intercity Rail Passenger Service and/or entraining and detraining therefrom; second, while on or about the Corridor for any purpose related to the Intercity Rail Passenger Service, including, without limitation, parking, inquiring about the Intercity Rail Passenger Service or purchasing tickets therefor and coming to, waiting for, or leaving from Intercity Rail Passenger Service trains. The term Intercity Rail 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.

(vi) The term "Railroad Operations" shall mean the conduct of Freight Service, Commuter Service and Intercity Rail Passenger Service.

(b) Notwithstanding any other provision of this Agreement to the contrary, upon the effective date of the Florida Statutes referenced in Paragraph 7.3.B of the Agreement, 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, 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 that party, the other party, 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) or Paragraph (c)(i), 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 Corridor, including, without limitation, any loss, damage, destruction, injury or death of or to FDOT's contractors, agents or employees, Rail Commuter Passengers, Other Invitees, trespassers on the Corridor and/or any other person on, about or crossing the Corridor 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 FDOT. The foregoing provisions of this Subsection (c) shall not apply to or govern occurrences covered by Subsection (d)

hereof.

(i) The parties specifically acknowledge and agree that, in the event of a Limited Covered Accident, FDOT shall have no duty to indemnify or hold harmless Amtrak from damages or expenses (aggregate per occurrence) up to the amount of the deductible or self-assumed amount authorized by Section 341.302, Florida Statutes, and actually in force at the time of the Limited Covered Accident, provided, however that, except as otherwise expressly provided by Paragraph (d)(iv), FDOT shall indemnify and hold harmless Amtrak from all damages and expenses above the amount of the deductible or self-assumed amount authorized by Section 341.302, Florida Statutes, and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If FDOT incurs any damages, fees, costs, or expenses in connection with a claim relating to a Limited Covered Accident Amtrak shall reimburse FDOT for all damages, fees, costs and expenses, up to the amount of the deductible or self-assumed amount authorized by Section 341.302, Florida Statutes, and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) incurred in the defense or settlement of such a claim, action or demand, which amounts shall count toward Amtrak's maximum responsibility under this Paragraph (c)(i), provided that if the settlement amount does not exceed the deductible or self-assumed amount authorized by Section 341.302, Florida Statutes,, Amtrak shall have no duty to indemnify State for the damages, fees, costs and expenses if such settlement has not been approved in

writing by Amtrak, which approval by s Amtrak hall not be unreasonably withheld.

(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 Corridor (without limiting the application of this Subsection (d) to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing on the Corridor or (ii) a trespasser, shall be governed by Subsection (d)(ii) or (d)(iii) as applicable):

- i. Except as is otherwise expressly provided in Paragraph (c)(i), (A) it is the specific and express intent of Amtrak and FDOT that FDOT shall be solely responsible for liability, howsoever arising, without limitation, to Rail Commuter Passengers and Other Invitees, and as between Amtrak and FDOT whenever Rail Commuter Passengers or Other Invitees suffer any loss, damage, injury or death arising out of, resulting from or connected with any occurrence covered by this Subsection (d), then except as is otherwise expressly provided in Paragraph (c)(i), FDOT shall be solely responsible for and assume, without recourse against Amtrak, any and all liability, cost and expense therefor, and (A) it is the specific and express intent of Amtrak and FDOT that Amtrak shall be solely responsible for liability, howsoever arising, without limitation, to Intercity Rail Passengers, and as between Amtrak and FDOT whenever Intercity Rail Passengers suffer any loss, damage, injury or death arising out of, resulting from or connected with any

occurrence covered by this Subsection (d), then except as is otherwise expressly provided in Paragraph (c)(i), Amtrak shall be solely responsible for and assume, without recourse against FDOT, 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 or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only FDOT being involved, then FDOT shall assume all liability therefor, and bear all cost and expense in connection therewith (except for the liability, cost and expense for loss, damage, injury or death to Intercity Rail Passengers, the liability, cost and expense for which will be solely assumed by Amtrak as aforesaid in Paragraph (d)(i)), including, without limitation, all cost and expense associated with clearing of wrecks.

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 Amtrak being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Rail Commuter Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by FDOT, as aforesaid in Paragraph (d)(i)), Amtrak shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense associated with clearing of wrecks.

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 or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both FDOT and Amtrak being involved, then: (A) FDOT and Amtrak 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) FDOT shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers, Other Invitees and FDOT's officers, agents, contractors and employees except as set forth in Paragraph (c)(i); (C) Amtrak shall assume and bear all liability, cost and expense for injury to and death of Intercity Rail Passengers and Amtrak's officers, agents, contractors and employees; and (D) FDOT and Amtrak shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in Subparagraph (d)(iv)(B) or (d)(iv)(C) and for loss of, damage to and destruction of all other property not referenced in Subparagraph (d)(iv)(A) (including, without limitation, the Corridor) so occurring, including, without limitation, all cost and expense associated with clearing of wrecks, provided, however, that this Subparagraph (d)(iv)(D) shall be ineffective and shall not apply to any injury to or death of any person or persons on or about the Corridor in connection with, arising from or related to, Freight Service.,

v. Except as provided in Paragraph (d)(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 or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, (A) both Amtrak and any other railroad using the Corridor being involved (including, without limitation, Florida Central Railroad ("FCEN"), CSXT and/or any detouring railroad), or (B) both FDOT and any other railroad (other than Amtrak) using the Corridor being involved, (including, without limitation, FCEN, CSXT and/or any detouring railroad), then FCEN and/or CSXT and/or any other such railroad, shall be considered as FDOT for the purpose of determining between FDOT and Amtrak, Amtrak's assumption and apportionment of liability, cost and expense under Paragraph (d)(iv) above, provided, however, where the event is as described in Subparagraph (d)(v)(B), where no Amtrak train is involved, then Subparagraph (d)(iv)(D) shall not apply.

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 or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, FDOT, Amtrak and any other railroad (including, without limitation, FCEN, CSXT and/or a detouring railroad) using the Corridor being involved, then FCEN and/or CSXT and/or any other such railroad shall be jointly considered as FDOT and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between Amtrak and FDOT under Paragraph (d)(iv) above, provided, however, that Amtrak's share of that liability, cost and expense that is to be borne equally by FDOT and Amtrak under said

Subparagraph (d)(iv)(D), above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to FDOT one-third (1/3) or more of the aforesaid liability, cost and expense. The division of liability expressed in this Paragraph (d)(vi) applies only to that cost and expense that is to be borne equally by FDOT and Amtrak under Subparagraph (d)(iv)(D) and shall be ineffective and shall not apply to any Rail Commuter Passenger, Intercity Rail Passenger, Other Invitee or other person referenced in Subparagraph (d)(iv)(B) or Subparagraph (d)(iv)(C), or any injury to or death of any person or persons on or about the Corridor in connection with, arising from or related to, Freight Service Nothing contained in the aforesaid proviso shall be construed as limiting or modifying either party's respective 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 that party; and (B) injury to and death of that party's officers, agents, contractors and employees; all as provided in said Paragraph (d)(iv).

vii. Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Subsection (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 Corridor at the time of any occurrence under said Subsection (d).

viii. For purposes of this Subsection (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; (B) for each party hereto, the invitee(s) to the Corridor of each such party, excluding Rail Commuter Passengers, Intercity Rail Passengers and Other Invitees.

(e) In every case of death or injury suffered by an employee of either FDOT or Amtrak, 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) Each provision of this Section shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 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 and the intentions of the parties with respect thereto.

(g) Nothing expressed or implied in this Section, including, without limitation, Paragraphs (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, or (B) limit or restrict either party hereto from seeking damages, 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.

(h) No provision in this Agreement shall constitute or be construed to constitute a waiver of FDOT's sovereign immunity for tort and the parties hereto recognize and agree that the insurance and self-retention fund authorized by Section 341.302, Florida Statutes, shall be the extent and sole source upon which FDOT's liability under this Section rests beyond that provided under the limited waiver of sovereign immunity contained in Section 768.28, Florida Statutes.

(i) In accordance with Section 341.302, Florida Statutes, FDOT shall, at its sole cost and expense, purchase insurance covering Amtrak as a named insured. 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 Ten Million and No/100 Dollars (\$10,000,000.00). FDOT shall also 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.