

**THIRD AMENDMENT TO INTERLOCAL OPERATING AGREEMENT FOR  
OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM**

**THIS THIRD AMENDMENT TO INTERLOCAL OPERATING AGREEMENT**

(this "Third Amendment"), is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), an agency of the State of Florida, and the Central Florida Commuter Rail Commission (the "Commission"), a legal entity and public body created by Orange County, Osceola County, Seminole County, the County of Volusia, and the City of Orlando (collectively, the "Local Government Partners") pursuant to Section 163.01, Florida Statutes.

**WITNESSETH:**

**WHEREAS**, FDOT and the Commission have entered into an Interlocal Operating Agreement for Operation of the Central Florida Commuter Rail System (the "Original Operating Agreement"); and

**WHEREAS**, with consent of the Local Government Partners, as required by the Interlocal Governance Agreement for Creation of the Central Florida Commuter Rail Commission (the "Interlocal Governance Agreement"), FDOT and the Commission have entered into a First Amendment to Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System (the "First Amendment") to extend the deadline set forth in subsection (D) of Section 3.02 of the Original Operating Agreement from December 31, 2008 to December 31, 2009; and

**WHEREAS**, with consent of the Local Government Partners, as required by the Interlocal Governance Agreement for Creation of the Central Florida Commuter Rail Commission (the "Interlocal Governance Agreement"), FDOT and the Commission have entered into a Second Amendment to Interlocal Operating Agreement for the Operation of the Central

Florida Commuter Rail System (the "Second Amendment") to extend the deadline set forth in subsection (D) of Section 3.02 of the Original Operating Agreement from December 31, 2009 to December 31, 2010; and

**WHEREAS**, action by the Florida Legislature and negotiations with CSX Transportation Inc. ("CSXT"), have created a need to further amend the Original Operating Agreement; and

**WHEREAS**, the Local Government Partners have all consented to the execution of this Third Amendment, as required by the Interlocal Governance Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree to further amend the Original Operating Agreement as follows:

1. Appendices C, F, and G attached hereto are hereby substituted for the original Appendices C, F, and G attached to the Original Operating Agreement and Appendix E attached hereto is hereby added to and made a part of Appendix E to the Original Operating Agreement.

2. The last sentence of Section 3.03(A) is hereby amended to read as follows: "FDOT shall use its best efforts to complete Phase I by February 2013 and Phase II by February 2015."

3. The first sentence of Section 3.04(C) is changed to read as follows: "FDOT has separately contributed capital for four Diesel Multiple Units and two coaches purchased for the Commuter Rail System, which shall remain the property of FDOT." The first phrase of the second sentence of Section 3.04(C) is changed to read as follows: "These initial four Diesel Multiple Units and two coaches may, at FDOT's discretion, be made available for use as part of the Commuter Rail System;".

4. Section 3.04(D), the second to last sentence of Section 6.02(B)(2), and the second to last sentence of 6.02(B)(6) are hereby deleted. The following is hereby substituted in place of the second to last sentence of Section 6.02(B)(2) and additionally in place of the second to last sentence of Section 6.02(B)(6): “Subject to Section 3.05(A) of this Agreement, if FDOT elects to dispose of the Commuter Rail System assets, any net funds remaining after payment of other obligations and expenses incurred on behalf of the Commuter Rail System (including, but not necessarily limited to, any obligation to repay Federal funds) shall be shared among FDOT and the Local Government Partners in proportion to the amount of funds contributed to the acquisition and/or improvement of the asset; provided however, that installation of other independent facilities by permit or otherwise that remain independently owned and that are not sold as a result of a sale of the asset shall not be deemed to be an improvement of the asset.”

5. The last two sentences of Section 5.01(B) are hereby deleted.

6. The first sentence of Section 6.02(B)(6) is hereby changed to read as follows: “In the event (a) any party to this Interlocal Operating Agreement or the Commission shall fail to pay any funds when due, or shall fail to issue when required any securities, guarantees, or credit enhancements required by this Interlocal Operating Agreement, or shall otherwise be in material breach of this Interlocal Operating Agreement, and in each case all applicable cure rights have been exhausted, and sufficient funds to replace such unpaid funds are not forthcoming from other sources, (b) the Commuter Rail System cannot be successfully operated with an annual System Operating Deficit less than or equal to the amounts specified in Section 4.01(F) of the Interlocal Governance Agreement, (c) the Local Government Partners remaining after a Local Government Partner has terminated its funding obligation pursuant to Section 4.01(J) of the Interlocal Governance Agreement are unable to agree unanimously to the increases in their respective

Shares of Local Operating Support and/or reductions in the Commuter Rail System service levels to alleviate such increases or (d) operation of the Commuter Rail System is suspended or terminated for a period longer than 180 days (other than as the result of a Force Majeure event, for which the time period shall be one year), unless otherwise agreed by the parties, then the FDOT, during the FDOT Funding Period, or the Commission, after the FDOT Funding Period, may terminate this Interlocal Operating Agreement.”

7. The following is hereby added after the first sentence of Section 6.02(B)(6): “With regard to terminating pursuant to the condition of Section 6.02(B)(6)(b) above, if FDOT and the Local Government Partners are unable, after discussions to reach a mutual agreement that fully funds said excess System Operating Deficit (including attempts to identify and secure additional funds), FDOT shall, when necessary to comply with the Full Funding Grant Agreement, fund any annual System Operating Deficit that is more than the amounts specified in Section 4.01(F) of the Interlocal Governance Agreement, but only for the period specified in Section 4.01(F) of the Interlocal Governance Agreement (which such FDOT funding will, after discussions between the FDOT and the affected Local Government Partner as to the most appropriate source of funds to be impacted, come from the FDOT Work Program in the geographic area of the Local Government Partners that choose not to provide additional funding of System Operating Deficits that are more than the amounts specified in Section 4.01(F) of the Interlocal Governance Agreement in accordance with the requirements of State and Federal law), in which case, the right of the Local Government Partners to terminate as a result of the specific annual System Operating Deficit that is funded by FDOT will be suspended during the period specified in Section 4.01(F) of the Interlocal Governance Agreement and may then be exercised at the end of said period. The election to fund an excess annual System Operating Deficit and

the suspension of the right to terminate as a result of said funding shall be separately and independently applied to each year of the period specified in Section 4.01(F) of the Interlocal Governance Agreement so that the election to fund one excess annual System Operating Deficit shall not impact the right to terminate because of excess annual System Operating Deficits that occur in other years.”

8. The words “as well as their respective elected or appointed officials, management, employees, agents and assigns” are removed from the third and fourth lines of Section 6.07(A).

9. The following terms and their corresponding definitions are hereby deleted from Appendix A:

**Debt Service**

**FDOT Fixed-Guideway Bonds**

**Interest Payment Date**

**Share of FDOT Bond Debt Service**

10. In the definition of “**Corridor**”, “A749.57” shall be substituted for “A749.7” and “A813.82” shall be substituted for “A814.1”.

11. The words “and Debt Service on the FDOT Fixed-Guideway Bonds” are hereby deleted from the end of the definition of the term “**FDOT Funding Period**”.

12. The definition of “**Phase I Cost Estimate**” is changed to read: “means \$362,600,000 which includes estimated cost of preliminary engineering, acquisition of Station Property, final design, and construction of Phase I.”

13. The definition of “**Phase II Cost Estimate**” is changed to read: “means \$252,800,000 which includes estimated cost of preliminary engineering, acquisition of Station Property, final design, and construction of Phase II.”

14. The words "Debt Service on the FDOT Fixed-Guideway Bonds or" are hereby deleted from the second sentence of the definition of the term "Total Operating Cost".

15. The following definition is hereby added to Appendix A:

**"Deductable(s), Self Assumed Amount(s), and Self-Insurance Retention Fund"** as between the FDOT, the Commission, and the Local Government Partners, shall mean the same thing and shall, whether capitalized or not, be deemed to be a reference to the deductibles or self-assumed amounts referred to in Section 21(b) of the Central Florida Operating and Management Agreement.

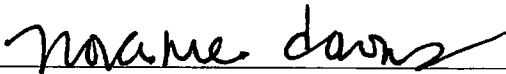
IN WITNESS WHEREOF, FDOT and the Commission have caused this Second Amendment to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 2010.

**By and for the Central Florida Commuter Rail Commission**

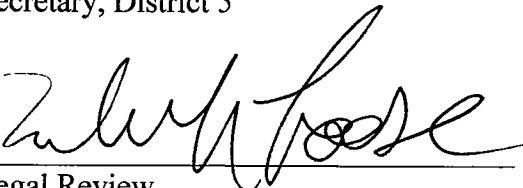
  
\_\_\_\_\_

Date: 6-25-10


**By and for the State of Florida, Department of Transportation**

  
Secretary, District 5

Date: 8.13.10

  
Legal Review

Date: 8/13/10

  
Office of Comptroller

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

**APPENDIX C**

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

1. The Central Florida Commuter Rail Transit (SunRail) Project is proposed to operate on the existing CSX Transportation, Inc. (CSXT) A-line rail corridor from the existing DeLand Amtrak Station in Volusia County, south through downtown Orlando and Kissimmee until its terminus at the Poinciana Industrial Park at the intersection on US 17-92 and the CSXT tracks in Osceola County, a distance of 61.5 miles.
2. The project is proposed to be built in two phases, the north corridor in Phase I, and the south corridor in Phase II. Phase I would extend approximately 31 miles from the Fort Florida Road station (DeBary) to Sand Lake Road station. Twelve stations are anticipated to be included in Phase I located at Fort Florida Road (DeBary), Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park Amtrak, Florida Hospital, LYNX Central Station, Church Street (downtown Orlando), Orlando Amtrak/ORMC, and Sand Lake Road. Phase I has a proposed 18 miles of additional 2nd track being added to the existing 11 miles of double track.
3. The south corridor, Phase II, would extend from Sand Lake Road to Poinciana Industrial Park. There are approximately 5 miles of existing double track in the south with 18 total miles proposed. Four stations will be included in Phase II located at Meadow Woods, Osceola Parkway, Kissimmee Amtrak, and Poinciana Industrial Park.
4. At the request of Volusia County, Phase II would also include the extension of the Commuter Rail System from the Fort Florida Road station (DeBary) to the DeLand Amtrak station, approximately twelve miles. One station would be included in this segment of Phase II located at the DeLand Amtrak Station. In addition, it is proposed that approximately 11.8 miles of double tracking will be added.
5. The primary infrastructure requirements include a new signal system, approximately 47.8

miles of new 2nd track, 17 stations, a Vehicle Storage and Maintenance Facility, and two end-of-the-line midday layover facilities. Commuter rail service would be operated with Federal Railroad Administration (FRA) compliant vehicles. For the 30-minute peak hour service, approximately 8 peak train sets will be operating (Fleet = 10 train sets). This includes 8 locomotives and 16 passenger/cab cars.

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



**SECOND AMENDMENT  
to the  
CONTRACT FOR SALE AND PURCHASE**

THIS SECOND AMENDMENT (this "Second Amendment"), made as of \_\_\_\_\_, 2010, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, ("State") and CSX TRANSPORTATION, INC., ("CSXT"), amends that certain CONTRACT FOR SALE AND PURCHASE dated as of November 30, 2007, by and between State and CSXT, as previously amended (the "Contract").

**WHEREAS**, the Contract was previously amended by the Corrective Amendment to the Contract dated January 4, 2008 (the "Corrective Amendment"), and

**WHEREAS**, the Parties desire to further amend the Contract as set forth herein.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants hereinafter set forth, the Parties hereto, intending to be legally bound, agree as follows:

Section 1. Dates, Ten Acre Parcel and Exhibits.

(a) The date of June 30, 2009 appearing in each of Subsection 6.01, 17.01(e) and 17.02(e) of the Contract is hereby amended to December 31, 2010.

(b) The Exhibit Agreement Deadline in Section 23 of the Contract is hereby amended to June 30, 2010.

(c) The text of Section 10.03 is hereby deleted in its entirety and replaced with the following:  
"Intentionally Left Blank."

(d) The text of Section 10.05 is hereby deleted in its entirety and replaced with the following:  
"Intentionally Left Blank."

(e) The List of Exhibits appearing on page iv of the Contract is hereby amended to replace "Exhibit 21 - Demolition Agreement" with "Exhibit 21 - Escrow Agreement," and to add "Exhibit 22 - Signal House Easements."

Section 2. Escrow Closing.

(a) State and CSXT have agreed that, in the event the State has not obtained final Federal Transit Administration full-funding grant agreement approval for the Central Florida Commuter Rail Transit Project Initial Operating Segment (the "Approval"), on or before the Closing Date set forth in Section 6.01 of the Contract, the parties will engage in an Escrow Closing, on or before August 31, 2010, subject to the satisfaction or waiver of all conditions to the Closing in the Contract by the respective party (the "Escrow Closing"). At said Escrow Closing, State and CSXT shall deliver documents and funds (the "Escrowed Items") to a mutually agreed escrow agent pursuant to the terms of an agreement (the "Escrow Agreement"), to be attached to the Contract as Exhibit 21, specifying the terms and conditions for the release from escrow and delivery of the Escrowed Items under certain circumstances. State and CSXT have agreed that the delivery of the Escrowed Items in consummation of the Closing as contemplated by the Contract shall not occur unless and until State has obtained the Approval, and the respective party has satisfied or waived all of the respective conditions to Closing agreed by State and CSXT in the Escrow Agreement and in the Contract. In the event the Escrowed Items are deposited with the escrow agent and the Closing does not occur by December 31, 2010, the Escrowed Items shall be distributed as provided in the Escrow Agreement. Subject to the satisfaction or waiver of the conditions of the Contract and the Escrow Agreement, the Closing shall occur not later than thirty (30) days following the obtaining by State of the Approval.

(b) To effectuate the detailed incorporation of this Second Amendment within the terms of the Contract, the parties agree to timely: (1) further amend the specific provisions of the Contract and any related agreements to the extent appropriate and necessary to reconcile same to fully address and incorporate the agreed Escrow Closing as set forth in Subsection (a), (2) finalize the Escrow Agreement and attach said Escrow Agreement as an exhibit to the Contract, (3) select an escrow agent, and (4) take such other actions as mutually determined to be reasonably necessary to effectuate the intent of this Second Amendment.

Section 3. Title Company Definition.

The definition of "Title Company" in the first sentence of Section 7.03 is hereby amended to First American Title Insurance Company.

Section 4. Limits of the State Property.

(a) Reference to the southern limit of the State Property as Milepost A814.1 (Sta. 42718+10) in Section 1.01(a) of the Contract is hereby amended to Milepost A813.82 (Sta. 42699+64).

(b) Reference to the northern limit of the State Property as Milepost A749.7 (Sta. 39406+75) in Section 1.01(a) of the Contract is hereby amended to Milepost 749.57 (Sta. 39406+75).

Section 5. Signal House Easements. Section 1.01 is amended to: delete "and" after the semicolon at the end of (d), insert a semicolon in place of the period at the end of (e), and add a subsection (f) as follows: "(f) Signal House Easements with respect to Signal Houses located at Columbia Street and Kaley Street as set forth in Exhibit 22 (the "Signal House Easements")."

Section 6. Additional Closing Documents. Section 7.02 is amended to: delete "and" after the semicolon at the end of (h), insert a semicolon in place of the period at the end of (i) and to add new subsections (j), (k), and (l) as follows:

"(j). The Party Wall Agreement attached as Exhibit 20;

(k) The Escrow Agreement attached hereto as Exhibit 21; and

(l) The Signal House Easements attached as Exhibit 22."

Section 7. Additional Recording. Section 7.06 is amended to add: "Within five days of Closing, State shall cause a counterpart of the Party Wall Agreement and Signal House Easements to be recorded in the public records of Orange County, Florida."

Section 8. CSXT Representation.

(a) Subparagraph 11.01(i) of the Contract is hereby amended to insert "; and" in lieu of the semicolon at the end thereof.

(b) Subsection 11.01 is hereby amended to add a new Subparagraph 11.01(j) reading as follows:

"(j) CSXT will invest One Hundred Fifty Million and no/100 Dollars (\$150,000,000.00) in capital expenditures or maintenance related to transportation capacity, facilities or equipment in the State of Florida during the

ten (10) year period following the Closing."

Section 9. Counterparts.

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

Section 10. No Other Changes.

Other than as expressly set forth above, the terms and conditions of the Contract remain in full force and effect.

[signature page follows]

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

Signed and delivered in the Presence of:

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

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

By: \_\_\_\_\_  
(Signed Name)

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

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

Print Name: Peter J. Shudtz

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

Its: Authorized Agent

Signed and delivered in the Presence of:

**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

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

By: \_\_\_\_\_  
(Signed Name)

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

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

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

Its: \_\_\_\_\_

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

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

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

REVIEWED AND APPROVED  
AS TO FORM

APPROVED AS TO FINANCIAL TERMS  
AND FUNDS ARE PROGRAMMED

\_\_\_\_\_  
District Chief Counsel

\_\_\_\_\_  
Office of the Comptroller

Signature Page to Second Amendment to Contract

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

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

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

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

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

I, \_\_\_\_\_, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County, personally came \_\_\_\_\_, to me known, and known to me to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did depose, acknowledge and say that: she resides in \_\_\_\_\_ County, Florida; she is Secretary of Transportation District 5 of the Florida Department of Transportation, the State agency described in and which executed said instrument; she is fully informed of the contents of the instrument; she signed her name thereto for said State pursuant to her authority; and the execution of said instrument is the free act and deed of said State of Florida Department of Transportation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2010.

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

**APPENDIX F**

AMENDED

**CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT**

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

Pertaining to the Central Florida Rail Corridor, a Line of  
Railroad Between Deland, Florida and Poinciana, Florida  
and Related Properties

Dated: \_\_\_\_\_, 2010

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## AMENDED CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS AMENDED CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT (this "Agreement") dated as of the \_\_\_ day of \_\_\_\_\_, 2010 by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT"), amends that certain Central Florida Operating and Management Agreement executed between State and CSXT as of November 30, 2007 (the "Execution Date"). Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A to this Agreement.

WHEREAS, by Contract For Sale and Purchase dated as of November 30, 2007, as amended (hereinafter referred to as "Contract"), State agreed to acquire and CSXT agreed to sell certain properties therein described (comprising a portion of CSXT's A-Line) upon which railroad freight, commuter and other passenger rail services are to be conducted; and

WHEREAS, under such Contract, CSXT retained, and did not transfer to State, those perpetual easements (the "CSXT Easement" and the "Reserved Easement") over the properties acquired by State as each perpetual easement is described in the Deed; and

WHEREAS, State and CSXT desire to establish in this Agreement the terms and conditions governing the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the mutual intention of the parties hereto that State shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and State shall not

become, the rail carrier subject to the Interstate Commerce Act, the ICC Termination Act of 1995, the Railway Labor Act, or any other federal law as enacted or revised relating to the provision of railroad freight transportation on the properties subject to the CSXT Easement.

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

Section 1. Description Of Use.

(a) Subject to the terms and conditions hereinafter set forth, as of the Commencement Date, the State Property shall be used for the conduct of Rail Freight Service, Commuter Rail Service and Intercity Rail Passenger Service, such services being sometimes collectively referred to herein as "Railroad Operations." In addition to the foregoing the State Property may be used for other public and private purposes as hereinafter provided or as may be otherwise mutually agreed to by the parties hereto from time to time during the term of this Agreement. CSXT shall have the exclusive right to use the State Property for the provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars and rail equipment thereon with its own crews.

(b) Except as is otherwise expressly provided in Section 8 hereof, State shall manage, direct and control the occupation, use and access to the State Property in accordance with the provisions of Section 3 herein.

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

substantially the same condition and in substantially the same manner as provided prior to the Commencement Date hereof (as modified by the Transition Agreement).

## Section 2. Compensation.

The fees described below shall constitute full and complete consideration to be paid by CSXT to State for all of CSXT's rights and operations (including without limitation, CSXT's rights with respect to the provision of Rail Freight Service on the State Property, CSXT's rights to contract with Amtrak, its successors and assigns with respect to the provision of Intercity Rail Passenger Service on the State Property by same), and all of State's duties and obligations (including without limitation, State's obligation to procure and maintain the insurance described in Section 21 of this Agreement), under this Agreement and the CSXT Easement with respect to the State Property. The fees shall be computed as follows:

(a) Beginning on a date established in the Transition Agreement (the "Fee Commencement Date"), and thereafter for the term of and subject to this Agreement, CSXT shall pay State a usage fee (the "Usage Fee") which shall have two components: a fixed fee component (the "Fixed Fee") and a variable fee component (the "Variable Fee") as follows:

(i) CSXT shall pay State a Fixed Fee of One Hundred Four Thousand, One Hundred and Sixty-six Dollars and Sixty-six Cents (\$104,166.66) per calendar month for each month during the term of this Agreement.

(ii) In addition to the Fixed Fee specified in Paragraph 2(a)(i), above, CSXT shall pay State, on a quarterly basis, a Variable Fee of Thirty-nine Cents (\$0.39) per car mile for each locomotive and each rail car loaded or empty (including each EOT Unit, business car, passenger

car, ballast car, and rail car used in a work train, but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels) handled on the State Property by CSXT, provided, however, that in full and complete consideration of the Variable Fee with respect to Amtrak, CSXT shall pass through to State the funds received by CSXT from Amtrak applicable to the operations by Amtrak on the State Property on a train/mile basis, until such time, if ever, as State and Amtrak enter into a separate agreement as contemplated in Subsection 3(1) of this Agreement, at which time Amtrak operations on the State Property shall no longer be included in the computation of the Variable Fee. Each locomotive unit, EOT Unit, business car, passenger car, ballast car, and work train car (but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels), handled by CSXT on the State Property, for the purpose of this Agreement, shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the Uniform Machine Language Equipment Register (“UMLER”) Specification Manual. The second numeric in the Car Type Code field covering codes “Q” and “S” shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code “S566” would equate to a five (5) car count as these type cars have five wells capable of handling 40’ to 48’ containers in each well. Car count data for articulated units is subject to change upon development of technology acceptable to both parties that would accurately separate units by Car Numbers.

(b) CSXT shall pay the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(i), above, for the current month within thirty (30) days of receipt of State’s invoice which shall be submitted to CSXT not earlier than thirty (30) days before the first day of such month. In the event that

the Fee Commencement Date or the termination date of this Agreement falls on a date other than the first calendar day of the month, the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(i), above, for the first month and/or the final month as the case may be, shall be prorated based on the number of days in such month. With respect to the Variable Fee component of the Usage Fee required under Paragraph 2(a)(ii), above, CSXT shall furnish to State, care of Secretary, District 5, Florida Department of Transportation, 719 Woodland Boulevard, Deland, FL 32720, within thirty (30) days of the end of each calendar quarter a statement of the number of loaded and empty rail cars as defined in Paragraph 2(a)(ii), above, handled by CSXT over the State Property and the miles traveled by each such car over the State Property during the quarter. CSXT shall pay the aforesaid Variable Fee for the immediately preceding quarter within thirty (30) days of receipt of State's invoice following the end of such quarter.

(c) The Variable Fee shall be revised upward or downward each year, effective upon each anniversary of the Closing, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR"). In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Variable Fee shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Variable Fee. For the initial annual adjustment following the Closing, the "latest calendar year" shall mean the calendar year following the Closing and the "previous calendar year" shall mean the calendar year in which the Closing occurs.

By way of example, assuming “A” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index figure for 2006; “B” to be the “Material prices, wage rates and supplements combined (excluding fuel)” final index figure for 2007; “C” to be the Variable Fee; and “D” to be the percent of increase or decrease; the revised Variable Fee stated herein would be revised by the following formula:

$$(1) \quad (B - A)/A = D$$

$$(2) \quad (D \times C) + C = \text{revised Variable Fee, effective upon the anniversary of the Fee Commencement Date of the year being revised.}$$

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration if necessary.

(d) The parties hereby agree that (10) years from the Fee Commencement Date and every ten (10) years thereafter the parties shall renegotiate the Fixed Fee and adjust the Fixed Fee upward or downward, by considering variables such as inflation or deflation, changes in the volume of Rail Freight Service, Intercity Rail Passenger Service and Commuter Rail Service on the State Property, expansion or contraction of CSXT’s use of the State Property and such other factors as may be mutually agreed upon by the parties which affect the reasonable interests of the parties. The parties shall commence such negotiations at least six (6) months prior to each such renegotiation in order to conclude such renegotiation prior to any given ten year anniversary of the Fee Commencement Date.

In the event that the parties fail to agree on whether an adjustment in the Fixed Fee is appropriate, or on the amount of such adjustment, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration if necessary. The parties agree that in the event of a dispute, the prior Fixed Fee shall remain in place until such time as the dispute is resolved. In the event the dispute is not resolved until after the ten year anniversary date (the “Expiring Anniversary Date”), the new Fixed Fee shall be applied with retroactive effect as of the Expiring Anniversary Date, but shall not be applied to any period prior to the Expiring Anniversary Date.

Section 3. Operation and Management.

(a) Subject to the terms and conditions of this Agreement, from and after the Commencement Date hereof, State shall manage, direct and control all Railroad Operations on the State Property and State shall control the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of same to, from and over the State Property. Except as is otherwise expressly provided herein, all rules, special instructions, timetables, practices, regulations, and orders governing operations on the State Property shall be promulgated and issued by State and may be modified and amended by State from time to time during the term of this Agreement; provided, however, that in so promulgating, issuing, modifying or amending any such matters State shall not apply any restriction that precludes CSXT’s provision of Rail Freight Service on the State Property. CSXT and State shall each designate a single representative for purposes of coordinating activities between State and CSXT under this Agreement.

(b) State shall furnish, at its sole cost and expense, any and all supervisory personnel, operators, dispatchers and bridge tenders as may be necessary for the conduct of Railroad Operations



by CSXT, State and Amtrak on the State Property.

(c) State shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Commuter Rail Service on the State Property and CSXT shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Rail Freight Service on the State Property. CSXT shall equip, at its sole cost and expense, its trains, locomotives, rail cars and rail equipment with radios and such other communication and signal devices that comply with the reasonable requirements established by State from time to time during the term of this Agreement for the conduct of Railroad Operations on the State Property. CSXT and State shall comply with any and all provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental matters, promulgated by any municipality, state or federal board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to State or the State Property, respecting the operation and use of the State Property and the operation, condition, inspection and safety of their respective trains, locomotives, rail cars and rail equipment while such trains, locomotives, rail cars and rail equipment are being operated on the State Property. In the event that any fine, penalty or liability is imposed upon a party hereto or its officers, agents and employees under any such laws, rules and regulations by any such public authority or court having jurisdiction in the premises which is attributable to the failure of such party to comply with its obligations hereunder, then that party shall pay any and all such fines, penalties and/or liabilities so imposed. In the event a fine, penalty or liability is imposed upon one party which is attributable to the failure of the other party to comply with its obligations hereunder, then the party whose failure to comply with such obligations shall pay any and all such fines, penalties and/or liabilities so imposed on the other party. Notwithstanding the foregoing provisions, the party

upon whom a fine, penalty or liability is being proposed to be imposed shall communicate with the other party and if there is no disagreement between the parties concerning which party's failure is responsible for such fine, penalty or liability, that party shall have the right to contest or settle any such fine, penalty or liability. If the parties do not agree which party's failure is responsible for such fine, penalty or liability, either party may, to the extent permitted by law, contest such fine, penalty or liability, and, provided the party upon whom the fine, penalty or liability is imposed has given notice to and offered to allow the other party to participate in the contest or negotiation of the fine, penalty or liability, may settle such fine, penalty or liability without prejudice to its right to seek reimbursement from the other party under and subject to this Agreement pursuant to Section 17. Nothing in this Section 3(c) shall alter, modify or amend Section 19 of this Agreement.

(d) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property, and State shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property. All of CSXT's and State's employees who shall operate trains, locomotives, rail cars and rail equipment over the State Property shall be qualified by State for operation thereover, and CSXT shall pay to State, within thirty (30) days of receipt of bills therefor, any cost incurred by State in connection with the qualification of such employees of CSXT as well as the cost incurred by State for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of State to be properly qualified for operation as herein contemplated. As used herein, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the State Property in accordance with State's operating rules and practices. For purposes of this Subsection 3(d), any employee of CSXT qualified to operate

over the State Property on a date prior to the Commencement Date shall be deemed qualified by State for operation over the State Property as herein contemplated as of the Commencement Date. On a date prior to the Commencement Date, CSXT shall provide to the State a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the State Property as of that date.

(e) If an employee of CSXT working on State Property is alleged to have violated State's safety rules, operating rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable CSXT labor agreement rules, CSXT, shall, unless State has actual notice of such alleged violation, provide notice of such alleged violation to State and, when appropriate, shall conduct an investigation. An officer of State may be present during such investigation. After the investigation is concluded, CSXT shall promptly furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee from the State Property in lieu of dismissal.

(f) (1) If such employee is barred by CSXT from the State Property, CSXT shall be responsible for any and all claims and expenses because of such action. (2) In a major offense, such as a violation of Rule "G," dishonesty, insubordination, or a serious violation of operating rules, wherein State desires to bar such employee from the State Property pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee, and CSXT shall bar the employee from the State Property. (3) It is understood that State shall reimburse CSXT for all payments CSXT is required to make as a result of a successful challenge (hereinafter "Claim") being made by the employee or his representative as to the discipline when, at the written request or direction of State, as the case may be,

