EXHIBIT D
INTERLOCAL AGREEMENT
CITY OF WINTER PARK
INTERLOCAL AGREEMENT

between the

CITY of WINTER PARK, FLORIDA

and

ORANGE COUNTY, FLORIDA

regarding the

CENTRAL FLORIDA COMMUTER RAIL TRANSIT SYSTEM

Approved by the City of Winter Park
City Commission

April 30, 2007

Approved by the Orange County
Board of County Commissioners

_____ , 2007
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INTERLOCAL AGREEMENT
between the
CITY of WINTER PARK and ORANGE COUNTY
regarding the
CENTRAL FLORIDA COMMUTER RAIL TRANSIT SYSTEM

This Interlocal Agreement ("Agreement") is made by and between the City of Winter Park, a municipality existing under the laws of the State of Florida (the "City"), and Orange County, Florida, a political subdivision and charter county of the State of Florida (the "County").

* * *

WHEREAS, the Florida Department of Transportation ("FDOT") is undertaking the development and implementation of the Central Florida Commuter Rail Transit System (the "CFCRT" or "Commuter Rail System") running through Orange County, including the City of Winter Park; and

WHEREAS, the FDOT and CSX Transportation, Inc. ("CSXT") have entered into a Non-Binding Consolidated Term Sheet Contract of Sale, dated August 2, 2006, providing for the acquisition by FDOT from CSXT of the railroad corridor known as CSXT's A-Line between Milepost A749.7 near DeLand, Florida and Milepost A814.1 near Poinciana, Florida, a distance of approximately 61.554 miles, (the "Corridor") for the use of the Commuter Rail System; and

WHEREAS, FDOT and CSXT are currently negotiating a Central Florida Operating
Management Agreement establishing operating windows for passenger rail and freight operations within the Corridor and providing for use and maintenance of the Corridor; and

WHEREAS, the CFCRT will be located on the "A" rail line of CSX Transportation, Inc., which rail line runs through Volusia County, Seminole County, Orange County and Osceola County; and

WHEREAS, FDOT is in the process of making application to the Federal Transit Administration ("FTA") and Congress for capital funds, commonly referred to as New Starts funding, to provide a portion of the funds necessary for the planning, design, right-of-way acquisition, construction, and operation of the proposed commuter rail service on the CFCRT; and

WHEREAS, Federal New Starts funding and other Federal funding will require a fifty percent (50%) match of Federal funds with State and local funds for capital costs, which will be shared among FDOT, Orange County, Osceola County, Seminole County, Volusia County and the City of Orlando pursuant to a Master Interlocal Agreement; and

WHEREAS, the most recent draft of the Master Interlocal Agreement, entitled "Interlocal Agreement for Development and Operation of the Central Florida Commuter Rail Transit System and Creation of the Central Florida Commuter Rail Commission", is attached hereto as "Exhibit A"; and

WHEREAS, the County will pay a share of the total local match of Capital Costs, Local Operating Support Costs, and Fixed Guideway Bond Debt Service for the CFCRT; and

WHEREAS, in accordance with the Central Florida Commuter Rail Environmental Assessment and the Master Interlocal Agreement, several stations shall be located within Orange County, one of which is proposed to be located within the jurisdictional boundaries of the City of
WHEREAS, implementation of the Commuter Rail System will result in overall social and environmental benefits, improve the quality of life in the State, stimulate economic growth, create new employment opportunities, and serve as a positive growth management catalyst; and

WHEREAS, substantial population and employment growth continues in Orange County and in the City of Winter Park with an increase in congestion and a decrease in mobility along the existing road transportation networks; and

WHEREAS, the Commuter Rail System will greatly benefit all of the citizens of and visitors to the Central Florida area and is needed in order to relieve traffic congestion, and provide transportation opportunities; and

WHEREAS, the CFCRT is intended to provide a reliable high capacity transportation option for commuters who travel on Interstate 4 and parallel transportation corridors; and

WHEREAS, on March 13, 2007 the voters of the City of Winter Park voted by referendum to allow the use of City funds and City land for a Commuter Rail System station to be located within the City limits; and

WHEREAS, the City and the County desire to enter into this Agreement in order to set forth the covenants, terms, and conditions pursuant to which they will assist in funding the construction and operation of the CFCRT for the benefit of the Winter Park Station; and

WHEREAS, the City has authority pursuant to Section 166.021, Florida Statutes, to enter into agreements; and

WHEREAS, the County has authority pursuant to Section 125.01, Florida Statutes, to enter into agreements; and

WHEREAS, the City and County have authority pursuant to Section 163.01, Florida
Statutes, to enter into interlocal agreements; and

WHEREAS, the City and the County have negotiated this Agreement in the spirit of cooperation in order to develop a partnership designed to maximize the efficient utilization of public resources for the CFCRT for the benefit of the public health, safety and welfare.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Agreement, the City and the County agree as follows:

Article 1. Recitals

The foregoing recitals are true and form a material part of this Agreement.

Article 2. Definitions

As used in this Agreement, the following terms used in this Agreement shall be defined as follows:

The term "Corridor" shall mean the transportation corridor through which the Commuter Rail System will operate, as described in the Master Interlocal Agreement, and specifically includes the platform and track used for the Commuter Rail System.

The term "Governing Board" shall mean the governing body of the Central Florida Commuter Rail System established under the Master Interlocal Agreement.

The term "Master Interlocal Agreement" shall mean the Interlocal Agreement for Development and Operation of the Central Florida Commuter Rail Transit System and Creation of the Central Florida Commuter Rail Commission (a draft of which is attached hereto as "Exhibit A").

For purposes of this Agreement, the term "Station" shall include all the components generally described in "Exhibit C."
All capitalized terms not otherwise defined in this Article 2 shall have the meanings as set forth in the Master Interlocal Agreement.

Article 3. Representations

The City and County each hereby represents and warrants to the other its respective authority and power under Florida law to enter into this Agreement.

Article 4. City's development and operational rights

(a) The City shall have exclusive authority and sole discretion to make improvements or to establish ancillary facilities at or near the Station, provided such improvements or ancillary facilities do not materially adversely affect the Station or Commuter Rail System, and to grant allowable development rights, or to enter into agreements with landowners in the vicinity of the Station that could produce revenue for the City, should the City desire to take these acts. Nothing in this Agreement diminishes the City's right to control land development which the City holds over the land within its jurisdiction and corporate limits. The parties hereby affirm that the City retains control over all such land use decisions and the County shall not gain any control over those decisions by virtue of this Agreement.

In addition to and without limitation of the foregoing, the following specific policy areas have been reserved for the sole determination of the City and are therefore excluded from oversight, control or action under this Agreement:

- any policy governing Station amenity charges and other revenue sources, provided no such policy or charge materially adversely affects the Commuter Rail System; and
- any policy governing development opportunities at or near the Station, provided that no such policy or development materially adversely affects the Commuter Rail System, or restricts vehicular or pedestrian access to the Station; and
the color, finishes, materials, landscaping, traffic flow, and location of the Station, provided no such action materially adversely affects the Commuter Rail System or restricts pedestrian or vehicular access to the Station.

(b) The parties acknowledge that, prior to initiation of service, the County and other parties to the Master Interlocal Agreement will assist the FDOT in developing a safety and security plan for the Commuter Rail System. For the FDOT funding period, the parties acknowledge that FDOT shall be solely responsible for security on the Commuter Rail System pursuant to the terms of the Master Interlocal Agreement. Upon expiration of the FDOT funding period, the City agrees to be responsible for the costs of providing security at the Station located within its municipal boundaries; provided that the City shall determine in its sole discretion the level of security needed, staffing, and all other matters related to said security, and the City shall not be required to provide any particular level or type of security unless the City deems it appropriate to do so.

(c) Nothing in this Agreement constitutes a commitment by the City to agree to the location of a Station outside the railroad right-of-way, or to the specific location of a Station even within the right-of-way, pending review and acceptance by the City of the final “footprint” location of the proposed Station.

Article 5. Financial Obligations

Section 5.1 County’s obligations

(a) Capital Costs: Pursuant to the terms of the Master Interlocal Agreement, the County is obligated to pay to the FDOT the County’s fair share of the capital costs of the CFCRT (estimated at “Exhibit B” attached hereto).
(b) Local Operating Support Costs: Pursuant to the Master Interlocal Agreement, the County shall incur no obligation to pay Local Operating Support Costs for the FDOT funding period; however, upon expiration of the FDOT funding period, the County is obligated to pay its share of the Local Operating Support Costs of the CFCRT, such share to be determined as described in the Master Interlocal Agreement, attached hereto.

(c) Fixed Guideway Bond Debt Service: Pursuant to the Master Interlocal Agreement, the County shall incur no obligation to pay Fixed Guideway Bond Debt Service for the FDOT funding period; however, upon expiration of the FDOT funding period, the County is obligated to pay its share of the Fixed Guideway Bond Debt Service, such share to be determined as described in the Master Interlocal Agreement, attached hereto.

(d) Pursuant to the terms of this Agreement, commencing upon expiration of the FDOT funding period, the County agrees to pay thirty percent (30%) of the City’s Local Operating Support Costs and Fixed Guideway Bond Debt Service as provided in Section 5.3(b) and 5.3(c), respectively.

Section 5.2 City’s obligations

(a) Capital Costs: Notwithstanding the County’s obligation to pay Capital Costs pursuant to the Master Interlocal Agreement (see Section 5.1(a) of this Agreement), the City is obligated and bound hereunder to timely pay to the County all of the Capital Costs related to the development of the Winter Park Station. The estimated Capital Costs to be paid by the City are as listed on “Exhibit C,” attached hereto.

(b) Local Operating Support Costs: The City shall incur no obligation to pay Local Operating Support Costs during the FDOT funding period; however, upon expiration of the FDOT funding period, notwithstanding the County’s obligation to pay Local Operating
Support Costs pursuant to the Master Interlocal Agreement (see Section 5.1(b) of this Agreement), the City is obligated and bound hereunder to timely pay to the Governing Board or designee one hundred percent (100%) of the Local Operating Support Costs for the CFCRT allocated to the City pursuant to the formula set forth in the Master Interlocal Agreement, attached hereto.

(c) Fixed Guideway Bond Debt Service: The City shall incur no obligation to pay Fixed Guideway Bond Debt Service costs for the FDOT funding period; however, upon expiration of the FDOT funding period, notwithstanding the County’s obligation to pay Fixed Guideway Bond Debt Service pursuant to the Master Interlocal Agreement (see Section 5.1(c) of this Agreement), the City is obligated and bound hereunder to timely pay to the FDOT one hundred percent (100%) of the Fixed Guideway Bond Debt Service costs, as provided in the Master Interlocal Agreement, attached hereto, for the CFCRT track miles within the City’s municipal boundaries.

Section 5.3 Time and method of payments

(a)(1) The City shall remit to the County the City’s share of the County’s obligation for Capital Costs for the Station, pursuant to the Master Interlocal Agreement, on or before thirty (30) days prior to the date on which the County must make its payment of the Capital Costs for the Station.

(a)(2) Notwithstanding the foregoing, in the event that the FDOT receives such Capital Cost funding directly on behalf of the City, the City’s obligation under subsection 5.3(a)(1) shall be deemed satisfied to the extent of funding received by FDOT.

(b) Commencing upon expiration of the FDOT funding period, the City shall be obligated and bound hereunder to timely pay its share of Local Operating Support Costs directly
to the Governing Board or designee. Following payment by the City to the Governing Board of the City’s share of Local Operating Support Costs, upon written notice to the County, the County shall reimburse the City in an amount equal to thirty percent (30%) of the Local Operating Support Costs paid by the City. Reimbursement shall occur within forty-five (45) days of County’s receipt of notice and pursuant to Section 5.2(b).

(c) Commencing upon expiration of the FDOT funding period, the City shall be obligated and bound hereunder to timely pay its share of Fixed Guideway Bond Debt Service. Following payment by the City to the FDOT of the City’s share of Fixed Guideway Bond Debt Service, upon written notice to the County, the County shall reimburse the City in an amount equal to thirty percent (30%) of the Fixed Guideway Bond Debt Service paid by the City. Reimbursement shall occur within forty-five (45) days of County’s receipt of notice and pursuant to Section 5.2(c).

(d) If a dedicated funding source for all financial costs and obligations placed upon the City hereunder is secured, the City shall be relieved hereunder from all such financial costs and obligations so long as such dedicated funding source exists.


Section 6.1 Term of agreement

This Agreement shall continue in full force and effect and be binding upon the parties for a period of ninety nine years unless sooner terminated as provided herein.

Section 6.2 Termination

(a) This Agreement shall automatically terminate if the Master Interlocal Agreement is not executed by all parties on or before August 31, 2007.
(b) If the City does not receive Federal or State funds in an amount sufficient (less any required local match) to construct the Station the City may terminate this Agreement so long as the County receives written notice of termination pursuant to this paragraph within 15 days of the County's notification to the City that the County's second major installment is due to the FDOT.

(c) If the Station location, design, or revised estimated Capital Costs (see Section 5.2(a)) do not meet the approval of the City Commission, the City may terminate this Agreement with thirty (30) days notice to the County. However, the City's decision to terminate this Agreement, pursuant to this subsection, shall be made, if at all, not later than thirty (30) days following the end of thirty percent (30%) preliminary design so long as the thirty percent (30%) preliminary design establishes the precise location and footprint of the Station. If such preliminary design does not, then this date shall be extended until such time as that location and footprint are established. In addition, if this termination right is exercised by the City, the City shall reimburse the County, the FDOT, and the FTA for any monies expended on the design of the Winter Park Station. These monies shall be reimbursed within thirty (30) days of the City terminating this Agreement. This obligation of the City under this subsection shall survive termination of this Agreement.

(d) Within sixty (60) days of the date of expiration of the FDOT funding period, the City may terminate this Agreement with thirty (30) days notice to the County upon the occurrence of both of the following conditions:

(1) A dedicated funding source to defray the Local Operating Support Costs and the Fixed Guideway Bond Debt Service costs for the Commuter Rail System has not been secured; and

(2) The decision to terminate is made by a majority vote of the City Commission.
Upon termination of this Agreement as set forth in this subsection, the City shall close the Station and the Commuter Rail System shall cease providing services to such Station. Upon termination, the obligations of the City as described at sections 5.2(b) and 5.2(c) of this Agreement shall immediately cease, provided, however, upon such termination the City shall indemnify and hold harmless the County from any obligation to refund, reimburse or repay, pursuant to their terms, any Federal or State funds and/or grants that were used to construct or permit the Station or parking areas constructed to serve the Station within the City. The obligations of the City under this subsection shall survive termination of this Agreement. It is the intention of the Parties that this indemnification provision shall be specifically limited to obligations which would not otherwise have existed had the Station not been constructed.

Section 6.3. Enforcement; remedies

This Agreement (and any part of this Agreement that may survive the termination of this Agreement) shall be enforceable by the parties hereto by whatever remedies are available in law or equity, including mandatory or prohibitory injunctive relief, specific performance, and actions to recover damages. In the event that either party believes the other party is not complying with or is violating this Agreement and seeks temporary and/or permanent injunctive relief as a result, the parties acknowledge and agree that the party bringing the case for injunctive relief shall, upon proving to the satisfaction of the reviewing court such non-compliance or violation, be deemed to have suffered irreparable harm and to have proven that it is in the best interests of the public to prevent, cure or stop the non-compliance or violation.

In the event the City fails to timely pay 100% of the costs as stated herein the County shall, in its sole discretion, determine whether all service and maintenance to the Station located within the City of Winter Park shall cease operations. However, pursuant to the provisions set forth in section
6.10 herein, the City shall have sixty (60) days to cure any such failure to pay, after receipt of written notice from the County that there is a failure to pay which could result in a cessation of operations. If the City notifies the County that it disputes any costs the County claims are owed which would justify a cessation of services under this provision, services may not be terminated by the County until the provisions of section 6.10 of this agreement and chapter 164, F.S., are exhausted.

Section 6.4. Master Interlocal Agreement

(a) The City understands, acknowledges and agrees that the County is subject to, is bound by and must comply with all terms and conditions of the Master Interlocal Agreement attached hereto as “Exhibit A.”

(b) The City understands, acknowledges and agrees that, but for the Master Interlocal Agreement, the County would not have entered into this Agreement with the City.

(c) The City agrees that in fulfilling its responsibilities, duties and obligations under this Agreement, it shall not undertake any action or engage in any act that is inconsistent with or conflicts with any of the terms and conditions of the Master Interlocal Agreement.

Section 6.5. Disclaimer of third-party beneficiaries

This Agreement is solely for the benefit of the City and the County, and no right, privilege, or cause of action shall accrue by reason hereof to or for the benefit of any third party, including without limitation any other municipality or county. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person, corporation, partnership, trust, private entity, agency, or other governmental entity any right, privilege, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective successors and assigns.

Section 6.6. Notice
(a) All notices which any party shall be required, requested or desires to give under this Agreement shall be in writing and shall be given only by hand delivery for which a receipt is obtained, or certified mail, prepaid with confirmation of delivery requested, or by facsimile transmission. All such communications shall be addressed to the applicable addressees set forth below or as either party may otherwise designate in a written notice to the other party delivered in the manner prescribed herein.

If to the City: Mayor
City of Winter Park
401 Park Avenue South
Winter Park, Florida 32789-4386
407-599-3235 (Phone)
407-_________ (Fax)

With a copy to: City Manager
City of Winter Park
401 Park Avenue South
Winter Park, Florida 32789-4386
407-599-3234 (Phone)
407-_________ (Fax)

If to the County: County Mayor
201 S. Rosalind Avenue
Orlando, Florida 32802
407-836-7370 (Phone)
407-836-7360 (Fax)

With a copy to: County Administrator
201 S. Rosalind Avenue
Orlando, Florida 32802
407-836-7370 (Phone)
407-836-7399 (Fax)

With a copy to: County Attorney
201 S. Rosalind Ave.
Orlando, Florida 32802
407-836-7320 (Phone)
407-836-5888 (Fax)
(b) Notices shall be deemed given when received by the party for whom such communication is intended at such party's address herein specified, or such other address, phone or fax number as such party may have substituted therefore by notice to the other.

Section 6.7. Complete agreement; effect on other agreements; interpretation and construction; captions; counterparts

(a) This Agreement embodies and constitutes the entire understanding of the parties with respect to the subject matter addressed herein, and all prior agreements, understandings, representations and statements, oral or written, are replaced and superseded by this Agreement.

(b) This Agreement, however, shall not be construed or interpreted as amending, modifying, superseding or terminating any other agreements between the City and County, except to the extent any other such agreement may conflict with or not be consistent with this Agreement.

(c) Neither the form of this Agreement, nor any provision or wording of this Agreement, shall be interpreted or construed against one party as the drafter thereof.

(d) Captions in this Agreement are intended for convenience and reference only, and the words and terms contained therein shall not in any way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

(e) This Agreement shall be executed by the parties in two original and identical counterparts, with one of the fully executed originals and its exhibits to be retained in the office of the City Clerk, and the other to be retained in the office of the Clerk of the Board of County Commissioners.

Section 6.8 Amendments and modifications; equal treatment
(a) This Agreement may not be amended or modified except pursuant to an instrument in writing that has been executed by both parties hereto.

(b) If the City believes the City of Maitland has been given more favorable treatment by the County in the Interlocal Agreement regarding the Commuter Rail System, then the City may notify the County of such and the parties shall amend this Interlocal Agreement so that the City receives equal or substantially the same treatment as the City of Maitland.

Section 6.9 Covenant to defend

The parties agree that neither this Agreement nor any portion of this Agreement may be challenged by the City or the County. Furthermore, if this Agreement or any portion hereof is challenged by a third party in any judicial, administrative or appellate proceeding (each party hereby covenaniting with the other party not to initiate, encourage, foster, promote, cooperate with, or acquiesce to such challenge), the parties hereto collectively and individually agree, at their individual sole cost and expense, to defend in good faith its validity through a final judicial determination or other resolution, unless both parties mutually agree in writing not to defend such challenge or not to appeal any decision invalidating this Agreement or any portion thereof.

Section 6.10 Conflict resolution

(a) In the event that any irreconcilable disagreements or conflicts arise between the parties relating to the terms of this Agreement that are not cured within a period of 60 days, the procedures for conflict resolution set forth in Chapter 164, Florida Statutes, shall be followed prior to the initiation of any legal, equitable or other formal challenge or action by either party.

(b) Notwithstanding the foregoing, in the event that either party determines in its sole discretion and good faith that it is necessary to file a lawsuit or other formal challenge in order to
meet a jurisdictional time deadline, to obtain a temporary injunction, or otherwise to preserve a
legal or equitable right, such lawsuit or challenge may be filed, but upon the filing and any other
act necessary to preserve the legal or equitable right or to obtain the temporary injunction, the
parties shall thereafter promptly file a joint motion with the reviewing court or administrative law
judge requesting that the case be abated in order to afford the parties an opportunity to pursue the
dispute resolution procedures set forth in Chapter 164. If the abatement is granted, the parties
shall revert to and pursue the dispute resolution procedures set forth in Chapter 164.

(c) In the event the parties cannot resolve a disagreement or conflict after following
the procedures set forth in Chapter 164, then in such event the parties may pursue or resume
pursuing such other remedies as may be available for resolution of such conflict, including but
not limited to all judicial and administrative remedies.

Section 6.11  Binding effect

All of the provisions, representations, covenants and conditions contained in this
Agreement shall inure to the sole benefit of and shall be binding upon the parties hereto and their
respective representatives, successors and assigns.

Section 6.12.  Governing law; changed law; venue

(a) This Agreement shall be construed, interpreted, and governed by the laws of the
State of Florida.

(b) If future federal or state statute, law, rule, regulation, or action renders a portion of
this Agreement illegal, invalid, or unenforceable, the parties agree to amend this Agreement to
delete and/or modify such portion of this Agreement as is necessary to render the remainder of
this Agreement legal, valid, or enforceable, provided the original intent of the parties can be
carried forward in a manner that substantially fulfills such original intent. If future federal or
state statute, law, rule, regulation, or action renders this Agreement illegal, invalid, or unenforceable in its entirety, then this Agreement, if not already terminated by operation of such statute, law, rule, regulation, or action, may be terminated by either or both parties pursuant to Section 6.

(c) Venue for any action to enforce any of the provisions of this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit of Florida, in and for Orange County, Florida.

Section 6.13. Records; documents and instruments

(a) The City and the County shall keep complete records and accounts according to generally accepted government accounting principles, practices, and procedures that sufficiently and properly reflect all costs and expenditures incurred by the City and the County in connection with this Agreement. Each party shall have the right, at the requesting party’s expense, to conduct an audit of the other party’s records during normal business hours at the offices of the party whose records are being audited.

(b) At any time following a request by a party, the other party shall execute and deliver to the requesting party such documents and instruments, in form and substance reasonably necessary to confirm or effectuate the obligations of either party and consummate the transactions contemplated hereby. Each party shall perform any other acts and to sign and deliver any other documents that may be reasonably necessary to carry out the provisions of this Agreement.

Article 7. Sovereign immunity

Neither the County nor the City waives sovereign immunity. The non-waiver of defenses provisions contained in the Master Interlocal Agreement apply to the both County and City and the language of those provisions shall be incorporated herein by reference.
Article 8. Exhibits

The following documents are attached hereto and incorporated herein by reference as exhibits:

**Exhibit A**  Interlocal Agreement for Development and Operation of the Central Florida Commuter Rail Transit System and Creation of the Central Florida Commuter Rail Commission ("Master Interlocal Agreement")

**Exhibit B**  Preliminary Commuter Rail Cost Allocation Analysis Year of Expenditure LPA Assessment, date issued January 2007

**Exhibit C**  Central Florida Commuter Rail Transit Station Development – Construction Estimate
Article 9. Effective date

This Agreement shall take effect upon the date of approval by the City or upon the date of approval by the County, whichever date is later.

CITY OF WINTER PARK
By: City Commission

By: ____________________________
    David C. Strong, Mayor

ATTEST: City Clerk
By: ____________________________

Approved as to form and legality (for the use and reliance of the City):

______________________________
City Attorney

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: ____________________________
    Richard T. Crotty, County Mayor

ATTEST: Martha O. Haynie, County Comptroller
as Clerk of the Board of County Commissioners

By: ____________________________
    Deputy Clerk
EXHIBIT A

INTERLOCAL AGREEMENT
FOR
DEVELOPMENT AND OPERATION OF THE
CENTRAL FLORIDA COMMUTER RAIL TRANSIT SYSTEM
AND
CREATION OF THE
CENTRAL FLORIDA COMMUTER RAIL COMMISSION

By and Among

ORANGE COUNTY, FLORIDA
OSCEOLA COUNTY, FLORIDA
SEMINOLE COUNTY, FLORIDA
COUNTY OF VOLUSIA, FLORIDA
CITY OF ORLANDO, FLORIDA

AND

FLORIDA DEPARTMENT OF TRANSPORTATION
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INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is made and entered into by and among Orange County, a charter county and political subdivision of the State of Florida ("Orange County"), Osceola County, a charter county and political subdivision of the State of Florida ("Osceola County"), Seminole County, a charter county and political subdivision of the State of Florida ("Seminole County"), the County of Volusia, a charter county and political subdivision of the State of Florida ("County of Volusia"), the City of Orlando, a municipal corporation of the State of Florida (the "City of Orlando"), and the State of Florida Department of Transportation, an agency of the State of Florida ("FDOT").

WITNESSETH:

WHEREAS, FDOT is undertaking the development and implementation of the Central Florida Commuter Rail Transit System (the "Commuter Rail System") running from DeLand in the County of Volusia through Seminole County and Orange County (including the City of Orlando) to Poinciana in Osceola County; and

WHEREAS, FDOT and CSX Transportation, Inc. ("CSXT") have entered into a Contract for Sale and Purchase, dated [to come], which, subject to certain conditions precedent, provides for the acquisition (subject to a retained perpetual easement for Rail Freight Services) by FDOT from CSXT of the railroad corridor known as CSXT's A-Line between Milepost A749.7 near DeLand, Florida and Milepost A814.1 near Poinciana, Florida, a distance of approximately 61.54 miles, (the "Corridor") for the use of the Commuter Rail System; and

WHEREAS, FDOT and CSXT have also entered into a Central Florida Operating and Management Agreement, dated [to come], establishing operating windows for passenger rail and
freight operations within the Corridor and providing for use and maintenance of the Corridor; and

WHEREAS, FDOT is in the process of making application to the Federal Transit Administration (FTA) and Congress for capital funds, commonly referred to as New Starts funding to provide a portion of the funds necessary for the planning, design, right-of-way acquisition and construction of the proposed commuter rail service on the Commuter Rail System; and

WHEREAS, Federal New Starts funding and other Federal funding will require a 50 percent match of Federal funds with state and local funds for capital costs, which will be shared among FDOT, Orange County, Osceola County, Seminole County, the County of Volusia and the City of Orlando in the manner set forth herein; and

WHEREAS, Orange County, Osceola County, Seminole County, the County of Volusia and the City of Orlando (collectively, the "Local Government Partners") have agreed that the FDOT will be the agency responsible for the design, permitting and construction of the Commuter Rail System, and will be responsible for its funding, operation, management, and maintenance for a period seven years (the "FDOT Funding Period") following the Revenue Operation Date (as hereinafter defined); and

WHEREAS, FDOT and the Local Government Partners desire to create the Central Florida Commuter Rail Commission (the "Commission") to assume responsibility for funding, operation, management, and maintenance of the Commuter Rail System upon expiration of the FDOT Funding Period; and

WHEREAS, upon expiration of the FDOT Funding Period, FDOT has agreed to enter into an agreement with the Commission to oversee operation of the Commuter Rail System,
including administration (as agent of the Commission) of the agreement between the Commission and the contract operator of the Commuter Rail System and the provision of other staff services to the Commission; provided that (A) the agreement requires the Commission to pay FDOT's direct cost for the services to be provided, (B) the service agreement does not require FDOT to fund any cost associated with the Commuter Rail System, and (C) the Local Government Partners are not in default of their respective obligations under Section 7.05 of this Interlocal Agreement; and

WHEREAS, FDOT has agreed to convey the Commuter Rail System to the Commission (other than the station areas, which shall be conveyed to the Local Government Partners) in accordance with and under the conditions described in Section 4.05 hereof; and

WHEREAS, the Commuter Rail System is contained in the Year 2025 Metroplan Orlando's Orlando Urban Area Transportation Study "Financially Constrained Network," and the 2025 Volusia County Long Range Transportation Plan; and

WHEREAS, implementation of the Commuter Rail System will result in overall social and environmental benefits, improve the quality of life in the state, stimulate economic growth, create new employment opportunities, and serve as a positive growth management catalyst; and

WHEREAS, the Commuter Rail System will greatly benefit all of the citizens of and visitors to the Central Florida region, and is needed in order to relieve traffic congestion, and provide transportation opportunities; and

WHEREAS, the Commuter Rail System will become an integral part of a Central Florida balanced transportation system and, with concurrent development of improvements to roadways and bus transit, will greatly enhance the mobility of the traveling public;
NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties mutually undertake, promise and agree for themselves, their successors and assigns as follows:
ARTICLE I

DEFINITIONS AND CONSTRUCTION

SECTION 1.01. DEFINITIONS. As used in this Interlocal Agreement, the following terms shall have the following meanings unless the context hereof otherwise requires.

"Average Fare" means the average fare paid for passage on the Commuter Rail System, as calculated pursuant to Section 7.07(F) hereof.

"Base Service" means commuter rail service provided in accordance with the standards set forth in Section 5.05, as adjusted pursuant to Sections 5.06 and 5.07.

"Boarding Share" means the share of passenger boardings computed for each Local Government Partner pursuant to Section 7.03(A) hereof.

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

"Capital Installment" means a deferred payment of an Initial Capital Contribution for which a Local Government has elected to provide a Letter of Credit.

"Chief Executive Officer" means the chief executive officer of the Commuter Rail System appointed pursuant to Section 5.13(A) hereof.

"Chief Operating Officer" means the chief operating officer of the Commuter Rail System appointed pursuant to Section 5.13(B) hereof.

"City of Orlando" means the City of Orlando, a municipal corporation organized under the laws of the State of Florida.
"Commuter Rail System" means the Central Florida Commuter Rail Transit System, a Fixed Guideway Transit System that shall operate within the Corridor, as described in this Interlocal Agreement.

"Commission" means the Central Florida Commuter Rail Commission created by Article III of this Interlocal Agreement.

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

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

"Corridor" means the railroad corridor formerly known as CSXT's A-Line between Milepost A749.7 near DeLand, Florida and Milepost A814.1 near Poinciana, Florida, a distance of approximately 61.54 miles through which the Commuter Rail System will operate, as depicted in Appendix A.

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

"Corridor Operating Agreement" means that certain Central Florida Operating and Management Agreement between CSXT and FDOT, dated [to come], delineating the rights and
responsible of FDOT and CSXT for the control, dispatch, operation, maintenance, and management of the Corridor and for freight and passenger rail service on the Corridor.

"Corridor Purchase Contract" means certain Contract for Sale and Purchase between CSXT and FDOT, dated [to come], which, subject to certain conditions precedent, provides for acquisition of the Corridor by FDOT, subject to a retained perpetual easement for Rail Freight Services.

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

"Credit Provider" means the issuer of a Letter of Credit.

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

"Customer Advisory Committee" means the advisory committee created pursuant to Section 3.08 hereof.

"Debt Service" means an amount equal to the sum of the principal of (either at the stated maturity or by an advancement of maturity pursuant to a mandatory sinking fund payment) and interest on, the FDOT Fixed-Guideway Bonds during each Fiscal Year of the Local Government Partners as such payments become due (provided that in the event of any acceleration of the due date of such principal by reason of mandatory or optional redemption or acceleration resulting from default or otherwise, other than any advancement of maturity pursuant to a mandatory sinking fund payment, the payments shall be deemed to become due in such amounts and at such times as such payments of principal would have been due had there not been any such acceleration) during or prior to such Fiscal Year.
"Diesel Multiple Unit" means a steel wheel on steel rail transit vehicle that is self-propelled, with the capacity to operate independently and pull non-powered cars. The Commuter Rail System intends to utilize FRA compliant (49 CFR Part 238 specifications for compression testing) Diesel Multiple Units, which pass the FRA 800,000-pound structural buff load test and have the ability to run in mixed freight service on existing track.

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

"Extended Service" means the provision of service to any Station not listed in Appendix B, C or D.

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

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

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

"FDOT Fixed-Guideway Bonds" means the debt obligations initially issued by FDOT to acquire the Corridor and relocate the Taft Yard Facility, as described in Section 7.05(A) hereof.

"FDOT Funding Period" means the period commencing on the Revenue Operation Date and ending on the first day [of the calendar month] following expiration a seven-year period, during which FDOT is obligated to fund operating deficits of the Commuter Rail System. [FDOT proposes to delete the bracketed/bold language, which was suggested for administrative convenience.]
"Fiscal Year" means (A) during the FDOT Funding Period, the fiscal year for State government, which commences on July 1 and continues through the next succeeding June 30, or (B) following expiration of the FDOT Funding Period, the fiscal year for county government, which commences on October 1 and continues through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for either level of government.

"Five-Year Capital Plan" means the five-year capital plan prepared in conjunction with the annual operating budget pursuant to Section 7.08 hereof.

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

"FRA" means the Federal Railroad Administration.

"FTA" means the Federal Transit Administration.

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

"Governing Board" means the governing body of the Commission established pursuant to Section 3.03 hereof.

"Initial Capital Contribution" means, for each Local Government Partner, the amounts set forth in Section 7.01(B) hereof, payable on the dates specified therein.

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

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

"Letter of Credit" means an unconditional irrevocable commercial letter of credit approved by the FDOT Comptroller pursuant to Rule 14-116.002, Florida Administrative Code, and meeting the standards set forth in Section 7.01(C) hereof.

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

"Local Farebox Revenue" means the amount computed for each Local Government Partner pursuant to Section 7.03(C) hereof.

"Local Station Revenue" means any Station revenue described in Section 6.02(B).

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

"Member" means a member of the Governing Board, as designated in Section 3.03 hereof.

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

"Non-Ad Valorem Funds" shall mean all revenues of the Local Government Partner derived from any source whatsoever other than ad valorem taxation on real or personal property, which are legally available to make the payments required herein, but only after provision has
been made by the Local Government Partner for the payment of all essential or legally mandated services.

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

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

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

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

"Phase I" means the portion of the Commuter Rail System expected to be operational in 2009, as described in Appendix B hereof.

"Phase II" means the portion of the Commuter Rail System expected to be operational in 2013, as described in Appendix C hereof.

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

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

"Seminole County" means Seminole County, a charter county and political subdivision of the State.
"Share of Local Capital Cost" means the amount computed for each Local Government Partner pursuant to Section 7.04 hereof.

"Share of Local Operating Support" means the amount computed for each Local Government Partner pursuant to Section 7.03 hereof.

"Share of Local Operating Support Without Farebox" means the amount computed for each Local Government Partner pursuant to Section 7.03(B) hereof.

"Share of FDOT Bond Debt Service" means the amount computed for each Local Government Partner pursuant to Section 7.05 hereof.

"State" means the State of Florida.

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

"Station" means a commuter rail passenger station on the Commuter Rail System, including the commuter rail passenger stations listed in Appendices B, C and D and any additional commuter rail passenger station added as Extended Service pursuant to Section 5.07 hereof. The term "Station" includes the "Station Platform" and the "Station Property."

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

"Station Property" means the Station parking area and other Station property located outside the Corridor, including any improvements made thereto.

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

"Technical Advisory Committee" means the advisory committee created pursuant to Section 3.07 hereof.

"Total Operating Cost" means all expenses incurred in connection with operation and maintenance of the Commuter Rail System including, but not limited to, the following: (A) during the FDOT Funding Period, the cost for FDOT staff and contractors working for the Commuter Rail System, including all reasonable non-labor expenses necessarily incurred by FDOT for such purposes, and during any period following expiration of the FDOT Funding Period in which the Commission contracts with FDOT to operate the Commuter Rail System, the cost payable under such contract; (B) payments made to the Contract Operator; (C) the direct cost of Corridor Access Management; (D) the direct cost for Maintenance of Way; (E) the cost to maintain the Commuter Rail System's rolling stock, including the "capital maintenance cost," as defined in the agreement with the Contract Operator; (F) the direct cost to insure and provide risk management for the Commuter Rail System; (G) during the FDOT Funding Period, the cost incurred by FDOT for the accounting, invoice payment to the Contract Operator and the preparation of the quarterly invoices to the individual Local Government Partners, including all reasonable non-labor expenses necessarily incurred by FDOT for such purposes; and (H) any other cost directly related to the Commuter Rail System. The term "Total Operating Cost" does not include Debt Service on the FDOT Fixed-Guideway Bonds or expenses related to operation of the Station Property. During the FDOT Funding Period, the term "Total Operating Cost" does not include any cost associated or incurred by the Local Government Partners or other governmental entities regarding the Commission, Governing Board, Technical Advisory
Committee or Customer Advisory Committee. [Note per FDOT: "it is unlikely FDOT will track these to this level of detail."]

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

SECTION 1.02. INTERPRETATION. Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Interlocal Agreement; the term "heretofore" shall mean prior to execution of this Interlocal Agreement; and the term "hereafter" shall mean following execution of this Interlocal Agreement. This Interlocal Agreement shall not be construed more strongly against any party regardless that such party, or its counsel, drafted this Interlocal Agreement.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Interlocal Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Interlocal Agreement nor affect its meaning, construction or effect.
ARTICLE II

REPRESENTATIONS

SECTION 2.01. REPRESENTATIONS OF ORANGE COUNTY. Orange County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) Orange County has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of Orange County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(B) To Orange County's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Orange County, threatened against or affecting Orange County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.

SECTION 2.02. REPRESENTATIONS OF OSCEOLA COUNTY. Osceola County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) Osceola County has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties
hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of Osceola County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(B) To Osceola County's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of Osceola County, threatened against or affecting Osceola County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.

SECTION 2.03. REPRESENTATIONS OF SEMINOLE COUNTY. Seminole County makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) Seminole County has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of Seminole County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(B) To Seminole County's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the
best knowledge of Seminole County, threatened against or affecting Seminole County, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.

SECTION 2.04. REPRESENTATIONS OF THE COUNTY OF VOLUSIA.
The County of Volusia makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:

(A) The County of Volusia has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of the County of Volusia, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(B) To the County of Volusia's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the County of Volusia, threatened against or affecting the County of Volusia, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.

SECTION 2.05. REPRESENTATIONS OF THE CITY OF ORLANDO. The City of Orlando makes the following representations as the basis for the undertakings on the part of FDOT and the other Local Government Partners herein contained:
(A) The City of Orlando has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of the City of Orlando, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.

(B) To the City of Orlando's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the City of Orlando, threatened against or affecting the City of Orlando, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.

SECTION 2.06. REPRESENTATIONS OF FDOT. FDOT makes the following representations as the basis for the undertakings on the part of the Local Government Partners herein contained:

(A) FDOT has duly authorized the execution and delivery of this Interlocal Agreement and assuming the due authorization, execution and delivery by the other parties hereto, this Interlocal Agreement constitutes a valid and legally binding obligation of FDOT, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity or public policy.
(B) To FDOT's knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or, to the best knowledge of the FDOT, threatened against or affecting the FDOT, wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated hereby or which, in any way, would materially adversely affect the validity of this Interlocal Agreement.
ARTICLE III

CREATION AND GOVERNANCE

SECTION 3.01. COMMUTER RAIL COMMISSION.

(A) FDOT and the Local Government Partners hereby create and establish the "Central Florida Commuter Rail Commission", a legal entity and public body and a unit of local government, with all of the privileges, benefits, powers and terms provided for herein and by Section 163.01, Florida Statutes, and other applicable law, for the purpose of acquiring, constructing, operating and maintaining the Commuter Rail System.

(B) The creation and reorganization of the Commission and the fulfillment of its purposes are in all respects for the benefit of the State and the citizens of Orange County (including the City of Orlando), Osceola County, Seminole County and the County of Volusia. The Commission is performing an essential governmental function. All property of the Commission is and shall in all respects be considered to be public property, and the title to such property shall be held by the Commission for the benefit of the public. The use of such property shall be considered a public purpose, until disposed of upon such terms as the Governing Board may deem appropriate.

SECTION 3.02. POWERS AND DUTIES OF THE COMMISSION. The Commission shall have the following powers in addition to and supplementing any other privileges, benefits and powers granted by Section 163.01, Florida Statutes:

(A) To acquire, construct, operate and maintain the Commuter Rail System in the manner provided herein.

(B) To sue and be sued in its own name.
(C) To acquire, by purchase, gift, devise or otherwise, and to dispose of, real or personal property, or any estate therein.

(D) To lease, as lessor or lessee, to or from any person, firm, corporation, association or body, public or private, facilities or property of any nature for the use of the Commission to carry out any of the purposes authorized by this Interlocal Agreement.

(E) To make and execute contracts or other instruments necessary or convenient to the exercise of its powers.

(F) To contract with one or more other public entities, including FDOT and the Local Government Partners, for the purpose of carrying out any of its powers and for that purpose to contract with such other public entity or entities for the purpose of financing such acquisitions, construction, and operations. Such contracts may provide for contributions to be made by each party thereto, for the division and apportionment of the expenses of such acquisitions and operations, and for the division and apportionment of the benefits, services, and products therefrom. Such contracts may contain such other and further covenants and agreements as may be necessary and convenient to accomplish the purposes hereof.

(G) To contract for the service of engineers, accountants, attorneys, rate consultants and other experts or consultants, and such other agents and employees as the Governing Board may require or deem appropriate.

(H) To accomplish construction directly or by advertising for construction bids and letting contracts for all or any part of the construction of improvements to the Commuter Rail System to the lowest responsible and responsive bidder or rejecting any and all bids at its discretion; provided however, that the competitive bid requirement may be waived if (a) the Governing Board determines that emergency circumstances are present or (b) after consideration
of all available alternative materials and systems, the Governing Board determines that the
specification of a sole material or system is justifiable based upon its design, cost,
interchangeability or any other relevant factor.

(I) To exercise the power of eminent domain in the manner provided by law for the
condemnation of private property for public use, to acquire title to such interest in real property
as is necessary to the exercise of the powers herein granted.

(J) Subject to such provisions and restrictions as may be set forth herein and the
rights of any third party, to sell or otherwise dispose of any Commuter Rail System assets, upon
such terms as the Governing Board deems appropriate.

(K) To apply for and accept grants, loans, and subsidies from any governmental entity
for the acquisition, construction, operation and maintenance of the Commuter Rail System, and
to comply with all requirements and conditions imposed in connection therewith.

(L) To the extent allowed by law and to the extent required to effectuate the purposes
hereof, to exercise all privileges, immunities and exemptions accorded FDOT, municipalities and
counties of the State under the provisions of the constitution and laws of the State.

(M) To do all acts and things necessary or convenient for the conduct of its business in
order to carry out the powers and duties provided in this Interlocal Agreement.

SECTION 3.03. GOVERNING BOARD.

(A) All powers, privileges and duties vested in or imposed upon the Commission shall
be exercised by a Governing Board comprised of the following seven Members.

(1) Orange County shall appoint a member of its Board of County
Commissioners, who may be the County Mayor.
(2) Osceola County shall appoint a member of its Board of County Commissioners.

(3) Seminole County shall appoint a member of its Board of County Commissioners.

(4) The County of Volusia shall appoint a member of its County Council.

(5) The City of Orlando shall appoint a member of its County Council, who may be the Mayor-Commissioner.

(6) FDOT shall be represented by the District Secretary.

(7) The seventh Member of the Governing Board shall rotate for one-year terms, the first of which shall commence at the organizational meeting of the Governing Board, among the executive directors of the following organizations in the order specified below:

   (a) Metroplan Orlando,

   (b) the Volusia County Metropolitan Planning Organization,

   (c) Lynx, and

   (d) Votran.

(7) [Volusia's preferred alternate] The seventh Member of the Governing Board shall rotate for one-year terms, the first of which shall commence at the organizational meeting of the Governing Board, among the following organizations in the order specified below:

   (a) Metroplan Orlando,

   (b) the Volusia County Metropolitan Planning Organization,

   (c) Lynx, and
(d) Votran.

Each organization shall appoint an elected member of its governing board not appointed to serve by a Local Government Partner pursuant to clauses (1) through (5) of this subsection.

(B) During the FDOT Funding Period, the Governing Board shall serve primarily in an advisory capacity to FDOT; provided however, that FDOT shall not be empowered to make any decision materially affecting the long-term funding for the Commuter Rail System (limited to capital investment decisions that would extend beyond the FDOT Funding Period or increases in the Base Service) without consent from the Governing Board. The Governing Board shall advise FDOT on decisions in respect to the Commuter Rail System including, but not limited to, service, fare policy, funding, procurement, operations, maintenance, and capital programs, reviewing the annual budget, and financing. FDOT shall give careful thought, consideration, and appropriate weight to the findings and recommendations of the Governing Board. Disagreements between the Governing Board and FDOT during the FDOT Funding Period shall be subject to the dispute resolution procedures set forth in Section 8.03 hereof. Not later than six months prior to expiration of the FDOT Funding Period, (1) the Governing Board shall complete a transition and implementation plan that will ensure a safe and orderly transition of the management and operation of the Commuter Rail System and Corridor, and (2) FDOT and the Commission shall enter into the agreement described in Section 5.01 hereof.

SECTION 3.04. GOVERNING BOARD CHAIR. At the beginning of each calendar year, the Governing Board shall elect a Chair from amongst its Members. The Chair shall rotate each year to a different Local Government Partner's representative. A Vice-Chair and Secretary shall also be elected annually and shall rotate each year to a different Local
Government Partner's representative. Members shall not be prohibited from serving in these positions for more than one term, provided such terms are not successive. The FDOT representative and the seventh Member appointed pursuant to Section 3.03(B)(7) shall not be eligible to serve as officers of the Governing Board.

SECTION 3.05. MEETINGS, QUORUM AND VOTING.

(A) The Governing Board shall meet regularly, but not less than quarterly, in the jurisdiction of one of the Local Government Partners and establish rules of procedure for its meetings. All meetings shall be held in accordance with Section 286.011, Florida Statutes, and shall be duly noticed. Meeting minutes shall be kept, and provisions shall be made for receiving public comment at those meetings. If neither the Chair nor Vice-Chair attends a meeting at which a quorum is present, the Members present may elect one of their number to serve as chairman pro-tem for that meeting. The Governing Board shall use "Roberts Rules of Order" for the conduct of the meetings, unless the Governing Board adopts other rules and procedures by which it will conduct meetings. Members of the Governing Board shall not be compensated for their service. The Chief Executive Officer, or the Chief Executive Officer's designee, shall attend each meeting of the Governing Board.

(B) Four Members shall constitute a quorum; provided however, that a majority of the Members present at any meeting may act to continue the meeting to any time and date specified in such action.

(C) Each Governing Board Member shall be entitled on one vote. Other than the matters identified in the following subsection (D), action of the Governing Board shall require an affirmative vote of not less than four Members.
(D) The following Governing Board actions shall require an affirmative vote of not
less than [five? six?] Members, including the affirmative vote of not less than [four?] Members
appointed by the Local Government Partners:

1. fare changes;
2. Expanded Service; [currently unanimous]
3. Extended Service; [currently unanimous]
4. any sale Commuter Rail System assets that would have an adverse affect
   on the operation;
5. fees for use of the Corridor by third parties;

SECTION 3.06. POWERS AND DUTIES OF THE GOVERNING BOARD.

The Governing Board shall act as the governing body of the Commission and shall have the
following powers and duties:

(A) To fix the time and place or places at which its regular meeting shall be held, and
to call and hold special meetings.

(B) To make and pass rules, regulations, resolutions and orders not inconsistent with
the Constitution of the United States or of the State, or with the provisions of Section 163.01,
Florida Statutes, or this Interlocal Agreement, necessary for the governance and management of
the affairs of the Commission, for the execution of the powers vested in the Commission, and for
carrying into effect the provisions of this Interlocal Agreement.

(C) To fix the location of the principal place of business of the Commission and the
location of all offices and departments.
(D) To prescribe a system of business administration and to establish the powers, duties and compensation of all employees; and to require and fix the amount of all official bonds necessary for the protection of the funds and property of the Commission.

(E) To appoint a Chief Executive Officer and Chief Operating Officer to administer the affairs and manage the staff of the Commission with Governing Board approval, and perform other administrative duties as directed by the Governing Board.

(F) To appoint a General Counsel, if deemed necessary, to act as the chief legal officer of the Commission, manage the Commission's legal representation and employ necessary legal staff with Governing Board approval, provide legal advice and support to the Governing Board, Chief Executive Officer, Chief Operating Officer and Commission staff, and perform such other duties as directed by the Governing Board.

The exercise of any and all executive, administrative and ministerial powers may be delegated by the Governing Board to FDOT, the Chief Executive Officer, the Chief Operating Officer and the General Counsel.

SECTION 3.07. TECHNICAL ADVISORY COMMITTEE.

(A) The Governing Board shall establish a Technical Advisory Committee to provide technical assistance to the Governing Board and the FDOT. The Technical Advisory Board shall consist of a single staff representative of FDOT, each Local Government Partner, each municipality that has a Station within its corporate limits and is not a Local Government Partner (as of the date hereof, these municipalities are DeLand, DeBary, Sanford, Lake Mary, Longwood, Altamonte Springs, Winter Park and Kissimmee), VOTRAN, LYNX, Metroplan Orlando, and the Volusia County Metropolitan Planning Organization. The staff representatives
shall be designated by the chief executive officer of each such entity, and shall serve without compensation from FDOT or the Commission.

(B) At the beginning of each calendar year, the Technical Advisory Committee shall elect a Chair from amongst its members. With the exception of the FDOT employees and contractors, who shall not be permitted to be chair or vice-chair, the chair shall rotate each year to a different Local Government Partner’s representative. A vice-chair and secretary shall also be elected annually from among the representatives of different Local Government Partners. There is no prohibition from serving in these positions for more than one term, provided such terms are not successive.

(C) The Technical Advisory Committee shall meet regularly, but not less than quarterly, or upon request of the Governing Board in the jurisdiction of one of the Local Government Partners. All meetings shall be held in accordance with Section 286.011, Florida Statutes, and shall be duly noticed. Meeting minutes shall be kept, and provisions shall be made for receiving public comment at those meetings. A majority of the members shall constitute a quorum; provided however, that a majority of the members present at any meeting may act to continue the meeting to any time and date specified in such action. If neither the chair nor vice-chair attends a meeting at which a quorum is present, the members present may elect one of their number to serve as chairman pro-tem for that meeting. The Technical Advisory Committee shall use "Roberts Rules of Order" for the conduct of the meetings, unless the Technical Advisory Committee adopts other rules and procedures by which it will conduct meetings. Members of the Technical Advisory Committee shall not be compensated for their service. The Chief Executive Officer, or the Chief Executive Officer's designee, shall attend each meeting of the Technical Advisory Committee.
(D) Major policy issues shall first be submitted to the Technical Advisory Committee for a recommendation. The Governing Board Chair shall determine whether an issue is a "major policy issue" that needs to first be submitted to the Technical Advisory Committee; provided however, that the determination shall be made by the FDOT Secretary in consultation with the Governing Board Chair during the FDOT Funding Period. The Technical Advisory Committee shall also meet to review short-term and long-term operating plans, and the annual budget prior to the budget being submitted to the Governing Board. The Technical Advisory Committee shall act in an advisory capacity only. During the FDOT Funding Period, the Technical Advisory Committee shall have no advisory or recommendation authority over Commuter Rail System procurement issues.

SECTION 3.08. CUSTOMER ADVISORY COMMITTEE.

(A) The Governing Board shall establish a Customer Advisory Committee to provide advice and recommendations to the Governing Board and FDOT. The Customer Advisory Committee shall be comprised of people who use the Commuter Rail System on a regular basis, meaning at least three days a week during a typical week. The Customer Advisory Committee shall be established within one year of the start of revenue operations for Phase I. At that time, the Customer Advisory Committee shall consist of eight members: two customers who reside in Volusia County; two customers who reside in Seminole County; two customers who reside in Orange County and two customers who reside in the City of Orlando. Within one year of the start of revenue operations for Phase II, the Customer Advisory Committee membership shall be expanded to ten members by adding two customers who reside in Osceola County. Appointments will be made by the respective Local Government Partners and be ratified by the Governing Board. Local Government Partners will be encouraged to make appointments such
that the Customer Advisory Committee is comprised of a diverse group of customers; the ultimate responsibility for ensuring diversity on the Customer Advisory Committee rests with the Governing Board. Appointments will be made for a one-year term, although Local Government Partners reserve the right to revoke the appointment if there is a change in residency, if the person does not use the system on a regular basis or if responsibilities are not fulfilled. People may serve on the Customer Advisory Committee for up to three consecutive years, subject to re-appointment by the respective Local Government Partner and ratification by the Governing Board. If someone who is appointed to the Customer Advisory Committee does not continue as a customer on a regular basis, he or she will be expected to notify the respective Local Government Partner and submit a letter of resignation. If a Customer Advisory Committee member misses two consecutive meetings of the Customer Advisory Committee, the appointing Local Government Partner will be notified and asked to consider replacing the member.

Members shall serve without compensation, but will be reimbursed by the Commuter Rail System for travel expenses associated with attending Customer Advisory Committee meetings and functions. Reimbursement of such travel expenses shall be paid by the Commuter Rail System as part of the Total Operating Cost.

(B) When the Customer Advisory Committee is first established, it shall elect a Chair from amongst its members to serve a one-year term. The Chair shall rotate each year to a representative from a different Local Government Partner. A Vice-Chair shall also be elected annually and shall represent a Local Government Partner different from the Chair. The Commuter Rail System shall provide the Customer Advisory Committee with appropriate staff support to handle notification of meetings, agenda development, preparing meeting minutes, research, reporting and other necessary services. Expenses of staff support to the Customer
Advisory Committee shall be paid by the Commuter Rail System as part of the Total Operating Cost.

(C) The Customer Advisory Committee shall meet quarterly or upon request of the Governing Board. All meetings shall be held in accordance with Section 286.011, Florida Statutes and shall be duly noticed. Meeting minutes shall be kept and provisions shall be made for receiving public comments at meetings. A majority of the members shall constitute a quorum provided, however, that a majority of the members present at any meeting may act to continue the meeting to any time and date specified in such action. If neither the Chair nor Vice Chair attends a meeting at which a quorum is present, the members present may elect a member to serve as Chair Pro-Tem for that meeting. The Customer Advisory Committee shall use "Roberts Rules of Order" to conduct their meetings, unless the Customer Advisory Committee adopts other rules and procedures by which it will conduct meetings. The Chief Executive Officer, or the Chief Executive Officer's designee, shall attend each meeting of the Customer Advisory Committee.

(D) Matters relating to customer service (including, but not limited to, the annual budget, levels of service, schedules, quality of service, Station access/egress features and services, fare policy, customer information, methods of handling customer commendations and complaints, and marketing) will generally be reviewed by the Customer Advisory Committee and a recommendation developed for the Governing Board before action is taken. The Governing Board Chair reserves the right to determine whether a matter needs to be submitted first to the Customer Advisory Committee; provided however, the determination shall be made by the FDOT Secretary in consultation with the Governing Board Chair during the FDOT Funding Period. The Customer Advisory Committee shall have no advisory or recommendation
authority over Commuter Rail System procurement issues. The Customer Advisory Committee shall act in an advisory capacity only. Minutes from Customer Advisory Committee meetings will be provided to the Governing Board on a regular basis.
ARTICLE IV

ACQUISITION, CONSTRUCTION AND OWNERSHIP

SECTION 4.01. GENERAL COMMUTER RAIL SYSTEM DESCRIPTION.

The Commuter Rail System will be a Fixed Guideway Transit System serving commuters within the jurisdictions of the Local Government Partners, consisting of the following elements.

(A) The Corridor will consist of the former CSXT railroad corridor known as CSXT's A-Line between Milepost A749.7 near DeLand, Florida and Milepost A814.1 near Poinciana, Florida, a distance of approximately 61.54 miles, including the Station Platforms and maintenance facility, as depicted in Appendix A.

(B) Phase I will consist of the first 31-mile segment of the Corridor (between DeBary and downtown Orlando), including the maintenance facility and currently planned Stations at DeBary/Saxon Boulevard Extension, Sanford, Lake Mary, Longwood, Altamonte Springs, Winter Park/Park Avenue, Florida Hospital, LYNX Central, Church Street and Orlando Amtrak/ORMC. The specific improvements to be constructing during Phase I are described in Appendix B. Additional Stations may be added in accordance with this Interlocal Agreement.

(C) Phase II will consist of (1) a 23-mile segment of the Corridor (between downtown Orlando and Poinciana), including Stations at Sand Lake Road, Meadow Woods, Osceola Parkway, Kissimmee Amtrak and Poinciana Industrial Park, (2) a 7-mile segment of the Corridor (between DeLand and DeBary), including a Station at DeLand Amtrak and (3) approximately 0.54 miles of staging areas at the northern and southern ends of the Corridor. The specific
improvements to be constructing during Phase II are described in Appendix C and may be modified in accordance with this Interlocal Agreement. [The last phrase was proposed by FDOT. We need to discuss the extent to which construction may be altered unilaterally, which is a first cousin of the cost-overrun issue.]

(D) The Commuter Rail System will use trains with diesel locomotive powered steel-wheeled technology with one, two or three modern comfortable passenger cars. The number of trains to be placed in service for Phase I and Phase II is included in Appendices A and B, respectively. [FDOT requested deletion of the detail, which as included in the December 4 draft. What is the reasoning?]

SECTION 4.02. ACQUISITION OF THE CORRIDOR. FDOT agrees to acquire the Corridor from CSXT pursuant to the Corridor Purchase Contract for the benefit of the Commuter Rail System, Freight Rail Service and intercity passenger rail service. The Local Government Partners acknowledge that FDOT’s acquisition of the Corridor will be subject to the terms set forth in the Corridor Purchase Contract, including certain conditions precedent that may result in FDOT not acquiring the Corridor.

SECTION 4.03. CONSTRUCTION OF THE COMMUTER RAIL SYSTEM.

(A) FDOT shall be responsible for the design and construction of Phase I and Phase II of the Commuter Rail System and agrees to initiate and diligently pursue such design and construction, based on Federal, State and local governmental approvals. FDOT shall use its best efforts to complete Phase I by December 2009 and Phase II by December 2013.

(B) Based upon previous actions taken by the individual Local Government Partners, as well as Metroplan Orlando and Volusia MPO, FDOT has been advancing the regional rail program since February 2003. As of the date hereof, FDOT has completed the Environmental
Assessment and has been granted entry into Preliminary Engineering by FTA for the system between DeBary in Volusia County to Poinciana Boulevard in Osceola County. Once Preliminary Engineering is complete, FDOT will make application to FTA to enter into Final Design for the Commuter Rail System, which is anticipated to occur in the last quarter of 2007 or the first quarter of 2008.

(C) The Commuter Rail System shall be designed in a manner that will permit construction of Phase I and Phase II (in accordance with the descriptions set forth in Appendices B and C) within the $600,000,000 Capital Cost estimate. Changes to Phase I and Phase II requested by a Local Government Partner during Preliminary Engineering and Final Design will not be incorporated into the design unless a funding source has been committed and all other parties to this Interlocal Agreement have agreed to the change.

(D) The FDOT shall construct Phase I and Phase II based upon the Final Design, subject to Federal, State and local governmental approvals. The development, design, engineering, preconstruction activities, construction and installation of all facilities shall be in accordance with State and Federal standards. FDOT shall require, in accordance with Section 337.18, Florida Statutes, surety bonds for all contractors undertaking any construction activity, and such bonds shall be payable to FDOT and conditioned for the prompt, faithful, and efficient performance of the contract according to plans and specifications and within the time period specified, and for the prompt payment of all persons defined pursuant to Section 713.01, Florida Statutes, who furnish labor, material, equipment, and supplies for work provided in the contract.

(E) During Phase I and Phase II FDOT shall maintain sufficient insurance or self insurance to protect and hold harmless the Commission and the Local Government Partners from any and all claims which may arise related to Phase I and Phase II. The Commission and the
Local Government Partners shall be named as additional insureds on each policy of insurance. Any contractor, subcontractor or other third party that may require access on or to the Corridor during construction shall be required to obtain a policy or policies with coverages that conform with the requirements of this Interlocal Agreement and to provide FDOT, the Commission, and the Local Government Partners with a copy of a current certificate of insurance prior to commencing work and annually thereafter. Such insurance shall be primary to any insurance of the Commission and the Local Government Partners. Upon request, a copy of each actual policy shall be provided to FDOT, the Commission, and Local Government Partner by the contractor, subcontractor or other third party.

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

SECTION 4.04. OWNERSHIP OF THE COMMUTER RAIL SYSTEM.
Subject to the conveyance requirements set forth in Section 4.05 hereof, (A) all right, title, and interest, whether in fee simple, easement, leasehold, or other, in the real estate in the Corridor, Stations and maintenance facility (including any agreement to use the existing AMTRAK maintenance facility in Sanford), and (B) all personal property, such as rolling stock and other equipment, that is acquired for the construction, operation, and maintenance of the Commuter Rail System shall be owned by FDOT. Any sale of any part, interest, use, license, permit or of any other conveyance or right to use, encumber, or impair the Corridor, any grant of an
easement, or any other agreement for use of a portion of the Corridor that would have an adverse
affect on the operation of the Commuter Rail System must be approved by the Governing Board
before being approved by FDOT. With the Governing Board's review during the FDOT Funding
Period and approval following expiration of the FDOT Funding Period, FDOT may establish an
application fee and a standard use fee schedule for certain uses of the Corridor by third parties.

FDOT has separately contributed capital for the initial six Diesel Multiple Units purchased for
the Commuter Rail System, which shall remain the property of FDOT. These initial six Diesel
Multiple Units shall be committed by FDOT for use of the Commuter Rail System; provided
however, that any Diesel Multiple Unit no longer required by the Commuter Rail System
because of an adjustment in Base Service made pursuant to Section 5.06 of this Interlocal
Agreement shall be released from any obligation created by this Interlocal Agreement. The
proceeds derived from any sale of Commuter Rail System shall be applied to the reduction of
Debt Service payable by the Local Government Partners pursuant to Section 7.05 hereof on the
next Interest Payment Date.

SECTION 4.05. CONVEYANCE REQUIREMENTS.

(A) Any property or other assets purchased with Federal or State funds shall be
subject to appropriate and applicable Federal and State laws, rules, and procedures regarding
disposition of property and funds.

(B) Immediately following expiration of the FDOT Funding Period, FDOT shall
convey all of its right, title and interest in the Station Property (free and clear of any and all liens,
encumbrances, mortgages, claims or causes of action) [proposed by the City of Orlando –
inconsistent with reverter proposed by FDOT] to the Local Government Partner in whose
jurisdiction the Station is located by special warranty deed, lease assignment, bill or sale or other
appropriate instrument; provided however, that if operation of the Commuter Rail System is
terminated, fee simple title to the Station Property shall revert to FDOT. \textit{[Reverter proposed by}
\textit{FDOT – Local Government Partner's equity?]} Such conveyance shall be made without
payment of additional compensation to FDOT by the Local Government Partners. For purposes
of this subsection (A), Stations located within the jurisdiction of the City of Orlando shall be
excluded from Stations located within the jurisdiction of Orange County. The Local
Government Partners and FDOT acknowledge that all transfers shall be subject to applicable
Federal and State regulations regarding the transfer of property purchased, in whole or in part,
with Federal or State funds.

(C) Upon (1) payment or defeasance of the FDOT Fixed-Guideway Bonds, or (2) the
Commission's agreement to pay FDOT amounts sufficient to pay annual debt service in a timely
manner on the FDOT Fixed-Guideway Bonds from revenue of the Commuter Rail System, in
form and substance satisfactory to FDOT in its reasonable judgment, \textit{[Are either of these
conditions necessary if FDOT is no longer operating the Commuter Rail System since the
Local Government Partners have made binding commitments to pay debt service directly to
FDOT, which will survive the termination of this agreement?]}, FDOT shall convey to the
Commission all of its right, title and interest in the Corridor (including the Station Platforms),
maintenance facility, layover facility, and other real property used or held for use by the
Commuter Rail System by special warranty deed, lease assignment, bill or sale or other
appropriate instrument, subject to FDOT's right to continue intercity passenger rail service and
CSXT's perpetual easement for Rail Freight Services; provided however, that if operation of the
Commuter Rail System is terminated, fee simple title to the Corridor (including the Station
Platforms), maintenance facility, layover facility, and other real property used or held for use by
the Commuter Rail System shall revert to FDOT.  [Reverter proposed by FDOT – Local Government Partner's equity?] Such conveyance shall be made without payment of additional compensation to FDOT by the Commission. The Commission acknowledges that the Corridor will be encumbered by the Corridor Operating Agreement, which shall be assumed by the Commission on the date of such conveyance.

(D) Simultaneously with conveyance of the real property described in the foregoing subsection (B), FDOT shall transfer to the Commission all of its right, title and interest in the rolling stock, equipment, tracks and other personal property of the Commuter Rail System, both tangible and intangible; provided however, that the initial six Diesel Multiple Units shall remain the property of FDOT. Such conveyance shall be made without payment of additional compensation to FDOT by the Commission. [FDOT has requested reverter language here also. Is it technically or practically possible to have a reverter for personal property?]
ARTICLE V
OPERATION AND MAINTENANCE

SECTION 5.01.  GENERAL DESCRIPTION. During the FDOT Funding Period, FDOT will be solely responsible for the development, design, engineering, preconstruction activities, construction and installation of all fixed facilities, procurement of rolling stock and other personal property, operation (including train dispatching), and maintenance of the Commuter Rail System, in accordance with appropriate Federal, State and local governmental approvals. Following expiration of the FDOT Funding Period, the Commission shall be responsible for the above-mentioned activities and may enter into a service agreement with FDOT to continue to manage, operate, and maintain the Commuter Rail System. Upon expiration of the FDOT Funding Period, the Commission and FDOT shall enter into an agreement, pursuant to which FDOT will oversee operation of the Commuter Rail System, including administration (as agent of the Commission) of the agreement between the Commission and the contract operator of the Commuter Rail System and the provision of other staff services to the Commission; provided that (A) the agreement requires the Commission to pay FDOT's direct cost for the services to be provided, (B) the service agreement does not require FDOT to fund any cost associated with the Commuter Rail System, and (C) the Local Government Partners are not in default of their respective obligations under Section 7.05 of this Interlocal Agreement. The service agreement required by this Section shall not expire until a dedicated funding source becomes available for the Commuter Rail System,

SECTION 5.02.  CORRIDOR ACCESS MANAGEMENT. Prior to conveyance of the Corridor, as described in Section 4.05 hereof, FDOT shall be responsible for Corridor Access Management. Following conveyance of the Corridor, the Commission shall assume the
Corridor Operating Agreement and become responsible for Corridor Access Management, other than functions FDOT is required to perform by law.

SECTION 5.03. SERVICE POLICIES. During the FDOT Funding Period, the Commuter Rail System service levels, including the number of trains and the number of cars per train, shall be established by FDOT with input from the Governing Board, the Technical Advisory Committee and the Customer Advisory Committee. Following expiration of the FDOT Funding Period, service levels shall be established by the Governing Board with input from the Technical Advisory Committee, the Customer Advisory Committee and, if then under contract for operating services, FDOT. To the extent permitted by law, the Local Government Partners agree not to adopt any policy or take any action that may substantially increase the cost of providing Commuter Rail System service (unless authorized by this Interlocal Agreement) or adversely impact the Commuter Rail System service as a whole.

SECTION 5.04. FARE POLICIES. During the FDOT Funding Period, the fares to be charged for Commuter Rail System service shall be determined by FDOT, with guidance from the Governing Board. In order for the bus transit system and Commuter Rail System fares to be as seamless as possible, and because operational subsidies for bus service will be included in the Commuter Rail System operations and maintenance cost projections, FDOT (during the FDOT Funding Period and the Commission (following expiration of the FDOT Funding Period) will enter into an agreement with LYNX and VOTRAN regarding transfers between service modes in the service areas of both transit authorities so that customer fares and fare vending equipment are viewed by customers as though they are part of one system. Following expiration of the FDOT Funding Period, fares shall be established by the Governing Board.
SECTION 5.05. BASE SERVICE STANDARDS.

2 (A) The Commuter Rail System will provide Base Service to the Local Government Partners, as described in the following subsection (B). Base Service shall only be adjusted pursuant to Sections 5.06 or 5.12 hereof.

(B) Commuter rail service will be provided initially in Phase I and expanded to Phases II in accordance with the schedule set forth in Section 4.03(A) hereof. The Commuter Rail System will provide bidirectional train service at a 30-minute frequency during Peak Hours and a two-hour frequency during Non-Peak Hours. The Commuter Rail System will not provide any train service during between midnight and 5:00 a.m., legal Holidays, and Saturdays and Sundays.

SECTION 5.06. ADJUSTMENTS TO BASE SERVICE. The Chief Executive Officer shall report any train whose ridership falls below the minimum ridership threshold [how will these be established?] for three consecutive months to FDOT during the FDOT Funding Period and to the Governing Board thereafter. Any train failing to meet the established minimum ridership threshold for three consecutive months shall be evaluated and considered for remedial action. During the FDOT Funding Period, remedial action shall be taken by FDOT, with input from the Governing Board. Thereafter, remedial action shall be taken by the Governing Board, with input from the Technical Advisory Committee and the Customer Advisory Committee. If after an opportunity for the remedial action to correct the deficiency in ridership the train continues to fall below the minimum rider threshold for a period of three months, that train shall be discontinued unless otherwise unanimously agreed by all Local Government Partners or unless one or more Local Government Partners elect to continue the scheduling of the train and agree to unilaterally pay the full net costs of continuing the train (i.e.,
the difference between the fares collected and/or allocated to that train and the fully allocated cost to operate that train). For purposes of this Section, a "train" is a regularly scheduled trip originating at one end of the Corridor at the respective time period of operations and terminating at the opposite end of the Corridor at the respective time period of operations. This Section shall not be construed to permit a reduction in Base Service to selected Stations.

SECTION 5.07. EXPANDED SERVICE AND EXTENDED SERVICE.

Expanded Service and Extended Service shall require the approval of all Local Government Partners and, during the FDOT Funding Period, FDOT. Each proposal for Expanded Service or Extended Service shall include a specific funding plan for the new service, which shall also be approved by all Local Government Partners. Contracts for excursion and special event trains complying with the provisions of Section 5.12 hereof shall be exempt from the requirements of this Section.

SECTION 5.08. OPERATING RULES. FDOT shall develop initial operating rules for Commuter Rail System service consistent with the Corridor Operating Agreement and all Federal and State laws and regulations. Operating rules developed by FDOT after the Commission and the Technical Advisory Committee have been established shall be reviewed by the Technical Advisory Committee and the Governing Board before they are adopted and implemented; provided however, Governing Board review shall not be required for issuance of operating bulletins, speed restrictions, or other routine adjustments made for the daily operation of all trains on the Corridor during the FDOT Funding Period. Following expiration of the FDOT Funding Period, all operating rules shall be developed and approved by the Governing Board, subject to the Corridor Operating Agreement and all applicable FRA and FTA regulations.
SECTION 5.09. MAINTENANCE.

(A) During the FDOT Funding Period, FDOT shall be responsible for maintenance of the Commuter Rail System other than the Station Property, which shall be maintained by the Local Government Partner in whose boundaries the Station is located. Following expiration of the FDOT Funding Period, the responsibility for maintenance shall be assumed by the Commission. The Corridor shall be maintained in accordance with the standards set forth in the Corridor Operating Agreement.

(B) During the FDOT Funding Period, all of the components of the Commuter Rail System under FDOT control, including but not limited to the Corridor (including the Station Platforms) yards, maintenance facility, layover facilities and rolling stock, shall be maintained in a constant State of Good Repair. When components of the Commuter Rail System are conveyed to the Local Government Partners and the Commission in compliance with Section 4.05 hereof, all such components shall be in a State of Good Repair, subject to normal wear.

SECTION 5.10. SECURITY. Prior to initiation of service, FDOT, in conjunction with the other Local Government Partners and in consultation with local law enforcement, shall prepare a safety and security plan which will include but not be limited to the various types of security required for the Commuter Rail System, minimum levels of security, security responsibilities, security procedures, and security coordination. During the FDOT Funding Period, FDOT shall be solely responsible for security on the Corridor (including the Station Platforms) and on revenue-service trains. Following expiration of the FDOT Funding Period, the Commission shall be solely responsible for security on the Corridor (including the Station Platforms) and on revenue-service trains. Each Local Government Partner shall be responsible for the costs of providing security for the Station Property located within its political boundaries.
SECTION 5.11. MARKETING. FDOT (during the FDOT Funding Period) and the Commission (following expiration of the FDOT Funding Period) shall develop and implement an annual plan for marketing the Commuter Rail System, which may include any and all forms of advertising and promotion, including without limitation, all forms of media advertising (including television, radio, print, billboard, brochure and internet), direct mail and direct marketing. Expenses related to development and implementation of the annual marketing plan shall be paid by the Commuter Rail System as part of the Total Operating Cost.

SECTION 5.12. EXCURSION AND SPECIAL EVENT TRAINS. The Chief Executive Officer may contract for special excursion and special event trains on the Commuter Rail System, provided that the party contracting for a special excursion or special event train pays the fully allocated cost to operate that train and the agreement conforms to the policies and procedures developed for such events, including provisions for insurance and indemnification.

SECTION 5.13. STAFFING.

(A) The FDOT shall establish and fill the position of Chief Executive Officer. During the FDOT Funding Period, the Chief Executive Officer may be either an employee or a contractor of the FDOT, and shall report directly to the District Secretary. Following expiration of the FDOT Funding Period, the Chief Executive Officer may be either an employee or a contractor of the Commission and shall report to the Governing Board. The Chief Executive Officer shall be responsible for the following tasks.

(1) Annual operating budgets shall be developed for the Commuter Rail System. During the FDOT Funding Period, each annual operating budget shall be submitted first to the Technical Review Committee for review and then to the Governing Board for comment prior to approval by FDOT. Following expiration of the FDOT
Funding Period, each annual operating budget shall be submitted to the Technical Advisory Committee for review prior to approval by the Governing Board.

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

(3) The Chief Executive Officer shall provide timely and comprehensive operational input to and coordination with each individual Local Government Partner and the Contract Operator in order to enable the FDOT to effectively respond to the needs and requirements of each individual Local Government Partner and to enhance Commuter Rail System service and future expansions.

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

(5) Additional duties and responsibilities pertaining to the Commuter Rail System may be assigned to the Chief Executive Officer by FDOT, during the FDOT Funding Period, and by the Governing Board, following expiration of the FDOT Funding Period.
(B) The FDOT shall establish and fill the position of Chief Operating Officer. During the FDOT Funding Period, the Chief Operating Officer may be either an employee or a contractor of the FDOT, and shall report directly to the District Secretary. Following expiration of the FDOT Funding Period, the Chief Operating Officer may be either an employee or a contractor of the Commission and shall report to the Governing Board. The Chief Operating Officer shall be responsible for the following tasks:

1. The Chief Operating Officer shall have daily oversight of Commuter Rail System commuter rail operations and service to ensure compliance with service standards and budgets, including oversight of all contracted services.

2. The Chief Operating Officer shall coordinate with the appropriate staff of each individual Local Government Partner, LYNX, VOTRAN and CSXT in the event of an emergency (such as the need for bus bridges, public service announcements, security, or railroad property issues).

3. Timely and comprehensive operational input and coordination shall be provided to each individual Local Government Partner and the Contract Operator in order to enable the FDOT (during the FDOT Funding Period) and the Commission (following expiration of the FDOT Funding Period) to effectively respond to the needs and requirements of each individual Local Government Partner and to enhance Commuter Rail System service and future expansions.

4. A Commuter Rail System fleet management plan and safety program plan shall be developed and implemented. The initial fleet management plan and safety program plan shall be submitted to the Local Government Partners for review. During the FDOT Funding Period, modifications to the fleet management plan and safety
program plan shall be approved in the same manner as the initial plans. Following expiration of the FDOT Funding Period, modifications shall be submitted to the Technical Advisory Committee for review prior to approval by the Governing Board, FTA and FRA.

(5) A high standard of customer relations shall be maintained with all users of the Commuter Rail System.

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

(C) The FDOT shall establish and fill (or delegate to the Chief Executive Officer the authorization to fill) such other budgeted positions, as the FDOT may deem necessary for the effective operation and administration of the Commuter Rail System. The Chief Executive Officer shall make recommendations as to the employment status and duties and responsibilities of such other Commuter Rail System staff members to the FDOT for its determination, consistent with budgets approved by the FDOT and the individual Local Government Partners. It is anticipated that a limited staff will be required, and that the FDOT can place many of the services in the third party operations, maintenance and dispatch procurement, if determined economically and fiscally reasonable. This includes, but is not limited to budget/finance, marketing, grants, planning, and engineering. With the exception of the Chief Executive Officer and Chief Operating Officer, these positions can be contracted out to a third party provider, either through a comprehensive procurement package (operate, maintain, dispatch), or individually. In addition, the FDOT may contract with other governmental entities for these
positions. All Commuter Rail System staff shall report to the Chief Executive Officer. Following expiration of the FDOT Funding Period, the rights responsibilities of FDOT established in this Section 5.13(C) shall be fulfilled by the Governing Board.

SECTION 5.14. CONTRACT OPERATOR.

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

1. operation of the commuter rail trains in revenue and non-revenue service;
2. maintenance of rolling stock;
3. maintenance of the Corridor right-of-way within 25 feet of the centerline of the mainline tracks, or as otherwise determined by FDOT;
4. signalization and dispatching on the Corridor; and
5. maintenance and security of the buildings, grounds, yard tracks, shop equipment and tools;
6. at the maintenance yard and layover facilities; and
7. all other operational activities.

(B) Any contract entered into by FDOT with a Contract Operator shall terminate upon expiration of the FDOT Funding Period; provided however, that the contract may extend for a period of three years following expiration of the FDOT Funding Period if it is assigned to the Commission and FDOT is released from all obligations thereunder.
SECTION 5.15. ADMINISTRATIVE FUNCTIONS.

(A) During the FDOT Funding Period, FDOT shall hire staff to manage the Contract Operator, as well as hire or contract out for specific areas of expertise. It is anticipated that most or all personnel will be employed by Contract Operator or as independent contractors. The Chief Executive Officer and Chief Operating Officer shall be employed or contracted separately from the Contract Operator and shall not be affiliated with the Contract Operator. Following expiration of the FDOT Funding Period, the Governing Board shall be responsible for employing or contracting with staff and the Contract Operator.

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

(C) During the FDOT Funding Period, procurements and contracts for the Commuter Rail System shall be processed and administered in accordance with the procurement policies
and procedures of the FDOT and contracts shall be awarded under the name and authority of the FDOT. Each contract entered into by FDOT for the Commuter Rail System shall provide for assignment to the Commission upon expiration of the FDOT Funding Period. The FDOT shall consider the advice of the Governing Board for major procurement actions.

(D) The main administrative office for management of the Commuter Rail System shall be located within the jurisdiction of one of the Local Government Partners.

SECTION 5.16. EMERGENCIES. During any emergency occurring during the FDOT Funding Period, FDOT and the Contract Operator shall take whatever action is necessary to protect the safety, health, and welfare of the Commuter Rail System, its passengers and employees, and the general public. After the conclusion of an emergency, FDOT shall prepare a written report. FDOT shall provide a copy of the report to the Governing Board and the Technical Advisory Committee for their advice, within their respective roles, on any improved activities, methods, or equipment that could prevent or mitigate future emergencies.
ARTICLE VI

STATIONS

SECTION 6.01. GENERAL PROVISIONS. Phases I and II of the Commuter Rail System will include sixteen Stations, each of which will be pedestrian accessible, have convenient connections for bus and other transportation services, and amenities designed with input from the Local Government Partners. Subject to the conveyance requirements set forth in Section 4.05 hereof, the Stations, other than Amtrak Stations, shall be owned by FDOT for the benefit of the Commuter Rail System. Management of Amtrak Stations shall be subject to prior agreements with CSXT, and upon their expiration, future agreement between Amtrak and FDOT (during the FDOT Funding Period) or the Commission (following expiration of the FDOT Funding Period). Operation and management of the Station Platforms and Station Property shall be delineated in a joint use agreement between FDOT and the Local Government Partner within whose boundaries the Station is located.

SECTION 6.02. JOINT USE AGREEMENTS.

(A) Prior to the Commissioning of the Commuter Rail System, the FDOT and the Local Government Partner in whose jurisdiction a Station or Stations is located shall enter into a joint use agreement for the Station or Stations, which shall delineate the responsibilities of each party, and as a minimum include the following:

(1) maintenance and operation standards for the Station;

(2) control over the Station Platform and any structure or device or system located on the Station Platform;

(3) provision of adequate pedestrian access to the Station Platform;
(4) requirements for housekeeping and appearance of the Station Platform and Station Property, for which the Local Government Partner shall be responsible from its own funds;

(5) security and law enforcement for the Station Platform and Station Property;

(6) access for vehicular or pedestrian traffic to the Station Platform and Station Property;

(7) provision of adequate lighting and parking; and

(8) the Local Government Partner's rights to develop ancillary facilities located near or on the Station site that are not inconsistent with this Interlocal Agreement.

(B) Revenue generated at any Commuter Rail System Stations maintained wholly or in part, by a Local Government Partner (including, but not limited to, non-fare vending or concession revenues and facility rental income, and including revenue generated from parking operations located on property that is not part of the Commuter Rail System and including financial contributions by other entities to a particular Local Government Partner, in support of a Station or as a contribution toward a particular Local Government Partner's Share of Local Operating Support payment, but excluding revenue generated from parking operations on Station Property, and excluding joint fare revenues) shall be retained by the Local Government Partner unless the source of such revenue has a material negative impact on the Commuter Rail System operations or materially adversely affects operations on the Corridor. There shall be no charge for parking during the FDOT Funding Period, and thereafter any charge for parking shall be approved pursuant to Section 3.05(D) hereof.
For purposes of this Section, Stations located within the jurisdiction of the City of Orlando shall be excluded from Stations located within the jurisdiction of Orange County.

SECTION 6.03. STATION IMPROVEMENTS. In the event it is determined that additional parking or other Station improvements need to be provided at any given Station location, the FDOT and the Local Government Partner within whose jurisdiction the Station is located agree to work together to meet these needs. For purposes of this Section, Stations located within the jurisdiction of the City of Orlando shall be excluded from Stations located within the jurisdiction of Orange County.

SECTION 6.04. STATION AREA LAND USE AND DEVELOPMENT. FDOT and the Local Government Partners agree that maintaining a transit friendly atmosphere in the vicinity of Stations will encourage and foster use of the Commuter Rail System and increase ridership. Therefore, the parties agree that each Local Government Partner, within its regulatory authority, shall enact land use policies and restrictions, consistent with sound growth management principles and in accordance with applicable law, that encourage transit oriented land uses and enhance utilization of the Commuter Rail System by the general public. With respect to any right-of-way or other real estate owned by or under the control of FDOT contiguous with a Station, the FDOT shall cooperate with the Local Government Partner in determining appropriate uses for such property so as to promote the Commuter Rail System and other public transit. Furthermore, the parties agree that a Local Government Partner in whose boundaries the Station is located shall have exclusive authority to establish ancillary facilities at the Station location, and to grant allowable development rights, or to enter into agreements with landowners in the vicinity of a Station that could produce revenue for the Local Government
Partner. Each Local Government Partner shall be granted the right to avail itself of any powers of FDOT as to development of ancillary Station facilities.

For purposes of this Section, Stations located within the jurisdiction of the City of Orlando shall be excluded from Stations located within the jurisdiction of Orange County.

SECTION 6.05. OTHER RIGHTS OF LOCAL GOVERNMENT PARTNERS.

The following specific policy areas have been reserved for the sole determination of each individual Local Government Partner, and therefore excluded from oversight, control or action by the FDOT or any other Local Government Partner:

(A) any policy governing station amenity charges and other revenue sources, other than Commuter Rail System fares and parking charges at FDOT owned facilities, provided no such charge adversely affects the Commuter Rail System; and

(B) any policy governing development opportunities at or near a Station, provided that no such development adversely affects the Commuter Rail System, or restricts vehicular or pedestrian access to the Station.
ARTICLE VII

FINANCIAL OBLIGATIONS

SECTION 7.01. INITIAL CAPITAL FUNDING.

(A) The parties expect to receive Federal grant funding for 50 percent of the estimated $600,000,000 Capital Cost for the Commuter Rail System. The remaining Capital Cost will be funded by FDOT and the Local Government Partners as described in this Section.

(B) The Local Government Partners agree to contribute funds toward the Capital Cost for the construction, installation and equipping of Phase I and Phase II (the "Initial Capital Contribution") in the amounts and prior to the first day of the months shown in the following table.

<table>
<thead>
<tr>
<th></th>
<th>May 2007</th>
<th>January 2008</th>
<th>October 2008</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange County</td>
<td>$2,250,000</td>
<td>$9,000,000</td>
<td>$27,800,000</td>
<td>$39,100,000</td>
</tr>
<tr>
<td>Osceola County</td>
<td>$3,100,000</td>
<td>$24,000,000</td>
<td>$27,100,000</td>
<td></td>
</tr>
<tr>
<td>Seminole County</td>
<td>$5,280,000</td>
<td>$40,920,000</td>
<td>$24,000,000</td>
<td>$46,200,000</td>
</tr>
<tr>
<td>County of Volusia</td>
<td>$1,600,000</td>
<td>$12,400,000</td>
<td>$10,000,000</td>
<td>$24,000,000</td>
</tr>
<tr>
<td>City of Orlando</td>
<td>$200,000</td>
<td>$13,500,000</td>
<td></td>
<td>$13,700,000</td>
</tr>
<tr>
<td>Total</td>
<td>$6,880,000</td>
<td>$79,970,000</td>
<td>$51,800,000</td>
<td>$150,100,000</td>
</tr>
</tbody>
</table>

(C) [The responsibility for cost overruns and the beneficiaries of construction savings is an open issue – FDOT committed to provide a proposal, but has not done so.]

(D) A Local Government Partner may elect to defer payment of its Initial Capital Contribution for a period of up to [to come] months by providing a Letter of Credit to FDOT meeting the requirements set forth in Rule 14-116.002, Florida Administrative Code and this subsection (D) that is in a form acceptable to the FDOT Comptroller. Capital Installments shall be as agreed by FDOT and the Local Government Partner electing to provide a Letter of Credit.
The Credit Provider for any Letter of Credit must be rated at least "A" by Standard and Poor's Corporation, Moody's Investors Service, Inc., or Fitch Investors Service, Inc. Each Letter of Credit shall permit draws upon presentation by FDOT of sight drafts accompanied by its certificate that each invoice submitted therewith (a) represents a Capital Installment, (b) is due and payable, and (c) covers a Capital Installment not previously the subject of a draw on the Letter of Credit. Each draw shall be payable within five days of presentation of the sight draft. The Letter of Credit shall be for a term of not less than one year and shall permit a draw in full not more than 15 days prior to the expiration or termination of the Letter of Credit if the Letter of Credit has not been renewed or replaced with a Letter of Credit meeting the standards of this subsection clause (1). The Credit Provider shall be required to notify FDOT and the Local Government Partner not later than 60 days prior to the stated expiration date of the Letter of Credit, as to whether such expiration date shall be extended, and if so, shall indicate the new expiration date. If such notice indicates that the expiration date shall not be extended, FDOT will draw upon the Letter of Credit prior to its expiration or termination unless another Letter of Credit meeting the standards of this clause (1) is substituted therefor prior to the expiration date. The Letter of Credit shall permit a draw in full if the rating of the Credit Provider is downgraded below "A" by Standard and Poor's Corporation, Moody's Investors Service, Inc. Fitch Investors Service, Inc. and the Local Government Partner fails to provide a replacement meeting the standards of this clause (1) within 60 days of the date on which FDOT and the Local Government Partner become aware of such downgrading.
(2) The submission of any Letter of Credit to FDOT shall be accompanied by (a) an opinion of counsel acceptable to FDOT in its reasonable judgment and in form and substance satisfactory to FDOT, as to the due authorization, execution, delivery and enforceability of the Letter of Credit in accordance with its terms, subject to applicable laws affecting creditor's rights generally, and, in the event the Credit Provider is not a domestic entity, an opinion of foreign counsel in form and substance satisfactory to FDOT in its reasonable judgment; and (b) an opinion of counsel acceptable to FDOT in its reasonable judgment, and in form and substance satisfactory to FDOT in its reasonable judgment to the effect that payments under the Letter of Credit would not constitute avoidable preferences under Section 547 of the U.S. Bankruptcy Code or similar laws of the State of Florida with avoidable preference provisions in the event of the filing of a petition for relief under the U.S. Bankruptcy Code or similar State laws by or against the Credit Provider.

SECTION 7.02. ANNUAL FUNDING OBLIGATION AND LIMITATION.

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

(B) Following expiration of the FDOT Funding Period, the Commission shall be entitled to retain the Total Operating Revenue of the Commuter Rail System and shall be obligated for payment of the Total Operating Cost of the Commuter Rail System. The Share of Local Operating Support for each Local Government Partner shall be computed pursuant to Section 7.03 hereof. Following expiration of the FDOT Funding Period, the Local Government Partners shall also be responsible for funding Debt Service on the FDOT Fixed-Guideway
Bonds. The Share of FDOT Bond Debt Service for each Local Government Partner shall be computed pursuant Section 7.05 hereof.

(C) In the absence of a voluntary agreement to provide additional funding, as described in the following subsection (D), the Local Government Partners' annual obligation to fund the System Operating Deficit shall be limited to the following amounts:

<table>
<thead>
<tr>
<th>Year</th>
<th>System Operating Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$7,786,000.00</td>
</tr>
<tr>
<td>2018</td>
<td>$6,895,000.00</td>
</tr>
<tr>
<td>2019</td>
<td>$6,804,000.00</td>
</tr>
<tr>
<td>2020</td>
<td>$7,225,000.00</td>
</tr>
<tr>
<td>2021</td>
<td>$7,128,000.00</td>
</tr>
<tr>
<td>2022</td>
<td>$7,574,000.00</td>
</tr>
<tr>
<td>2023</td>
<td>$7,471,000.00</td>
</tr>
<tr>
<td>2024</td>
<td>$7,944,000.00</td>
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<tr>
<td>2025</td>
<td>$7,835,000.00</td>
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<tr>
<td>2026</td>
<td>$7,336,000.00</td>
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<tr>
<td>2027</td>
<td>$8,219,000.00</td>
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<tr>
<td>2028</td>
<td>$8,750,000.00</td>
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<tr>
<td>2029</td>
<td>$8,627,000.00</td>
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<td>2031</td>
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<td>2032</td>
<td>$9,653,000.00</td>
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<td>2033</td>
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<td>2034</td>
<td>$9,996,000.00</td>
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<td>2035</td>
<td>$10,145,000.00</td>
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<tr>
<td>2036</td>
<td>$10,665,000.00</td>
</tr>
<tr>
<td>Total</td>
<td>$168,811,000.00</td>
</tr>
</tbody>
</table>
The foregoing amounts are based on the State Fiscal Year, which is from July 1 to June 30. For a unit of government with a different fiscal year, these amounts shall be pro-rated to establish an equivalent amount for the time period of its Fiscal Year.

(D) Annual funding in excess of the amounts specified in the foregoing subsection (C) shall only be required:

(1) with unanimous written consent of the Local Government Partners, or

(2) if one or more Local Government Partners agree in writing to fund the difference between the amount specified in the foregoing subsection (C) and the System Operating Deficit.

SECTION 7.03. LOCAL OPERATING SUPPORT. Following expiration of the FDOT Funding Period, each Local Government Partner shall be responsible for paying its Share of Local Operating Support for each Fiscal Year, which shall be computed as follows:

(A) The "Boarding Share" for each Local Government Partner shall be computed as follows:

(1) The total number of passengers embarking and disembarking from Stations located within the jurisdiction of a Local Government Partner during the most recent Funding Determination Year shall be divided by the total number passengers embarking and disembarking from all Commuter Rail System Stations for the same period.

(2) The total number of passengers embarking and disembarking during Peak Hours from Stations located within the jurisdiction of a Local Government Partner during the most recent Funding Determination Year shall be divided by the total number
passengers embarking and disembarking during Peak Hours from all Commuter Rail System Stations during the same period.

(3) The Boarding Share for each Local Government Partner shall be equal to the arithmetic average of the shares computed in clauses (1) and (2). For purposes of computing Boarding Shares, Stations located within the jurisdiction of the City of Orlando shall be excluded from Stations located within the jurisdiction of Orange County.

(B) The "Share of Local Operating Support Without Farebox" for each Local Government Partner shall be computed by multiplying the Local Government Partner's Boarding Share by the System Net Revenue Without Farebox.

(C) The "Local Farebox Revenue" for each Local Government Partner shall be computed by multiplying its Boarding Share by the total number passengers embarking and disembarking from all Commuter Rail System Stations during the most recent Funding Determination Year, and multiplying the result by the Average Fare for the same period.

(D) The "Share of Local Operating Support" for each Local Government Partner shall be computed by deducting its Farebox Revenue from its Share of Local Operating Support Without Farebox.

(E) The Commission shall prepare and submit a quarterly invoice to each individual Local Government Partner, in advance, for its respective Share of Local Operating Support. Invoices shall be submitted not later than sixty days prior to the beginning of each calendar quarter and payment shall be made within thirty days after receipt of the invoice.
SECTION 7.04. CAPITAL PLAN FUNDING.

(A) The cost of implementing the Five-Year Capital Plan during the FDOT Funding Period shall be paid by FDOT.

(B) Following expiration of the FDOT Funding Period, each Local Government Partner shall be responsible for paying its Share of Local Capital Cost for each Fiscal Year, which shall be computed by multiplying the Capital Cost of the Five-Year Capital Plan for such Fiscal Year by the Local Government Partner's percentage of track miles, as shown in the following table.

<table>
<thead>
<tr>
<th>Local Government Partner</th>
<th>Track Miles</th>
<th>Percentage of Track Miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange County</td>
<td>16.30 miles</td>
<td>26.9243 percent</td>
</tr>
<tr>
<td>Osceola County</td>
<td>9.60 miles</td>
<td>15.8573 percent</td>
</tr>
<tr>
<td>Seminole County</td>
<td>16.44 miles</td>
<td>27.1556 percent</td>
</tr>
<tr>
<td>County of Volusia (Phase I)</td>
<td>5.70 miles</td>
<td>9.4153 percent</td>
</tr>
<tr>
<td>County of Volusia (Phase II)</td>
<td>7.00 miles</td>
<td>11.5626 percent</td>
</tr>
<tr>
<td>City of Orlando</td>
<td>5.50 miles</td>
<td>9.0849 percent</td>
</tr>
</tbody>
</table>

(C) The Commission shall prepare and submit a quarterly invoice to each individual Local Government Partner, in advance, for its respective Share of Local Capital Costs. Invoices shall be submitted not later than sixty days prior to the beginning of each calendar quarter and payment shall be made within thirty days after receipt of the invoice.

SECTION 7.05. FDOT BOND DEBT SERVICE.

(A) FDOT shall issue FDOT Fixed-Guideway Bonds pursuant to Section 215.615, Florida Statutes, bearing interest at fixed rates consistent with prevailing market rates and having substantially equal annual Debt Service payments, in a total principal amount sufficient to fund FDOT’s reasonable transaction costs (estimated at $1,170,000) and yield $173,000,000 of net proceeds to fund acquisition of the Corridor and relocate the Taft Yard Facility.
(B) Following expiration of the FDOT Funding Period, each Local Government Partner shall be responsible for paying its "Share of FDOT Bond Debt Service," which shall be computed by multiplying the Debt Service for each Interest Payment Date (reduced by the proceeds of any Commuter Rail System assets, as set forth in Section 4.04 hereof) by the Local Government Partner's percentage of track miles, as shown in the following table.

<table>
<thead>
<tr>
<th>Local Government Partner</th>
<th>Track Miles</th>
<th>Percentage of Track Miles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Orange County</td>
<td>16.30 miles</td>
<td>26.9243 percent</td>
</tr>
<tr>
<td>Osceola County</td>
<td>9.60 miles</td>
<td>15.8573 percent</td>
</tr>
<tr>
<td>Seminole County</td>
<td>16.44 miles</td>
<td>27.1556 percent</td>
</tr>
<tr>
<td>County of Volusia (Phase I)</td>
<td>5.70 miles</td>
<td>9.4153 percent</td>
</tr>
<tr>
<td>County of Volusia (Phase II)</td>
<td>7.00 miles</td>
<td>11.5626 percent</td>
</tr>
<tr>
<td>City of Orlando</td>
<td>5.50 miles</td>
<td>9.0849 percent</td>
</tr>
</tbody>
</table>

(C) Each Local Government Partner shall pay its respective Share of FDOT Bond Debt Service on each Interest Payment Date \[FDOT\text{proposes that payments be made five days before the interest payment date, which would be inconsistent with the standard business practice.}\] by wire transfer in immediately available funds in accordance with written instructions provided to the Local Government Partners by FDOT. Unless otherwise agreed to by FDOT, no Federal funds shall be used for these payments. \[The\text{last sentence was proposed by FDOT.}\]

What is the purpose?\[FDOT\text{has not yet provided a proposal to address Osceola County's funding obligations if Phase II is not funded (this issue is shared by Volusia County for the segment between Debary and Deland).}\]

SECTION 7.06. COVENANT TO BUDGET AND APPROPRIATE.

(A) Each Local Government Partner hereby covenants and agrees to appropriate in its annual budget for each Fiscal Year, by amendment, if necessary, from Non-Ad Valorem Funds
lawfully available in each Fiscal Year, amounts required to pay its Initial Capital Contribution, its Share of Local Operating Support and its Share of FDOT Bond Debt Service for such Fiscal Year. Each Local Government Partner's covenant and agreement to budget and appropriate such amounts of Non-Ad Valorem Funds shall be cumulative to the extent not paid, and shall continue until such Non-Ad Valorem Funds or other legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid. Notwithstanding the foregoing, the Local Government Partners do not covenant to maintain any services or programs, now provided or maintained by such Local Government Partners which generate Non-Ad Valorem Funds.

(B) The foregoing covenant to budget and appropriate does not create any lien upon or pledge of such Non-Ad Valorem Funds, nor does it preclude a Local Government Partner from pledging its Non-Ad Valorem Funds in the future, nor does it require a Local Government Partner to levy and collect any particular Non-Ad Valorem Funds, nor does it give the parties to this Interlocal Agreement a prior claim on the Non-Ad Valorem Funds as opposed to claims of general creditors of the Local Government Partner. The covenant to appropriate Non-Ad Valorem Funds is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Funds heretofore or hereafter entered into (including the payment of debt service on bonds and other debt instruments). However, the covenant to budget and appropriate in its general annual budget for the purposes and in the manner stated herein shall have the effect of making Non-Ad Valorem Funds available for the payment of amounts described in this Section, in the manner described in this Interlocal Agreement and placing on each Local Government Partner a positive duty to appropriate and budget, by amendment, if necessary, amounts sufficient to meet its obligations hereunder; subject, however, in all respects to the
provisions of general law which provide that the governing body of each county or municipality shall not make appropriations in a Fiscal Year which exceed the amount to be received from taxation or other revenue sources during such Fiscal Year; and subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the inhabitants of the Local Government Partner or which are legally mandated by applicable law.

(C) No provision of this Interlocal Agreement shall be considered a debt obligation of any Local Government Partner within the meaning of any constitutional or statutory provision or limitation. Amounts payable hereunder are limited obligations of each Local Government Partner and neither the property, the full faith and credit nor the taxing power of the Local Government Partners, the State of Florida or any political subdivision is pledged as security for the obligations due hereunder.

SECTION 7.07. FARES. Fares, the collection of fare revenue and use of fare collection equipment shall be as follows:

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

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

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

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

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

(F) In determining the source and amount of passenger fare revenue to be allocated to Commuter Rail System by LYNX and VOTRAN as joint revenue, a survey of passengers shall be conducted on an annual basis or at some other frequency as determined by the FDOT (during the FDOT Funding Period) or the Commission (following expiration of the FDOT Funding Period) to ascertain where the passenger boarded the train, other modes of transportation service utilized, the type of fare utilized for their trip (e-pass, monthly pass, cash, etc.) and from which service provider (LYNX, VOTRAN or the Commuter Rail System) the fare was purchased. The data from these surveys shall be used to determine the percentage of total passenger trips to be allocated to each mode of service. FDOT, with advise from the Governing Board (during the FDOT Funding Period) or the Governing Board (following expiration of the FDOT Funding Period) shall approve an Average Fare based upon the results of these surveys and the methodologies and assumptions utilized to calculate the Average Fare. This Average Fare shall then be applied to joint ridership statistics to determine Commuter Rail System passenger fare revenue.
SECTION 7.08. ANNUAL BUDGETS.

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

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

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

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

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

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

SECTION 7.09. ACCOUNTING AND REPORTING.

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

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

SECTION 7.10. FDOT ANNUAL APPROPRIATIONS. Notwithstanding any other provision of this Interlocal Agreement, in compliance with Florida Statutes, Section 339.135(6)(a), the following language and provisions thereof are hereby made a part of this Interlocal Agreement:

The FDOT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. 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.
ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.01. TERM. This Interlocal Agreement shall become effective when a fully-executed copy is filed with the clerk of the circuit court for each of the Local Government Partners and, unless terminated earlier pursuant the terms hereof, shall extend for a term of ninety-nine years.

SECTION 8.02. TERMINATION.

(A) This Interlocal Agreement shall not be terminated prior to conveyance of the Corridor and the rolling stock, equipment and other personal property of the Commuter Rail System, as described in Section 4.05 hereof.

(B) Following conveyance of the Corridor and the rolling stock, equipment and other personal property of the Commuter Rail System, as described in Section 4.05 hereof, this Interlocal Agreement may be terminated by agreement of the Local Government Partners if a successor agency is created to own and operate the Commuter Rail System. The agreement of FDOT shall not be required for termination of this Interlocal Agreement following conveyance of the Corridor if the successor agency (which may be the Commission) has assumed operation and management of the Commuter Rail System in accordance with Federal, State and local governmental requirements and has assumed operation and maintenance responsibility for the Corridor in accordance with the Corridor Operating Agreement.

(C) Each Local Government Partner's obligation to pay its respective Share of FDOT Bond Debt Service pursuant to Section 7.05 hereof shall survive the termination of this Interlocal Agreement.
(D) Although all parties to this Interlocal Agreement fully expect the Commuter Rail System to be successful and are committed to fulfilling any and all requirements of this Interlocal Agreement for the entire ninety-nine year term, the parties are cognizant that certain unforeseen events may result in termination of the Commuter Rail System at an earlier date and desire to set forth the consequences of such early termination. For the purposes of this subsection "termination of the Commuter Rail System" shall mean that that the Commuter Rail System is no longer available for use by the public as a means of transportation. Termination of the Commuter Rail System shall not occur except in accordance with the following:

(1) **Mutual Consent.** The Commuter Rail System may be terminated at any time, by the written agreement of FDOT, the Local Government Partners, and the FTA that such would be in the best public interest. The agreement shall specify the consequences of the termination and the disposition of any assets of the Commuter Rail System.

(2) **Force Majeure.** In the event a Force Majeure causes, continues, or is likely to continue the performance of the Commuter Rail System to be impractical for a period of one year or more, the FDOT, during the FDOT Funding Period, or the Commission, after the FDOT Funding Period, may terminate the Commuter Rail System. Upon such termination all assets of the Commuter Rail System, the Corridor, the Stations, associated parking lots, and ancillary facilities shall revert to the FDOT, who shall have sole discretion to determine the disposition of same in accordance with law, and the FDOT shall assume responsibility for compliance with the Corridor Operating Agreement.
(3) Financial Events. In the event (a) any party to this agreement or the
Commission shall fail to pay any funds when due, or shall fail to issue when required any
securities, guarantees, or credit enhancements required by this Interlocal Agreement, or
shall otherwise be in material breach of this Interlocal Agreement, and in each case all
applicable cure rights have been exhausted, and sufficient funds to replace such unpaid
funds are not forthcoming from other sources, or (b) the Commuter Rail System cannot
be successfully operated with an annual Operating Deficit less than or equal to the
amounts specified in Section 7.02(C) hereof, then the FDOT, during the FDOT Funding
Period, or the Commission, after the FDOT Funding Period, may terminate the
Commuter Rail System. Upon such termination all assets of the Commuter Rail System,
the Corridor, the Stations, associated parking lots, and ancillary facilities shall revert to
the FDOT, who shall have sole discretion to determine the disposition of same in
accordance with law, and the FDOT shall assume responsibility for compliance with the
Corridor Operating Agreement.

SECTION 8.03. RESOLUTION OF DISPUTES. It is the desire and intent of the
parties to avoid, if possible, the expense and delay inherent in litigation; therefore, the FDOT and
the Local Government Partners agree that whenever any individual party cannot resolve an issue
with any other party, the affected parties will in engage in the alternative dispute resolution
process described below prior to resorting to litigation.

(A) Any party may give another party written notice of any dispute not resolved in the
normal course of business. Within ten 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 (1) 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 (2) 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.

(B) Within ten 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. All reasonable requests for information made by one party to the other will be honored. In an effort to facilitate the negotiation process, such executives may agree to have an unrelated third party moderate and facilitate the negotiations. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least three business days notice of such intention and may also be accompanied by an attorney.

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

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

(E) Each party shall each bear its own costs and expenses incurred in connection with any negotiations and dispute resolution.
Upon failure to resolve any dispute in accordance with this Section 8.03, the parties may engage in mediation, arbitration, or other dispute resolution processes at their discretion, or pursue other legal remedies.

SECTION 8.04. FORCE MAJEURE. It is expressly understood and agreed by the parties to this Interlocal Agreement that if the performance of any provision of this Interlocal Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Interlocal Agreement to do or perform the same, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

SECTION 8.05. CONDEMNATION. FDOT and the Local Government Partners agree to cooperate if the exercise of eminent domain power becomes necessary to acquire property for the Commuter Rail System in determining which agency would be the most appropriate governmental entity to exercise its authority. In the event that any condemning authority institutes an action or proceeding for the condemnation of a portion of the Commuter Rail System property, FDOT and the Local Government Partners 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 commuter rail service.

SECTION 8.06. INSURANCE AND SELF INSURANCE.

(A) FDOT shall provide sufficient insurance or self insurance to protect FDOT, the Commission, and the Local Government Partners during the Term of this Interlocal Agreement.
and at all times that FDOT owns the Corridor or acts as the management/operator of the Commuter Rail System. FDOT shall as a minimum procure and maintain insurance or self insurance in the amounts set forth in the Corridor Operating Agreement, which are incorporated herein by reference. If FDOT owns, manages or operates an intercity passenger rail service on the Corridor FDOT shall also provide such additional insurance as the Commission or the Local Government Partners may require. FDOT, the Commission, or the Local Government Partners may self insure in lieu of commercial insurance but only to the extent that such self insurance is not inconsistent with the Corridor Operating Agreement.

(B) Each policy provided in connection with this Interlocal Agreement shall name FDOT, the Commission, and the Local Government Partners as well as their respective elected or appointed officials, management, employees, agents and assigns of each as additional insureds. Each insurance policy shall provide a thirty day notice of cancellation to all named insureds and that endorsement shall be noted on the certificate of insurance.

(C) Any Contract Operator or subcontractor of the Contract Operator and any other third party contractors that may require access on or to the Corridor shall be required to obtain a policy or policies with coverages that conform with the requirements of this Section and to provide FDOT, the Commission, and the Local Government Partners with a copy of a current certificate of insurance prior to commencing work and annually thereafter. Such insurance shall be primary to any insurance of the Commission and the Local Government Partners. Upon request, a copy of each actual policy shall be provided to FDOT, the Commission, and Local Government Partner by the Contract Operator or Subcontractor Operator.

(D) Upon expiration of the FDOT Funding Period, the Commission (through funding by the Local Government Partners) and FDOT shall each pay a pro rata share of the premiums
for any insurance policies required by the Corridor Operating Agreement. Any self insured retention shall be as agreed among the FDOT, the Commission, and the Local Government Partners, but such self insured retention shall not be inconsistent with the provisions of the Corridor Operating Agreement.

(E) FDOT shall give prompt written notice to the Commission and the Local Funding Partner of all known losses, damages, or injuries to any person or to property of the Commission of third persons that may be in any way related to the Interlocal Agreement or for which a claim might be made against the FDOT, the Local Government Partners, or the Commission. FDOT shall promptly report all such claims, whether related to matters insured or self insured. No settlement or payment for any claim for loss, injury or damage or other matter as to which the Commission or the Local Government Partners may be charged with an obligation to make any payment or reimbursement shall be made by FDOT without the prior written approval of the Commission or Local Funding Partners.

(F) FDOT shall, by mutual agreement with the Local Government Partners and the Commission, establish a risk management policy to establish the procedure of handling any and all claims filed against the FDOT and the Local Government Partners with regard to the Commuter Rail System. The policy shall include, but not be limited to, written guidelines, forms and procedures for the economical evaluation, settlement, processing and defense and/or dispositions of claims in litigation against FDOT, the Commission, and/or the Local Government Partners, together with the respective elected or appointed officials, the management staff, employees, agents and assigns of these entities. These policies shall also include, but not be limited to, written procedures or notification and/or settlement of all claims.
SECTION 8.07. SOVEREIGN IMMUNITY, LIMITATION OF LIABILITY AND INDEMNIFICATION.

(A) During the term of this Interlocal Agreement, FDOT and the Local Government Partners each agree to defend, indemnify and hold the other parties harmless from all claims, damages, losses and expenses arising out of or resulting from any act or omission of the indemnifying party’s elected or appointed officials, employees or agents which act or omission is under or which relates in any way to this Interlocal Agreement. The foregoing notwithstanding, the indemnifying party does not waive the right to defend a claim by raising the defense that sovereign immunity has not been waived for the act or omission which is the basis of the claim nor any other defense available under state or federal law. Upon the formation of the Commission contemplated in Article III hereof, the Commission shall have the same indemnification rights and obligations. The obligations of indemnity commence on the effective date of this Interlocal Agreement and shall survive the termination or expiration of this Interlocal Agreement for purposes of defense and indemnification of any action arising during the term of this Interlocal Agreement. The obligations of indemnity are specifically subject to the limitations on liability and damages hereinafter set forth in the subsections (B) through (E), inclusive, of this Section.

(B) The governmental entities referenced in subsection (A) of this Section, including the contemplated Commission, expressly retain all rights, benefits, immunities of sovereign immunity and limitations of liability in accordance with Section 768.28, Florida Statutes. The governmental entities referenced in the subsection (A) of this Section, including the contemplated Commission, expressly retain all rights, benefits, immunities, and limitations of liability in accordance with Chapter 49 U.S.C.A Section 28013. Except as specifically set forth
in this Section 8.07 to the contrary and only to the extent and manner set forth, nothing in this
Interlocal Agreement shall be deemed as a waiver of either sovereign immunity or the limits of
liability of the governmental entities including the contemplated Commission beyond any
statutory limited waiver of sovereign immunity or limits of liability which may have been
adopted by the Florida Legislature or may be adopted by the Florida Legislature and nothing is
this Agreement shall be deemed a waiver of any immunity or limits of liability which may be
available under federal law to the governmental entities referenced in subsection (A) of this
Section or the contemplated Commission. Nothing in this Interlocal Agreement shall inure to the
benefit of any third party for the purpose of allowing any claim against the governmental entities
which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of
state or federal law.

(C) Unless otherwise further limited by state or federal law, the cap on the amount
and liability of the Local Government Partners and the contemplated Commission for damages
for third party claims or indemnification claims under the Corridor Operating Agreement
regardless of the number or nature of claims or whether such claim sounds in tort, equity or
contract shall not exceed the dollar amount set by the Florida legislature for tort which is
currently ONE HUNDRED THOUSAND ($100,000.00) DOLLARS per claim and TWO
HUNDRED THOUSAND ($200,000.00) DOLLARS per incident.

(D) The foregoing notwithstanding the Local Government Partners agree that to the
extent a judgment or a settlement of claim by FDOT occurs which arises and which comes
within the parameters of the indemnification provisions of the Corridor Operating Agreement
such that FDOT or its successors or assigns are liable to pay therefore and such successor or
assign is the Commission and/or the Local Government Partners that sovereign immunity of
FDOT, the Commission and/or the Local Government Partners shall be waived for purposes of payment only for such liability under the judgment or settlement and only to the collective maximum limit of the insurance required under the Corridor Operating Agreement which is TWO HUNDRED MILLION ($200,000,000.00) DOLLARS per occurrence. The FDOT’s assignment to the Commission or Local Government Partners of any of its rights under the Corridor Operating Agreement shall not assign FDOT’s duty of indemnification of CSXT to the Commission and the Local Government Partners except as limited and as specifically described in this Section. Subject to the other provisions of this Section the Commission and the Local Government Partners maximum total liability for indemnification under the Corridor Operating Agreement shall not exceed the insurance limits of TWO HUNDRED MILLION ($200,000,000.00) DOLLARS for payment of any claim including prejudgment interest. FDOT shall hold the Commission and the Local Government Partners harmless from any liability for indemnification under the Corridor Operating Agreement which exceeds TWO HUNDRED MILLION ($200,000,000.00) DOLLARS.

(E) IN NO EVENT WILL THE COMMISSION OR LOCAL GOVERNMENT PARTNERS BE LIABLE TO CSXT OR FDOT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES EVEN IF THE COUNTY KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF SUCH DAMAGES FOR ANY PROVISION OF THIS INTERLOCAL AGREEMENT.

SECTION 8.08. THIRD PARTY CONTRACTORS. If any portion of the Commuter Rail Service is contracted to another party, FDOT agrees that it will require the contracted party to assume the insurance and indemnification obligations required by Sections 8.06 and 8.07 hereof.
SECTION 8.09.  CHANGED CIRCUMSTANCES. If future Federal, State or local statute, ordinance, regulation, rule or action render this Interlocal Agreement, wholly or in part, illegal, invalid, unenforceable or impractical, the parties agree to delete and/or to modify such portions of the Interlocal Agreement as are necessary to render it valid, enforceable and/or practical. Each section, paragraph or provision of this Interlocal 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 operation of or otherwise affect the valid portions of this instrument. In the event that a future Federal, State or local statute, ordinance, regulation, rule or action renders this Interlocal Agreement in whole illegal, invalid, unenforceable or impractical and either one or more of the parties to this Interlocal Agreement agree that it is impossible or impractical to continue to operate the Commuter Rail System, then this Interlocal Agreement, if not already terminated by operation of law, may be terminated.

SECTION 8.10.  NOTICES. Whenever this Interlocal Agreement requires or permits any consent, approval, notice, request, proposal, or demand from one party to another, the content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be delivered to and received by the party intended to receive it (A) by hand delivery to the person(s) hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and 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 and
received by the person to which it is addressed at the address set forth opposite the party's name by facsimile, addressed to the person at the address set forth opposite the party's name below:

Orange County:

Osceola County:

Seminole County:

County of Volusia:

City of Orlando:

FDOT:

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

SECTION 8.11. ENFORCEMENT. If any party initiates an action to enforce any provision of this Interlocal Agreement or for damages by reason of an alleged breach of any provision hereof, FDOT and each Local Government Partner shall pay its own costs, and expenses, and attorneys' fees and costs incurred in connection with such action.

SECTION 8.12. COUNTERPARTS. This Interlocal Agreement may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this Interlocal
Agreement, so that in making proof of this Interlocal Agreement, it shall only be necessary to produce or account for one such counterpart.

**SECTION 8.13. COMPLETE AGREEMENT.** This Interlocal Agreement embodies all of the agreements of the parties relating to its subject matter, supersedes all prior understandings and agreements regarding such subject matter, and may be amended, modified, or supplemented only by an instrument or instruments in writing executed by all of the parties.

**SECTION 8.14. SEVERABILITY.** In the event any one or more of the provisions contained in this Interlocal Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Interlocal Agreement shall be revised so as to cure such invalid, illegal or unenforceable provision to carry out as nearly as possible the original intent of the parties.

**SECTION 8.15. CONTRACTUAL RELATIONSHIP.** It is specifically understood and agreed that the relationship described in this Interlocal Agreement between and among the FDOT and Local Government Partners is contractual in nature and is not to be construed to create a partnership or joint venture or agency relationship among the parties. Nor, shall FDOT and individual Local Government Partners be liable for any debts or liabilities incurred by the other parties to this Interlocal Agreement except as provided herein, or for non-commuter rail service operations or activities.

**SECTION 8.16. CAPTIONS.** The captions, headings, and arrangements used in this Interlocal Agreement are for convenience only and shall not in any way affect, limit, amplify, or modify its terms and provision.
SECTION 8.17. GOVERNING LAW AND VENUE. This Interlocal Agreement and all agreements entered into in connection with the transactions contemplated by this Interlocal Agreement are, and will be, executed and delivered, and are intended to be performed in Orange County, Osceola County, Seminole County and the County of Volusia. The laws of Florida shall govern the validity, construction, enforcement, and interpretation of this Interlocal Agreement. In the event of litigation among the parties hereto, their successors or assigns, with regard to this Interlocal Agreement and any subsequent supplementary agreements or amendments, venue shall lie exclusively in the county where the administrative offices of the Commuter Rail System are located.

SECTION 8.18. FURTHER ASSURANCES. Each party agrees to perform any further acts and to sign and deliver any further documents that may be reasonably necessary to carry out the provisions of this Interlocal Agreement.

EXECUTION PAGES TO COME
## PRELIMINARY COMMUTER RAIL COST ALLOCATION ANALYSIS
### YEAR OF EXPENDITURE LPA ASSESSMENT

Station and Distance (Non-Station Items) Allocation Method

Revised April 2007 - 5% Escalation

<table>
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<th>Station</th>
<th>Track Miles</th>
<th>Non-Station Cost Allocation</th>
<th>Station Cost</th>
<th>Total Capital Cost</th>
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<td><strong>Volusia County</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>DeLand Amtrak Station</td>
<td>12.7</td>
<td>$77,900,000</td>
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<td>DeBary/Saxon Blvd. Extension Station</td>
<td></td>
<td></td>
<td>$11,100,000</td>
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<td><strong>Total Volusia County</strong></td>
<td></td>
<td>$77,900,000</td>
<td>$16,800,000</td>
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<td><strong>Seminole County</strong></td>
<td>16.44</td>
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<td>Sanford/SR 46 Station</td>
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<td><strong>Total Seminole County</strong></td>
<td></td>
<td>$128,400,000</td>
<td>$54,900,000</td>
<td>$183,300,000</td>
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<tr>
<td><strong>Orange County</strong></td>
<td>16.3</td>
<td>$127,300,000</td>
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</tr>
<tr>
<td>Maitland</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winter Park/Park Avenue Station</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sand Lake Road Station</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Meadow Woods Station</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>Total Orange County</strong></td>
<td></td>
<td>$127,300,000</td>
<td>$33,100,000</td>
<td>$160,400,000</td>
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<tr>
<td><strong>City of Orlando</strong></td>
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<tr>
<td>Florida Hospital Station</td>
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<tr>
<td>LYNX Central Station</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Church/South Street Station</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Orlando AMTRAK/ORMC Station</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Total Orange County</strong></td>
<td></td>
<td>$42,900,000</td>
<td>$11,400,000</td>
<td>$54,300,000</td>
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<tr>
<td><strong>Osceola County</strong></td>
<td>9.6</td>
<td>$74,900,000</td>
<td>$13,300,000</td>
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<tr>
<td>Osceola Parkway Station</td>
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<td></td>
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<tr>
<td>Kissimmee AMTRAK Station</td>
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<tr>
<td>Poinciana Industrial Park Station</td>
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<td><strong>Total Osceola County</strong></td>
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<td>$32,100,000</td>
<td>$107,000,000</td>
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</tbody>
</table>

**YEAR OF EXPENDITURE TOTALS**

|                      | 60.54       | $451,400,000                  | $148,300,000 | $599,700,000       |

**Full Cost Assumption:**

- **Federal Share (50%)** $605,000,000
- **State Share (25%)** $302,500,000
- **Local Share (25%)** $151,250,000
- **Total Local Share** $151,250,000

Note: Soft costs are included in non-station costs.
## Central Florida Commuter Rail Transit Station Development - Construction Estimate

<table>
<thead>
<tr>
<th>Proposed WINTER PARK STATION - AMTRAK LOCATION (without any land acquisition and any new surface parking)</th>
<th>Winter Park</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LAND COSTS</strong></td>
<td></td>
</tr>
<tr>
<td>Land Acquisition Costs</td>
<td>$ -</td>
</tr>
<tr>
<td>Site Preparation (clearing)</td>
<td>$ -</td>
</tr>
<tr>
<td>Site Mitigation</td>
<td>$ 100,000</td>
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<tr>
<td><strong>VEHICULAR CIRCULATION</strong></td>
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<tr>
<td>Signal and Intersection Modifications</td>
<td>$ -</td>
</tr>
<tr>
<td>Surface Parking &amp; Walks, 250 car</td>
<td>$ -</td>
</tr>
<tr>
<td>Structured Parking</td>
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<tr>
<td>Bus Circulation &amp; Pedestrian Walk</td>
<td>$ 131,169</td>
</tr>
<tr>
<td>Vehicle area Utilities</td>
<td>$ -</td>
</tr>
<tr>
<td><strong>STATION ELEMENTS</strong></td>
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<tr>
<td>Utility Connections</td>
<td>$ 72,000</td>
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<tr>
<td>Commuter Platforms</td>
<td>$ 520,000</td>
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<tr>
<td>Cross-track pedestrian circulation</td>
<td>$ -</td>
</tr>
<tr>
<td>Platform Facilities</td>
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<tr>
<td>Plumbing Facilities</td>
<td>$ 7,900</td>
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<tr>
<td><strong>LANDSCAPING</strong></td>
<td>$ -</td>
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<tr>
<td><strong>SITE UTILITIES</strong></td>
<td>$ 119,600</td>
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<td><strong>SIGNAGE</strong></td>
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<td><strong>GENERAL CONDITIONS</strong></td>
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<td>SUBTOTALS</td>
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<tr>
<td>CONTINGENCY (Weighted average)</td>
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<tr>
<td>CONCEPTUAL TOTAL 2005 dollars</td>
<td>$ 2,458,686</td>
</tr>
<tr>
<td>Year of Expenditure Dollars (2009)</td>
<td>$ 3,000,000</td>
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</tbody>
</table>

### Assumptions
- Assume Amtrak Location is the selected station site.
- 1% Art element assumed included in cost of platform design as presented
- Open access to unoccupied sites is assumed, day shift hours without overtime
- Assumes easy excavation in soils suitable for reuse. Rock excavation excluded
- Year of expenditure dollars assumes 5% escalation rate with an additional 2.5% added

### Exclusions
- Removal or Abatement of contaminated, regulated, or hazardous materials in demolished Buildings
- Trackwork, Rail Signals, Railroad Force Accounts
- At-grade pedestrian track crossings
- Cost of Engineering, Contract Management

7-5-06