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May 5, 2014

236003

VIA FEDERAL EXPRESS

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20024

ENTERED
Office of Proceedings
May 6, 2014
Part of
Public Record

MAY 6 2014
RECEIVED

Re: **Finance Docket No. 35783**
Florida Department of Transportation -- Petition for Declaratory Order -- Rail Line of CSX Transportation, Inc. Between Riviera Beach and Miami, Florida

Dear Ms. Brown:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Petition for Declaratory Order of Florida Department of Transportation**, dated May 5, 2014. A credit card payment form in the amount of $1,400, representing the appropriate fee for this filing, and a compact disk containing the text of the Petition in MS Word 2007 format are attached. Please note that expedited consideration of the Petition is requested.

One extra copy of the Petition and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

William C. Sippel
Attorney for Florida Department of Transportation

FILED
May 6, 2014
SURFACE
TRANSPORTATION BOARD

WCS:tjl

Enclosures

cc: Parties on Certificate of Service

FEE RECEIVED
May 6, 2014
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

ORIGINAL

FINANCE DOCKET NO. 35783

FLORIDA DEPARTMENT OF TRANSPORTATION
-- PETITION FOR DECLARATORY ORDER --
RAIL LINE OF CSX TRANSPORTATION, INC.
BETWEEN RIVIERA BEACH AND MIAMI, FLORIDA

MAY 6 2014

PETITION FOR DECLARATORY ORDER OF
FLORIDA DEPARTMENT OF TRANSPORTATION

EXPEDITED CONSIDERATION REQUESTED

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ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION

Dated: May 5, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35783

FLORIDA DEPARTMENT OF TRANSPORTATION
-- PETITION FOR DECLARATORY ORDER --
RAIL LINE OF CSX TRANSPORTATION, INC.
BETWEEN RIVIERA BEACH AND MIAMI, FLORIDA

PETITION FOR DECLARATORY ORDER OF
FLORIDA DEPARTMENT OF TRANSPORTATION

Pursuant to 49 U.S.C. § 721 and 5 U.S.C. § 554(e), Florida Department of Transportation ("FDOT") hereby seeks a declaratory order that its continued ownership of, and assumption of dispatching and maintenance responsibility over, rail trackage between Riviera Beach and Miami, Florida (the "South Florida Line") on which CSX Transportation, Inc. ("CSXT") holds a perpetual, exclusive freight easement does not render FDOT a rail common carrier under the Interstate Commerce Act or otherwise implicate a need for Surface Transportation Board authorization under 49 U.S.C. § 10901.

FDOT acquired the physical assets of the South Florida Line in 1988, and after significant capital improvements over the last 25 years the line today hosts the "Tri-Rail" commuter passenger service in addition to CSXT freight service and National Railroad Passenger Corporation ("Amtrak") intercity passenger service. Pursuant to a recently-executed and perpetual new operating and management agreement with CSXT, FDOT now proposes to assume responsibility for maintaining and dispatching the South Florida Line. The carefully-crafted provisions and protections contained in that agreement assure that CSXT can fulfill all current and reasonably foreseeable rail freight needs on the South Florida Line. The relevant

agreements also assure that Amtrak service on the South Florida Line will continue to be reasonably accommodated and that the on-time performance of Amtrak trains should not be adversely affected.

Because CSXT retains a permanent, exclusive freight operating easement on the South Florida Line and FDOT neither possesses nor will obtain the right or ability to provide or control freight service on the line, FDOT seeks a determination pursuant to Maine DOT -- Acq. Exempt. -- Maine Central R. Co., 8 I.C.C.2d 835 (1991) ("State of Maine") and its progeny that FDOT's continued ownership of the physical assets of the South Florida Line and its assumption of dispatching and maintenance on the line do not require Board authorization under 49 U.S.C. § 10901. Issuance of a declaratory order is appropriate to remove any uncertainty and facilitate a State of Maine determination.[1]

The operative agreements set a target date of June 30, 2014 as the date on which dispatching and maintenance of the South Florida Line will be assumed by FDOT, but in any event no later than December 31, 2014. The parties currently contemplate that they will implement the change no sooner than the end of October, 2014. A State of Maine determination by the Board is a prerequisite to implementation of the new arrangements. Accordingly, expedited consideration of this petition is requested to allow a decision by October 1, 2014.

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[1] State of Maine determinations are usually obtained through a two-step process that involves filing an acquisition notice of exemption pursuant 49 U.S.C. § 10901 and 49 C.F.R. § 1152.31, et seq. and separately filing a motion to dismiss the notice of exemption. The declaratory order process also has been utilized by the Board and its predecessor in the State of Maine context, however, including in instances where (as here) the underlying acquisition transaction occurred at a significantly earlier date. See Maryland Transit Administration -- Petition for Declaratory Order, Finance Docket No. 34975 (STB served October 9, 2007), reconsideration denied (STB served September 19, 2008); see also, e.g., Santa Cruz County Regional Transportation Commission -- Petition for Declaratory Order, Finance Docket No. 35653 (STB served September 7, 2012); Metro. Transit Auth. of Harris County, TX -- Declar. Order, 9 I.C.C.2d 559 (1993).

BACKGROUND

A. Description and Development of the South Florida Line

FDOT is a governmental agency of the State of Florida and a non-carrier. In 1988, FDOT acquired approximately 81 miles of rail line from CSXT extending primarily from Riviera Beach (near West Palm Beach) to the Miami airport, and also including two short secondary lines in the Miami area.[2] CSXT retained an exclusive, perpetual freight easement on the South Florida Line, and also continued to provide dispatching and maintenance on the line. Verified Statement of Gerry O'Reilly, FDOT District 4 Director of Transportation Development, attached hereto at Tab 1 ("O'Reilly V.S.") at 1-2. FDOT and CSXT consulted informally with staff of the Interstate Commerce Commission ("ICC") at the time of the 1988 transaction, and provided staff with drafts of the proposed transactional documents. Verified Statement of Jay S. Westbrook, CSXT Assistant Vice President - Passenger Operations, attached hereto at Tab 2 ("Westbrook V.S.") at 2; O'Reilly V.S. at 2. As the Board noted in Florida Department of Transportation -- Acquisition Exemption -- Certain Assets of CSX Transportation, Inc., Finance Docket No. 35110 (STB served December 15, 2010) ("FDOT/Orlando") at 6, reopening denied (STB served June 22, 2011), no formal ICC decision or determination was issued regarding the 1988 transaction, which preceded the State of Maine case by three years. ("In 1988, several years

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[2] The lines originally acquired extended: 1) from milepost SX-964.9 in Riviera Beach to milepost SX-1037.5 in Miami; 2) from milepost SXD-1036.6 to milepost SXD-1041.0 in Miami (the "Downtown Spur"); and 3) from milepost SXH-36.8 (equal to milepost SX-1036.8) in Miami to milepost SXH-41.12 in Oleander, a portion of CSXT's Homestead Subdivision (the "Oleander Branch"). Some of these mileposts were rounded in the 1988 transactional documents. As explained further below, due to subsequent events this declaratory order request covers line segments with slightly different milepost termini. While the term "South Florida Line" as used in this Petition is broadly intended to encompass all three line segments, the Downtown Spur and the Oleander Branch are freight-only lines and thus are not generally implicated in the shared use considerations that apply to the main Riviera Beach-Miami stem.

before the State of Maine decision was issued, FDOT purchased [the South Florida Line] from CSXT running parallel to Interstate 95 between Miami International Airport and West Palm Beach, Fla. CSXT retained a permanent, exclusive freight rail easement in the property. The South Florida transaction was not filed with the ICC for review."); Cf. City of Venice -- Abandonment Exemption -- In Venice, IL and St. Louis, MO, Docket No. AB-863X (STB served June 22, 2004) at 6 ("It would be anomalous to hold that the City should have followed a procedure [i.e., the State of Maine process] that was developed in 1991 in a transaction that occurred" at an earlier time.). ICC staff informally indicated, however, that no agency action was contemplated in connection with the transaction. Westbrook V.S. at 2; O'Reilly V.S. at 2.

FDOT acquired the South Florida Line in order to facilitate the initiation of "Tri-Rail" commuter service, under the auspices initially of the Tri-County Commuter Rail Authority and today of the South Florida Regional Transportation Authority ("SFRTA"). Commuter operations begin in January, 1989, originally between West Palm Beach and Miami, and were later extended north to Mangonia Park and south to a new Miami Airport station. FDOT and SFRTA also undertook a major upgrading of the South Florida Line, including double-tracking most of the main West Palm Beach-Miami stem, improving signals and constructing a new bridge over the New River near Fort Lauderdale.[3] These improvements resulted in higher speeds and significantly increased capacity on that line. O'Reilly V.S. at 2-3; Westbrook V.S. at 3.

Since 1988, operations, maintenance and dispatching on the South Florida Line have been governed by an Operating and Management Agreement - Phase A dated as of May 11,

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[3] This new, double-track bridge extends from approximately milepost SX-1013.3 to milepost SX-1015.8, and is parallel to the earlier single-track bascule movable bridge which remains in place and in operation. Due to gradient and other factors, only Tri-Rail commuter trains and Amtrak intercity passenger trains use the new double-track bridge. CSXT freight trains continue to use the original bascule bridge. Westbrook V.S. at 3.

1988 ("OMAPA") between FDOT and CSXT. Pursuant to that agreement, CSXT continues to maintain and dispatch the South Florida Line.[4] Also on May 11, 1988, the parties agreed to an Operating and Management Agreement - Phase B ("OMAPB") between FDOT and CSXT that contemplated the future assumption of maintenance and dispatching responsibilities on the South Florida Line by FDOT. OMAPB has never been implemented.

Today, SFRTA operates 50 weekday Tri-Rail commuter trains (25 in each direction) on the South Florida Line.[5] Stephens V.S. at 2. CSXT operates an average of 10 freight trains per day on the line, and operates yards at Fort Lauderdale and Hialeah in Miami. Westbrook V.S. at 7. Amtrak operates four daily trains (two in each direction) between Riviera Beach and Amtrak's Miami station near Hialeah.[6]

Since 1988, CSXT has abandoned two sections of its retained freight easement on the Downtown Spur, and also abandoned its easement on the very south end of the main line at the Miami Airport. See CSX Transportation, Inc. -- Abandonment and Discontinuance of Service Exemption -- Dade County, FL, Docket No. AB-55 (Sub-No. 242X) (ICC served July 19, 1988); CSX Transportation, Inc. -- Abandonment Exemption -- In Dade County, FL, Docket No. AB-55 (Sub-No. 383X) (ICC served July 10, 1991); CSX Transportation, Inc. -- Abandonment Exemption -- In Miami-Dade County, FL, Docket No. AB-55 (Sub-No. 717X)

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[4] The only exception is the new 2.5-mile, passenger-only bridge over the New River near Fort Lauderdale, which is dispatched by Amtrak pursuant to an agreement with SFRTA. See note 3, supra, and accompanying text; Westbrook V.S. at 3; Verified Statement of Jack L. Stephens, SFRTA Executive Director, attached hereto at Tab 3 ("Stephens V.S.") at 3.

[5] On Saturdays and Sundays Tri-Rail operates 30 commuter trains (15 in each direction) on the South Florida Line. As indicated above, these commuter trains only transit the main West Palm Beach-Miami stem of the South Florida Line; the Downtown Spur and the Oleander Branch are freight-only.

[6] Train Nos. 91 and 92, the *Silver Star*, and Trains Nos. 97 and 98, the *Silver Meteor*.

(STB served September 9, 2011). In fulfillment of a 2001 agreement between CSXT and what is now SFRTA, CSXT is now preparing to contribute to FDOT an additional three-quarters of a mile of track at the north end of the South Florida Line, subject to the same retained, permanent exclusive freight easement and conditions that apply to the rest of the line.[7] With these changes, the South Florida Line as to which FDOT seeks a State of Maine determination extends a total distance of approximately 80.28 miles, as follows:

- From approximately milepost SX-964.16 in Riviera Beach to milepost SX-1036.8 in Miami;
- The Downtown Spur, from milepost SX-1036.6 (on the main stem) to the end of track at milepost SXD-1039.92 in Miami; and
- The Oleander Branch, from milepost SXH-36.8 (milepost SX-1036.8 on the main stem) to the connection with CSXT at milepost SXH-41.12 at Oleander.

A map showing the South Florida Line is attached at Tab 4.

In 2010, in connection with development of the "SunRail" commuter rail system in the Orlando area, FDOT obtained a State of Maine determination with respect to its acquisition of 61.5 miles of CSXT rail line between DeLand and Poinciana, Florida. FDOT/Orlando. Relying on CSXT's retained, permanent and exclusive freight easement on the line and the terms of the "Central Florida Operating and Management Agreement" between FDOT and CSXT ("CFOMA"), the Board found that FDOT's acquisition of the physical assets

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[7] This additional segment of track (the "Contribution Segment") extends from milepost SX-964.9 to approximately milepost SX-964.16 in Riviera Beach, and will facilitate eventual construction of a maintenance/layover facility for the Tri-Rail commuter service. Unlike the remainder of the South Florida Line, which FDOT acquired in 1988, the Contribution Segment transaction has not yet occurred. Once the transaction is consummated, this very short piece of track will become an integral part of the South Florida Line and will be governed by the new operating agreement discussed below that covers the whole line. Including the prospective Contribution Segment transaction in this declaratory order proceeding is reasonable and avoids a duplicative and unnecessary State of Maine proceeding to address just that segment.

of the Orlando Line and assumption of dispatching and maintenance on the line did not require Board regulatory authorization and would not impose a common carrier obligation on FDOT.

In its decision in the FDOT/Orlando proceeding, the Board noted FDOT's prior 1988 acquisition of the South Florida Line, and also noted the determination by several other federal agencies that SFRTA, the operator of the Tri-Rail commuter service, is not a rail carrier. FDOT/Orlando at 4 & nn. 6-7. For its part, FDOT noted in that proceeding that FDOT and CSXT anticipated modification of their existing arrangement on the South Florida Line, and committed to seek a State of Maine determination with respect to any such new arrangement prior to its implementation. Finance Docket No. 35110, FDOT Motion to Dismiss Notice of Exemption, filed April 3, 2009, at 2, n.1. This declaratory order petition is being filed in fulfillment of that commitment.

FDOT now proposes to assume dispatching and maintenance responsibilities from CSXT on the South Florida Line. While the never-implemented OMAPB provides for such a transfer of dispatching and maintenance, that agreement is twenty-five years old and was not considered an ideal vehicle for achieving the parties' objectives. Instead, the parties entered into an entirely new South Florida Operating and Management Agreement ("SFOMA"), based largely on the CFOMA that the parties had utilized and the Board had considered in FDOT/Orlando. An original version of SFOMA was initially executed on December 6, 2007. On January 25, 2013, FDOT and CSXT executed an Amended South Florida Operating and Management Agreement ("Amended SFOMA"), which is provided with this petition and is the primary operative document for the State of Maine analysis that FDOT requests herein. As contemplated in the agreement, the governing board of SFRTA approved the terms and conditions of the Amended SFOMA on January 25, 2013. Pursuant to a separate Operating Agreement between FDOT and

SFRTA, dated June 13, 2013, SFRTA will perform the actual maintenance and dispatching of the South Florida Line on FDOT's behalf. O'Reilly V.S. at 4; Stephens V.S. at 3.

The relevant agreements entered into by FDOT and CSXT assure that FDOT's continued ownership of the South Florida Line, the addition of the Contribution Segment to the South Florida Line, and FDOT's assumption of maintenance and dispatching responsibilities on the South Florida Line will not interfere with or unduly burden CSXT's provision of rail freight service on the line. Nor will those arrangements adversely affect the operations of Amtrak on the South Florida Line, which are subject to a separate agreement between FDOT and Amtrak. Indeed, dispatching of trains on the South Florida Line will be performed in the first instance by Amtrak itself, under contract to SFRTA. Because CSXT retains, through a perpetual, exclusive easement, all necessary rights and powers to continue to provide common carrier freight service on the South Florida Line, the Board should find that FDOT's ownership and management of the line's assets do not make FDOT a rail carrier and that the arrangements contemplated by the Amended SFOMA do not require Board authorization.

FDOT is serving a copy of this petition on all known local shippers on the South Florida Line, and has served a copy on CSXT, SFRTA and Amtrak.

B. <u>FDOT-CSXT Agreements</u>

FDOT and CSXT have executed, or will execute, a number of relevant agreements that govern FDOT's ownership of the South Florida Line and the shared use of that line by FDOT and CSXT:

- a Contract for Installment Sale and Purchase, dated as of May 11, 1988 (the "Sale Contract"), attached, without its exhibits, at Tab 5 hereto;

- a Warranty Deed, dated May 11, 1988, attached, without its exhibits, at Tab 6 hereto and which contains CSXT's perpetual, exclusive retained freight easement on the South Florida Line;[8]

- a Supplemental Warranty Deed, dated March 28, 1990, attached, without its exhibits, at Tab 7 hereto;[9]

- a proposed Contract (the "Contribution Contract"), attached at Tab 8 hereto; providing for CSXT's contribution of the Contribution Segment to FDOT;

- a proposed Quitclaim Deed, attached at Tab 9 hereto, that accompanies and is Exhibit B to the Contribution Contract;

- the Amended SFOMA, attached at Tab 10 hereto; and

- a Transition Agreement, dated March 31, 2014, attached at Tab 11 hereto, which provides technical and other specifications for the transition of maintenance and dispatching responsibilities from CSXT to FDOT.

In addition,

- FDOT and Amtrak entered into an Agreement dated May 1, 1997 (the "FDOT-Amtrak Agreement"), attached at Tab 12 hereto, providing for Amtrak's continued use of the South Florida Line;

- FDOT and SFRTA entered into an Operating Agreement dated June 13, 2013 (the "FDOT-SFRTA Agreement"), attached at Tab 13 hereto, providing for SFRTA's

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[8] The Warranty Deed is also Exhibit 3 to the Sale Contract.

[9] The Supplemental Warranty Deed provided a more specific legal description of the property transferred from CSXT to FDOT, but used identical language as the original Warranty Deed in describing CSXT's perpetual, exclusive retained freight easement. References below to the original Warranty Deed thus cover the Supplemental Warranty Deed as well.

performance of the actual maintenance and dispatching of the South Florida Line on FDOT's behalf; and

- SFRTA and Amtrak entered into an Agreement for Transition, Dispatching, Train Control and Yard Services, dated January 24, 2007 (the "Amtrak Dispatching Agreement"), attached with various amendments at Tab 14 hereto, providing for Amtrak to serve as SFRTA's contractor in the performance of dispatching services on the South Florida Line.

1. Sale Contract and Related Deeds

Pursuant to the terms of the Sale Contract, FDOT acquired the land, real property, rights-of-way and associated property of the South Florida Line from CSXT on May 11, 1988. The Sale Contract provided that:

> the parties desire that CSXT retain, and not transfer to the State, a perpetual easement over the properties acquired by the State limited for the exclusive purpose of providing rail freight service . . . it being the intention of the parties that CSXT remain, and the State not become, the rail carrier subject to the Interstate Commerce Act, the Railway Labor Act or any other federal law relating to the provision of railroad transportation on such properties.

Sale Contract at 2. Section 1.01(a) of the Sale Contract provides that the property transfer to FDOT is "subject to the Easement to be retained by CSXT as set forth in the Deed" attached to the Sale Contract as Exhibit 3. Specifically, the Warranty Deed reserves to CSXT:

> an EASEMENT IN PERPETUITY . . . FOR RAILROAD PURPOSES . . . in, over or on [the South Florida Line], including the use of all the tracks or Trackage . . . within the Premises; and herein known as the CSXT Easement; but SUBJECT TO;
>
> 1. The terms, conditions and limitations of [the OMAPA] . . .
>
> . . .
>
> 3. Grantor [CSXT] and Grantee [FDOT] agree that the CSXT Easement is not retained to the exclusion of Grantee and its

> assigns, except for freight rail purposes, as set forth in said [OMAPA].
>
> 4. Grantor [CSXT] and Grantee [FDOT] agree that the CSXT Easement can be assigned only in conjunction with a transfer or assignment of said [OMAPA].

Warranty Deed at 4.[10]

The Warranty Deed provides expansive definitions of the terms "Trackage," "Railroad Purposes" and "Sidetracks." Thus, CSXT is guaranteed "the exclusive right to use (including rights to repair, replace and maintain) all Trackage on the Premises for freight rail purposes," and "Trackage" includes all conveyed facilities "necessary for the safe operation of rail freight; whether main, siding or sidetrack(s)." Warranty Deed at 5.

The CSXT Easement continues in perpetuity, until it "is abandoned or terminated, as provided in the [OMAPA, now Amended SFOMA]." Deed at 4. As discussed further below, the Amended SFOMA grants CSXT sole control over the abandonment of rail freight service on the South Florida Line, and provides for termination of the CSXT Easement only if and to the extent that CSXT obtains and consummates STB abandonment authority for any portion of the South Florida Line.

2. Contribution Contract and Related Deed

The proposed Contribution Contract provides for CSXT's contribution of the Contribution Segment to FDOT, subject to the CSXT Easement as defined in the Quitclaim Deed. Contribution Contract, § 3.3. Nothing in the Contribution Contract is to be construed to "limit or restrict CSXT's right to enter into any contract, agreement, lease or license pertaining to the provision by CSXT of rail freight service on the [Contribution Segment], subject to the terms

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[10] As explained below, Amended SFOMA explicitly provides that references in the Warranty Deed to OMAPA are to be replaced by references to Amended SFOMA.

and conditions of the [Amended SFOMA]." Contribution Contract, § 3.3(b). And FDOT and SFRTA cannot utilize the Contribution Segment for commuter rail service "unless and until [FDOT] causes to be made such improvements as CSXT and [FDOT] agree are necessary to accommodate commuter rail service, in accordance with the [Amended SFOMA]." Contribution Contract, § 12.2.

The proposed Quitclaim Deed that will convey the Contribution Segment to FDOT uses the same language to describe the CSXT Easement as the 1988 Warranty Deed discussed above. Quitclaim Deed at 2-3. [11]

3. Amended SFOMA

The Amended SFOMA is intended to govern the shared use of the South Florida Line by FDOT and CSXT commencing as early as late October, 2014 but no later than December 31, 2014. It provides that FDOT will be responsible for maintaining and dispatching the South Florida Line, and specifies the standards that will govern FDOT's performance of those activities. It also provides for daily passenger-priority, freight-priority and mixed passenger/freight operating windows on the South Florida Line. The Amended SFOMA was carefully crafted and negotiated by the parties to assure that both passenger and freight trains are handled efficiently on the South Florida Line, and to assure that CSXT possesses sufficient rights, of a permanent and exclusive nature, to provide common carrier freight service on the line. Specific operational aspects of the Amended SFOMA are reviewed in the Discussion section of this motion, infra.

Upon initiation of operations under the Amended SFOMA, the existing 1988 OMAPA will terminate. Amended SFOMA, § 1(d)(ii). That termination "shall not affect the

[11] In 2006, CSXT contributed another parcel of land to FDOT to accommodate a highway project. However, that parcel did not contain track or signals.

rights and interests of CSXT in the CSXT Easement," and existing references to OMAPA in the deeds that define the retained CSXT Easement will be replaced by references to Amended SFOMA. Amended SFOMA, §§ 1(c) and (d).[12]

The Amended SFOMA reiterates the "intention of the parties hereto that CSXT remain, and [FDOT] 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 provisions of railroad transportation on [the South Florida Line]." Amended SFOMA at 4. It provides that "CSXT shall have the exclusive right to use the [South Florida Line] for the exclusive provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars, and rail equipment thereon with its own crews." Amended SFOMA, § 1(a).[13] And it summarizes FDOT's general obligation to assure that CSXT is able to fulfill its common carrier obligation on the South Florida Line:

> It is understood by the parties hereto that, under its management, direction and control, [FDOT] shall furnish CSXT adequate facilities, including, without limitation, tracks, and yards, and building space . . . for CSXT's provision of Rail Freight Service on the [South Florida Line] in substantially the same manner and condition as provided prior to the Commencement Date hereof.

Amended SFOMA, § 1(b).[14]

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[12] Thus, the Amended SFOMA specifically confirms the "understanding of the parties that the conveyance made by the Deeds is subject to the terms, conditions, and limitations of this Agreement in lieu of the 1988 OMAPA." Amended SFOMA, § 1(d).

[13] "Rail Freight Service" is expansively defined to encompass "the transportation by rail of property and moveable articles of every kind, character, and description over the [South Florida Line], including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the [South Florida Line], and supporting activities, over the [South Florida Line] pursuant to the CSXT Easement and this Agreement." Amended SFOMA at 6. The only exception relates to detour movements of other railroads, governed by Section 3(m) of Amended SFOMA.

[14] FDOT's particularized obligations under the Amended SFOMA in support of this general standard are discussed further below.

The Amended SFOMA is essentially perpetual in nature; it continues in effect unless and until CSXT obtains and consummates requisite STB abandonment authority to abandon rail freight service on the South Florida Line. Amended SFOMA, §§ 11(a)(ii)(1), 36(a). If STB authority is not required in the future (due to, for example, federal legislative changes), the Amended SFOMA continues in effect until CSXT gives six months' prior written notice of its termination. Amended SFOMA, § 36(a). FDOT has no unilateral ability to terminate the Amended SFOMA, nor can it direct or compel CSXT to abandon its operations on the South Florida Line. CSXT retains sole discretion regarding abandonment or discontinuance of rail freight service, subject only to FDOT's right to invoke the Board's offer of financial assistance ("OFA") procedures and to be selected by CSXT if more than one offeror files an OFA. Amended SFOMA, § 11.

The Amended SFOMA provides that CSXT may not transfer the CSXT Easement to a non-affiliate without FDOT's prior written consent, but also provides that FDOT's consent cannot be unreasonably withheld, conditioned or delayed. Amended SFOMA, §§ 8(d), 37(a), (b).[15] CSXT also has a right of first refusal to repurchase the physical assets of the South Florida Line in the event FDOT ever sought to dispose of its interests to a party other than another Florida state or local governmental agency. Amended SFOMA, § 38.

4. FDOT-Amtrak Agreement

Pursuant to the May 1, 1997 agreement between FDOT and Amtrak, Amtrak now operates on the South Florida Line as a direct tenant of FDOT, rather than as a tenant of CSXT.

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[15] The limitations on FDOT's withholding of consent do not apply in the case of Florida East Coast Railway Company ("FEC"). Amended SFOMA, § 8(d). The parties are currently studying options regarding the potential operation of FEC freight trains over the South Florida Line. O'Reilly V.S. at 5-6; Stephens V.S. at 6. Any such operations would require CSXT's consent, as well as that of FDOT. Amended SFOMA, § 8(a).

FDOT-Amtrak Agreement, § 3.1. FDOT is obligated to provide dispatching and maintenance of the South Florida Line, although it may designate others to fulfill those responsibilities. FDOT-Amtrak Agreement, §§ 3.4(A), 4.2, 3.1. Running and station dwell times for Amtrak trains are specified, late train penalties are outlined, and a dispatching protocol is provided that governs the train priority of Tri-Rail commuter and Amtrak intercity operations. FDOT-Amtrak Agreement, §§ 3.5, Appendix V and VI.

Pursuant to the FDOT-SFRTA Agreement, FDOT has designated SFRTA to perform actual dispatching and maintenance on the South Florida Line once Amended SFOMA is implemented.[16] The FDOT-SFRTA Agreement specifically recognizes that SFRTA shall dispatch the South Florida Line "in accordance with . . . the Amtrak Agreement [i.e., the FDOT-Amtrak Agreement]." FDOT-SFRTA Agreement, § 6A.1.[17] And SFRTA has in fact hired Amtrak as SFRTA's contractor to initially provide dispatching services on the South Florida Line. See Amtrak Dispatching Agreement (Tab 14). Under that agreement, Amtrak has provided dispatching for SFRTA over the passenger-only New River Bridge segment since 2007, and will extend those dispatching services to the entire South Florida Line once the transaction proposed in this petition is completed. See Stephens V.S. at 3 ("Amtrak employees will be dispatching the entire length of the [South Florida Line] over which Amtrak currently operates its intercity passenger trains."). The Amtrak Dispatching Agreement can be renewed by SFRTA through 2017, after which Amtrak will be able to bid on the next dispatching contract. Stephens V.S. at 5.

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[16] Until implementation of the Amended SFOMA, dispatching and maintenance functions on the South Florida Line will continue to be performed by CSXT.

[17] Similarly, SFRTA is required to maintain and repair the South Florida Line "in accordance with . . . the Amtrak Agreement . . . ." FDOT-SFRTA Agreement, § 6A.9.

Notwithstanding FDOT's delegation of maintenance and dispatching responsibilities on the South Florida Line to SFRTA, FDOT retains the responsibility to Amtrak for the provision of such services. FDOT-Amtrak Agreement, § 3.1.

DISCUSSION

Ordinarily, the acquisition of ownership of an active rail line by a non-carrier, including a state or a state entity like FDOT, would require Board approval under 49 U.S.C. § 10901. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). A long line of cases beginning with the seminal State of Maine decision, however, has held that Board authorization is not required where the common carrier rights and obligations that attach to a line of railroad are not transferred with the line's physical assets. Maine DOT, 8 I.C.C.2d at 836-837; see, e.g., Massachusetts Department of Transportation -- Acquisition Exemption -- Certain Assets of CSX Transportation, Inc., Finance Docket No. 35312 (STB served May 3, 2010) ("MassDOT") at 4-8, aff'd sub nom. Bhd. of R. Signalmen v. STB, 638 F.3d 807 (D.C. Cir. 2011); Rail Term Corp. -- Petition for Declaratory Order, Finance Docket No. 35582 (STB served November 19, 2013) at 11-13 (reaffirming continuing validity of State of Maine principles in context of publicly-owned, shared use rail corridors).

A basic requirement of such cases is that the incumbent freight railroad retain a permanent easement that permits it to continue to provide common carrier freight service. The Port of Seattle -- Acquisition Exemption -- Certain Assets of BNSF Railway Company, Finance Docket No. 35128 (STB served October 27, 2008) ("Port of Seattle") at 3. Beyond that, the relevant inquiry is whether the freight railroad has sufficient property and contract rights to conduct freight operations, and whether the line's new owner (usually a state agency like FDOT)

has the right or ability to materially or unreasonably interfere with the railroad's freight operations. E.g., State of Michigan Department of Transportation -- Acquisition Exemption -- Certain Assets of Norfolk Southern Railway Company, Finance Docket No. 35606 (STB served May 8, 2012 ("Michigan DOT") at 4; Metro Regional Transit Authority -- Acquisition Exemption -- CSX Transportation, Inc., Finance Docket No. 33838 (STB served October 10, 2003) ("Akron Metro") at 4; see New Jersey Transit -- Acq. Exempt. -- Certain Assets of Conrail, 4 S.T.B. 512, 514 (2000) ("NJT/Bordentown") (question is whether freight carrier "has retained a permanent easement and whether it has sufficient interest and control over the line to permit it to carry out its common carrier obligation.").

The Board has summarized how Maine DOT and its progeny have been applied in the "shared use" context, where a state agency acquires a rail line that will be used both for continuing freight service and for new commuter or passenger transit service:

> To balance the development of mass transit with the retention of freight rail service, the freight carrier need not necessarily retain full control. Instead, the Board examines in each case whether the agreements between the parties continue to give the freight carrier the ability to conduct its existing and reasonably foreseeable freight operations so that it can satisfy its common carrier obligation.
>
> While the freight carrier must continue to have a permanent easement or its equivalent to provide freight service, the public agency acquiring the right-of-way and track may negotiate terms and conditions with the freight carrier necessary to provide reliable commuter service or protect the agency's investment so long as such terms and conditions do not unreasonably interfere with freight rail service. Thus, the easement or the operating agreement may restrict freight operations to specific parts of the day, provided that the window for exclusive freight operations is adequate to satisfy the service needs of freight shippers. Likewise, the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight carrier has the right to inspect and to request prompt repair of any track defects.

Maryland Transit Administration -- Petition for Declaratory Order, Finance Docket No. 34975 (STB served September 19, 2008) ("MTA II") at 4-5.

FDOT's continued ownership of the South Florida Line, its proposed acquisition of the Contribution Segment, and its proposed assumption of maintenance and dispatching responsibilities on the South Florida Line satisfy all of the criteria of State of Maine and its progeny. FDOT has made significant capacity enhancements to the South Florida Line, and the shared use of the line by Tri-Rail commuter trains, Amtrak intercity trains and CSXT freight trains have proceeded without significant disruption for more than twenty years. FDOT and CSXT have carefully crafted the Amended SFOMA to assure that the transfer of maintenance and dispatching from CSXT to FDOT will not adversely affect CSXT's continued ability to provide adequate common carrier rail freight service in the region. Indeed, that agreement is largely drawn from the CFOMA utilized in the FDOT/Orlando transaction, which the Board has already considered and found to satisfy the State of Maine standard. FDOT does not possess and will not acquire any common carrier obligation as a result of the existing and contemplated shared use arrangements on the South Florida Line, and the Board should issue a declaratory order so finding.

1. General Provisions

CSXT retains a permanent, exclusive easement to conduct rail freight operations on the South Florida Line (including the Contribution Segment), and the related protective provisions of the Amended SFOMA will continue in place for as long as the easement exists. Warranty Deed, Tab 6; Quitclaim Deed, Tab 9; Amended SFOMA, Tab 10, § 36(a). The easement terminates only if CSXT decides to abandon the South Florida Line for common carrier freight purposes, a decision that is within CSXT's sole discretion, subject to the Board's

approval. Amended SFOMA, § 11(a). This is not a case, then, where the freight easement is subject to periodic renewal at the state agency's choosing, or where the state agency has the ability to compel the carrier's abandonment of freight service. Cf. Wisconsin Department of Transportation -- Petition for Declaratory Order, Finance Docket No. 34764 (STB served December 2, 2005) at 2; Southern Pac. Transp. Co. -- Aban. -- L.A. County, CA, 8 I.C.C.2d 495 (1992), recons. denied, 9 I.C.C. 2d 385 (1993); see Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company, Finance Docket No. 33046 (STB served October 28, 1996) ("Sacramento-Placerville") at 2 (no STB jurisdiction where public agency "has no power to require [carrier] to discontinue or curtail its freight service on the line.").

FDOT has no right to conduct common carrier freight operations on the South Florida Line, nor to admit any other party for that purpose. Amended SFOMA, § 1(a) ("CSXT shall have the exclusive right to use the [South Florida Line] for the exclusive provision of Rail Freight Service . . . "); Amended SFOMA, § 8(a) (FDOT's right to use the South Florida Line and to grant rights to others "shall not be used to permit any form of Rail Freight Service on the [South Florida Line] without CSXT's prior written consent."). CSXT has the exclusive right to "enter contracts, agreements, lease and licenses . . . with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the [South Florida Line]." Amended SFOMA, § 8(d). It is the explicit mutual intention of the parties that FDOT shall "not become [a] rail carrier" on the South Florida Line. Amended SFOMA at 1. Because FDOT does not hold itself out as a common carrier on the South Florida Line and has neither the right nor ability to provide rail freight service on the line, its ownership of the South Florida Line does not involve a transfer of a common carrier obligation and is not subject to the Board's authorization.

Central Puget Sound Regional Transit Authority -- Acquisition Exemption -- BNSF Railway Company, Finance Docket No. 34747 (STB served November 18, 2005) at 2; Metro-North Commuter Railroad Company -- Acquisition and Operation Exemption -- Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC, Finance Docket No. 34293 (STB served May 13, 2003) ("Metro North") at 2, 3.

CSXT may, with FDOT's consent, transfer the CSXT Easement to another carrier, or admit new third-party rail carriers to the South Florida Line. Amended SFOMA, §§ 8(e), 37(a). In nearly all instances, FDOT's consent cannot be unreasonably withheld, conditioned or delayed. Id. The Board has explained that "[i]t is not uncommon for a public entity . . . that seeks to acquire the physical assets of a rail line to use or preserve for rail freight and commuter service [] to play a role in the subsequent assignment of the freight easement . . . ." Port of Seattle at 4. Particularly given the restriction against unreasonable uses of FDOT's consent power, these contractual provisions do not unreasonably interfere with CSXT's ability to fulfill its common carrier obligation on the South Florida Line.

2. Operating Windows

The Amended SFOMA provides for three types of operating windows on the South Florida Line: 1) a passenger-priority window from 5:00 am to 9:00 am daily and again from 3:00 pm to 7:00 pm daily; 2) a freight-priority window from 11:00 pm to 5:00 am daily; and 3) a mixed passenger/freight window from 9:00 am to 3:00 pm daily and again from 7:00 pm to 11:00 pm daily. Amended SFOMA, § 3(i). CSXT freight trains can access and use the South Florida Line during the passenger priority window, as long as those trains do not impede or delay

Tri-Rail commuter trains.[18] The parties will agree on a dispatching protocol for the mixed passenger/freight window, which must permit CSXT to operate at least 1.5 additional freight trains per hour beyond existing freight operations. Amended SFOMA, § 3(i)(2). Major track and signal work would occur only between 5:00 am and 1:00 am the following day, i.e., largely outside of the freight priority window, while ordinary maintenance and inspection functions will be spread over all windows. Amended SFOMA, § 3(i)(4).

Thus, under the Amended SFOMA, freight train operations will be permitted 24 hours per day, and for 16 hours every day when either freight trains have priority over commuter train movements (6 hours) or mixed passenger and freight operations are conducted under a dispatching standard that protects all existing freight movements and significant future freight traffic growth (10 hours). As CSXT's Mr. Westbrook points out, the Amended SFOMA actually reduces the passenger priority window by a half hour from what is currently provided in OMAPA. Westbrook V.S. at 4-5. CSXT has not experienced significant delays from commuter train interference under the existing arrangements, and does not expect train scheduling or frequency to change as a result of the implementation of Amended SFOMA. Westbrook V.S. at 7. CSXT freight traffic levels on the South Florida Line have been essentially flat for the past twenty years, and CSXT does not foresee significant freight volume growth in the future. Nonetheless, CSXT believes that significant additional capacity exists on the South Florida Line, and concludes that it will be able to satisfy its common carrier obligations under Amended SFOMA. Westbrook V.S. at 8.

The rights of Amtrak to utilize the South Florida Line under its existing agreement with FDOT are specifically recognized in the Amended SFOMA (§ 3(l)), and

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[18] Similarly, commuter trains may operate in the freight priority windows if they do not impede or delay freight train movements.

operations in the various operating windows on the South Florida Line will be coordinated to fulfill FDOT's obligation to give priority to on-time Amtrak trains. Amended SFOMA, § 3(i)(5). Amtrak operations have been conducted effectively and efficiently for 15 years under the FDOT-Amtrak Agreement, and currently have an on-time performance rate of approximately 90%. Stephens V.S. at 4-5. Those operations will not be adversely affected by implementation of the Amended SFOMA. O'Reilly V.S. at 5; Westbrook V.S. at 8; Stephens V.S. at 5-6.

The Board has consistently held that segregated or preferential operating windows for passenger and freight service are acceptable where the windows available for freight operations are adequate to satisfy the service needs of freight shippers. MassDOT at 12; MTA II at 5; New Mexico Department of Transportation -- Acquisition Exemption -- Certain Assets of BNSF Railway Company, Finance Docket No. 34793 (STB served February 6, 2006 ("New Mexico DOT") at 2 (preferential operating windows not prohibited where carrier retains ability to provide freight service and "Amtrak service [is] provided in accordance with statutory and contractual standards."); Akron Metro at 4; NJT/Bordentown, 4 S.T.B. at 515. Here, the parties have provided for accommodation of existing and potential future CSXT freight traffic in the development of the operating windows for the South Florida Line. Indeed, unlike the FDOT/Orlando transaction, which had an exclusive passenger operating window, the Amended SFOMA provides a baseline of flexibility to operate freight trains at any time of the day. Shared use of the South Florida Line for freight and passenger service under the terms of the Amended SFOMA will not unduly restrict CSXT in the provision of rail freight service, and will not result in any transfer of common carrier rights or obligations to FDOT.

A copy of this petition, without certain of its voluminous exhibits, is being served on all local shippers located on the South Florida Line. FDOT will provide written certification to the Board upon completion of that service.

3. Maintenance

The Amended SFOMA provides that FDOT will be responsible for track maintenance on the South Florida Line. Amended SFOMA, § 4. FDOT is required to maintain the mainline tracks of the South Florida Line (excluding the Oleander Branch and the Downtown Spur) to FRA Class 4 standards, with maximum track speeds of 60 miles per hour for freight trains and 79 miles per hour for passenger trains.[19] Maintenance of all tracks, bridges, signals and right-of-way must be in accordance with CSXT's geometry standards, the Manual for Railway Engineering of the American Railway Engineering Maintenance of Way Association ("AREMA"), best generally accepted industry standards and all applicable FRA track and signal standards. Amended SFOMA, § 4(b). Train speeds on the South Florida Line cannot be lowered without CSXT's consent. Amended SFOMA, § 4(c). CSXT has the right to inspect the South Florida Line to assure FDOT's compliance with the Amended SFOMA maintenance obligations and to require that FDOT perform any necessary repairs. In the unlikely event FDOT fails to fulfill its maintenance obligations, CSXT may do so at FDOT's expense. Amended SFOMA, § 4(e).

FDOT's agreement with Amtrak similarly requires FDOT to maintain the South Florida Line to a maximum authorized speed of 79 miles per hour. FDOT-Amtrak Agreement, § 4.2 and Appendix I. FDOT's agreement with SFRTA, under which SFRTA will assume responsibility for performing maintenance on the South Florida Line on FDOT's behalf,

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[19] The Oleander Branch and the Downtown Spur, which are freight-only, are to be maintained to allow 25 mile per hour operation. Amended SFOMA, § 4(b).

incorporates the maintenance standards from the FDOT-Amtrak Agreement. FDOT-SFRTA Agreement, § 6A.9.

The Board has found that similar maintenance arrangements did not result in transfer of common carrier rights or obligations to the owning governmental agency. MassDOT at 10; Maryland Transit Administration -- Petition for Declaratory Order, Finance Docket No. 34975 (STB served October 9, 2007) ("MTA I") at 6; Akron Metro at 3; Sacramento-Placerville at 2; see also Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 34374 (STB served July 23, 1996) ("LACTC/UP") at 3 (needs of passenger service give agency added incentive to fulfill track maintenance obligation).

4. Dispatching

Under the Amended SFOMA, FDOT will be responsible for dispatching of all trains on the South Florida Line. Amended SFOMA, § 3(a). Trains will be dispatched "without prejudice or partiality to any party and in such manner, as will afford the economical and efficient manner of movement of all trains." Amended SFOMA, § 3(i). Specific dispatching protocols for train movements during the mixed passenger/freight operating window will be mutually agreed to by the parties. Amended SFOMA, § 3(i)(2).

Under these circumstances and standards, the vesting of dispatching control in FDOT does not make FDOT a common carrier or unduly impair CSXT's common carrier rights and obligations on the South Florida Line. Michigan DOT at 5 (citing FDOT/Orlando); MTA I at 6; New Mexico DOT at 2; Metro North at 2. The Board has explained that:

> Dispatching control has less importance in its own right than it has as a means of enforcing the service priorities accorded under the operating agreement. If the operating agreement considered as a whole and the circumstances surrounding it are not likely to impair

> freight service, the passenger operator's control over dispatching will not by itself create such an obstacle, because the latter merely implements the former.

LACTC/UP at 3. As discussed above, the contractual provisions governing operations on the South Florida Line assure that CSXT will continue to be able to provide adequate freight service to local shippers. FDOT's control over dispatching does not diminish those capabilities.

Amtrak service on the South Florida Line also will not be adversely affected by a shifting of dispatching responsibility from CSXT to FDOT. Amended SFOMA specifically recognizes FDOT's obligation to give priority to on-time Amtrak trains. Amended SFOMA, § 3(i)(5). And as explained above, the proposed changes will actually result in Amtrak being the party that performs the dispatching function on the South Florida Line.[20] Those Amtrak dispatchers will work out of SFRTA's headquarters building in Pompano Beach, Florida, facilitating close coordination and communication with SFRTA. Stephens V.S. at 5. While construction and weather-related issues have adversely affected Amtrak service in other places, those factors are not present on the South Florida Line and SFRTA is committed to accommodations of Amtrak that satisfy the governing contractual and legal standards. Stephens V.S. at 5-6.[21]

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[20] Pursuant to Amended SFOMA, dispatching responsibility for the South Florida Line will be transferred from CSXT to FDOT. Pursuant to the FDOT-SFRTA Agreement, FDOT will delegate the dispatching function to SFRTA. And pursuant to the Amtrak Dispatching Agreement, SFRTA is hiring Amtrak as SFRTA's contractor to actually provide dispatching services on the line.

[21] Should the Board desire, SFRTA is willing to provide the agency with quarterly on-time performance reports for Amtrak trains on the South Florida Line for a period of a year after implementation of Amended SFOMA. Stephens V.S. at 6.

5. Spur Tracks and Improvements

The Amended SFOMA provides that FDOT may request that CSXT remove unused sidetracks on the South Florida Line, but only where 1) no rail freight service has been provided on the sidetrack for a period of thirty consecutive months, and 2) CSXT has contacted the shipper and determined that future use of the sidetrack for rail freight purposes is not reasonably foreseeable. Amended SFOMA, § 11(d). CSXT may construct additional sidetracks or other improvements on the South Florida Line, in consultation and agreement with FDOT and with reasonable conditions that FDOT may request. Amended SFOMA, § 8(e). The FDOT approval process, however, may not be used to unreasonably interfere with CSXT's ability to meet future freight service demands:

> It is understood by the parties hereto that: the purpose of the aforesaid approval process is to ensure that any work performed on the [South Florida Line] is done in a manner consistent with [FDOT's] reasonably foreseeable use(s) for the [South Florida Line]; [and] that the approval process specified herein shall not be used to unreasonably prohibit CSXT's development of railroad freight business on the [South Florida Line].

Amended SFOMA, § 8(e).

For its part, any improvements to the South Florida Line undertaken by FDOT for commuter passenger purposes "shall not unreasonably interfere with CSXT's provision of Rail Freight Service on the [South Florida Line] as contemplated in Section 1(a) of [the Amended SFOMA] or CSXT's operations on the CSXT Easement . . . ." Amended SFOMA, § 5(a); see also Amended SFOMA, § 8(c) (specifying clearances that must be maintained along the South Florida Line, including at TriRail station platform locations).

These contractual rights and provisions reasonably protect CSXT's interest in providing rail freight service, and assure that FDOT will not have the ability to unduly restrict or

impair CSXT's fulfillment of its common carrier obligation on the South Florida Line. Cf. MTA II at 4 (contractual provision for seeking abandonment of line with no freight operations for sixty consecutive months "would not seem inconsistent with any freight rail service needs.");[22] Metro North at 2-3.

Considering all of the agreements and circumstances outlined above, and in accordance with the Board's long-standing line of State of Maine precedent, the Board should find that FDOT's ownership, maintenance and dispatching of the South Florida Line (including the Contribution Segment) does not transfer any common carrier rights or obligations to FDOT nor make FDOT a common carrier, and that CSXT retains sufficient property and contractual rights in the South Florida Line to conduct existing and reasonably foreseeable freight operations so as to satisfy its common carrier obligation.

6. Labor Considerations

CSXT does not anticipate that the transfer of dispatching and maintenance to FDOT will have a significant impact on CSXT employees. Although CSXT will no longer dispatch or maintain the South Florida Line once the Amended SFOMA is implemented, CSXT does not expect to furlough any of its employees as a result of the transfer of dispatching and maintenance. Although not required to do so, CSXT offered to negotiate agreements with its unions representing potentially affected employees, which would provide New York Dock-type economic protective benefits to any employees adversely affected by the changes. CSXT reached such agreements with unions that represent the vast majority of employees who hold potentially

[22] Here, unlike in MTA, there are no provisions that require CSXT to seek abandonment of any portion of the South Florida Line for non-use. Abandonment decisions are left solely to CSXT's discretion. The relevant provisions of the Amended SFOMA relate only to the removal of unused spur tracks, an action not requiring Board authority. 49 U.S.C. § 10906.

affected positions, including the Brotherhood of Locomotive Engineers and Trainmen, United Transportation Union, Brotherhood of Maintenance of Way Employee, American Train Dispatchers Association and Brotherhood of Railway Carmen. Westbrook V.S. at 8.

EXPEDITED CONSIDERATION

FDOT respectfully requests expedited consideration of this petition, and asks that a Board decision be issued by October 1, 2014 to allow timely implementation of the Amended SFOMA. The targeted "Commencement Date" stated in the Amended SFOMA is June 30, 2014, but in any event no later than December 31, 2014. Amended SFOMA, § 1(c). The agreement specifically provides that the Commencement Date may not occur until the Board has issued a State of Maine determination with respect to the contemplated arrangements. Amended SFOMA, § 1(c)(i)(1). FDOT, CSXT and SFRTA have recently entered into a detailed Transition Agreement (Tab 11) that adopts final technical and other provisions to effectuate a transfer of maintenance and dispatching responsibilities on the South Florida Line, and the parties are engaging in close coordination and communications to ensure a seamless transition. Stephens V.S. at 4. That process is now expected to be completed as soon as the end of October, 2014.

In light of these circumstances, it is reasonable for the Board to expedite this matter as necessary and issue a decision by October 1, 2014. That decisional timeline is consistent with the Board's action in other similar cases. E.g., Michigan DOT (2 months); New Mexico DOT (2 months); UTA (3 months); Central Puget Sound (3 months); Metro North (2 months).

WHEREFORE, FDOT respectfully requests that the Board issuing a declaratory order finding that the arrangements contemplated by the Amended SFOMA do not give rise to a transaction requiring Board authorization.

Respectfully submitted,

By: _____

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ATTORNEYS FOR FLORIDA DEPARTMENT OF TRANSPORTATION

Dated: May 5, 2014

LIST OF EXHIBITS

Tab 1	-	Verified Statement of Gerry O'Reilly, District 4 Director of Transportation Development, Florida Department of Transportation
Tab 2	-	Verified Statement of Jay S. Westbrook, Assistant Vice President – Passenger Operations, CSX Transportation, Inc.
Tab 3	-	Verified Statement of Jack L. Stephens, Executive Director, South Florida Regional Transportation Authority
Tab 4	-	Map of South Florida Line
Tab 5	-	Contract for Installment Sale and Purchase, dated May 11, 1988, between FDOT and CSXT [without exhibits]
Tab 6	-	Warranty Deed, dated May 11, 1988 [without exhibits]
Tab 7	-	Supplemental Warranty Deed, dated March 28, 1990 [without exhibits]
Tab 8	-	Proposed Contribution Contract between CSXT and FDOT
Tab 9	-	Proposed Quitclaim Deed, to accompany proposed Contribution Contract
Tab 10	-	Amended South Florida Operating and Management Agreement, dated January 25, 2013, between FDOT and CSXT
Tab 11	-	Transition Agreement, dated March 31, 2014, between FDOT and CSXT
Tab 12	-	Agreement, dated May 1, 1997, between National Railroad Passenger Corporation (Amtrak) and FDOT
Tab 13		Operating Agreement, dated June 13, 2013, between FDOT and SFRTA [without exhibits]
Tab 14	-	Agreement for Transition, Dispatching, Train Control and Yard Services, dated January 24, 2007, between SFRTA and Amtrak, with Amendments dated March 27, 2009, August 28, 2009 and April 17, 2013

TAB 1

VERIFIED STATEMENT
OF
GERRY O'REILLY

My name is Gerry O'Reilly. I am the Director of Transportation Development for District Four of the Florida Department of Transportation ("FDOT"). My address is 3400 West Commercial Boulevard, Ft. Lauderdale, Florida 33309. Among other things, District Four is responsible for overseeing the management of the infrastructure comprising the South Florida Rail Corridor described below.

I have served in my present position since 2001. I have also served as Interim District Secretary for District 6 of FDOT and Interim Executive Director of Florida's Turnpike Enterprise in Orlando, Florida. I hold a Bachelor of Engineering degree and a Master's degree in Engineering Science from University College of Dublin, Ireland. As Director of Transportation Development for District Four, I personally led the negotiations with CSX Transportation, Inc. ("CSXT") that resulted in the execution of the Amended South Florida Operating and Management Agreement described herein.

FDOT is the owner of the right-of-way and tracks that make up the South Florida Rail Corridor between Milepost SX 964.9 in Riviera Beach, Florida (just north of West Palm Beach) and Milepost SX 1037.5 at Miami, Florida (the "Corridor"). The Corridor includes two "branches" or "extensions" at the south end, one between Milepost SXD 1036.6 and the end of the right-of-way at Milepost SXD 1039.92 in Miami (the "Downtown Spur") and the other (the "Homestead Branch") between Milepost SX 1036.8 (Milepost SXH 36.8) in Miami and Milepost SXH 41.12 at Oleander, Florida (the change of ownership point on the line that continues south to Homestead, Florida). FDOT acquired the Corridor from CSXT on May 11, 1988.

FDOT desired to acquire the Corridor to facilitate the initiation of commuter rail service between West Palm Beach and Miami. FDOT had no intent or desire to assume any part of CSXT's freight operations or common carrier freight service obligations. Accordingly, FDOT and CSXT structured the transaction so that CSXT retained an exclusive freight easement on the entire Corridor (including the "extensions") by which CSXT would continue to use the Corridor to provide common carrier freight service to current and future industries.

I understand that prior to the sale, representatives of CSXT and the State met with the staff of the Interstate Commerce Commission, shared information regarding the proposed transaction, and obtained informal guidance that ICC jurisdiction was not implicated by the contemplated arrangement.

To implement shared use of the Corridor, FDOT and CSXT entered into the "Operating and Management Agreement -- Phase A" dated May 11, 1988 ("OMAPA"), a detailed agreement that would govern operations, maintenance and dispatching on the Corridor. Under OMAPA, CSXT would continue to maintain and dispatch the Corridor. However, it was always contemplated that FDOT would, at some point, assume responsibility for those functions. Accordingly, at the time that OMAPA was executed, the parties also agreed to the "Operating and Management Agreement -- Phase B" dated May 11, 1988 ("OMAPB") under which FDOT would be responsible for maintenance and dispatching of the Corridor and which would take effect upon termination of OMAPA. However, OMAPA is still in effect. CSXT continues to maintain and dispatch the Corridor and the Corridor continues to be operated pursuant to OMAPA, as amended. The National Railroad Passenger Corporation ("Amtrak") operates over the Corridor today pursuant to a 1997 agreement with FDOT.

Commuter service on the Corridor began on January 9, 1989 under the oversight of the Tri-County Commuter Rail Authority under the name "Tri-Rail," reflecting the three counties – Palm Beach, Broward and Miami-Dade -- that it serves. In 2003, the Rail Authority was legislatively transformed into the South Florida Regional Transportation Authority ("SFRTA") under whose authority Tri-Rail commuter service is provided on the Corridor today. FDOT's role is limited to owning the property and providing funding for operations, maintenance and capital improvements. SFRTA conducts the actual commuter rail operations on the Corridor, pursuant to agreement with FDOT.

The Corridor as acquired by FDOT in 1988 was largely a single-track rail line on which CSXT provided freight service and on which Amtrak provided intercity passenger service. At the time commuter service began, it was clear that operating freight trains, Amtrak trains and commuter trains on the single-track line would be a challenge. Beginning in 1995, FDOT undertook an approximately $466 million capital program in five phases to increase the Corridor's capacity. Except for two miles at the south end which is currently single-track (over which Tri-Rail does not currently operate), today the main line on the Corridor is double-track, with high capacity, four aspect bi-directional signals on both main tracks with crossovers at frequent intervals. The main line on the Corridor is maintained to overall Federal Railroad Administration Class 4 standards. Maximum permitted speeds on the main tracks are generally 79 mph for passenger trains and 60 mph for freight trains. A study to double track the remainder of the Corridor from Milepost SX 1035.5 to Milepost SX 1037.5 (21st Street) at the new Miami Airport Station (Miami Intermodal Center) is underway.

Tri-Rail initially provided commuter service between approximately Milepost SX 969.8 at West Palm Beach and Milepost SX 1036.4 at the original Miami Airport Station

(currently the Hialeah Market Station) in Miami. In 1998, commuter service was extended northward approximately 3.5 miles from West Palm Beach to Mangonia Park and southward approximately 1.1 miles from Hialeah Market Station (the former Miami Airport Station) to the new Miami Airport Station at Milepost SX 1037.5. Tri-Rail is currently making its southernmost stop at the Hialeah Market Station at Milepost 1036.3 until completion of the Miami Intermodal Center ("MIC"), now under construction near Milepost SX 1037.5. Upon completion of the MIC, Tri-Rail will extend commuter service south to the MIC. It is also contemplated that Amtrak will extend its service south to the MIC.

Since FDOT acquired the Corridor in 1988, CSXT has abandoned its freight easement on the Downtown Spur east of Milepost SX 1039.92, and between Milepost SX 1036.8 and Milepost SX 1037.5 at the south end of the Corridor. The latter abandonment, of a segment no longer utilized for freight purposes, accommodated construction of the MIC discussed in the prior paragraph.

On January 25, 2013, FDOT and CSXT entered into the "Amended South Florida Operating and Management Agreement" ("Amended SFOMA") which updated, restated and replaced a 2007 version of the Amended SFOMA. The Amended SFOMA is the current version and is the agreement that the parties intend to implement (OMAPB never became effective and will not be implemented). Although the Amended SFOMA set a target date for implementation of June 30, 2014, but no later than December 31, 2014, the parties currently contemplate implementation no sooner than the end of October, 2014. At the time the Amended SFOMA is implemented, OMAPA, now over 25 years old, and entered into before commuter operations on the Corridor began, will be terminated.

Among other things, the Amended SFOMA provides that on the Commencement Date, FDOT will assume responsibility for maintenance and dispatching of the Corridor from CSXT. Pursuant to an Operating Agreement between FDOT and SFRTA dated June 13, 2013, SFRTA will perform these maintenance and dispatching functions on FDOT's behalf.

The Amended SFOMA provides for a slightly smaller evening commuter window than under OMAPA, establishes for the first time a freight priority window in which freight trains have priority over passenger trains, establishes a mixed passenger and freight window, and specifically provides for accommodating additional freight trains in the mixed window. These agreed operating "windows" are described in detail in the accompanying Verified Statement of Jay S. Westbrook of CSXT.

Before purchasing the Corridor, FDOT performed several studies to confirm that with double-tracking of the Corridor and the other improvements, the Corridor could accommodate current and foreseeable CSXT, Amtrak and Tri-Rail operations. The results of the studies were shared with and discussed with CSXT. CSXT advised FDOT that CSXT concurred with FDOT's conclusion that with the improvements there would be ample capacity for all users. Actual experience since completion of the improvements has confirmed the parties' conclusions. Although there were some delays to both freight and passenger trains when the Corridor was single-track, since completion of the improvements in 2007, delays to CSXT freight trains due to commuter trains and delays to commuter trains due to freight trains have been minimal. Delays to Amtrak trains on the Corridor since 2007 have also been minimal.

FDOT and CSXT also have agreed that CSXT will convey to FDOT an additional segment of the Miami Subdivision at the northern end of the Corridor between Milepost SX 964.9 at Riviera Beach and a point at or near Milepost SX 964.16. The precise latter milepost

may vary slightly pending further field measurements taking into account signal location, signal circuits, the location of insulated joints, etc. The additional segment, approximately three-quarters of a mile in length, will facilitate the future construction off of the main line of a maintenance/layover facility to support Tri-Rail commuter service.

Today, Tri-Rail operates 50 commuter trains (25 in each direction) each week day and 30 commuter trains (15 each way) on each weekend day on the Corridor. I understand that CSXT operates an average of 10-12 freight trains per day on the Corridor. Amtrak operates 4 trains per day (2 each way): the *Silver Star* and the *Silver Meteor*. The shared use of this Corridor by Tri-Rail, CSXT and Amtrak has worked well.

As a result of the improvements undertaken between 1995 and 2007, the Corridor has ample capacity to handle all current and foreseeable volumes of Tri-Rail, CSXT and Amtrak service. No change in the schedules and no additional Tri-Rail, CSXT or Amtrak trains are contemplated as a result of the implementation of the Amended SFOMA.

In September of 2013, FDOT received a Transportation Investment Generating Economic Recovery (TIGER) grant from the United States Department of Transportation which will be applied toward the cost of constructing new track connections at the north end and the south end of the Corridor between the Corridor and tracks of the Florida East Coast Railway ("FEC"). The new connections will facilitate the initiation of Tri-Rail commuter service on the FEC tracks between downtown Miami and Jupiter, Florida and potentially the diversion of some overhead FEC freight operations from FEC's line onto the Corridor. The potential options are currently being studied. No agreements have been reached. Any change in operations on the Corridor is not likely to occur before 2015. Under the Amended SFOMA, the admission of any other freight carrier to the Corridor requires CSXT's prior consent. FDOT and SFRTA, working

with CSXT pursuant to the Amended SFOMA, will ensure that CSXT's ability to provide freight service on the Corridor will not be adversely affected by any such changes.

Based on my thirteen years of actual experience with this Corridor, I am confident that the implementation of the Amended SFOMA, including specifically FDOT's assumption of dispatching and maintenance responsibilities on the Corridor and the refined operating windows, will have no adverse effect on CSXT's ability to carry out its common carrier obligations.

VERIFICATION

State of Florida)
) SS:
County of Broward)

Gerry O'Reilly, being duly sworn, deposes and says that he is the Director of Transportation Development for District Four of the Florida Department of Transportation, that he has read the foregoing statement, knows the facts asserted therein, and that the same are true as stated.

Gerry O'Reilly

SUBSCRIBED AND SWORN TO
before me this 8th day of
April, 2014.

Notary Public

PHILIPPA SAMUEL WELLS-HARRISON
MY COMMISSION #EE008340
EXPIRES: JUL 23, 2014
Bonded through 1st State Insurance

My Commission expires:

TAB 2

VERIFIED STATEMENT
OF
JAY S. WESTBROOK

My name is Jay S. Westbrook. I am Assistant Vice President – Passenger Operations for CSX Transportation, Inc. ("CSXT"). I have more than 29 years of experience in the rail industry, having served in positions with CSXT in Engineering, Transportation, State Relations and Government Affairs and as Special Assistant to CSXT's Chief Operations Officer. As Assistant Vice President – Passenger Operations, I am responsible for CSXT's relationships with the passenger agencies operating on CSXT-controlled tracks and with the agencies that allow CSXT to operate on tracks controlled by such agencies. Additionally, I am responsible for the day-to-day safe operation of passenger trains on CSXT-controlled tracks as well as the planning associated with new passenger service contemplated on CSXT.

CSXT is a Class I rail carrier operating 21,000 route miles of rail lines in 23 states east of the Mississippi River, the District of Columbia and the Canadian Provinces of Ontario and Quebec. Based in Jacksonville, Florida, CSXT is the largest railroad in the State of Florida, operating a network of main lines and secondary lines that, together with its arrangements with other rail carriers, allows it to serve all the major population centers in the state, including, among other locations, the ports of Fernandina, Ft. Lauderdale, Jacksonville, Manatee, Miami, Panama City, Pensacola and Tampa and the heart of the state's agricultural and mining areas.

In 1988, CSXT reached agreement with the Florida Department of Transportation (the "State") to sell to the State a 72.6-mile portion of CSXT's single-track Miami Subdivision line between Riviera Beach (north of West Palm Beach) and Miami, Florida (the "Line"). The Line included an additional 8.7 miles of secondary lines in the Miami area. A map showing the Line in relation to other CSXT lines in the area is attached to the Petition as Tab 4. The State

advised CSXT that it desired to acquire ownership in order to upgrade the Line and institute commuter rail service on it. The commuter service, to be operated under the auspices of the Tri-County Commuter Rail Authority (and later the South Florida Regional Transportation Authority ("SFRTA")), would be known as "Tri-Rail." As part of the sale transaction, CSXT would retain an exclusive perpetual freight easement on the Line pursuant to which CSXT would continue to fulfill its common carrier obligations and provide freight service on the Line to all current and future local industries. FDOT would have no right to conduct common carrier freight operations on the Line, nor to admit any other party for that purpose without CSXT's prior consent.

As part of the sale transaction, CSXT and the State entered into the "Operating and Management Agreement – Phase A," dated May 11, 1988 ("OMAPA") which would govern operations, maintenance and dispatching on the Line. As discussed further below, OMAPA, as amended, is still in effect.

Though I did not participate in the negotiation of OMAPA, having been involved with this Line for the last eleven years, I am very familiar with OMAPA's provisions and the operations of CSXT and Tri-Rail conducted pursuant to it. Under OMAPA, CSXT continues to dispatch and maintain the Line. However, at the same time as the parties executed OMAPA, they also agreed to the "Operating and Management Agreement – Phase B" ("OMAPB") which would take effect upon a future termination of OMAPA and which contemplated that FDOT would dispatch and maintain the Line.

I understand that prior to the sale, representatives of CSXT and the State met with the staff of the Interstate Commerce Commission, shared information regarding the proposed transaction, and obtained informal guidance that ICC jurisdiction was not implicated by the contemplated arrangement. The sale transaction closed on May 11, 1988. Tri-Rail began

commuter operations in January, 1989 over a portion of the still single-track Line between West Palm Beach and the original Miami Airport Station (now known as "Hialeah Market Station").

Beginning in 1995, the State undertook a multi-phase project to upgrade and improve the Line. The improvements included construction of a second main track over most of the Line, upgrading of the track to FRA Class 4 standards, installation of crossovers at frequent intervals, installation of new four aspect bi-directional signals on both main tracks, and construction of a new rail fixed-span double-track high bridge over the New River near Fort Lauderdale parallel to the existing rail bascule bridge. The improvements were completed in 2007.

Under OMAPA, once the improvements were completed, passenger train speeds up to 79 mph and freight train speeds up to 60 mph would be permitted over the main tracks. Pursuant to OMAPA as amended, CSXT dispatches and maintains the Line today. However, under a contract with SFRTA, the National Railroad Passenger Corporation (Amtrak) dispatches the 2.5 mile segment of double track main line over the new New River bridge between Milepost SX 1013.3 and Milepost SX 1015.8. Due to gradient considerations and other factors, CSXT does not operate over the new bridge (designated as Track Nos. 1 and 2), but continues to use the single-track former CSXT bascule bridge (now Track No. 3) over the New River. The effect of the improvements was to add significant capacity and improve operational flexibility on the Line. In 1998, Tri-Rail commuter service was extended north to Mangonia Park and south to the new Miami Airport Station.

Since FDOT acquired the Line from CSXT in 1988, CSXT, pursuant to exemption authority from the Surface Transportation Board, abandoned its freight easement

between Milepost SX 1036.8 and Milepost SX 1037.5 and on the Downtown Spur east of Milepost SXD 1039.92.

On January 25, 2013, CSXT and the State entered into the "Amended South Florida Operating and Management Agreement" (the "Amended SFOMA") which restated and amended an earlier version of the Amended SFOMA. The Amended SFOMA, when implemented, will replace OMAPA, an agreement that is now over 25 years old. Because the Amended SFOMA will replace OMAPA, I am very familiar with its provisions and the manner in which it will govern operations on the Line. Among other things, the Amended SFOMA provides that on the date of its implementation (currently expected to be sometime between the end of October, 2014 and December 31, 2014), the State will assume dispatching and maintenance responsibilities on the Line.

The parties also have agreed that CSXT will convey to the State an additional segment of the Miami Subdivision at the northern end of the Line between Milepost SX 964.9 at Riviera Beach and a point at or near Milepost SX 964.16. The precise latter milepost may vary slightly pending further field measurements taking into account signal location, signal circuits, the location of insulated joints, etc. I understand that the additional segment, approximately three-quarters of a mile in length, will facilitate the future construction of a maintenance/layover facility to support Tri-Rail commuter service.

Under OMAPA, presently in effect on the Line, commuter service has priority over freight service during the periods of the day between 5:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 7:30 p.m. Monday through Friday or such other periods of the day or days as may be mutually agreed upon by FDOT and CSXT from time to time. It also provides that FDOT may supplement the schedules and consists for commuter service on the Line within such

priority periods subject to capacity constraints existing at the time(s) of such supplementing, subject to FDOT and CSXT establishing schedules and consists for such supplemental service and subject to FDOT bearing any and all cost and expense associated or connected with any facility modifications necessary to accommodate such supplemental service. All the schedules and consists for the above specified priority periods are to be established in a manner that reflects the priority of intercity (*i.e.*, Amtrak) rail passenger service over commuter rail service and rail freight service.

In the Amended SFOMA, the parties have provided for a slightly smaller (by 30 minutes) evening commuter window, established for the first time a freight priority window and a mixed passenger and freight window, and expressly provided for accommodating additional freight trains in the mixed window beyond those currently operated. Under the Amended SFOMA, the parties will operate pursuant to three daily "operating windows:" (i) a priority "passenger" window between 5:00 a.m. and 9:00 a.m. and between 3:00 p.m. and 7:00 p.m. in which commuter service has priority, but which recognizes that freight trains may continue to have access to and use of the tracks on the Line during this window as long as such access and use does not impede or delay commuter service; (ii) a "mixed" passenger and freight window between 9:00 a.m. and 3:00 p.m. and between 7:00 p.m. and 11:00 p.m. to be operated under an agreed dispatch protocol that takes into account the type of train, time of day and on-time performance of the passenger trains and which will accommodate at least one and one-half freight trains per hour in addition to the number of freight trains operating on the Line as of the Commencement Date of the Amended SFOMA; and (iii) a priority "freight" window between 11:00 p.m. and 5:00 a.m. in which freight service has priority but, which recognizes that commuter trains may continue to have access to and use of the Line as long as such access or use

does not impede or delay freight service. Thus, under the Amended SFOMA, there are at least 16 hours each day in which CSXT freight trains can use the Line and 6 of those 16 hours in which CSXT freight trains have priority. Indeed, CSXT freight trains may operate during the "passenger" window (essentially the rush periods), so long as they do not impede or delay commuter service. So, on that basis, CSXT has access to the Line 24 hours per day, seven days per week.

The parties have adopted other provisions to protect freight operations on the Line. Betterments and additions, curfew and program work, construction, and signal suspension are to be performed between 5:00 a.m. and 1:00 a.m. the following day, or within other operating windows if, in the reasonable judgment of CSXT, the work does not interfere with freight service on the Line. The State may perform such work within other operating windows (1:00 a.m. to 5:00 a.m.) without CSXT's prior approval, provided the State maintains at least one track open with functioning signals and grade crossing warning devices for freight service adjacent to the track upon which such work is taking place. The State agrees not to perform such work nor operate engineering work trains simultaneously between more than two control points (from one control point to another control point) on the Line without obtaining CSXT's prior consent. Other than in the case of an emergency, track, bridge and signal inspections and maintenance work "shall be fairly spread over each party's operating windows." Amtrak trains shall be accommodated over the Line pursuant to a written agreement between the State and Amtrak. The Amended SFOMA also provides that the schedules and consists for the operating windows will be discussed by the parties in a manner that reflects the agreement between the State and Amtrak to give priority to on-time Amtrak trains.

Currently, Tri-Rail operates 50 commuter trains (25 in each direction) each week day and 30 commuter trains (15 in each direction) on each weekend day on the Line.

CSXT currently operates approximately 10 freight trains per day on the Line. One local switch job originates and terminates at Okeechobee, Florida providing local freight service between Riviera Beach and Deerfield Beach, Florida. Two local switch jobs per day originate and terminate at Fort Lauderdale Yard providing local service between Deerfield Beach, Florida and Ft. Lauderdale, Florida. Three local switch jobs originate and terminate at Hialeah Yard providing local freight service between Ft. Lauderdale, Florida and Homestead, Florida. In addition, CSXT operates one northbound and one southbound mixed merchandise train daily, an occasional unscheduled aggregate train northbound that returns empty southbound, and a unit coal train (and empty return) approximately once every six weeks. Five yard switchers work at Hialeah Yard providing service to customers within the yard. There are no active or open freight interchanges on the Line. The mainline, all yard tracks and all former CSXT-owned industry tracks are owned by the State and, following implementation of Amended SFOMA, will be maintained by the State. Although Tri-Rail has car cleaning facilities in Hialeah Yard, both Amtrak and Tri-Rail have maintenance and storage facilities located within Hialeah Yard and Amtrak uses tracks on the State property in Hialeah Yard to reach trackage leading to Amtrak's Hialeah Station, Tri-Rail does not operate passenger service on any of the yard tracks or industry tracks. Under Amended SFOMA, though the State will dispatch the Line and therefore control entry and exit to the yards, CSXT retains operational control of all yard tracks except for the storage track used exclusively by Tri-Rail and the Progressive Maintenance Facility used exclusively by Amtrak in Hialeah Yard. CSXT does not currently plan to change

any schedules or add any additional trains as a result of the implementation of the Amended SFOMA.

Amtrak currently operates four daily train movements over the Line (two each way): Train Nos. 91 and 92, the *Silver Star* and Train Nos. 97 and 98, the *Silver Meteor*, between Riviera Beach and Amtrak's Miami Station near Hialeah.

Since CSXT sold the line to the State, CSXT's freight volumes on the Line have declined from the level they were at 20 years ago. Due in part to changing land use patterns in this highly populated corridor, CSXT does not foresee any significant growth in freight volumes on this Line in the future. However, the Line has ample capacity to handle additional freight traffic should it occur. Following completion of improvements to the Line, Tri-Rail increased the number of its commuter trains from 40 trains per weekday to 50 trains per weekday without any adverse effect on CSXT freight service.

CSXT continues to monitor the performance of its trains on the Line. Delays to CSXT trains due to commuter traffic have been few and, I believe, delays to commuter trains due to freight traffic have also been minimal. Based on CSXT's experience in operating in this shared used corridor for over twenty-five years, and my more than eleven years of experience with this Line, I am very confident that CSXT will be able to fully satisfy its common carrier freight obligations on the Line. The Line not only accommodates current CSXT freight service needs, but has additional capacity to accommodate future freight traffic growth and the parties in the Amended SFOMA have provided for it. The other current user of the Line – Amtrak – whose four daily intercity passenger trains will continue to operate over the Line pursuant to Amtrak's agreement with the State, will not be adversely affected.

CSXT does not anticipate that the transfer of dispatching and maintenance to the State will have a significant impact on CSXT employees. Although CSXT will no longer dispatch or maintain the Line once the Amended SFOMA is implemented, CSXT does not expect to furlough any of its employees as a result of the transfer of dispatching and maintenance to the State. Although not required to do so, CSXT offered to negotiate agreements with its unions representing potentially affected employees, which would provide New York Dock-type economic protective benefits to any employees adversely affected by the changes, CSXT reached such agreements with unions that represent the vast majority of employees who hold potentially affected positions, including the Brotherhood of Locomotive Engineers and Trainmen, United Transportation Union, Brotherhood of Maintenance of Way Employees, American Train Dispatchers Association and Brotherhood of Railway Carmen.

The Amended SFOMA is a comprehensive and well thought out operating agreement, the result of a collaborative effort and arm's length negotiations and based on over 25 years of actual shared use of the Line by CSXT, Tri-Rail and Amtrak. It addresses safety, capacity, dispatching, maintenance, liability and operating windows and, I believe, accommodates the respective needs of all stakeholders on the Line. The long-planned and anticipated transfer of responsibility for dispatching and maintenance of the Line from CSXT to the State and the refinement of the operating windows will not adversely affect CSXT's ability to fully satisfy its common carrier freight obligations on the Line.

VERIFICATION

State of Florida)
) SS:
County of Duval)

Jay S. Westbrook, being duly sworn, deposes and says that he is Assistant Vice President-Passenger Operations for CSX Transportation, Inc., that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.

Jay S. Westbrook

SUBSCRIBED AND SWORN TO
before me this 16 day of
April, 2014.

Notary Public

My Commission expires:

LINDA MAXWELL
Notary Public - State of Florida
My Comm. Expires Aug 5, 2016
Commission # EE 222167

TAB 3

Before the Surface Transportation Board
Washington, DC

Finance Docket No. 35783

Florida Department of Transportation - -
Petition for Declaratory Order - -
Rail Line of CSX Transportation, Inc. Between Riviera Beach and Miami, FL

VERIFIED STATEMENT OF JACK L. STEPHENS

City of Pompano Beach)
) ss:
State of Florida)

1. I am Jack L. Stephens, the Executive Director of the South Florida Regional Transportation Authority ("SFRTA"). I became Interim Executive Director in January 2014, and became Executive Director in March 2014. Prior to serving in this position, I was Deputy Executive Director at SFRTA for eleven (11) years. In my prior position, my responsibilities included oversight over the operations (including the dispatch function) of our system.
2. Prior to joining SFRTA, I worked at the Metropolitan Atlanta Rapid Transit Authority ("MARTA") for eleven (11) years. I held the following positions there: Legislative Coordinator (April, 1990 – December, 1990); Assistant to the General Manager, Office of Federal and State Relations (January, 1991 – September, 1996); Executive Vice President, Customer Development Division (September, 1996 – January, 2001); Interim General Manager/Chief Executive Officer (January, 2000 – December, 2000) and Deputy General Manager for Administration (January, 2001 – July, 2001).

3. Prior to joining MARTA, I served as: Legislative Aide to Various Legislative Committees in the Georgia State Legislature (December, 1985 – April, 1990); Analysis, Information and Research Coordinator for the Orleans Parish Department of Special Education (March, 1979 – March, 1985); and, Research Consultant with the Georgia Department of Offender Rehabilitation (December, 1973 – March, 1979).

4. SFRTA is a Florida public agency formed pursuant to Chapter 343, Part II, Fla. Stat. (as amended in 2003). SFRTA is responsible for operating public transit service (currently the Tri-Rail commuter rail passenger service) in Broward, Miami-Dade, and Palm Beach Counties on the South Florida Rail Corridor ("SFRC"), the corridor owned by the State of Florida that is the subject of this proceeding. We, as SFRTA and previously as the Tri-County Commuter Rail Authority ("TCRA"), have been operating the Tri-Rail commuter rail service on this line since 1989. The State of Florida, through its Department of Transportation ("FDOT"), contracts with SFRTA, and provides financial support, for the operation of the Tri-Rail commuter service. We currently operate 50 trains per weekday and 30 trains per weekend day between Mangonia Park and Hialeah Market/Miami Airport (a distance of approximately 70 miles) serving 17 stations in all three counties. We serve an average of 14,550 riders per weekday and 6,055 per weekend day, and over the past 12 months have enjoyed on-time performance averaging 86% per month. A copy of our schedule is attached to this Verified Statement as Attachment A.

5. Although from the time that the State purchased the SFRC from CSXT in 1988, it was contemplated that at some point the State would assume responsibility for dispatching and maintaining the line, the parties have now agreed to implement that transition. Pursuant to the Amended South Florida Operating and Management Agreement between FDOT and

CSXT dated January 25, 2013 (the "Amended SFOMA"), FDOT will assume responsibility for maintaining and dispatching the SFRC on the "Commencement Date." Pursuant to an Operating Agreement between FDOT and SFRTA dated June 13, 2013, SFRTA will perform the maintenance and dispatching function on FDOT's behalf. The targeted "Commencement Date" in the Amended SFOMA is June 30, 2014 but no later than December 31, 2014. FDOT, CSXT and SFRTA expect that the transfer of maintenance and dispatching on the SFRC will not occur before the end of October, 2014.

6. While CSX Transportation, Inc. ("CSXT") currently provides dispatching services over most of the SFRC, SFRTA assumed responsibility for dispatching (including the entry to and exit from that segment) over a 2.5 mile segment of the SFRC in 2007 (the "New Bridge Corridor"). The New Bridge Corridor that we currently dispatch includes a new bridge over the New River that is used exclusively by passenger trains, both SFRTA's commuter passenger trains and Amtrak's four (4) intercity trains (two in each direction per day) that currently move over the SFRC.

7. Amtrak has been SFRTA's dispatching contractor for the New Bridge Corridor since we took on responsibility for this aspect of the operations on the SFRC. Our contract with Amtrak permits us to expand the scope of the contractor's responsibility to the entire SFRC, which we plan to do so that Amtrak will be dispatching the entire SFRC following the transfer of responsibilities that is the subject of this proceeding. As discussed below, pursuant to a contract with SFRTA, Amtrak employees will be dispatching the entire length of the SFRC over which Amtrak currently operates its intercity passenger trains.

8. Even though we already have a dispatch services contract in place with Amtrak, which will no doubt assist enormously in creating an opportunity for a smooth transition from CSXT to

FDOT/SFRTA control over the SFRC, we are planning carefully for the transition. SFRTA has entered into contract (dated March 27, 2014) for construction of the SFRTA dispatch desk and changes to the signal system on the SFRC that will give our current dispatchers the ability to control the entire SFRC, not just the New Bridge Corridor.

9. In addition we are working closely with CSXT and FDOT to ensure a smooth transition for the dispatch function, as well as the right-of-way maintenance function that SFRTA will also assume as a result of this transaction. We have recently executed an agreement with CSXT and FDOT that sets out the parameters for the transition. Two important elements of that agreement are communication with CSXT and the transfer of technical information that SFRTA needs to be able to arrange for the construction of the new signal interface that will enable the dispatch system to transition seamlessly when the changeover to SFRTA control takes place. We will have weekly, or as necessary, meetings with CSXT and FDOT personnel to ensure that we are receiving the information and support that SFRTA needs to enable the seamless transition to a smoothly functioning SFRTA dispatch desk that honors the rights and needs of all of the carriers whose trains operate on the SFRC. We also plan to meet with Amtrak personnel throughout the planning process to ensure that Amtrak has the information it needs and the opportunity to provide input.

10. We understand fully the obligation to give priority to Amtrak trains operating on the SFRC. As a passenger operator, SFRTA is well-acquainted with the importance of on-time performance. In addition, we understand fully and will honor the requirements of the agreements and the laws that govern Amtrak's operations on the SFRC. Fortunately, Amtrak's trains on the SFRC, according to the data that Amtrak provides to FDOT, already operate at a high rate of on-time performance. Based on information provided by FDOT, it is

my understanding that on-time performance on the SFRC averaged 87.69% over the 18-month period between September, 2012 and February, 2014 and 92.7% in the six-month period between September, 2013 and February, 2014. SFRTA has every expectation that we will continue to meet those same standards. While I understand that Amtrak has recently encountered delays elsewhere in Florida and around the country, there is no reason to expect that Amtrak will encounter similar issues here. Amtrak which already dispatches part of the SFRC, will dispatch the entire SFRC following the transition pursuant to its existing contract with SFRTA which SFRTA has the option to extend for two (2) additional one year options through 2017, subject to our Board's approval of each annual extension. Our Board has already approved three (3) such extensions since the end of the initial five (5) year term in 2012. Amtrak will, of course, have full opportunity, if it chooses, to bid on the next contract. Moreover, Amtrak's dispatchers are physically located in SFRTA's headquarters building in Pompano Beach, Florida which further facilitates coordination and communication. Also, we will not be engaging in construction projects similar to those that created delays to Amtrak trains in Central Florida. This is an existing, well-established corridor on which SFRTA completed a double-tracking project in 2006 and no construction on the SFRC is required to implement the changeover to SFRTA control of dispatching and right-of-way maintenance. The construction of the SFRTA dispatch desk and any required work to tie the signal system to the SFRTA dispatch desk will be completed before the transition. In addition, the SFRC is not seeing the types of weather-related and congestion-induced delays that have created serious problems for Amtrak operations in the upper Midwestern states in recent months.

11. Amtrak operations over the SFRC today are governed by a written agreement entered into by FDOT and Amtrak in May, 1997. We understand and are contractually bound to honor the

obligations stated in that agreement and in the applicable law with respect to Amtrak's operations. We fully expect to fulfill our obligations under that Agreement.

12. To underscore our understanding of the importance of on-time performance of Amtrak trains, we are willing to provide to the STB quarterly for a full twelve (12) months following the transition and longer, if the Board requests it, reports using data Amtrak provides to the State of the actual on-time performance of Amtrak's trains on the SFRC. Our reports will indicate the transit time from end-point to end-point and report on the nature of any interference or delays that the trains encountered. We are confident, however, that given the importance to SFRTA and our passengers of keeping the SFRC operating fluidly and in accordance with all applicable schedules, we will be able to meet the high standards set by the governing agreement and law and by the current operation on the SFRC.

13. SFRTA understands that there are ongoing discussions regarding the potential diversion of some Florida East Coast Railway, Inc. ("FECR") freight trains to the SFRC. We are aware that such discussions are preliminary and no agreements have been reached regarding the number or frequency of such trains or the timing of the diversions. Any such diversions will only be implemented after studies have shown that such trains can be accommodated on the SFRC, after discussions with and input from CSXT and Amtrak, and, if necessary, after additional capacity improvements have been made on the SFRC. SFRTA is committed to working closely with CSXT, FECR and FDOT to ensure that those trains can be handled efficiently, while at the same time giving the intercity and commuter passenger trains on the SFRC the priority that is required by applicable law and the agreements that govern the operation of trains on the SFRC.

14. Further, Affiant sayeth not.

Jack L. Stephens

Subscribed and sworn to
before me this 29th day of April, 2014.

Notary Public
My commission expires: July 30, 2015

SANDRA K. THOMPSON
Notary Public - State of Florida
My Comm. Expires Jul 30, 2015
Commission # EE 89356
Bonded Through National Notary Assn.

TRI RAIL™

Part of the South Florida Regional Transportation Authority

NEW TRAIN SCHEDULE - EFFECTIVE MARCH 2, 2013

SOUTHBOUND — WEEKDAYS

	AM SOUTHBOUND														PM SOUTHBOUND									
Train No.	P601	P603	P605	P607	P609	P611	P613	P615	P617	P619	P621	P623	P625	P627	P629	P631	P633	P635	P637	P639	P641	P643	P645	P647	P649
Mangonia Park	4:00	4:40	5:20	6:00	6:20	6:40	7:00	7:20	8:00	9:00	10:00	11:00	12:00	1:00	2:00	3:00	3:30	4:00	4:25	5:00	5:30	6:15	6:45	7:40	8:40
West Palm Beach ✈	4:08	4:46	5:26	6:06	6:26	6:46	7:06	7:36	8:06	9:06	10:06	11:06	12:06	1:06	2:06	3:06	3:36	4:06	4:31	5:06	5:36	6:21	6:51	7:48	8:48
Lake Worth	4:15	4:56	5:36	6:16	6:36	6:56	7:16	7:46	8:16	9:16	10:16	11:16	12:16	1:16	2:16	3:16	3:46	4:16	4:41	5:16	5:46	6:31	7:01	7:56	8:56
Boynton Beach	4:20	5:02	5:42	6:22	6:42	7:02	7:22	7:52	8:22	9:22	10:22	11:22	12:22	1:22	2:22	3:22	3:52	4:22	4:47	5:22	5:52	6:37	7:07	8:02	9:02
Delray Beach	4:29	5:11	5:51	6:31	6:51	7:11	7:31	8:01	8:31	9:31	10:31	11:31	12:31	1:31	2:31	3:31	4:01	4:31	4:56	5:31	6:01	6:46	7:16	8:11	9:11
Boca Raton	4:35	5:17	5:57	6:37	6:57	7:17	7:37	8:07	8:37	9:37	10:37	11:37	12:37	1:37	2:37	3:37	4:07	4:37	5:02	5:37	6:07	6:52	7:22	8:17	9:17
Deerfield Beach	4:42	5:24	6:04	6:44	7:04	7:24	7:44	8:14	8:44	9:44	10:44	11:44	12:44	1:44	2:44	3:44	4:14	4:44	5:09	5:44	6:14	6:59	7:29	8:24	9:24
Pompano Beach	4:48	5:30	6:10	6:50	7:10	7:30	7:50	8:20	8:50	9:50	10:50	11:50	12:50	1:50	2:50	3:50	4:20	4:50	5:15	5:50	6:20	7:05	7:35	8:30	9:30
Cypress Creek	4:54	5:37	6:17	6:57	7:17	7:37	7:57	8:27	8:57	9:57	10:57	11:57	12:57	1:57	2:57	3:57	4:27	4:57	5:23	5:58	6:27	7:12	7:42	8:37	9:37
Fort Lauderdale	5:01	5:45	6:25	7:05	7:25	7:45	8:05	8:35	9:05	10:08	11:08	12:08	1:08	2:08	3:08	4:08	4:38	5:08	5:33	6:08	6:35	7:20	7:50	8:45	9:45
Fort Lauderdale Airport ✈	5:08	5:53	6:33	7:13	7:33	7:53	8:13	8:43	9:13	10:17	11:17	12:17	1:17	2:17	3:17	4:17	4:47	5:17	5:42	6:17	6:43	7:28	7:58	8:53	9:53
Sheridan Street	5:12	5:57	6:37	7:17	7:37	7:57	8:17	8:47	9:17	10:21	11:21	12:21	1:21	2:21	3:21	4:21	4:51	5:21	5:46	6:21	6:47	7:32	8:02	8:57	9:57
Hollywood	5:16	6:01	6:41	7:21	7:41	8:01	8:21	8:51	9:21	10:26	11:26	12:26	1:26	2:26	3:26	4:26	4:56	5:26	5:51	6:26	6:51	7:36	8:06	9:01	10:01
Golden Glades	5:25	6:10	6:50	7:30	7:50	8:10	8:30	9:00	9:30	10:35	11:35	12:35	1:35	2:35	3:35	4:35	5:05	5:35	6:00	6:35	7:00	7:45	8:15	9:10	10:10
Opa-Locka	5:31	6:16	6:56	7:36	7:56	8:16	8:36	9:06	9:36	10:41	11:41	12:41	1:41	2:41	3:41	4:41	5:11	5:41	6:06	6:41	7:06	7:51	8:21	9:16	10:16
Metrorail Transfer	5:38	6:23	7:03	7:43	8:03	8:23	8:43	9:13	9:43	10:48	11:48	12:48	1:48	2:48	3:48	4:48	5:18	5:48	6:13	6:48	7:13	7:58	8:28	9:23	10:23
Hialeah Market/ Miami Airport ✈	5:44	6:29	7:09	7:49	8:09	8:29	8:49	9:19	9:49	10:54	11:54	12:54	1:54	2:54	3:56	5:12	5:26	6:12	6:21	6:56	7:19	8:04	8:34	9:29	10:29

NORTHBOUND — WEEKDAYS

	AM NORTHBOUND														PM NORTHBOUND									
Train No.	P600	P602	P604	P606	P608	P610	P612	P614	P616	P618	P620	P622	P624	P626	P628	P630	P632	P634	P636	P638	P640	P642	P644	P646	P648
Hialeah Market/ Miami Airport ✈	4:18	4:48	5:13	5:38	6:03	6:23	7:03	7:43	8:23	9:23	10:23	11:23	12:23	1:23	2:23	3:13	3:53	4:33	4:53	5:00	5:51	6:56	6:59	7:53	8:43
Metrorail Transfer	4:23	4:54	5:19	5:49	6:09	6:29	7:09	7:49	8:30	9:30	10:30	11:30	12:30	1:30	2:30	3:20	4:09	4:39	4:59	5:29	5:57	6:29	6:59	7:59	8:49
Opa-Locka	4:29	5:00	5:25	5:55	6:15	6:35	7:15	7:55	8:36	9:36	10:36	11:36	12:36	1:36	2:36	3:26	4:15	4:45	5:05	5:35	6:03	6:35	7:05	8:05	8:55
Golden Glades	4:35	5:06	5:31	6:01	6:21	6:41	7:21	8:01	8:43	9:43	10:43	11:43	12:43	1:43	2:43	3:33	4:21	4:51	5:11	5:41	6:09	6:41	7:11	8:11	10:01
Hollywood	4:43	5:15	5:40	6:10	6:30	6:50	7:30	8:10	8:52	9:52	10:52	11:52	12:52	1:52	2:52	3:42	4:30	5:00	5:20	5:50	6:18	6:50	7:20	8:20	10:10
Sheridan Street	4:47	5:19	5:44	6:14	6:34	6:54	7:34	8:14	8:56	9:56	10:56	11:56	12:56	1:56	2:56	3:46	4:34	5:04	5:24	5:54	6:22	6:54	7:24	8:24	10:14
Fort Lauderdale Airport ✈	4:51	5:23	5:48	6:18	6:38	6:58	7:38	8:18	9:00	10:00	11:00	12:00	1:00	2:00	3:00	3:50	4:38	5:08	5:28	5:58	6:26	6:58	7:28	8:28	10:18
Fort Lauderdale	5:00	5:32	5:57	6:27	6:47	7:07	7:47	8:27	9:09	10:09	11:09	12:09	1:09	2:09	3:09	3:59	4:47	5:17	5:37	6:07	6:35	7:07	7:37	8:37	10:27
Cypress Creek	5:06	5:39	6:04	6:34	6:54	7:14	7:54	8:34	9:16	10:16	11:16	12:16	1:16	2:16	3:16	4:06	4:54	5:24	5:44	6:14	6:42	7:14	7:44	8:44	10:34
Pompano Beach	5:12	5:45	6:10	6:40	7:00	7:20	8:00	8:40	9:23	10:23	11:23	12:23	1:23	2:23	3:23	4:13	5:00	5:30	5:50	6:20	6:48	7:20	7:50	8:50	10:40
Deerfield Beach	5:18	5:51	6:16	6:46	7:06	7:26	8:06	8:46	9:29	10:29	11:29	12:29	1:29	2:29	3:29	4:19	5:06	5:36	5:56	6:26	6:54	7:26	7:56	8:56	10:46
Boca Raton	5:25	5:59	6:24	6:54	7:14	7:34	8:14	8:54	9:38	10:38	11:38	12:38	1:38	2:38	3:38	4:28	5:14	5:44	6:04	6:34	7:02	7:34	8:04	9:04	10:54
Delray Beach	5:30	6:04	6:29	6:59	7:19	7:39	8:19	8:59	9:44	10:44	11:44	12:44	1:44	2:44	3:44	4:34	5:19	5:49	6:09	6:39	7:07	7:39	8:09	9:09	10:59
Boynton Beach	5:36	6:13	6:38	7:08	7:28	7:48	8:28	9:08	9:53	10:53	11:53	12:53	1:53	2:53	3:53	4:43	5:28	5:58	6:18	6:48	7:16	7:48	8:18	9:18	11:08
Lake Worth	5:44	6:19	6:44	7:14	7:34	7:54	8:34	9:14	9:59	10:59	11:59	12:59	1:59	2:59	3:59	4:49	5:34	6:04	6:24	6:54	7:22	7:54	8:24	9:24	11:14
West Palm Beach ✈	5:55	6:30	6:55	7:25	7:45	8:05	8:45	9:25	10:10	11:10	12:10	1:10	2:10	3:10	4:10	5:00	5:45	6:15	6:35	7:05	7:33	8:05	8:35	9:35	11:25
Mangonia Park	6:05	6:40	7:05	7:35	7:55	8:15	8:55	9:35	10:20	11:20	12:20	1:20	2:20	3:20	4:20	5:10	5:55	6:25	6:45	7:15	7:43	8:15	8:45	9:45	11:35

SOUTHBOUND — WEEKENDS & HOLIDAYS

	AM SOUTHBOUND									PM SOUTHBOUND				
Train No.	P661	P663	P665	P667	P669	P671	P673	P675	P677	P679	P681	P683	P685	P687	P689
Mangonia Park	5:50	6:30	7:50	8:50	9:50	10:50	11:50	12:50	1:50	2:50	3:50	4:50	5:50	6:50	8:00
West Palm Beach ✈	5:58	6:58	7:58	8:56	9:58	10:58	11:58	12:58	1:58	2:58	3:58	4:58	5:58	6:58	9:08
Lake Worth	6:06	7:06	8:06	9:06	10:06	11:06	12:06	1:06	2:06	3:06	4:06	5:06	6:06	7:06	9:16
Boynton Beach	6:14	7:14	8:14	9:14	10:14	11:14	12:14	1:14	2:14	3:14	4:14	5:14	6:14	7:14	9:24
Delray Beach	6:23	7:23	8:23	9:23	10:23	11:23	12:23	1:23	2:23	3:23	4:23	5:23	6:23	7:23	9:33
Boca Raton	6:29	7:29	8:29	9:29	10:29	11:29	12:29	1:29	2:29	3:29	4:29	5:29	6:29	7:29	9:39
Deerfield Beach	6:36	7:36	8:36	9:36	10:36	11:36	12:36	1:36	2:36	3:36	4:36	5:36	6:36	7:36	9:46
Pompano Beach	6:41	7:41	8:41	9:41	10:41	11:41	12:41	1:41	2:41	3:41	4:41	5:41	6:41	7:41	9:51
Cypress Creek	6:48	7:48	8:48	9:48	10:48	11:48	12:48	1:48	2:48	3:48	4:48	5:48	6:48	7:48	9:58
Fort Lauderdale	6:56	7:56	8:56	9:56	10:56	11:56	12:56	1:56	2:56	3:56	4:56	5:56	6:56	7:56	10:06
Fort Lauderdale Airport ✈	7:03	8:03	9:03	10:03	11:03	12:03	1:03	2:03	3:03	4:03	5:03	6:03	7:03	8:03	10:13
Sheridan Street	7:07	8:07	9:07	10:07	11:07	12:07	1:07	2:07	3:07	4:07	5:07	6:07	7:07	8:07	10:17
Hollywood	7:11	8:11	9:11	10:11	11:11	12:11	1:11	2:11	3:11	4:11	5:11	6:11	7:11	8:11	10:21
Golden Glades	7:20	8:20	9:20	10:20	11:20	12:20	1:20	2:20	3:20	4:20	5:20	6:20	7:20	8:20	10:30
Opa-Locka	7:26	8:26	9:26	10:26	11:26	12:26	1:26	2:26	3:26	4:26	5:26	6:26	7:26	8:26	10:35
Metrorail Transfer	7:32	8:32	9:32	10:32	11:32	12:32	1:32	2:32	3:32	4:32	5:32	6:32	7:32	8:32	10:42
Hialeah Market/ Miami Airport ✈	7:50	8:50	9:50	10:50	11:50	12:50	1:50	2:50	3:50	4:50	5:50	6:50	7:50	8:50	11:00

NORTHBOUND — WEEKENDS & HOLIDAYS

	AM NORTHBOUND									PM NORTHBOUND				
	P660	P662	P664	P666	P668	P670	P672	P674	P676	P678	P680	P682	P684	P686	P688
Hialeah Market/ Miami Airport ✈	5:20	6:20	7:20	8:20	9:20	10:20	11:20	12:20	1:20	2:20	3:20	4:20	5:20	6:20	9:45
Metrorail Transfer	5:27	6:27	7:27	8:27	9:27	10:27	11:27	12:27	1:27	2:27	3:27	4:27	5:27	6:27	9:52
Opa-Locka	5:33	6:33	7:33	8:33	9:33	10:33	11:33	12:33	1:33	2:33	3:33	4:33	5:33	6:33	9:58
Golden Glades	5:39	6:39	7:39	8:39	9:39	10:39	11:39	12:39	1:39	2:39	3:39	4:39	5:39	6:39	10:04
Hollywood	5:49	6:49	7:49	8:49	9:49	10:49	11:49	12:49	1:49	2:49	3:49	4:49	5:49	6:49	10:14
Sheridan Street	5:53	6:53	7:53	8:53	9:53	10:53	11:53	12:53	1:53	2:53	3:53	4:53	5:53	6:53	10:18
Fort Lauderdale Airport ✈	5:57	6:57	7:57	8:57	9:57	10:57	11:57	12:57	1:57	2:57	3:57	4:57	5:57	6:57	10:22
Fort Lauderdale	6:05	7:05	8:05	9:05	10:05	11:05	12:05	1:05	2:05	3:05	4:05	5:05	6:05	7:05	10:30
Cypress Creek	6:12	7:12	8:12	9:12	10:12	11:12	12:12	1:12	2:12	3:12	4:12	5:12	6:12	7:12	10:37
Pompano Beach	6:19	7:19	8:19	9:19	10:19	11:19	12:19	1:19	2:19	3:19	4:19	5:19	6:19	7:19	10:44
Deerfield Beach	6:24	7:24	8:24	9:24	10:24	11:24	12:24	1:24	2:24	3:24	4:24	5:24	6:24	7:24	10:50
Boca Raton	6:33	7:33	8:33	9:33	10:33	11:33	12:33	1:33	2:33	3:33	4:33	5:33	6:33	7:33	10:58
Delray Beach	6:39	7:39	8:39	9:39	10:39	11:39	12:39	1:39	2:39	3:39	4:39	5:39	6:39	7:39	11:04
Boynton Beach	6:48	7:48	8:48	9:48	10:48	11:48	12:48	1:46	2:46	3:46	4:46	5:46	6:46	7:46	11:13
Lake Worth	6:54	7:54	8:54	9:54	10:54	11:54	12:54	1:54	2:54	3:54	4:54	5:54	6:54	7:54	11:19
West Palm Beach ✈	7:05	8:05	9:05	10:05	11:05	12:05	1:05	2:05	3:05	4:05	5:05	6:05	7:05	8:05	11:30
Mangonia Park	7:20	8:20	9:20	10:20	11:20	12:20	1:20	2:20	3:20	4:20	5:20	6:20	7:20	8:20	11:45

Passengers will be shuttled to/from the Metrorail Transfer Station, Hialeah Market Station and the Miami International Airport.

L Stop Train may depart station as much as five (5) minutes ahead of schedule.

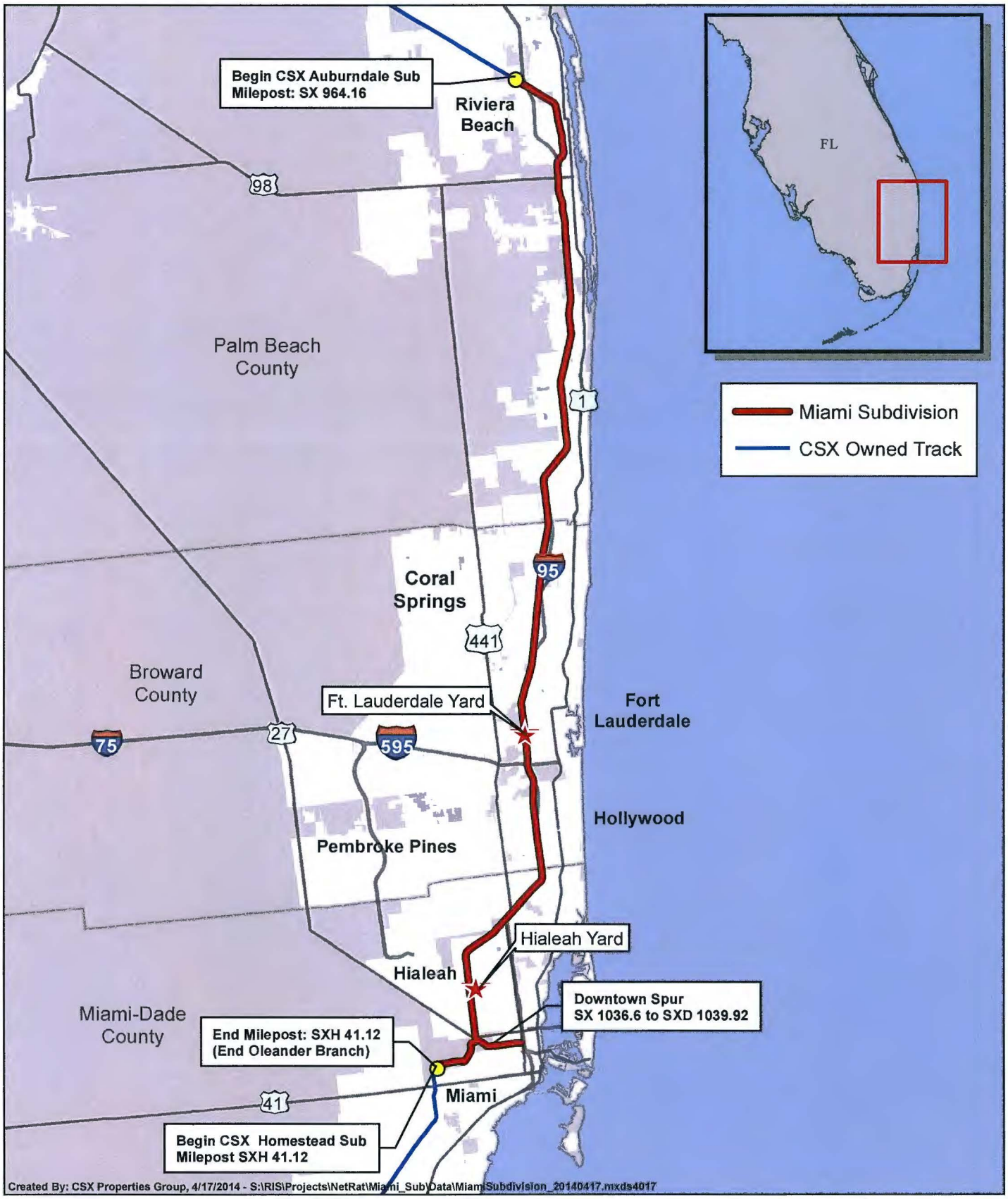
Southbound trains board on Track 1 and Northbound trains board on Track 2, unless otherwise announced at train station.

Tri-Rail advises passengers to arrive at the station 20 minutes prior to departure and to call Customer Service at 1-800-TRI-RAIL (874-7245) to verify schedule and connection information before traveling. All passengers must purchase a valid ticket before boarding the train.

Para recibir esta información en español por favor llame al 1-800-TRI-RAIL (874-7245).

Pou resevwa enfòmasyon sa a an kreyòl silvouple rele 1-800-TRI-RAIL (874-7245).

TAB 4



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South Florida Rail Corridor
April 17, 2014

0 5 10
Miles

TAB 5

CONTRACT FOR INSTALLMENT SALE AND PURCHASE

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

Pertaining to the Line of
Railroad Between West Palm
Beach and Miami, Florida
and Related Properties

Dated: May 11, 1988

OPERATING AND MANAGEMENT AGREEMENT - PHASE A

OPERATING AND MANAGEMENT AGREEMENT - PHASE B

JOHN H. BECK
1026 East Park Avenue
Tallahassee, Florida 32301
904/681-0417

CONTRACT FOR INSTALLMENT SALE AND PURCHASE

Section		Page
1	Purchase and Sale	3
2	Purchase Price and Installment Obligations	5
3	Lien and Security Provisions	18
4	Statutory Limitation	30
5	Commission Approvals	30
6	Closing	31
7	Instruments of Transfer and Conveyance	31
8	CSXT's Further Exceptions and Reservations	37
9	Sales, Transfer Taxes, Recording Fees and Utilities	39
10	Further Agreements and Instruments	40
11	Representations and Warranties	41
12	Disclaimer of Warranty	45
13	Condition of Property	46
14	Other Agreements	47
15	Inspection	48
16	Arbitration	49
17	Termination and Recission	49
18	Extension, Waiver and Amendment	52
19	Notices	53
20	Governing Law	53
21	Counterparts	54
22	Interpretation	54
23	Exhibits	55
24	Survival	55
25	Entire Agreement	55
26	Waiver	56
27	Expenses	56
28	Further Assurances	57
29	Time of the Essence	57
30	Prohibition of Third Party Beneficiaries	57
31	Successors and Assigns	58

EXHIBITS

Exhibit 1 Description of Real Property

2 Contracts to be retained by CSXT

3 Deed (Including CSXT Easement)

4 Exceptions to Sale - Real Estate (Retained by CSXT)

5 Description of Personal Property

6 Bill of Sale

7 Schedule of Installment Obligations

8 Operating and Management Agreement

9 Contracts to be Assigned to State

10 Environmental Matters

CONTRACT FOR INSTALLMENT SALE AND PURCHASE

THIS CONTRACT, made as of the 11th day of May, 1988, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT").

WITNESSETH THAT:

WHEREAS, CSXT has interests in certain properties including a line of railroad between West Palm Beach and Miami, FL over which rail freight and intercity rail passenger service are presently conducted; and

WHEREAS, pursuant to authorization by The 1987 Appropriations Act of the Florida Legislature (Conference Committee Report on Senate Bill 1325, now Chapter 87-98, Laws of Florida, specific appropriation 1700B) (hereinafter referred to as the "1987 Appropriations Act"), the State desires to acquire CSXT's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight and intercity rail passenger service;

and

WHEREAS, the parties desire that CSXT retain, and not transfer to the State, a perpetual easement over the properties acquired by the State limited for the exclusive purpose of providing rail freight service and intercity rail passenger service, it being the intention of the parties that CSXT remain, and the State not become, the rail carrier subject to the Interstate Commerce Act, the Railway Labor Act or any other federal law relating to the provision of railroad transportation on such properties; and

WHEREAS, the State desires to contract with CSXT for, among other things, management of operations and use of the properties, for maintenance and improvement of the properties (except such property as may be determined to be subject to the exclusive use of the State or its designee), and for allocation of all costs attendant to such services on behalf of the State; and

WHEREAS, CSXT desires to sell and the State desires to acquire the involved properties and the parties hereto desire to provide for the continued operation, use and maintenance thereof, all upon the terms and conditions hereinafter set forth.

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

Section 1. Purchase and Sale.

1.01 Upon the terms and subject to all of the conditions herein set forth and the performance by each of the parties hereto of their respective obligations hereunder, CSXT agrees to sell, transfer and convey to State on the Closing Date and State agrees to accept and purchase from CSXT on the Closing Date:

(a) All of CSXT's right, title and interest in and to the following rights-of-way and associated property: (i) that portion of CSXT's main line on its so-called Miami Subdivision (A) between Valuation Station 10499+53 (at or near Milepost SX-965), at or near West Palm Beach, FL and Valuation Station 14331+90 (at or near Milepost SX-1037), at or near Hialeah, FL, and (B) between Valuation Station 14282+67 (at or near Milepost SX-1037) at or near Hialeah, FL and Valuation station 14518+10 (at or near Milepost SX-1041) at or near Miami, FL, (ii) that portion of CSXT's main line on its so-called Homestead Subdivision between Valuation Station 14292+53 (at or near Milepost **SXH-1037**) No Mile near Hialeah, FL, and Valuation Station 14523+94.6 (at or near Milepost SXH-1041), at or near Oleander, FL, a total distance of approximately 81 miles; and (iii) certain specified properties contiguous to such main lines; all as more specifically described in Exhibit 1 hereto; subject to those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described in Exhibit 2 hereto, and subject to the Easement to be retained by CSXT (hereinafter referred to as the "CSXT Easement") as set forth in the Deed appearing as Exhibit 3 hereto and excluding

and excepting those parcels, rights and interests listed or described on Exhibit 4 hereto, all of which are excluded or excepted from the sale, transfer and conveyance to State contemplated by this Contract.

(b) All of CSXT's right, title and interest in and to tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles and radio masts which are affixed, as of the Closing Date, to the real property described in Exhibit 1 hereto; but excepting any items of the kind described above which are on the properties listed or described in Exhibit 4 hereto, all of which are hereby reserved by CSXT and excepted from the sale, transfer and conveyance to State contemplated by this Contract.

(c) All of CSXT's right, title and interest in and to the items of personal property listed or described in Exhibit 5 hereto.

(d) The aforesaid properties, real and personal, which are to be sold, transferred and conveyed to State under this Contract are hereinafter collectively referred to as "the subject property."

1.02 The sale, transfer and conveyance to State of any interest in real property under this Contract shall be made by Deed as set forth in Exhibit 3 hereto and shall be made subject to the warranties set forth therein. The sale, transfer and conveyance of any interest in personal property to State under this Contract shall be evidenced by a Bill of Sale as set forth

in Exhibit 6 hereto, and shall be made without any express or implied warranty whatsoever, other than as otherwise expressly provided in this Contract and other than warranties of good title free and clear of all mortgages, deeds of trust, financing statements, judgment liens, materialmen liens and liens arising out of CSXT's employee pension obligations.

1.03 In addition to the reservations and exceptions of properties set forth in Sections 1.01(a) and (b) hereof, the sale, transfer and conveyance contemplated under this Contract does not include, and State shall not acquire, any right, title or interest in the following items of personal property that are or may be located on or in the subject property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery (except as listed or described in Exhibit 5 hereto), office and computer equipment, radios and radio control equipment, furniture, tools, switch locks and keys, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to State under the provisions of Sections 1.01(b) and 1.01(c) hereof and which is not affixed to the subject property on the Closing Date.

Section 2. <u>Purchase Price</u>.

2.01 Subject to the terms and conditions of this Contract, and in consideration for the sale, transfer and conveyance of the subject property to State, State shall pay to CSXT the sum of Two Hundred Sixty Four Million and no/100 Dollars

($264,000,000.00) (hereinafter referred to as the "Purchase Price") for the subject property. The Purchase Price shall be paid as follows: first, by delivery on the Closing Date the sum of Seventy-five Million and no/100 Dollars ($75,000,000.00) in immediately available United States funds, and, second, by the execution and delivery of this Contract which provides for annual installment payments (hereinafter referred to as the "Installment Obligation(s)") for the balance of the Purchase Price upon the following conditions:

(a) The annual interest rate on such remaining Purchase Price and Installment Obligations shall be nine and thirty-four hundreds percent (9.34%), which is one-half percent (0.5%) above the yield, as determined in the manner specified below, on United States Treasury Bonds and Notes maturing in the month and year in which the last scheduled payment of the Purchase Price is due under the Installment Obligations. The aforesaid yield has been determined from the yields and maturities supplied by the Federal Reserve Bank of New York as representative, mid-afternoon, over-the-counter quotations based on transactions of One Million and no/100 Dollars ($1,000,000.00) or more for the day immediately preceding the Closing Date, as published, on the Closing Date, in the Wall Street Journal, or if not so published on the Closing Date then as so published for the day preceding and closest to the Closing Date; provided, however, that said interest rate shall not exceed the rate established in Section 287.063(1)(b), Florida Statutes (1985).

(b) Principal and interest required under these

Installment Obligations shall be payable in immediately available United States funds at the offices of CSXT, 500 Water Street, Jacksonville, FL 32202, or at such other place(s) as CSXT may designate in writing from time to time during the term of the Installment Obligations, in annual payments of combined principal and interest on the due dates all as specified in the schedule set forth as Exhibit 7 hereto.

(c) State shall have the right and privilege to prepay, without payment of any penalty or prepayment premium, at the times and in the manner specified below, the entire indebtedness or any portion thereof, together with accrued interest on the sum so prepaid, at the interest rate established under Subsection (a) hereof. Such prepayment(s) may be made by State as follows: first, the entire outstanding principal balance and accrued interest thereon may be prepaid at any time after May 11, 1989, upon ninety (90) days' prior written notice to CSXT, and/or second, additional payment(s) of principal may be made by State on any scheduled annual payment due date on or after May 11, 1989, with the full amount of any such additional payment(s) being applied to the outstanding principal balance.

(d) It is understood that subject to certain conditions described in Sections 2.03 through 2.06, inclusive, hereof, State may transfer its rights and obligations under these Installment Obligations to another agency of the State or to a local governmental agency of the State (hereinafter referred to as the "Transferee") capable of demonstrating the

capacity to continue the Installment Obligations and upon the condition of payment in full, in cash, of any and all principal and interest in arrears to CSXT upon such transfer. In the event of any such transfer, the Transferee shall expressly assume all rights and obligations of the State set forth herein. The Transferee, however, shall not receive the benefits of Sections 2.03 through 2.06, inclusive, of this Contract to the extent those Sections would otherwise permit the Transferee to transfer, upon its default in the payment obligations hereunder, Transferee's rights and obligations under these Installment Obligations to another agency of the State of Florida or local governmental agency of the State of Florida. Rather, such Transferee shall be unconditionally obligated to make any and all annual payments required hereunder from and after the date of such transfer; and upon any failure of such Transferee to so make such annual payments the entire unpaid principal of, and interest accrued on, the Installment Obligations may be declared by CSXT immediately due and payable, and CSXT shall be further entitled to any and all other rights and remedies provided under this Contract.

(e) The Installment Obligations are secured by the Lien Provisions set forth in Section 3.02 of this Contract. Nothing contained in this Contract (other than Sections 2.03 through 2.06, inclusive, hereof) shall be construed to affect or impair the nonrecourse obligation of State to pay the aforesaid principal and interest when due, in accordance with and subject to the provisions hereof.

(f) CSXT's sole remedy under these Lien Provisions is to regain the subject property in accordance with this Contract and to retain the monies already paid by the State under this Contract. In view of the foregoing, State hereby waives demand, presentment for payment, notice of dishonor, protest and notice of protest, and diligence in collection or bringing suit, on the Installment Obligations. State and CSXT hereby agree that CSXT may, at CSXT's election, extend the time for payment or accept partial payment without discharging or releasing the State from the Installment Obligations.

(g) The Installment Obligations and Lien Provisions may be assigned by CSXT, in whole or in part, subject to CSXT's rights and obligations hereunder, and whenever the term CSXT occurs in this Section 2 or any Section relating to the Installment Obligations and/or the Lien Provisions, the same shall include the successors or assigns of CSXT, whether by operation of law or otherwise, as though originally herein written. Nothing contained herein shall be construed to permit State to transfer its rights and obligations hereunder, except as otherwise expressly provided under and in accordance with Subsection (d) hereof and Sections 2.03 through 2.06, inclusive, below.

(h) By acceptance of these Installment Obligations, CSXT, for itself and its successors and assigns (including, without limitation, any subsequent holder of the Installment Obligations and/or the Lien Provisions), covenants and agrees that the holder hereof shall look exclusively to the subject

property and that any judgment rendered on these Installment Obligations, the Lien Provisions or under this Contract, and against State, or any recovery thereon, shall be limited to such security, and that no deficiency or judgment shall be rendered against State in any action or proceeding brought on the Installment Obligations, the Lien Provisions or this Contract.

2.02 As provided in the 1987 Appropriations Act, annual payments under the Installment Obligations shall be subject to annual appropriation by the Florida Legislature and the execution of this Contract and future actions of the parties hereto under this Contract shall not in any manner be construed to pledge the full faith and credit of the Department of Transportation or the State of Florida to make any annual payment or portion thereof under the Installment Obligations in the absence of legislative appropriation or the availability to pay same from other legal sources. Failure of the Florida Legislature to appropriate annual payments or of the Department of Transportation to be able to make payments from any legally available funds shall, subject to the provisions of Sections 2.03 through 2.06, inclusive, hereof, result in retention by CSXT of any sums previously paid to CSXT as payment, and not as a penalty, for use and control of the subject property by State, for CSXT holding same off the market and for permitting State to change the use thereof, all during the period prior to nonpayment, and CSXT shall have the right to receive return of title to and possession of the subject property as set forth in Section 2.05 hereof.

2.03 State shall, upon receipt of notice that sufficient funds are not available to continue its full and faithful performance under the Installment Obligations, provide prompt written notice to CSXT of such event. Effective thirty (30) days after the giving of such notice, or upon the expiration of the period of time for which funds were appropriated, whichever occurs first, State shall be released of all obligations to make payments under the Installment Obligations in any way related to the subject property. In such event, State shall have the following options:

> First, within one hundred eighty (180) days after the earlier of the aforesaid two (2) occurrences, either: (a) sell, lease, or otherwise dispose of the subject property, subject to the CSXT Easement and the Operating and Management Agreement between State and CSXT set forth as Exhibit 8 hereto (hereinafter referred to as the "Operating and Management Agreement"), for fair consideration, which in no event shall be less than the balance of all installment payments due or which will become due under the Installment Obligations, and from the proceeds thereof pay to CSXT all remaining sums due under the terms of the Installment Obligations, less any interest then unearned, or (b) arrange to transfer its rights and obligations under the Installment Obligations to

another agency of the State of Florida or local governmental agency of the State of Florida capable of demonstrating the capacity to continue the Installment Obligations, and the successor agency shall be responsible for performing all the obligations of State described in the Installment Obligations and the payment under said Installment Obligations shall not be accelerated so long as the transferee meets the obligations of State under the Installment Obligations at the time of such transfer and thereafter; or,

Second, within one hundred eighty (180) days after the earlier of the aforesaid two (2) occurrences return the subject property to CSXT, subject to the provisions of Section 2.05 hereof, in which event CSXT shall retain all sums paid by State hereunder and under the Installment Obligations with respect to such property.

2.04 In the event State elects option First (a) or (b) under Section 2.03 hereof, then, until such time as State sells, leases or otherwise disposes of the subject property or transfers its rights and obligations under the Installment Obligations and this Contract as herein provided, State shall continue to be entitled to and be responsible for all of its rights and obligations under the Operating and Management Agreement. From and after the date of any such sale, lease,

other disposal or transfer, State shall be: (a) released and discharged from all obligations under the Installment Obligations and this Contract, and (b) released and discharged from its obligations and liabilities and no longer be entitled to any of its rights under this Contract and the Operating and Management Agreement; provided, however, that such release and discharge shall not relieve or release State from any obligation assumed or any liability which may have arisen or been incurred from and after the Closing Date by State prior to such release and discharge which has not been fully satisfied or discharged by State; and, provided, further, that the party to whom the State so sells, leases, or otherwise disposes of the subject property or so transfers its rights and obligations under the Installment Obligations and this Contract shall assume and be bound by all rights and obligations of State under this Contract and the Operating and Management Agreement and, in the case of option First (b) above, the transferee shall also assume and be bound by the Installment Obligations. In the event that State exercises option First (a) under Section 2.03 hereof, then any such sale, lease or other disposal shall be subject to the exercise by CSXT, prior to the consummation of any such sale, lease or other disposal, of CSXT's right of first refusal or right of termination as set forth in Section 42 of the Operating and Management Agreement - Phase A or CSXT's right of first refusal as set forth in Section 40 of the Operating and Management Agreement - Phase B, as the case may be. In the event State elects option First (a)

or (b) under Section 2.03 hereof, State shall provide that any and all principal and interest in arrears under the Installment Obligations shall be paid to CSXT in full, in cash, upon the consummation of any such sale, lease, other disposal or transfer.

2.05 In the event State elects option Second under Section 2.03 hereof, or in the event State elects option First (a) or (b) of said Section 2.03 and fails to perform and complete such option within the prescribed time, then, in either event, State shall immediately transfer and re-convey to CSXT the subject property solely in exchange for CSXT's termination of, and release and discharge of State from State's obligations under the Installment Obligations, this Contract and the Operating and Management Agreement. Such transfer and re-conveyance shall be effected by Deed and Bill of Sale in the same form as the subject property was sold, transferred and conveyed to State upon the Closing Date of this Contract, except as otherwise expressly provided in this Section 2.05. Such transfer and re-conveyance by State to CSXT shall be free and clear of all mortgages, deeds of trust, financing statements, judgment liens, materialmen liens, liens arising out of State's employee pension benefit obligations and any and all other liens and/or encumbrances of whatever nature, kind or description, which liens and/or encumbrances were caused or created by State from and after the Closing Date of this Contract without the written consent of CSXT. In the event of such transfer and re-conveyance, State shall assign to CSXT any

or expense to CSXT.

If in the judgment of the State any proposed building, construction, addition, alteration, removal, improvement or demolition would be of value to CSXT in the event the subject property is transferred and re-conveyed to CSXT under this Section 2.05, then the State shall have the option to seek CSXT's prior agreement to purchase from State or reimburse it for such building, construction, addition, alteration, removal, improvement or demolition, or portion(s) thereof, upon terms and conditions mutually agreeable to the parties hereto. If CSXT and the State cannot agree as aforesaid, then the State may make any such building, construction, addition, alteration or improvement, subject to the aforesaid obligations to remove and restore and subject to the terms and conditions of the Operating and Management Agreement, including, without limitation, any consents required under Section 8 thereof.

In the event that the subject property is transferred and re-conveyed to CSXT under this Section 2.05, then, as of the date of such transfer and re-conveyance, any and all of State's rights and interests under this Contract in the subject property including, without limitation, State's right to operate commuter rail service thereon, shall cease and terminate; provided, however, that in the event such transfer and re-conveyance occurs prior to the expiration of the initial or extended term specified in Section 9.01 of that certain Access and Services Agreement between State and CSXT, dated June 9, 1987 (which Agreement is incorporated herein by

reference), then State may elect to continue to operate the commuter rail service pursuant to the terms and conditions of the aforesaid Access and Services Agreement for the remainder of the initial or any extended term specified in Section 9.01 of such Access and Services Agreement. (For purposes hereof the time remaining under the initial or any extended term of Section 9.01 of said Agreement shall be computed on the same basis as if the commuter rail service had commenced in accordance with the provisions of said Agreement and said Agreement had remained in full force and effect).

In the event this Contract and the Operating and Management Agreement are terminated as aforesaid and in the event that at the time of such termination operations on the State Property are being conducted under Phase B of said Agreement as a consequence of State's termination of Phase A of said Agreement, then in addition to all of its other obligations under this Contract and said Agreements, State shall also bear and pay to CSXT any and all reasonable costs and expenses incurred by CSXT in resuming its maintenance and operation of the State Property, including, without limitation, the costs and expenses of any and all modifications of dispatching, communication and signal facilities necessary to reconnect such facilities with those of CSXT and any and all cost and expense incurred by CSXT for the hiring of employees for the maintenance and operation of the subject property.

The termination of the aforesaid Agreements, rights and interests and the release and discharge of State as aforesaid

shall not relieve or release State from any obligation assumed or any liability which may have arisen or been incurred by State prior to such termination, release and discharge which has not been fully satisfied or discharged by State.

2.06 It is understood by the parties hereto that, except as otherwise provided in this Section 2, State may not assign the Operating and Management Agreement unless and until State pays the Purchase Price, in full, by making all of the payments contemplated under the Installment Obligations. It is further understood by the parties hereto that nothing contained in this Section 2 either: first, shall limit or restrict State's right to terminate the Operating and Management Agreement in accordance with and subject to the terms thereof, or second, shall limit or restrict CSXT's right to terminate or assign the Operating and Management Agreement in accordance with and subject to the terms thereof prior to such payment of the Purchase Price, in full, as evidenced by said Installment Obligations.

Section 3. Lien and Security Provisions.

3.01 The parties hereto understand that this Contract will be recorded and will constitute and evidence a lien and encumbrance on the subject property upon the terms and conditions hereinafter set forth, and that the Deed herein provided for will incorporate all of the terms and conditions of this Contract and will also evidence for recording purposes this Contract and the lien and encumbrance created hereby.

3.02 Upon the Closing Date and simultaneously with CSXT's delivery to State of the Deed contemplated under this Contract, the provisions of Sections 3.01 through 3.17, inclusive, (herein sometimes referred to as the "Lien Provisions") shall become applicable and shall constitute a lien and encumbrance on the subject property.

State hereby covenants and agrees from and after the Closing Date and until such time as all of the payments required under the Installment Obligations are made to CSXT in accordance therewith and this Contract as follows:

(a) To pay any and all principal and interest and other sums of money payable by virtue of the Installment Obligations and/or this Contract promptly on the dates respectively the same severally become due, subject to the limitations and conditions pertaining to such payments set forth herein and in said Installment Obligations.

(b) To pay or exempt itself from any and all taxes, assessments, levies, liabilities, obligations and encumbrances for which the State may become liable of every nature on the subject property (except as may be otherwise expressly provided in the Operating and Management Agreement between State and CSXT), and if the same are not promptly paid or exempted by State on CSXT's request, CSXT may at any time pay the same without waiving or affecting its rights hereunder or otherwise, and every payment so made shall become a lien on the subject property fully secured hereby and shall bear interest from the date thereof at the maximum interest rate permitted under

Section 287.063(1)(b), Florida Statutes (1985).

(c) To perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Installment Obligations and this Contract including, without limitation, the provisions of Section 2.05 hereof pertaining to buildings, constructions, alterations, additions, removals, improvements, demolitions and restorations, and to pay any and all costs, charges and expenses, including attorney's fees, reasonably incurred or paid at any time by CSXT, its successors or assigns, for which State is liable because of its failure to perform, comply with and abide by each and every stipulation, agreement, condition and covenant of the Installment Obligations and/or this Contract and every such payment so made shall become a lien on the subject property fully secured hereby and shall bear interest from the date thereof at the maximum interest rate permitted under Section 287.063(1)(b), Florida Statutes (1985).

(d) To permit, commit or suffer no waste, impairment or deterioration of the subject property or any part thereof, except for reasonable wear and tear; provided, however, that the foregoing provision shall not apply to casualty losses and shall not be construed as modifying or amending the rights and obligations of State and CSXT under the Operating and Management Agreement or as imposing upon State any obligation with respect to the maintenance or repair of said property which CSXT is otherwise obligated to perform pursuant to said Operating and Management Agreement.

(e) Not to grant or convey, without the prior written consent of CSXT, to any person, firm, partnership, corporation or governmental entity, any interest, easement, lease, license or right of occupancy in, on, under, through, above, across or along the subject property or any portion thereof or to enter into any contract or agreement pertaining to said property, without the prior written consent of CSXT, unless such interest, easement, lease, license, right, contract or agreement provides for both: (i) termination at the discretion of CSXT upon the occurrence of any Event of Default under these Lien Provisions on not more than thirty (30) days' prior written notice by CSXT, and (ii) compensation provisions providing for payments being made no less frequently than annually, if any compensation is received by State thereunder. Not to modify or amend the terms and conditions of any contract, agreement, lease, license or easement that is assigned to State by CSXT pursuant to this Contract, without the prior written consent of CSXT, unless such modification or amendment provides for both: (i) termination at the discretion of CSXT upon the occurrence of any Event of Default under these Lien Provisions on not more than thirty (30) days' prior written notice by CSXT, and (ii) compensation provisions providing for payments being made no less frequently than annually, if any compensation is received by State thereunder. Notwithstanding the foregoing, CSXT and State may agree upon the sale or transfer by State of portions of the subject property which agreement will provide for the substitution of

property or money of equal value to the portions of the subject property being so sold or transferred and for any such monies so paid to be credited to the balance due CSXT of the Purchase Price as set forth herein. In the event that the State's exercise of any of the foregoing rights or privileges would cause or permit any building, constructing, alteration, addition, removal, improvement or demolition on or to the subject property, then such exercise shall be subject to the State's performing, complying and abiding with the provisions of Section 2.05 hereof and Section 8 of the Operating and Management Agreement.

(f) Upon the occurrence of any Event of Default under these Lien Provisions, then, upon CSXT's request, all of the interests, easements, leases, licenses, rights, contracts and agreements referred to in Subsection (e) above shall be assigned by State to CSXT, subject to the rights of termination specified in said Subsection (e), and any and all prepaid fees, rents, charges or income thereunder shall be prorated, adjusted and apportioned between State and CSXT as of the date of such default. On request, State shall promptly pay to CSXT the amount so due CSXT under such proration, adjustment and apportionment. The foregoing provisions of Subsection (e) and this Subsection (f) shall apply to and bind State during the term of these Lien Provisions, notwithstanding any provision of this Contract and the Operating and Management Agreement to the contrary, including, without limitation, Sections 7 and 8 of said Operating and Management Agreement.

(g) To execute and deliver to CSXT and to any assignee from time to time, upon presentment and demand, any instrument or instruments required to perfect the lien hereof with respect to all chattels and articles of personal property now intended to be subject to these Lien Provisions.

3.03 If the subject property, or any portion thereof, shall be taken and condemned by the exercise of any lawful authority for condemnation, expropriation or seizure, all damages and awards for the property so taken shall be applied to the replacement, repair or restoration of the property so taken with property of like kind, condition and quality. In the event that such replacement, repair or restoration is not practicable or reasonably necessary for the conduct of railroad operations on the subject property or in the event that damages and awards exceed the cost of such replacement, repair or restoration, then the total damages and awards or the aforesaid excess amount, as the case may be, up to the amount then unpaid on the indebtedness hereby secured, shall be paid to CSXT, and the amount so paid shall be credited on such indebtedness to the principal portion of the Installment Obligations. The balance, if any, of such damages and awards remaining after satisfaction of State's indebtedness shall be paid to State. The foregoing provisions of this Section 3.03 shall apply to and bind State during the term of these Lien Provisions notwithstanding any provision of this Contract or the Operating and Management Agreement to the contrary, including, without limitation, Section 17 of Phase A thereof or Section 15 of

Phase B thereof.

3.04 State shall advise CSXT in writing within ten (10) days after the service on State of any summons or other process or notice issued in any action, suit, proceeding or matter affecting, or in which any judgment, decree, order or determination may affect or result in any lien or charge on the subject property.

3.05 CSXT may correct any Event of Default under the terms of these Lien Provisions without waiving it, or waive an Event of Default without waiving any prior or subsequent Event of Default.

3.06 State shall not cause or create any lien, claim, mortgage, deed of trust, security instrument, financing statement or charge of any nature, including, without limitation, mechanics' or materialmen's liens to be asserted against or claimed against the subject property for any reason, and State shall cause any such lien, claim, mortgage or charge to be discharged of record within thirty (30) days of the later of either: (i) the filing or attachment of same, or (ii) the date that State has actual notice of such filing or attachment. If same are not so discharged by State, CSXT may at any time discharge same without waiving or affecting the option to foreclose or exercise any right hereunder, and every payment so made by CSXT in connection with discharge, including reasonable attorney's fees, shall be paid by State. If not so paid promptly on request, such payments shall become a lien on the subject property fully secured hereby and shall bear

interest from the date any payment is so made at the maximum interest rate permitted under Section 287.063(1)(b), Florida Statutes (1985).

3.07 If any legal action or proceeding be commenced arising out of or connected with any action or inaction of State with respect to the subject property, except an action to foreclose or to collect the debt secured hereby, in which it becomes necessary to defend or assert these Lien Provisions, whether or not CSXT is made or becomes a party to such action or proceeding, all expenses of CSXT incurred in any such action or proceeding to prosecute or defend these Lien Provisions, including reasonable attorney's fees, shall be paid by State. If not so paid promptly on request, such expenses shall become a lien on the subject property, and shall be deemed to be fully secured hereby and shall bear interest at the maximum rate permitted under Section 287.063(1)(b), Florida Statutes (1985). This covenant shall not govern or affect any action or proceeding by CSXT to recover the subject property or collect the debt secured hereby, in accordance with the terms of this Contract or the Installment Obligations, which action or proceeding shall be governed by the provisions of law respecting the recovery of costs, disbursements, and allowances in foreclosure actions.

3.08 If State receives any payment(s) under insurance policies, if any, for loss or damage by casualty to the structures and improvements on the subject property, then such payment(s) shall be applied to the replacement, repair or

restoration of the property so lost or damaged with property of like kind, condition and quality. In the event that such replacement, repair or restoration is not practicable or reasonably necessary for the conduct of railroad operations on the subject property or in the event that such payment(s) exceed the cost of such replacement, repair or restoration, then the total payment(s) or the aforesaid excess amount, as the case may be, up to the amount then unpaid on the indebtedness hereby secured, shall be paid to CSXT, and the amount so paid shall be credited on such indebtedness to the principal portion of the Installment Obligations. The balance, if any, of such payment(s) remaining after satisfaction of State's indebtedness shall be paid to State. Nothing contained in this Section 3.08 shall be construed as diminishing, modifying or amending State's obligation to secure and maintain the insurance required under Section 24 of Phase A or Section 22 of Phase B of the Operating and Management Agreement.

3.09 For purposes of these Lien Provisions, any of the following shall constitute an Event of Default hereunder:

(a) State fails to pay when due any amount owed under the Installment Obligations, unless and to the extent State is released from such failure under Section 2.03 of this Contract; or

(b) State fails to timely and fully perform one of the options specifically granted it under Section 2.03 of this Contract; or

(c) State fails to timely and fully perform or

observe the covenants or conditions set forth in Sections 3.02 (d) and (e) of these Lien Provisions and such failure continues for a period of ninety (90) days (or such additional time as may be mutually agreeable to State and CSXT) after State's receipt of written notice of such failure from CSXT.

3.10 Upon an Event of Default, State shall transfer and re-convey to CSXT the subject property in accordance with and subject to the provisions of Section 2.05 of this Contract.

3.11 These Lien Provisions may be enforced in accordance with their terms and the other terms of this Contract by the institution of proceedings before a court of competent jurisdiction.

3.12 State and CSXT have entered into these Lien Provisions in accordance with the 1987 Appropriations Act which provides, in part: that payments due under the Installment Obligations, except as appropriated under said Appropriations Act, shall be subject to the appropriation of funds by future legislatures unless available from other legal sources; that the execution of this Contract and the Installment Obligations shall not in any manner be construed to pledge the full faith and credit of State to make any annual payment or portion thereof provided in said Contract or Installment Obligations; and that if any Event of Default as defined in Section 3.09 hereof shall occur and be continuing, then CSXT shall be entitled to retain all sums previously paid by the State, not as a penalty, but for the use and control of the subject property, for CSXT holding said property off the market and for

permitting the State to change the use thereof, all during the period prior to such Event of Default, and CSXT shall have the right to receive the return of title to and possession of the property as herein set forth. Notwithstanding any provision herein to the contrary, in no event shall CSXT be entitled to a deficiency judgment as it is the intent of the parties that this instrument be nonrecourse security for the Installment Obligations in order to comply with the laws of the State of Florida and the terms of the Installment Obligations.

3.13 No waiver of any covenant herein or of the obligations secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or to the Installment Obligations secured hereby.

3.14 These Lien Provisions shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness or any part thereof secured hereby. In the event either party hereto fails to make, when due, any payment to the other under this Contract, then, the party not receiving such payment (in addition to any other rights such party may have under this Contract or at law or equity) may set off the amount due such non-receiving party against any payment that is owed by such non-receiving party to the other under this Contract.

3.15 The mailing of a written notice or demand addressed to the State or owner of record of the subject property or directed to State or the said owner at the last address actually furnished to CSXT, or, if none, directed to State or

said owner at said premises and delivered personally or mailed by United States certified mail, postage prepaid, shall be sufficient notice and demand.

3.16 The covenants herein contained shall bind and the benefits and advantages hereof shall inure to the respective successors and assigns of the parties hereto; provided, however, that nothing contained herein shall be construed to permit State to transfer its rights and obligations hereunder, except as otherwise expressly provided under and in accordance with Sections 2.03 through 2.06, inclusive, of this Contract. The Installment Obligations, these Lien Provisions and this Contract may be assigned by CSXT in whole or in part, subject to CSXT's rights and obligations hereunder. Whenever used in these Lien Provisions the term CSXT shall include the successors or assigns of CSXT, as though originally herein written, whether by operation of law or otherwise.

3.17 Upon payment in full of all sums contemplated in the Installment Obligations and these Lien Provisions which constitute the secured Purchase Price, and upon payment of any lien which may become due and payable as a result of any other provision of the Lien Provisions, then the Installment Obligations and these Lien Provisions shall be considered satisfied. Upon said payment, CSXT shall execute and deliver to State a Satisfaction approved by State for recording by State.

Section 4. Statutory Limitations.

Nothwithstanding any other provision hereof, this Contract and the Installment Obligations are subject to the provisions of Section 339.135(8)(a), Florida Statutes, to wit:

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

Section 5. Commission Approvals.

The parties hereto have entered into this Contract subject to the understanding that the acquisition of the subject property contemplated herein does not require any approval or authorization of the Interstate Commerce Commission (hereinafter referred to as the "Commission"), or exemption from the requirements to obtain such approval or authorization. The parties hereto have obtained mutually satisfactory opinions that no such approval, authorization or exemption by the Commission is required.

Section 6. Closing.

The Closing under this Contract and all deliveries hereunder shall be held at the offices of CSXT in Jacksonville, FL or at such other location as the parties hereto may mutually agree upon. Subject to the rights of termination and rescission expressly provided under Section 17 of this Contract, the Closing Date shall occur on May 11, 1988, or upon such other date as the parties hereto may mutually agree upon.

Section 7. Instruments of Transfer and Conveyance.

7.01 To the extent that a tax, title or United States District Court search, a Uniform Commercial Code search, local tax certificates and/or soil or other environmental tests was desired by State, it has obtained such at its sole cost and expense prior to the Closing Date. Neither the failure nor the inability to obtain such items shall constitute grounds for the termination or rescission of this Contract.

7.02 At the Closing, CSXT shall deliver to State CSXT's Deed and Bill of Sale, as described in Section 1.02 hereof, subject to:

(a) The exceptions, reservations, rights and privileges of CSXT set forth in this Contract, including, without limitation, the CSXT Easement;

(b) Building, Zoning, Subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations;

(c) Taxes, tax liens and assessments, both general and special, which may become due or payable on the subject property on or after the Closing Date;

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

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

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

(g) Mortgage liens pertaining to the subject property created by CSXT, which liens CSXT shall cause to be released, at no cost or expense to State, within sixty (60) days of the recording date of the Deed.

7.03 In the event desired by State, CSXT shall arrange with a Florida title insurance company for a title insurance policy covering the subject property to be issued to and for the benefit of State. CSXT shall bear the premium cost for said policy. Subject to the concurrence and approval of State (which State may withhold in its sole judgment and discretion), CSXT shall select the company to issue said policy. State and said company shall agree upon and establish all terms and conditions with respect to said policy, including a commitment

for the issuance of said policy. In the event a commitment, as aforesaid, is not issued to State by the Closing Date, then both State and CSXT shall have the unilateral right to terminate and rescind the Contract at the Closing. It is expressly understood by the parties hereto that CSXT shall have no liability or responsibility under or beyond said policy or as a consequence of any failure of any obligation, term or condition of said policy, howsoever arising, including, without limitation, the insolvency or bankruptcy of the company issuing said policy and/or said company's failure, inability or refusal to perform under said policy, and that any such failure, inability, refusal, insolvency or bankruptcy shall not constitute grounds for the termination or recission of this Contract.

7.04 In the event that any subdivision approval is either desired by State or is necessary for the completion of the sale, transfer and conveyance contemplated by this Contract, said approval shall be obtained by State, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plats, the filing of same with governmental body(ies), recordation thereof and legal fees. Nothing contained herein shall be construed as a covenant by CSXT that the subject property, or any portion thereof, will be approved for subdivision, and CSXT assumes no obligation or liability for any cost or expense howsoever arising in the event subdivision approval is not secured. Failure to obtain

any subdivision approval shall not constitute grounds for the termination or rescission of this Contract.

7.05 CSXT shall prepare the Deed (which includes therein the CSXT Easement) and Bill of Sale. CSXT shall describe the subject property by means of map references and by such other references as may be deemed appropriate by CSXT. The Deed to be prepared by CSXT and delivered at Closing shall not contain a metes and bounds description of the subject property.

7.06 State shall cause the Deed (which includes therein the CSXT Easement) and this Contract to be recorded in the public records of the counties in which the subject property lies within thirty (30) days subsequent to the Closing Date. In the event that the description of the subject property contained in the Deed and/or CSXT Easement is deemed inadequate for recordation purposes by the Recorders of Deeds or in the event that after Closing a metes and bounds description of the subject property is desired by State and furnished to CSXT by State, at State's sole cost and expense, then CSXT shall execute and deliver such further deeds and/or further easements or confirmatory or corrective deeds and/or confirmatory or corrective easements, containing a description of the subject property based on such metes and bounds description as may be acceptable to State, CSXT and to the Recorder(s) of Deeds so involved. In the event that the preparation of such further or confirmatory deeds and/or easements requires any survey of the subject property, or any portion thereof, or any search or examination of title with respect to the subject property, or

any portion thereof, State shall pay any and all costs and expenses arising out of or connected with such survey, search or examination.

7.07 CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, cost and expense arising out of or connected with CSXT's ownership and operation on the subject property prior to the Closing Date; provided, however, that nothing contained herein shall be construed as modifying or amending any provision of this Contract, including, without limitation, any other provision of this Section 7, Sections 12 and 13 hereof or any other agreement by or between State and CSXT; provided, further, that nothing contained herein shall be construed as creating any responsibility or liability on the part of CSXT with respect to any fault, defect or condition of the subject property; and, provided, further, that nothing contained herein shall be construed as applying to any occurrence in which State is or was involved.

7.08 The subject property shall be sold, transferred and conveyed subject to all contracts, agreements, leases, licenses, and easements and all amendments and supplements thereto, pertaining to the subject property, or any portion thereof, which are listed or described in Exhibits 2 and 9 hereto. Nothing contained in this Section 7.08 shall be construed to: (a) limit or restrict any exception, reservation, right or privilege of CSXT under Section 8 of this Contract; (b) limit or restrict CSXT's right to enter into any

contract, agreement, lease or license pertaining to the provision by CSXT of rail freight service on the subject property, subject to the terms and conditions set forth in Sections 7 and 8 of the Operating and Management Agreement; (c) require CSXT to cancel, terminate or amend any existing contract, agreement, lease, license or easement listed or described in Exhibits 2 or 9 hereto; or, (d) require CSXT to cancel or terminate any amendment to an existing or additional contract, agreement, lease, license or easement to which the terms and conditions of Section 8 of this Contract may apply.

7.09 At the Closing, CSXT shall assign to State all of CSXT's rights and interests and State shall assume all of CSXT's obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses and easements listed or described in Exhibit 9 hereto. Notwithstanding the foregoing, nothing contained in this Contract shall impose upon CSXT an obligation to assign to State any contract, agreement, lease, license or easement listed or described in Exhibit 9 hereto which expires, terminates or is cancelled in accordance with the terms thereof on or prior to the Closing Date. Any such expiration, termination or cancellation shall not be construed as a breach of this Contract and shall not constitute grounds for termination or rescission of this Contract.

7.10 In the event that CSXT is unable, for any reason(s), including, without limitation, its inability or failure to obtain any necessary consent, to effect, on the Closing Date, the assignment of any contract or agreement as contemplated by

Section 7.09 hereof, then such failure or inability shall not constitute grounds for termination or rescission of this Contract. CSXT represents that the schedules of contracts, agreements, leases, licenses and easements contained in Exhibits 2 and 9 to this Contract include, to the best of CSXT's knowledge after diligent investigation, all such instruments that are in existence. In the event that any omission becomes known to CSXT or State, then the party discovering such ommission shall provide notice thereof to the other party. In such event, CSXT shall assign any such instrument to State that would otherwise have been assigned to State under this Contract, and such instrument shall be subject to all of the applicable terms of this Contract.

Section 8. CSXT's Further Exceptions and Reservations.

8.01 In accordance with Sections 1.01 and 7.02 hereof, and subject to the provisions of this Section 8, State shall accept and purchase the subject property subject to: (a) the CSXT Easement; (b) the Operating and Management Agreement; and (c) the rights, interests, contracts, agreements, leases, licenses and easement(s) listed or described in Exhibits 2 and 9 hereto. It is understood by the parties hereto that the aforesaid contracts, agreements, leases, licenses and easements, inter alia, may grant or confer to others, not party to this Contract, including, without limitation, the National Railroad Passenger Corporation, MCI Telecommunications, Inc. and Lightnet, rights, interests and privileges in or pertaining

to the subject property, and that, from and after the Closing Date, State shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in such contracts, agreements, leases, licenses and easements listed or described in Exhibits 2 and 9 hereto, and State shall not cause or suffer any breach of such contracts, agreements, leases, licenses and easements.

8.02 The rights, interests and obligations of CSXT and State with respect to the contracts, agreements, leases, licenses or easements listed or described in Exhibit 2 hereto shall be governed by the terms and conditions of Sections 7.01 and 8 of the Operating and Management Agreement - Phase A, except for the contracts or agreements pertaining to sidetracks which shall be governed by the terms and conditions of Sections 7.03 and 8 of the Operating and Management Agreement - Phase A, and, except as otherwise provided in Section 8.03 hereof, the rights, interests and obligations of CSXT and State with respect to the contracts, agreements, leases, licenses or easements listed or described in Exhibit 9 hereto shall be governed by the terms and conditions of Sections 7.02 and 8 of the Operating and Management Agreement - Phase A. In the event that the Operating and Management Agreement - Phase B comes into effect, then the rights, interests and obligations of the parties hereto or their respective successors or assigns, as the case may be, with respect to the aforesaid instruments, shall be governed by Sections 7 and 8 of said Agreement.

8.03 The rights, interests and obligations of the parties

hereto, or their respective successors or assigns with respect to the Agreement dated April 16, 1971, and all supplements thereto, between CSXT and the National Railroad Passenger Corporation (hereinafter referred to as "Amtrak") shall be governed by the terms and conditions of the Operating and Management Agreement - Phase A, including, without limitation, Section 3.12 thereof. In the event that the Operating and Management Agreement - Phase B comes into effect, then the rights, interests and obligations of the parties hereto, or their respective successors or assigns, with respect to the aforesaid Agreement between CSXT and Amtrak, shall be governed by Section 3(1) of said Agreement. In the event that the subject property is transferred and re-conveyed to CSXT pursuant to Section 2.05 hereof, then all of State's rights, interests and obligations with respect to all of the aforesaid instruments listed or described in Section 8.02 and this Section 8.03 shall automatically terminate; provided, however, that such termination shall not relieve or release State from any obligation assumed or any liability which may have arisen or been incurred thereunder prior to such termination.

Section 9. <u>Sales, Transfer Taxes, Recording Fees and Utilities</u>.

9.01 CSXT shall bear and pay any and all state or local transfer taxes, fees, documentary stamp taxes, intangible taxes, sales and/or use taxes and charges, and any and all documentary, recording or filing fees arising out of or connected with the sale, transfer, conveyance, promissory

obligation and lien contemplated by this Contract, and CSXT shall indemnify, protect, defend, and hold harmless State from and against any and all liability, cost and expense arising out of or connected therewith, including, without limitation, any and all interest and penalties connected therewith.

9.02 It is the intent and understanding of the parties hereto that from and after the Closing Date CSXT shall not be responsible for any taxes, fees, charges, liens, or assessments associated with the State's ownership of the subject property and/or the State's interests therein; provided, however, that nothing contained herein shall relieve CSXT from any tax liability which it may have for its retained interests in the subject property.

9.03 Utility charges pertaining to the subject property shall be prorated, adjusted and apportioned between CSXT and State as of the Closing Date and shall thereafter be shared by State and CSXT in accordance with the provisions of the Operating and Management Agreement.

Section 10. Further Agreements and Instruments.

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

Section 8 of this Contract.

Section 11. Representations and Warranties.

11.01 As a material inducement to State to execute this Contract including, without limitation, the Exhibits hereto and to perform its obligations hereunder including, without limitation, the obligations set forth in the other instruments to be executed hereunder, CSXT hereby represents and warrants to State, as follows:

(a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by CSXT without the intervention of any broker, finder or other person, and CSXT has not incurred any obligation that would result in State's liability to pay any brokerage, finder's fee or similar fee in connection with such transactions;

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

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

State of Florida;

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

(e) Neither the execution of this Contract and the other instruments to be executed hereunder by CSXT, nor the performance by CSXT of the various terms and conditions hereto will violate the Articles of Incorporation or By-Laws of CSXT or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage (subject to the release of liens required under Section 7.02(g) hereof), lease or any other agreement to which CSXT is a party or by which it is bound except as may be provided in the contracts, agreements, leases, licenses and easements listed or described in Exhibits 2 and 9 hereof, and CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, loss, cost or damage resulting from any such breach or default of the aforesaid instruments listed or described in Exhibit 2 hereof;

(f) When duly recorded among the land records of Dade Broward and Palm Beach Counties, Florida, the deed issued by CSXT pursuant to this Contract will create a valid and enforceable conveyance in favor of State of the interests therein stated, subject only to the matters described in said deed.

(g) Except as disclosed by CSXT to State in writing prior to Closing, there is no action or proceeding pending or, to CSXT's best knowledge, threatened challenging CSXT's right, title and interest in and to the subject property at law or in equity or the consummation and performance of the transactions contemplated by this Contract, which challenge, if successful, would result in any material adverse effect upon any such transaction;

(h) Except as may pertain to the items listed or described in Attachment A to Exhibit 10 hereto, CSXT has not been apprised of, nor is it aware of, the presence within the subject property of hazardous wastes, hazardous substances or other contaminants at a level violative of applicable environmental laws or regulations.

(i) Except as disclosed by CSXT to State in writing prior to Closing, CSXT has not received notice from any governmental body having jurisdiction in the premises of a material violation of any building, environmental, zoning, subdivision, federal, state, county, municipal or local law, ordinance or regulation affecting the subject property; and

(j) Except as disclosed by CSXT to State in writing prior to Closing, CSXT has not received notice of any material breach associated with any contract, agreement, lease, license or easement listed or described in Exhibits 2 and 9 from a party permitted to give notice under such instrument.

11.02 As a material inducement to CSXT to execute this Contract including, without limitation, the Exhibits hereto,

and to perform its obligations hereunder including, without limitation, the other instruments to be executed hereunder, State hereby represents and warrants to CSXT, as follows:

(a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by State without the intervention of any broker, finder or other person, and State has not incurred any obligation that would result in CSXT's liability to pay any brokerage, finder's fee or similar fee in connection with such transaction;

(b) The execution of this Contract and the other instruments to be executed hereunder by State and the performance by it of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents required hereunder, have been duly authorized by the State of Florida and fully comply with the laws of such State;

(c) State of Florida Department of Transportation is an agency of the State of Florida, duly organized under the laws of such State, and is qualified to own and lease property in such State pursuant to Chapter 334 of the Florida Statutes (1985); and

(d) This Contract, when executed and delivered, will be valid and legally binding upon State, enforceable in accordance with its terms; and neither the execution of this Contract and the other instruments to be executed hereunder by

State, nor the performance by it of the various terms and conditions hereto will violate the laws of the State of Florida or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage, lease or any other agreement to which State is a party or by which it is bound.

11.03 (a) At the Closing, CSXT shall deliver to State an opinion of CSXT's counsel to the effect that the representations and warranties of CSXT contained in Sections 11.01 (b) through (f), inclusive, are true and correct as of the Closing Date.

(b) At the Closing, State shall deliver to CSXT an opinion of State's counsel to the effect that the representations and warranties of State contained in Section 11.02(d) are true and correct as of the Closing Date.

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

Section 12. Disclaimer of Warranty.

Except as otherwise provided in Exhibit 10 hereto, State represents that it has or by the Closing Date will have fully inspected the subject property and is relying on such inspection for all purposes whatsoever, including, without

limitation, the determination of the character, size, condition, state of repair and suitability of the subject property. IN ADDITION, EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE AND THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, EXHIBIT 10 HERETO), STATE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO STATE BY CSXT OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

Section 13. Condition of Property.

13.01 The parties hereto understand that facilities on the subject property including the tracks are being upgraded pursuant to the aforesaid Railroad Master Reimbursement Agreement dated June 9, 1987, between State and CSXT, and that, subject to the rights of termination and rescission expressly set forth herein that are exercisable prior to the Closing and subject to CSXT's compliance with the provisions of Exhibit 10 hereto, State agrees to accept and purchase the subject property, without warranty, "as is, where is", and in the condition in which it finds the subject property as of the Closing Date.

Section 14. Other Agreements.

14.01 In conjunction with the transactions contemplated by this Contract, CSXT and State will enter into the Operating and Management Agreement on the Closing Date. The Operating and Management Agreement may be amended, from time to time, or cancelled or terminated in accordance with the provisions of said Agreement, and any such amendment(s), cancellation(s) or termination(s) shall not constitute grounds for the termination or rescission of this Contract.

14.02 From time to time after the Closing Date, CSXT may sell, transfer or convey any of its personal property, may sell, transfer, convey any of its real property or modify, abandon or discontinue rail operations thereon including, without limitation, lines of railroad that may now or hereafter connect with the subject property, and CSXT may sell, transfer, convey, abandon or discontinue rail operations on the subject property. Any such sale, transfer, conveyance, abandonment or discontinuance of operations by CSXT shall not constitute grounds for the termination or rescission of this Contract, and, except as is otherwise expressly provided in the Operating and Management Agreement, any such action shall not relieve or release either party hereto from any or all of its liabilities, obligations or responsibilities under this Contract or the Operating and Management Agreement. Nothing contained herein shall be construed as limiting or restricting the rights and obligations of the parties hereto set forth in Sections 14 and 40 through 42, inclusive, of the Operating and Management

Agreement - Phase A or Sections 12 and 38 through 40, inclusive, of the Operating and Management Agreement - Phase B.

Section 15. Inspection.

15.01 Prior to the Closing, CSXT has made available from time to time for State's inspection the deeds and other instruments evidencing CSXT's right, title and interest in the subject property and all contracts, agreements, leases, licenses or easements listed or described in Exhibits 2 and 9 hereto. To the extent it has not already done so, within thirty (30) days of the Closing Date, CSXT shall deliver to State originals of all the aforesaid deeds, instruments, contracts, agreements, leases, licenses and easements contained in Exhibit 9 that CSXT may possess and copies of those contained in Exhibit 2 and any further documents in support thereof that State may require. CSXT may retain copy(ies) of any item furnished to State under the foregoing provisions. In the event that the subject property is transferred and re-conveyed to CSXT pursuant to Section 2.05 hereof, then State shall return to CSXT all of the originals and copies of the items furnished to State under the foregoing provisions.

15.02 Prior to the Closing, CSXT has provided State access to the subject property in order for State to make such investigation and inspection as State deemed appropriate including, without limitation, soil or other environmental tests. State hereby agrees to indemnify, protect, defend and hold harmless CSXT, its officers, agents and employees, from

and against any and all liability, cost and expense arising out of or connected with the exercise by State, its officers, agents or employees, of the rights of access, inspection and investigation heretofore granted, so long as such liability, cost and expense was not caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of CSXT, its officers, agents or employees.

Section 16. Arbitration.

Arbitration is not contemplated for the resolution of controversies under this Contract, except as is otherwise provided under the Operating and Management Agreement.

Section 17. Termination and Rescission.

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

(a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature and likelihood of success as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless;

(b) State has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing;

(c) The voluntary or involuntary filing by or

against CSXT of any petition, petitions or similar proceedings under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property;

(d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the subject property, or any portion thereof;

(e) The Closing has not occurred by May 11, 1988, for any reason; or

(f) State's failure or inability to deliver the written opinion as provided in Section 11.03 hereof.

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

(a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless;

(b) CSXT has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing;

(c) The voluntary or involuntary filing by or against CSXT of any petition, petitions or similar proceedings

under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property;

(d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the subject property, or any portion thereof;

(e) The Closing has not occurred by May 11, 1988, for any reason; or

(f) CSXT's failure or inability to deliver the written opinion as provided in Section 11.03 hereof, or CSXT's disclosure pursuant to Sections 11.01(g), (h) and/or (j) hereof, of any state of facts unacceptable to State.

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

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

17.05 Subsequent to Closing, the remedy of rescission shall not be available to the parties hereto, except in the case of fraud and/or material misrepresentation of the

representations and warranties set forth in Section 11 of this Contract.

Section 18. Extension, Waiver and Amendment.

18.01 This Contract may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto.

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

Section 19. Notices.

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

If to CSXT, to

President
CSX Rail Transport
500 Water Street
Jacksonville, FL 32202

with copy to

Peter J. Shudtz
CSX Rail Transport
100 North Charles Street
Baltimore, MD 21201

If to State, to

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

with copy to

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

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

Section 20. Governing Law.

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

Florida.

Section 21. Counterparts.

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

Section 22. Interpretation.

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

subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section. Whenever reference is made to the Operating and Management Agreement, such reference is to both the Operating and Management Agreement - Phase A and the Operating and Management Agreement - Phase B unless the reference is expressly made to only one of such Agreements.

Section 23. Exhibits.

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

Section 24. Survival.

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

Section 25. Entire Agreement.

This Contract constitutes the entire agreement among the parties hereto, and, except as otherwise expressly provided herein or in the Operating and Management Agreement, supersedes all other prior agreements and understandings, both written or oral, between or among the parties hereto, or any of them, with respect to the subject matter of this Contract, including, without limitation, those certain Memorandum of Understanding and Letter of Intent between the parties hereto dated February

20, 1987 and March 16, 1988, respectively.

Section 26. Waiver.

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

Section 27. Expenses.

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

Section 28. Further Assurances.

Both parties hereto shall exert their reasonable best efforts to cause the transactions contemplated by this Contract to be consummated and to fulfill all conditions and obligations of such party under this Contract.

Section 29. Time of the Essence.

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

Section 30. Prohibition of Third Party Beneficiaries.

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

conferred to such other party(ies) by contract(s), agreement(s), lease(s), license(s) or easement(s) entered into between CSXT and such other party(ies) pursuant to Section 8 hereto and the Exhibits referred to therein.

Section 31. Successors and Assigns.

This Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that, except as otherwise expressly provided in this Contract, this Contract may not be assigned, in whole or in part, by State without the prior written consent of CSXT.

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

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CSX TRANSPORTATION, INC.

By Harold L. Snyder
Harold L. Snyder

Attest (SEAL)
Assistant Secretary

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Karen M. Yeakley

Carol L Bahr

STATE OF
FLORIDA DEPARTMENT
OF TRANSPORTATION

By
William W. Miller

Attest (SEAL)

THE AFOREMENTIONED CONTRACT HAS BEEN REVIEWED AND APPROVED AS TO FORM

ATTORNEY ~~FOR~~ STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

FUNDS ARE APPROVED
AND AVAILABLE

By
COMPTROLLER FOR STATE
OF FLORIDA DEPARTMENT
OF TRANSPORTATION

APPROVED
FUNDS AVAILABLE
MAY 09 1988
Office of the Comptroller

APPROVED
FUNDS AVAILABLE
18 1988
Office of the Comptroller

STATE OF FLORIDA)
) ss.
BROWARD COUNTY)

I, Vivian M Tomnick, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came H. L. Snyder, 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 Jacksonville, Duval County, Florida; he is a duly authorized agent and attorney-in-fact of CSX Transportation, Inc., the corporation described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said corporation, the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; he signed his name thereto for said corporation pursuant to such authority; and the execution of this instrument is the free act and deed of said corporation; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 11th day of May, 1988.

Vivian M. Tomnick (SEAL)
Notary Public

My Commission Expires On:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB 22,1991
BONDED THRU GENERAL INS. UND.

STATE OF FLORIDA)
) ss.
BROWARD COUNTY)

I, Vivian M Tomnick, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came William W. Miller, 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 Lake City, Columbia County, Florida; he is Deputy Assistant Secretary of Transportation of the Florida Department of Transportation, the State agency described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of the Florida Department of Transportation; the seal affixed to said instrument is such seal; it was duly affixed; he signed his name thereto for said State pursuant to his authority; and the execution of said instrument is the free act and deed of said State of Florida Department of Transportation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 11th day of May, 1988.

Vivian M Tomnick (SEAL)
Notary Public

My Commission Expires On:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB 22,1991
BONDED THRU GENERAL INS. UND.

EXHIBIT 1

DESCRIPTION OF REAL PROPERTY

That certain land situate, lying and being in the Counties of Palm Beach, Broward and Dade, State of Florida, hereinafter designated "the Premises," more particularly described as follows:

A line of railroad, underlying land and property and appurtenant facilities, COMMENCING at Railroad Valuation Station 10499+53, at or near Railroad Mile Post SX-965, West Palm Beach, Palm Beach County, Florida, and extending in a southerly direction through Broward County, Florida, and terminating at Railroad Valuation Station 14331+90, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida; PLUS the River Spur between Railroad Valuation Station 14282+67, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14518+10, at or near Railroad Mile Post SX-1041, Miami, Dade County, Florida; PLUS the Oleander Branch between Railroad Valuation Station 14292+53, at or near Railroad Mile Post SXH-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14523+94.6, at or near Railroad Mile Post SXH-1041, Oleander, Dade County, Florida; ALL hereafter designated "the Premises"; as shown generally on Railroad Valuation Map Line Sheets, Exhibits A-1, A-2 and A-3, attached hereto and incorporated herein; as further described in Exhibits B-1, B-2 and B-3 and as more particularly

described by crosshatching on Railroad Valuation Section V-5FL/L27, Maps 50, 51, S-51-A, S-51-B, S-51-C, 52 and S-52 and Railroad Valuation Section V-7FL/L29, Maps 1, S-1, 2, 3, 4, 5, 6, 7, 8, S-8, S-8A, 9, 10, S-10, 11, S-11, 12, 13, S-13, 14, S-14, S-14-A, 15, SL-15-A, ST-15-A, S-15-B, S-15-C, S-15-D, 16, S-16-A, S-16-B, S-16-C, S-16-D, S-16-E, 17, S-17-A, S-17-B, S-17-C, S-17-D, 18 and 19, each of which consists of four (4) segmented parts, herein after referred to as "Valuation Maps," attached hereto and incorporated herein and containing 1,128.715 acres, more or less (427.823 acres, more or less, in Palm Beach County; 327.993 acres, more or less, in Broward County; and 372.899 acres, more or less, in Dade County).

EXCLUDING all parcels shown and designated on Exhibits C-1, C-2 and C-3, which are not crosshatched on the Valuation Maps, and EXCEPTING unto Grantor all right, title and interest in and to those parcels shown and designated on Exhibits, D-1, D-2 and D-3, which are not crosshatched on the Valuation Maps.

NOTE: The Exhibits referred to above are set forth as Exhibits to the Deed which appears as Exhibit 3 to this Contract.

TAB 6

Return to: J Marshall Conrad
Ausley Law Firm
PO Box 391
Tallahassee, Fla. 32312

SS AF Fixed in P.B. 5-666-6

88185325

THIS INSTRUMENT PREPARED IN 3 COUNTERPARTS FOR SIMULTANEOUS RECORDING IN 3 COUNTIES.

COUNTERPART 2 OF 3

'88 MAY 11 PM 12 56

BK15424PG0731

WARRANTY DEED

THIS WARRANTY DEED, made this 11th day of May, 1988, between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter called "Grantor," and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose mailing address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450, hereinafter called "Grantee".

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations.)

W I T N E S S E T H :

WHEREAS, Grantor owns, controls and possesses a railroad corridor in Dade, Broward and Palm Beach Counties, Florida, measuring approximately eighty-one (81) miles in length and of varying widths, generally one hundred (100') feet in width, plus various connecting siding, sidetracks and branch lines; and

WHEREAS, Grantee is statutorily charged with anticipating the immediate and long-term transportation needs of the population of the State and devising a methodology to timely and economically meet those needs; and

WHEREAS, under the 1987 Appropriation Act of the Florida Legislature (Chap. 87-98, Laws of Florida), Specific Appropriation 1700-B, Grantee was authorized to acquire all or a portion of said railroad corridor; and

WHEREAS, Grantor and Grantee both recognize the total uniqueness of the property described herein; and

This instrument was prepared by
William C. Basney
Attorney
500 Water Street, Jacksonville, Fla.

1265.60
158.50

WHEREAS, Grantor is desirous of selling the property provided Grantor can retain the minimal interests necessary to meet its corporate mission and to fulfill its requirements under the mandates of the United States-Interstate Commerce Commission and various contracts related thereto; and

WHEREAS, Grantee recognizes Grantor's desires and obligations and has determined that such will not frustrate the intentions of Grantee in its use of the property; and

WHEREAS, after lengthy negotiations and proper reviews, a Contract for Installment Sale and Purchase has been concluded, and such is hereby adopted as part and parcel of this conveyance;

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR ($1.00), to it in hand paid by Grantee, the receipt of and sufficiency of which is hereby acknowledged, Grantor has granted, bargained and sold, and by these presents does GRANT, BARGAIN, SELL and CONVEY with warranties of title as hereinafter provided, unto Grantee, its successors and assigns, that certain land situate, lying and being in the Counties of Palm Beach, Broward and Dade, State of Florida, hereinafter designated "the Premises," more particularly described as follows:

A line of railroad, underlying land and property and appurtenant facilities, COMMENCING at Railroad Valuation Station 10499+53, at or near Railroad Mile Post SX-965, West Palm Beach, Palm Beach County, Florida, and extending in a southerly direction through Broward County, Florida, and terminating at Railroad Valuation Station 14331+90, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida; PLUS the River Spur between Railroad Valuation Station 14282+67, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14518+10, at or near Railroad Mile Post SX-1041, Miami, Dade County, Florida; PLUS the Oleander Branch between Railroad Valuation Station 14292+53, at or near Railroad Mile Post SXH-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14523+94.6, at or near Railroad Mile Post SXH-1041, Oleander, Dade County, Florida; ALL hereafter designated "the Premises"; as shown generally on Railroad Valuation Map Line Sheets, Exhibits A-1, A-2 and A-3, as further described in Exhibits B-1, B-2 and B-3, attached hereto and incorporated herein and as more particularly described by crosshatching on Railroad Valuation Section V-5FL/L27, Maps 50, 51, S-51-A, S-51-B, S-51-C, 52 and S-52 and Railroad Valuation Section V-7FL/L29, Maps 1, S-1, 2, 3, 4, 5, 6, 7, 8, S-8, S-8-A, 9, 10, S-10, 11, S-11, 12, 13, S-13, 14, S-14, S-14-A, 15, SL-15-A, ST-15-A, S-15-B, S-15-C, S-15-D, 16, S-16-A, S-16-B, S-16-C, S-16-D, S-16-E, 17, S-17-A, S-17-B, S-17-C, S-17-D, 18 and 19, each of which consists of four (4) segmented parts, hereinafter referred to as "Valuation Maps," attached hereto and incorporated herein, and containing 1,128.715 acres, more or less (427.823 acres, more or less, in Palm Beach County; 327.993 acres, more or less, in Broward County; and 372.899 acres, more or less, in Dade County).

BUT EXCLUDING all parcels shown and designated on Exhibits C-1, C-2 and C-3, which are not crosshatched on the Valuation Maps, and EXCEPTING unto Grantor all right, title and interest in and to those parcels shown and designated on Exhibits D-1, D-2 and D-3, which are not crosshatched on the Valuation Maps, each of which is also attached hereto and incorporated herein.

TO HAVE AND TO HOLD the said Premises unto Grantee, Grantee's successors and assigns, forever, and including all right, title and interest in those properties conveyed by that certain Special Masters Deed dated December 17, 1945 and recorded April 11, 1946 in Deed Book 531, Page 118 of the Public Records of Broward County, Florida; as recorded April 11, 1946 in Deed Book 2666, Page 297 of the Public Records of Dade County, Florida; and as recorded April 10, 1946 in Deed Book 759, Page 1 of the Public Records of Palm Beach County, Florida, and not heretofore alienated by Grantor or its predecessors in interest.

TOGETHER WITH all buildings, structures and improvements thereon, including tracks, ties, rails, switches, etc., and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to said Premises belonging or in anyway incident or appertaining (except for the retained perpetual use easement for exclusive freight railroad operations as more particularly described below).

SUBJECT TO: (a) Building, Zoning, Subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (b) Taxes, tax liens and assessments, both general and special, which may become due or payable on the Premises, after the Date hereof; (c) Reservations or exceptions whether or not of record, including, without limitation: reservations or exceptions of minerals or mineral rights; public utility and other easements; and easements, crossings, occupancies, and rights-of-way, howsoever created; (d) Encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Premises; (e) All other existing roads, streets, ways, alleys, party walls, appurtenances and servitudes, howsoever created; and (f) Mortgage liens pertaining to the Premises created by Grantor, which liens Grantor shall cause to be released and recorded, at no cost or expense to Grantee, within sixty (60) days of the recording date of this Indenture; Grantor hereby WARRANTS GENERALLY title to those portions of the Premises marked (A) on Exhibits B-1, B-2 and B-3 only, and that it will forever defend said title unto Grantee against claims of or by Grantor and all other persons lawfully claiming the same or any part thereof, by, through or under Grantor.

BK 15424 PG 733

As to that portion of the Premises marked (B) on Exhibits B-1, B-2 and B-3, Grantor FURTHER WARRANTS only that it has certain rights, title and/or interest(s) in and to that portion of the Premises, which right, title and/or interest(s) it hereby sells, transfers, assigns and conveys; but Grantor further warrants that it (or its predecessor railroads) has done no act since its acquisition of such portion of the Premises to destroy, diminish, limit or impair such rights, title or interest; and Grantor further covenants and agrees to defend and indemnify Grantee against any and all claims against title to such portion of the Premises arising from such (real or alleged) acts of Grantor, but excluding any claims resulting by Grantee's action(s) or from this conveyance or the restriction upon Grantor's reserved railroad easement herein; but not otherwise.

RESERVING unto Grantor, its successors and assigns, an EASEMENT IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on that certain portion of the Premises, more particularly described in Exhibits A-1, A-2, A-3, B-1, B-2, B-3 and on the Valuation Maps, to a maximum height of and within an area limited by a plane twenty-three feet (23') above the top of each rail, being (a) twenty feet (20') wide, ten feet (10') on each side of the centerline of each main track and adjacent siding and/or (b) eighteen feet (18') wide, nine feet (9') on each side of the centerline of each sidetrack (as hereinafter defined); including the use of all the tracks or Trackage (as hereinafter defined) within the Premises; and herein known as the CSXT Easement; but SUBJECT TO:

1. The terms, conditions and limitations of that Operating and Management Agreement between Grantor and Grantee, of even date herewith, particularly Section 2 and 8 thereof, as amended, altered, cancelled or terminated pursuant to its terms.

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Exhibits B-1, B-2 and B-3 or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Easement is not retained to the exclusion of Grantee and its assigns, except for freight rail purposes, as set forth in said Operating and Management Agreement.

4. Grantor and Grantee agree that the CSXT Easement can be assigned only in conjunction with a transfer or assignment of said Operating and Management Agreement.

5. <u>Definitions of Railroad Easement Terms</u>:

(a) <u>Perpetuity</u>: Until this Easement is abandoned or terminated, as provided in the Operating and Management Agreement herein referenced. In the event of abandonment or termination of any portion of this CSXT Easement, such portion thereof shall automatically be extinguished.

BK 15424 PG 734

(b) Trackage: The railway tracks located on, in or below the CSXT Easement area, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, siding or sidetrack(s); being the items hereinabove conveyed to Grantee.

(c) Railroad Purposes: The exclusive right to use (including rights to repair, replace and maintain) all Trackage on the Premises for freight rail purposes, and the further right to use the same for accommodation of Amtrak (National Railroad Passenger Corporation) for intercity rail passenger service, together with the right of ingress and egress to and from said Trackage and facilities located within and on the area described in Exhibits B-1, B-2 and B-3 and the Valuation Maps. The right retained with regard to the accommodations of Amtrak shall no longer be a Railroad Purpose after April 30, 1996.

(d) Sidetrack(s): The track structure (assemblage of rails, ties and fastenings), including ballast, turnout, grading, drainage structure, and all other appurtenances in connection therewith, whether on land of Railroad or of Industry, used for private industrial rail service (pick up and/or delivery); extending from the point of switch (P.S.) to the last switch tie, generally limited to the first 150 feet of such track structure.

As part of the consideration for this grant, Grantee COVENANTS and AGREES to comply with all terms of and pay all the principal and interest and other sums of money payable by virtue of the Contract for Installment Sale and Purchase of even date, hereinafter called "Installment Contract", a copy of which is attached hereto as Exhibit E, and incorporated herein, promptly on the dates the same severally become due, subject to the limitations and conditions pertaining to such payments set forth therein. Upon payment in full of all sums contemplated in said Installment Contract, which constitutes the secured portion of the purchase price, and upon payment of any lien which may become due and payable as a result of any other provision of said Installment Contract, then all the Lien Provisions thereof, shall be considered satisfied. Upon said payment Grantor shall execute and deliver to Grantee a Satisfaction, approved by Grantee, for recording by Grantee.

BK 15424 PG 735

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 offical(s) hereunto duly authorized, and the seal of each, duly attested, to be hereunto affixed.

Signed, sealed and delivered in the presence of:

CSX TRANSPORTATION, INC.:

By _____
Harold L. Snyder
Agent and Attorney-in-Fact
CSX Rail Transport

Attest _____ (SEAL)
Assistant Secretary

Signed, sealed and delivered in the presence of:

Karen M. Yeakley

Carol L Bahr

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION:

By _____
William W. Miller
Deputy Assistant Secretary

Attest _____ (SEAL)

This instrument prepared by or under the direction of:

William C Barr

Attorney for Grantor
Business Address:
500 Water Street
Jacksonville, Florida 32202

BK 15424 PG 736

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, Vivian M. Lamarch, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came Harold L. Snyder, 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 Jacksonville, Duval County, Florida; he is Agent and Attorney-in-Fact, CSX Rail Transport, of CSX Transportation, Inc., the corporation described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; he signed his name thereto for said corporation pursuant to such authority; and the execution of this Indenture 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 the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 11th day of May, 1988.

My commission expires on:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB 22,1991
BONDED THRU GENERAL INS. UND.

Vivian M. Lamarch (SEAL)
Notary Public

BK 1542 PG 737

STATE OF FLORIDA)
) SS.
COUNTY OF BROWARD)

I, Vivian M. Lamarch, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came William M. Miller, 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 Lake City, Columbia County, Florida; he is Deputy Assistant Secretary of Transportation of the State of Florida Department of Transportation, the State agency described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said State; the seal affixed to said instrument is such seal; it was so affixed by authority of the Legislature of said State; he signed his name thereto for said State pursuant to such authority; and the execution of said Indenture is the free act and deed of said State.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 11th day of May, 1988.

My commission expires on:

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. FEB 22,1991
BONDED THRU GENERAL INS. UND.

Vivian M. Lamarch (SEAL)
Notary Public

OFF. REC. 14491 PG 326

SOUTH FLORIDA-WLK
PS 290087A-KCY

Documentary Stamps Collected $ .55
$ SURTAX Doc. Stamps Collected
Class "C" Intangible Tax Collected $
Richard P. Brinker, Clerk, Dade County, Fla.
By 3/30/90 DC

SUPPLEMENTAL WARRANTY DEED

THIS WARRANTY DEED, made this 28th day of March, 1990, between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter called "Grantor", and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose mailing address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450, hereinafter called "Grantee";

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations.)

W I T N E S S E T H:

WHEREAS, on the 11th day of May, 1988, Grantor did execute and deliver to Grantee a Warranty Deed, which deed is recorded in the Public Records of Broward County, Florida, at Official Records Book 15424, Page 0731; the Public Records of Palm Beach County, Florida at Official Records Book 5666, Page 8, and the Public Records of Dade County, Florida, at Official Records Book 13675, Page 3540, "the above-referenced deed(s)"; and

WHEREAS, Grantor and Grantee desire to supplement said above-referenced deed(s) by more particularly describing by a metes and bounds legal description the "Premises" described by railroad plat and title source(s) therein, and conveyed from Grantor to Grantee under and by the terms of the above-referenced deed(s);

Return to: Attorneys' Title Ins. Fund
7235-H NW 19 St.
Miami, Fl. 33126

NOW, THEREFORE, for and in consideration of the sum of ONE DOLLAR ($1.00), to it in hand paid by Grantee, the receipt of and sufficiency of which is hereby acknowledged, Grantor has granted, bargained and sold, and by these presents does CONFIRM, GRANT, BARGAIN, SELL and CONVEY, with warranties of title as hereinafter provided, unto Grantee, its successors and assigns, that certain land situate, lying and being in the Counties of Palm Beach, Broward and Dade, State of Florida, hereinafter described in Attachment A hereto, also referred to in this deed as the "Premises".

It is the intent of and understanding between the Grantor and Grantee that should there be a discrepancy or conflict between the location or quantity of the land described as the Premises in the previously referenced deed(s) and the Premises as described in Attachment A to this deed, then, in that event, the location and quantity as described in Attachment A to this deed shall control.

TO HAVE AND TO HOLD said Premises unto Grantee, Grantee's successors and assigns, forever.

TOGETHER WITH all buildings, structures and improvements thereon, including tracks, ties, rails, switches, etc., and all and singular the rights, alleys, ways, waters, privileges, hereditaments and appurtenances to said Premises belonging or in anyway incident or appertaining (except for the retained perpetual use easement for exclusive freight railroad operations, as more particularly described in the above-referenced deed(s) and below).

SUBJECT TO: (a) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (b) taxes, tax liens and assessments, both general and special, which may become due or payable on the Premises, after the date hereof;

(c) reservations or exceptions whether or not of record, including, without limitation: reservations or exceptions of minerals or mineral rights; public utility and other easements; and easements, crossings, occupancies, and rights-of-way, howsoever created; (d) encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Premises; (e) all other existing roads, streets, ways, alleys, party walls, appurtenances and servitudes, howsoever created; Grantor hereby WARRANTS GENERALLY title only to those portions of the Premises described in Attachment A which are also previously described and marked (A) on Exhibits B-1, B-2 and B-3 attached to the above-referenced deed(s); and that Grantor will forever defend said title unto Grantee against claims of or by Grantor and all other persons lawfully claiming the same or any part thereof, by, through or under Grantor.

As to that portion of the Premises described in Attachment A to this deed, which is not otherwise described and marked (A) on Exhibits B-1, B-2 and B-3 to the above-referenced deed(s), Grantor FURTHER WARRANTS only that it has certain rights, title and/or interest(s) in and to that portion of the Premises, which right, title and/or interest(s) it hereby confirms, sells, transfers, assigns and conveys; but Grantor further warrants that it (or its predecessor railroads) has done no act since its acquisition of such portion of the Premises to destroy, diminish, limit or impair such rights, title or interest; and Grantor further covenants and agrees to defend and indemnify Grantee against any and all claims against title to such portion of the Premises arising from such (real or alleged) acts of Grantor, but excluding any claims resulting by Grantee's action(s) or from this conveyance or the restriction upon Grantor's reserved railroad easement herein; but not otherwise.

RESERVING unto Grantor, its successors and assigns, an EASEMENT IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on that certain portion of the Premises, described in Attachment A, to a maximum height of and within an area limited by a plane twenty-three feet (23') above the top of each rail, being (a) twenty feet (20') wide, ten feet (10') on each side of the centerline of each main track and adjacent siding and/or (b) eighteen feet (18') wide, nine feet (9') on each side of the centerline of each sidetrack (as hereinafter defined); including the use of all the tracks or Trackage (as hereinafter defined) within the Premises; and herein known as the CSXT Easement; but SUBJECT TO:

1. The terms, conditions and limitations of that Operating and Management Agreement between Grantor and Grantee, dated May 11, 1988, particularly Sections 2 and 8 thereof, as amended, altered, cancelled or terminated pursuant to its terms.

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Attachment A or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Easement is not retained to the exclusion of Grantee and its assigns, except for freight rail purposes, as set forth in said Operating and Management Agreement.

4. Grantor and Grantee agree that the CSXT Easement can be assigned only in conjunction with a transfer or assignment of said Operating and Management Agreement.

5. Definitions of Railroad Easement Terms:

(a) Perpetuity: Until this Easement is abandoned or terminated, as provided in the Operating and Management Agreement herein referenced. In the event of abandonment or termination of any portion of this CSXT Easement, such portion thereof shall automatically be extinguished.

(b) Trackage: The railway tracks located on, in or below the CSXT Easement area, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, siding or sidetrack(s); being the items hereinabove conveyed to Grantee.

(c) Railroad Purposes: The exclusive right to use (including rights to repair, replace and maintain) all Trackage on the Premises for freight rail purposes, and the further right to use the same for accommodation of Amtrak (National Railroad Passenger Corporation) for intercity rail passenger service, together with the right of ingress and egress to and from said Trackage and facilities located within and on the area described in Attachment A. The right retained with regard to the accommodations of Amtrak shall no longer be a Railroad Purpose after April 30, 1996.

OFF. REC. 14491PG 331

(d) Sidetrack(s): The track structure (assemblage of rails, ties and fastenings), including ballast, turnout, grading, drainage structure, and all other appurtenances in connection therewith, whether on land of Railroad or of Industry, used for private industrial rail service (pick up and/or delivery); extending from the point of switch (P.S.) to the last switch tie, generally limited to the first 150 feet of such track structure.

As part of the consideration of this grant, Grantee COVENANTS and AGREES to comply with all terms of and pay all the principal and interest and other sums of money payable by virtue of the Contract for Installment Sale and Purchase dated May 11, 1988, hereinafter called "Installment Contract", a copy of which is attached to the above-referenced deed(s) as Exhibit E, and incorporated herein, promptly on the dates the same severally become due, subject to the limitations and conditions pertaining to such payments set forth therein. Upon payment in full of all sums contemplated in said Installment Contract, which constitutes the secured portion of the purchase price, and upon payment of any lien which may become due and payable as a result of any other provision of said Installment Contract, then all the Lien Provisions thereof, shall be considered satisfied. Upon said payment, Grantor shall execute and deliver to Grantee a Satisfaction, approved by Grantee, for recording by Grantee.

OFF. REC. 14491 PG 332

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

Signed, sealed and delivered
in the presence of:

R. N. Grove

P. Adams

CSX TRANSPORTATION, INC.

By: J. L. Kiesler
J. L. Kiesler
Vice President-Property Services
CSX Rail Transport

Attest: David M. Yearwood (SEAL)
Assistant Secretary

Signed, sealed and delivered
in the presence of:

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

By: Richard Chase

Attest: Barbara J. Cone (SEAL)

This instrument prepared by
or under the direction of:

Attorney for Grantee
Business Address:
2441 Monticello Drive
Tallahassee, Florida 32303

OFF. REC. 14.. 1 PG 333

STATE OF FLORIDA)
) ss.
COUNTY OF Duval)

I, Robert L Wheaton, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came J. L. Kiesler, to me known, and known to be 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 Jacksonville, Duval County, Florida; he is Vice President-Property Services, CSX Rail Transport, of CSX Transportation, Inc., the corporation described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; he signed his name thereto for said corporation pursuant to such authority, and the execution of this Indenture 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 the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 28th day of March, 1990.

My commission expires:

Robert L Wheaton (SEAL)
Notary Public

NOTARY PUBLIC, STATE OF FLORIDA
My commission expires. Dec. 7, 1993
Bonded thru Patterson - Becht Agency

STATE OF FLORIDA)
) ss.
COUNTY OF ~~DADE~~ BROWARD)

I, Sadie L. Beauchane, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County personally came Richard Chesser, 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 Fort Lauderdale, Broward County, Florida; he is District Secretary of Transportation of the State of Florida Department of Transportation, the State agency described in and which executed said instrument; he is fully informed of the contents of the instrument; he knows the seal of said State; the seal affixed to said instrument is such seal; it was so affixed by authority of the Legislature of said State; he signed his name thereto for said State pursuant to such authority; and the execution of said Indenture is the free act and deed of said State.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 30th day of March, 1990.

My commission expires on:

Sadie L. Beauchane (SEAL)
Notary Public

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. OCT.31,1993
BONDED THRU GENERAL INS. UND.

TAB 8

CONTRACT

This Contract is made this ___ day of _____, 2012, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, Florida 32202 ("CSXT") and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309 ("State").

Explanatory Statement

WHEREAS, by Contract for Installment Sale and Purchase (hereinafter referred to as the "Original Contract") dated May 11, 1988, State acquired, and CSXT sold, certain properties therein described (the "State Property"), upon which railroad freight, passenger and commuter rail services are currently being conducted; and

WHEREAS, under the Original Contract, CSXT retained, and did not transfer to State, an exclusive perpetual easement over the State Property limited for the purpose of providing rail freight service and intercity rail passenger service, it being both then and now the intention of the parties that CSXT remain, and State not become, the rail carrier subject to the Interstate Commerce Act, the Railway Labor Act or any other federal law relating to the provisions of railroad transportation on the State Property; and

WHEREAS, State and CSXT entered into an Operating and Management Agreement - Phase A dated as of May 11, 1988 (as may be amended, cancelled, terminated pursuant to its terms, supplemented or replaced from time to time, the "Basic Operating Agreement"), pursuant to which CSXT, on behalf of State, has managed, maintained, improved and operated the State Property; and

WHEREAS, pursuant to an Agreement among Tri-County Commuter Rail Authority (now known as South Florida Regional Transportation Authority ("RTA")), State and CSXT dated March 2001 (as amended, the "RTA Agreement"), CSXT agreed to contribute to State a portion of CSXT's rail corridor from approximately Milepost 964.16 to Milepost 965.004 (the "Contribution Property"); and

WHEREAS, pursuant to that certain contract dated November 10, 2006, between CSXT and State, CSXT contributed to State approximately 0.703 acres, more or less, of the Contribution Property; and

WHEREAS, by this Contract, the parties now wish to provide for the consummation of the remainder of such contribution.

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual covenants hereinafter set forth, CSXT and the State, intending to be legally bound, do hereby covenant and agree as follows:

1. Contribution. Being interested in and desiring to promote the interests and general welfare of the State of Florida, CSXT wishes to contribute to State, and State wishes to accept CSXT's contribution of CSXT's right, title and interest (if any) in certain real property, and certain improvements located on such real property, all as more particularly described on Exhibit A (the "Premises").

2. Closing. Closing on the transaction contemplated by this Contract (the "Closing") shall be held at such time and place as CSXT and State shall mutually agree, but in no event later than _____, 2012. If State and CSXT do not agree upon a time and place for Closing, CSXT shall designate the time and place for Closing.

3. Deed and Assignment.

   3.1. The conveyance of the Premises shall be made by delivery of a quitclaim deed substantially in the form of Exhibit B to this Contract (the "Deed"), at Closing.

   3.2. The conveyance contemplated by this Contract does not include, and State shall not acquire, any right, title or interest in the following items of personal property that are or maybe located on or in the Premises: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery, office and computer equipment, radios , radio control equipment, furniture, tools, switch locks and keys, inventories, materials and supplies, as well as any other personal property which is not affixed to the Premises on or at the date of Closing.

   3.3. The Premises are being conveyed subject to the reservations, exceptions and limitations set forth in the Deed including, without limitation, the CSXT Easement (as defined by the Deed), and all contracts, agreements, leases, licenses, and easements, pertaining to the Premises, which are listed on Exhibit C and Exhibit D to this Contract (collectively, the "Subject Agreements"). However, nothing contained in this Contract shall be construed to: (a) limit or restrict any exception, reservation, right or privilege of CSXT under Section 8 of the Original Contract, it being understood and agreed that the Subject Agreements shall be subject to the provisions of the Original Contract, including Section 8, and the Basic Operating Agreement, except as provided in Section 12.1 below; (b) limit or restrict CSXT's right to enter into any contract, agreement, lease or license pertaining to the provision by CSXT of rail freight service on the Premises, subject to the terms and conditions of the Basic Operating Agreement; (c) require CSXT to cancel, terminate or amend any existing Subject Agreement; or (d) require CSXT to cancel or terminate any amendment to an existing or additional Subject Agreement to which the terms and conditions of Section 8 of the Original Contract may apply.

   3.4. At Closing, CSXT shall assign to State all of CSXT's right, title and interest and State shall assume all of CSXT's rights and obligations (as disclosed in the attached Exhibits) arising under or connected with the Subject Agreements described in

Exhibit D, except those Subject Agreements which expire, terminate or are cancelled prior to Closing.

4. Possession. CSXT shall deliver possession of the Premises to State, at Closing, subject to the matters stated in the Deed and the Subject Agreements, as may then exist.

5. Intentionally Omitted.

6. Taxes On Transfer; Closing Costs.

   6.1. State shall pay all transfer taxes, however styled or designated, all documentary stamps, recording costs or fees or any similar expense in connection with this Agreement, the conveyance of the Premises or necessary to record the Deed.

   6.2. State shall be solely responsible for any reassessments or taxes in respect of the Premises generated by reclassification of the Premises resulting from the conveyance of the Premises contemplated herein, except with respect to any interest retained by CSXT.

   6.3. If any State or local governmental authority requires, presently or in the future, the payment of any sales, use or similar tax (including any interest or penalty thereon) upon the sale, acquisition, use or disposition of any portion of the Premises except with respect to any interest retained by CSXT (whether under statute, regulation or rule), State assumes all responsibility for the same, except those assessed prior to the date of conveyance and not related to the conveyance contemplated herein. CSXT shall cooperate (at no expense to CSXT) with State in the prosecution of any claim for refund, rebate or abatement of said tax(es).

   6.4. CSXT shall pay the cost of recording any release of CSXT's mortgage(s) or lien(s) on the Premises.

7. Condition Of Premises. State agrees and acknowledges that CSXT makes no guarantee, representation or warranty regarding the physical or environmental condition of the Premises or improvements situated on the Premises, or the accuracy or completeness of any assessments or reports (environmental or otherwise) relied upon by State, and that CSXT expressly disclaims any and all obligation and liability to State regarding any defects which may exist with respect to the condition of the Premises. State shall take the Premises "AS IS" at Closing, except as to any penalty or fine as of the date of transfer, and hereby assumes all risks associated with the environmental or physical condition of the Premises. The provisions of this Section 7 shall survive Closing.

8. Title. State agrees and acknowledges that CSXT shall not be required to obtain either a title insurance commitment or title insurance policy, but that State may elect to do so at State's sole cost and expense.

9. Subdivision Approval; Zoning.

9.1 Any subdivision approval needed to complete the transaction herein contemplated shall be obtained by State, at State's sole risk, cost, and expense. CSXT shall cooperate with State in obtaining said approval, to the extent necessary or required.

9.2 CSXT makes no guarantee or warranty that any subdivision approval will be granted and assumes no obligation or liability for any costs or expenses if it is not approved. However, State agrees to accept the Deed as provided by Section 3 of this Contract.

9.3 Costs and expenses shall include all fees, costs and expenses, including reasonable attorneys' fees, of obtaining subdivision plats, or filing same with the applicable governmental body(ies), or recordation thereof, including attorneys' fees, and all other related and/or associated items.

9.4 CSXT makes no guarantee, warranty or representation as to the permissibility of any use(s) contemplated by State under existing zoning of the Premises or as to any ability to secure any rezoning for State's use.

10. Broker's Fees. State and CSXT each represent to the other that neither has introduced into this transaction any person, firm or corporation who is entitled to compensation for services as a broker, agent or finder. Neither State nor CSXT shall be under an obligation to pay or be responsible for any broker's or finder's fees, commissions or charges in connection with handling this transaction or Closing.

11. Assignment, Limits, Survival.

11.1 State may not assign this Agreement without the prior written consent of CSX, which consent may be withheld for any reason; provided, however, that State may assign this Agreement to the RTA or other authority designated to assume RTA's role.

11.2 As limited above, this Agreement shall be binding upon the parties, their successors and assigns, or upon their heirs, legal representatives and assigns, as the case may be.

11.3 Any provision calling for rights or obligations continuing after Closing shall survive delivery of the Deed and shall not be deemed merged into or replaced by any deed, whether or not the Deed so states.

12. Operation and Maintenance After Closing.

12.1 Upon and after the Closing, the Premises shall constitute "State Property," for the purposes of the Basic Operating Agreement, except for purposes of Section 7.01 of the Basic Operating Agreement with respect to that Amended and Restated Basic, Use and Operating Agreement for Fiber Optic Occupancies dated as of July 1, 1998, between MCI Communications Services, Inc. (f/k/a MCI Telecommunications Corporation) ("MCI") and CSXT (as may be amended, restated or supplemented from

time to time, the "MCI Agreement"). CSXT and State agree that, notwithstanding anything to the contrary in this Contract, the Original Contract, the Basic Operating Agreement, the RTA Agreement and the Deed, with respect to the Premises, State shall not have any rights under Section 7.01 of the Basic Operating Agreement in respect to the MCI Agreement, including, without limitation, State shall not be entitled to any fees, rents, charges, or income arising out of or in connection with the MCI Agreement.

12.2 The Premises shall not be used for commuter rail service unless and until State causes to be made such improvements as CSXT and State agree are necessary to accommodate commuter rail service, in accordance with the Basic Operating Agreement.

IN WITNESS WHEREOF, the parties hereto have respectively executed and delivered this Contract for Donation as of the day and year first above written.

ATTEST:

CSX TRANSPORTATION, INC.

_____

By: _____
Print Name:_____
Title:_____

ATTEST:

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

_____

By: _____
Director of Transportation Development

_____
Attorney
Approved as to Form

EXHIBITS

A Description of Premises
B Deed
C Agreements to be retained by CSXT
D Agreements to be assigned to State

EXHIBIT A

Description of Premises

EXHIBIT B

Deed

EXHIBIT C

Agreements to be Retained by CSXT

Lease dated March 29, 1979, between CSXT (as successor to Seaboard Coastline Railroad Company) and Outdoor Systems, Inc. (as successor to National Advertising Company) (Contract No. SCL 028186).

License dated May 15, 1991, with Ackerley Communications (Contract No SBD 7751).

License effective March 1, 1991, with Ackerley Communications (Contract No. CSX 7903).

Amended and Restated Basic, Use and Operating Agreement dated July 1, 1998, with MCI Communication Services, Inc. (f/k/a MCI Telecommunications Corporation).

Operating Agreement with Lightnet.

EXHIBIT D

Agreements to be Assigned to State

1. Contract No. SCL 003340-100, with Florida Power and Light company;
2. Contract No. SCL 028436, with City of Riviera Beach; and
3. Contract No. CSX 051264, with State of Florida Department of Transportation.

#3655895_v14

TAB 9

This instrument prepared by
or under the direction of:

DRAFT 7/6/2012

Christopher G. Commander
Outside Counsel
Law Department
500 Water Street
Jacksonville, Florida 32202

QUITCLAIM DEED

THIS QUITCLAIM DEED, made this ___ day of _____, 2012, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, and whose Tax Identification Number is 54-6000720, hereinafter called "Grantor", and STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, whose mailing address is 3400 W. Commercial Boulevard, Ft. Lauderdale, Florida 33309, hereinafter called "Grantee",

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations.)

WITNESSETH:

THAT, in connection with that Contract dated as of _____, 2012, between Grantor and Grantee (as may be amended from time to time, the "Contribution Contract"), Grantor wishes to contribute to Grantee, and Grantee wishes to accept Grantor's contribution of Grantor's right, title and interest (if any) in certain Premises (as defined below), and certain improvements located on such Premises.

NOW, THEREFORE, for and in consideration of TEN AND NO/100 DOLLARS ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby RELEASE, REMISE and forever QUITCLAIM unto Grantee, its successors and assigns, all right, title and interest of Grantor, if any, in and to that certain tract or parcel of land situate, lying and being in Palm Beach County, Sate of Florida, hereinafter designated "the Premises," more particularly described in Exhibit A, attached hereto and incorporated herein, and containing 20.194 acres, more or less; TOGETHER WITH all buildings, structures and improvements thereon, including railroad tracks, signals, bridges, ties, switches, etc. and all appurtenances thereto.

SUBJECT TO: (a) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (b) taxes, tax liens and assessments, both general and special, which may become incurred and payable on the Premises, after the date hereof; (c) reservations or exceptions whether or not of record, including, without limitation: reservations or exceptions of minerals or mineral rights; public utility and other easements; and easements, crossings, occupancies, and rights-of-way, howsoever created; (d) encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Premises; (e) all

other existing roads, streets, ways, alleys, party walls, appurtenances and servitudes, howsoever created.

RESERVING unto Grantor, its successors or assigns, a signboard easement, hereinafter the "Signboard Easement," more particularly described in Exhibit B, attached hereto and incorporated herein, for the continued location, maintenance, use, repair, replacement and removal of (i) signboards owned by CBS Outdoor, Inc. (and its successors and assigns) and located within and on the Premises, and covered under agreement dated March 29, 1979 (as amended from time to time), (ii) signboards owned by Ackerley Communications (and its successors and assigns) and located within and on the Premises, and covered under license agreement effective May 15, 1991 (as amended from time to time), and (iii) signboards owned by Ackerley Communications (and its successors and assigns) and located within and on the Premises, and covered under license agreement effective March 1, 1991; TOGETHER WITH the right of ingress and egress to and from the Signboard Easement, and the further rights to convey or assign said reserved Signboard Easement, in whole or in part, and to lease, license or permit third parties to occupy the same solely for the signboards. The Signboard Easement shall automatically terminate and title vest in Grantee upon cessation of use by Grantor, its successors or assigns, of the reserved signboard easement. In the event that any of the above-referenced signboards interfere with proposed construction activities of Grantee on the Premises, Grantor and Grantee shall cooperate with one another to relocate said signboards, and the applicable portion of the Signboard Easement, if the relocation of such signboards is reasonably possible, provided, however, that Grantor shall not be obligated to incur any expenses or liabilities in connection with such cooperation or relocation.

RESERVING unto Grantor, its successors and assigns, an EASEMENT IN PERPETUITY (as hereinafter defined) FOR RAILROAD PURPOSES (as hereinafter defined) in, over or on that certain portion of the Premises, described in Exhibit A, to a maximum height of and within an area limited by a plane twenty-three feet (23') above the top of each rail, being (a) twenty feet (20') wide, ten feet (10') on each side of the centerline of each main track and adjacent siding and/or (b) eighteen feet (18') wide, nine feet (9') on each side of the centerline of each sidetrack (as hereinafter defined); including the use of all the tracks or Trackage (as hereinafter defined) within the Premises; and herein known as the CSXT Easement; but SUBJECT TO:

1. The terms, conditions and limitations of that Operating and Management Agreement between Grantor and Grantee, dated May 11, 1988, particularly Sections 2 and 8 thereof, as may be amended, altered, cancelled, terminated pursuant to its terms, supplemented or replaced from time to time (the "Operating and Management Agreement"), it being further understood and agreed that the Premises, except as otherwise expressly provided in the Contribution Contract, constitute "State Property", for the purposes of the Operating and Management Agreement.

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Exhibit A or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Easement is not retained to the exclusion of Grantee and its assigns, except for freight rail purposes, as set forth in said Operating and Management Agreement.

4. Grantor and Grantee agree that the CSXT Easement can be assigned only in conjunction with a transfer or assignment of said Operating and Management Agreement.

5. Definitions of CSXT Easement Terms:

(a) Perpetuity: Until this CSXT Easement is abandoned or terminated, as provided in the Operating and Management Agreement herein referenced. In the event of abandonment or termination of any portion of this CSXT Easement, such portion thereof shall automatically be extinguished.

(b) Trackage: The railway tracks located on, in or below the CSXT Easement area, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, siding or sidetrack(s); being the items hereinabove conveyed to Grantee.

(c) Railroad Purposes: The exclusive right to use (including rights to repair, replace and maintain) all Trackage on the Premises for freight rail purposes, together with the right of ingress and egress to and from said Trackage and facilities located within and on the area described in Exhibit A.

(d) Sidetrack(s): The track structure (assemblage of rails, ties and fastenings), including ballast, turnout, grading, drainage structure, and all other appurtenances in connection therewith, whether on land of Railroad or of Industry, used for private industrial rail service (pick up and/or delivery); extending from the point of switch (P.S.) to the last switch tie, generally limited to the first 150 feet of such track structure.

RESERVING unto Grantor, for itself, its successors and/or assigns, notwithstanding anything to the contrary herein or in any other agreement between Grantor and Grantee, a perpetual easement, hereinafter the "Easement", upon and along, over, under or across as the case may be, the Premises, together with ancillary surface rights, for the purpose of maintaining, operating, inspecting, repairing, reconstructing, renewing and/or replacing two existing fiber optic communication systems, each consisting of cables, lines or facilities beneath the surface of the Premises, and all ancillary equipment or facilities (both underground and surface), and the right to attach the same to existing bridges or poles on the Premises, herein collectively the "Facilit(y)(ies)"; TOGETHER WITH the further rights to convey or assign said reserved Easement, in whole or in part, and to lease, license or permit third parties to occupy the same solely for the Facility(ies); PROVIDED that Grantor shall use good faith and commercially reasonable efforts to effect such work in a manner so as not to unreasonably interfere with the safe and efficient use of the Premises, or any improvements thereof, by Grantee, except that if the exercise of such rights unreasonably interferes with the safe and efficient use of the Premises in connection with any improvements placed thereon by Grantee after the date hereof, then Grantee shall, at its cost and expense, relocate such Facilities, unless otherwise agreed by Grantor or the owner or operator of the Facilities. However, in the case of relocation of the Facilities, once such Facilities are relocated and the improvements requiring such relocation are in place, Grantor shall not unreasonably interfere with the safe and efficient use of such improvements as contemplated on the date of such relocation.

TO HAVE AND TO HOLD the Premises, and all the estate, right, title, lien, interest and claim whatsoever of Grantor therein, either in law or equity, and all improvements thereon and appurtenances thereto, unto the proper use, benefit and enjoyment of Grantee, Grantee's heirs and assigns or successors and assigns, forever.

GRANTEE understands that Grantor does not intend to erect or maintain any fences, railings or guard rails along any boundary lines between the Premises and the adjacent land(s) of Grantor or of any other person or entity.

Said covenant(s) shall run with title to the Premises conveyed, and bind upon Grantee, Grantee's heirs, legal representatives and assigns, or corporate successors and assigns, and anyone claiming title to or holding Premises through Grantee.

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be signed hereto by its officers hereunto duly authorized and its corporate seal, duly attested, to be hereunto affixed.

Signed, sealed and delivered
in the presence of:

CSX TRANSPORTATION, INC.:

_____

By:_____
Print Name: Stephen A. Crosby
Print Title: President, CSX Real Property, Inc.

_____

Attest _____ (SEAL)
Secretary
Print Name:_____

RETURN TO: **State of Florida**
Department of Transportation

STATE OF FLORIDA)

) SS.

COUNTY OF DUVAL)

I, _____ , a Notary Public of the State of Florida and the County of Duval, do certify that, on the date below, before me in said County came Stephen A. Crosby (X) to me known, and/or ( ) proven by satisfactory current evidence to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did make oath, acknowledge and say that: (s)he resides in Jacksonville, Duval County, Florida; (s)he is President-CSX Real Property, Inc., signing on behalf of CSX Transportation, Inc., the corporation described in and which executed said instrument; (s)he is fully informed of the contents of the instrument; (s)he knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; (s)he signed his/her name thereto for said corporation pursuant to Board authority; and 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 the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this _____day of _____, 2012.

My commission expires on:

_____(SEAL)
Notary Public
Print Name:_____

EXHIBIT A

Description of property at: Palm Beach County, Florida
To: State of Florida Department of Transportation
CSXT Deed File No.:

(INSERT DESCRIPTION)

BEING a portion of the property acquired by Seaboard Coast Line Railroad, a predecessor of Grantor, from

On December 29, 1982, the **Seaboard Coast Line Railroad Company** merged with the Louisville and Nashville Railroad Company and the name of the surviving corporation changed to Seaboard System Railroad, Inc. On July 1, 1986, Seaboard System Railroad, Inc. changed its name to CSX Transportation, Inc.

EXHIBIT B

A. March 29, 1979 Agreement:

(1) Sufficient space on the northeasterly portion of the Premises for one of said signboards, said space fronting 50 feet towards the northeasterly side of CSXT's main track at a minimum clearance distance of 33.5 feet northeastwardly measured at right angles from the center line thereof and having its center at a point 195 feet northwestwardly measured along said center line from Milepost SX-965; as shown in red on print of CSXT's Drawing No. M-1453-A, last revised March 9, 1979; also

(2) Sufficient space on the southwesterly portion of said Premises for one of said signboards, said space fronting 50 feet towards the southwesterly side of said main track at a minimum clearance distance of 59 feet southwestwardly measured at right angles from the center line thereof and having its center at a point 630 feet northwestwardly measured along said center line from said milepost; also shown in red on said print;

Said Premises being 100 feet wide on each side of said center line.

B. May 15, 1991 License:

1. Sufficient space at South side SR 710, North side of Premises 1200' South of Milepost 964 - set back 25' from center line of tracks + 7' from all overhead wirelines and poles.

2. Sufficient space at South side SR 710, North side of Premises 1900' South of Milepost 964 - set back 25' from center line of tracks + 7' from all overhead wirelines and poles.

3. Sufficient space at South side SR 710, North side of Premises 2700' South of Milepost 964 – set back 25' from center line of tracks + 7' from all overhead wirelines and poles.

4. Sufficient space at South side SR 710, North side of Premises 3450' South of Milepost 964 – set back 25' from center line of tracks + 7' from all overhead wirelines and poles.

C. March 1, 1991 License: Sufficient space at Dyer, Palm Beach County, Florida on the S/S Beeline Highway, 400 ft E/O Military Trail, 570 ft S/O Mile Post 964.

#3610920_v14

TAB 10

Execution Copy

AMENDED
SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

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

Pertaining to the South Florida Rail Corridor, a Line of
Railroad Between West Palm
Beach and Miami, Florida
and Related Properties

Dated: January 25th, 2013

AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

DEFINITIONS 5
Section 1. Description of Use; Commencement Date 7
Section 2. Compensation 11
Section 3. Operating and Management 14
Section 4. Maintenance 22
Section 5. Additions, Betterments, Retirements, and Alterations 26
Section 6. Revenues 28
Section 7. Existing Agreements Pertaining to State Property and CSXT Property 29
Section 8. Future Agreements Pertaining to and Uses of the State Property 31
Section 9. Taxes, Assessments, and Utilities 40
Section 10. Casualty Losses 41
Section 11. Abandonment and/or Discontinuance 42
Section 12. Compliance With Laws 45
Section 13. Liens and Charges 46
Section 14. Eminent Domain 47
Section 15. Payment of Bills and Records 49
Section 16. Default and Breach 50
Section 17. Dispute Resolution and Arbitration 51
Section 18. Clearing of Wrecks 53
Section 19. Liability 54
Section 20. Investigation 61
Section 21. Insurance 62
Section 22. Force Majeure 66
Section 23. Extension, Waiver, and Amendment 66
Section 24. Notices 67
Section 25. Governing Law 68
Section 26. Counterparts 68
Section 27. Interpretation 68
Section 28. Exhibits 69
Section 29. Entire Agreement 69
Section 30. Waiver 69
Section 31. Expenses 70
Section 32. Further Assurances 70
Section 33. Time of the Essence 70

Section 34. Performance of Agreement 70
Section 35. Prohibition of Third Party Beneficiaries 71
Section 36. Term 71
Section 37. Successors and Assigns 72
Section 38. CSXT's Right of First Refusal 73
Section 39. Incorporation of Recitals 75

Exhibits Follow Signature Pages

AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS AMENDED SOUTH FLORIDA OPERATING AND MANAGEMENT AGREEMENT, as may be further amended (this "Agreement") made as of the __th day of January, 2013, 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"), further amends that certain South Florida Operating And Management Agreement executed between State and CSXT as of December 6, 2007 (the "Execution Date") including all amendments thereto.

WHEREAS, by Contract For Installment Sale and Purchase between State and CSXT dated as of May 11, 1988 (hereinafter referred to as "Contract") State acquired the properties hereinafter described as the State Property over which CSXT possesses an exclusive perpetual easement for the purpose of providing Rail Freight Service thereon; and

WHEREAS, until the "Commencement Date" as hereinafter defined, the operation, maintenance and use of the State Property for the conduct of Rail Freight Service, Intercity Rail Passenger Service and Commuter Rail Services shall continue to be governed by that certain Operating and Management Agreement Phase - A, between State and CSXT, also dated as of May 11, 1988, including all amendments thereto (the "1988 OMAPA"); and

WHEREAS, as of the Commencement Date, the 1988 OMAPA shall terminate by mutual agreement of the parties as herein provided, and the parties hereto desire that the provisions of this Agreement will thereafter govern the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the intention of the parties hereto that CSXT remain, and State 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 provisions of railroad transportation on the properties subject to the CSXT Easement.

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

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

(a) "Commencement Date" shall be the date determined pursuant to Subsection 1(c) of this Agreement, which is the date State commences management, operation (including dispatch), and maintenance of the State Property, and the control and supervision of the occupation, use, and access to the State Property.

(b) "Commencement Date Notice" shall have the meaning given to it in Section 1(c) of this Agreement.

(c) "Commuter Rail Service" shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee.

(d) "Contract" shall mean that certain Contract for Installment Sale and Purchase dated May 11, 1988, by and between State and CSXT.

(e) "CSXT Easement" shall mean the exclusive perpetual easement retained by CSXT (as set forth in the Deed), for the purpose of providing Rail Freight Service on the State Property.

(f) "CSXT Property" shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and property that connect with the State Property and are owned, controlled or used by CSXT, being properties contiguous to the State Property that were not acquired by State under the Contract.

(g) "Deed" or "Deeds" shall have the meaning given to it in Section 1(d) of this Agreement.

(h) "Force Majeure" shall have the meaning given to it in Section 22 of this Agreement.

(i) "FRA" shall mean the Federal Railroad Administration.

(j) "Industry Sidetracks" shall mean sidetracks located on the State Property, owned by a third party and listed in Exhibit B to this Agreement for which State shall have no financial obligation and which are used exclusively by CSXT to provide Rail Freight Service to industries, customers and facilities located along the State Property.

(k) "Intercity Rail Passenger Service" shall mean the transportation of intercity passengers by rail provided by the National Railroad Passenger Corporation, its successors and assigns (hereinafter referred to as "Amtrak"), or as may be provided by others, on the State Property.

(l) "Rail Freight Service" shall mean the transportation by rail of property and movable articles of every kind, character, and description over the State Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the State Property, and supporting activities, over the State Property pursuant to the CSXT Easement and this Agreement, but excluding detour movements of other railroads permitted by State pursuant to Subsection 3(m) hereof.

(m) "Railroad Operations" shall mean Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail Service.

(n) "Sidetracks" shall mean Industry Sidetracks and State Sidetracks.

(o) "Sidetrack Agreement" shall mean any agreement between CSXT and a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack that governs the ownership, construction, maintenance, repair, and use of a Sidetrack.

(p) "South Florida Rail Corridor" and "Corridor" shall mean the linear contiguous strip of railroad right of way owned by State, which was acquired by the State from CSXT on May 11, 1988, pursuant to the Contract, together with additional rights of way acquired by State, used for Railroad Operations and for other lawful uses, located in Miami-Dade, Broward, and Palm Beach Counties Florida.

(q) "South Florida Regional Transportation Authority" or "SFRTA" shall have the meaning ascribed by the South Florida Regional Transportation Authority Act, Chapter 343, Part I, Sections 343.51-343.58, Florida Statutes.

(r) "State" shall mean the State of Florida Department of Transportations, its agents, permitted assignees and any successor agency.

(s) "State Property" shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way acquired by State under the Contract (the real estate for which is described in the Deeds), as depicted in Exhibit 1.

(t) "State Sidetracks" shall mean sidetracks on the State Property other than Industry Sidetracks.

(u) "STB" shall mean the federal Surface Transportation Board.

(v) "Trackage" shall mean the railroad tracks located on, in, or below the CSXT Easement area, and all supporting materials, facilities, and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with control devices, signals, switches, communication lines, and poles necessary for safe Railroad Operations, whether main, siding, or Sidetracks.

Section 1. Description of Use; Commencement Date

(a) Subject to the terms and conditions hereinafter set forth, the State Property shall be used for the conduct of Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail 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 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 exclusive provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars, and rail equipment thereon with its own crews. 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 a manner consistent

with the Railroad Operations contemplated under Subsection 1(a) hereof, including, without limitation, the allocation of space on the State Property for each of such Railroad Operations.

(b) 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 yards, and building space (as provided in and subject to the provisions of Exhibit 2), for CSXT's provision of Rail Freight Service on the State Property in substantially the same manner and condition as provided prior to the Commencement Date hereof.

(c) The Commencement Date shall be the date identified by the parties in the notice (the "Commencement Date Notice") issued pursuant to Paragraph (1)(c)(ii) below and shall be the same date as the termination date of the 1988 OMAPA, it being understood that the parties have agreed that the target date for the Commencement Date is June 30, 2014, provided, further that the 1988 OMAPA shall continue to apply to and govern Railroad Operations on the State Property unless and until (X) this Agreement has been duly executed by and delivered to both parties on or before January 31, 2013, (Y) State has communicated to CSXT that the SFRTA has approved the terms and conditions of the Agreement on or before February 28, 2013, and (Z) the Commencement Date has occurred prior to December 31, 2014. In the absence of the events described in both of (Y) and (Z) of this Subsection 1(c) within the time provided therefor, and exclusive of the provisions of Section 5(d), and the obligation of State to increase its insurance under Section 21(b), this Agreement shall be deemed null and void and of no further effect and the 1988 OMAPA shall continue in force according to its terms, including without limitation, the terms and conditions of Section 39 thereof pertaining to the right of either party thereto to elect to terminate the 1988 OMAPA and commence the Operating and Management Agreement - Phase B, dated May 11, 1988, previously executed by the parties. The parties further agree that Railroad Operations on the State Property will not be interrupted or terminated as a consequence of the termination of the aforesaid 1988 OMAPA and that such termination shall not affect the rights and interests of CSXT in the CSXT Easement. During the period of transition from the 1988 OMAPA to this Agreement, the parties hereto will use their best efforts and provide such facilities, equipment, and personnel upon

mutually agreeable terms and conditions as may be necessary to ensure the continuation of economical and efficient Railroad Operations on the State Property. To ensure a safe and orderly transition to this Agreement, the parties shall develop an agreed upon transition and implementation plan at least sixty (60) days prior to the anticipated Commencement Date (which shall include a list of locations and facilities that will no longer be required by CSXT for the performance of maintenance under the 1988 OMAPA).

(i) The Commencement Date shall occur on the date set forth in the Commencement Date Notice, and shall be no earlier than the date on which all of the following are satisfied:

1. The STB shall have found that it does not have jurisdiction over the transaction contemplated in this Agreement, and/or the STB shall not have imposed any conditions, including labor protective conditions, which either party in its sole and absolute discretion deems unacceptable;

2. The parties shall have complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to the Commencement Date;

3. The implementation of this Agreement shall not have been stayed or enjoined by the STB or by any court;

4. State shall have provided notification to the FRA pursuant to 49 C.F.R. § 213.5(c), if applicable, at least thirty (30) days prior to the Commencement Date;

5. State has all necessary contractors and employees in place and properly trained so as to be ready to satisfactorily perform all duties and responsibilities required hereby and by any applicable law, rules, regulations, and State policy, provided however, in the event of any administrative or civil action resulting in a delay regarding the procurement of any such contractors, this condition shall not be deemed satisfied until such time as the proceedings are completed to the satisfaction of State;

6. The legislation referenced in Section 21 shall be in full force and effect; and

7. The provisions of Subsection 1(c) have been timely fulfilled.

(ii) Upon satisfaction of all items listed in Paragraph (1)(c)(i), above, the parties shall jointly issue the Commencement Date Notice specifying the Commencement Date.

(d) The parties hereby agree that (i) each party has provided the other party with effective notice of its desire to terminate the 1988 OMAPA and (ii) the 1988 OMAPA shall terminate as of the Commencement Date. State and CSXT hereby confirm each to the other their understanding and agreement that upon termination of the 1988 OMAPA as referenced in the Warranty Deeds recorded in 1988 and the Supplemental Warranty Deeds recorded in 1990 (collectively the "Deeds"), the terms of this Agreement shall replace the 1988 OMAPA for all purposes under said Deeds, including the agreement and understanding of the parties that the conveyance made by the Deeds is subject to the terms, conditions, and limitations of this Agreement in lieu of the 1988 OMAPA.

(e) The parties acknowledge that termination of the 1988 OMAPA by mutual agreement as contemplated herein will terminate the provisions thereof pertaining to labor protection. The parties agree that CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the transfer to State of control and performance of dispatch and maintenance contemplated in this Agreement. As used herein, "Labor Protection" shall mean the costs, if any, incurred by CSXT as a result of State's assumption of control of dispatching and maintenance on the State Property for the protection of the employees of CSXT, which costs may be incurred by CSXT pursuant to a provision of a collective bargaining agreement, bargained by CSXT as a result of the transfer or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. If any claim, dispute, litigation, or work stoppage with a CSXT union shall be threatened or pending related to the transaction up to the time of the Commencement Date either party may elect not to proceed with the transaction. Notwithstanding the above, the parties agree that each shall be solely responsible for their respective risks and costs (including defense costs and liability) associated with any challenge to the transactions pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge"). To assist the State in responding or defending against labor claims by a CSXT employee, upon request of State addressed in writing to CSXT at the address provided in Section 23, CSXT will provide the following information relating to such claimant:

(1) whether the claimant has been dismissed or displaced from a position on CSXT on or after the Commencement Date and (2) the status or disposition of any claim for Labor Protection made by such claimant to CSXT after the Commencement Date. State and CSXT acknowledge a policy of non-interference with respect to labor protective decisions by employees.

(f) Except as otherwise expressly provided herein, and in accordance with Section 39.04 of the 1988 OMAPA, termination of the 1988 OMAPA shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of the 1988 OMAPA prior to the termination thereof.

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), 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 Commencement Date Notice (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 Two Hundred Sixteen Thousand, Six Hundred Sixty-six Dollars and Sixty-six-Cents ($216,666.66) 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 Fifty-two Cents ($0.52) 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. 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 4, Florida Department of Transportation, 3400 West Commercial Boulevard, Fort Lauderdale, Florida, 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 Fee Commencement Date, 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 Fee Commencement Date the "latest calendar year" shall mean the calendar year following the Fee Commencement Date and the "previous calendar year" shall mean the calendar year in which the Fee Commencement Date 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) $(B - A)/A = D$

(2) $(D \times C) + C =$ 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 which 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 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 the provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental matters, promulgated by any municipality, state or 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 and 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, agent, or contractor 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 an applicable collective bargaining agreement to which CSXT is a party, 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 after the availability thereof, furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT's Transportation Officer shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee, agent, or contractor from the State Property in lieu of dismissal.

(f) (1) If such employee, agent, or contractor 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 safety rules, operating rules, regulations, orders, practices, or instructions, wherein State desires to bar CSXT's employee, agent, or contractor from service on the State Property pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT and promptly followed by a written notification, 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 CSXT, at the written request or direction of State, as the case may be, has barred CSXT's employee from the State Property prior to an investigation. CSXT agrees to notify State before committing itself to making payment on any 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 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, disabled or otherwise defective rail cars, or locomotives are set out of State's or CSXT's trains, then State shall 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. 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. 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 by State that 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 9:00 a.m. (0500 to 0900 hours) and 3:00 p.m. to 7:00 p.m. (1500 to 1900 hours) there shall be a priority window for passenger service, recognizing that rail freight trains may continue to have access to and use of the tracks on the State Property during this window as long as such access and use does not impede or delay Commuter Rail Service.

2. 9:00 a.m. to 3:00 p.m. (0900 to 1500 hours) and 7:00 p.m. to 11:00 p.m. (1900 to 2300 hours) mixed Commuter Rail and Freight Rail Service, which shall be handled through dispatch protocol, that shall be agreed upon by the State and CSXT, depending upon the type of train, time of day and on-time performance of passenger trains and which shall accommodate at least one and one-half (1.5) freight trains per hour in addition to all freight trains operating as of the Commencement Date (based upon the prior ninety (90) day average number of freight trains), and shall recognize the need for future growth in Rail Freight Service, Intercity Rail Passenger Service, and Commuter Rail Service;

3. 11:00 p.m. to 5:00 a.m. the following day (2300 to 0500 hours the following day) – priority given to freight operation recognizing that Commuter Rail Service may continue to have access to and use of the tracks of the State Property during this window as long as such access and use does not impede or delay Rail Freight Service.

4. Betterments and additions, curfew and program work, construction, and signal suspension (the "Work") will be performed in the hours from 5:00 a.m. to 01:00 a.m. the following day (0500 to 0100 hours the following day) or within other operating windows if the work does not interfere with Freight Rail Service in CSXT's reasonable judgment. State may perform such Work within other operating windows (1:00 a.m. to 5:00 a.m.) without CSXT's prior approval provided State maintains at least one track open with functioning signals and grade crossing warning devices for Freight Rail Service adjacent to the track where State's Work is taking place. State shall not perform Work nor the operation of engineering work trains simultaneously between more than two control points (from one control point to another control point) on the State Property without

obtaining CSXT's prior consent. Other than in case of emergency, track, bridge 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 State and Amtrak, to give priority to on-time Intercity Rail Passenger Service.

(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 out of or connected with any such interruption or delay to Commuter Rail Service. In the event that State desires to perform maintenance or make improvements to the State Property which may interfere with or delay CSXT's Rail Freight Service, then State shall in advance thereof notify, advise and consult with CSXT regarding said interference and/or delay; provided, however, that such notification shall not be required in emergency situations.

(k) It is agreed and understood by the parties hereto that State has the option of using its own employees, the SFRTA, its successor, or another third party operator as its agent for the performance of Commuter Rail Service. State shall cause such agent, at no cost or expense to CSXT, to comply with the provisions of this Agreement pertaining to the operation of Commuter Rail Service on the State Property. State shall be responsible for any and all liability, cost and expense arising out of or connected with any act or omission of said agent and said agent shall be considered as State for the purposes of determining between State and CSXT State's assumption and apportionment of liability, cost and expense under this Agreement.

(l) State and CSXT understand that Intercity Rail Passenger Service and the provision of ancillary services with respect to Amtrak on the State Property are governed by the aforementioned Agreement between State and Amtrak. State and CSXT hereby understand and agree that CSXT cannot modify or amend its agreement with Amtrak and cannot enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service on the State Property, inconsistent with this Agreement, without the prior written consent of State, provided, however, that such consent shall not be required in the event that the amendment is required by law or any agreement in effect as of the date hereof. 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). 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 to operate special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees, and/or passengers, but not the general public. CSXT 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 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 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 Subsection 19(d) hereof; and for purposes of Section 19 of this Agreement, the aforesaid employees and/or invitees of State 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: first, all work of maintaining and repairing the rights-of-way, tracks, State Sidetracks, bridges, communications, signals, including Positive Train Control ("PTC") equipment, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof; and, second, all work of maintaining buildings on the State Property in a satisfactory condition, normal wear and tear excepted. CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property in a condition deemed appropriate by CSXT in its sole judgment and discretion.

i. On the Commencement Date, CSXT will convey to State any tracks described in Exhibit A, attached hereto and incorporated in this Agreement, which tracks, if any shall become State Sidetracks subject to the CSXT Easement. State will, upon the Commencement Date, own both the State Property and the Trackage thereon with the exception of the Industry Sidetracks described in Exhibit B attached hereto and incorporated in this Agreement. The Industry Sidetracks will be permitted to remain on the State Property in accordance with the terms of the Contract, existing agreements, and the provisions of this Agreement. The mutually agreed precise cut points for the State Sidetracks will be at the boundaries of the State Property; and ownership of the Industry Sidetracks will be as set forth at Exhibit B hereto. Exhibits A and B will be provided by the mutual agreement of the parties at least ninety (90) days prior to the Commencement Date.

ii. Concerning maintenance, repair, and replacement of Industry Sidetracks, such responsibilities are generally those of the owners of such Industry Sidetracks. In the event of failure of a

specific industry to maintain any Industry Sidetrack in accordance with applicable standards and regulations, CSXT may elect to cease provision of service over said Industry Sidetrack. CSXT shall comply with Section 11(d) of this Agreement to the extent such provisions are applicable to any such election by CSXT to cease provision of service over an Industry Sidetrack.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, State Sidetracks, bridges, communications, signals, and all appurtenances to a level consistent with State standards, then current CSXT 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 (the "CSXT Standards"), be more restrictive than any other standard, then State shall apply the more restrictive CSXT Standard. Furthermore:

(i) the parties agree that the CSXT Standards in place on the Commencement Date shall be the CSXT Standards in effect for the first Annual Period (as defined herein);

(ii) annually, at least three (3) months prior to the first and each subsequent anniversary of the Commencement Date ("Annual Period"), State shall request, in writing, from CSXT a copy of CSXT's then current CSXT Standards showing any changes (if any) in the CSXT Standards. CSXT shall provide its changes (if any) to State in writing within forty-five (45) days following receipt of State's request. The CSXT Standards provided in response to this section will become the CSXT Standards applicable to maintenance under this Section 4 and the CSXT Standards referenced in Section 5 and Section 8 related to future additions, betterments or alterations starting on the anniversary of the Annual Period. Should CSXT fail to respond within the forty-five (45) day period, the existing CSXT Standards from the prior Annual Period shall apply during the upcoming Annual Period; and

(iii) provided the CSXT Standards included in a contract are the then applicable CSXT Standards, and a contract for the applicable work is awarded, CSXT shall not be entitled to alter, amend or modify the CSXT Standards contained in the contract other than as required by the FRA pursuant to rule or regulation. With respect to longer term projects for additions, betterments or alterations, where standards other than the CSXT Standards defined herein are being developed as the project proceeds, the CSXT Standards existing at the time a particular scope of work or other identifiable contract in which other design and construction standards are made final shall apply and remain in place for the duration of the awarded scope of work or other identifiable contract. Any disputes 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 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. The speed limits for the tracks specified below are:

	Track	Maximum Authorized Track Speed
Main Track	(Between Milepost SX-964.9 at West Palm Beach and Milepost SX-1036.3 at Hialeah)	79 MPH Passenger and Commuter Traffic 60 MPH Freight Traffic
Main Track	(Between Milepost SX-1036.3 at Hialeah and Milepost SX-1041.12 at Oleander and SX-1036.3 at Hialeah and SX-1041.3 at Miami)	25 MPH All Traffic
Signaled Passing Sidings		30 MPH All Traffic
Industrial and Yard Tracks		10 MPH All Traffic
All Other		In accordance with FDOT operating rules

(c) The maximum authorized track speeds may be changed from time to time during the term of this Agreement by State in accordance with state and federal law and with notice to CSXT providing

CSXT the opportunity to comment on any proposed change, 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, upon prior written notice to State, may accompany State on its inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection 4(b) hereof, 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, without the approval of CSXT, may enter into agreements from time to time with the South Florida Regional Transportation Authority, Amtrak, or others for the maintaining, servicing, fueling, and repairing of State's trains, locomotives, rail cars, and rail equipment, provided,

however, that in the event any such maintenance, service, fueling, or repair is performed on the State Property by a party other than Amtrak, then State shall be responsible for any and all liability, cost and expense arising out of or connected with such maintenance, service, fueling, or repair and said party shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement.

(g) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, improving or repairing the buildings, structures and facilities on State Property as listed or described in Exhibit 2; provided, however, State by separate agreement may provide that certain buildings, structures, and facilities that are to be used by CSXT, whether exclusively or jointly with State, may be maintained, improved, or repaired by CSXT.

(h) Upon the Commencement Date hereof, CSXT shall transfer to State, and State shall assume, the administration and performance of all agreements listed in Exhibit 6 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.

(i) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provision 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 on the State Property as

contemplated in Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Easement or 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. The design and construction standards for the foregoing shall be the standards set forth in Section 4(b) of this Agreement.

(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.

(c) The parties agree that CSXT will reimburse State for fifty percent (50%) of the cost of the initial purchase, construction and installation of the wayside communications and signals equipment, comprised of the radios, signal hardware, and wired and wireless infrastructure, necessary to satisfy the FRA PTC regulations promulgated pursuant to the Rail Safety Improvement Act of 2008, as amended, to the extent applicable to the State Property, provided, the cost of maintenance of all such PTC equipment from and after that initial construction will be for State's account. CSXT and State shall cooperate in securing for State and/or SFRTA an initial and subsequent PTC 220, LLC provided spectrum lease (s) upon mutually agreeable terms among the parties to the lease (s).

(d) The parties agree that the bascule bridge over the New River will be replaced by State, at State's sole cost and expense, in accordance with this Subsection 5(d), and the cost and expense thereof shall not be taken into consideration in any future renegotiation of the Usage Fee under Subsection 2(d) hereof, nor in connection with any allocation of expenses under the 1988 OMAPA. The parties mutually agree that (i) the standards and specifications for the bridge replacement shall be those as set forth in

Exhibit 7 hereto; (ii) construction shall begin within ten (10) years of the Execution Date; and (iii) during the construction period, State shall provide for continuation of Rail Freight Service by minimizing the closure of the existing bascule bridge, to the maximum extent possible. Prior to letting any contract that includes construction of the replacement bridge, State shall develop operating protocols for Railroad Operations during construction, which shall identify bridge closure schedules, and which shall be provided to CSXT for review and comment in accordance with Subsection 8(h) hereof. The approved closure schedules shall be included in any contract to construct the replacement bridge. Any closure of the bridge beyond that allowed by the closure schedule set forth in such contract shall be only for safety reasons. Notwithstanding any other provision in this Agreement to the contrary, from and after the Execution Date, in the event extraordinary expenses related to the maintenance or replacement of the bascule bridge over the New River are required or incurred prior to the Commencement Date: (i) the parties agree to negotiate a mutually agreed allocation of those costs; and (ii) in the absence of mutual agreement on the allocation of those costs, either party may terminate this Agreement without further obligation or liability. The parties acknowledge that sufficient consideration for the effectiveness of this Subsection 5(d) as an independent obligation has been exchanged, including but not limited to, the execution of this Agreement by the parties.

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 on the State Property pursuant to agreement with State.

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

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

(a) Except as is otherwise expressly provided in Section 3(1) hereof with respect to Amtrak and hereinafter with respect to MCI Telecommunications, Inc. and Lightnet, CSXT has been and shall continue to 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 the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 3 hereto as such Exhibit 3 is updated in accordance with Subsection 7(d), and CSXT may renegotiate, renew, terminate, cancel or modify any of the contracts, agreements, licenses, leases or easements listed or described in said Exhibit 3 without the consent of State. Except as may be otherwise provided under this Section 7 and/or Sections 8, 18 and 19 hereof, CSXT shall forever release and discharge State from and against any and all obligations and liabilities arising out of or connected with the aforesaid contracts, agreements, leases, licenses, and easements, and CSXT shall be responsible for any and all obligations, liabilities, costs or expenses arising out of or connected with the aforesaid contracts, agreements, leases, licenses, and easements. Any and all prepaid proceeds, fees, rents, charges or income under the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 3 hereto shall be retained by CSXT, without any interest in or participation by State with respect to same. With respect to MCI Telecommunications, Inc., from and after December 12, 2007, State shall be entitled to renegotiate, renew, terminate, cancel or modify the Operating Agreement between CSXT and MCI with respect to MCI's occupation and use of the State Property and, as between the parties hereto, 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 therewith from and after the Commencement Date. With respect to Lightnet, from and

after September 18, 2018, State shall be entitled to renegotiate, renew, terminate, cancel or modify the Operating Agreement between CSXT and Lightnet with respect to Lightnet's occupation and use of the State Property and, as between the parties hereto, 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 therewith from and after the Commencement Date. Except as otherwise provided under Sections 18 and 19 hereof, State shall be responsible for any and all obligations and liabilities arising out of or connected with MCI's and Lightnet's occupation and use of the State Property from and after December 12, 2007 with respect to MCI, and from and after September 19, 2018 with respect to Lightnet. The provisions of this Subsection 7(a) shall not apply to the contracts, agreements, leases, licenses, and easements which are listed or described in Exhibit 4 hereto or Subsection 7(c) hereof or which State may enter into pursuant to Section 8 hereof.

(b) CSXT has previously or does hereby transfer and assign to State the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 4 hereto, and in the event it has not already done so, State shall give notice of such transfer and assignment to the parties to said instruments. From and after May 11, 1988, 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 the contracts, agreements, leases, licenses, and easements listed or described in said Exhibit 4. State may renegotiate, renew, terminate, cancel or modify any of the contracts, agreements, leases, licenses, or easements listed or described in said Exhibit 4, subject to the same terms and conditions governing the entry of contracts, agreements, leases, licenses, and easements pursuant to Section 8 hereof. Except as may be otherwise provided under Sections 18 and 19 hereof, State shall be responsible for any and all obligations and liabilities arising from and after the date hereof out of or connected with the aforesaid contracts, agreements, leases, licenses and easements, and State shall be responsible for any and all obligations, liabilities, costs or expenses arising from and after the date hereof out of or connected with the aforesaid contracts, agreements, leases, licenses and easements. Except as otherwise expressly provided in Exhibit 4 hereto with respect to certain agreements therein specified, any and all prepaid proceeds, fees, rents, charges or income (as of May 11, 1988) under

the contracts, agreements, leases, licenses, and easements listed or described in Exhibit 4 hereto have been and shall be retained by CSXT without any interest in or participation by State with respect to same, and CSXT hereby reserves the right to collect any and all fees, rents, charges or income under said instruments which are uncollected as of May 11, 1988 hereof and pertain to the period of time preceding May 11, 1988. Except as otherwise provided above, the provisions of this Subsection 7(b) shall not apply to the contracts, agreements, leases, licenses, and easements which are listed or described in Exhibit 3 hereto or Subsection 7(c) hereof or which State may enter into pursuant to Section 8 hereof.

(c) 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(e) 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. The provisions of this Subsection 7(c) shall not apply to the contracts, agreements, leases, licenses, or easements listed or described in Exhibits 3 and 4 to the 1988 OMAPA hereto or which State may enter into pursuant to Section 8 hereof. Except as may be otherwise provided under this Subsection 7(c) 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, which will be 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 and the CSXT Easement (to the extent that it may apply) and will be undertaken by State in its sole discretion and in a manner consistent with the then current

Commuter Rail Service, Rail Freight Service, and Intercity Rail Passenger Service operations 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 May 11, 1988, whether or not of record (including, without limitation, those occupancies granted by CSXT and operating agreements entered into by and between CSXT and MCI Telecommunications, Inc., until December 12, 2007, and CSXT and Lightnet, until September 18, 2018, which provide, in part, for exclusive use by Lightnet and MCI of the State Property for fiber optics transmission systems until the specific dates), 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: first, in such a manner as not to unreasonably interfere with CSXT's and/or Amtrak's operations on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property, and, second, otherwise in conformance with the provisions of this Agreement, including, without limitation, Subsections 8(c) and (d) and Section 38 hereof. State shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with State's rights under this Section 8(a) and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from the enjoyment and use of such rights.

(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 within the

first fifty (50) feet measured from the adjacent Corridor boundary line to the portion of the residential building closest to the Corridor boundary line ("Residential Setback"). The parties agree that associated residential development requirements related to landscaping, irrigation, fencing, walls, drainage and utilities, not reasonably expected to be used by building residents, shall be permitted to occur within the Residential Setback. Any bike paths, sidewalks, parking lots or other amenities reasonably expected to be regularly used by building residents shall not be permitted within the Residential Setback.

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

(c) Notwithstanding any other provision of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (i) grant or convey to others any interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 10 feet from either side of the centerline of any main track and adjacent sidings and 9 feet from either side of the centerline of any Sidetrack; and (B) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track; or (ii) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility on the State Property within the following clearances of any track now or hereafter located on the State Property or the CSXT Property: (A) Lateral clearances of not less than 12 feet from either side of the centerline of any track; and (B) Vertical clearances for the entire lateral clearance width of any such track of not less than 23 feet above the top of rail of any such track (the "Specified Clearances"). It is understood by State and CSXT that State has constructed certain platforms for commuter rail service within the Specified Clearances and there exist other facilities on State Property that do not meet the Specified Clearances, for which, to the extent previously approved by CSXT, no further consent from CSXT shall be required. If any proposed facility or structure is to be closer to the track than allowed by the Specified Clearances, State shall submit to CSXT a copy of the plans and specifications for such facility or structure for CSXT's review and approval in accordance with the CSXT Standards then in effect pursuant to Section 4(b) prior to construction, provided, however, that with respect to the following items, the less restrictive of the Specified Clearances, the then current CSXT Standards or the clearances below shall apply:

(I) for overhead highway bridges, a lateral clearance of ten (10) feet from either side of the centerline of any track with a crash wall;

(II) for fences, other than intertrack fences, a lateral clearance of eight (8) feet from either side of the centerline of any track;

(III) for intertrack fences, a site by site review, if a lateral clearance from either side of the centerline of any track is less than seven and one-half (7 ½) feet plus or minus three (3) inches, is desired; and

(IV) for platforms, eight inches (8") ATR and a lateral clearance from either side of the centerline of any track of not less than five feet, one inch (5'1"). A twenty-five inch (25") ATR mini-hi platform located on the eight inch (8") ATR platforms shall have a lateral clearance measured from the centerline of the track of not less than seven feet, six inches (7'6").

(V) The platform clearances in (IV) above shall apply only to platforms constructed along tangent track. Any platform to be constructed along curved track shall comply with the then current CSXT Standards or such other clearances mutually agreed upon between the parties.

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 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(h).

(d) CSXT shall have the exclusive right to enter contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining State's prior 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, and provided further that in the case of Florida East Coast Railroad only, CSXT shall not, without first obtaining State's written consent thereto (which consent may be withheld by State in its sole and absolute discretion), convey, transfer or assign any right to operate on or over the State Property, and further provided, that the limitations described above shall not apply to such rights as currently exist pertaining to crossings or interchange or which may be granted by CSXT for detour movements; and second, with Amtrak to the extent provided herein or required by law, and third, with MCI Telecommunications, Inc. and Lightnet, its or their successors and assigns pertaining to fiber

optic transmission systems (subject to the provisions of Subsection 7(a) hereof). CSXT shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and State shall have no interest or right of participation in any revenue or income howsoever derived from such contracts, agreements, leases and licenses.

(e) 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, high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by State; second, the proposed work is necessary or desirable for the provision of Rail Freight Service, and/or 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 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.

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

(g) 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.

(h) 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 1, above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by State pursuant to Clause (2)(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 (2)(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.

(vi) If CSXT objects to the proposed plans, it shall set forth with particularity the reasons therefor, and shall identify reasonable alternatives or conditions that would render the proposed plans not objectionable.

(vii) If State accepts and incorporates CSXT's tendered alternatives or conditions, the proposed plans as so modified shall become final.

(viii) If CSXT fails to respond or State rejects CSXT's tendered alternatives or conditions, either party may provide the other party with the notice required by Subsection 17(a), Paragraph 1 of this Agreement, and the matter shall be subject to Section 17 of this Agreement, it being understood and agreed that Section 17 of this

Agreement renders binding arbitration inapplicable to certain matters, including, without limitation, matters reserved for mutual agreement of State and CSXT, and it being further understood and agreed that (A) binding arbitration shall apply to any dispute over State's wish to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property as described in this Section 8(h), including without limitation for failure of CSXT to respond as set forth above, and (B) that in any such arbitration the arbitrator or arbitrators shall apply the standards specified in Section 4(b) of this Agreement.

Section 9. Taxes, Assessments, and Utilities

(a) It is the intent and understanding of the parties hereto that all services performed by State for CSXT under this Agreement, including, without limitation, those performed under Sections 3, 4, and 5 hereof, are railroad transportation services, and accordingly are exempt from the payment of sales, use, or other taxes by either State or CSXT. In the event any taxes, fees, charges, liens or assessments are imposed upon State for such performance of railroad transportation services for CSXT or the acquisition of property for CSXT by State in conjunction therewith, then same shall be borne and paid by CSXT in their entirety, including, without limitation, any and all interest and penalties thereon.

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

(c) State shall initiate; contract for and obtain, in its name, all utility services required for the buildings, structures and facilities listed or described in Exhibit 5 of this Agreement including gas, electricity, telephone, water and sewer connections and services and State shall bear and pay directly to the providers of such services all charges for such services as they become due and payable. CSXT shall

not be required to bear any portion of the cost and expense for such services except with respect to buildings, structures, and facilities referenced in Exhibit 2 that are directly attributable to CSXT's use thereof.

Section 10. Casualty Losses

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

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

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

(c) Nothing in this Section 10 referring to an "accident" shall alter or modify the liability provisions of Section 19, or the insurance provisions of Section 21, and whenever any loss of, damage to or destruction of State Property occurs as a result of an accident involving the trains, locomotives, rail cars or rail equipment of, or on the account of State, CSXT, or any other railroad (including, without limitation, Amtrak and/or a detouring railroad), the provisions of Sections 19 and 21 shall govern the liability for the repair or replacement of State Property.

Section 11. Abandonment and/or Discontinuance

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

(i) State may offer financial assistance to CSXT, in accordance with applicable statutory and regulatory provisions, to enable Rail Freight Service to be continued over the State Property or portion thereof so involved with such abandonment or discontinuance. In the event that such offer of financial assistance complies with applicable statutory and regulatory provisions governing such offers, then CSXT shall accept such offer and shall continue Rail Freight Service on the State Property or portion so involved pursuant to the terms and conditions of such offer. In the event that CSXT believes that such offer does not comport with such applicable statutory and regulatory provisions, then CSXT shall promptly advise State of CSXT's non-acceptance of such offer, and State shall either: (A) seek to have the STB establish the terms and conditions governing the offer of financial assistance, subject to CSXT's participation in any such establishment, or (B) withdraw its offer of financial assistance. In the event that State so seeks to have the terms and conditions established by the STB and the terms and conditions so established are acceptable to State, then State shall so advise CSXT, and CSXT shall continue the Rail Freight Service over the State Property or portion thereof so involved in accordance with the terms and conditions so established by the STB. In the event that CSXT should receive an offer as aforesaid from State and one (1) or more offer(s) to purchase the CSXT Easement or subsidize the provision of Rail Freight Service on State Property, or portion involved, from any other person, then CSXT shall exercise its statutory right to select State as the offeror with whom CSXT desires to transact business, subject to all of the aforesaid provisions governing the acceptability of State's offer and the STB's establishment of terms and conditions in the event of CSXT's non-

acceptance of State's offer, provided, however, that if State's offer is to purchase the CSXT Easement or portion involved, State shall have the right, without the consent of CSXT, to transfer the CSXT Easement or portion involved to a third party in compliance with any STB requirements.

(ii) In the event that: (A) State declines or fails to make an offer of financial assistance to CSXT, as aforesaid; (B) State declines or fails to accept the terms and conditions established by the STB, as aforesaid; (C) State withdraws its offer of financial assistance; or (D) the agreement governing the continuation of Rail Freight Service under such financial assistance terminates by expiration of its term or otherwise, then CSXT may exercise, in whole or in part, the regulatory authority obtained by it for the abandonment or discontinuance of service on the State Property, or portion thereof, so involved. In the event that CSXT exercises the regulatory authority so obtained, then (1) this Agreement and the CSXT Easement shall automatically terminate and be of no further force and effect with respect to the State Property, or portion thereof, with respect to which CSXT exercises such regulatory authority and, except to the extent so terminated, this Agreement and the CSXT Easement shall remain in full force and effect; and (2) CSXT shall bear the conditions, if any, imposed by the STB on CSXT to protect the interests of CSXT's employees in the abandonment or discontinuance application or petition brought by CSXT under applicable statutory and regulatory provisions.

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

(c) As used in this Section 11, the term "applicable statutory and regulatory provisions" means 49 U.S.C. § 10903 et seq. and 49 C.F.R. Part 1152 and the STB's interpretations thereof as of the date of this Agreement. In the event that during the term of this Agreement such statutory and/or regulatory provisions are modified or amended in substantial respect or are repealed, then the parties hereto shall

supplement and amend the provisions of this Section 11 in order to continue in effect substantially the same rights and obligations herein contained.

(d) The foregoing provisions of Subsections 11(a) through 11(c), inclusive, pertain to abandonments or discontinuances subject to the STB's jurisdiction. As of the date hereof, the abandonment or discontinuance of sidetracks are statutorily exempt from the need to obtain abandonment or discontinuance authority from the STB's jurisdiction. In the event that at any time during the term of this Agreement any Sidetrack located on the State Property is not used by CSXT for the purpose of providing Rail Freight Service or Intercity Rail Passenger Service for a period of thirty (30) consecutive months, then either party shall so notify the other party and State may notify CSXT of State's desire that such Sidetrack, including the track switch(es) connecting such Sidetrack to the mainline or siding be removed. In the event State so requests, then CSXT shall within (60) days contact the shipper or last known user of such Sidetrack and determine whether use of such Sidetrack in the future for Rail Freight Service is reasonably foreseeable. If such use is not reasonably foreseeable, CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and shall use reasonable efforts to secure from the owner thereof the right to remove such Sidetrack, and upon the date said contract or agreement is canceled this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force or effect and State shall be free to remove such State Sidetracks and to require CSXT to remove or cause to be removed such Industry Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Industry Sidetracks) and the materials so removed shall be made available to the owner thereof. If no such contract or agreement exists, then upon the date of State's aforesaid notice, this Agreement and the CSXT Easement, only insofar as they pertain to said Sidetrack, shall automatically terminate and be of no further force or effect and State shall be free to remove such State Sidetracks and to require CSXT to use reasonable efforts to secure any consent required from a third party to remove, and to remove or cause to be removed such Industry Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Industry Sidetracks) and the materials so removed shall be made available to the

owner thereof. Except to the extent so terminated, this Agreement and the CSXT Easement, shall remain in full force and effect. Nothing contained herein shall preclude State and CSXT from mutually agreeing to the removal of any such Sidetrack prior to the expiration of said thirty (30) month period.

Section 12. Compliance With Laws

(a) During the term of this Agreement, State and CSXT shall comply, at their respective sole cost and expense, with all laws, orders, rules and regulations, to the extent such laws, rules, or regulations apply to State or to the State Property governing the maintenance and repair of the State Property, including, without limitation, those pertaining to environmental matters, that are promulgated by any municipality, state or federal government, board, commission or agency having appropriate jurisdiction, to the extent such laws, orders, rules, or regulations apply to State or the State Property, and except as otherwise provided in Exhibit 10 to the Contract.

Either party shall have the right to contest by appropriate legal proceedings, at its sole cost and expense, the validity and applicability of any law, order, rule or regulation of a nature referred to above. To the extent permissible, compliance with such law, order, rule or regulation may be postponed until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch on the part of the party hereto contesting same.

(b) Neither party hereto shall permit the State Property to be used by the public without restriction or in such manner as might reasonably tend to impair State's title to the State Property or CSXT's rights and interests therein as contemplated under this Agreement and the CSXT Easement. The foregoing: (i) shall not be construed to limit or restrict the rights and interests of the parties hereto as provided in this Agreement; and (ii) shall not in any way restrict the public use of the State Property or the CSXT Property in the normal conduct of the three classes of Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(c) Whenever State or CSXT enters into any new instrument referred to in Sections 7 or 8 hereof that grants to others a right to occupy or use the State Property then the party hereto entering into such

new instrument shall provide therein that the person so occupying or using the State Property shall comply with all applicable federal, state and local laws, regulations and ordinances respecting such occupancy or use.

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

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

Section 13. Liens and Charges

CSXT shall not cause or create any lien, claim, mortgage or charge of any nature whatsoever, including, without limitation, mechanics' or material supplier's liens (hereinafter in this Section collectively referred to as "charge") to be asserted against or claimed against the State Property for any reason and State shall not cause or create any charge to be asserted against the State Property which would interfere with or restrict the CSXT Easement. If any such charge shall at any time be claimed against the State Property, then the following provisions shall apply:

(a) The party hereto causing or creating such charge shall cause same to be discharged of record within thirty (30) days of the later of either: (i) the filing or attachment of same; or (ii) the date that the creating party has actual notice of such filing or attachment. If the party causing or creating such charge fails to discharge same within such period, then, except as is otherwise expressly provided in Subsection 13(b) hereof, the other party hereto may discharge the same by paying the amount claimed to be due without inquiry into the validity of the same. Any amount

paid by the party discharging the charge and all cost and expense incurred in connection therewith, including, without limitation, reasonable attorney's fees, together with interest thereon at the maximum rate allowed by law from the date of payment, shall be paid by the party causing or creating the charge to the party discharging same within thirty (30) days of the discharging party's submission of a bill therefor.

(b) Notwithstanding the foregoing provisions, the party causing or creating a charge shall have the right to contest or settle any such charge, provided, however, that within thirty (30) days of the later of either: (i) the filing or attachment of the charge, or.(ii) the date that the causing or creating party has actual knowledge of such filing or attachment, the causing or creating party shall give written notice to the other party hereto of the causing or creating party's intention to contest or settle such charge. In the event that the party causing or creating the charge complies with the foregoing provisions, then the other party shall not pay, remove or otherwise proceed to discharge any such charge.

Section 14. Eminent Domain

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

(a) Taking of Whole. If such proceeding shall result in the taking of the whole, then each party hereto shall have the unilateral right, upon written notice to the other and subject to the securing of any and all necessary governmental approvals, to terminate this Agreement in its entirety and the term hereof shall terminate and expire on the date title to the State Property vests in the condemning authority, and the

Usage Fee and any other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.

(b) Taking of Part. If such proceeding shall result in the taking of less than all of the State Property and does not materially interfere with either State's or CSXT's use of the State Property as contemplated under Subsection 1(a) hereof, then this Agreement shall continue for the balance of its term as to the part of the State Property remaining and the Usage Fee and any other sums or charges provided in this Agreement shall only be adjusted as of the date of such taking to reflect any increase in CSXT's costs or a decrease in CSXT's revenue as a result of the taking so occurring.

(c) Temporary Taking. If the temporary use of the whole or any part of the State Property shall be taken at any time during the term of this Agreement for any public or quasi-public purpose, the party receiving notice thereof shall give prompt notice thereof to the other party and this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring. For purposes of this Subsection 14(c), temporary taking shall include all use or occupation of all or any portions of the State Property that shall not exceed ninety (90) consecutive days of use or occupation. In the event that such temporary taking shall exceed such ninety (90) day period, then either State or CSXT may elect to treat such taking in accordance with the provisions of Subsections 14(a), (b) and (d) hereof.

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

(e) Each party hereto shall provide prompt notice to the other party of any eminent domain proceeding involving the State Property. Each party shall be entitled to participate in any such proceeding, at its own cost and expense, and to consult with the other party, its attorneys, and experts. State and CSXT shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure the continued use of the State Property for the Railroad Operations contemplated under Subsection 1(a) of this Agreement.

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

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

Section 15. Payment of Bills and Records

(a) Except as otherwise expressly provided in this Agreement, all payments called for under this Agreement shall be made by the party hereto obligated to pay same within thirty (30) days after its receipt of a bill therefor. In cases of a bona fide dispute those portions of the billings which are undisputed, shall be paid in accordance with the time period set forth above, and any dispute reconciled by the parties hereto shall be promptly adjusted in the accounts of the subsequent months. All bills submitted shall be in sufficient form for pre-audit and post-audit thereof of the services performed, and shall indicate, to the extent applicable, the dates of the occurrences and time expended therefor. All bills shall be signed by a person who can represent that the costs and expenditures contained in said bill are true and correct to the best of that person's knowledge or belief.

(b) The books, records and accounts of each party hereto, insofar as they pertain to the State Property and this Agreement, shall be open to inspection by the other, upon reasonable request during normal business hours, at the offices of the parties hereto. If so instructed by State, CSXT shall allow

public access to all such books, records and accounts subject to the provisions of Chapter 119, Florida Statutes, and made or received by CSXT on behalf of State in conjunction with this Agreement.

(c) In the event CSXT fails to make, when due, any payment to State under this Agreement, then State, to the extent permitted by law, may set off the amount due from CSXT against any payment that is owed by State to CSXT under this Agreement. Payments by State to CSXT shall be subject to Section 215.422, Florida Statutes (2007), which provides, among other things, State has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the services are received. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to CSXT. Interest penalties of less than one (1) dollar shall not be enforced unless CSXT requests payment. Invoices which have to be returned to CSXT because of CSXT preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to State. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

Section 16. Default and Breach

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

(b) The parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; that equitable relief, such as injunction, mandatory or otherwise, may be necessary in the event a party fails to cure a breach or default so occurring; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach, so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof. Nothing contained in this Section 16 shall be construed to limit or restrict the parties' rights and obligations under Section 36 hereof.

Section 17. Dispute Resolution and Arbitration

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

(a) Executive Level Resolution of Disputes

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

(2) Negotiation Process. Within ten (10) business days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The parties will cooperate

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

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

(4) Obligation of Parties. The parties regard the obligations to notify the other party of a dispute and to negotiate such dispute pursuant to this Subsections 17(a) and (b) hereof as an essential provision of this Agreement and one that is legally binding on each of them. In case of a violation of such obligation by either party, the other may bring an action to seek enforcement of such obligation in a court of law pursuant to Section 25 hereof.

(5) Payment of Fees And Costs. Each party shall each bear its own costs and expenses incurred in connection with any negotiations and dispute resolution.

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

(b) Arbitration

1. Except as is otherwise provided in Paragraph 17(b)2. hereof, any controversy under this Agreement that is not resolved pursuant to Subsection 17(a) shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held at a mutually convenient location, and in the event the parties cannot agree, then at a location specified by the arbitrator(s). It is the intent of the parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, shall extend to disputes as to whether particular disagreements are arbitrable, and shall be specifically enforceable by either of the parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the State of Florida. In the event of arbitration, each party hereto shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by State and CSXT.

2. It is understood and agreed by State and CSXT that the provisions of Subsection 17(b) are not applicable to and shall not be used: first, to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by State and CSXT in the submission of the matter to arbitration; second, to resolve any matter subject to the judgment or discretion of one party to this Agreement; and, third, except as is otherwise expressly provided herein, to resolve any matter reserved for mutual agreement of State and CSXT.

Section 18. Clearing of Wrecks

Whenever State's or CSXT's use of the State Property requires rerailing, wrecking service or wrecking train service, State shall be responsible for the performance of such service, including, without limitation, the repair and restoration of roadbed, track and structures. CSXT shall assist State in the performance of such service to the extent requested by State: The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and

injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 19 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. State shall perform the services under this Section 18 in an expeditious manner in order to restore rail service on the line.

Section 19. Liability

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

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

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

(iii) The term "Other Invitee" shall mean any person or persons described in Section 8(a)(ii) of this Agreement, other than those persons on the State Property for Railroad Operations or Incidental Use

as defined in Paragraph 19(a)(ii), hereof. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

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

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

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

(i) The parties specifically acknowledge and agree that, in the event of a Limited Covered Accident, State shall have no duty to indemnify or hold harmless CSXT from damages or expenses (aggregate per occurrence) up to the amount of the deductible or self-assumed amount allowed by Section 21 (b) and actually in force at the time of the Limited Covered Accident, provided, however that, except as otherwise expressly provided by Paragraph 19(d)(iv), State shall indemnify and hold harmless CSXT from all damages and expenses above the amount of the deductible or self-assumed amount allowed by Section 21(b) and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) regardless of the basis of such claims or occurrences, including willful misconduct or punitive or exemplary damages. If State incurs any damages, fees, costs, or expenses in connection with a claim relating to a Limited Covered Accident, CSXT shall reimburse State for all damages, fees, costs and expenses, up to the amount of the deductible or self-assumed amount allowed by Section 21(b) and actually in force at the time of the Limited Covered Accident (aggregate per occurrence) incurred in the defense or settlement of such a claim, action or demand, which amounts shall count toward CSXT's maximum responsibility under this Paragraph 19(c)(i), provided that if the settlement amount does not exceed the deductible or self-assumed amount allowed by Section 21 (b), CSXT shall have no duty to indemnify State for the damages, fees, costs and expenses if such settlement has not been approved in writing by CSXT, which approval by CSXT shall not be unreasonably withheld.

(d) The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the State Property (without limiting the application of this Subsection 19(d) to any other incident or occurrence, for the avoidance of doubt, an occurrence involving a train, locomotive, rail car or rail equipment of or in the account of either party on one hand, and on the other hand, either (i) a third party at a highway or grade crossing on the State Property or (ii) a trespasser, shall be governed by Subsection 19(d)(ii) or 19(d)(iii) as applicable):

i. Except as is otherwise expressly provided in Paragraph 19(c)(i), it is the specific and express intent of CSXT and State that State shall be solely responsible for liability, howsoever arising, without

limitation, to Rail Commuter Passengers and Other Invitees, and as between CSXT and State whenever Rail Commuter Passengers or Other Invitees suffer any loss, damage, injury or death arising out of, resulting from or connected with any occurrence covered by this Subsection 19(d), then except as is otherwise expressly provided in Paragraph 19(c)(i), State shall be solely responsible for and assume, without recourse against CSXT, any and all liability, cost and expense therefor.

ii. Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only State being involved, then State shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 18 hereof.

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

iv. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both State and CSXT being involved, then: (A) State and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them; (B) State shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers, Other Invitees and State's officers, agents, contractors and employees except as set forth in Paragraph 19(c)(i); (C) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents,

contractors and employees; and (D) State and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person (including, without limitation, trespassers) not referenced in Subparagraph 19(d)(iv)(B) or 19(d)(iv)(C) and for loss of, damage to and destruction of all other property not referenced in Subparagraph 19(d)(iv)(A) (including, without limitation, the State Property) so occurring, including, without limitation, all cost and expense referred to in Section 18 hereof, provided, however, that this Subparagraph 19(d)(iv)(D) shall be ineffective and shall not apply to any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons).

v. Except as provided in Paragraph 19(d)(vi) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, (A) both CSXT and any other railroad using the State Property being involved (including, without limitation) Amtrak and/or any detouring railroad), or (B) both State and any other railroad (other than CSXT) using the State Property being involved, (including, without limitation) Amtrak and/or any detouring railroad), then Amtrak and/or any other such railroad, shall be considered as State for the purpose of determining between State and CSXT, CSXT's assumption and apportionment of liability, cost and expense under Paragraph 19(d)(iv) above, provided, however, where the event is as described in Subparagraph 19(d)(v)(B), where no CSXT train is involved, then Subparagraph 19(d)(iv)(D) shall not apply.

vi. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, State, CSXT and any other railroad (including, without limitation, Amtrak and/or a detouring railroad) using the State Property being involved, then State and Amtrak and/or any other such railroad shall be

jointly considered as State and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between CSXT and State under Paragraph 19(d)(iv) above, provided, however, that CSXT's share of that liability, cost and expense that is to be borne equally by State and CSXT under said Subparagraph 19(d)(iv)(D), above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to State one-third (1/3) or more of the aforesaid liability, cost and expense. The division of liability expressed in this Paragraph 19(d)(vi) applies only to that cost and expense that is to be borne equally by State and CSXT under Subparagraph 19(d)(iv)(D) and shall be ineffective and shall not apply to any Rail Commuter Passenger, Other Invitee or other person referenced in Subparagraph 19(d)(iv)(B) or Subparagraph 19(d)(iv)(C), or any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons). Nothing contained in the aforesaid proviso shall be construed as limiting or modifying either party's respective obligation to assume and bear all liability, cost and expense for: (A) loss of, damage to or destruction of the trains, locomotives, rail cars and rail equipment operated by that party; and (B) injury to and death of that party's officers, agents, contractors and employees; all as provided in said Paragraph 19(d)(iv).

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

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

ix. For purposes of this Subsection 19(d), the term "person" shall include, without limitation, the employee(s) of a party hereto and the term "employee(s)" shall mean and include: (A) employees of a party hereto; (B) for each party hereto, the invitee(s) to the State Property of each such party, excluding Rail Commuter Passengers and Other Invitees; and (C) for CSXT, the employees of MCI and Lightnet while on the State Property pursuant to the agreements between CSXT and MCI and CSXT and Lightnet referred to in Section 7(a) hereof until such time, if any, that State enters into agreements with MCI and/or Lightnet pursuant to said Section 7(a), at which time said employees shall be considered as employees of State.

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

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

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

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

limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

(i) No provision in this Agreement shall constitute or be construed to constitute a waiver of State's sovereign immunity for tort and the parties hereto recognize and agree that the insurance and self-retention fund required under Section 21 below shall be the extent and sole source upon which State's liability under this Section 19 rests beyond that provided under the limited waiver of sovereign immunity contained in Section 768.28, Florida Statutes.

Section 20. Investigation

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost and expense therefor under the provisions of this Agreement including, without limitation, State's obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers or Other Invitees. For avoidance of doubt, the parties agree that State shall have the obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers or Other Invitees, notwithstanding CSXT's potential liability pursuant to Paragraph 19(c)(i).

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or State solely or CSXT and State jointly may have any liability under the provisions of this Agreement.

(c) The party hereto receiving notice of the filing of a claim will promptly notify the other party of such filing where liability therefor may be joint or that of the other party hereto. State and CSXT will cooperate with each other in all such investigations, adjustments and defenses, and State and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and

produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

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

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

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

(g) It is understood that nothing in this Section 20 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 19 or elsewhere in this Agreement.

Section 21. Insurance

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

(a) Pursuant to the 1987-89 General Appropriations Act, Specific Appropriation 1724, State established a self-insurance retention fund which Act's Summary Statement of Intent indicates is for the purpose of paying the deductible limit established in insurance policies obtained for Commuter Rail Service on the State Property. Accordingly, and notwithstanding any provision of this Agreement to the contrary, State has purchased insurance and has established and shall maintain an adequate self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof. The parties hereto recognize that said insurance and fund shall be the extent and sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity contained in the aforesaid Florida Statutes until an insurance policy is established, as authorized pursuant to Section 341.302, Florida Statutes. In accordance with Section 341.302, Florida Statutes, State shall purchase insurance and establish and maintain an adequate, segregated self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof. The parties hereto recognize that said insurance and fund shall be the extent and sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity for tort contained in Section 768.28, Florida Statutes. The obtaining of such policy of insurance and the establishment of said fund by State is a condition precedent to the commencement of this Agreement pursuant to Subsection 1(c) above, and the continued effect of Section 341.302, Florida Statutes, and obtaining and maintenance of said insurance and fund in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of Commuter Rail Service on the State Property. In the event that the obligations of State set forth in Section 19 and 21 of this Agreement become ineffective for any reason, or the insurance policy is canceled for any reason and/or the deductibles or self-assumed amounts of said insurance policy is unfunded, in the opinion of

CSXT, then State shall immediately cease operation of any and all Commuter Rail Service on the State Property until such time, if any, that the obligations of State under Section 19 and Section 21 of this Agreement become fully effective again and/or State shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 21 and/or replenish the fund, as the case may be. It is understood and agreed by the parties hereto that State's cessation of Commuter Rail Service on the State Property, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT Easement or CSXT's rights hereunder with respect to the provision of Rail Freight Service and/or Intercity Rail Passenger Service on the State Property, and shall not modify or amend any other obligation of State under this Agreement.

(b) State, at its sole cost and expense, shall procure no later than December 31, 2013, and maintain during the entire term of this Agreement, liability insurance covering CSXT as a named insured as agreed and provided in the terms and conditions of Subsection 21(a) hereof. The said liability insurance shall have a limit of not less than Two Hundred Million and no/100 Dollars ($200,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Ten Million and No/100 Dollars ($10,000,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage and shall not exclude punitive damages. Coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under any applicable employee liability regime, including without limitation, the Federal Employers Liability Act.

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

(d) In the event that any operating practice of CSXT jeopardizes the obtaining and maintaining of the insurance policies required of State hereunder, then, upon reasonable request and notice from State (which notice shall include all communications with respect to the offending operating practice between

State and its insurance carrier), CSXT shall modify the offending operating practice in a manner sufficient to obtain or maintain such insurance, provided that in no event shall CSXT be required to adopt a practice that is not consistent with generally accepted operating practices in the railroad industry. As used herein, the term "operating practice" shall exclude any practice that would require CSXT to modify any facilities and/or equipment, unless the cost and expense of such modifications to facilities and /or equipment are borne and paid entirely by State.

(e) The amount of insurance required of State under this Section 21 shall be adjusted from time to time during the term of this Agreement to reflect the effects of inflation and such other matters as may be mutually agreed upon by the parties hereto and at such times the parties may also adjust the deductible or self-assumed amounts. The parties hereto recognize that the amount of insurance required of State herein reflects the risks attendant with Commuter Rail Service and such amount shall be adjusted by mutual agreement of the parties during any period during the term of this Agreement that such Commuter Rail Service may be suspended or canceled. The parties hereto also recognize that the amount of insurance required herein of State reflects the risks attendant with the indemnification provided by State under the legislation described herein and reflected in Sections 19 and 21, hereof.

(f) As of the Execution Date, CSXT maintains system-wide insurance (which covers, inter alia, its Rail Freight Service on the State Property) with a limit in excess of Two Hundred Million and No/100 Dollars ($200,000,000.00) and deductibles or self-assumed amounts of Twenty-five Million and No/100 Dollars ($25,000,000.00). It is understood by the parties hereto that from time to time during the term of this Agreement CSXT may, at its option, change the limits, coverage and deductibles or self-assumed amounts of its aforesaid insurance. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 37 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the amount of insurance required of State under Subsections (a) and (b) hereof may, at State's option, be reduced to a limit of Thirty Million and No/100 Dollars ($30,000,000.00), and, second, as a condition to the conduct of operations by such person, firm, partnership or corporation on the State Property, State may, at its option, require such entity to maintain during the remainder of the term of this

Agreement insurance having a limit of Thirty Million and no/100 Dollars ($30,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million and no/100 Dollars ($1,000,000.00). To the extent and in the event mutually agreeable to State and such other entity, the aforesaid limits and/or amounts of insurance required of State and such other entity may be changed from time to time during the term of this Agreement.

Section 22. Force Majeure

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, said party shall not be liable or responsible for any delays due to strike, embargo, derailment, lockout, casualty, fire, flood, weather condition, earthquake, act of God, war, terrorism or threatened acts of terrorism, court order, work stoppage, nuclear incident, riot, civil disturbance, public disorder, criminal act of other entities, governmental regulation or control, governmental or judicial restraint or other such causes beyond the reasonable control of said party (collectively, "Force Majeure"); and in any such event of Force Majeure, said time period shall be extended for the amount of time said party is so delayed, provided that this Section 22 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such event of Force Majeure has been removed.

Section 23. Extension, Waiver, and Amendment

(a) This Agreement may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto.

(b) In each instance in which either State or CSXT is entitled to any benefit hereunder, State or CSXT, as the case may be, may: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto; (ii) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (iii) waive, in whole or in part, compliance with any of the terms and conditions of this Agreement by the other party

hereto. Any agreement on the part of either State or CSXT to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of such party.

Section 24. Notices

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

If to CSXT, to:

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

with a copy to:

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

If to State:

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

with copy to:

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

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

Section 25. Governing Law

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

Section 26. Counterparts

This Agreement may be executed in two or more counterparts, including counterparts transmitted by facsimile or electronic transmission, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

Section 27. Interpretation

State and CSXT acknowledge that the language used in this Agreement is language developed and chosen by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein", "hereof", "hereby", "hereunder" and "hereinafter" refer to this Agreement as a whole and not

to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, except that in the event of any inconsistency between such definition and any definition set forth in this Agreement, the latter shall govern. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section.

Section 28. Exhibits

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Agreement, provided, however, the parties recognize that Exhibits 1, 2, 3, 4, 5, and 6 need to be revised and will be updated, and Exhibits A and B are to be added pursuant to Section 4 prior to the Commencement Date, and therefore agree that upon completion and agreement to each exhibit, that each such exhibit shall be appended hereto and incorporated by reference herein.

Section 29. Entire Agreement

This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, including, without limitation, the 1988 OMAPA and that certain Non-binding Term Sheet dated as of August 2, 2006

Section 30. Waiver

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

any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

Section 31. Expenses

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

Section 32. Further Assurances

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

Section 33. Time of the Essence

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

Section 34. Performance of Agreement

Except as is otherwise expressly provided in this Agreement, where any service is required or permitted of either party to this Agreement, the performance of such service may be delegated to such agent, contractor or employee as either such party may designate; provided, however, that nothing contained herein shall be construed as creating or diminishing any right in State or CSXT or to cause a transfer, release or discharge of any or all of State's or CSXT's obligations under this Agreement. State understands that a substantial portion of CSXT's employees are covered by collective bargaining

agreements that govern the terms and conditions of their employment with CSXT, including, without limitation, rates of pay and scope of work.

Section 35. Prohibition of Third Party Beneficiaries

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors or assigns any right or benefit under or by reason of this Agreement; provided, however that nothing contained in the foregoing provision shall be construed to limit or restrict the enjoyment and use of the rights contained in Sections 7 and 8 of this Agreement and the Exhibits hereto or any other party's(ies') enjoyment and use of any and all of the rights that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s) license(s) or easement(s) entered into between State or CSXT and such other party(ies) pursuant to Sections 7 and 8 hereof and the Exhibits hereto.

Section 36. Term

(a) Subject to Section 1(c), this Agreement shall be effective as of the Execution Date, provided, however, that the terms and conditions of the 1988 OMAPA shall continue to apply to and govern Railroad Operations on the State Property until the Commencement Date hereof, which Commencement Date shall be simultaneous with the termination date of the 1988 OMAPA. Subject to Section 1(c), this Agreement shall continue in effect until such time as CSXT, its successors or assigns, secures and exercises appropriate regulatory authority to abandon and/or discontinue operations over the State Property, or in the event that such authority is not required, until such time as CSXT, its successors or assigns, gives six (6) months' prior written notice of termination of this Agreement. It is understood by the parties hereto that this Agreement may be terminated, in part, upon the securing of the aforesaid authority or the giving of the aforesaid notice, as the case may be, as it pertains to a portion of the State Property.

(b) Termination of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof, including without limitation, State's obligations with respect to the bridge over the New River as set forth in Section 5(d), and State's obligation to increase its insurance under Section 21(b). The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

Section 37. Successors and Assigns

(a) This Agreement and all of its terms, conditions, covenants, rights and obligations herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, subject to the following: at any time during the term of this Agreement: (i) State shall not convey any interest in the State Property underlying the CSXT Easement to any person, firm, partnership, corporation or governmental entity unless State has first complied with Section 38 of this Agreement and, (ii) as a condition to such conveyance, this Agreement is assigned to the party acquiring such property to the extent of the conveyance so involved. CSXT shall not transfer the CSXT Easement, in whole or in part, to any person, firm, partnership, corporation or governmental entity unless, CSXT shall have first obtained the prior written consent of State (which consent shall not be unreasonably withheld, conditioned, or delayed), and as a condition to such transfer, this Agreement is assigned to the party acquiring such CSXT Easement to the extent of the transfer so involved.

(b) The provisions of this Agreement pertaining to State's right of prior consent to CSXT's assignment thereof shall not apply to any assignment by CSXT of this Agreement, in whole or in part, or any of CSXT's rights, interests or obligations hereunder to any person, firm, partnership or corporation now or hereafter affiliated with CSXT; provided, however, that such affiliated entity, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to State's right of consent to any subsequent assignment (which consent shall not be unreasonably withheld, conditioned or

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

(c) Except as is otherwise provided in Subsection (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment; provided, however, that any such assignment by CSXT shall be made by CSXT in strict accordance with and subject to the provisions set forth in this Section 37 relating to the assignment of this Agreement.

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

Section 38. CSXT's Right of First Refusal

(a) If at any time or from time to time during the term of this Agreement, State receives from a ready, willing and able purchaser a bona fide written offer acceptable to State for the acquisition of

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

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

(c) CSXT's aforesaid right of first refusal shall not apply to any transfer or assignment of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, to any other agency of the State of Florida or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent

applicable at the time of such transfer or assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency.

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

Section 39. Incorporation of Recitals

The recitals to this Agreement are true and correct and are hereby incorporated herein.

[Signatures appear on the following page.]

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, duly attested, to be hereunto affixed as of the day and year first above written.

CSX TRANSPORTATION, INC.

By: _____
Peter J. Shudtz
Authorized Agent

(Signature page to Amended South Florida Operating and Management Agreement)

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, duly attested, to be hereunto affixed as of the day and year first above written.

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: _____
James A. Wolfe, P.E.
District Four Secretary

APPROVED AS TO FINANCIAL
TERMS AND FUNDS ARE
PROGRAMMED

_____
OFFICE OF THE COMPTROLLER

LEGAL REVIEW:

_____

(Signature page to Amended South Florida Operating and Management Agreement)

EXHIBITS

[To be updated per Section 28]

Exhibit 1.	Description of Real Property, as described in Exhibit 1 to the Contract for Installment Sale and Purchase, dated May 11, 1988, including the Railroad Valuation Map Line Sheets identified therein in 1988; and the description of Parcel 101 as described in Exhibit A to that certain Quitclaim Deed between CSXT and FDOT dated as of November 10, 2006, including the two Right of Way Plans attached thereto.
Exhibit 2.	List of buildings, structures, and facilities.
Exhibit 3.	Contracts to be retained by CSXT.
Exhibit 4.	Contracts, Agreements, Leases, Licenses, and Easements Assigned to State.
Exhibit 5.	Utility Services for Buildings, Structures, and Facilities Transferred to State.
Exhibit 6.	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
Exhibit 7.	Design, Engineering, and Construction Standards and Specifications for the New River Bascule Bridge Replacement.
Exhibit A.	Sidetracks to be Conveyed to State on Commencement Date
Exhibit B.	Industry Sidetracks

EXHIBIT 1

DESCRIPTION OF REAL PROPERTY

That certain land situate, lying and being in the Counties of Palm Beach, Broward and Dade, State of Florida, hereinafter designated "the Premises," more particularly described as follows:

A line of railroad, underlying land and property and appurtenant facilities, COMMENCING at Railroad Valuation Station 10499+53, at or near Railroad Mile Post SX-965, West Palm Beach, Palm Beach County, Florida, and extending in a southerly direction through Broward County, Florida, and terminating at Railroad Valuation Station 14331+90, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida; PLUS the River Spur between Railroad Valuation Station 14282+67, at or near Railroad Mile Post SX-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14518+10, at or near Railroad Mile Post SX-1041, Miami, Dade County, Florida; PLUS the Oleander Branch between Railroad Valuation Station 14292+53, at or near Railroad Mile Post SXH-1037, Hialeah, Dade County, Florida, and Railroad Valuation Station 14523+94.6, at or near Railroad Mile Post SXH-1041, Oleander, Dade County, Florida; ALL hereafter designated "the Premises"; as shown generally on Railroad Valuation Map Line Sheets, Exhibits A-1, A-2 and A-3, attached hereto and incorporated herein; as further described in Exhibits B-1, B-2 and B-3 and as more particularly

described by crosshatching on Railroad Valuation Section V-5FL/L27; Maps 50, 51, S-51-A, S-51-B, S-51-C, 52 and S-52 and Railroad Valuation Section V-7FL/L29, Maps 1, S-1, 2, 3, 4, 5, 6, 7, 8, S-8, S-8A, 9, 10, S-10, 11, S-11, 12, 13, S-13, 14, S-14, S-14-A, 15, SL-15-A, ST-15-A, S-15-B, S-15-C, S-15-D, 16, S-16-A, S-16-B, S-16-C, S-16-D, S-16-E, 17, S-17-A, S-17-B, S-17-C, S-17-D, 18 and 19, each of which consists of four (4) segmented parts, herein after referred to as "Valuation Maps," attached hereto and incorporated herein and containing 1,128.715 acres, more or less (427.823 acres, more or less, in Palm Beach County; 327.993 acres, more or less, in Broward County; and 372.899 acres, more or less, in Dade County).

EXCLUDING all parcels shown and designated on Exhibits C-1, C-2 and C-3, which are not crosshatched on the Valuation Maps, and EXCEPTING unto Grantor all right, title and interest in and to those parcels shown and designated on Exhibits, D-1, D-2 and D-3, which are not crosshatched on the Valuation Maps.

NOTE: The Exhibits referred to above are set forth as Exhibits to the Deed recorded at the Official Records Book 15424 Page 0731 of Public Records of Broward County.

EXHIBIT A

Description of property at: Palm Beach County, Florida
To: State of Florida Department of Transportation
CSXT Deed File No.:

Description of Premises

Parcel No. 101 State Road 710 Palm Beach County Description

A parcel of land located in Section 31, Township 42 South, Range 43 East, and Section 36, Township 42 South, Range 42 East, Palm Beach County, Florida, being more particularly described as follows:

Commence at a found concrete monument with a Palm Beach County Brass Disk marking the North ¼ Corner of said Section 36; thence South 01°53'29" West along the Westerly line of the Northeast ¼, a distance of 48.14 feet to a point on the Baseline of Survey for State Road 710 (Beeline Highway), as shown on the Florida Department of Transportation Right of Way Map for Section No. 93310-2504; thence South 53°41'25" East along said Baseline of Survey, a distance of 3,206.34 feet; thence South 36°18'35" West, a distance of 56.00 feet to a point on the Southerly Existing Right of Way Line for said State Road 710 (Beeline Highway) and the POINT OF BEGINNING; thence South 53°41'25" East along said Southerly Existing Right of Way Line, a distance of 1,938.85 feet; thence South 36°18'35" West, a distance of 16.57 feet to the beginning of a curve concave Northeasterly, having a chord bearing of North 55°05'37" West and a radius of 2,145.48 feet from a tangent bearing of North 56°29'49" West, through a central angle of 02°48'24", an arc distance of 105.10 feet to the end of said curve; thence North 53°41'25" West, a distance of 211.13 feet; thence South 36°18'35" West, a distance of 3.85 feet; thence North 53°41'25" West, a distance of 563.29 feet; thence North 36°28'15" East, a distance of 3.94 feet to the beginning of a curve, concave Northeasterly, having a chord bearing of North 52°58'51" West and a radius of 22,969.31 feet; thence Northwesterly along said curve, through a central angle of 01°05'49", an arc distance of 439.77 feet to the end of said curve; thence North 52°25'56" West, a distance of 619.81 feet to the POINT OF BEGINNING.

Containing 0.703 acres, more or less.

BEING a portion of the property acquired by Seaboard Coast Line Railroad, a predecessor of Grantor, from

On December 29, 1982, the Seaboard Coast Line Railroad Company merged with the Louisville and Nashville Railroad Company and the name of the surviving corporation changed to Seaboard System Railroad, Inc. On July 1, 1986, Seaboard System Railroad, Inc. changed its name to CSX Transportation, Inc.

This deed is a transfer of property under threat of condemnation & is immune from payment of Documentary Stamp Taxes

4094582_v2

Florida Department of Transportation
District Four Right of Way
3400 W. Commercial Boulevard
Ft. Lauderdale, Florida 33309-3421

Exhibit 7

I. DESIGN REQUIREMENTS – NEW RIVER BASCULE RAIL BRIDGE REPLACEMENT

The design services shall be in compliance with all applicable Manuals and Guidelines including the Department, FHWA, AASHTO, AREMA standards, FRA, CSXT operating rules, CSXT Signal Standards, CSXT Track Standards and additional requirements specified in this document. Except to the extent inconsistent with the specific provisions in this document, the current edition, including updates, of the following Manuals and Guidelines shall be used in the performance of this work.

Where a conflict exists between FDOT and CSXT standards and any other listed standard, the higher standard will control. If the higher standard is unclear, then FDOT standards will apply to the bridge structure and CSXT standards will apply to track, signal, and communication systems. During the design process, any changes or amendments to such standards may be proposed by either party and will be subject to approval by the other party, which such approval shall not be unreasonably withheld.

A. Structures Plans:
Design in accordance with the following documents:

1. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering

2. Florida Department of Transportation Roadway Plans Preparation Manuals
http://www.dot.state.fl.us/rddesign/PPMManual/PPM.htm

3. Florida Department of Transportation Structures Manual including Temporary Design Bulletins
http://www.dot.state.fl.us/structures/manlib.htm

4. Florida Department of Transportation Soils and Foundations Handbook
http://www.dot.state.fl.us/structures/Manuals/SFH.pdf

5. Florida Department of Transportation Design Standards
http://www.dot.state.fl.us/rddesign/DesignStandards/Standards.htm

6. Florida Department of Transportation Computer Aided Design and Drafting (CADD) Production Criteria Handbook Roadway Standards
http://www.dot.state.fl.us/ecso/downloads/publications/CriteriaHandBook/

7. Florida Department of Transportation Production Criteria Handbook CADD Structures Standards
http://www.dot.state.fl.us/ecso/downloads/publications/CriteriaHandBook/

8. Standard Specifications for Road and Bridge Construction 2007
http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm

B. Track Plans:
Design in accordance with the following documents:

1. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering

2. Florida Department of Transportation Roadway Plans Preparation Manuals
http://www.dot.state.fl.us/rddesign/PPMManual/PPM.htm

3. CSXT Roadway and Track Standards

4. U.S. Department of Transportation, Federal Railroad Administration (FRA) Track Safety Standards

5. Florida Department of Transportation Soils and Foundations Handbook http://www.dot.state.fl.us/structures/Manuals/SFH.pdf

6. Florida Department of Transportation Design Standards http://www.dot.state.fl.us/rddesign/DesignStandards/Standards.htm

7. Florida Department of Transportation Computer Aided Design and Drafting (CADD) Production Criteria Handbook Roadway Standards http://www.dot.state.fl.us/ecso/downloads/publications/CriteriaHandBook/

8. Florida Department of Transportation Production Criteria Handbook CADD Structures Standards http://www.dot.state.fl.us/ecso/downloads/publications/CriteriaHandBook/

9. Standard Specifications for Road and Bridge Construction 2007 (Written as Supplemental Specifications to Standard Specifications for Road and Bridge Construction 2007) http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm

10. CSXT Standard Specifications and Special Specifications

C. **Bridge Construction Specifications:** the bridge shall be constructed in accordance with Standard Specifications for Road and Bridge Construction 2007. http://www.dot.state.fl.us/specificationsoffice/2007BK/TOC.htm

D. **Track Construction Specifications:** the track, signals, and communications shall be constructed in accordance with:

1. CSXT Roadway, Track, Signal and Communication Standard Specifications and Special Specifications

2. U.S. Department of Transportation, Federal Railroad Administration (FRA) Track Safety Standards

3. American Railway Engineering and Maintenance-of-Way Association (AREMA), Manual for Railway Engineering

E. **Continuation of Freight Operations:** The Department will minimize the closure of the existing bascule bridge, to the maximum extent possible. Bridge closures for extended work to occur within period from 8:00 PM (2000 hours) Friday to 5:00 PM (1700 hours) Sunday, and daily outages worked under flag protection from 7:00 am (0700 hours) to 7:00 pm (1900 hours), with a four (4) hours uninterrupted work window during this twelve (12) hour period and up to eight (8) freight trains being allowed to operate through the remainder. Safety will be the only consideration for additional closures of the bridge.

Exhibits Related to Sidetracks

Exhibit A

Sidetracks to be Conveyed to State on Commencement Date

[To be updated per Section 28]

Exhibit B

Industry Sidetracks

[To be updated per Section 28]

AGREEMENT #	INDUSTRY	INDUSTRY OWNERSHIP WITHIN R.O.W.	MILEPOST

Note: Drawings defining the referenced trackage are attached hereto and incorporated herein as a part of this Exhibit.

TAB 11

Execution Version

Transition Agreement

This Transition Agreement (this "Agreement"), is entered into this 31st day of March, 2014 (the "Effective Date"), by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION ("State") and CSX TRANSPORTATION, INC. ("CSXT") with the South Florida Regional Transportation Authority ("SFRTA") joining for the purposes outlined herein.

WHEREAS, by that certain Contract for Installment Sale and Purchase between State and CSXT entered into as of May 11, 1988 (the "Contract")[1] State purchased the State Property from CSXT subject to the retained rights of CSXT; and

WHEREAS, pursuant to Phase A of that certain Operating and Management Agreement between State and CSXT dated as of May 11, 1988 (as it has been and may be amended or succeeded, the "OMAPA"), CSXT dispatches and maintains the State Property on behalf of State; and

WHEREAS, pursuant to that certain South Florida Operating and Management Agreement dated as of December 6, 2007 (the "Original SFOMA"), which was amended as of January 25, 2012 (and as it may be amended or succeeded, the "Amended SFOMA"), State and CSXT have agreed, among other things, that State shall assume the obligation to maintain and dispatch the State Property as of the Commencement Date; and

WHEREAS, State has entered into an Operating Agreement with SFRTA, dated June 13, 2013 (the "Operating Agreement"), pursuant to which SFRTA will perform (subject to Section 34 of the Amended SFOMA) all State maintenance and dispatch of State property required by the Amended SFOMA; and

WHEREAS, the parties wish to identify in this Agreement certain requirements that must occur in order to effect a smooth transition of the maintenance and dispatch obligations to State from CSXT;

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

1. Relationship to SFOMA.

1.1. This Agreement is supplemental to the Amended SFOMA and OMAPA, but does not alter, modify or amend the Amended SFOMA or OMAPA. In the event of any conflict among this Agreement, OMAPA and the Amended SFOMA, the terms of OMAPA, then the Amended SFOMA, then this Agreement will govern. This Agreement shall terminate upon the Commencement Date under the Amended SFOMA.

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[1]Capitalized terms not defined herein shall have the meaning given to them in the Contract or the Amended SFOMA.

2. **Dispatch Interface between Control Point (CP) South End Dyer and State's South Florida Dispatcher Office.**

2.1. Prior to the Commencement Date and in preparation for transition of dispatching to State, certain changes are necessary to the existing wayside signaling/interlockings, at CP South End Dyer at the northern limits of the State Property (approximate MP 964.1 of the State Property), with associated database changes to CSXT office software (dispatching system), to implement interface of CSXT Jacksonville Dispatcher dispatching the State Property ("CSXT JG Dispatcher") with the State Dispatcher located in the South Florida Dispatching Office ("CSXT Work"). For purposes of this Agreement, "State Dispatcher" may include a dispatcher engaged by or contracted to the SFRTA and acting for State as provided by and subject to Section 34 of the Amended SFOMA. The South Florida Dispatching Office shall be collectively defined as the dispatching center located at SFRTA's Headquarters and the backup dispatching center located at SFRTA's West Palm Beach Tri-Rail Station which shall dispatch the State Property as required by the Amended SFOMA.

2.2. At the north end of State Property, the signals at CP South End of Dyer, MP SX 964.1, located on CSXT Property, controlling movement to/from the State owned South Florida Rail Corridor shall be owned and maintained by CSXT. CP South End of Dyer and the switch will be controlled by CSXT's JG Desk. Each party shall control entry into its own property.

2.3. State shall be responsible for connectivity from CSXT signal system on the CSXT Property via a communication link to the South Florida Dispatching Office.

2.4. The dispatch interface shall:

2.4.1. Enable the CSXT JG Dispatcher to make a computer request to route a southbound train from the CSXT Auburndale Subdivision to the State Property. The State Dispatcher will see a computer screen indication that the signal has been requested but not yet cleared. The State Dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the State Property.

2.4.2. Enable the State Dispatcher to make a computer request to route a northbound train from the State Property to the CSXT Auburndale Subdivision. The CSXT JG Dispatcher will see a computer screen indication that the signal has been requested but not yet cleared. The CSXT JG Dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the CSXT Auburndale Subdivision.

2.5. The two dispatchers will also have the ability to communicate via a dedicated phone line.

2.6. All actual field work and installation on CSXT Property required by or related to the interfacing of the CSXT JG and State Dispatchers will be performed by CSXT forces or its contractors.

2.7. CSXT shall be responsible for all ongoing maintenance of field equipment that is placed on CSXT Property in conjunction with the dispatch interface, at its sole cost and expense.

2.8. State shall be responsible for providing its communication link and connectivity between the State's South Florida Dispatch Office and the South End Dyer field location, as well as any back up communication link State deems appropriate between the office and field location pursuant to Section 3 of this Agreement.

2.9. State shall be responsible for all ongoing maintenance of its communication link and connectivity between the State's South Florida Dispatch Office and the South End Dyer field location on the State Property.

2.10. Estimated timeline for the implementation of the CSXT Work under this Section 2, including design, review and construction, is currently six (6) months from the Effective Date.

2.11. The estimated costs of the CSXT Work in establishing the dispatch interface at South End Dyer at MP SX 964.1 as contemplated herein are set forth below:

Item	Estimated Cost
Field Signal Changes, including design and review	$298,394.00
Office Software Changes (CSX Dispatch System)	$ 60,000.00
Total Cost	$358,394.00

2.12. Fifty percent (50%) of CSXT's performance of the CSXT Work under this Agreement will be at State's cost and expense and the State's share is estimated to be One Hundred Seventy-Nine Thousand One Hundred Ninety-Seven Dollars ($179,197). A force account estimate ("FAE") is attached as Exhibit 1, for Two Hundred Ninety-Eight Thousand Three Hundred Ninety-Four Dollars ($298,394). State agrees and accepts the remaining estimated costs as reasonable and necessary.

2.13. A simple hardware diagram for the South End Dyer field location that indicates how the controls and indications will be shared by CSXT and State is attached as Exhibit 2. Exhibit 2 also indicates which party will be responsible for providing equipment and connectivity.

3. Dispatch Interface between State's South Florida Dispatcher Office and Control Points Other than CP South End Dyer.

3.1. All communication and other work necessary to be performed on the State Property to implement the State dispatching system, connectivity and support services other than the CSXT Work (the "State Work"), shall be the responsibility of State and at State's sole risk and expense. State and CSXT agree that the State Work on the State Property is unrelated to CSXT or Amtrak operations and that this Agreement shall constitute the parties' agreement under Sections 5 and 8 of OMAPA that State's contractor shall perform the State Work at the State's sole risk and expense, subject to the following:

3.1.1. See Exhibit 3 for the insurance requirements.

3.1.2. In recognition of the necessity to observe safe practices and protect the existing network on the State Property, State shall coordinate with CSXT all entry upon the State Property by State's contractor pursuant to a coordinated schedule mutually agreed between State and CSXT and identifying the scope and timing of the State Work in a manner that will allow CSXT to be present during the State Work.

3.2. At State's request, and subject to mutually acceptable planning, advance notice, compliance with CSXT labor agreements and agreement on compensation and available resources, CSXT and State may discuss other coordinated efforts to facilitate the transition of maintenance and dispatch to State.

3.3. CSXT has agreed to provide initial access to the SFRC, as described in Exhibit 4, within fourteen (14) to twenty-one (21) days of CSXT's issuance of the Outside Party Number referenced in Section 8.

4. **Software and Hardware.**

4.1.1. CSXT will provide five (5) territory overviews of the CSXT Auburndale Subdivision to State at a cost of Four Thousand Dollars ($4,000)/license to permit mirrored monitoring.

4.1.2. State will provide five (5) territory overviews of the State Property to CSXT at a cost not to exceed Four Thousand Dollars ($4,000)/license to permit mirrored monitoring.

4.1.3. Except as set forth herein, each party will provide any necessary installation hardware and communication links for that party.

4.1.4. After installation, each party shall bear any future hardware or software costs associated with the use of the Dispatch Interface.

4.1.5. All proprietary information belonging to CSXT or State, respectively, which is contained within the monitoring systems described herein, including information relating to railroad track layout and train movement, shall remain the property of the owning party. Neither party will make any copies of the proprietary information of the other except where necessary to carry out its rights and obligations under this Agreement or as required by law, and will make no use of the proprietary information except as contemplated by this Agreement, it being the intention of the parties that each party be prohibited from using the proprietary information of the other party for its own gain or purpose, financial or otherwise, except in the manner authorized under this Agreement.

5. **Signage, Locks.**

5.1. Within one month of the Commencement Date, State shall have satisfied the following:

5.1.1. Install "No Trespassing Signs" as appropriate;

5.1.2. Replace all padlocks on signal appliances, electrical and mechanical, exclusive of switch locks, which shall remain in place;

5.1.3. Restencil current CSXT signs to identify State or SFRTA as the responsible party to contact with contact information.

5.2. Within twenty-four (24) hours of the Commencement Date, State shall have satisfied the following:

5.2.1. Install or update all highway-grade crossing warning signage to reflect State or SFRTA as the responsible party to contact with contact information.

5.2.2. In lieu of actual signage, change out, stickers with the required information shall be allowed and overlaid on existing signage until the actual signage change can be made.

5.3. The parties will work together in good faith to identify, at least sixty (60) days prior to the Commencement Date, any other matter mutually agreed upon by the parties as necessary to ensure a safe and orderly transfer of management and operation of the State Property to State.

6. **Wastewater Permits.** No later than thirty (30) days prior to the Commencement Date State will have obtained a transfer or replacement for each of the following or approval from the permitting authority that it will approve such transfer or replacement as of the Commencement Date:

6.1. Miami Dade County Industrial Waste Pretreatment Operating Permit No. IWP-00024

6.2. Miami Dade County Private Sanitary Sewer Operating Permit No. PSO-00845

6.3. Florida Department of Environmental Protection Multi-Sector Generic Permit/National Pollutant Discharge Elimination System Stormwater Permit No. FLR05F629-003

7. **CSXT Standards, Operating Rules, and Roadway Safety Rules.**

7.1. CSXT agrees that State may adopt, use and copy CSXT's 2014 version of its Operating Rules (which includes the CSXT Roadway Safety Rules) that have been applicable to the State Property and previously provided training materials and qualifying examinations (the "Rules") and incorporate them into State's operating and safety rules. State acknowledges receipt of a scanned version of the Rules. CSXT hereby provides a royalty-free license as of the Commencement Date to State and its contractors, for use of the Rules solely and exclusively on the State Property, allowing State and its contractors to use the Rules with respect to operations on the State Property. State shall delete any reference to "CSXT" (or any derivative thereof) in State's operating rules. State may, after the Commencement Date, modify its rules to have specific application to the State Property.

7.2. CSXT agrees to establish or cause to be established, within sixty (60) days of the Effective Date, at State's cost and expense, a scanned version of CSXT's current maintenance of way standards, signal standards and standards drawings, with references to CSXT or CSXT employees deleted, such standards to be scanned to be selected at CSXT's reasonable determination (the "Scanned Standards"). CSXT agrees that State may use the Scanned Standards as the basis for the adoption of its own standards and hereby provides a royalty-free license as of the Commencement Date to State and its contractors, for use of the Scanned Standards solely and exclusively for the development by State or its contractors of State's standards for operations on the State Property subject to the Amended SFOMA. State will reimburse CSXT, based on an invoice identifying the actual cost of providing the Scanned Standards, not to exceed Thirty Thousand Dollars ($30,000.00) based on current estimates. CSXT makes no warranty or representation whatsoever with respect to the accuracy, integrity, suitability or fitness of the Scanned Standards for State's or its contractor's purposes, all of which shall be determined by State or its contractor prior to using the Scanned Standards as provided herein.

8. **Costs.** State will reimburse CSXT for the costs and expenses of the CSXT Work and other work to be performed by CSXT pursuant to this Agreement (the "Services") in accordance with the terms and conditions of this Agreement in an amount not to exceed Two Hundred and Fifty Thousand Dollars ($250,000.00) (the "Amount"). In the event CSXT anticipates work beyond the scope or costs that exceed this estimate, CSXT will notify State and provide an updated estimate for review and approval. The parties recognize the time sensitivity of all of the work under this Agreement and will work together in good faith to review and approve all such requests in a timely manner. All Services performed under the terms of this Agreement shall not exceed the Amount without an amendment to this Agreement. CSXT shall not perform, nor be obligated to perform, the Services under the terms of this Agreement in excess of the estimated Amount without an amendment to this Agreement. Billings shall be charged at the same overhead rates provided for in OMAPA using an Outside Party Number to be established by CSXT no later than two (2) business days after the Effective Date and to be paid under FM# 236769-1.

   Prior to CSXT commencing the Services, State shall submit to CSXT a notice to proceed and written proof that the State has encumbered the funds necessary for payment to CSXT for the Services in accordance with this Agreement; said written proof may be in the form of a copy of the State of Florida Department of Transportation Funds Approval from the state Comptroller's office, reflecting the estimated amount.

9. **Scheduling.** The parties agree to develop a master list of tasks within thirty (30) days of this Agreement and to hold regular meetings to monitor the efforts of the parties.

10. **Spare Parts and Inventory.** All spare parts and inventory acquired by CSXT under Section 4 of OMAPA and not used prior to the Commencement Date shall be made available to State for the performance by State of its maintenance and dispatch obligations under the Amended SFOMA. Within fifteen (15) days following the Effective Date, CSXT will provide reasonable historical data not to exceed one year reflecting all materials purchased by CSXT for the SFRC.

11. **Concurrent Projects.** Both parties agree to schedule, to the extent possible, all future projects on the SFRC in such a way as to have the least impact on the transition efforts. Existing projects will be transitioned to State as of the Commencement Date and completed by State.

12. **Supervisory Personnel.** If requested by the State prior to the Commencement Date, CSXT will make available for consultation for a period of thirty (30) days after the Commencement Date the following:

    12.1. Roadmaster with primary responsibility for the Miami Subdivision and Hialeah Yard,

    12.2. Signal Supervisor with primary responsibility for the Miami Subdivision and Hialeah Yard,

    12.3. Communications Supervisor with primary responsibility for the Miami Subdivision and Hialeah Yard,

12.4. Bridge Manager with primary responsibility for the Miami Subdivision and Hialeah Yard,

12.5. State shall compensate CSXT at the rate of $365.00/day per supervisor for such services.

13. **Documentation.** The parties agree to confer and identify such documentation as may be mutually agreed to be furnished by CSXT to State or SFRTA with good faith efforts to furnish such documentation within sixty (60) days following the request, but no later than sixty (60) days in advance of the Commencement Date. This shall not preclude any requests up until the Commencement Date and those requests shall be addressed by CSXT within a reasonable period of time.

14. **Coordination Meetings.** State, SFRTA and CSXT have appointed the point persons shown in Section 35 for purposes of communication and coordination concerning the transition. CSXT, FDOT and SFRTA agree they shall each have their respective point person participate in weekly, or as necessary, meetings via conference call with State and SFRTA, in support of the transition to the Amended SFOMA through the Commencement Date.

15. **Training.** State shall provide CSXT with one (1) "train the trainer" session for up to five (5) CSXT employees, at a location in South Florida to be determined by State, at State expense, to qualify CSXT personnel on physical characteristics and operating rules on the State Property.

16. **Timeliness.** It is understood and agreed by the parties hereto that they are working toward the transition from OMAPA to the Amended SFOMA and therefore the prompt and timely performance of the services contemplated under this Agreement is of the essence.

17. **Travel.** Bills for travel expenses specifically authorized in this agreement shall be submitted and paid in accordance with DEPARTMENT Rule 14-57.011 "Public Railroad-Highway Grade Costs" and the Federal Highway Administration Federal-Aid Policy Guide, Subchapter B, Part 140, Subpart I "Reimbursement for Railroad Work."

18. **Vendor Ombudsman.** In accordance with Section 215.422, Florida Statutes, the following information is provided: Contractors providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The DEPARTMENT has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

    If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to Section 215.422(3)(b), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Contractor. Interest penalties of less than one (1) dollar will be not be enforced unless the Contractor requests payment. Invoices which have to be returned to a Contractor because of Contractor preparation errors will result in a delay in the

payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.

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

19. **Final Billing.** Upon completion of the CSXT Work under this Agreement, CSXT shall, within one hundred eighty (180) days, furnish the State with two (2) copies of its progressive and final billing of the costs incurred in connection with the work performed. Such statement to follow as closely as possible the order of the items contained in the project estimates. The totals for labor, overhead, travel expense, transportation and other services related to the CSXT Work shall be shown in such manner as will permit ready comparison with the approved plans and estimates.

20. **Payment.** Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the State's Comptroller under Section 334.044(29), F.S. or by the Department of Financial Services under Section 215.422(14), F.S.

21. **Invoicing and Records.**

    21.1. Invoices shall be submitted by CSXT in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable and verifiable units of deliverables as identified in this agreement. Deliverables must be received and accepted in writing by the Department's Contract Manager prior to payments. Supporting documentation must establish that the deliverables were received and accepted in writing and that the required minimum level of service to be performed as specified in this Agreement.

    21.2. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the State at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the State upon request. Records of costs incurred include CSXT's general accounting records and the project records, together with supporting documents and records, of contractors and all subcontractors performing work under this Agreement, and all other records of contractors and subcontractors reasonably required by State for a proper audit of costs.

22. **Florida Statutes, Section 339.135(6)(a).** In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, but its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and which have a term for a period of more than one year.

23. **Florida Statutes, Section 287.133 (2)(a).** In accordance with Section 287.133 (2)(a), Florida Statutes, the following provision is included in this Agreement:

    A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

24. **Florida Statutes, Section 287.134(2)(a).** In accordance with Section 287.134(2)(a), Florida Statutes, the following provisions are included in this agreement:

    An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

25. **Florida Statute 287.0582.** In accordance with Section 287.0582, Florida Statutes, the following provisions is included in this agreement:

    The DEPARTMENT'S obligation to pay under this contract is contingent upon an annual appropriation by the Florida Legislature.

26. E-Verify. CSXT shall:

26.1. Utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by CSXT during the term of this Agreement; and

26.2. Include in subcontracts the requirement that subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement.

27. Severability. It is understood and agreed by the parties to this Agreement that if any part, term, or provision of this Agreement is held illegal by the courts or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

28. Jurisdiction and Venue. Any questions or matters arising under this Agreement as to validity, construction, enforcement, performance, or otherwise, shall be determined in accordance with the laws of the State of Florida. Venue for any legal proceedings shall be in Leon County, Florida.

29. Dispute Resolution. Dispute resolution shall be governed by the terms of Section 17 of the Amended SFOMA as if set forth in full herein.

30. Attorney's fees. The parties agree to bear their own attorney's fees and costs with respect to this Agreement.

31. Binding Effect. The parties agree that this Agreement is binding on the parties and their assigns and successors in interest as evidenced by their signatures and lawful executions below.

32. Amendment. A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

33. State Delegation. State hereby delegates to SFRTA all rights and responsibilities granted to it in Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 2.8, 2.9, 2.14, 3,1.1, 3.1.2, 3.2, 4, 5, 6, 7, 9, 10, 11, 12, 13, and 15 of this Agreement and SFRTA assumes all obligations of State associated with said Sections, provided, however, that nothing in this delegation is intended to (i) delegate to or result in the assumption by SFRTA of any of State's expense and payment obligations under this Agreement, or (ii) relieve State from any duty or obligation arising under the referenced Sections.

34. Miscellaneous. Unless otherwise stated herein, all references to days shall mean calendar days.

35. **Communication Protocols. CSXT, State, and SFRTA** hereby designate the following points of contact for this transition effort:

Cheryl Boehm, CSXT
Cheryl_boehm@csx.com
500 Water Street, J-315
Jacksonville, FL 32202
Phone: (904)359-3291

Birgit Olkuch, FDOT (also State's Contract Manager for purposes of this Agreement)
Birgit.Olkuch@dot.state.fl.us
3400 West Commercial Blvd
Fort Lauderdale, FL 33309
Phone: (954)777-4689

Dan Mazza, SFRTA
mazzad@sfrta.fl.gov
800 NW 33rd Street - Suite 100
Pompano Beach FL 33064
Phone: (954) 788-7893

(signature page follows)

IN WITNESS WHEREOF, the parties, acting through their duly authorized representatives and intending to be legally bound, have executed this Transition Agreement as of the Effective Date.

CSX TRANSPORTATION, INC.

By: _____
Peter J. Shudtz
Authorized Agent

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____
Gerry O'Reilly
Director of Transportation Development

_____
LEGAL REVIEW

Joinder for purposes of participation in the communication and coordination described in Sections 14 and 16 and the delegation described in Section 33.

SOUTH FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By: _____
Jack Stephens
Executive Director

_____
LEGAL REVIEW

(Signature page to South Florida Transition Agreement)

Exhibit 1

Force Account Estimate

ACCT. CODE : 709 - 0

ESTIMATE SUBJECT TO REVISION AFTER: 2/2/2015 **DOT NO.:** __

CITY: West Palm Beach **COUNTY:** Palm **STATE:** FL

DESCRIPTION: CSX / S Fla Dispatch Cut - Point: Modify signal system at CP "SE Dyer" for South Florida Dispatching

DIVISION: Jacksonville **SUB-DIV:** Miami **MILE POST:** SX 964.0

AGENCY PROJECT NUMBER __ SX 964.1

	PRELIMINARY ENGINEERING:			
200	Labor (Non Contract)		$	-
200	Additive	31.34%	$	-
230	Expenses		$	-
212	Contracted & Administrative Engineering Services		$	1,000
	Subtotal		$	1,000
	CONSTRUCTION ENGINEERING/INSPECTION:			
200	Labor (Non Contract)		$	-
200	Additive	31.34%	$	-
230	Expenses		$	-
212	Contracted & Administrative Engineering Services		$	-
	Subtotal		$	-
	FLAGGING SERVICE: (Contract Labor)			
070	Labor (Conductor-Flagman)		$	-
050	Labor (Foreman/Inspector)		$	-
070	Additive	71.09% (Transportation Department)	$	-
050	Additive	95.98% (Engineering Department)	$	-
230	Per Diem	(Engineering Department)	$	-
230	Expenses		$	-
	Subtotal		$	-
	SIGNAL & COMMUNICATIONS WORK:		$	268,637
	TRACK WORK:		$	-
	ACCOUNTING & BILLING:			
040	Labor		$	1,000
040	Additive	63.03%	$	630
	Subtotal		$	1,630
	PROJECT SUBTOTAL		$	271,267
900	**CONTINGENCIES:**	10.00%	$	27,127
	GRAND TOTAL	**********	$	298,394

NOTE: Estimate is based on FULL CROSSING CLOSURE during work by Railroad Forces.

This estimate has been prepared based on site conditions, anticipated work duration periods, material prices, labor rates, manpower and resource availability, and other factors known as of the date prepared. The actual cost for CSXT work may differ based upon the agency's requirements, their contractor's work procedures, and/or other conditions that become apparent once construction commences or during the progress of the work

Office of Assistant Chief Engineer Public Projects--Jacksonville, Florida

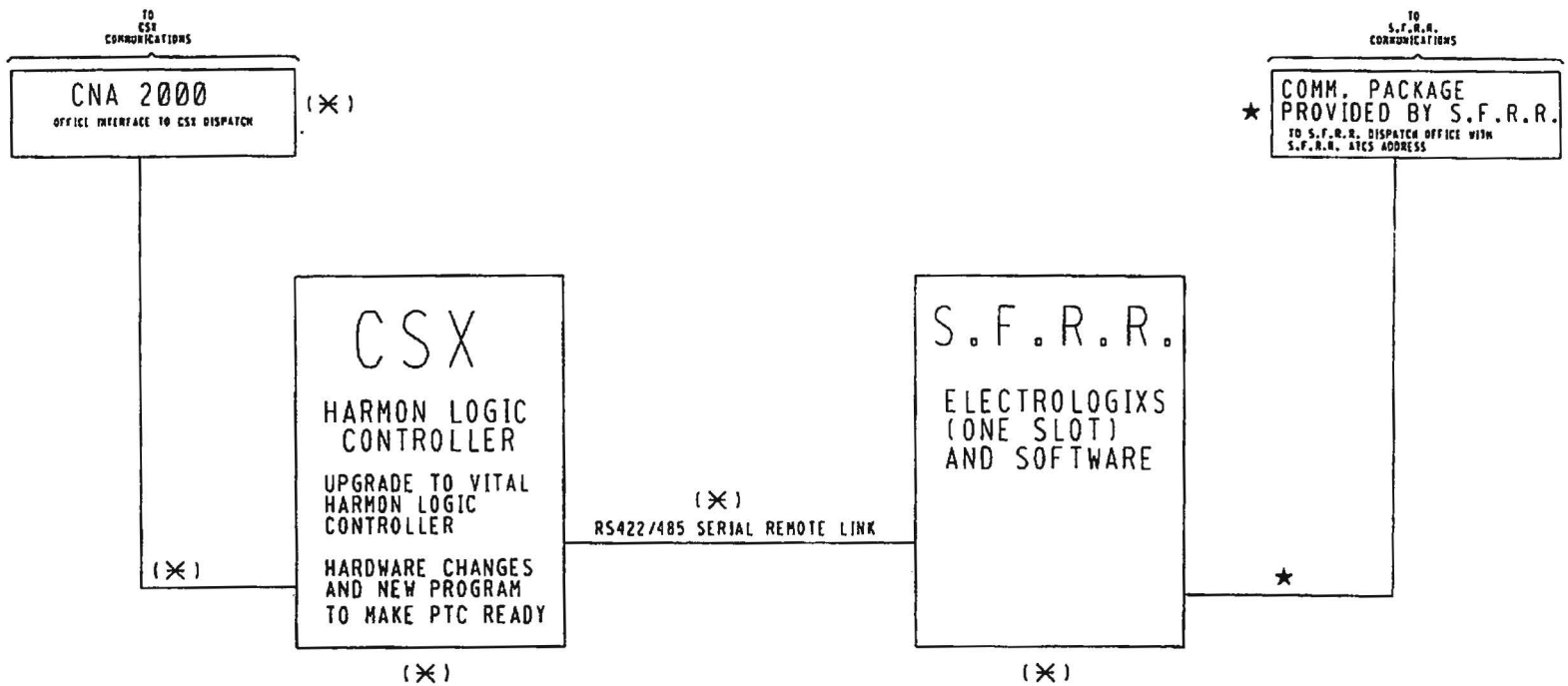
Estimated prepared by: _____

DATE: 1/0/1900 REVISED:

Form Last Revised: March 4, 2005 CFL

Exhibit 2

Diagram



(✳) = CSX TO PROVIDE

★ = S.F.R.R. TO PROVIDE

CSX TRANSPORTATION
RAIL TRANSPORT GROUP ENGINEERING
COMMUNICATIONS AND SIGNALS

S.E. DYER
CSX/TRI-RAIL INTERFACE

BLANK(14X22).SC
REV. 01-31-85

DESIGNED	DIGITIZED	CHECKED	DATE

DESIGN DATE	REV. NO.	DRAWING	SHEET NO	FILE	SHEET
	1				

Exhibit 3
Insurance Requirements

Contractor shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance including Worker's Compensation Insurance, Business Automobile Liability Insurance, Railroad Protective Insurance, Builder's Risk Insurance, Pollution Liability Insurance and Commercial General Liability Insurance as will assure to SFRTA the protection contained in the foregoing indemnification undertaken by Contractor.

SFRTA reserves the right to reject coverage from any company not acceptable to SFRTA and to require Contractor to obtain coverage from another source. Self-insurance shall not be acceptable under the terms of this Contract.

1.53.1 Contractor shall furnish a Certificate of Liability Insurance to SFRTA within ten (10) business days of Contractor's receipt of a fully executed Contract. If the insurance certificate is received within the specified time frame, but not in the manner prescribed, Contractor shall be verbally notified of such deficiency and shall have an additional five (5) business days to submit a corrected certificate to SFRTA. If Contractor fails to submit the required insurance certificate in the manner prescribed within fifteen (15) business days from the receipt of a fully executed Contract, the Contractor shall be in default, and this Contract shall be rescinded. Under such circumstances, Contractor may be prohibited from submitting future Bids to SFRTA.

Such policy or policies shall be issued by a company or companies authorized to transact business in the State of Florida or an eligible surplus lines insurer in good standing with the Florida Insurance Commissioner's Office. ALL POLICIES MUST BE ENDORSED TO PROVIDE SFRTA WITH THIRTY (30) DAYS, NOTICE OF CANCELLATION, NON-RENEWAL AND/OR RESTRICTION AND IT SHALL BE STATED ON THE INSURANCE CERTIFICATE THAT THIS COVERAGE IS PRIMARY TO ALL OTHER COVERAGE SFRTA MAY POSSESS. POLICY(IES) MUST ALSO BE ENDORSED WITH A WAIVER OF SUBROGATION IN FAVOR OF SFRTA, CSX TRANSPORTATION, INC., AND FDOT.

Contractor shall use the Standard "ACORD" 25 Certificate of Liability Insurance form and Acord form 101, Additional Remarks Schedule, if necessary. Any required endorsement pages shall be submitted with the Standard "ACORD" Insurance Certificate.
1.53.2 Worker's Compensation Insurance is to apply to all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include Employer's Liability with the minimum limit of One Million Dollars ($1,000,000.00).

1.53.3 Commercial General Liability (CGL) Insurance with the minimum limit of Five Million Dollars ($5,000,000.00) per occurrence or aggregate combined single limit for Bodily Injury Liability and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy,

without restrictive endorsements, as filed by the Insurance Services Office, and must include the following coverages:

A. Premises and/or Operations;

B. Products and Completed Operations Extension Endorsement, providing that loss occurring or discovered within Three (3) years after date of Final Acceptance of the Project by SFRTA shall be deemed to be an occurrence within the policy period;

C. Independent Contractors;

D. Broad Form Property Damage;

E. Broad Form Contractual Coverage applicable to this specific Contract, including any hold harmless and/or indemnification agreement; and

F. Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

G. Contractor shall specifically protect SFRTA by obtaining an endorsement to its Commercial General Liability policy naming SFRTA, its employees and officers, Florida Department of Transportation, and CSX Transportation, Inc., as Additional Insureds.

1.53.4 Business Automobile Liability with minimum limits of One Million Dollars ($1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Contractor shall specifically protect SFRTA by obtaining an endorsement to its Automobile Liability policy naming SFRTA, its employees and officers, Florida Department of Transportation, and CSX Transportation, Inc., as Additional Insureds. Coverage must be afforded on a form no more restrictive than the latest edition of the business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include the following coverages:

A. Owned vehicles;

B. Hired and non-owned vehicles;

C. Employees' non-ownership; and,

D. Personal Injury, Property Damage, Uninsured Motorist, Collision, and Comprehensive coverages.

1.53.5 Railroad Protective Insurance with a limit of not less than Two Million Dollars ($2,000,000.00) per occurrence/Six Million Dollars ($6,000,000.00) aggregate

applying to Bodily Injury Liability, Property Damage Liability, or Physical Damage to property or a combination of all three. The aggregate limit shall apply separately to each job, contract, agreement, project or work order. SFRTA, FDOT, and CSX Transportation, Inc., are to be the "Named Insureds on the policy.

Renewal of Insurance. Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this section remains in force with no changes for the duration of the contractual period. If the insurance certificate is scheduled to expire during this period, Contractor shall be responsible for submitting a new or renewed insurance certificate to SFRTA prior to expiration. In the event that expired certificate is not replaced with a new or renewed certificate, which covers the contractual period, SFRTA shall suspend this Contract and shall suspend all payments until such time as the new or renewed certificate is received by SFRTA.

Minimum Coverage. Insurance Coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor of liability in excess of such coverage, nor shall it preclude SFRTA from taking such other actions as is available to it under any other provisions of this Contract or otherwise in law or equity.

Additional Insured. In all instances where the Contractor's insurance is required to name parties as Additional Insureds, a copy of the Additional Insured Endorsement(s) shall be attached to the Certificate of Insurance. The additional insured coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar protection available to the Additional Insureds, whether other coverage is primary, contributing or excess.

1.53.8 The above indicated insurance coverages shall be issued by insurers of financial responsibility that are rated "A" or better by Best's Insurance Report, "AA" or better by Standard & Poor's Insurance Rating Service, or "AA" or better by Moody's Investors Service. SFRTA reserves the right to reject as inadequate any insurance coverage provided by an insurance company that is rated less than the ratings above by any of the aforementioned rating services.

Exhibit 4

Access to the SFRC for Survey Work

Background

The South Florida Regional Transportation Authority ("SFRTA"), on behalf of the Florida Department of Transportation ("FDOT"), is constructing a dispatch system for dispatching the South Florida Rail Corridor ("SFRC") consistent with the terms of the Amended South Florida Operating and Management Agreement, including the Commencement Date requirement (the "SFRTA Dispatch System"). SFRTA will be contracting with Ansaldo STS USA ("Ansaldo") to construct the SFRTA Dispatch System. SFRTA is providing CSXT with the following access request to facilitate construction of the SFRTA Dispatch System:

Parties Performing the Work

Ansaldo and its subcontractors (the "Ansaldo Team") and one (1) representative from FDOT and SFRTA, respectively, will need to obtain access to the SFRC to perform the Work (as defined herein). SFRTA will provide CSXT with a list of the names of these individuals no later than twenty-four (24) hours prior to any scheduled access visit.

The Ansaldo Team will include: 1 installer; 2 communication engineers; Ansaldo's Project Engineer, Ansaldo's Sales Manager (responsible for component ordering) and Ansaldo's Project Manager, for a total of 6 Ansaldo representatives.

Description of the Work

The Work, as defined herein, is intended to mean the survey work to be performed by the Ansaldo Team as part of its construction of the SFRTA Dispatch System. The Work will not entail any physical changes to any signal equipment of the SFRC.

The Work is defined as:

- Inspection of all signal bungalows at the 25 Control Points on the SFRC, 4 existing 160 MHZ VHF voice towers ("Voice Towers") locations and the Hialeah Yard (as more particularly described herein);
- Inspection at the Hialeah Yard involves surveying for: (1) the location of a new Voice Tower; and (2) the placement of a radio base station and dispatch (Avtec) workstation within the Hialeah Administration Building ("Administration Building Survey"). A CSXT employee familiar with the Communication Room within the Hialeah Administration Building is requested to be in attendance for the Administration Building Survey.

- Photographs and measurements of the signal bungalows at the Control Points and the Voice Towers;
- Comparison of the communication/signal items seen in the field to the available as-in-service drawings for the signal bungalows and the Voice Towers;
- Determination if there is available space within the signal bungalows and Voice Towers for new communication and power equipment necessary for the SFRTA Dispatch System; and
- Assessment of power (buses, breakers, etc.) and electrical service availability to the Voice Towers and signal bungalows. The assessment includes inspecting the breaker boxes and current cabling to gain a complete understanding and evaluation of the available electrical power and determining if the current electrical layout is adequate to supply power to the communication racks and work stations.

Scheduling of the Work

- The Work will start within fourteen (14) to twenty-one (21) days from the date of CSXT's issuance of the Outside Party Number referenced in Section 8 and continue uninterrupted until such time as it has been completed.
- The current estimate is that the Work will require five (5) days from 8:00 a.m. until 5 p.m. each day, but that can be adjusted if necessary.
- It is currently anticipated that approximately eight (8) Control Points will be visited each day, with approximately 1 hour devoted to the Work associated with each signal bungalow, 1 hour for the Work associated with each Voice Tower and 2 hours for Work associated with the Hialeah Yard.

TAB 12

ORIGINAL

AGREEMENT

BETWEEN

NATIONAL RAILROAD PASSENGER CORPORATION

AND

THE FLORIDA DEPARTMENT OF TRANSPORTATION

Dated: May 1, 1997

TABLE OF CONTENTS

RECITALS

Page

ARTICLE I

Definitions 2

Article II

Description of Corridor 3

Article III

The Services 4

Section 3.1 Right to Services 4
3.2 Schedule Changes 4
3.3 Standards of Performance 5
3.4 FDOT Control and Supervision 5
3.5 Train Priorities 6

Article IV

Corridor 7

Section 4.1 Corridor 7
4.2 Maintenance of the Corridor 7
4.3 Additional Maintenance and Improvements 8

Article V

Accounts and Payments 8

Section 5.1 Basis of Payment 8
5.2 Modified or Additional Service 9
5.3 Termination of Services 9
5.4 Payment of Monthly Billing 10
5.5 Right of Review and Audit 10

Page

5.6 Records 10
5.7 Audit Adjustments 11
5.8 Contract Advance 11

Article VI

Dispute Resolution 12

Section 6.1 Settlement of Disputes 12
6.2 Arbitration Procedure 12
6.3 Pending Resolution 13
6.4 Cost of Arbitration 14
6.5 Enforcement 14

Article VII

Risk of Liability 14

Section 7.1 Risk of Liability

Article VIII

General 15

Section 8.1 Information 15
8.2 Contract Administration 15
8.3 Force Majeure 15
8.4 Successors and Assigns 16
8.5 Interpretation of Agreement 16
8.6 Severability 16
8.7 Notices 17
8.8 Counterparts 17
8.9 Term 18
8.10 Equal Employment Opportunity 18
8.11 Rights Reserved 18
8.12 Relationship of Parties 19

Appendix I - Maximum Passenger Train Speeds

Appendix II - Intentionally Left Blank

Appendix III - Intentionally Left Blank

Appendix IV - Compensation

Appendix V - Penalty

Appendix VI - Train Dispatching and Priority

THIS AGREEMENT is between the National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (hereafter referred to as the "RPSA"), and the laws of the District of Columbia, having offices at 60 Massachusetts Avenue, N.E., Washington, D.C. 20002 (hereafter referred to as "Amtrak"), and the Florida Department of Transportation; having offices at 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33309-3421 (hereafter referred to as "FDOT").

WHEREAS, as of April 16, 1971, CSXT's predecessors entered into an Agreement with Amtrak, pursuant to Section 401(a) of the RPSA, with respect to the provision of services and facilities for intercity rail passenger operations, which Agreement has subsequently been amended and consolidated; and

WHEREAS, pursuant to that certain Contracts for Installment, Purchase and Sale dated May 11, 1988, FDOT acquired from CSX Transportation, Inc. (CSXT), the rail lines and related facilities between West Palm Beach and Miami, Florida (hereinafter referred to as "Corridor") which Agreement specifically excluded certain rights and obligations including a retained freight easement and their existing agreement between CSXT and Amtrak; and

WHEREAS, subsequent to the acquisition of the Corridor by FDOT, Amtrak has continued to operate on the Corridor pursuant to the RPSA and its agreement with CSXT; and

WHEREAS, in accordance with the terms and conditions of the Contracts for Installation Purchase and Sale between FDOT and CSXT, FDOT assumed responsibility to negotiate an agreement with Amtrak for continued Amtrak operation; and

WHEREAS, FDOT owns the Corridor subject to CSXT's retained easement for freight service, and has granted operating rights over the Corridor to Tri-County Commuter Rail Authority for local commuter passenger service, and has also contracted with CSXT to provide for train dispatching and maintenance of the Corridor and operation of bridges on a continuing basis, and FDOT does not directly perform any operations or maintenance services with respect to operation of the Corridor; and

WHEREAS, the parties desire to provide for continued Amtrak operation on FDOT's Corridor;

NOW, THEREFORE, effective May 1, 1997, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Amtrak.** "Amtrak" means the National Railroad Passenger Corporation.

1.2 **FDOT.** "FDOT" means the Florida Department of Transportation, its designee, to which FDOT has assigned responsibility to perform services on the Corridor.

1.3 **TCRA.** "TCRA" means the Tri-County Commuter Rail Authority.

1.4 **CSXT.** "CSXT" means CSX Transportation, Inc.

1.5 **Passenger Train.** "Passenger Train" means an intercity passenger train

operated over the Corridor for the account of Amtrak.

1.6 **Corridor.** "Corridor" means the Rail Line and adjacent facilities owned by FDOT extending from West Palm Beach to Miami, FL that Amtrak is granted access to under the terms of this Agreement as further described in Article II.

1.7 **RPSA.** "RPSA" means the Rail Passenger Service Act (49 USC 24101 et. seq.), including amendments that may be made during the term of this Agreement.

1.8 **Freight Service.** "Freight Service" means rail freight service operated by CSXT or any other railroad on the Corridor.

1.9 **Commuter Service.** "Commuter Service" means commuter rail passenger service operated by TCRA on the Corridor.

1.10 **Intercity Rail Passenger Service.** "Intercity Rail Passenger Service" means rail passenger service operated by Amtrak on the Corridor under the terms of this Agreement.

ARTICLE II

DESCRIPTION OF CORRIDOR

The Corridor consists of the rail line, structures, signals, signal systems, switches, crossovers, interlocking devices and related rail facilities, including stations owned by FDOT extending from West Palm Beach to Miami, FL, from Mile Post 965 to Mile Post 1040.1. CSXT currently dispatches trains, maintains track and signals and communications and operates and maintains bridges used in the operation of commuter, intercity and freight rail service over the Corridor. TCRA has been delegated by FDOT the responsibilities of operating commuter services over the

Corridor and the maintaining of certain facilities within the Corridor. CSXT currently operates rail freight service over the Corridor pursuant to a perpetual easement it has negotiated with FDOT.

ARTICLE III

THE SERVICES

Section 3.1. Right to Services.

Subject to and in accordance with the terms and conditions of this Agreement, FDOT agrees to provide Amtrak with access for and in connection with the operation of Amtrak's Intercity Rail Passenger Service on the Corridor, including the carrying of mail and express on passenger trains, to the extent authorized by the RPSA. The schedules and consists shall be compatible with the physical capabilities of FDOT.

For the purposes of this Agreement, FDOT may designate CSXT, TCRA or any other party the responsibility to perform any services it may be obligated to provide Amtrak under the terms of this Agreement. Such designation does not relieve FDOT of the responsibility to provide such services.

Section 3.2. Schedule Changes.

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

of all changes contemplated by this Section.

When either TCRA or Amtrak desires to change an existing schedule or operate additional service on the Corridor, a minimum of sixty (60) day's written notice shall be given to the other party specifying the desired change in service. Every effort shall be made by each party to adjust its operations to accommodate the requested change.

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

Section 3.3. Standards of Performance.

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

1. To deliver Amtrak trains to all scheduled passenger stops on the Corridor by the scheduled time therefore; and

2. To avoid excessive delays to trains and, consistent with safety, to make up delays incurred on the Corridor or on rail lines of other railroads.

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

Section 3.4. FDOT Control and Supervision.

A. In the performance of services referred to in this Agreement, FDOT, shall have sole control of the dispatching of Amtrak's Intercity Rail Passenger trains while on

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

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

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

Section 3.5. Train Priorities.

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

ARTICLE IV

CORRIDOR

Section 4.1. Corridor.

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

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

Section 4.2. Maintenance of the Corridor.

The Corridor, used in Amtrak Intercity Rail Passenger Service pursuant to this

Agreement, shall be maintained at not less than the level of utility existing on May 1, 1997. The parties agree that the first track geometry run conducted after the execution of this Agreement is a reasonable representation of the track condition in place as of May 1, 1997. Amtrak agrees that FDOT may adjust speeds at various locations when conditions, maintenance requirements and production work require and will restore speeds as soon as possible once the conditions warrant. The speeds in effect as of May 1, 1997 shall be as set forth in Appendix I.

Section 4.3. Additional Maintenance and Improvements.

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

ARTICLE V

ACCOUNTS AND PAYMENTS

Section 5.1. Basis of Payment.

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

deducted from amounts due pursuant to Appendix IV.

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

Section 5.2. Modified or Additional Service.

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

Section 5.3. Termination of Services.

Amtrak may notify FDOT by providing advance written notice, of not less than five days, that it no longer desires FDOT to perform or furnish specific services, activities, or facilities for which Amtrak compensates FDOT, and FDOT shall cease to perform or provide the same as soon as practicable. Such notice shall include a schedule of the services, activities, or facilities to be terminated. Amtrak shall no longer be required to make payment to FDOT once the service has been terminated. Amtrak agrees however to reimburse FDOT, or its designee, for all incremental costs incurred by FDOT, or its designee, as a result of the termination of such services and/or facilities usage. In the event of any dispute between the parties relative to the termination of services or facilities usage, said dispute shall be resolved in accordance with the procedures in Article VI of this Agreement.

Section 5.4. Payment of Monthly Billing.

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

Section 5.5. Right of Review and Audit.

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

Section 5.6. Records.

Both parties shall maintain supporting accounting records and any other related data which may reasonably concern the performance of services for Amtrak pursuant to this Agreement, and such documents shall be available for review and audit at points where such records are ordinarily kept. Where pertinent, such records shall include the designated train number and/or locomotive number and/or car numbers, and shall be maintained and accumulated on a location-by-location basis. Such records shall be retained not less than 36 months and shall be available for inspection and copying during the regular business hours of the location where the record is retained.

Specification of such minimum retention period shall not limit the right of review and audit of any records that exist.

Section 5.7. Audit Adjustments.

In the event either party believes it has made a payment which exceeds (or has received a payment which is less than) the amount required by the provisions of this Agreement or a settlement between the parties of a matter covered by this Agreement, such party shall formally submit its claim in reasonable detail to the other party. Undisputed audit adjustments shall be paid promptly by the other party. In the event that a party disagrees with the proposed adjustment, such party shall provide a written statement of the basis of its disagreement and the facts supporting that basis in a form which will permit the claiming party to evaluate the merits of the other party's position. Any adjustment which is unresolved 90 days after having been formally presented shall, at the request of either party, be submitted to arbitration for resolution in accordance with Article VI. Interest shall be paid in accordance with Sections 215.422 and 55.03(1), Florida Statutes.

Section 5.8. Contract Advance.

A contract advance equal to 30 days estimated cost shall be paid to FDOT on the effective date of this Agreement and shall be retained by FDOT until forty five (45) days after the last day of the last month for which this Agreement provides the basis of payment. At that time, such advance shall be credited against any amount then properly owing from Amtrak to FDOT under this Agreement and any remaining amount

shall be refunded to Amtrak, or Amtrak shall pay FDOT the difference between the advance and the payments due and owing under the Agreement for the last month's operation, as the case may be. The amount of the advance on the effective date of this Agreement is $53,500.00, and shall be appropriately adjusted in the event of an addition, deletion, or substantive modification of Amtrak's passenger operations over the Corridor.

ARTICLE VI

DISPUTE RESOLUTION

Section 6.1. Settlement of Disputes. The parties shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to arbitration. In the event the parties are unable to resolve any dispute arising out of the interpretation, application or implementation of this Agreement, either party may submit said dispute to arbitration to a disinterested person experienced in railroad operations for final and binding arbitration in accordance with the procedures set forth in this Article VI.

Section 6.2. Arbitration Procedure. Any controversy between or among the parties which cannot be resolved within 30 calendar days or such other time as the parties to the dispute may agree in writing, shall be submitted to a panel of arbitrators, one of whom shall be appointed by Amtrak, one of whom shall be appointed by FDOT and the third who shall be selected by the two arbitrators so chosen. The 30-day period described in the preceding sentence shall begin upon receipt by a party of notice from another party that a dispute or controversy has arisen that cannot be otherwise resolved.

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

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

Section 6.3. Pending Resolution. Unless otherwise specifically provided in other sections of this Agreement, while such arbitration proceeding is pending, the business, the operations to be conducted, the physical plant to be used and the compensation under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the

arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary.

Section 6.4. Cost of Arbitration. Each party to the dispute shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally in the costs and expenses attributable to the services of the third arbitrator.

Section 6.5. Enforcement. Upon failure of a party to comply with an arbitration award issued pursuant to this Article, the other party may refer the matter to a court of competent jurisdiction for enforcement of the said award.

ARTICLE VI I

RISK OF LIABILITY

Section 7.1. Risk of Liability. Except as provided in the last sentence of this paragraph, to the extent permitted by law, FDOT shall be responsible for any damage or liability arising from the Tri-Rail operations. Except as provided in the next sentence, Amtrak shall be responsible for any damage or liability arising from the Amtrak operations on the Corridor. In the event of an accident involving operations of both parties, each party (i.e. Amtrak on the one hand and FDOT and Tri-Rail on the other hand) shall bear the share of damage or liability caused by its negligence as determined by a court of appropriate jurisdiction.

ARTICLE VIII

GENERAL

Section 8.1. Information.

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

Section 8.2. Contract Administration.

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

Section 8.3. Force Majeure.

The obligations of the parties hereunder, other than payment, shall be subject to force majeure (which shall include strikes, riots, hurricanes, floods, accidents, acts of God, and other causes or circumstances beyond the reasonable control of the party claiming such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall prevent performance of such obligations.

Section 8.4. Successors and Assigns.

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

Section 8.5. Interpretation of Agreement.

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

Section 8.6. Severability.

If any part of this Agreement is determined to be invalid, illegal or unenforceable,

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

Section 8.7. Notices.

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided for or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by the other party, shall be in writing, certified mail, return receipt requested, and shall be delivered by hand or by deposit in the mails of the United States postage prepaid, if to Amtrak, in an envelope addressed as follows:

National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, D.C. 20002

Attention: Director, Contract Management

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

Florida Department of Transportation
3400 West Commercial Boulevard
Fort Lauderdale, FL 33309-3412

Attention: Manager, South Florida Rail Corridor

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

Section 8.8. Counterparts.

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

Section 8.9. Term.

This Agreement shall become effective on May 1, 1997 and remain in effect for a period of five (5) years, and shall continue in effect thereafter unless terminated by either party by providing twelve (12) months written notice. Such notice may be given at any time after April 30, 2001.

Section 8.10. Equal Employment Opportunity.

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

Section 8.11. Rights Reserved. Notwithstanding anything to the contrary, FDOT specifically reserves the following powers and rights with respect to the Corridor: (a) to permit TCRA to conduct commuter rail service and to permit others to conduct freight rail operations under, across and over the Corridor and adjacent properties; (b) to enter into service and trackage rights agreements for freight, commuter and high speed rail service on the Corridor with any other party that are not inconsistent with the obligations of FDOT pursuant to this Agreement; (c)to sell or otherwise dispose of the Corridor pursuant to Section 4.1 of this Agreement; and (d) consistent with Section 4, to modify,

change or relocate any facilities or segments of track on the Corridor; and (e) to implement any other public facilities within the Corridor.

Section 8.12. Relationship of Parties. In rendering any service or in furnishing any equipment, materials or supplies hereunder, FDOT or it's designees are acting solely pursuant to this Agreement with Amtrak and not in any other capacity.

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

FORM APPROVED
Date 4/24/97
Sig. F. C. Ohl
LAW DEPARTMENT

NATIONAL RAILROAD PASSENGER CORPORATION

By R. C. Vanden Chute by J Johnson

FLORIDA DEPARTMENT OF TRANSPORTATION

By Rick Chaser

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

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Appendix I

MAXIMUM PASSENGER TRAIN SPEEDS

Effective May 1, 1997

See Attached Table.

Table 56 (Page 2 of 2). Authority for Movement

Between Location/Mile Post	Rules
SX1036.5 and Miami	93

Note: Rules 265-273 are in effect on the following sidings: McDonald Connection at Auburndale, West Lake Wales (between south switch and southward signals north end of siding south of station only), West Frostproof, Hartt, Ridge, Plains, Ft. Basinger, Mildred, Sherman, Indiantown, Delta, Boynton Beach, Yamato, Pompano Beach, Carmen, Dania, Miami Plantation and Amtrak Lead (between NE Hialeah Yard, SX1031.6 and SX1033.1 only).

72.3 SUSPENSION OF SIGNAL SYSTEM-(AND MOVEMENT AGAINST CURRENT OF TRAFFIC)

Table 57. Suspension of Signal System-(and Movements against Current of Traffic)

Between Location/Mile Post	Block Name
SX822.0 Switch McDonald Connection (South YL) and SX834.7 North Switch West Lake Wales Siding	Winter Haven
SX834.7 North Switch West Lake Wales Siding and SX857.7 South Switch Avon Park Siding	Frostproof
SX857.7 South Switch Avon Park Siding and SX872.7 South Switch Ridge Siding	Turner
SX872.7 South Switch Ridge Siding and SX893.2 South Switch Ft. Basinger Siding	Plains
SX893.2 South Switch Ft. Basinger Siding and SX913.4 North Switch Sherman Siding	Mildred
SX913.4 North Switch Sherman Siding and SX936.4 South Switch Indiantown Siding	Zana
SX936.4 South Switch Indiantown Siding and SX957.3 South Switch Delta Siding	United
SX957.3 South Switch Delta Siding and SX969.8 North Switch West Palm Beach Sdg	Dyer
SX969.8 North Switch West Palm Beach Siding and SX990.5 North Switch Yamato Siding	West Palm
SX990.5 North Switch Yamato Siding and SX1003.4 North Switch Pompano Siding	Yamato
SX1003.4 North Switch Pompano Siding and SX1011.9 South Switch Carmen Siding	Pompano
SX1011.9 South Switch Carmen Siding and SX1019.3 North Switch Hollywood Siding	Ft.Lauderdale
SX1019.3 North Switch Hollywood Siding SX1029.0 North YL Opa Locka	Hollywood

72.4 EXCEPTED TRACK

1. Effective immediately, the Hialeah Rail Industry tracks (except Opa Locka Siding), the Hialeah East Rail Industry Tracks, the Hialeah West Rail Industry Tracks and all the Downtown Hialeah Tracks between SX1037.0 and SX1040.7 are declared "Excepted Track."

73.0 SPEEDS

73.1 MAXIMUM AUTHORIZED SPEED

Table 58. Maximum Authorized Speed

Between Location/Mile Post	MPH
Auburndale and Miami 1031 6	79

73.2 SPEED RESTRICTIONS

Bold MPH denoted city ordinance

Table 59 (Page 1 of 2). Speed Restrictions

Between Location/Mile Post	Psgr. MPH	Other MPH
Entire Subdivision Intermodal Trains	-	60
Other than Passenger or Intermodal Trains	-	70
SX819.1 and SX820.9	20	20
SX825.6 and SX825.9	55	55
SX825.9 and SX826.3	30	30
SX826.3 and SX827.1	50	50
SX835.4 and SX836.4	65	65
SX856.4 and SX856.7	75	-
SX856.7 and SX858.8	45	45
SX858.8 and SX862.9	70	-
SX862.9 and SX866.5	75	-
SX866.5 and SX867.5	45	45
SX867.5 and SX868.0	60	60
SX937.2 and SX937.3	45	45
SX966.6 and SX968.8	55	55
SX968.8 and SX969.6	45	45
SX969.6 and SX970.2	20	20
SX970.2 and SX971.9	45	45
SX971.9 and SX977.8	60	-
SX982.2 and SX982.5	70	-
SX982.5 and SX983.9	75	-
SX985.4 and SX987.4	70	-
SX1003.3 and SX1011.6	60	60
SX1011.6 and SX1014.0	45	45
SX1014.0 and SX1019.0	60	60
SX1019.0 and SX1021.6	45	45
SX1028.3 and SX1028.9	60	60
SX1028.9 and SX1031.6	45	45
SX1031.6 and SX1034.0	60	60
SX1034.0 and SX1036.5	45	45
Signaled Sidings - McDonald Connection, Auburndale, Boynton Beach, Yamato, Pompano Beach, Carmen, Dania, Miami Plantation, Opa Locka. Amtrak Lead SX1031.6 to SX1033.1	30	30

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APPENDIX II

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APPENDIX III

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FDOT

APPENDIX IV

PAYMENT CALCULATION

Item 1. Trip Payment Amtrak shall pay FDOT $394 per one way trip for each Amtrak train operated in either direction between MP964.2 (S. Dyer) and MP 1032.3 Miami Station. Except as provided in Item 2 below, this payment is intended to cover all cost of Amtrak's use of FDOT facilities. This includes but is not limited to the use, operation and maintenance of the Rail Lines, the use and utilities at stations, and use of utilities at the Hialeah maintenance facility.

Item 2. Hialeah Pollution Control Facility Amtrak shall pay FDOT $15,833 per month for the months of May and June 1997 for the cost of the operation of the Hialeah Pollution Control Facility. Effective July 1, 1997, this rate shall be adjusted to reflect 50% of the actual monthly cost of the operation of the Hialeah Pollution Control Facility as determined by a joint study performed by Amtrak and FDOT prior to that date.

PRICE LEVEL ADJUSTMENT METHOD

The above flat rates shall be adjusted annually for price level changes beginning May 1, 1998 based on the relationship of the most recent January Consumer Price Index for All Urban Consumers (CPI-U), All Items to the comparable index one year previous. The

adjustment to be made on May 1, 1998 shall be based on the comparison of the January 1998 index to the January 1997 index which is 159.1

FDOT

APPENDIX V

PENALTY FOR LATE TRAINS.

Pursuant to the rules of this Appendix V, for each train considered late, FDOT shall pay Amtrak $500.

A. Performance Calculation

A trip of a train will be considered late if its actual running time from Origin to the arrival at its Destination, less the sum of the times allowed pursuant to A.1, A.2 and A.3 below, is more than its Allowed Running Time. Running time for northbound trains shall be measured from departure at Amtrak's Miami station to arrival at MP 964.2 (S. Dyer). Running time for southbound trains shall be measured from arrival at MP 964.2 (S. Dyer) to arrival at Amtrak's Miami station. The Origin, Destination, and Allowed Running Time for each train are specified in Appendix V, Table 1. The following amounts of time are allowed in measuring on-time operation of a train:

1. A standard tolerance of five minutes per trip.
2. The amount of time that the sum of actual dwell times for a trip of a train exceeds the sum of the Allowed Station Dwell times for the

scheduled station stops between the Origin and Destination. The Allowed Station Dwell time for each train is specified in Appendix V, Table 1. For purposes of this paragraph, any time lost due to causes attributable to the FDOT or its contractors shall be excluded.

3. The amount of time in excess of five minutes that a train is delayed due to:

(a) An equipment failure of an Amtrak car or locomotive (excluding delays for equipment defect detectors when no defective condition is found).

(b) Trains operated in accordance with the train priority guidelines specified in Appendix VI of this Agreement.

B. Trips Not Counted.

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

Exhibit 1

FDOT

Appendix VI

Train Dispatching and Priority

FDOT and Amtrak agree that on-time passenger trains of either party shall be given priority, as follows:

A. On-time Tri-Rail commuter rail trains shall be given priority over Amtrak intercity trains if such intercity trains are operating 5 or more minutes behind their published schedules.

B. On-time Amtrak intercity trains shall be given priority over Tri-Rail commuter rail trains if such commuter rail trains are operating 5 or more minutes behind their published schedules.

C. When both trains are operating five (5) or more minutes behind their published schedules, the meet will be handled to provide for the most efficient movement of both trains and in accordance with good train dispatching principles.

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

2. If, because of emergency conditions on the Rail Lines, a train is terminated, or annulled, and fails to operate, the first train in each direction will be considered late. If on subsequent trips a train is terminated or annulled for the same reason, it will not be counted as late.

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

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

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

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

(d) The train is delayed by more then ten minutes due to acts of vandalism which require the Amtrak passenger train to stop or be operated at reduced speed for a portion of its trip.

(e) The train is delayed by the opening of a drawbridge.

(f) The train is delayed en route due to Uniform Efficiency Testing required by the Federal Railroad Administration.

(g) A train is delayed by another Amtrak train experiencing delays described in (a) through (f), above.

4. For each train considered "not counted as late" pursuant to this Appendix V, Paragraph B, FDOT shall pay Amtrak $188.00.

C. Limit on Payment.

Payments calculated pursuant to this Appendix V shall only be made to the extent they do not exceed:

1. the payment for trains operated in that month calculated pursuant to Appendix IV, Item 1.

2. $412,000 when they are added to the penalty for late trains for the previous eleven months.

D. Price Level Adjustment

All rates and amounts specified in this Appendix V shall be adjusted annually as specified in the PRICE LEVEL ADJUSTMENT METHOD section of Appendix IV.

E. Programed Maintenance of Way Work.

In order to facilitate programed maintenance of way work, the parties agree to negotiate each project in good faith and to modify this Appendix V as appropriate in order to minimize interference or disruption to Amtrak service while allowing maximum production by maintenance of way forces. FDOT will give Amtrak at least 30 days advance notice, when practicable, that will permit issuing modified schedules when appropriate or provision of advance notification to passengers of potential delays if it is not practical to amend schedules. The parties will renegotiate the financial impacts of delays caused by the maintenance of way work.

F. Revision of Schedule Data

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

Allowed Running Time shall also be revised by the parties in the event that the authorized speeds established by federal, state, or local regulation are decreased in a way which is likely to have a significant impact on the operation of a train. Subject to the provisions of Section 3.2., upon request of Amtrak, station stops or services shall be added, deleted, or modified in connection with the operation of a train as it existed on the effective date of Table 2; provided, however, any such addition, deletion, or modification of schedules or services (including, but not limited to schedules herein and public timetables) for Amtrak trains shall not be made without FDOT's approval, which approval shall not be unreasonably withheld. When changes pursuant to the two preceding sentences require a net change in time of operation (including dwell time) which exceeds 5 minutes, the parties shall adjust the schedules to reflect such differences in operating time (unless such adjustment has previously been effected) at the next Amtrak timetable change. For the purposes of the foregoing sentence, upon the request of either party, the parties shall jointly conduct a field test to determine the proper amount of time to be added or deleted as a result of the change in stops; provided, however, that in the event the parties cannot reach agreement concerning such time, the parties specifically agree that operating time shall be reduced or increased by 5 minutes for each regular stop which is eliminated or added to the train operation. On an ongoing basis the tables may require refinement to account for changes in the operation of Amtrak trains. Therefore, it

is agreed that as studies are performed which produce more accurate data for Allowed Running Time and Allowed Station Dwell, the figures in this Appendix V, shall be amended to reflect the results of such studies. The various items shall be agreed upon by Amtrak and FDOT and shall be calculated as follows:

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

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

FDOT

Appendix V, Table 1

Allowed Running and Station Dwell Times

Train No.	Origin	Destination	Allowed Running Time (Note 1)	Allowed Station Dwell (note 2)
89	MP 964.2 (S. Dyer)	MP 1032.3 (Miami Station)	111	11
90	MP 1032.3 (Miami Station)	MP 964.2 (S. Dyer)	120	15
91	MP 964.2 (S. Dyer)	MP 1032.3 (Miami Station)	111	11
92	MP 1032.3 (Miami Station)	MP 964.2 (S. Dyer)	120	15
97	MP 964.2 (S. Dyer)	MP 1032.3 (Miami Station)	116	11
98	MP 1032.3 (Miami Station)	MP 964.2 (S. Dyer)	115	15

Note 1: Running times for northbound trains are from departure at Amtrak's Miami station to arrival at MP 964.2. Running times for southbound trains are for arrival at MP 964.2 to arrival at Amtrak's Miami station.

Note 2: Allowed station dwell times are detailed by station in Appendix V, Table 2.

FDOT

Appendix V, Table 2

Station Dwell Times

Station	89	90	91	92	97	98
West Palm Beach	3	4	3	4	3	4
Delray Beach	1	1	1	1	1	1
Deerfield Beach	2	3	2	3	2	3
Ft Lauderdale	3	4	3	4	3	4
Hollywood	2	3	2	3	2	3
Total	11	15	11	15	11	15

FDOT
Appendix V, Table 3

Train Consists

Train No.	Locomotive Consist	Cars
89 & 90	2 F40	14
91 & 92	2 F40	14
97 & 98	1 P42	10

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

FDOT

Appendix VI

Train Dispatching and Priority

FDOT and Amtrak agree that on-time passenger trains of either party shall be given priority, as follows:

A. On-time Tri-Rail commuter rail trains shall be given priority over Amtrak intercity trains if such intercity trains are operating 5 or more minutes behind their published schedules.

B. On-time Amtrak intercity trains shall be given priority over Tri-Rail commuter rail trains if such commuter rail trains are operating 5 or more minutes behind their published schedules.

C. When both trains are operating five (5) or more minutes behind their published schedules, the meet will be handled to provide for the most efficient movement of both trains and in accordance with good train dispatching principles.

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

CRAVEN THOMPSON & ASSOCIATES INC.

ENGINEERS • PLANNERS • SURVEYORS

3563 N.W. 53RD. STREET, FORT LAUDERDALE, FLORIDA 33309 (954) 739-6400

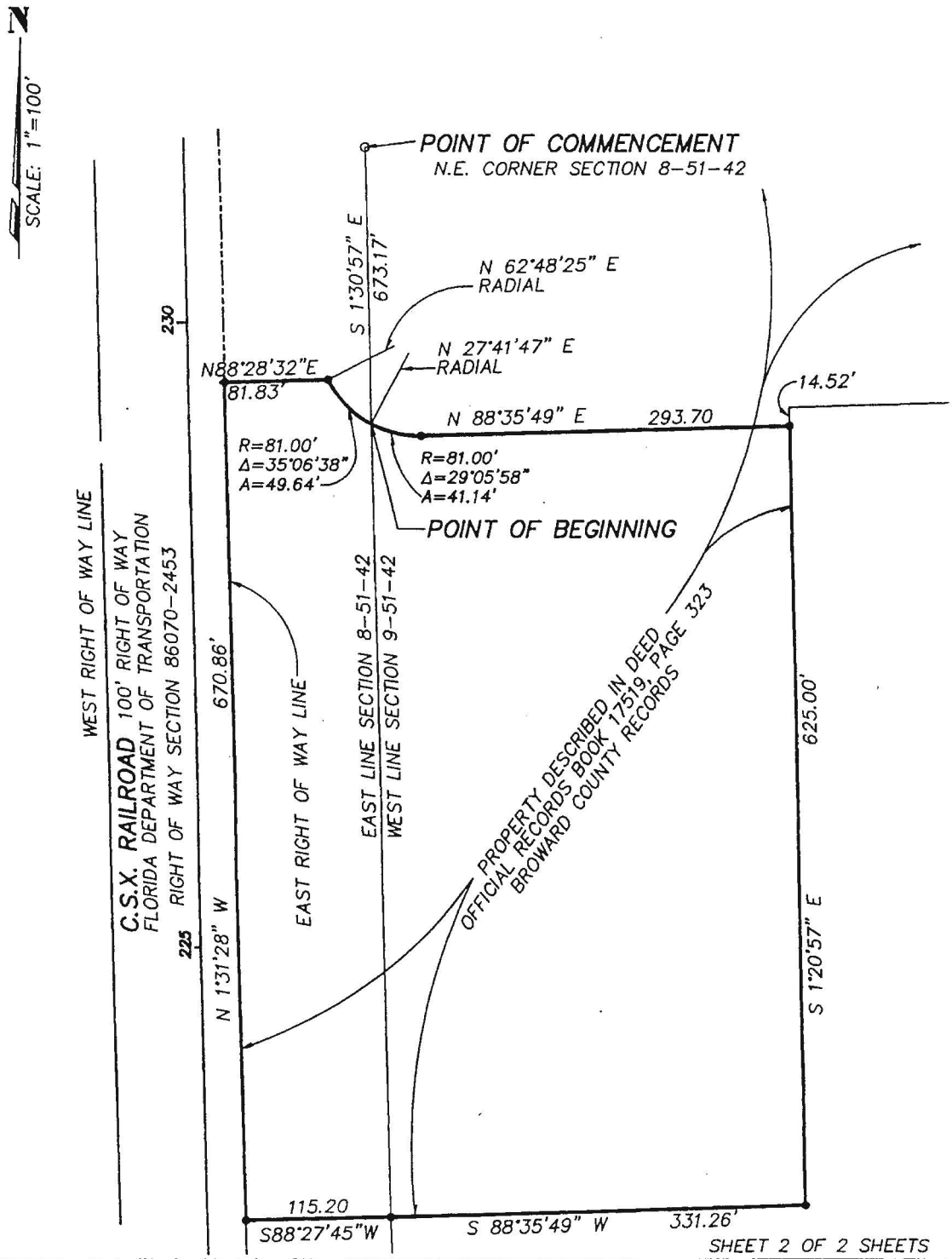
OFFICES: FORT LAUDERDALE, VERO BEACH

EXHIBIT "A" p#2

FOR: HNTB

NOTE: THIS IS NOT A SKETCH OF SURVEY, but only a graphic depiction of the description shown hereon. There has been no field work, viewing of the subject property, or monuments set in connection with the preparation of the information shown hereon.

SKETCH TO ACCOMPANY DESCRIPTION



SHEET 2 OF 2 SHEETS

UPDATES and/or REVISIONS	DATE	BY	CK'D
REVISE WEST BOUNDARY	8-18-97	DB	
REVISE SOUTH BOUNDARY	8-28-97	DB	
REVISE BOUNDARY DIMENSIONS	9-04-97	DB	
REVISE BOUNDARY DIMENSION	9-09-97	DB	

NOTE The undersigned and CRAVEN-THOMPSON & ASSOCIATES, INC. make no representations or guarantees as to the information reflected hereon pertaining to easements, rights-of-way, set back lines, reservations, agreements and other similar matters, and further, this instrument is not intended to reflect or set forth all such matters. Such information should be obtained and confirmed by others through appropriate title verification.

NOTE Lands shown hereon were not abstracted for right-of-way and/or easements of record.

G:\1995\950101\PARCEL4

JOB NO. 95-0101	DRAWN BY: DB	CHECKED BY:	F.B. PG.	DATED: 6-20-97

TAB 13

OPERATING AGREEMENT

BETWEEN

THE FLORIDA DEPARTMENT OF TRANSPORTATION

AND

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

FOR THE SOUTH FLORIDA RAIL CORRIDOR

TABLE OF CONTENTS

SECTION 1. RECITALS....4.
SECTION 2. BACKGROUND.... 4
SECTION 3. IMPLEMENTATION.... 5
SECTION 4. TERM.... 6
SECTION 5. FINANCIAL RESPONSIBILITIES.... 7
SECTION 6. OPERATIONS AND MAINTENANCE.... 11
SECTION 7. FRA COMPLIANCE AND FUTURE REGULATORY CHANGES.... 18
SECTION 8. ENVIRONMENTAL.... 19
SECTION 9. DEPARTMENT RESPONSIBILITIES.... 22
SECTION 10. ADDITIONS, BETTERMENTS, RETIREMENTS AND ALTERATIONS.... 22
SECTION 11. RESERVED.... 23
SECTION 12. LIABILITY AND INSURANCE.... 23
SECTION 13. TERMINATIONS AND DEFAULT.... 25
SECTION 14. MISCELLANEOUS.... 28

EXHIBITS

Exhibit A: Corridor Description.... 32
Exhibit B: MIC Rail Corridor Description.... 33
Exhibit C: Commencement Date Schedule....34
Exhibit D: Cost Sharing Table....35
Exhibit E: SFRTA Property....36

THIS OPERATING AGREEMENT ("Agreement"), entered into this ____day of _____, 2013, between the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida ("Department"), and the SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, a body politic and corporate and an agency of the State of Florida created pursuant to Chapter 343, Florida Statutes ("SFRTA").

A. Pursuant to a Contract for Installment Sale and Purchase, ("Contract") dated May 11, 1988, the Department purchased from CSX Transportation, Inc., ("CSXT") certain properties described in this Agreement as the "State Property", upon which railroad freight, intercity passenger and commuter rail services are currently being conducted.

B. The conveyance to the Department was evidenced by a Warranty Deed dated May 11, 1988 that was simultaneously recorded in Palm Beach, Broward and Miami-Dade Counties (Counterparts 1 of 3, 2 of 3 and 3 of 3, respectively). Counterpart 2 of 3 was recorded in Official Record Book 15424, Pages 0731-1046, of the Public Records of Broward County, Florida (collectively referred to herein as the "Deed").

C. Under the Deed, CSXT retained a perpetual freight easement over the State Property for the exclusive purpose of providing rail freight service; it having been in the interest of the parties that CSXT remain the freight rail carrier subject to the Interstate Commerce Commission Termination Act of 1995, the Railway Labor Act and any other federal law relating to the provision of freight railroad transportation on the State Property.

D. SFRTA was created pursuant to Chapter 343, Florida Statutes, to own, operate, maintain, and manage a transit system in the tri-county area comprised of Miami-Dade, Broward, and Palm Beach Counties which three counties also comprise the Miami Urbanized Area.

E. In 2009, the Florida Legislature, pursuant to Chapter 2009-271, amended Section 343.58, Florida Statutes, providing a funding source for allocations to SFRTA under specified provisions (the "State Dedicated Funding") and authorized the annual transfer from the State Transportation Trust Fund to SFRTA, as provided for therein.

F. The Department and CSXT have entered into the South Florida Operating and Management Agreement ("SFOMA"), dated January 25, 2013 and SFRTA's Governing Board approved SFOMA's terms and conditions on January 25, 2013.

G. Pursuant to this Agreement, SFRTA, on behalf of the Department, will manage, operate, maintain, and dispatch all railroad operations on the South Florida Rail Corridor (the "Corridor"), and will also maintain and repair the rights-of-way, Layover Facilities and Yards (as collectively defined herein), state-owned buildings and facilities, tracks, bridges,

communications, signals and all appurtenances on the Corridor in a satisfactory condition and in accordance with the standards specified in this Agreement and SFOMA.

H. The parties recognize a need to formalize the operating rights and responsibilities of the parties as it relates to SFRTA's continued operation, dispatching (only over the New Bridge Corridor, as defined herein) and management of a commuter rail system on the Corridor and the acceptance of certain additional responsibilities under SFOMA regarding the management, operation, maintenance, and dispatch of all rail operations and signals on the Corridor as stated herein.

I. Until such time as SFOMA takes effect pursuant to the terms thereof, the 1988 Operating and Management Agreement Phase A ("OMAPA") shall govern the conduct of all rail operations over the South Florida Rail Corridor.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

SECTION 1. RECITALS.

The recitals in this Agreement, which are true and correct, and the exhibits attached to this Agreement, are incorporated by reference.

SECTION 2. BACKGROUND.

The Corridor consists of all State Property conveyed by the Contract and Deed including but not limited to the rail lines, tracks, structures, signals, signal systems, communication systems, switches, crossovers, interlocking devices, state-owned buildings and facilities, the Hialeah Maintenance Yard, the proposed SFRTA Northern Maintenance Yard and Layover Facility, the West Palm Beach Layover Facility, the Dania Yard and the Miami Gardens Yard (collectively referred to herein as the "Layover Facilities and Yards") and stations owned by the Department and SFRTA extending from Mangonia Park to the Miami Intermodal Center ("MIC") - Central Station, as defined in Exhibit "A" attached to and incorporated in this Agreement, and including the New Bridge Corridor, and the MIC Rail Corridor as defined in Exhibit "B" attached to and incorporated in this Agreement, and the Replacement Bascule Bridge over the New River which is being constructed by the Department pursuant to SFOMA. The Corridor also includes Department-owned property that was not acquired as part of the State Property, but is used and is currently being maintained as described in Exhibit "A." .

The following operations currently occur on the Corridor:

A. SFRTA operates the Tri-Rail commuter passenger rail services over the Corridor, including the New Bridge Corridor, but it does not operate over the MIC Rail Corridor, which is currently under construction by the Department; and

B. CSXT operates through and switching rail freight service over the Corridor pursuant to a freight rail easement reserved to itself in the Deed, but it does not operate over the New Bridge Corridor or the MIC Rail Corridor; and

C. The National Railroad Passenger Corporation ("Amtrak") operates Intercity Rail Passenger Service over the Corridor, including the New Bridge Corridor, pursuant to an Agreement with the Department dated May 1, 1997 (the "Amtrak Agreement"), but it does not operate over the MIC Rail Corridor.

The New Bridge Corridor is defined by an agreement between the Department and CSXT dated June 30, 2005, AGREEMENT PARTIALLY IMPLEMENTING OPERATING AND MANAGEMENT AGREEMENT – PHASE B FOR THE NEW RIVER BRIDGE, and it has been operated and maintained by SFRTA since its opening.

The MIC Rail Corridor includes the property described in the decision rendered by the Surface Transportation Board on September 2, 2011 (Docket No. AB 55 (Sub-No. 717X)), which CSXT abandoned pursuant to that decision on October 31, 2011.

The MIC Rail Corridor shall be supplemented by the Department to include certain additional land which will be utilized for passenger rail operations serving the MIC Central Station. Once the MIC Rail Corridor has been completed and final accepted by the Department, the parties agree that this Agreement shall govern the newly constructed MIC Rail Corridor, except that the maintenance of the MIC Central Station common area shall be governed by the Temporary Relocation Agreement between SFRTA and the Department dated March 2, 2011 (the "Temporary Relocation Agreement") and any future agreement between SFRTA and the then-operator of the MIC Central Station common area.

SFRTA will undertake certain responsibilities addressed in SFOMA, as more particularly outlined in this Agreement.

SECTION 3. IMPLEMENTATION.

A. Operating Rights: The Department acknowledges that the purpose of this Agreement is to confirm that SFRTA has the rights necessary to implement the rights granted to it under Chapter 343, F.S., to operate a commuter rail service on the Corridor and to fulfill the responsibilities required of the Department under SFOMA and the Amtrak Agreement, as set forth in this Agreement. As a condition to maintaining the operating rights provided for in this Agreement, SFRTA agrees to comply with the terms and conditions contained in this Agreement, as well as those provided for in OMAPA, SFOMA and the Amtrak Agreement, as applicable, and to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies and procedures, adopted pursuant to such laws and regulations or SFOMA, on the Corridor.

B. Schedule: The schedule provided in Exhibit "C," which is attached hereto and incorporated herein (the "Schedule") applies to the capital improvements to SFRTA's dispatch desk and SFRTA's procurement of the necessary contractors to perform the SFRTA Responsibilities (as defined herein), based on SFRTA's current intent to procure contractors to perform the SFRTA Responsibilities. The parties agree to make good faith efforts to comply with the Schedule and acknowledge that it is consistent with the Commencement Date in SFOMA. The Department acknowledges that SFRTA shall have the same consideration provided to the State regarding delays in procurements due to administrative or civil actions, as provided in Section 1(c)(i)5 of SFOMA.

C. Transition Responsibilities: No later than thirty (30) calendar days after execution of this Agreement by the parties, SFRTA, working in cooperation with the Department and CSXT shall commence work on a transition and implementation plan that will ensure the safe and orderly transition of the management, operation, maintenance, and dispatch of the Corridor with the goal of having said plan completed six (6) months prior to the Commencement Date.

SECTION 4. TERM.

A. This Agreement shall be for a term of fourteen (14) years and become effective on the date last signed by the parties to this Agreement ("Effective Date") and may be renewed by mutual agreement of the parties.

B. SFRTA and the Department shall cooperate in the effort to identify and implement an alternative dedicated local funding source before July 1, 2019 as referenced in Section 343.58, F.S. (the "Local Dedicated Funding"). In the event the Local Dedicated Funding is obtained, this Agreement shall be replaced with a mutually acceptable agreement between the parties, which shall be completed no later than six (6) months after SFRTA obtains the Local Dedicated Funding.

C. Upon commencement of the Local Dedicated Funding, the Department shall:

1. convey to SFRTA a perpetual commuter rail easement on the Corridor and all the Department's rights, title, and interests in rolling stock, equipment, tracks and other personal property for the operation and maintenance of the commuter rail operations on the Corridor; and

2. transfer, assign or take whatever legal action(s) necessary, to ensure that SFRTA receives all of the revenues from the Corridor existing as of the date of the conveyance of the perpetual commuter rail easement, including but not limited to SFOMA revenues, revenues from the Amtrak Agreement, outdoor advertising, right-of-way leases and utility revenues (including, but not limited to, telecommunications), and grants to SFRTA the right to generate new revenues on the Corridor consistent with applicable Florida law. The Department agrees that it

shall take no action during the term of this Agreement that shall in any way reduce or eliminate such Corridor revenues which exist as of the execution date of this Agreement without first notifying SFRTA.

SECTION 5. FINANCIAL RESPONSIBILITIES.

A. State Funding Assistance:

1. Until SFRTA begins to perform the SFRTA Responsibilities, the Department shall transfer quarterly, in equal installments, to SFRTA, the total amount of $30,600,000, unless a lump sum advance payment is approved by the Department's Comptroller (the "Current State Dedicated Funding"). In the fiscal year that SFRTA begins to perform the SFRTA Responsibilities and for each fiscal year thereafter during the term of this Agreement, pursuant to Section 343.58(4)(a)1., F.S., the Department shall transfer annually to SFRTA the total amount of $42,100,000.00, of which $11,500,000 represents the additional amount for SFRTA to assume the SFRTA Responsibilities (as defined herein) (the "Total State Dedicated Funding"). The Department will annually transfer to SFRTA the total amount of the State Dedicated Funding, in accordance with Section 343.58, F.S. and Section 215.422, F.S., prior to August 31st of each year. However, should SFRTA begin performing the SFRTA Responsibilities after August 31st of any fiscal year, the Department shall transfer a portion of the $11,500,000 representing the prorated amount for the remainder of said fiscal year to the SFRTA, no later than thirty (30) days following the date that SFRTA begins to perform the SFRTA Responsibilities. SFRTA agrees that the Current and Total State Dedicated Funding shall be deposited in an interest-bearing account, and that said interest shall be used by SFRTA for, and applied to, expenditures directly related to the operations, maintenance, and dispatch on the Corridor. The amount of interest earned and the uses for which it has been expended shall be reported annually, along with the expenditure report due per Section 5.D.2. Payment by the Department shall be made only after advance payments are authorized by the Department's Comptroller under Section 334.044(29), F.S., or by the Department of Financial Services under Section 215.422(14), F.S.

2. In the event the Department's revenues calculated using the Variable Fee (as defined in SFOMA) exceed $5 million in any given Annual Period (as defined herein) (the "Exceedance"), the Department shall, within sixty (60) days following the Department's receipt of the final quarterly payment for any Annual Period (as defined herein), transfer to SFRTA an amount equal to twenty-five percent (25%) of the Exceedance. The term "Annual Period" shall be defined initially as the first four(4) quarters under which CSXT calculates the Variable Fee revenues owed to the State pursuant to SFOMA and then every annual period thereafter. The Exceedance shall not be included in the calculation of the Average Annual MOW Cost (as defined herein) in Section 5.A.3 of this Agreement and shall not be used to offset any of the respective contributions of each party in Section 5.A.3 of this Agreement.

3. In the event the average annual cost for the provision of the maintenance, of the Corridor ("Maintenance of Way Services" or "MOW Services") under this Agreement ("Average Annual MOW Cost") exceeds the State Dedicated Funding, the parties agree that the cost sharing table in Exhibit "D" shall determine the respective annual contributions of each party. In the event SFRTA enters into an agreement with a third-party contractor to provide all of the MOW services under this Agreement, the Average Annual MOW Cost shall be calculated as the total bid amount(s) provided by the contractor(s) divided by the number of years of the MOW contract(s). In the event the bid(s) for MOW Services exceeds the engineer's estimate and both parties agree that cost efficiencies can be accomplished by the use of SFRTA employees, SFRTA will seek approval from the Department prior to removing such work from the MOW Services scope. The parties will negotiate the value of those services that can be applied to the Average Annual MOW Cost for the provision of MOW Services.

4. In no event shall SFRTA be responsible to bear more than $1.491 million of additional costs in excess of the State Dedicated Funding amount provided to perform the SFRTA Responsibilities in any Annual Contract Period, unless otherwise agreed to by the parties or unless SFRTA elects to perform some portion or all of the MOW Services using its own employees and FDOT disapproves including a portion of the costs associated with such employees in the Average Annual MOW Cost.

5. The parties agree that 100 percent (100%) of all of the capital improvements relating to the MIC Rail Corridor, including, but not limited to, all of the improvements to SFRTA's dispatching equipment necessary for SFRTA to dispatch the Corridor, and necessary to meet the requirements of this Agreement, SFOMA, and the Amtrak Agreement, will be paid by the Department. The current estimate for the capital improvements to the SFRTA dispatch equipment is approximately $3.6 million. The parties acknowledge that this amount may change if the contemplated staggered phasing of the work on the dispatch equipment is amended.

6. If the Department requests SFRTA to perform any additional work currently not performed by CSXT or the Department relating to the Corridor, which would be deemed outside the SFRTA Responsibilities or those contemplated by SFOMA, the Amtrak Agreement and this Agreement, the Department shall enter into a written agreement with SFRTA for such additional work to be performed. Any separate agreements for SFRTA additional work in addition to the SFRTA Additional Responsibilities (as defined herein) shall provide for additional funding to cover the entire cost of the additional work, unless another mutually acceptable arrangement is reached between the parties.

7. SFRTA shall comply with all applicable Disadvantaged Business Enterprise (DBE) requirements for all procurements related to the Corridor.

8. As this Agreement is for services in excess of $25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6)(a), F.S., are hereby incorporated:

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

9. The Department's obligation to pay any monies under this Agreement is contingent upon an annual appropriation by the Florida Legislature.

B. Compliance with State Funding Requirements:

   SFRTA shall be in compliance with State funding requirements of Section 341.052, F.S., as related to Section 5307 of the Federal Transit Act, 49 U.S.C. 5307.

C. Level of Commuter Rail Service. Subject to the availability of commuter rail funding as described in this Agreement, SFRTA agrees to provide the level of commuter rail service identified in the Full Funding Grant Agreement ("FFGA") with the Federal Transit Administration ("FTA"). SFRTA will continue to allocate an appropriate level of funding to maintain the FFGA level of commuter rail services. SFRTA agrees to provide the Department with copies of notices SFRTA may provide to FTA pursuant to the terms of the FFGA of any change in circumstances or commitments that adversely affects its commitment to finance its commuter rail services. The Department and SFRTA agree to cooperate in obtaining federal funding for current and future projects on the Corridor.

D. Budgets:

   1. Approved Operating Budget: The operating budget for the commuter rail service and a five-year (5) capital plan shall be approved by SFRTA's Governing Board prior to July 1 of each year. SFRTA will provide the Department with the Governing Board approved operating budget and capital budget by the end of July of each year. Any

changes to the approved operating budget or capital budget that must be approved by the Governing Board will be provided to the Department no more than ten (10) working days following such approval. SFRTA will incur obligations and make disbursements in accordance with its latest approved operating and capital budgets.

2. Actual Expense Accounting: SFRTA shall provide the Department with an actual expense report based on the approved operating budget line items by July 31st of each year. SFRTA will continue to provide to the Department, and post on the SFRTA website, SFRTA's Comprehensive Annual Financial Report ("CAFR") which contains its actual expenditures for the prior fiscal year, within thirty (30) days of the SFRTA Governing Board's receipt of the CAFR from its independent auditors.

E. Accounting, Reporting, Record Retention, and Access:

1. SFRTA shall account separately for all Department funds and maintain all accounts and reports required by Florida Law.

2. SFRTA shall adhere to all applicable state, federal, Federal Railroad Administration ("FRA"), and FTA related reporting requirements, including but not limited to, the National Transit Database. Boarding and alighting information shall be collected in accordance with FTA reporting requirements, and used in the operations and maintenance budgeting process.

3. SFRTA shall maintain all records pertaining to the operation, maintenance, and inspection of the Corridor pursuant to Florida's Public Records Laws, unless the retention of such records is otherwise provided for in this Agreement. Such records shall be made available to the Department or its designee, the State's Chief Financial Officer ("CFO") or Auditor General during normal business hours upon reasonable request.

4. SFRTA shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of at least five (5) years from the date each annual CAFR is presented to the SFRTA Governing Board ("CAFR Date"). SFRTA shall ensure that its independent audit working papers are made available to the Department, or its designee, the CFO, or Auditor Inspector General upon request for a period of at least five (5) years from the CAFR Date.

5. SFRTA agrees to require its contractors to comply with the records requirements in paragraphs 3 and 4 of this Section.

SECTION 6. OPERATIONS AND MAINTENANCE.

SFRTA shall provide for the management, operation, maintenance and dispatch of the Corridor, including, but not limited to, the services provided below (the "SFRTA Responsibilities"), except for the Additional I SFRTA Responsibilities (as defined herein) and any additional work provided pursuant to Section 5A.6 of this Agreement. SFRTA shall perform, or may contract with third parties to perform, the SFRTA Responsibilities and the Additional SFRTA Responsibilities (as applicable). SFRTA shall have no obligation to perform any of the SFRTA Responsibilities prior to the Commencement Date (as defined in SFOMA), other than for those SFRTA Responsibilities that require procurement and training of contractors prior to the Commencement Date.

After the Commencement Date, SFRTA's obligation to perform any work that will be subject to separate agreement(s) shall not commence until such agreements are executed ("Additional SFRTA Responsibilities") which include those Additional SFRTA Responsibilities addressed elsewhere in the document, i.e. wherever a separate agreement is required.

A. Operating and Maintenance

SFRTA shall:

1. Manage, direct, and control all railroad operations over the Corridor in accordance with SFOMA and the Amtrak Agreement, including the control and dispatch for the entry and exit of trains, locomotives, and rail cars (collectively referred to herein as "Rolling Stock"), as well as other rail equipment, including but not limited to, the following:

    a. Signalization and dispatching of the Corridor;
    b. Maintenance of the Corridor;
    c. Maintenance and security of the buildings, stations, grounds, Layover Facilities and Yards, maintenance equipment and tools;
    d. Operation of Tri-Rail feeder buses in revenue and non-revenue service;
    e. Operation and Maintenance of Rolling Stock and other rail equipment in revenue and non-revenue service; and
    f. All other operational activities necessary for the safe operations and maintenance of the Corridor.

2. Reach agreements with any contractors that, in its sole discretion, SFRTA determines are necessary to provide any of the SFRTA Responsibilities in compliance with this Agreement. If SFRTA determines, with the concurrence of the Department, that the prices offered in any competitive solicitation for services required to perform the SFRTA Responsibilities are unreasonable, SFRTA may elect to perform the services using its own employees.

3. Pay all costs associated with the SFRTA Responsibilities, subject to Section 5.

4. Coordinate its commuter rail service, Corridor maintenance and dispatch services with CSXT and Amtrak in accordance with SFOMA and with the Amtrak Agreement.

5. Promulgate and issue all rules, procedures, special instructions, timetables, practices, regulations and orders governing operations, track maintenance and inspections, over the Corridor, except for the Standards, as defined in SFOMA, which shall be developed and promulgated by the Department, as referenced herein in Section 9. The maximum authorized track speed and other operating rules for rail traffic shall be established by SFRTA in accordance with SFOMA, unless otherwise authorized by the Department.

6. Furnish, qualify, and train all operators, bridge tenders, and dispatchers and other personnel, including for the benefit of CSXT and Amtrak, as necessary and appropriate for the operation of the Corridor. Costs that are incurred by SFRTA with respect to CSXT and Amtrak operations (including training or qualifications of CSXT and/or Amtrak employees) shall be reimbursed to SFRTA pursuant to a separate agreement(s) and shall be deemed Additional SFRTA Responsibilities.

7. Be the host railroad for purposes of compliance with any federal Positive Train Control ("PTC") laws and regulations. The parties agree that the Department shall be responsible for the costs of the wayside signal hardware associated with PTC on the Corridor. SFRTA shall be wholly responsible for the costs of hardware on its Rolling Stock associated with PTC and for the annual spectrum leasing fees. SFRTA shall be responsible for the State's obligations regarding PTC maintenance, as stated in SFOMA.

8. Coordinate with, and obtain approval from, the Department, as may be required by Section 343.58, F.S.

9. Maintain and repair the Corridor, including the Layover Facilities and Yards, state-owned buildings and facilities, rights-of-way, the Hialeah Maintenance Yard Wastewater Treatment Facility, tracks, bridges, communications, signals and all appurtenances, in accordance with SFOMA, the Amtrak Agreement, and with applicable federal, state and local regulations.

10. Perform property maintenance work, including, but not limited to, mowing, Corridor fencing, garbage and trash pick-up, and graffiti removal.

11. Inspect the Corridor, including rail-highway grade crossings and signals, and conduct such inspections in accordance with applicable federal and state requirements.

12. Provide emergency services for all rail operations including, but not limited to, mechanical failure, wreck clearing and derailments as specified in SFOMA and the Amtrak Agreement. Such emergency services will not include Adverse Environmental Condition Services (as defined herein) which shall be handled in accordance with paragraph 13 of this Section and Section 9 of this Agreement, entitled "Department Responsibilities." Providing these services to CSXT and Amtrak shall be performed under separate agreements, however if separate agreements are not entered into between SFRTA and CSXT and/or Amtrak, prior to the Commencement Date, the Department and SFRTA will enter into a separate agreement to provide for the reimbursement to SFRTA of 100 percent (100%) of all costs incurred by SFRTA for the provision of emergency services, as described in this Agreement and such services shall be deemed Additional SFRTA Responsibilities. SFRTA shall be responsible for costs incurred in the provision of emergency services for its commuter rail operations unless the emergency service was required due to the actions of CSXT or Amtrak, in which case the Department shall seek reimbursement for all costs incurred by SFRTA from the party that caused the need for emergency services.

13. At the request of the Department, provide services to address Adverse Environmental Conditions (as defined herein), including emergencies, ("Adverse Environmental Condition Services") pursuant to a separate agreement with the Department in which the Department agrees to reimburse SFRTA for all costs associated with such work, unless another mutually acceptable arrangement is reached between the parties. Such services shall be deemed Additional SFRTA Responsibilities.

14. Provide emergency repair and protective services for crossings and approaching roadway surfaces within the Corridor in the event of damage or hazardous conditions affecting public safety, as needed or as requested by the Department. This work does not include the work contemplated under paragraph 16 of this Section.

15. SFRTA shall have the Corridor utilities placed in its name, except those currently under Amtrak's name, and shall be responsible for the costs of utility services pertaining to the Corridor.

16. Maintain and rehabilitate all railroad and roadway crossings and traffic control devices on the Corridor, in accordance with SFOMA. The parties acknowledge that certain railroad crossings will be repaired to the extent required only to permit continued railroad operations and such repairs will be part of the SFRTA Responsibilities. Additionally there are certain roadways that existed prior to the railroad and rehabilitation of these crossings will likewise be part of the SFRTA Responsibilities. With regard to all other crossings, at the direction of the Department, the SFRTA shall undertake rehabilitation of those crossings which have

deteriorated to an extent such that minor repairs cannot keep the crossing in service. The Department shall identify the number and locations of the crossings to undergo such rehabilitation, if any, in advance of each fiscal Year. SFRTA shall develop and provide the scope and cost estimate necessary for any crossing work to the Department, and such rehabilitation projects shall be compensated pursuant to the relevant separate agreement(s), such services being deemed Additional SFRTA Responsibilities.. The Department will work with SFRTA to obtain separate agreements with the Department (for crossings on State Roads) and applicable local governmental entities (for crossings on local roads) which shall provide for reimbursement for crossing improvements and maintenance of the traffic control devices for the crossings.

17. Perform all station maintenance, including but not limited to the platforms, pedestrian overhead bridges, elevators and station utilities, except as otherwise provided for in Section 2 of this Agreement regarding the MIC Central Station and as provided in the Amtrak Agreement. Station utilities shall include, but are not limited to, water, sewer, garbage, telephone and electrical services.

18. SFRTA will consult with the Department and seek the Department's approval for decisions regarding any SFRTA capital improvements, major rehabilitation, and track and facility layouts, and consider their impacts to other users of the Corridor and in accordance with SFOMA, and the Amtrak Agreement.

19. Obtain CSXT review and approval for track, signal and communication improvements, to the extent required by SFOMA.

20. Be responsible for all negotiations, communications with CSXT, Amtrak, local governments, private entities, and other affected parties necessary to maintain and operate the Corridor, except for matters related to SFOMA that are not delegated to SFRTA by this Agreement, the Amtrak Agreement or as addressed in Section 9 of this Agreement.

21. Pay all costs associated with any new construction projects on the Corridor which solely benefit SFRTA's commuter rail operation, unless otherwise agreed to by the Department. All such projects shall be coordinated in accordance with SFOMA and the Amtrak Agreement, unless otherwise approved by the Department.

22. Make changes in or additions or betterments to the Corridor required to accommodate CSXT and Amtrak Operations, in accordance with SFOMA and the Amtrak Agreement upon execution of a separate agreement for reimbursement with the necessary parties and such services shall be deemed Additional SFRTA Responsibilities The Department agrees to consult and discuss with SFRTA the work associated with all capital improvement projects on the Corridor that the Department desires to construct, prior to the Department initiating any related

procurements The Department agrees that it shall not take any actions as part of, or related to, such projects that shall detrimentally impact SFRTA's ability to meet its obligations under this Agreement or to operate a commuter rail service on the Corridor.

23. Upon receipt of written notice from the Department and/or CSXT, permit the Department and/or CSXT to accompany SFRTA on an inspection of the Corridor to determine SFRTA's compliance with its maintenance obligations. In the event such inspection discloses any defect(s) from the requirements set forth in this Agreement, the Department or CSXT may give SFRTA notice thereof, in which event SFRTA shall correct such defect(s) within the time provided under the applicable laws and regulations. In the event SFRTA shall fail to correct such defect(s) within the time provided under applicable laws or regulations, the Department and/or CSXT shall have the right, but not the obligation, to cause such defect(s) to be corrected and SFRTA shall reimburse the Department and/or CSXT for the entire cost thereof.

24. SFRTA shall operate and maintain any equipment and rolling stock provided by the Department in a State of Good Repair, according to prescribed standards and shall be responsible for all equipment and rolling stock warranties, preventative maintenance, repair maintenance and spare parts inventory. "State of Good Repair" means safe, fully functional, not in need of repair, and meeting or exceeding the minimum threshold for manufacturer's standards or other applicable regulations or standards. Proper procedures shall be established that will assure proper and timely records are kept and preventative maintenance is performed consistent with equipment warranty requirements and any applicable FRA requirements.

25. Conduct investigations under Section 20 of SFOMA, entitled "Investigations", with Department assistance, as required.

26. Regarding correspondence relating to notice of violations or violations received from regulatory agencies such as letters, emails, and written notifications ("Violation Notification or Correspondence"), notify the Department within twenty-four (24) hours by phone of SFRTA's receipt of any Violation Notification or Correspondence and provide copies of the Violation Notification or Correspondence to the Department within ten (10) business days of the date of the Violation Notification or Correspondence.

27. Notify the Department within twenty-four (24) hours by telephone of any known FRA reportable accident and/or incident that requires notification to third party agencies, in compliance with 49 Code of Federal Regulations ("CFR") 225 and 659. In addition, SFRTA shall provide the Department with written documentation regarding same within ten (10) business days of such notification.

28. Bar individuals from the Corridor, in accordance with SFOMA. In the event SFRTA does bar any individual, it shall be responsible for any costs that may be assessed against the State, as described in Section 3 of SFOMA, unless the individual was barred at the request of the Department in which case the Department shall be responsible for any such costs.

29. The Department confirms that SFRTA and not the Department shall establish rates for, and be entitled to revenues from, the commuter rail service, as referred to in Section 6(b) of SFOMA.

B. Environmental Activities, Requirements and Permits

1. Upon entering into a separate agreement with the Department, assist in environmental remediation activities on the Corridor, as requested by the Department, and such services shall be deemed Additional SFRTA Responsibilities, provided however, that SFRTA shall not be responsible for and shall incur no liability for any costs associated with the remediation of activities caused by parties other than SFRTA. In the event the Department incurs any costs associated with environmental remediation on the Corridor as a result of activities of third parties, the Department shall be solely responsible for obtaining any payments due the Department from the third parties.

2. Serve as the Department's representative for all required environmental permits on the Corridor, including but not limited to the National Pollution Discharge Elimination System ("NPDES") Permits issued by the Florida Department of Environmental Protection ("DEP"), the "Required Environmental Permits".

3. Comply with all federal and state regulations pertaining to the Required Environmental Permits.

4. Obtain the Department's approval of all SFRTA projects on the Corridor which shall require an Environmental Permit or an amendment to any existing Environmental Permit.

5. Coordinate and conduct: (1) monthly environmental inspections at the Hialeah Maintenance Yard; and (2) as needed elsewhere on the Corridor with the Department, CSXT, and Amtrak, as applicable.

6. Conduct the asbestos and lead inspections for all state-owned buildings on the Corridor, pursuant to federal and state regulations.

7. Conduct all activities in conformance with all applicable environmental regulations, including the acquiring of any applicable permits, whether in SFRTA's or the Department's name, and provide the Department with copies of all correspondence with regulatory agencies such as letters, notifications and permit applications and obtain the Department's approval prior to submitting any such permit applications. In the event of non-compliance, as determined by the applicable regulatory agency, SFRTA shall reimburse the Department for any fines or penalties incurred by the Department directly attributable to such non-compliance.

C. Development of Safety Programs and Plans:

1. Maintain the required safety programs and plans for transit and commuter rail operations, pursuant to applicable federal and state laws and regulations, including but not limited to 49 CFR 239, 270 and 659 (the "Required Safety Programs and Plans").

2. Certify annually to the Department that the Required Safety Programs and Plans are in compliance with the applicable federal and state laws and regulations.

3. Provide security resources appropriate to ensure safe and secure railroad operations in the Corridor. Coordinate security activities with local law enforcement related to illegal activities, including but not limited to, trespassing, vandalism, theft and vagrancy.

4. Comply with all applicable federal, state, and local government safety requirements. In the event of non-compliance, as determined by the applicable regulatory agency, SFRTA shall reimburse the Department for any fines or penalties incurred by the Department directly attributable to such non-compliance.

D. Preliminary Engineering (PE) Agreements, Review Times, and Flagging

1. SFRTA shall be responsible to review planning and engineering documents related to the Corridor requested by the Department for Department projects, at SFRTA's sole cost and expense. If the review services are requested on behalf of third parties, such services shall be reimbursed 100 percent (100%) by the party requesting the service by separate agreement and shall be deemed Additional SFRTA Responsibilities.

2. Review of preliminary engineering plans shall be consistent with the review time frames for the Department established in SFOMA. Such reviews shall to the extent practicable be concurrent with CSXT's review.

3. SFRTA shall be responsible for providing all of the Protective Services (as defined herein) on the Corridor. SFRTA shall be solely responsible for the cost of providing Protective Services, as needed, for its day to day operations. Protective Services will be required for activities on the Corridor as provided in this paragraph. When the Department, requires Protective Services it shall notify SFRTA before beginning any operations requiring movement of employees, trucks, or other equipment within the Corridor that may affect railroad operations. SFRTA shall furnish, within fifteen (15) business days of such notification (or within such timeframe as is mutually agreed upon between the affected parties), watchmen or flagging (the "Protective Services") to ensure the safety of railroad operations during the period of operation requiring the Protective Services. SFRTA's provision of the Protective Services, and associated payment to SFRTA from the Department, CSXT, Amtrak or other third party for the Protective Services, shall be addressed through separate agreements, which must be entered into prior to any Protective Services being provided by SFRTA and such services shall be deemed Additional SFRTA Responsibilities.. The Department agrees that it shall be responsible for reimbursing SFRTA for 100 percent of all costs associated with any Protective Services provided by SFRTA for Department projects, unless otherwise mutually agreed upon between the parties.

E. Labor Protection: SFRTA retains responsibility for all labor protection costs associated with the commuter rail service including the management, operation, maintenance, and dispatch thereof. The parties agree that the Department shall not seek funding or take any other action that may trigger labor protection obligations under any applicable 13(c) agreements or any other provision of law or applicable collective bargaining agreements without obtaining the prior written approval of SFRTA, which approval shall not be unreasonably withheld. The Department will assist SFRTA in securing information from CSXT to resolve labor protection claims pursuant to Section 1(e) of SFOMA.

SECTION 7. FRA COMPLIANCE AND FUTURE REGULATORY CHANGES.

A. SFRTA or SFRTA's contractors shall comply with all FRA regulatory requirements for all the training requirements, as applicable, of 49 CFR Parts 200 to 299 and 649.

B. SFRTA shall keep all testing results and analyses relative to approved FRA plans and submittals accessible at the location identified in the applicable plan. SFRTA shall certify to the Department that it has received the necessary approvals from FRA for the assumption of the SFRTA Responsibilities no later than twenty (20) business days prior to the Commencement Date.

C. SFRTA shall be responsible for resolving all FRA and FTA violations including mitigating circumstances that led to violation, responding to regulators and paying fines. Any and all penalties and fines imposed regarding the violation of state and federal codes,

regulations, and laws shall be paid by SFRTA inasmuch as the violation occurs as a result of its or its contractor's failure to fully perform, as required by this Agreement.

D. Future changes to federal laws, regulations related to this Agreement ("Future Regulatory Obligations") which impose a financial burden of more than $500,000 on SFRTA shall require a separate agreement between the parties pursuant to Section 5A.6 of this Agreement addressing how the costs associated with such Future Regulatory Obligations shall be paid for.

SECTION 8. ENVIRONMENTAL

A. As between SFRTA and the Department, the Department shall be responsible for Adverse Environmental Conditions (as defined in Section 8.C.) existing, created or caused on the State Property prior or subsequent to the Commencement Date, which are not directly attributable to SFRTA or its employees, officers, agents or contractors. The parties agree that this Section applies, but is not limited to, asbestos and lead in State buildings.

B. SFRTA shall be responsible for any Adverse Environmental Conditions directly attributable to SFRTA's or its contractors' acts, omissions or violation of environmental laws, existing, created or caused on the State Property prior or subsequent to the Commencement Date, including failure to secure any applicable permits and will reimburse the Department for any loss it incurs in connection therewith.

C. "Adverse Environmental Condition" shall mean any condition in the soil, air, surface water, or groundwater that violates or exceeds, or has the potential to violate or exceed, any federal, state or local statute, ordinance, code, criteria, guidance or standard intended to protect the natural environment or public health or that otherwise is a source of risk to human health or the environment.

D. Notice of Asserted Liability. Following the receipt by either party of written notice of any claims, liabilities, causes of action or any other circumstances that would give rise to costs pursuant to Section 12.E.1 of this Agreement ("Asserted Liability"), the receiving party shall give written notice to the other party within forty eight (48) hours after the occurrence of the Asserted Liability.

E. Costs of Defense and SIRF Coverage: Each party shall bear its own costs of defense for any defense, compromise, and satisfaction of any Asserted Liability attributable to that party pursuant to this Section 12, except that if SFRTA is named in a lawsuit in which a third party asserts that SFRTA is liable for:

    i. Personal Injury or Property Damage caused by an intentional Discharge of Pollutants solely for the purpose of mitigating or avoiding Personal Injury or Property Damage; or

ii. Personal Injury or Property Damage caused by a Discharge of Pollutants which is not Expected or Intended, but only if SFRTA becomes aware of the commencement of such Discharge within thirty (30) days of such commencement;

which Personal Injury or Property Damage would be covered by Pollution Liability coverage set forth in the insurance policies obtained under Section 12 of this Agreement, the Department shall defend SFRTA in any such lawsuit and pay any damages or settlement amounts arising from such lawsuit up to the limits of the Department's self-insurance retention fund. The capitalized terms in this subsection E shall have the same meanings as set forth in the insurance policies, e.g., "Pollutant" means any solid, liquid, gaseous or thermal irritant, contaminant or toxic or hazardous substance or any substance which may, does, or is alleged to affect adversely the environment, property, persons or animals, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and Waste.

Notwithstanding anything in the foregoing to the contrary, SFRTA shall not admit or assume liability or settle or negotiate to settle any Asserted Liability without the prior written consent of the Department.

F. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving SFRTA's, SFRTA's contractors or the Department's sovereign immunity protections, or increasing the limits of liability set forth in Sections 337.27(4) and 768.28, F.S., as the same may be amended from time to time.

SECTION 9. DEPARTMENT RESPONSIBILITIES.

A. The Department, as the property owner of the Corridor, shall retain oversight responsibilities, as described in this Agreement, for all activities performed under SFOMA, the Amtrak Agreement, and this Agreement. The Department shall:

1. Pursuant to Section 341.302(17), F.S., maintain the Self Insurance Retention Fund ("SIRF") and be responsible for the claims handling function and for defense of all claims under the SIRF as required by SFOMA and this Agreement.

2. Appoint a Rail Liaison Coordinator, who will be the District 4 Modal Development Administrator or its designee and will be the primary contact person for the Department.

3. Make the Corridor available to SFRTA for SFRTA's operation of commuter rail service and for managing, operating, maintaining, and dispatching the Corridor in accordance with SFOMA, the Amtrak Agreement, this Agreement and Chapter 343, F.S. In addition, Department owned track and other materials stored in the Layover

Facilities and Yards and on Corridor property shall be available for SFRTA's use in operating and maintaining the Corridor. An inventory of these materials will be provided by the Department to the SFRTA upon execution of this Agreement.

4. Coordinate reviews and approvals with SFRTA for SFRTA, CSXT and Amtrak related matters including but not limited to contracts, agreements, leases, licenses, permits, track abandonments and discontinuances, and track and capital improvement projects on the Corridor.

5. Retain the oversight responsibilities for all environmental activities on the Corridor.

6. Provide Adverse Environmental Condition Services. Liability for costs associated with such emergency services shall be allocated to the party causing the environmental damages in accordance with SFOMA, the Amtrak Agreement and this Agreement.

7. Make all good faith efforts to facilitate or execute (if a party) any separate agreements referenced herein regarding the SFRTA Responsibilities, SFRTA Additional Responsibilities or any other work referenced herein to be performed pursuant to separate agreements.

8. Develop the Standards for the Corridor in compliance with SFOMA and be responsible for annually requesting from CSXT any amended standards, as provided for in SFOMA and provide the Standards to SFRTA annually no later than fifteen (15) calendar days following receipt of the CSXT Standards, as defined in SFOMA. SFRTA will have the opportunity to review proposed Standards and provide input to the Department during the Standards development process.

9. The Department will not take any action that would result in increased maintenance or dispatch costs, without mutual agreement of the parties.

10. Include SFRTA in any negotiations regarding amendments or subsequent agreements to the Amtrak Agreement or SFOMA or any other agreements relating to or impacting the SFRTA Responsibilities or Additional SFRTA Responsibilities as defined herein.

11. Consult with SFRTA prior to any abandonment or discontinuance pursuant to Section 11 of SFOMA.

12. Maintain responsibility (including all funding required) for Section 5(c) of SFOMA (Bascule Bridge).

13. Maintain responsibility for coordination with local governmental entities and other third parties regarding projects which involve or impact grade crossings and traffic

control devices for the grade crossings. The Department shall coordinate with SFRTA, local governments, and emergency services providers regarding the recurring maintenance and rehabilitation of the railroad and roadway grade crossings in the Corridor. This shall include changes and improvements to crossing traffic control devices and equipment related to the Federal grade crossing improvement program (also known as the Title II Program), which is subject to the annual appropriation of funding by the U.S. Congress. See also Section 6.A.16 of this Agreement.

14. Maintain responsibility for the administration, revocation and enforcement, and coordination regarding any Department issued leases, permits, and licenses. The Department shall also be responsible for addressing encroachments, right of entry, safety regulation compliance with respect to encroachments or rights of entry, or any other uses of the Corridor by third parties, except as noted herein as an SFRTA Responsibility or in the future is a separate agreement entered into for Additional SFRTA Responsibility(ies) and any costs associated with the foregoing.

15. Maintain responsibility for any Additional SFRTA Responsibilities until: (1) such time as the necessary separate agreement(s) have been executed by SFRTA and other relevant party(ies) as referenced herein; or (2) the parties have mutually agreed upon a date certain which is after the date of execution of any such separate agreement(s).

16. The Department shall be responsible to review planning and engineering documents related to the Corridor for SFRTA projects, at the Department's sole cost and expense.

SECTION 10. ADDITIONS, BETTERMENTS, RETIREMENTS AND ALTERATIONS.

A. The Department, from time to time, may make changes in, additions, betterments or alterations to, or retirements from the Corridor, at its sole cost and expense, in accordance with SFOMA, subject to the requirements of Sections 6.A.22 and 9.A.9 herein.

B. The Department may request, from time to time, that SFRTA perform or cause to be performed work on the Corridor involving the construction, modification, alteration or relocation of railroad tracks, signals, or communication facilities used by SFRTA, CSXT and/or Amtrak for railroad operations. The Department, pursuant to a separate written agreement which must be entered into prior to any work being commenced, shall pay or cause to be paid, the cost and expense of the work to be performed, or caused to be performed, including without limitation, any and all costs and expenses incurred by SFRTA and others for the relocations of railroad tracks, signals, fiber optic transmission systems or communication facilities and for the provision of services, materials,

employees or equipment in connection with such work, which shall all be deemed Additional SFRTA Responsibilities, except as otherwise noted in this Agreement,.

C. SFRTA shall be responsible for costs incurred for the construction, modification, alteration or relocation of railroad tracks, signals and communication facilities that solely benefits its commuter rail operations. Said construction, modification, alteration or relocation of railroad tracks, signals and communication facilities require the prior approval of the Department.

SECTION 11. RESERVED.

SECTION 12. LIABILITY AND INSURANCE

A. Liability

Each party (including its officers, agents, employees, and contractors) shall be responsible for its own acts, errors or omissions. This provision does not in any way limit insurance coverage, or coverage provided by the SIRF (as defined herein), as provided below.

B. Insurance

1. Pursuant to Section 341.302(17)(b), F.S., the State is authorized to purchase liability insurance in an amount not to exceed Two Hundred Million Dollars ($200,000,000.00). In addition, the Department is authorized to establish a self-insurance retention fund (the "SIRF") in an amount not to exceed Ten Million Dollars ($10,000,000.00).

2. Pursuant to the authority granted under Section 341.302(17)(b), F.S., the Department has established the SIRF in the amount of Five Million Dollars ($5,000,000.00) "for the purpose of paying the deductible limit established in the excess insurance policies" required to be obtained under this Agreement including all SFRTA's business operations related to the Corridor as set forth in this Agreement and the coverages contained in the excess insurance policies. SFRTA shall obtain Department approval prior to entering into any agreement, lease or arrangement that may require coverage under the SIRF.

3. Notwithstanding any provision of this Agreement to the contrary, SFRTA has purchased, on behalf of the Department, and shall maintain such insurance in excess of the SIRF, which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with the ownership, operation, maintenance and management of the Corridor, including, without limitation, the Department's obligations under SFOMA, the Operating and Management Agreement – Phase A,

SFRTA's contractual liabilities under this Agreement, and its contract operators and security providers in the amount of One Hundred Twenty Five Million Dollars ($125,000,000.00). SFRTA shall timely provide the Department and CSXT with copies of all policies showing the required coverage to be in effect with endorsements showing the Department and CSXT to each be an additional named insured under all policies. In the event of any material change in or cancellation of the policies reflecting the required coverage, sixty (60) days advance notice shall be given to the Department or within two (2) business days of such notice of material change or cancellation should SFRTA receive less than sixty (60) days advance notice.

4. The obtaining of such policy of insurance by SFRTA is a condition precedent to SFRTA's contract operators and security providers ("SFRTA Contractors") operating the commuter rail service for SFRTA, and the obtaining and maintenance of the insurance in full force and effect shall thereafter, throughout the term of the commuter rail operation, be considered a condition subsequent to the continuation of such operation by SFRTA and the SFRTA Contractors. In the event the insurance policy is canceled for any reason, SFRTA shall replace said policy or self-insure or provide such coverage as is needed during the notification period with another policy in like amount and coverage protection.

5. If the Department agrees to increase the insurance limits on the State Property from $125,000,000.00 to $200,000,000.00, pursuant to SFOMA, the Department shall direct SFRTA to promptly increase the limits of insurance to $200,000,000.00 and the Department shall simultaneously with the increase in the amount of insurance, increase the amount of the SIRF to $10,000,000.00. The parties agree that the coverage shall not be increased prior to December 31, 2013.

6. The property insurance shall be maintained at a minimum level of $15,000,000.00 during passenger intercity and commuter rail operations on the Corridor.

7. The foregoing liability and insurance provisions shall apply to any property owned or leased by SFRTA or over which SFRTA has an easement ("SFRTA Property") used in connection with the provision of commuter rail service as of the date of this Agreement. The SFRTA Property is set forth in the attached Exhibit "E." Except as provided for in the preceding sentence, the Department shall not have, nor exercise any oversight responsibilities for, or control over, any SFRTA Property. SFRTA agrees it shall maintain the SFRTA Property in a safe and secure manner.

C. Claims:

1. SFRTA shall notify all excess insurance carriers in writing and in accordance with the policy notice requirements, of any incidents such as severe personal injury or death occurring on or about the Corridor. SFRTA shall notify the Department within twenty-four (24) hours of SFRTA's knowledge of such incidents and shall copy the

Department on any such policy notices sent to the excess insurance carriers. When the Department receives a notice of litigation or a claim for damages that may have been caused by SFRTA in the performance of its business operations, the Department will notify SFRTA within twenty-four (24) hours and forward the claim to SFRTA. Likewise, if SFRTA receives notice of litigation or a claim for damages, it will notify the Department within twenty-four (24) hours and forward the claim to the Department. The Department will evaluate the claim. After reviewing the claim, the Department will determine whether to require the participation of SFRTA in the handling of the claim.

2. In the event litigation is commenced against the Department and if the claims asserted in the litigation do not fall within coverage of the SIRF or the excess liability policies, the Department may require that SFRTA defend the Department in such litigation as described in this section. The Department's failure to promptly notify SFRTA of a claim shall not act as a waiver of any right herein to require the participation in handling of the claim or defense of any litigation that arises from such claim. The Department and SFRTA will each pay its own expenses for the evaluation, settlement, negotiations, and trial, if any. However, if only one party participates in the defense of litigation, that party is responsible for all expenses at trial.

SECTION 13. TERMINATIONS AND DEFAULT

A. Default by SFRTA. Any one of the following events shall constitute an Event of Default by SFRTA: (1) noncompliance with any federal, state, or local law which materially and adversely affects the ability of SFRTA to comply with the terms of this Agreement; or (2) failure to comply with any material requirements of this Agreement or with any requirements of SFOMA that prevents SFRTA from fulfilling its obligations under this Agreement; (3) SFRTA commences a voluntary case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of SFRTA or any substantial part of SFRTA's assets; files an answer admitting the material allegations of a petition filed against SFRTA in any proceeding commenced against SFRTA; consents to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against SFRTA; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or (4) an involuntary case or other proceeding shall be commenced against SFRTA seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to SFRTA's debts under any bankruptcy, insolvency or other similar law now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of SFRTA or any substantial part of SFRTA's assets; seeking the

issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case or other proceeding shall not be contested by SFRTA in good faith or shall remain undismissed and unstayed for a period of ninety (90) days.

B. Department Remedies. Upon the occurrence and continuance of any Event of Default on the part of SFRTA as defined above, the Department may exercise one or more of the following:

1. The Department may institute legal proceedings against SFRTA to collect payment of any sum owed by SFRTA hereunder.

2. If a Default has occurred that SFRTA has failed to cure after written notice and a ninety (90) day opportunity to cure (or longer if the cure period is extended by the Department), the Department may institute legal proceedings against SFRTA to compel performance of any obligation required to be performed by SFRTA hereunder including but not limited to, where appropriate, actions for specific performance and/or injunctive relief.

3. If an Event of Default has occurred, and if the Department wishes to elect to terminate this Agreement, then the Department shall provide SFRTA with a written notice ("Termination Notice"). If SFRTA fails to cure the Default within ninety (90) days from receipt of the Termination Notice, then the Department shall have the unilateral right to terminate this Agreement and exercise all of the remedies hereunder and at law or in equity. However, if such obligation is of a nature that it could not reasonably be performed within ninety (90) days, such ninety (90) day period shall be extended so long as SFRTA institutes performance within such ninety (90) days and thereafter diligently and continuously pursues performance, all being subject to force majeure. Any Termination Notice shall recite that the Department intends to pursue termination of the Agreement if the Default is not cured. Termination shall be effective upon notice to that effect to SFRTA.

C. Whenever the Department has reason to believe that an Event of Default by SFRTA will imminently occur if SFRTA fails to take the necessary action, the Department shall provide notice to SFRTA, stating with particularity the basis for its belief and shall detail the corrective actions the Department deems are necessary to prevent or mitigate the anticipated Event of Default including a schedule for such action ("Default Notice"). Prior to providing the Default Notice, the Department shall contact SFRTA in writing to set up a timeframe for a meeting between the Parties ("Meeting Notice") and the parties agree to meet within ten (10) calendar days after receipt of the Meeting Notice by SFRTA. If the meeting fails to result in a resolution amenable to both parties, the Department may provide the Default Notice as identified herein. In the event a Default does occur, the Department may pursue its remedies as provided for herein.

D. Default by the Department. Any one of the following events by the Department shall constitute a default: (1) noncompliance with any federal, state, or local law which materially and adversely affects the ability of the Department to comply with the terms of this Agreement; or (2) failure to comply with any material requirements of this Agreement or with any requirements of the SFOMA that prevents SFRTA from fulfilling its obligations under this Agreement.

E. SFRTA Remedies. Upon the occurrence and continuance of any Event of Default on the part of the Department as defined above, SFRTA may exercise one or more of the following remedies:

1. SFRTA may institute legal proceedings against the Department to collect payment of any sum owned by the Department hereunder.

2. If a default has occurred that the Department has failed to cure after written notice thereof and a ninety (90) day opportunity to cure (or longer if the cure period is extended by SFRTA), SFRTA may institute legal proceedings against the Department to compel performance of any obligation required to be performed by the Department hereunder including, where appropriate, actions for specific performance and/or injunctive relief.

3. If a Default has occurred pursuant to this Section, above, and if SFRTA wishes to elect to terminate this Agreement, then SFRTA shall provide the Department with a written notice ("Termination Notice"). If the Department fails to cure the Default within ninety (90) days from receipt of the Termination Notice,, SFRTA shall have the unilateral right to terminate the Agreement and exercise all of the remedies hereunder and at law or in equity. However, if such obligation is of a nature that it could not reasonably be performed within ninety (90) days, such ninety (90) day period shall be extended so long as the Department institutes performance within such ninety (90) days and thereafter diligently and continuously pursues performance all being subject to force majeure. Any Termination Notice shall recite that SFRTA intends to pursue termination of the Agreement Notice if the Default is not cured. Termination shall be effective upon notice to that effect to the Department.

F. Whenever SFRTA has reason to believe that a Default under this Agreement by the Department will imminently occur if the Department fails to take the necessary action, SFRTA shall provide notice to the Department, stating with particularity the basis for its belief and shall detail the corrective actions SFRTA deems are necessary to prevent or mitigate the anticipated default including a schedule for such action ("Default Notice"). Prior to providing the Default Notice, SFRTA shall contact the Department in writing to set up a timeframe for a meeting between the parties ("Meeting Notice") and the parties agree to meet within ten (10) calendar days after receipt of the Meeting Notice by the Department. If the meeting fails to result in a resolution amenable to both

parties, SFRTA may provide the Default Notice as identified herein. In the event a Default does occur SFRTA may pursue its remedies as provided for herein.

SECTION 14. MISCELLANEOUS.

A. SFRTA shall utilize and expressly require any SFRTA contractors to use the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by SFRTA or its contractors during the term of this Agreement.

B. Subject to Section 768.28(10)(d), F.S., neither party is an agent of the other party for any purpose such as to bind or represent the interests thereof, nor shall either party represent that it is an agent or that it is acting on behalf of the other party, except as expressly provided. Neither party shall be bound by any unauthorized acts or conduct of the other party.

C. Neither party's employees are employees of the other party.

D. Neither party shall sell, assign, or otherwise transfer its rights and obligations under this Agreement without the prior written consent of the other party.

E. The parties agree to look solely to each other with respect to the performance of this Agreement. This Agreement and each and every provision of this Agreement is for the exclusive benefit of the Department and SFRTA and not for the benefit of any third party, and no third party shall be entitled to rely upon or enforce the terms of this Agreement, or to be a third party beneficiary thereof, except to the extent expressly provided in this Agreement.

F. Neither party shall in any event be responsible or held liable to the other for any indirect, incidental, special or consequential damages of any nature whatsoever, including liability for loss of use of property, loss of profits or other revenues, interest, increased expenses or business interruption, however the same may be caused, except as stated in Section 9.A.9 herein.

G. The parties agree to engage in mediation or other dispute resolution process prior to resorting to any litigation regarding this Agreement.

H. Unless otherwise agreed, the delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right under this Agreement.

I. Any changes, modifications, or deletions to this Agreement shall be in writing and with the same formality of execution as this Agreement.

J. The parties will, subsequent to the Effective Date, and without any additional consideration, execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate the purposes of this Agreement.

K. This Agreement and any amendments thereto, constitutes the full and complete agreement of the parties and supersedes any prior agreements, arrangements and communications, whether oral or written between the parties, with respect to the subject matter of this Agreement. Each party acknowledges that it is entering into the Agreement solely on the basis of the representations contained herein, and for its own purposes and not for the benefit of any third party.

L. Any notices required or permitted to be given under this Agreement shall be in writing (except those otherwise authorized herein to be given by telephone) and shall be deemed to have been given if: (1) if by telephone, when a discussion occurs between SFRTA and FDOT's Modal Development Administrator or his or her designee or (2) if in writing, when delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage-prepaid envelope, and addressed as follows:

If to SFRTA:
South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33rd Street
Pompano Beach, Florida 33064
Attn: Executive Director

With a copy to:
South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33rd Street
Pompano Beach, Florida 33064
Attn: General Counsel

If to the Department:
FDOT/District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309
Attn: Modal Development Administrator

With a copy to:
FDOT/District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309
Attn: District General Counsel

M. No funds received pursuant to this Agreement may be expended for lobbying the Federal and State Legislature or a state agency.

N. The Department and SFRTA agree to cooperate if the exercise of eminent domain power becomes necessary to acquire property for the commuter rail service in determining which agency will be the most appropriate governmental entity to exercise its authority. In the event that any condemnation authority institutes an action or proceeding for the condemnation of a portion of the Corridor, the Department and SFRTA agree to jointly and equally defend such action and shall attempt to prevent any taking that would make it more costly or less efficient to provide the commuter rail service.

O. If future federal, state, or local statute, ordinance, regulation, rule or court action renders this Agreement, wholly or in part, illegal, invalid, unenforceable or impractical, the Department and SFRTA agree to delete and/or to modify such portions of the Agreement as are necessary to render it valid, enforceable and/or practical. Each section, paragraph or provision of this Agreement shall be considered severable, and if for any reason any section, paragraph, or provision herein is determined to be invalid under current or future law, regulation or rule, such invalidity shall not impair the operations of or otherwise affect the valid portions of this Agreement.

P. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Venue for any action arising under this Agreement shall be in Leon County, Florida.

Q. This Agreement may be executed in duplicate and in counterparts.

R. This Agreement supersedes the extension of the 2006 Joint Participation Agreement between the parties, dated December 20, 2010 and any other agreements between the parties relating to the Department's grant to SFRTA of operating rights on the Corridor, except for the Temporary Relocation Agreement.

S. For the purposes of this Agreement, references to CSXT shall mean CSXT and any successor or assignee of CSXT's rights and responsibilities under SFOMA; and references to Amtrak shall mean Amtrak and any successor or assignee of Amtrak's rights and responsibilities under the Amtrak Agreement.

The remainder of this page intentionally left blank.

The parties have executed this Agreement on the date(s) below:

SFRTA:
South Florida Regional Transportation Authority,
a body politic and corporate and an agency of
the State of Florida

By: _____
Steven L. Abrams, Chair, SFRTA Governing Board

Date: 6/7/13

Attest:

_____
SFRTA Executive Director

Approved as to form and legal sufficiency:

_____
SFRTA General Counsel

DEPARTMENT:

State of Florida, Department of Transportation,
an Agency of the State of Florida

By: _____
James A. Wolfe, P.E., District Four Secretary

Date: 6/13/2013

Legal Review:

_____

Exhibit "A"
Corridor Description

The Corridor shall mean:

1. the Premises as described in the Warranty Deed dated May 11, 1988 between CSX Transportation, Inc. (the "Grantor") and the State of Florida Department of Transportation (the "Grantee") that was simultaneously recorded in Palm Beach, Broward and Miami-Dade counties (Counterparts 1 of 3, 2 of 3 and 3 of 3, respectively). Counterpart 1 of 3 was recorded in Official Record Book 5666, Page 8 of the Public Records of Palm Beach County, with the Supplemental Warranty Deed recorded in Official Record Book 6403, Page 1215; and as described on the Florida Department of Transportation Right of Way Maps prepared by Carnahan Engineers and approved 1/21/03. Counterpart 2 of 3 was recorded in Official Record Book 15424, Page 731, of the Public Records of Broward County, Florida, with the Supplemental Warranty Deed recorded in Official Record Book 17290, Page 887; and as described on the Florida Department of Transportation Right of Way Maps prepared by Keith and Schnars and approved on January 7, 2003. Counterpart 3 of 3 was recorded in Official Record Book 13675 Page 3540, of the Public Records of Miami-Dade County, with the Supplemental Warranty Deed recorded in Official Record Book 14491, Page 326; and as described on the Florida Department of Transportation Right of Way Maps prepared by Bechamps, Aylward and Associates and approved on November 25, 2002. Copies of the Right-of-Way maps are available either from South Florida Regional Transportation Authority ("SFRTA") at its administrative office at 800 NW 33rd Street, Pompano Beach, FL 33064, or from State of Florida Department of Transportation, District IV (the "Department"), at its administrative offices at 3400 West Commercial Blvd., Fort Lauderdale, Florida 33309; and

2. at such time as the Department acquires the portion of the rail corridor right-of-way from CSX Transportation, Inc., known as Parcel 146, as described in the Parcel Sketch dated July 9, 2011, and prepared by Florida Department of Transportation District 4 (5 Sheets). It shall become part of this Exhibit "A" and subject to the terms and conditions of this Operating Agreement; and

3. that as to the real property identified by the Department as Parcel and Right of Way No. 1(X&S-B) that is the subject of that Railroad Reimbursement Agreement dated September 9, 2008, among Florida Department of Transportation, CSX Transportation, Inc. ("CSX"), and Miami-Dade County, it is the intention of the Department and SFRTA that the track and grade crossing traffic control devices installed at Mile Post 1040.6 pursuant to that agreement (the "Perimeter Road

Grade Crossing") and that have been maintained by CSX since their installation shall be maintained by SFRTA, subject to the reimbursement requirements contained in Paragraph 3 of the agreement.

As supplements to the Corridor description, the parties have attached to this Exhibit "A" pages "A-1" through "A-7" taken from the Right-of-Way Maps showing improved parking areas located within the Corridor at the Deerfield Beach, Fort Lauderdale-Broward Boulevard, Hollywood, Opa-Locka and Hialeah Market passenger rail stations (the "Corridor Station Maintenance Areas"). These station areas are being maintained as the date of this Operating Agreement by SFRTA for the Department and are intended to provide a baseline for SFRTA's station maintenance responsibilities within the Corridor. Also, for informational purposes, pages "A-1" through "A-7" show other areas outside of the Corridor that are currently being maintained by SFRTA through its station maintenance contractor. The Corridor Station Maintenance Areas will continue to be maintained by SFRTA for the Department under the terms and conditions of this Operating Agreement. The attached supplements are not intended in any way to alter the legal descriptions of the Corridor as described in Section 1 or to alter SFRTA's responsibilities under the Operating Agreement or to limit SFRTA's obligations to maintain additional areas within the Corridor or additional improvements made to the Corridor pursuant to the terms of the Operation Agreement.

TAB 14

EXHIBIT 1

ORIGINAL

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL
AND YARD SERVICES

AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES

This is an Agreement, by and between SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY, hereinafter referred to as "SFRTA",

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK), a District of Columbia corporation, authorized to and doing business in the State of Florida, hereinafter referred to as "CONTRACTOR".

DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

a. Board. The Board and governing body of the SFRTA, created pursuant to Chapter 343, Florida Statutes (2003).

b. Contract Administrator. The Executive Director for SFRTA or appointed designee. In the administration of this Agreement, all parties may rely upon the instructions or determinations made by the Contract Administrator.

c. Contractor. The Contractor selected to perform the services pursuant to this Agreement is National Railroad Passenger Corporation (AMTRAK).

d. Project. Providing all services described in the Contract Documents.

e. Project Manager. A person supplied by SFRTA and the single point of contact for Contractor with SFRTA.

PREAMBLE

In order to establish the background, context, and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties herein, the following statements, representations, and explanations shall be accepted as predicated for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual consideration upon which this Agreement is based.

- A Request for Proposal was advertised by SFRTA as RFP No. 06-101, for TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES, and CONTRACTOR was determined to be the most qualified responsive and responsible respondent.

CONTRACTOR covenants and agrees to perform all obligations of CONTRACTOR set forth in this Agreement and in the documents listed below, which documents are incorporated herein by reference and which documents together with this Agreement are hereinafter called "Contract Documents".

RFP Requirements and Instructions to Contractors
General Terms and Conditions
Special Terms and Conditions
Scope of Work
Definition of Terms
Advertisement
All Exhibits and Attachments
Addendum No. 1 - 3
Contractor's Proposal
Proposal Form
Price Proposal Form
Contractor's Qualification Certification
Key Employee Certification
DBE Participation Schedule
Drugfree Workplace Certification
Debarment & Suspension Certification
Certification of Restriction on Lobbying
Truth in Negotiation Certificate
Declaration of Non-Collusion Certification
Schedule of Subcontractors
Intent to Perform as a Subcontractor
Certificate of Disbursement of Previous Periodic Payment to Subcontractors
Subcontractors Certificate of Previous Payment
Monthly Subcontractor Utilization Report
Monthly Employee Utilization Report

TERM

The period of performance shall be for a term of five (5) years from the Service Commencement Date, with SFRTA's sole option to renew for an additional five (5) one (1) year option periods.

COMPENSATION

SFRTA agrees to pay the CONTRACTOR compensation as specified in the CONTRACT DOCUMENTS the total not-to-exceed amount of Fifteen Million Eight Hundred Nine Thousand Two Hundred Ninety-three Dollars ($15,809,293.00), which includes a maximum potential On-Time Performance Incentive of $100,000.00 per year.

ADDRESSES

CONTRACTOR:

National Railroad Passenger Corporation (AMTRAK)
60 Massachusetts Avenue, N.E.
Washington DC 20002

Attn: Gilbert Mallery

SFRTA:

South Florida Regional Transportation Authority (SFRTA)
800 N.W. 33 Street
Suite 100
Pompano Beach, FL 33064

Attn: Bradley Barkman

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective date under each signature: **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** signing by and through its PRESIDENT & CEO, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, signing by and through its Chair, authorized to execute same by Board action on the 24 day of JANUARY, 2007.

SFRTA

ATTEST:

JOSEPH GIULIETTI
EXECUTIVE DIRECTOR

SOUTH FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By
COMMISSIONER BRUNO BARREIRO, CHAIR

26 DAY OF JANUARY, 2007

(SFRTA SEAL)

Approved as to form by:

CHRIS BROSS, Director
Procurement

GREENBERG TRAURIG, P.A.
General Counsel, SFRTA

ATTEST:

WITNESS

NATIONAL RAILROAD PASSENGER CORP.
(AMTRAK)

PRESIDENT OR VICE-PRESIDENT

24th DAY OF January, 2007

(Corporate Seal)

PRICE PROPOSAL FORM
RFP NO. 06-101 TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES

TO BE SUBMITTED IN A SEPARATE SEALED ENVELOPE

For each Contract Year, including Option Years, Proposers shall detail:

a) Monthly 24/7 Dispatcher cost
b) Monthly Contract Manager costs
c) Monthly costs not identified in a and b
d) Optional payment for Section 13(c) labor protection obligations (triggered only in the event that Contractor actually incurs any obligation to pay any such cost).

Proposers shall also included a one-line Mobilization Price.

YEAR 1

a	Monthly Dispatcher 24/7 coverage costs	197,158 X	12	=	2,365,900
b	Monthly Contract Manager costs	23,044 X	12	=	276,534
c	Monthly cost not identified in a and b	1,754 X	12	=	21,043
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
1	**YEAR 1 TOTAL (sum a + b + c + d + e)**			=	**$2,763,477**

YEAR 2

a	Monthly Dispatcher 24/7 coverage costs	204,422 X	12	=	2,453,065
b	Monthly Contract Manager costs	23,893 X	12	=	286,722
c	Monthly cost not identified in a and b	1,806 X	12	=	21,674

d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
2	**YEAR 2 TOTAL (sum a + b + c + d ± e)**			=	**$2,861,461**

YEAR 3

a	Monthly Dispatcher 24/7 coverage costs	211,971	X 12	=	2,543,655
b	Monthly Contract Manager costs	24,776	X 12	=	297,310
c	Monthly cost not identified in a and b	1,860	X 12	=	22,325
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
3	**YEAR 3 TOTAL (sum a + b + c + d ± e)**			=	**$2,963,289**

YEAR 4

a	Monthly Dispatcher 24/7 coverage costs	219,818	X 12	=	2,637,812
b	Monthly Contract Manager costs	25,693	X 12	=	308,316
c	Monthly cost not identified in a and b	1,916	X 12	=	22,994
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
4	**YEAR 4 TOTAL (sum a + b + c + d ± e)**			=	**$3,069,122**

YEAR 5

a	Monthly Dispatcher 24/7 coverage costs	227,974	X 12	=	2,735,686
b	Monthly Contract Manager costs	26,646	X 12	=	319,755
c	Monthly cost not identified in a and b	16,812	X 12	=	201,745
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
5	**YEAR 5 TOTAL (sum a + b + c + d + e)**			=	**$3,357,186**

OPTION YEAR 6

a	Monthly Dispatcher 24/7 coverage costs	236,453	X 12	=	2,837,433
b	Monthly Contract Manager costs	27,637	X 12	=	331,648
c	Monthly cost not identified in a and b	2,033	X 12	=	24,395
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
6	**YEAR 6 TOTAL (sum a + b + c + d + e)**			=	**$3,293,476**

OPTION YEAR 7

a	Monthly Dispatcher 24/7 coverage costs	245,268	X	12	= 2,943,216
b	Monthly Contract Manager costs	28,668	X	12	= 344,012
c	Monthly cost not identified in a and b	2,094	X	12	= 25,127
d	Maximum Potential On-Time Performance Incentive				= $100,000
e	Optional payment for Section 13(c) labor protection obligation				= 0
7	**YEAR 7 TOTAL (sum a + b + c + d + e)**				= **$3,412,355**

OPTION YEAR 8

a	Monthly Dispatcher 24/7 coverage costs	254,434	X	12	= 3,053,207
b	Monthly Contract Manager costs	29,739	X	12	= 356,868
c	Monthly cost not identified in a and b	2,157	X	12	= 25,880
d	Maximum Potential On-Time Performance Incentive				= $100,000
e	Optional payment for Section 13(c) labor protection obligation				= 0
8	**YEAR 8 TOTAL (sum a + b + c + d + e)**				= **$3,535,955**

OPTION YEAR 9

a	Monthly Dispatcher 24/7 coverage costs	263,965	X	12	= 3,167,581
b	Monthly Contract Manager costs	30,853	X	12	= 370,237

c	Monthly cost not identified in a and b	2,221	X 12	=	26,657
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
9	**YEAR 9 TOTAL (sum a + b + c + d + e)**			=	**$3,664,475**

OPTION YEAR 10

a	Monthly Dispatcher 24/7 coverage costs	273,877	X 12	=	3,286,526
b	Monthly Contract Manager costs	32,012	X 12	=	384,139
c	Monthly cost not identified in a and b	2,288	X 12	=	27,456
d	Maximum Potential On-Time Performance Incentive			=	$100,000
e	Optional payment for Section 13(c) labor protection obligation			=	0
10	**YEAR 10 TOTAL (sum a + b + c + d + e)**			=	**$3,798,121**

Base Agreement Total (Years 1 thru 5)	=	**$15,014,536**
Option Agreement Total (Years 6 thru 10)	=	**$17,704,382**
Mobilization Price	=	**$794,757**
Total Cost (Base Agreement, Option Years and Mobilization)	=	**$33,513,675**

Amtrak
Contractor

Gilbert O. Mallery — Vice President Contract Administration
Authorized Person (Print or Type) — Title

60 Massachusetts Avenue, NE; Washington, DC 20002
Address

(202) 906-2372 — (202) 906-2085
Telephone — Fax

Signature

City of Washington
~~XXXXXX~~
District of Columbia
~~State of~~

Affix Corporate Seal
(If Applicable)

The foregoing instrument was acknowledged before me on this 1 day of January, 2007

By Gilbert O. Mallery

___ An individual acting in their own right;

X Vice President Contract Administration (Title) of Amtrak (Corporation/Company)

a D.C. (State) Corporation, on behalf of the corporation.

___ Acknowledging partner/agent on behalf of _____ a partnership. (Name of partnership)

This person is personally known me ~~or~~ and has produced OREGON DRIVERS LICENSE as identification and did/did not take an oath.

Signature of Person Taking Acknowledgment — NOTARY PUBLIC, DC

Place Notary Seal Here

In lieu of Stamp: _____ Type or Print Name — _____ Title

_____ Expiration Date

MY COMMISSION EXPIRES
JULY 31, 2009

EXHIBIT 1

ORIGINAL

RECEIVED
MAR 3 1 2009
OPERATIONS

RECEIVED
MAR 0 4 2009
EXECUTIVE OFFICE

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

FIRST AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
FOR

TRANSITION, DISPATCHING, TRAIN CONTROL
AND YARD SERVICES

FIRST AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES

This First Amendment to the Agreement for Transition, Dispatching, Train Control and Yard Services, is between **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,** an agency of the State of Florida, hereinafter referred to as **"SFRTA"** and **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** hereinafter referred to as **"CONTRACTOR".**

WHEREAS, on January 26, 2007, **CONTRACTOR** and **SFRTA** entered into a five year Agreement hereinafter referred to as "Agreement" in the total not-to-exceed amount of $15,809,293.00; and

WHEREAS, as a result of CONTRACTOR currently performing only Phase 1 train traffic control services over the New River Bridge Corridor, both parties wish to amend the Agreement to reflect a reduction in the Phase 1 staffing levels required to perform the work and also to reflect a reduction in compensation regarding the reduction in staff;

NOW THEREFORE:

IN CONSIDERATION of the promises, mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree to amend the Agreement as follows:

1. During Phase 1 Services only, Paragraph 3 of **Section 4.3.1 of the Scope of Services, "Staffing for Contract Services"** is amended as follows:

The Contractor shall provide one (1) additional person, ~~during all hours that Commuter trains are operating in revenue service~~ on non-holiday weekdays between the hours of 6:30 a.m. and 10:30 p.m., or other hours as may be mutually agreed to by the parties.

2. During Phase 1 Services only, **Section 4.1.1 of the Contractor's Technical Proposal** is amended to reduce the number of Supervisor, Commuter Operations positions from 10 to 8.

3. **Section 3.2.4 of the Special Terms and Conditions, "Payment"** is amended to include the following:

   During Phase 1 Services the monthly invoice amount will be adjusted to reflect the reduction in the number of Supervisor, Commuter Operations positions. Line item (a) "Monthly Dispatcher 24/7 coverage costs" will be reduced proportional to the reduction in the number of Supervisor, Commuter Operations positions.

4. During Phase 1 Services only, Paragraph 2 of **Section 3.11.7 of the Special Terms and Conditions, "Management Penalties"** is amended as follows:

   If SFRTA determines to assess a penalty, Contractor's invoice payment will be reduced by $500.00 per shift per day for failure to provide ~~two people,~~ a Train Dispatcher ~~and a Yardmaster/Supervisor,~~ as detailed in the Scope of Services.

5. Paragraph 5 of **Section 4.1 of the Scope of Services, "General"** is amended as follows:

   It is anticipated that the Contractor shall have three (3) months from Notice to Proceed to ~~the Full Service Phase for Transition~~ Phase 1 Services. ~~Service under the Dispatching, Train Traffic Control and Yard Agreement will follow immediately~~. SFRTA will provide the Contractor a minimum of ten (10) months notice prior to proceeding with full dispatching services in order to allow the Contractor sufficient time to mobilize additional staff.

Except to the extent modified by this First Amendment, the Agreement shall remain in full force and effect. In the event of any conflict between the terms of this First Amendment to the Agreement and the Agreement, the parties hereby agree that this First Amendment to the Agreement shall control.

IN WITNESS WHEREOF, the parties have made and executed this First Amendment to the Agreement on the respective date under each signature: **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** signing by and through its _____, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY**, signing by and through its Chair, authorized to execute same by Board action on the 27th day of March, 2009.

SFRTA

ATTEST:

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

JOSEPH GIULIETTI
EXECUTIVE DIRECTOR

By _____
JOSEPHUS EGGELLETON, JR., CHAIR

27th DAY OF March, 2009

(SFRTA SEAL)

Approved as to form by:

CHRIS BROSS, Director
Procurement

GREENBERG TRAURIG, P.A.
General Counsel, SFRTA

ATTEST:

NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)

WITNESS

PRESIDENT OR VICE-PRESIDENT

23 DAY OF February, 2009

(Corporate Seal)

Approved as to form by:

Amtrak Law Department

EXHIBIT 1

ORIGINAL

RECEIVED
AUG 1 2 2009
EXECUTIVE OFFICE

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

SECOND AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL
AND YARD SERVICES

SECOND AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES

This Second Amendment to the Agreement for Transition, Dispatching, Train Control and Yard Services, is effective May 1, 2009, between **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,** an agency of the State of Florida, hereinafter referred to as **"SFRTA"** and **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** hereinafter referred to as **"CONTRACTOR".**

WHEREAS, on January 26, 2007, **CONTRACTOR** and **SFRTA** entered into a five year Agreement hereinafter referred to as "Agreement" in the total not-to-exceed amount of $15,809,293.00; and

WHEREAS, on March 27, 2009, the First Amendment to the Agreement between **CONTRACTOR** and **SFRTA** was executed to reduce the staffing levels for Phase 1 dispatching services by two positions and also to reflect a reduction in compensation; and

WHEREAS, as a result of **CONTRACTOR** currently performing only Phase 1 train traffic control services over the New River Bridge Corridor, **SFRTA** wishes to amend the Agreement to remove an additional Phase 1 dispatching position and also to reflect a reduction in compensation;

NOW THEREFORE:

IN CONSIDERATION of the promises, mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree to amend the Agreement as follows:

1. During Phase 1 Services only, **Section 4.1.1 of the Contractor's Technical Proposal** is amended to reduce the number of Supervisor, Commuter Operations positions from 8 to 7.

2. Paragraph 2 of **Section 3.2.4 of the Special Terms and Conditions, "Payment"** is amended to read as follows:

   During Phase 1 Services the monthly invoice amount will be adjusted to reflect the reduction in the number of Supervisor, Commuter Operations positions. For the reduction of two positions, Line item (a) "Monthly Dispatcher 24/7 coverage costs" will be reduced proportional to the reduction in the number of Supervisor, Commuter Operations positions. For the reduction of the third position, Contractor will reduce the annual cost by $150,110.00, which is to be prorated on each monthly invoice.

Except to the extent modified by this Second Amendment, the Agreement shall remain in full force and effect. In the event of any conflict between the terms of this Second Amendment to the Agreement and the Agreement, the parties hereby agree that this Second Amendment to the Agreement shall control.

IN WITNESS WHEREOF, the parties have made and executed this Second Amendment to the Agreement on the respective date under each signature: **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** signing by and through its VICE PRESIDENT, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,** signing by and through its Chair, authorized to execute same by Board action on the 25 day of AUGUST, 2009.

SFRTA

ATTEST:

JOSEPH GIULIETTI
EXECUTIVE DIRECTOR

SOUTH FLORIDA REGIONAL
TRANSPORTATION AUTHORITY

By
COMMISSIONER JOHN F. KOONS, CHAIR

28TH DAY OF AUGUST, 2009

(SFRTA SEAL)

Approved as to form by:

CHRIS BROSS, Director
Procurement

GREENBERG TRAURIG, P.A.
General Counsel, SFRTA

ATTEST:

WITNESS

NATIONAL RAILROAD PASSENGER CORP.
(AMTRAK)

PRESIDENT OR VICE-PRESIDENT

10 DAY OF August, 2009

(Corporate Seal)

Approved as to form by:

Amtrak Law Department

THIRD AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL
AND YARD SERVICES

THIRD AMENDMENT TO AGREEMENT NO. 06-101

BETWEEN

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

AND

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

FOR

TRANSITION, DISPATCHING, TRAIN CONTROL AND YARD SERVICES

This Third Amendment to the Agreement for Transition, Dispatching, Train Control and Yard Services is effective April 17, 2013 ("Amendment #3), between **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,** an agency of the State of Florida, hereinafter referred to as **"SFRTA"** and **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** hereinafter referred to as **"CONTRACTOR".**

WHEREAS, on January 26, 2007, **CONTRACTOR** and **SFRTA** entered into a five year Agreement hereinafter referred to as "Agreement" in the total not-to-exceed amount of $15,809,293.00 for the initial five year term; and

WHEREAS, on March 27, 2009, the First Amendment to the Agreement between **CONTRACTOR** and **SFRTA** ("Amendment #1) was executed to reduce the staffing levels for Phase 1 dispatching services by two positions and also to reflect a reduction in compensation but the not-to-exceed contract amount remains the same; and

WHEREAS, on May 1, 2009, the Second Amendment to the Agreement between **CONTRACTOR** and **SFRTA** ("Amendment #2") was executed to reduce the staffing levels for Phase I dispatching services further by one position and also to reflect a reduction in compensation but the not-to-exceed contract amount remains the same; and

WHEREAS, SFRTA has previously exercised its options to extend the term of the Agreement for two consecutive one year terms so that the Agreement is currently in Contract Year 7; and

WHEREAS, as a result of SFRTA initiating commuter rail service to the Miami Intermodal Center (MIC) anticipated to occur in 2013, and SFRTA's future responsibilities to dispatch the entire South Florida Rail Corridor (SFRC), **SFRTA** wishes to amend the Agreement for **CONTRACTOR,** to provide dispatching services to and from the MIC, MP 1037.5 to a point that CSXT control begins at MP 1036.8 in accordance with the terms and conditions set forth herein. .

NOW THEREFORE:

IN CONSIDERATION of the promises, mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto agree to amend the Agreement as follows:

1. Paragraph 3 of **Section 4.3.1 of the Scope of Services, "Staffing for Contract Services"** is amended as follows:

   The Contractor shall provide one (1) additional person, during all hours that Commuter trains are operating in revenue service. ~~on non-holiday weekdays between the hours of 6:30 a.m. and 10:30 p.m., or other hours as may be mutually agreed to by the parties.~~

2. Paragraph 2 of **Section 3.11.7 of the Special Terms and Conditions, "Management Penalties"** is amended as follows:

   After the initiation of dispatching services to and from the MIC, MP 1037.5 to a point that CSXT control begins at MP 1036.8, and for the duration of full dispatching services, if SFRTA determines to assess a penalty, Contractor's invoice payment will be reduced by $500.00 per shift per day for failure to provide two people, a Train Dispatcher and a Yardmaster/Supervisor, as detailed in the Scope of Services.

3. Paragraph 6 of **Section 4.1 of the Scope of Services, "General"** is added as follows:

   Within ten (10) months of the execution date of Amendment #3, Contractor shall provide dispatching services to and from the MIC, MP 1037.5 to a point that CSXT control begins at MP 1036.8. Full dispatching services, estimated to begin on or about June 1, 2014, shall commence upon written notice from SFRTA to Contractor.

4. **Section 4.1.1 of the Contractor's Technical Proposal** is amended to reinstate the number of Supervisor, Commuter Operations positions from 7 currently to 10.

5. Paragraph 2 of **Section 3.2.4 of the Special Terms and Conditions, "Payment"** is amended to read as follows:

   Upon execution of Amendment #3 and completion of staffing for each vacant position, the monthly invoice amount will be adjusted to reflect the re-instatement in the number of Supervisor, Commuter Operations positions from 7 (prior to execution of Amendment #3) to 10. Upon the re-instatement of the first two positions, Line item (a) "Monthly Dispatcher 24/7 coverage costs" will be increased proportionally to the number of Supervisor, Commuter Operations positions reinstated ($24,527 monthly for each position in Contract Year 7). The

reinstatement of both positions will result in a total monthly invoice amount of $263,521 for Contract Year 7. Upon the re-instatement of the third position, the total monthly invoice amount will return to the original values in Contractor's Price Proposal Form for Contract Year 7 of $276,030.

Both parties agree that nothing in Amendment #3 is intended to increase the annual compensation for the Contractor above that of the annual Base Compensation for Dispatching/Yard Master Services provided for in the Agreement.

Except to the extent modified by this Third Amendment, the Agreement shall remain in full force and effect. In the event of any conflict between the terms of this Third Amendment to the Agreement and the Agreement, the parties hereby agree that this Third Amendment to the Agreement shall control.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have made and executed this Third Amendment to the Agreement on the respective date under each signature: **NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK),** signing by and through its Vice President-Operations, duly authorized to execute same and **SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY,** signing by and through its Executive Director, authorized to execute same on the 17 day of APRIL, 2013.

SFRTA

ATTEST:

WITNESS

SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY

By: JOSEPH GIULIETTI, Executive Director

17 DAY OF April, 2013

(SFRTA SEAL)

Approved as to form by:

CHRIS BROSS, Director
Procurement

TERESA MOORE, General Counsel

ATTEST:

WITNESS

NATIONAL RAILROAD PASSENGER CORP. (AMTRAK)

DJ STADTLER, Vice President, Operations

8 DAY OF April, 2013

(Corporate Seal)

Approved as to form by:

ELISSA GALLO, Associate General Counsel
Amtrak Law Department

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2014, a copy of the foregoing **Petition for Declaratory Order of Florida Department of Transportation** was served by first-class mail, postage prepaid, upon:

Peter J. Shudtz, Esq.
Senior Vice President - Regulatory Affairs
and Washington Counsel
CSX Transportation, Inc.
1331 Pennsylvania Avenue, N.W.
Suite 560
Washington, DC 20004

Charles A. Spitulnik, Esq.
Kaplan Kirsch & Rockwell LLP
1001 Connecticut Avenue, N.W.
Suite 800
Washington, DC 20036
Counsel for South Florida Regional Transportation Authority

Eleanor D. Acheson, Esq.
Vice President, General Counsel and
Corporate Secretary
National Railroad Passenger Corporation
60 Massachusetts Avenue, N.E.
Washington, DC 20002

Thomas J. Litwiler