

**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.

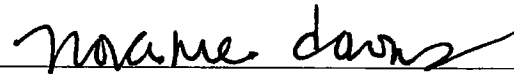
IN WITNESS WHEREOF, FDOT and the Commission have caused this Second Amendment to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 2010.

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

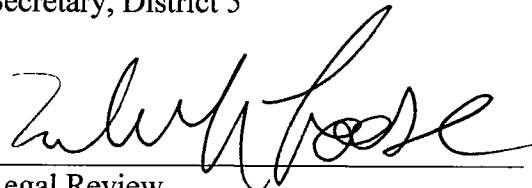
  
\_\_\_\_\_

Date: 6-25-10

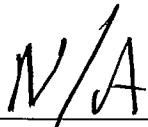
**By and for the State of Florida, Department of Transportation**

  
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

## Table of Contents

Section 1. Description of Use.....	4
Section 2. Compensation.....	5
Section 3. Operation and Management .....	9
Section 4. Maintenance .....	20
Section 5. Additions, Betterments, Retirements and Alterations.....	23
Section 6. Revenues .....	24
Section 7. Existing Agreements Pertaining to the State Property and the CSXT Property .....	25
Section 8. Future Agreements Pertaining to and Uses of the State Property .....	25
Section 9. Taxes, Assessments and Utilities .....	36
Section 10. Casualty Losses .....	37
Section 11. Abandonment and/or Discontinuance .....	38
Section 12. Compliance with Laws.....	42
Section 13. Liens and Charges .....	43
Section 14. Eminent Domain .....	45
Section 15. Payment of Bills and Records .....	47
Section 16. Default and Breach.....	49
Section 17. Dispute Resolution and Arbitration .....	50
Section 18. Clearing of Wrecks .....	52
Section 19. Liability .....	53
Section 20. Investigation.....	62
Section 21. Insurance .....	63
Section 22. Force Majeure .....	67
Section 23. Extension, Waiver and Amendment .....	67
Section 24. Notices.....	68
Section 25. Governing Law.....	69
Section 26. Counterparts .....	69
Section 27. Interpretation .....	70
Section 28. Exhibits .....	71
Section 29. Entire Agreement .....	71
Section 30. Waiver .....	71
Section 31. Expenses.....	72
Section 32. Further Assurances.....	72
Section 33. Time of the Essence .....	72
Section 34. Performance of Agreement .....	72
Section 35. Prohibition of Third Party Beneficiaries .....	73
Section 36. Term .....	73
Section 37. Successors and Assigns.....	74
Section 38. CSXT's Right of First Refusal.....	76
Section 39. Incorporation of Recitals.....	77
Appendix A.....	79

Exhibits .....	84
Exhibit 1 CFCRT Freight Service Plan (Revision 5).....	84

## 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,

such employee has been barred from the State Property prior to an investigation. CSXT agrees to notify State before making any required payment on any such Claim. In the event such Claim is progressed to an Adjustment Board, State shall be given an opportunity to review CSXT's submission. Any payments required to be made to employees, as a result of an investigation being "overturned," shall include not only actual wages, but in addition, shall include expenses which CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits, and the employee shall be permitted to return to the State Property.

(g) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive, rail car or rail equipment of State or CSXT becomes unable to proceed under its own power, or fails to maintain the speed required by State on the State Property, or, if in emergencies, crippled or otherwise defective rail cars or locomotives are set out of State's or CSXT's trains, then State may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move such trains, locomotives, rail cars or rail equipment, provided however that in the event that State is unable to assist, CSXT shall, at its own cost and expense, promptly make such repairs or furnish such motive power as may be necessary to expeditiously haul, help, push or move CSXT trains, locomotives, rail cars or rail equipment off of the State Property and may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move State trains, locomotives, rail cars or equipment. CSXT shall bear and pay to State the cost and expense incurred by State of rendering any such assistance for CSXT and State shall bear the cost and expense incurred by State of rendering any such assistance for

itself. Except as provided in Section 19, the party bearing the cost and expense as aforesaid, shall be responsible for any and all liability, cost and expense arising out of or connected therewith. Any assistance provided by State to CSXT under this provision shall not be considered providing common carrier freight service by State.

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

(i) Subject to the terms and conditions of this Agreement, the trains, locomotives, cars and equipment of CSXT, State, and any other present or future user of the State Property or any portion thereof, shall, in the absence of emergency situations, be operated without prejudice or partiality to any party and in such manner, as will afford the economical and efficient manner of movement of all trains, locomotives, rail cars, and rail equipment, within the following operating windows for seven (7) days a week:

1. 5:00 a.m. to 10:00 a.m. (0500 to 1000 hours) and 3:00 p.m. to 10:00 p.m. (1500 to 2200 hours) - exclusive passenger operation with no limit on the number of commuter or intercity rail passenger trains.
2. 10:00 a.m. to 3:00 p.m. (1000 to 1500 hours) and 10:00 p.m. to midnight (2200 to 2400 hours) - mixed passenger rail and freight rail. All trains operated during this window shall be handled pursuant to a mutually agreed to dispatch protocol which shall take into account

the type of train, time of day and on time performance of passenger trains. The CFCRT Freight Service Plan (Revision 5) jointly developed by the parties hereto and attached hereto as Exhibit 1 (the “Service Plan”) is a mutually agreed to initial operating plan, based upon the proposed build-out by State and the simulation described in Appendix 1 to the Service Plan. The Service Plan is intended to be representative of expected local operations and shall be amended from time to time upon the written request of one party to the other, no less than annually, to determine whether any changes to the Service Plan are necessary to accommodate local rail customer requirements and commuter operations and recognizing the need for future passenger and/or freight growth. Any changes to the Service Plan shall be by mutual agreement of the parties hereto. In the event that the parties hereto cannot agree on the need for any changes to the Service Plan, the dispute shall be resolved pursuant to Section 17 hereof.

3. Midnight to 5:00 a.m. (2400 to 0500 hours the following day) - exclusive freight operation with no limit on the number of freight trains.
4. Betterments and additions, curfew and program work, construction and signal suspension will be performed between the hours from 5:00 a.m. until midnight (0500 to 2400 hours), including weekends. Other than in case of emergency, bridge, track and signal inspection and maintenance shall be fairly spread over each party’s operating window.
5. All the schedules and consists for the above windows shall be discussed in a manner that reflects the arrangement between CSXT and/or State and Amtrak, to give priority to on-time Intercity Rail Passenger Service.

From time to time during the term of this Agreement, State and CSXT shall allow reasonable

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

(j) State and CSXT understand that operations on the State Property may be interrupted or delayed from time to time during the term of this Agreement due to maintenance of or improvements to the State Property performed in accordance with Section 3(i)(4) of this Agreement or Force Majeure as defined in Section 22 of this Agreement. Except as expressly provided in this Subsection (j), neither party shall have any liability to the other for any loss or damage arising out of or resulting from any such interruption or delay. Except as expressly provided in this Subsection (j), CSXT shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Rail Freight Service and State shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Commuter Rail Service. In the event that State desires to perform: (i) additions and betterments not in conformity with Section 5 that would interrupt or delay CSXT's Rail Freight Service on the State Property, then prior to the performance or making of such maintenance or improvements, State shall notify CSXT thereof and obtain CSXT's consent therefor, which consent will not be unreasonably withheld or delayed;

provided, however, that such consent shall not be required in emergency situations which pose immediate threat to life or property or prevent the expeditious passage of trains. Failure by State to obtain consent when required under the preceding sentence shall cause State to be responsible for any costs and expenses incurred by CSXT resulting from interruption or delay to Rail Freight Service caused by State performing such maintenance or additions and betterments not in conformity with Section 5.

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

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

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

(ii) It is the understanding of the parties hereto that any agreement for renewal or extension of Amtrak's use of the State Property beyond termination or replacement of the current Amtrak-CSXT Agreement shall be a matter between State and Amtrak, and that State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with any such agreement between State and Amtrak, herein referred to as the Amtrak-State Agreement. CSXT shall have no interest in or right of participation in any revenue or income howsoever derived by State from Amtrak for its use of the State Property under any such agreement, and CSXT shall not be responsible for any cost or expense that may result from any such agreement. In the event that State and Amtrak enter into the Amtrak-State Agreement, then the terms and conditions of this Agreement shall be amended to reflect the changes arising out of or resulting from such agreement. The foregoing provisions apply only to Intercity Rail Passenger Service as provided by Amtrak, its successors or assigns.

(m) , From time to time during the term of this Agreement following the Commencement Date, CSXT shall have the right subject to the provisions of Subsection 3(i) hereof to operate non-revenue special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees and/or passengers, provided however that CSXT shall not make such special or excursion trains available to members of the general public. CSXT shall be entitled to or responsible for, as the case may be, any and all fees, rents or charges arising out of or connected with such special and/or excursion trains, and such trains shall be considered as trains of CSXT for all purposes under this Agreement, including, without limitation, the provisions of Subsections 2(a) and 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid employees, invitees and/or passengers of CSXT shall be considered as CSXT's employees. From time to time during the term of this Agreement following the Commencement Date, State shall have the exclusive right to operate special and/or excursion trains on the State Property carrying State's employees, invitees and/or passengers including members of the general public. Except in emergencies, third party detours over the State Property shall be by mutual agreement of the parties. State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with such detour, special, and/or excursion trains, and such trains shall be considered as trains of State for all purposes under this Agreement, including, without limitation, the provisions of Section 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid State's employees, invitees and/or passengers shall be considered as Rail Commuter Passengers. It is understood by the parties hereto that the rights herein granted with respect to special and/or excursion trains shall not be used to expand or modify the provisions of this Agreement pertaining to Rail Freight Service, Commuter Rail Service, or Intercity Rail Passenger Service contemplated under this Agreement.

Section 4. Maintenance.

(a) Except as is otherwise expressly provided herein, from and after the Commencement Date hereof, State shall have management, direction and control of, and shall perform, or cause to be performed all work of maintaining and repairing the rights-of-way, tracks, bridges, communications, signals, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof. CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property in a condition deemed appropriate by CSXT in its sole judgment and discretion. CSXT shall be responsible for the maintenance of its sidetracks connecting to the State Property, and shall not operate on sidetracks when CSXT determines such operations would be unsafe. CSXT facilities, including Sidetracks, shall be maintained and repaired by CSXT in accordance with the applicable FRA Track Safety Standards and the Sidetrack Agreement pertaining thereto. In the event that State agrees to maintain or repair Sidetracks at CSXT's request, CSXT shall reimburse State on a quarterly basis for the actual cost of maintaining and repairing such Sidetracks. State shall have no obligation to maintain or repair the CSXT Property or any sidetrack that is not on State Property.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, bridges, communications, signals, and all appurtenances to a level consistent with State standards, then current CSXT's geometry standards, the American Railway Engineering Maintenance-of-Way Association (A.R.E.M.A.) Manual for Railway Engineering, the best generally accepted industry standards, and all applicable FRA track and signal standards. Where specific conflicts arise between the standards described above then State, in its discretion, may apply the more restrictive standard, provided, however, should the CSXT standard with respect to grades, degree of curvature,

clearances, or braking distances be more restrictive than any other standard, then State shall apply the more restrictive CSXT standard. Upon request, the parties shall update one another as their respective standards may change from time to time. Any dispute regarding the use of standards shall be resolved using the procedures in Section 17. State agrees to maintain the mainline on the State Property to achieve at least the FRA Class 4 track standard for freight and passenger trains under the FRA's regulations, as amended. The aforesaid standards shall be applied in a manner that generally permits authorized track speeds, subject to temporary and permanent slow orders and speed restrictions that may be reasonably imposed by State or other lawful authority from time to time in a manner consistent with generally accepted industry standards.

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

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

(e) From time to time, CSXT, may conduct such inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection (b) hereof,

provided, however, CSXT shall endeavor in good faith to schedule its inspections in a way that will enable it, upon prior written notice to State, to accompany State on its inspection of the State Property and in the event such inspection discloses any defect(s) from the standards set forth in said Subsection 4(b), CSXT may give State notice thereof, in which event State shall correct such defect(s) within the time provided under applicable laws or regulations. In the event State shall fail to correct such defect(s) within the time provided under applicable laws or regulations, CSXT shall have the right, but not the obligation, to cause such defects to be corrected and State shall reimburse CSXT for the entire cost thereof.

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

(g) As provided in Section 7.08 of the Contract, upon the Closing Date as specified therein,

CSXT shall assign to State and State shall assume all of the agreements listed or described in Exhibit 9 therein and all rights and obligations under such agreements pertaining to the maintenance, repair, and operation of existing roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities on the State Property and thereafter State may renegotiate, renew, terminate, cancel, or modify any such agreements subject to the terms and conditions of Section 8 hereof. It is understood by the parties hereto that State shall have the right to grant new crossings on the State Property subject to the terms and conditions of Section 8 hereof.

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

Section 5. Additions, Betterments, Retirements and Alterations.

(a) Subject to the provisions of Section 8 hereof, State, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the State Property: first, as shall, in State's sole judgment, be necessary or desirable for the economical or safe operation thereof; provided, however, that any such addition, betterment, retirement or alteration shall not unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property as contemplated in Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Easement or the CSXT Property, and any retirement to the State Property shall be subject to the mutual agreement of State and CSXT or, as pertaining to Sidetracks, in accordance with the provisions of Subsection 11(d); or, second, as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the State Property and such retirements shall be

excluded from the State Property. The design and construction standards for the foregoing shall be subject to the mutual approval of the parties hereto or determined in accordance with Subsection 8(i) hereof. Once the agreed standards are included in a contract and a contract for the applicable work is awarded, CSXT shall not be entitled to alter, amend or modify the standards contained in the contract other than for safety reasons.

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

#### Section 6. Revenues.

(a) CSXT shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Freight Service on the State Property and the CSXT Easement and CSXT Property.

(b) State shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Commuter Rail Service and other passenger rail service provided by State on the State Property.

(c) The parties hereto understand that Amtrak shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Intercity Rail Passenger Service by Amtrak on the State Property.

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

Section 7. Existing Agreements Pertaining to the State Property and the CSXT Property.

(a) The parties have addressed in the Contract the manner in which any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, intangible rights and easements listed or described in the Contract shall be governed.

(b) From and after the Commencement Date, CSXT may renegotiate, renew, terminate, cancel or modify any of its contracts or agreements pertaining to Sidetracks. CSXT also may enter into new agreements pertaining to Sidetracks without the consent of State, subject to the provisions of Subsections 3(i) and 8(f) hereof. Any rental income from Sidetracks that is derived from and after the Commencement Date by CSXT from such contracts or agreements shall be paid to State within thirty (30) days. Except as may be otherwise provided under this Subsection 7(b) and/or in Sections 8, 18, and 19 hereof, CSXT shall be responsible for any and all obligations, liabilities, costs or expenses arising out of or connected with the aforesaid contracts or agreements.

Section 8. Future Agreements Pertaining to and Uses of the State Property.

It is understood by the parties hereto that State may use, grant to others the right to use, and convey interests in the State Property, in whole or in part, for any lawful private or public purposes, in addition to the Railroad Operations on the State Property contemplated under Subsection 1(a) of this Agreement. Such additional uses and conveyances of the State Property will be subject to the

provisions of the Contract, this Agreement, including Subsection 1(a), and the CSXT Easement and will be undertaken by State in its sole discretion and in a manner consistent with the then current Commuter Rail Service, Rail Freight Services, and Intercity Rail Passenger Service on the State Property.

(a) Except as is otherwise expressly provided in this Agreement and except as is otherwise expressly provided under any contract, agreement, lease, license, easement, reservation or restriction of or pertaining to the State Property in existence as of the date hereof, whether or not of record including, without limitation, fiber optic occupancies, State shall have the exclusive right: first, to use the State Property on its own behalf for any lawful purpose; and/or, second, to grant and convey to others any and all interests, easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the State Property, or any portion thereof; provided, however, that the aforesaid rights of State shall not be used to permit any form of Rail Freight Service on the State Property, or any portion thereof, without CSXT's prior written consent; provided, further, that the aforesaid rights of State shall be exercised in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property, and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, Subsections 8(c) and (d) and 38 hereof. State shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with State's rights under this Subsection 8(a) and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from the enjoyment and use of such rights.

(i) Any future uses or improvements on, under, through, above, across, or along the State

Property shall be compatible with the existence and continuation of Railroad Operations, shall not unreasonably interfere with or unreasonably constrain continued Rail Freight Service, Commuter Rail Service or Intercity Rail Passenger Service and shall not include residential use.

(ii) Subject to (i) above, State may use the State Property for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), and for any other lawful purpose; however, for any other use of the State Property (that being other than for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), the following conditions shall apply: (A) any other use of the State Property by Other Invitees (as defined in Paragraph 19(a)(iii), hereof), if and when allowed by State, State shall assume liability, indemnify, and provide insurance as between State and CSXT, solely and to the extent as provided under and pursuant to Sections 19 and 21 hereof, for any liability, cost, or expense for the loss of, damage to, or destruction of any property and for the injury to or death of any such person or persons that occurs on or about the State Property; and, (B) such other use shall be allowed only in areas where there is either (1) no environmental contamination or (2) where such use would not result in a requirement that environmental remediation be conducted to levels more stringent than that which would be required if such use were for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof), unless the State agrees to be responsible for any increased liability, cost, and expense for any more stringent environmental remediation resulting from the allowed use over and above that required for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(ii), hereof) and from any claim or claims made related to any use of the State Property in the absence of such remediation having been performed by State as required.

(iii) State agrees and acknowledges that CSXT will continue to have a substantial interest in enforcement of Paragraphs (8)(a)(i) through (8)(a)(iii) whether or not CSXT retains title to property adjacent to State Property or retains the CSXT Easement.

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

(c) In each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Subsection 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Subsection that requires the performance of any work on the State Property, including, without limitation, the construction, modification, alteration or relocation of railroad tracks, signals, fiber optic transmission systems or communication facilities on the State Property, then State shall use its best efforts to cause or permit such work to be effected in a manner consistent with the requirements of the subject interest, easement, lease, license or right of occupancy or the aforesaid exercise of any right, privilege or license; provided, however, that all such work shall be effected in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, this Subsection (c) and Subsection 8(d) hereof. Unless otherwise mutually agreed to by the parties hereto, to the extent any of the aforesaid work on the State Property

involves the construction, modification, alteration or relocation of railroad tracks, signals or communication facilities used by CSXT and/or Amtrak for Railroad Operations, then State shall bear, pay, or cause to be paid, the entire cost and expense of the aforesaid work, including, without limitation, any and all cost and expense incurred by CSXT and others for the relocation of railroad tracks, signals, fiber optic transmission systems or communications facilities and for the provision of services, materials, employees or equipment in connection with such work. In the event a fiber optic occupant bears and pays for any relocation of the fiber optic transmission systems when such relocation is for railroad operational purposes then State shall not be responsible for the cost and expense of such relocation to the extent such cost and expense is borne and paid by a fiber optic occupant. The CSXT Easement shall be adjusted, at the sole cost and expense of State, to reflect any changes to the location of the State Property.

(d) (i) Notwithstanding any other provision of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (A) grant or convey to others any interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the State Property or the CSXT Property: (1.) Lateral clearances of not less than 10 feet from either side of the centerline of any main track and adjacent sidings and 9 feet from either side of the centerline of any sidetrack; and (2.) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track; or (B) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility on the State Property within the following clearances of any track now or hereafter located on the State Property or the CSXT Property: (1.) Lateral clearances of not less than 12 feet from either side

of the centerline of any track; and (2.) Vertical clearances for the entire lateral clearance width of any such track of not less than 23 feet above the top of rail of any such track. Nothing in this Subsection (d) shall require State to alter, replace or remove any structure or facility on the State Property that as of the Closing Date as defined in the Contract does not comply with such clearances.

(ii) It is understood by State and CSXT that State shall construct certain platforms for Commuter Rail Service, provided, however, such platforms shall be constructed in accordance with the following clearances:

(A) North of the junction with the Stanton Spur, between Milepost 800 and Milepost 749.57, all platforms shall be fifteen inches (15") ATR and provide a lateral clearance measured from the centerline of the track of not less than five feet, six inches (5' 6"),

(B) South of the junction with the Stanton Spur, between Milepost 800 and Milepost A813.82, all platforms shall not exceed eight inches (8") ATR and provide a lateral clearance measured from the centerline of the track of not less than seven feet, six inches (7' 6").

(C) The platform clearances in (A) and (B) above shall apply only to platforms constructed along tangent track. Any platform to be constructed along curved track shall comply with CSXT's then current clearance requirements or such other clearances as the parties shall mutually agree.

(D) The parties acknowledge an issue with the canopy clearance at the Ocala station. State agrees to obtain a resolution of the issue with the concurrence of the owner of the station within a reasonable time from the Execution Date. In the event that the canopy

issue at Ocala cannot be resolved between State and the owner of the station within a reasonable time from the Execution Date, the platform clearance standards of Subparagraph (d)(ii)(B) shall apply to the entire line.

(iii) State shall submit all plans and specifications for each such platform to CSXT for its review and approval as to its compliance with the above clearance standards. CSXT shall respond with written comments in accordance with Subsection 8(i)

(iv) State shall submit all plans and specifications for any facilities to be built under the tracks on the State Property for CSXT's review and approval in accordance with CSXT's then current engineering specifications for facilities of like type and condition on CSXT's railroad properties. CSXT shall respond to State's submission with written comments in accordance with Subsection 8(i).

(e) CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining the State's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, convey, transfer or assign the CSXT Easement or grant any operating rights over all or any portion of the State Property, to any third party (other than such rights as currently exist pertaining to interchange or locomotive run-through); second, with Amtrak, its successors and assigns, pertaining to Amtrak's provision of Intercity Rail Passenger Service on the State Property and the CSXT Property (subject to the provisions of Subsection 3(1) hereof); and, third, with fiber optic occupants, or their successors and assigns pertaining to fiber optic transmission systems to be located on the State Property that would extend onto CSXT Property north of Milepost A749.57 (Sta.

39406+75), at or near Deland, FL and/or south of Milepost A813.82 (Sta. 42699+64), at or near Poinciana, FL. CSXT shall collect any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall pay to State on a periodic basis prorated amounts received by CSXT after the date of this Agreement on a per mile proration (that is, if the subject agreement relates to 200 miles of rail corridor, and 43 miles is within the State Property, CSXT shall deliver to State on a periodic basis 43/200th of the amounts received by CSXT under the subject agreement). Further, any such agreement shall be subject to a Joint Use Agreement which shall be entered into between CSXT and State similar to the Joint Use Agreement entered into at Closing as provided in the Contract of Sale. State shall have the exclusive right to enter into contracts, agreements, leases and licenses with fiber optic occupants pertaining to fiber optic transmission systems to be located on the State Property that would not extend onto CSXT Property north of Milepost A749.57 (Sta. 39406+75), at or near Deland, FL and/or south of Milepost A813.82 (Sta. 42699+64), at or near Poinciana, FL and State shall be entitled to or be responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from such interests, agreements, leases or licenses.

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

provision of Commuter Rail Service and/or Intercity Rail Passenger Service on the State Property and/or any reasonably foreseeable use of State Property by State, such uses including, without limitation, light rail (within the City of Orlando, from approximately milepost 787 to milepost 792.5, at State's sole risk and expense, and without impairment to rail freight operations remaining on the State Property or at Kaley Yard, such system to be designed and constructed to provide adequate clearances and the necessary physical separation from the "conventional" rail system utilized by freight and intercity and commuter passenger trains and shall comply with mutually agreed design and construction standards), high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by the State; second, the proposed work is necessary or desirable for the provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property; and, third, CSXT pays, or causes to be paid, any and all cost and expense of the proposed work. In the event that State determines that the proposed work will unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses, then within sixty (60) days of its receipt of the aforesaid plans and specifications, State shall provide written notification thereof to CSXT, which notification shall first, to the extent possible, specify the reasonable conditions, including, without limitation, duration of use and modification(s) to the submitted plans and specifications, that are necessary to permit such work to be performed in a manner that will not unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses or, after exhausting such conditions or modifications, State's reasons for denial of such request, such denial only then being final and not subject to Section 17 hereof. To the extent that the plans and specifications are approved subject to modification(s), then the plans and specifications as so modified shall be submitted to State for its written approval, which approval State shall provide within thirty (30) days of its receipt of such

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

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

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

in this Section 8.

(i) Whenever State wishes to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property, the following procedures shall apply:

(i) State shall submit to CSXT a copy of the plans and specifications for such facility or structure for CSXT's review. The plans and specifications submitted shall contain sufficient detail to allow meaningful review.

(ii) CSXT shall have thirty (30) days from receipt of such written submittal in which to request additional information or to seek clarification. If CSXT requests such additional information or seeks clarification of the decision, State shall within fifteen (15) days either: (A) supply the additional information or clarification, or (B) notify CSXT that no additional information or clarification is necessary and will not be provided.

(iii) Within ninety (90) days from receipt of the submission of the plans to CSXT pursuant to Paragraph (i), above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by State pursuant to Clause (ii)(A), above, or within forty-five (45) days of receipt by CSXT of notification from State that no additional information or clarification will be provided pursuant to Clause (ii)(B), above, whichever time frame is later, CSXT shall transmit its written comments to State.

(iv) If CSXT fails to respond within the ninety (90) days, State may proceed under subparagraph (viii) below.

(v) If CSXT accepts State's proposed plans, the proposed plan shall become final.

