

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** Approval of the First Amendment to the Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System

**DEPARTMENT:** Public Works

**DIVISION:** Engineering

**AUTHORIZED BY:** Gary Johnson

**CONTACT:** Jerry McCollum

**EXT:** 5651

**MOTION/RECOMMENDATION:**

Approve and authorize Commissioner Carlton Henley, Secretary of the Central Florida Commuter Rail Commission and Seminole County's representative on the Board of Directors, to approve the First Amendment to the Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System.

County-wide

Jerry McCollum

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**BACKGROUND:**

The initial agreement required the FDOT to purchase the CSX right-of-way by December 31, 2008. However, as the Board is aware, legislation was not passed in the last legislative session that would have allowed the purchase to proceed. This amendment extends the purchase date to December 31, 2009, which would allow the purchase to occur after this legislative session, if appropriate legislation is passed.

Also attached for the Board's information are copies of a resolution and exhibits provided by Volusia County. The County Council has conditionally approved the amendment as detailed in these documents. Osceola County has approved the First Amendment to the Interlocal Operating Agreement as presented by FDOT. Orange County and City of Orlando are expected to take action prior to the Board's December 9 meeting. Staff will provide an update on the status of the agreement with all partners at the BCC meeting.

**STAFF RECOMMENDATION:**

Staff recommends that the Board approve and authorize Commissioner Carlton Henley, Secretary of the Central Florida Commuter Rail Commission and Seminole County's representative on the Board of Directors, to approve the First Amendment to the Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System.

**ATTACHMENTS:**

1. Letter-FDOT-Commuter Rail-Agreement
2. First Amendment-Interlocal Operating Agmt.-Commuter Rail
3. Interlocal Operating Agreement - Commuter Rail Transit
4. Transmittal Letter-Volusia County Resolution
5. Resolution - Volusia County
6. Resolution - Exhibit 1
7. Resolution - Exhibit 2
8. Resolution - Exhibit 3

**Additionally Reviewed By:**

County Attorney Review ( Matthew Minter )



## Florida Department of Transportation

CHARLIE CRIST  
GOVERNOR

719 S. Woodland Blvd.  
DeLand, FL 32720

STEPHANIE C. KOPELOUSOS  
SECRETARY

October 21, 2008

Mr. Jerry McCollum  
Seminole County  
520 West Lake Mary Boulevard, Suite 200  
Sanford, Florida 32773

**SUBJECT:** Central Florida Commuter Rail Transit System  
Amendment to Interlocal Funding Agreement

Dear Mr. McCollum:

As discussed at the meeting held on October 13, 2008 with representatives from the Central Florida Commuter Rail five local government partners (Volusia, Seminole, Orange, and Osceola Counties and City of Orlando) and the Florida Department of Transportation, enclosed please find the First Amendment to Interlocal Operating Agreement for the Operation of the Central Florida Commuter Rail System. This amendment has been reviewed by attorneys representing the five local government partners and suggested changes have been incorporated. As discussed on October 13, 2008, this amendment is expected to be presented to your commission at your December 9, 2008 meeting.

Further, this will confirm that the Florida Department of Transportation will not issue the Fixed Guideway bonds prior to approval by the Florida Legislature of the Florida Department of Transportation's purchase of the Central Florida Commuter Rail corridor from CSX Transportation, Inc.

I very much appreciate your continued support of this important project, and look forward to seeing you in the near future. If you have any additional questions, please do not hesitate to contact me at 386-943-5476.

Sincerely,

A handwritten signature in black ink, appearing to read "George S. Lovett".

George S. Lovett  
Director of Transportation Development

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

**THIS FIRST AMENDMENT TO INTERLOCAL OPERATING AGREEMENT FOR  
THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** (the  
"First Amendment") dated as of \_\_\_\_\_, 2008 (the "Effective Date") is  
entered into between the State of Florida, Department of Transportation, an agency of  
the State of Florida ("FDOT") and the Central Florida Commuter Rail Commission (the  
"Commission"), a legal entity and public body created by the Interlocal Governance  
Agreement for Creation of the Central Florida Commuter Rail Commission By and  
Among Orange County, Florida, Osceola County, Florida, Seminole County, Florida,  
County of Volusia, Florida, and City of Orlando, Florida pursuant to Section 163.01,  
Florida Statutes.

**WITNESSETH:**

**WHEREAS**, FDOT and the Commission desire to amend Section 3.02(D) of the  
**INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM** to change the date therein from  
December 31, 2008 to December 31, 2009, and

**WHEREAS**, the Local Government Partners have all consented to the execution  
of this First Amendment.

**NOW THEREFORE**, FDOT and the Commission hereby agree to amend the  
**INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM** as follows:

1. The date of December 31, 2008 contained in Section 3.02(D) shall be changed to the new date of December 31, 2009.
2. Other than expressly set forth herein, all other terms and conditions of the **INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereby have caused this First Amendment

to be executed as of the Effective Date.

By and For the Central Florida Commuter Rail Commission:

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

By and For The State of Florida, Department of Transportation:

\_\_\_\_\_ Date: \_\_\_\_\_  
Secretary, District Five

\_\_\_\_\_ Date: \_\_\_\_\_  
Legal Review

INTERLOCAL OPERATING AGREEMENT  
FOR OPERATION OF THE  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM

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By and Between

FLORIDA DEPARTMENT OF TRANSPORTATION

AND

CENTRAL FLORIDA COMMUTER RAIL COMMISSION

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40 construction of the proposed commuter rail service on the Commuter Rail System; and

41       **WHEREAS**, Federal New Starts funding and other Federal funding will require a 50 percent  
42 match of Federal funds with state and local funds for capital costs, which will be shared among FDOT,  
43 Orange County, a charter county and political subdivision of the State of Florida ("Orange County"),  
44 Osceola County, a charter county and political subdivision of the State of Florida ("Osceola County"),  
45 Seminole County, a charter county and political subdivision of the State of Florida ("Seminole  
46 County"), the County of Volusia, a charter county and political subdivision of the State of Florida  
47 ("County of Volusia"), the City of Orlando, a municipal corporation of the State of Florida (the "City  
48 of Orlando"), in the Interlocal Funding Agreement among such parties; and

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

54       **WHEREAS**, Local Government Partners have created the Central Florida Commuter Rail  
55 Commission (the "Commission") to assume responsibility for funding, operation, management, and  
56 maintenance of the Commuter Rail System upon expiration of the FDOT Funding Period; and

57       **WHEREAS**, FDOT has agreed to convey an easement in the Corridor and fee title to the  
58 Station Property to the Commission in accordance with and under the conditions described in Section  
59 3.05 hereof and Article III of the Interlocal Funding Agreement between FDOT and the Local  
60 Government Partners; and

61       **WHEREAS**, the Commuter Rail System is contained in the Year 2025 Metroplan Orlando's

62 Orlando Urban Area Transportation Study "Financially Constrained Network," and the 2025 Volusia  
63 County Long Range Transportation Plan; and

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

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

70 **WHEREAS**, the Commuter Rail System will become an integral part of a Central Florida  
71 balanced transportation system and, with concurrent development of improvements to roadways and  
72 bus transit, will greatly enhance the mobility of the traveling public;

73 **NOW THEREFORE**, in consideration of the mutual promises, covenants and agreements  
74 contained herein and other valuable consideration, receipt of which is hereby acknowledged, the parties  
75 mutually undertake, promise and agree for themselves, their successors and assigns as follows:

76 **ARTICLE I**

77 **DEFINITIONS AND CONSTRUCTION**

78 **SECTION 1.01. DEFINITIONS.** Except as otherwise expressly provided herein or unless the  
79 context otherwise requires, capitalized terms have the meanings assigned to such terms in the Master  
80 Glossary of Terms for the Florida Commuter Rail System Agreements attached hereto as Appendix A  
81 and by the reference incorporated herein.

82 **SECTION 1.02. INTERPRETATION.** For the purposes of the interpretation, construction,  
83 administration, and implementation of this Interlocal Operating agreement, unless otherwise stated in

84 this Interlocal Operating Agreement, the following rules of construction shall apply:

85 (A) Words importing the singular number shall include the plural, and vice versa, unless the  
86 context clearly indicates to the contrary.

87 (B) In case of any difference of meaning or implication between the text of this Interlocal  
88 Operating Agreement and any caption, illustration, summary table or illustrative table, the text shall  
89 control.

90 (C) The word “shall” is mandatory, not discretionary; the word “may” is permissive and  
91 discretionary.

92 (D) The word “person” includes an individual, a corporation, a partnership, an incorporated  
93 association, or any other similar entity.

94 (E) Unless the context clearly indicates to the contrary, where a provision involves two or  
95 more items, conditions, provisions or events connected by the conjunction “and,” “or” or “either . . .  
96 or,” the conjunction shall be interpreted as follows:

97 a. *And* indicates that all the connected terms, conditions, provisions or events shall  
98 apply.

99 b. *Or* indicates that the connected items, conditions, provisions or events may  
100 apply singly or in any combination.

101 c. *Either . . . or* indicates that the connected items, conditions, provisions or events  
102 shall apply singly but not in combination.

103 (F) The word “includes” shall not limit a term to the specific example but is intended to  
104 extend its meaning to all other instances or circumstances of like kind or character.

105 (G) The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof,” and any similar terms,

106 shall refer to this Interlocal Operating Agreement; the term “heretofore” shall mean prior to execution  
107 of this Interlocal Operating Agreement.

108 (H) This Interlocal Operating Agreement shall not be construed more strongly against any  
109 party regardless that such party, or its counsel, drafted this Interlocal Operating Agreement.

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

114 **ARTICLE II**

115 **REPRESENTATIONS**

116 **SECTION 2.01. REPRESENTATIONS OF FDOT.** FDOT makes the following  
117 representations as the basis for the undertakings on the part of Commission herein contained:

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

125 (B) To FDOT's knowledge, there is no action, suit, proceeding or investigation at law or in  
126 equity before or by any court, public board or body pending or, to the best knowledge of FDOT,  
127 threatened against or affecting FDOT, wherein an unfavorable decision, ruling or finding would



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

154 (B) Phase I will consist of the first 32.54-mile segment of the Corridor (between DeBary  
155 through downtown Orlando and into Orange County), including the maintenance facility and currently  
156 planned Stations at DeBary/Fort Florida Road, Sanford, Lake Mary, Longwood, Altamonte Springs,  
157 Maitland, Winter Park/Park Avenue, Florida Hospital, LYNX Central, Church Street and Orlando  
158 Amtrak/ORMC, and Sand Lake Road. The specific improvements to be constructed during Phase I are  
159 described in Appendix C.

160 (C) Phase II will consist of (1) a 17.46-mile segment of the Corridor (between Orange  
161 County and Poinciana), including Stations at Meadow Woods, Osceola Parkway, Kissimmee Amtrak  
162 and Poinciana Industrial Park, (2) an 11-mile segment of the Corridor (between DeLand and DeBary),  
163 including a Station at DeLand Amtrak and (3) approximately 0.54 miles of staging areas at the northern  
164 and southern ends of the Corridor. The specific improvements to be constructed during Phase II are  
165 described in Appendix C.

166 (D) The Commuter Rail System will use trains with diesel locomotive powered steel-  
167 wheeled technology with one, two or three modern comfortable passenger cars. The number of trains  
168 to be placed in service for Phase I and Phase II is included in Appendix C.

169 **SECTION 3.02. ACQUISITION OF THE CORRIDOR.** FDOT agrees to use its best  
170 efforts to acquire the Corridor from CSXT for the benefit of the Commuter Rail System, Freight Rail  
171 Service and intercity passenger rail service.

172 (A) FDOT agrees to use its best efforts to enter into the Contract for Sale and Purchase of  
173 the Corridor. The Commission acknowledges that FDOT's acquisition of the Corridor will be subject  
174 to the terms set forth in the Contract for Sale and Purchase, including certain conditions precedent that  
175 may result in FDOT not acquiring the Corridor. If the executed Contract for Sale and Purchase is  
176 modified from the form and substance attached to this Interlocal Operating Agreement as Appendix E  
177 in a manner that imposes a material adverse financial or operational burden on the Commission or the  
178 Local Government Partners, this Interlocal Operating Agreement shall be terminated pursuant to  
179 Section 6.02(B)(3) hereof unless the FDOT and the Commission agree otherwise.

180 (B) FDOT agrees to use its best efforts to enter into the Central Florida Operating and  
181 Management Agreement for the Corridor. If the executed Central Florida Operating And Management  
182 Agreement is modified from the form and substance attached to this Interlocal Operating Agreement as  
183 Appendix F in a manner that imposes a material adverse financial or operational burden on the  
184 Commission or the Local Government Partners, this Interlocal Operating Agreement shall be  
185 terminated pursuant to Section 6.02(B)(3) hereof unless the FDOT and the Commission agree  
186 otherwise. By way of example, but not limitation, modifications that impose a material adverse  
187 financial or operational burden shall include the following:

188 (1) the assumption of liability in excess of that amount specified in Appendix F; or

189 (2) a failure to charge a reasonable rate for Rail Freight Services within the Corridor.

190 (C) The FDOT will use its best efforts to have the Florida Legislature pass the proposed  
191 legislation as set forth in Appendix G.

192 (D) If the legislation described in subsection (C) or something substantially similar which  
193 accomplishes the same intent and purpose (and includes the provisions proposed by the Commission

194 and Local Government Partners) is not enacted or FDOT is unable to acquire the Corridor for any other  
195 reason prior to December 31, 2008, this Interlocal Operating Agreement shall be terminated pursuant to  
196 Section 6.02(B)(3) hereof.

197 (E) The Commission acknowledges that intercity passenger rail service is an appropriate use  
198 of the Corridor and FDOT agrees that intercity passenger rail service (other than AMTRAK) shall not  
199 be implemented until the parties to this Interlocal Operating Agreement have (1) agreed upon (a) a fair  
200 and reasonable method of computing intercity passenger rail service's share of the operating and  
201 maintenance cost of the Corridor, provided that no track access fee shall be charged, (b) an operating  
202 window for such intercity passenger rail service, and (c) provisions relating to liability, and (2) FDOT  
203 or any third-party operator of the intercity passenger rail service has entered into an agreement with the  
204 Commission addressing such issues.

205 **SECTION 3.03. CONSTRUCTION OF THE COMMUTER RAIL SYSTEM.**

206 (A) FDOT shall be responsible for the design and construction of Phase I and Phase II of the  
207 Commuter Rail System and agrees to initiate and diligently pursue such design and construction, based  
208 on Federal, State and local governmental approvals. FDOT shall use its best efforts to complete Phase  
209 I by December 31, 2010 and Phase II by December 31, 2013.

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

216 System, which is anticipated to occur in the last quarter of 2007 or the first quarter of 2008.

217 (C) The Commuter Rail System shall be developed in a manner that will permit design,  
218 acquisition, and construction of Phase I (in accordance with the description set forth in Appendix C)  
219 within the Phase I Cost Estimate and construction of Phase II (in accordance with the description set  
220 forth in Appendix C) within the Phase II Cost Estimate. Changes to Phase I and Phase II requested by  
221 a Local Government Partner during Preliminary Engineering and Final Design will not be incorporated  
222 into the design unless a funding source has been committed or all other parties to this Interlocal  
223 Operating Agreement have agreed to the change.

224 (D) For Phase I and Phase II of the Commuter Rail System, FDOT shall enter into a  
225 guaranteed maximum price design-build contract or other contract that establishes a firm fixed price for  
226 the work.

227 (E) The FDOT shall construct Phase I and Phase II based upon the Final Design, subject to  
228 Federal, State and local governmental requirements. The development, design, engineering,  
229 preconstruction activities, construction and installation of all facilities shall be in accordance with State  
230 and Federal standards. FDOT shall require, in accordance with Section 337.18, Florida Statutes, surety  
231 bonds for all contractors undertaking any construction activity.

232 (F) Any contractor, subcontractor or other third party who may require access on or to the  
233 Corridor during construction shall be required to obtain a policy or policies with coverages that  
234 conform with the requirements of FDOT's Standard Specifications. The Commission and the Local  
235 Government Partners shall be named as additional insureds on each policy of insurance, excluding  
236 workers' compensation and professional liability insurance. Upon request, the FDOT shall provide the  
237 Commission with a copy of the current certificate of insurance.

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

243 **SECTION 3.04. OWNERSHIP OF THE COMMUTER RAIL SYSTEM.**

244 (A) Subject to the conveyance requirements set forth in Section 3.05 hereof, (1) all right,  
245 title, and interest, whether in fee simple, easement, leasehold, or other, in the real estate in the Corridor,  
246 Stations and maintenance facility (including any agreement to use the existing AMTRAK maintenance  
247 facility in Sanford), and (2) all personal property, such as rolling stock and other equipment, that is  
248 acquired for the construction, operation, and maintenance of the Commuter Rail System shall be owned  
249 by FDOT. Prior to the Commissioning of the Commuter Rail System, FDOT and the Responsible  
250 Local Government Partners shall enter into joint use agreement for the Stations, which FDOT shall  
251 assign to the Commission when the Station Property is conveyed to the Commission pursuant to  
252 Section 3.05 hereof.

253 (B) Any sale of any part, interest, use, license, permit or of any other conveyance or right to  
254 use, encumber, or impair the Corridor, any grant of an easement, or any other agreement for use of a  
255 portion of the Corridor must be approved by the Governing Board pursuant to Section 3.05(E) of the  
256 Interlocal Governance Agreement before being approved by FDOT; provided however, that permits  
257 and licenses incidental to the ownership of the Corridor and the operation of the Commuter Rail  
258 System that FDOT is required by law to issue shall not require approval by the Governing Board. With  
259 the Governing Board's review during the FDOT Funding Period, FDOT may establish an application

260 fee and a standard use fee for certain uses of the Corridor by third parties. After the FDOT Funding  
261 Period, the Commission may establish and receive an application fee and a standard use fee for certain  
262 uses of the Corridor by third parties. The Commission acknowledges and agrees that certain  
263 transactions with third parties may be subject to certain statutory and rule requirements and nothing  
264 herein shall be deemed to change or override such requirements. To the extent that the provisions of  
265 this Interlocal Operating Agreement are inconsistent with such statutory or rule requirements, the  
266 statutory or rule requirements shall prevail.

267 (C) FDOT has separately contributed capital for the initial six Diesel Multiple Units  
268 purchased for the Commuter Rail System, which shall remain the property of FDOT. These initial six  
269 Diesel Multiple Units shall be committed by FDOT for use of the Commuter Rail System; provided  
270 however, that any Diesel Multiple Unit no longer required by the Commuter Rail System because of an  
271 adjustment in Base Service made pursuant to Section 4.06 of this Interlocal Operating Agreement shall  
272 be released from any obligation created by this Interlocal Operating Agreement.

273 (D) The net proceeds remaining after payment of other obligations and expenses derived  
274 from any sale of Commuter Rail System shall be applied to the reduction of Debt Service payable by  
275 the Local Government Partners pursuant to Section 4.03 of the Interlocal Funding Agreement on the  
276 next Interest Payment Date and subject to Section 3.05(A) of this Agreement.

277 **SECTION 3.05. CONVEYANCE REQUIREMENTS.**

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

280 (B) Following expiration of the FDOT Funding Period, FDOT shall execute and deliver the  
281 Commuter Rail Easement to the Commission, without payment of additional compensation to FDOT

282 by the Commission. The Commission acknowledges that the Commuter Rail Easement will be  
283 encumbered by the Central Florida Operating and Management Agreement. Such conveyance shall be  
284 subject to a provision that if operation of the Commuter Rail System is suspended or terminated for a  
285 period longer than 180 days (other than as the result of a Force Majeure event, for which the time  
286 period shall be one year), unless otherwise agreed by the parties, the Commuter Rail Easement will  
287 expire and the interest shall revert to and become the property of the FDOT. Said reverter shall  
288 become effective within thirty days of notice from the FDOT to the Commission and shall not require  
289 action of the Commission; provided, however, that the Commission agrees to execute such documents  
290 as FDOT may reasonably request in the event that FDOT deems it convenient or necessary to confirm  
291 the reverter. At the time of the conveyance of the Commuter Rail Easement to the Commission, the  
292 Commission and the FDOT shall execute a written assignment of the Central Florida Operating and  
293 Management Agreement pursuant to which the Commission agrees to assume and fully comply with  
294 the obligations of FDOT thereunder, except to the extent of FDOT's retained rights after the FDOT  
295 Funding Period as set forth in this Interlocal Operating Agreement. Without limiting the generality of  
296 the foregoing, the Commission, by virtue of this assignment, shall have all liability under the Central  
297 Florida Operating and Maintenance Agreement as specified therein to the same extent as FDOT has  
298 thereunder.

299 (C) Simultaneously with conveyance of the Commuter Rail Easement, FDOT shall transfer  
300 to the Commission all of its right, title and interest in the rolling stock, equipment, tracks and other  
301 personal property of the Commuter Rail System, both tangible and intangible; provided however, that  
302 the initial six Diesel Multiple Units shall remain the property of FDOT. Such conveyance shall be  
303 made without payment of additional compensation to FDOT by the Commission. Such conveyance

304 shall be subject to a provision that if operation of the Commuter Rail System is suspended or  
305 terminated for a period longer than 180 days (other than as the result of a Force Majeure event), unless  
306 otherwise agreed by the parties, these properties shall revert to and become the property of the FDOT.  
307 Said reverter shall become effective within thirty days of notice from the FDOT to the Commission and  
308 shall not require action of the Commission; provided, however, that the Commission agrees to execute  
309 such documents as FDOT may reasonably request in the event that FDOT deems it convenient or  
310 necessary to confirm the reverter.

311 (D) Following expiration of the FDOT Funding Period, FDOT shall convey all of its right,  
312 title and interest in the Station Property (free and clear of any and all liens, encumbrances, mortgages,  
313 claims or causes of action, but subject to any joint use agreement entered into pursuant to and subject to  
314 the other provisions of Article III of the Interlocal Funding Agreement) to the Commission by deed,  
315 lease assignment, bill of sale or other appropriate instrument; provided however, that if operation of the  
316 Commuter Rail System is suspended or terminated for a period longer than 180 days (other than as the  
317 result of a Force Majeure event, for which the time period shall be one year), unless otherwise agreed  
318 by the parties, fee simple title to the Station Property shall revert to FDOT. Said reverter shall become  
319 effective within thirty days of notice from the FDOT to the Commission and shall not require action of  
320 the Commission; provided, however, that the Commission agrees to execute such documents as FDOT  
321 may reasonably request in the event that FDOT deems it convenient or necessary to confirm the  
322 reverter. Such conveyance shall be made without payment of additional compensation by FDOT to the  
323 Commission. For purposes of this subsection (D), Stations located within the jurisdiction of the City of  
324 Orlando shall be excluded from Stations located within the jurisdiction of Orange County. The  
325 Commission and FDOT acknowledge that all transfers shall be subject to applicable Federal and State

326 regulations regarding the transfer of property purchased, in whole or in part, with Federal or State  
327 funds.

328 (E) When components of the Commuter Rail System are conveyed to the Commission, all  
329 such components shall be in a State of Good Repair, subject to normal wear, and all guarantees,  
330 warranties, and similar rights held by FDOT relating to such components shall be assigned to the  
331 Commission.

332 **SECTION 3.06. CONDEMNATION.** FDOT and the Commission agree to cooperate if the  
333 exercise of eminent domain power becomes necessary to acquire property for the Commuter Rail  
334 System in determining which agency would be the most appropriate governmental entity to exercise its  
335 authority. In the event that any condemning authority institutes an action or proceeding for the  
336 condemnation of a portion of the Commuter Rail System property, FDOT and the Commission agree to  
337 jointly and equally defend such action and shall attempt to prevent any taking that would make it more  
338 costly or less efficient to provide commuter rail service.

339 **ARTICLE IV**

340 **OPERATION AND MAINTENANCE**

341 **SECTION 4.01. GENERAL DESCRIPTION.** During the FDOT Funding Period, FDOT  
342 will be solely responsible for the development, design, engineering, preconstruction activities,  
343 construction and installation of all fixed facilities, procurement of rolling stock and other personal  
344 property, operation (including train dispatching), and maintenance of the Commuter Rail System, in  
345 accordance with applicable Federal, State and local governmental requirements and in accordance with  
346 the Central Florida Operating and Management Agreement. Following expiration of the FDOT  
347 Funding Period, the Commission shall be responsible for any future activities described above that are

348 necessary for the Commuter Rail System.

349         **SECTION 4.02. CORRIDOR ACCESS MANAGEMENT.** Prior to conveyance, as  
350 described in Section 3.05 hereof, FDOT shall be responsible for Corridor Access Management.  
351 Following execution and delivery of the Commuter Rail Easement, the Commission shall be  
352 responsible for Corridor Access Management, other than functions FDOT is required to perform by  
353 law.

354         **SECTION 4.03. SERVICE POLICIES.** During the FDOT Funding Period, the Commuter  
355 Rail System service levels, including the number of trains and the number of cars per train, shall be  
356 established by FDOT with input from the Governing Board, the Technical Advisory Committee and  
357 the Customer Advisory Committee. Following expiration of the FDOT Funding Period, service levels  
358 shall be established by the Governing Board with input from the Technical Advisory Committee, the  
359 Customer Advisory Committee.

360         **SECTION 4.04. FARE POLICIES.** During the FDOT Funding Period, the fares to be  
361 charged for Commuter Rail System service shall be determined by FDOT, with guidance from the  
362 Governing Board. In order for the bus transit system and Commuter Rail System fares to be as  
363 seamless as possible, and because operational subsidies for bus service will be included in the  
364 Commuter Rail System operations and maintenance cost projections, FDOT (during the FDOT  
365 Funding Period) and the Commission (following expiration of the FDOT Funding Period) will enter  
366 into an agreement with LYNX and VOTRAN regarding transfers between service modes in the service  
367 areas of both transit authorities so that customer fares and fare vending equipment are viewed by  
368 customers as though they are part of one system. Following expiration of the FDOT Funding Period,  
369 fare changes shall be approved by the Governing Board pursuant to Section 3.05(D) of the Interlocal

370 Governance Agreement.

371 **SECTION 4.05. BASE SERVICE STANDARDS.**

372 (A) The Commuter Rail System will provide Base Service to the Local Government  
373 Partners, as described in the following subsection (B). Base Service shall only be adjusted pursuant to  
374 Sections 4.06 or 4.12 hereof.

375 (B) Commuter rail service will be provided initially in Phase I and expanded to Phase II in  
376 accordance with the schedule set forth in Section 3.03(A) hereof. The Commuter Rail System will  
377 provide bidirectional train service at a 30-minute frequency during Peak Hours and a two-hour  
378 frequency during Non-Peak Hours. The Commuter Rail System will not provide any train service  
379 between midnight and 5:00 a.m., legal Holidays, and Saturdays and Sundays.

380 **SECTION 4.06. ADJUSTMENTS TO BASE SERVICE.** The Chief Executive Officer shall  
381 report any train whose ridership falls below the minimum ridership threshold for three consecutive  
382 months to FDOT during the FDOT Funding Period and to the Governing Board thereafter. Any train  
383 failing to meet the established minimum ridership threshold for three consecutive months shall be  
384 evaluated and considered for remedial action. During the FDOT Funding Period, remedial action shall  
385 be taken by FDOT, with input from the Governing Board. Thereafter, remedial action shall be taken  
386 by the Governing Board, with input from the Technical Advisory Committee and the Customer  
387 Advisory Committee. If after an opportunity for the remedial action to correct the deficiency in  
388 ridership the train continues to fall below the minimum rider threshold for a period of three months,  
389 that train shall be discontinued unless otherwise agreed by the Commission with an unanimous vote of  
390 the Governing Board, or unless one or more Local Government Partners elect to continue the  
391 scheduling of the train and agree to unilaterally pay the full net costs of continuing the train (i.e., the

392 difference between the fares collected and/or allocated to that train and the fully allocated cost to  
393 operate that train). For purposes of this Section, a "train" is a regularly scheduled trip originating at  
394 one end of the Corridor at the respective time period of operations and terminating at the opposite end  
395 of the Corridor at the respective time period of operations. This Section shall not be construed to  
396 permit a reduction in Base Service to selected Stations.

397 **SECTION 4.07. EXPANDED SERVICE AND EXTENDED SERVICE.** Expanded Service  
398 and Extended Service shall be approved pursuant to Section 3.05(E) of the Interlocal Governance  
399 Agreement. Each proposal for Expanded Service or Extended Service shall include a specific funding  
400 plan for the new service. During the FDOT Funding Period, Expanded Service and Extended Service  
401 shall require the approval of FDOT. Contracts for excursion and special event trains complying with  
402 the provisions of Section 4.12 hereof shall be exempt from the requirements of this Section.

403 **SECTION 4.08. OPERATING RULES.** FDOT shall develop initial operating rules for  
404 Commuter Rail System service consistent with the Central Florida Operating and Management  
405 Agreement and all Federal and State laws and regulations. Operating rules developed by FDOT after  
406 the Commission and the Technical Advisory Committee have been established shall be reviewed by the  
407 Technical Advisory Committee and the Governing Board before they are adopted and implemented;  
408 provided however, Governing Board review shall not be required for issuance of operating bulletins,  
409 speed restrictions, or other routine adjustments made for the daily operation of all trains on the Corridor  
410 during the FDOT Funding Period. Following expiration of the FDOT Funding Period, all operating  
411 rules shall be developed and approved by the Governing Board, subject to the Central Florida  
412 Operating and Management Agreement and all applicable FRA and FTA regulations.

413 **SECTION 4.09. MAINTENANCE.**

414 (A) During the FDOT Funding Period, FDOT shall be responsible for maintenance of the  
415 Commuter Rail System, other than the Station Property, which shall be maintained by the Local  
416 Government Partner in whose boundaries the Station is located. Following expiration of the FDOT  
417 Funding Period, the Commission shall be responsible for maintenance of the Commuter Rail System,  
418 other than the Station Property. The Corridor shall be maintained in accordance with the standards set  
419 forth in the Central Florida Operating and Management Agreement.

420 (B) During the FDOT Funding Period, all of the components of the Commuter Rail System  
421 under FDOT control, including but not limited to the Corridor (including the Station Platforms), yards,  
422 maintenance facility, layover facilities and rolling stock, shall be maintained in a constant State of  
423 Good Repair.

424 **SECTION 4.10. SECURITY.** Prior to initiation of service, FDOT, in conjunction with the  
425 other Local Government Partners and in consultation with local law enforcement, shall prepare a safety  
426 and security plan which will include but not be limited to the various types of security required for the  
427 Commuter Rail System, minimum levels of security, security responsibilities, security procedures, and  
428 security coordination. During the FDOT Funding Period, FDOT shall be solely responsible for  
429 security on the Corridor (including the Station Platforms) and on trains in service. Following  
430 expiration of the FDOT Funding Period, the Commission shall be solely responsible for security on the  
431 Corridor (including the Station Platforms) and on trains in service. Each Responsible Local  
432 Government Partner shall be responsible for the costs of providing security for the Station Property.

433 **SECTION 4.11. MARKETING.** FDOT (during the FDOT Funding Period) and the  
434 Commission (following expiration of the FDOT Funding Period) shall develop and implement an  
435 annual plan for marketing the Commuter Rail System, which may include any and all forms of

436 advertising and promotion, including without limitation, all forms of media advertising (including  
437 television, radio, print, billboard, brochure and internet), direct mail and direct marketing. Expenses  
438 related to development and implementation of the annual marketing plan shall be paid by the  
439 Commuter Rail System as part of the Total Operating Cost. The Commission acknowledges and  
440 agrees that FDOT activities will be subject to applicable legal restrictions.

441 **SECTION 4.12. EXCURSION AND SPECIAL EVENT TRAINS.** The Chief Executive  
442 Officer may contract for special excursion and special event trains on the Commuter Rail System,  
443 provided that the party contracting for a special excursion or special event train pays the fully allocated  
444 cost to operate that train and the agreement conforms to the policies and procedures developed for such  
445 events, including provisions for insurance and indemnification.

446 **SECTION 4.13. STAFFING.**

447 (A) During the FDOT Funding Period, the FDOT shall have a Chief Executive Officer who may be  
448 either an employee or a contractor of the FDOT. Following expiration of the FDOT Funding Period,  
449 the Chief Executive Officer may be either an employee or a contractor of the Commission and shall  
450 report to the Governing Board. The Chief Executive Officer shall be responsible for the following  
451 tasks.

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

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

465           (3)     During the FDOT Funding Period, to enhance and ensure the effectiveness of the  
466           Commuter Rail System service, the Chief Executive Officer shall provide timely and  
467           comprehensive operational input to and coordination with the Contract Operator and FDOT,  
468           and simultaneously provide operational information to the Commission. After the FDOT  
469           Funding Period, the Chief Executive Officer shall provide timely and comprehensive  
470           operational input to and coordination with the Commission and Contract Operator.

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

476           (5)     Additional duties and responsibilities pertaining to the Commuter Rail System  
477           may be assigned to the Chief Executive Officer by FDOT, during the FDOT Funding Period,  
478           and by the Governing Board, following expiration of the FDOT Funding Period.

479           (B)     During the FDOT Funding Period, the FDOT shall have a Chief Operating Officer who

480 may be either an employee or a contractor of the FDOT. Following expiration of the FDOT Funding  
481 Period, the Chief Operating Officer may be either an employee or a contractor of the Commission and  
482 shall report to the Governing Board. The Chief Operating Officer shall be responsible for the  
483 following tasks:

484 (1) Daily oversight of Commuter Rail System commuter rail operations and service  
485 to ensure compliance with service standards and budgets, including oversight of all contracted  
486 services.

487 (2) Coordinate with the appropriate staff of each individual Local Government  
488 Partner, LYNX, VOTRAN and CSXT in the event of an emergency (such as the need for bus  
489 bridges, public service announcements, security, or railroad property issues).

490 (3) Timely and comprehensive operational input to and coordination with the Chief  
491 Executive Officer and the Contract Operator in order to enable the FDOT (during the FDOT  
492 Funding Period) and the Commission (following expiration of the FDOT Funding Period) to  
493 effectively respond to the needs and requirements of the users of the Commuter Rail System  
494 and to enhance Commuter Rail System service and future expansions.

495 (4) Develop and implement a Commuter Rail System fleet management plan and  
496 safety program plan shall be developed and implemented. The initial fleet management plan  
497 and safety program plan shall be submitted to the Local Government Partners for review.  
498 During the FDOT Funding Period, modifications to the fleet management plan and safety  
499 program plan shall be approved in the same manner as the initial plans. Following expiration of  
500 the FDOT Funding Period, modifications shall be submitted to the Technical Advisory  
501 Committee for review prior to approval by the Governing Board, FTA and FRA.

502           (5)    Maintain a high standard of customer relations with all users of the Commuter  
503    Rail System.

504           (6)    Performance of additional duties and responsibilities pertaining to the Commuter  
505    Rail System may be assigned by the Chief Executive Officer or FDOT during the FDOT  
506    Funding Period and by the Chief Executive Officer or the Governing Board following  
507    expiration of the FDOT Funding Period.

508           (C)    FDOT shall have such other positions, as the FDOT may deem necessary for the  
509    effective operation and administration of the Commuter Rail System. It is anticipated that a limited  
510    staff will be required, and that the FDOT can place many of the services in the third party operations,  
511    maintenance and dispatch procurement, if determined economically and fiscally reasonable. This  
512    includes, but is not limited to, budget/finance, marketing, grants, planning, and engineering. These  
513    positions can be contracted out to a third party provider, either through a comprehensive procurement  
514    package (operate, maintain, dispatch), or individually. In addition, the FDOT may contract with other  
515    governmental entities for these positions. Following expiration of the FDOT Funding Period, staffing  
516    shall be established by the Governing Board.

517           **SECTION 4.14. CONTRACT OPERATOR.**

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

- 522           (1)    operation of the commuter rail trains in revenue and non-revenue service;
- 523           (2)    maintenance of rolling stock;

- 524 (3) maintenance of the Corridor right-of-way within 25 feet of the centerline of the  
525 mainline tracks, or as otherwise determined by FDOT;
- 526 (4) signalization and dispatching on the Corridor;
- 527 (5) maintenance and security of the buildings, grounds, yard tracks, shop equipment  
528 and tools;
- 529 (6) at the maintenance yard and layover facilities; and
- 530 (7) all other operational activities.

531 (B) Any contract entered into by FDOT with a Contract Operator shall provide that it  
532 expires upon the expiration of the FDOT Funding Period unless the contract is assigned to the  
533 Commission pursuant to an assignment that effects a novation and releases the FDOT from being a  
534 party to the contract, in which case, the contract will continue for a period of three years following the  
535 FDOT Funding Period. Such contract shall provide that it can be assigned to the Commission.

536 **SECTION 4.15. ADMINISTRATIVE FUNCTIONS.**

537 (A) During the FDOT Funding Period, FDOT shall manage the contract with the Contract  
538 Operator, as well as obtain assistance for specific areas of expertise as FDOT deems necessary or  
539 appropriate. It is anticipated that most or all personnel will be employed by Contract Operator or as  
540 independent contractors. The Chief Executive Officer and Chief Operating Officer shall be employed  
541 or contracted separately from the Contract Operator and shall not be affiliated with the Contract  
542 Operator; provided, however, that nothing in this Interlocal Operating Agreement shall be deemed to  
543 impose any limitations or restrictions on what duties or functions FDOT decides to assign to FDOT  
544 employees. Following expiration of the FDOT Funding Period, the Governing Board shall be  
545 responsible for employing or contracting with staff and the Contract Operator.

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

558 (C) During the FDOT Funding Period, procurements and contracts for the Commuter Rail  
559 System shall be processed and administered in accordance with the procurement policies and  
560 procedures of FDOT and contracts shall be awarded under the name and authority of FDOT. Each  
561 contract entered into by FDOT for the Commuter Rail System shall provide for assignment to the  
562 Commission upon expiration of the FDOT Funding Period to the extent that it has not expired as of that  
563 time; provided, however, that no assignment will be made unless a novation is effected and FDOT is  
564 released from being a party to the contract. FDOT shall consider the advice of the Governing Board  
565 for major procurement actions.

566 (D) The main administrative office for management of the Commuter Rail System shall be  
567 located within the jurisdiction of one of the Local Government Partners, except that during the FDOT

568 Funding Period, FDOT shall be entitled to house staff for the Commuter Rail System at such places as  
569 FDOT determines is necessary or appropriate.

570 **SECTION 4.16. EMERGENCIES.** During the FDOT Funding Period, FDOT shall handle  
571 emergency response. After the conclusion of an emergency, FDOT shall prepare a written report.  
572 FDOT shall provide a copy of the report to the Governing Board and the Technical Advisory  
573 Committee for their advice, within their respective roles, on any improved activities, methods, or  
574 equipment that could prevent or mitigate future emergencies.

575 **ARTICLE V**

576 **FINANCIAL OBLIGATIONS**

577 **SECTION 5.01. ANNUAL FUNDING OBLIGATION AND LIMITATION.**

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

581 (B) Following expiration of the FDOT Funding Period, the Commission shall be entitled to  
582 retain the Total Operating Revenue of the Commuter Rail System and shall be obligated for payment of  
583 the Total Operating Cost of the Commuter Rail System. The Share of Local Operating Support for  
584 each Local Government Partner shall be computed pursuant to Section 4.01 of the Interlocal  
585 Governance Agreement. Following expiration of the FDOT Funding Period, the Local Government  
586 Partners shall also be responsible for funding Debt Service on the FDOT Fixed-Guideway Bonds. The  
587 Share of FDOT Bond Debt Service for each Local Government Partner shall be computed pursuant  
588 Section 4.03 of the Interlocal Funding Agreement.

589 **SECTION 5.02. FARES.** Fares, the collection of fare revenue and use of fare collection

590 equipment shall be as follows:

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

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

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

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

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

608 (F) In determining the source and amount of passenger fare revenue to be allocated to the  
609 Commuter Rail System by LYNX and VOTRAN as joint revenue, a survey of passengers shall be  
610 conducted on an annual basis or at some other frequency as determined by FDOT (during the FDOT  
611 Funding Period) or the Commission (following expiration of the FDOT Funding Period) to ascertain

612 where the passenger boarded the train, other modes of transportation service utilized, the type of fare  
613 utilized for their trip (e-pass, monthly pass, cash, etc.) and from which service provider (LYNX,  
614 VOTRAN or the Commuter Rail System) the fare was purchased. The data from these surveys shall be  
615 used to determine the percentage of total passenger trips to be allocated to each mode of service.  
616 FDOT, with advice from the Governing Board (during the FDOT Funding Period) or the Governing  
617 Board (following expiration of the FDOT Funding Period), shall approve an Average Fare based upon  
618 the results of these surveys and the methodologies and assumptions utilized to calculate the Average  
619 Fare. This Average Fare shall then be applied to joint ridership statistics to determine Commuter Rail  
620 System passenger fare revenue.

621 SECTION 5.03. ANNUAL BUDGETS.

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

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

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

628 (3) the operating budget and Five-Year Capital Plan shall be developed on a State  
629 fiscal year basis, which commences on July 1 and continues through the next succeeding June  
630 30, in accordance with Florida law applicable to FDOT and the state budgeting process.

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

634 in accordance with Florida law applicable to counties.

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

639 **SECTION 5.04. ACCOUNTING AND REPORTING.**

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

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

649 (C) FDOT (during the FDOT Funding Period) and the Commission (following expiration of  
650 the FDOT Funding Period) shall ensure that the Local Government Partners timely receive sufficient  
651 accounting and financial information so as to enable these entities to fulfill their financial reporting and  
652 auditing obligations.

653 **SECTION 5.05. FDOT ANNUAL APPROPRIATIONS.** Notwithstanding any other  
654 provision of this Interlocal Operating Agreement, in compliance with Section 339.135(6)(a), Florida  
655 Statutes, the following language and provisions thereof are hereby made a part of this Interlocal

## 656 Operating Agreement:

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

669 **ARTICLE VI**670 **GENERAL PROVISIONS**

671 **SECTION 6.01. TERM.** This Interlocal Operating Agreement shall become effective when  
672 fully-executed copies of the Interlocal Governance Agreement, the Interlocal Funding Agreement and  
673 this Interlocal Operating Agreement have been filed with the clerk of the circuit court, or as otherwise  
674 required by law, for each of the Local Government Partners and, unless terminated earlier pursuant the  
675 terms hereof, shall extend for a term of ninety-nine years.

676 **SECTION 6.02. TERMINATION.**

677 (A) Except as provided herein, this Interlocal Operating Agreement shall not be terminated

678 prior to conveyance of the Corridor, the Station Property, and the rolling stock, equipment and other  
679 personal property of the Commuter Rail System, as described in Section 3.05 hereof.

680 (B) Although all parties to this Interlocal Operating Agreement fully expect the Commuter  
681 Rail System to be successful and are committed to fulfilling any and all requirements of this Interlocal  
682 Operating Agreement for the entire ninety-nine year term, the parties are cognizant that certain  
683 unforeseen events may result in cessation of operation of the Commuter Rail System at an earlier date  
684 and desire to set forth the consequences of such event. For the purposes of this subsection "cessation  
685 of operation of the Commuter Rail System" shall mean that that the Commuter Rail System is no  
686 longer available for use by the public as a means of transportation. Termination of this Interlocal  
687 Operating Agreement and cessation of operation of the Commuter Rail System shall not occur except  
688 in accordance with the following:

689 (1) Mutual Consent. This Interlocal Operating Agreement may be terminated at  
690 any time, by the written agreement of FDOT and the Commission.

691 (2) Force Majeure. If an event of Force Majeure causes, continues, or is likely to  
692 cause the continuation of the Commuter Rail System to be impractical for a period of one year  
693 or more, the FDOT, during the FDOT Funding Period, or the Commission, after the FDOT  
694 Funding Period, may terminate this Interlocal Operating Agreement. Upon such termination all  
695 assets of the Commuter Rail System, the Corridor (including the Station Platforms), the Station  
696 Property, and all other facilities, equipment and supplies shall revert or be conveyed to FDOT  
697 and the assignment of the Central Florida Operating and Management Agreement to the  
698 Commission shall simultaneously be terminated. Said reverter shall become effective within  
699 thirty days of notice from the FDOT to the Commission and shall not require action of the

700 Commission; provided, however, that the Commission agrees to execute such documents as  
701 FDOT may reasonably request in the event that FDOT deems it convenient or necessary to  
702 confirm the reverter. Any such conveyance shall be made without payment of additional  
703 compensation to the Commission or Local Government Partners by FDOT. FDOT may elect,  
704 in its sole discretion, to continue operating the Commuter Rail System or dispose of the  
705 Commuter Rail System assets in accordance with law. If FDOT elects to dispose of the  
706 Commuter Rail System assets, 50 percent of any net funds remaining after payment of other  
707 obligations and expenses shall be shared with the Local Government Partners in proportion to  
708 each Local Government Partner's Initial Capital Contribution. The requirements set forth in this  
709 clause (2) shall survive the termination of this Interlocal Operating Agreement.

710 (3) Failure of Conditions. If the conditions for termination as set forth in Section  
711 3.02 occur, then this Interlocal Operating Agreement shall be terminated and the following shall  
712 apply:

713 (a) Any portion of the Preliminary Engineering Contributions made by the  
714 Local Government Partners that has not yet been expended, assuming the Preliminary  
715 Engineering Contributions constituted twenty-five percent of each expenditure for  
716 preliminary engineering, shall be returned by FDOT to the Local Government Partners.

717 (b) Any portion of the Station Property Contributions made by the Local  
718 Government Partners that has not yet been expended, assuming the Station Property  
719 Contributions constituted twenty-five percent of the total expenditures for the  
720 acquisition of Station Property, shall be returned by FDOT to the Local Government  
721 Partners. FDOT shall sell any Station Property that has been acquired and 25 percent of

722 the net proceeds remaining after payment of other obligations and expenses shall be  
723 used to reimburse the Local Government Partner whose Station Property Contribution  
724 was applied to such acquisition.

725 (c) Any portion of the Final Design Contributions made by the Local  
726 Government Partners that has not yet been expended, assuming the Final Design  
727 Contributions constituted twenty-five percent of the total expenditures for Final Design,  
728 shall be returned by FDOT to the Local Government Partners.

729 The requirements set forth in subclauses (a), (b) and (c) of this clause (3) shall survive the  
730 termination of this Interlocal Operating Agreement.

731 (4) Phase I Contingency.

732 In the event of any one of the following:

733 (a) FTA does not approve FDOT's entry into the final design process for Phase I  
734 prior to July 31, 2008; or

735 (b) Funding for the Commuter Rail System has not been included in the  
736 President's budget prior to July 31, 2008; or

737 (c) FDOT is unable to enter into a guaranteed maximum design-build or other  
738 firm-fixed price contract for Phase I equal to or less than 105 percent of the Phase I Cost  
739 Estimate, and the parties cannot agree upon either (i) a reduction in scope agreed to by  
740 the contractor that reduces the price to an amount that is equal to or less than 105  
741 percent of the Phase I Cost Estimate, or (ii) additional funding sufficient to cover the  
742 price is not obtained in accordance with the Interlocal Funding Agreement;

743 then this Interlocal Operating Agreement shall be terminated and the provisions of Subclauses

744 6.02(B)(3)(a), (b), and (c) shall apply. The requirements set forth in this clause (4) shall  
745 survive the termination of this Interlocal Operating Agreement.

746 (5) Phase II Contingency. In the event that Phase II does not proceed through  
747 construction and Commissioning, the FDOT, the Commission, and the Local Government  
748 Partners agree to discuss the impacts and renegotiate this Interlocal Operating Agreement and  
749 the Interlocal Funding Agreement.

750 (6) Other Events. In the event (a) any party to this Interlocal Operating Agreement  
751 or the Commission shall fail to pay any funds when due, or shall fail to issue when required any  
752 securities, guarantees, or credit enhancements required by this Interlocal Operating Agreement,  
753 or shall otherwise be in material breach of this Interlocal Operating Agreement, and in each  
754 case all applicable cure rights have been exhausted, and sufficient funds to replace such unpaid  
755 funds are not forthcoming from other sources, (b) the Commuter Rail System cannot be  
756 successfully operated with an annual System Operating Deficit less than or equal to the  
757 amounts specified in Section 4.01(F) of the Interlocal Governance Agreement or (c) operation  
758 of the Commuter Rail System is suspended or terminated for a period longer than 180 days  
759 (other than as the result of a Force Majeure event, for which the time period shall be one year),  
760 unless otherwise agreed by the parties, then the FDOT, during the FDOT Funding Period, or the  
761 Commission, after the FDOT Funding Period, may terminate this Interlocal Operating  
762 Agreement. Upon such termination all assets of the Commuter Rail System, the Corridor  
763 (including the Station Platforms), the Station Property, and all other facilities, equipment and  
764 supplies shall revert or be conveyed to FDOT and the assignment of the Central Florida  
765 Operating and Management Agreement to the Commission shall simultaneously be terminated.

766 Said reverter shall become effective within thirty days of notice from the FDOT to the  
767 Commission and shall not require action of the Commission; provided, however, that the  
768 Commission agrees to execute such documents as FDOT may reasonably request in the event  
769 that FDOT deems it convenient or necessary to confirm the reverter. Any such conveyance shall  
770 be made without payment of additional compensation to the Commission by FDOT. FDOT  
771 shall elect, in its sole discretion, to continue operating the Commuter Rail System or dispose of  
772 the Commuter Rail System assets in accordance with law. If FDOT elects to dispose of the  
773 Commuter Rail System assets, 50 percent of any net funds remaining after payment of other  
774 obligations and expenses shall be shared with the Local Government Partners in proportion to  
775 each Local Government Partner's Initial Capital Contribution. The requirements set forth in this  
776 clause (6) shall survive the termination of this Interlocal Operating Agreement.

777 (C) FDOT and the Commission expressly acknowledge that the Local Government Partners  
778 are directly and substantially benefited by the termination provisions set forth in this Section 6.02 and  
779 agree that the terms of this Section 6.02 may be enforced by each of the Local Government Partners.

780 **SECTION 6.03. ASSIGNMENT.** Following conveyance of the Corridor and the rolling stock,  
781 equipment and other personal property of the Commuter Rail System, as described in Section 3.05  
782 hereof, this Interlocal Operating Agreement may be assigned to a successor agency created to own and  
783 operate the Commuter Rail System, provided that:

784 (1) The successor agency has been created in such a manner and with such powers,  
785 duties, and responsibilities as to not, in the reasonable judgment of FDOT, impair the position  
786 of FDOT or impair the ability of the successor agency to fully assume the position of the  
787 Commission under this Interlocal Operating Agreement; and

788           (2) The successor agency executes a written assignment of this Interlocal Operating  
789 Agreement from the Commission to the successor agency; and

790           (3) The successor agency executes a written assignment of the Central Florida  
791 Operating and Management Agreement from FDOT to the successor agency pursuant to which  
792 the successor agency agrees to assume and fully comply with the obligations of FDOT under  
793 the Central Florida Operating and Management Agreement, except to the extent of FDOT's  
794 retained rights.

795           **SECTION 6.04. ADVISORY RELATIONSHIPS.**

796           (A) During the FDOT Funding Period, the Governing Board shall serve primarily in an  
797 advisory capacity to FDOT; provided however, that FDOT shall not be empowered to make any  
798 decision materially affecting the long-term funding for the Commuter Rail System (limited to capital  
799 investment decisions that would extend beyond the FDOT Funding Period or increases in the Base  
800 Service) without consent from the Governing Board. The Governing Board shall advise FDOT on  
801 decisions in respect to the Commuter Rail System including, but not limited to, service, fare policy,  
802 funding, procurement, operations, maintenance, and capital programs, reviewing the annual budget,  
803 and financing. FDOT shall give careful thought, consideration, and appropriate weight to the findings  
804 and recommendations of the Governing Board.

805           (B) Not later than six months prior to expiration of the FDOT Funding Period, the  
806 Governing Board shall complete a transition and implementation plan that will ensure a safe and  
807 orderly transition of the management and operation of the Commuter Rail System and Corridor.

808           (C) Upon expiration of the FDOT Funding Period, FDOT shall serve in an advisory capacity  
809 to the Commission. FDOT shall advise the Governing Board on decisions in respect to the Commuter

810 Rail System including, but not limited to, service, fare policy, funding, procurement, operations,  
811 maintenance, and capital programs, reviewing the annual budget, and financing. The Governing Board  
812 shall give careful thought, consideration, and appropriate weight to the findings and recommendations  
813 of FDOT.

814 (D) Disagreements between the Governing Board and FDOT shall be subject to the dispute  
815 resolution procedures set forth in Section 6.05 hereof.

816 **SECTION 6.05. RESOLUTION OF DISPUTES.** It is the desire and intent of the parties to  
817 avoid, if possible, the expense and delay inherent in litigation; therefore, the FDOT and the  
818 Commission agree that whenever any individual party cannot resolve an issue with any other party, the  
819 affected parties will in engage in the alternative dispute resolution process described below prior to  
820 resorting to litigation.

821 (A) Any party may give another party written notice of any dispute not resolved in the  
822 normal course of business. Within ten business days after delivery of the notice, the receiving party  
823 shall submit to the disputing party a written response. The notice and the response shall include (1) a  
824 statement of the position of the party delivering the notice of dispute or the response, as the case may  
825 be, and a summary of arguments supporting its position and (2) the name and title of the executive who  
826 will represent that party in the negotiation to resolve the dispute and of any other person who will  
827 accompany the executive.

828 (B) Within ten business days after delivery of the disputing party's notice, the executives of  
829 both parties shall meet at a mutually acceptable time and place, and thereafter as often as they  
830 reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information  
831 made by one party to the other will be honored. In an effort to facilitate the negotiation process, such

832 executives may agree to have an unrelated third party moderate and facilitate the negotiations. If a  
833 negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at  
834 least three business days notice of such intention and may also be accompanied by an attorney.

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

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

843 (E) Each party shall each bear its own costs and expenses incurred in connection with any  
844 negotiations and dispute resolution.

845 (F) Upon failure to resolve any dispute in accordance in this Section 6.05, the parties may  
846 engage in mediation, arbitration, or other dispute resolution processes at their discretion, or pursue  
847 other legal remedies.

848 **SECTION 6.06. FORCE MAJEURE.** It is expressly understood and agreed by the  
849 parties to this Interlocal Operating Agreement that if the performance of any provision of this Interlocal  
850 Operating Agreement is delayed by reason of war, civil commotion, act of God, governmental  
851 restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances  
852 which are reasonably beyond the control of the party obligated or permitted under the terms of this  
853 Interlocal Operating Agreement to do or perform the same, the party so obligated or permitted shall be

854 excused from doing or performing the same during such period of delay, so that the period of time  
855 applicable to such requirement shall be extended for a period of time equal to the period of time such  
856 party was delayed.

857 **SECTION 6.07. INSURANCE AND LIABILITY.**

858 (A) During the FDOT Funding Period, the FDOT shall carry such insurance and have such  
859 liability as is set forth in the Central Florida Operating and Management Agreement. The Commission  
860 and the Local Government Partners as well as their respective elected or appointed officials,  
861 management, employees, agents and assigns will be additional named insureds under any insurance  
862 policies. After the FDOT Funding Period, the Commission, as required by the assignment referred to  
863 in Section 3.05 hereof, shall carry such insurance and have such liability as is set forth in the Central  
864 Florida Operating and Management Agreement, and FDOT will be an additional named insured under  
865 any such insurance policy.

866 (B) Execution of this Interlocal Operating Agreement by the Commission is not intended  
867 and shall not be construed as an assumption by the Local Government Partners of any liability incurred  
868 by FDOT or the Commission. The Commission and FDOT acknowledge that Local Government  
869 Partners do not assume any direct obligation for payment of any amounts not expressly required by this  
870 Interlocal Governance Agreement or the Interlocal Funding Agreement, including, but not limited to  
871 obligations or liabilities incurred in connection with operation of the Commuter Rail System or  
872 assigned by FDOT and accepted by by the Commission under the Central Florida Operating and  
873 Management Agreement.

874 **SECTION 6.08. THIRD PARTY CONTRACTORS.** If any portion of the Commuter  
875 Rail Service is contracted to another party, FDOT during the FDOT Funding Period and the

876 Commission after the FDOT Funding Period, will require the contracted party to indemnify the FDOT  
877 and the Commission against negligent acts or omissions of the contracted party and shall require the  
878 contracted party to carry such insurance as is reasonable under the circumstances. The Commission,  
879 the FDOT, and the Local Government Partners shall be named insureds under such policies..

880         **SECTION 6.09.         CHANGED CIRCUMSTANCES.** If future Federal, State or local  
881 statute, ordinance, regulation, rule or action render this Interlocal Operating Agreement, wholly or in  
882 part, illegal, invalid, unenforceable or impractical, the parties agree to delete and/or to modify such  
883 portions of the Interlocal Operating Agreement as are necessary to render it valid, enforceable and/or  
884 practical. Each section, paragraph or provision of this Interlocal Operating Agreement shall be  
885 considered severable, and if for any reason any section, paragraph, or provision herein is determined to  
886 be invalid under current or future law, regulation or rule, such invalidity shall not impair the operation  
887 of or otherwise affect the valid portions of this instrument. In the event that a future Federal, State or  
888 local statute, ordinance, regulation, rule or action renders this Interlocal Operating Agreement in whole  
889 illegal, invalid, unenforceable or impractical and either one or more of the parties to this Interlocal  
890 Operating Agreement agree that it is impossible or impractical to continue to operate the Commuter  
891 Rail System, then this Interlocal Operating Agreement, if not already terminated by operation of law,  
892 may be terminated.

893         **SECTION 6.10.         NOTICES.** Whenever this Interlocal Operating Agreement requires or  
894 permits any consent, approval, notice, request, proposal, or demand from one party to another, the  
895 content, approval, notice, request, proposal, or demand must be in writing to be effective and shall be  
896 delivered to and received by the party intended to receive it (A) by hand delivery to the person(s)  
897 hereinafter designated, or (B) by overnight hand delivery addressed as follows, or (C) through the

898 United States Mail, postage prepaid, certified mail, return-receipt requested, or (D) delivered and  
 899 received by facsimile telephone transmission or other electronic transmission (provided that an original  
 900 of the electronically transmitted document is delivered within five (5) days after the document was  
 901 electronically transmitted) upon the date so delivered to and received by the person to whom it is at the  
 902 address set forth opposite the party's name below:

Party	Principal & Address	With a copy to:
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COMMISSION:

FDOT:	District Five Secretary 719 South Woodland Boulevard DeLand, Florida 32720 Telephone: (386) 943-5476 FAX: (386) 740-2675	District Five General Counsel 719 South Woodland Boulevard Deland, FL 32720 Telephone: (386) 943-5492 FAX: (386) 736-5500
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903

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

908 **SECTION 6.11. ENFORCEMENT.** If any party initiates an action to enforce any  
 909 provision of this Interlocal Operating Agreement or for damages by reason of an alleged breach of any  
 910 provision hereof, FDOT, the Commission, and each Local Government Partner shall pay its own costs,  
 911 and expenses, and attorneys' fees and costs incurred in connection with such action.

912 **SECTION 6.12. COUNTERPARTS.** This Interlocal Operating Agreement may be  
 913 executed in multiple counterparts. Each such counterpart shall be deemed an original of this Interlocal

914 Operating Agreement, so that in making proof of this Interlocal Operating Agreement, it shall only be  
915 necessary to produce or account for one such counterpart.

916         **SECTION 6.13. CONCURRENT AGREEMENTS.** This Interlocal Operating  
917 Agreement is being entered into in conjunction with the Interlocal Funding Agreement between FDOT  
918 and Orange County, Osceola County, Seminole County, the County of Volusia, and the City of  
919 Orlando, and these two agreements, being pari materia, must be construed with reference to one  
920 another and neither agreement shall have precedence over the other. Furthermore, these two  
921 Agreements encompass all prior negotiations, correspondence, conversations, agreements, and  
922 understandings of the parties relating to the subject matter, supersede all prior understandings and  
923 agreements regarding such subject matter, and may not be amended, modified, or supplemented except  
924 by an instrument or instruments in writing executed by all of the parties.

925         **SECTION 6.14. SEVERABILITY.** In the event any one or more of the provisions  
926 contained in this Interlocal Operating Agreement shall for any reason be held to be invalid, illegal or  
927 unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other  
928 provision hereof, and this Interlocal Operating Agreement shall be revised so as to cure such invalid,  
929 illegal or unenforceable provision to carry out as nearly as possible the original intent of the parties.

930         **SECTION 6.15. CONTRACTUAL RELATIONSHIP.** It is specifically understood and  
931 agreed that the relationship described in this Interlocal Operating Agreement by and between the  
932 FDOT and the Commission is contractual in nature and is not to be construed to create a partnership or  
933 joint venture or agency relationship between the parties. Nor, shall FDOT and the Commission liable  
934 for any debts or liabilities incurred by the other party to this Interlocal Operating Agreement except as  
935 provided herein, or for non-commuter rail service operations or activities.

936           **SECTION 6.16.     GOVERNING LAW AND VENUE.**   This Interlocal Operating  
 937 Agreement and all agreements entered into in connection with the transactions contemplated by this  
 938 Interlocal Operating Agreement are, and will be, executed and delivered, and are intended to be  
 939 performed in Orange County, Osceola County, Seminole County and the County of Volusia. The laws  
 940 of Florida shall govern the validity, construction, enforcement, and interpretation of this Interlocal  
 941 Operating Agreement. In the event of litigation among the parties hereto, their successors or assigns,  
 942 with regard to this Interlocal Operating Agreement and any subsequent supplementary agreements or  
 943 amendments, venue shall lie exclusively in the county where the administrative offices of the  
 944 Commuter Rail System are located.

945           **SECTION 6.17.     FURTHER ASSURANCES.** Each party agrees to perform any further  
 946 acts and to sign and deliver any further documents that may be reasonably necessary to carry out  
 947 the provisions of this Interlocal Operating Agreement.

948

949           **EXECUTED** by the following to be effective upon the date as herein provided:

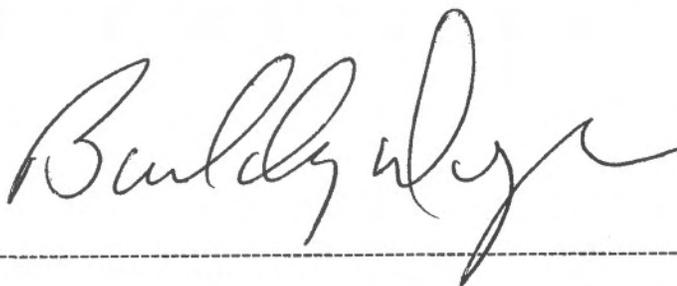
950 By and For the Central Florida Commuter Rail Commission:

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954



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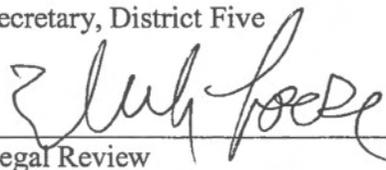
955 By and For The State of Florida Department of Transportation:

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          NoVanne down                     Date:           8/29/07

959 Secretary, District Five  
960  
961   
962  
963 Legal Review

Date: 8/29/07

964  
965 N/A  
966  
967 Office of Comptroller

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

968 -----



County Manager

**FRANK T. BRUNO JR.**  
COUNTY CHAIR

**JOIE ALEXANDER**  
VICE-CHAIR, AT-LARGE

**ANDY KELLY**  
DISTRICT 1

**ART GILES**  
DISTRICT 2

**JACK H. HAYMAN**  
DISTRICT 3

**CARL G. PERSIS**  
DISTRICT 4

**PATRICIA NORTHEY**  
DISTRICT 5

**JAMES T. DINNEEN**  
COUNTY MANAGER

November 14, 2008

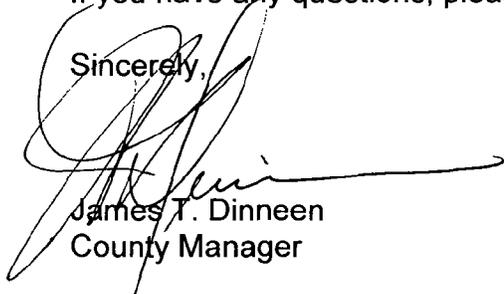
Ms. Cynthia Coto  
Seminole County Manager  
1101 E. First St.  
Sanford, FL 32771

Dear Ms. Coto:

Attached is a copy of Resolution 2008-194 adopted last night by the Volusia County Council in support of the Central Florida Commuter Rail system. Volusia County looks forward to the other partners taking the same actions. I assume the same procedure will be followed as with the original interlocal agreements that the necessary number of duplicate originals will be circulated for signature in order for each jurisdiction and the Central Florida Rail Commission to have an original.

If you have any questions, please do not hesitate to contact me.

Sincerely,



James T. Dinneen  
County Manager

cc: Mr. Jerry McCollum, Seminole County (email)  
County Council Members (e-mail)  
Daniel D. Eckert, County Attorney  
Tura Schnebly, Deputy County Attorney

Attachment

**RESOLUTION NO. 2008-194**

**A RESOLUTION OF THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA, RELATING TO THE PROPOSED CENTRAL FLORIDA COMMUTER RAIL SYSTEM; AUTHORIZING FIRST AMENDMENT TO THE INTERLOCAL GOVERNANCE AGREEMENT TO PERMIT APPOINTMENT OF ALTERNATES ON THE COMMUTER RAIL COMMISSION AND THE TECHNICAL ADVISORY COMMITTEE; CONDITIONALLY CONSENTING TO EXECUTION OF FIRST AMENDMENT TO THE INTERLOCAL OPERATING AGREEMENT BY THE COMMUTER RAIL COMMISSION GOVERNING BOARD, SUBJECT TO THE TERMS OF THIS RESOLUTION; APPROVING EXECUTION OF FIRST AMENDMENT TO THE INTERLOCAL FUNDING AGREEMENT TO CLARIFY CONTINGENCIES TO BE CONSISTENT WITH THE FIRST AMENDMENT TO THE INTERLOCAL OPERATING AGREEMENT; PROVIDING FOR CONFLICTS AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, for more than a decade Osceola County, Orange County, Seminole County, the County of Volusia and the City of Orlando (collectively the Local Government Partners) have explored the potential for commuter rail and supported the concept on a regional basis in Central Florida; and

**WHEREAS**, during that same time period the Local Government Partners have worked with the State of Florida Department of Transportation (FDOT) separately, collectively and through applicable metropolitan planning organizations to move the regional commuter rail concept to reality; and

**WHEREAS**, the State of Florida Department of Transportation has undertaken to acquire, develop and implement the Central Florida Commuter Rail Transit System (the Commuter Rail System) running from DeLand in Volusia County through Seminole County and Orange County (including the City of Orlando) to Poinciana in Osceola County; and

**WHEREAS**, implementation of the Commuter Rail System will greatly benefit all of the residents of, and visitors to the Central Florida region, and is needed in order to relieve traffic

congestion, provide transportation opportunities and provide a relief for I-4 traffic during the I-4 reconstruction; and

**WHEREAS**, the Commuter Rail System will become an integral part of Central Florida's balanced transportation system and, with concurrent development of improvements to roadways and bus transit, will greatly enhance the mobility of the traveling public; and

**WHEREAS**, in the summer of 2006 the State of Florida Department of Transportation announced an Agreement in Principle between CSXT and FDOT to purchase CSXT's A line as the rail Corridor for operation of the Commuter Rail System and continued provision of rail freight and intercity rail passenger service; and

**WHEREAS**, FDOT made application for Federal New Starts funding (also known as a Full Funding Grant Agreement) and other federal funding to acquire, develop, and implement the Commuter Rail System and such funding is a contingency for FDOT's closing with CSXT; and

**WHEREAS**, Congressman John Mica and Congresswoman Corrine Brown have pledged to secure more than \$300 million in federal funding for the Commuter Rail System which, if not used for this project, will be lost to rail transit projects elsewhere in the country; and

**WHEREAS**, all above described federal funding is essential to the acquisition, development and implementation of the Commuter Rail System and without such federal funding the Commuter Rail System will not be viable; and

**WHEREAS**, such federal funding mandates a 50 percent match of federal funds with state and local funds; and

**WHEREAS**, FDOT represented to the Local Government Partners that FDOT will not go forward with the Commuter Rail System project without all the federal funding used as a basis for FDOT's estimation of each Local Government Partner's share to fund the Commuter Rail System; and

**WHEREAS**, in addition to federal funding, Fixed Guideway Bonds will be issued by FDOT to yield \$173,000,000 in net proceeds for the sole purpose of acquisition of the Corridor and relocation of the Taft Yard Facility; and

**WHEREAS**, FDOT will pay for the Fixed Guideway Bonds during the FDOT Funding Period and the Local Government Partners will pay for the Fixed Guideway Bonds for approximately 23 years after the FDOT Funding Period irrespective of the viability of the Commuter Rail System; and

**WHEREAS**, in July of 2007 each of the Local Government Partners through unanimous vote of the respective governing bodies did agree to execute an Interlocal Governance Agreement creating the Central Florida Rail Commission; and

**WHEREAS**, in July of 2007 each of the Local Government Partners through unanimous vote of the respective governing bodies did agree to execute an Interlocal Funding Agreement with the FDOT to provide matching funds for the requisite federal funding in amounts as allocated in that Interlocal Agreement; and

**WHEREAS**, in July of 2007 each of the Local Government Partners through unanimous vote of the respective governing bodies did endorse the Interlocal Operating Agreement between FDOT and the Central Florida Rail Commission and consented to the execution of that interlocal agreement by the Central Florida Rail Commission; and

**WHEREAS**, under the Interlocal Funding Agreement the Local Government Partners acknowledged that FDOT will be the agency responsible for design, permitting, and construction of the Commuter Rail System, and further agreed that FDOT will be responsible for funding, operating, managing, and maintaining the Commuter Rail System for the FDOT Funding Period, a period of seven years commencing from the Revenue Operation date of the Commuter Rail System; and

**WHEREAS**, by entering into the Interlocal Governance Agreement, the Local Government Partners created the Central Florida Commuter Rail Commission (the Commuter Rail Commission) to assume responsibility for funding, operating, managing, and maintaining the Commuter Rail System following expiration of the FDOT Funding Period; and

**WHEREAS**, FDOT has agreed to convey the Commuter Rail System and an easement over the Corridor to the Commuter Rail Commission after the FDOT Funding Period; and

**WHEREAS**, under the Interlocal Funding Agreement the Local Government Partners agreed after the FDOT Funding Period to provide a portion of the budget for the Commuter Rail Commission consisting of payment of a share of the self-insurance fund and insurance premiums as well as payment of capped operating deficits for the Commuter Rail System based on track mile allocations; and

**WHEREAS**, the Local Government Partners, acting consistently with the Interlocal Governance Agreement, consented to the Commuter Rail Commission's execution of the Interlocal Operating Agreement with the FDOT subject to each and every appendix attached to the Interlocal Operating Agreement being acceptable under Section 3.02 of the Interlocal Operating Agreement, a requirement not waived by the Volusia County Council and not yet satisfied; and

**WHEREAS**, pursuant to Section 6.03(C) the Local Government Partners are third party beneficiaries of the Interlocal Operating Agreement; and

**WHEREAS**, the Local Government Partners have agreed to a covenant to budget and appropriate to fund the repayment of the Fixed Guideway Bonds and the portion of the budget the Commuter Rail Commission consisting of payment of a share of the self-insurance fund and insurance premiums as well as payment of capped operating deficits for the Commuter Rail System based on track mile allocations; and

**WHEREAS**, the County of Volusia's covenant to budget and appropriate has as its sole source the county's general fund; and

**WHEREAS**, pursuant to Section 3.06(B)(2) of the Interlocal Governance Agreement "...the Commission shall not be authorized to approve or execute any amendment to the Interlocal Operating Agreement unless written consent to such amendment has been received from all Local Government Partners"; and

**WHEREAS**, the Interlocal Operating Agreement provides at Section 3.02(A) that the Contract for Sale and Purchase between FDOT and CSXT be finalized in acceptable form to the Local Government Partners and the copy of the executed Contract for Purchase and Sale received does not include completed exhibits; and

**WHEREAS**, the Interlocal Operating Agreement provides at Section 3.02(B) that the Central Florida Operating and Management Agreement (CFOMA) between FDOT and CSXT be finalized in acceptable form to the Local Government Partners and the copy of the executed CFOMA received by the Local Government Partners does not include completed exhibits; and

**WHEREAS**, the Interlocal Operating Agreement provides at Section 3.02(D) that if the Florida Legislature did not enact acceptable legislation including provisions proposed by the Commuter Rail Commission and Local Government Partners or FDOT did not acquire the rail Corridor by December 31, 2008, for any other reason the Interlocal Operating Agreement will terminate; and

**WHEREAS**, the Florida Legislature did not enact acceptable legislation and will not do so prior to December 31, 2008; and

**WHEREAS**, the Closing Date for the Contract of Purchase and Sale is June 30, 2009, and both FDOT and CSXT have a unilateral right to terminate the contract if the closing has not occurred by that date for any reason; and

**WHEREAS**, the Contract for Purchase and Sale gives both the FDOT and CSXT a unilateral right to terminate the contract if the proposed legislation in Exhibit 19 to the contract or substantially similar legislation which accomplishes the same intent and purpose, in the sole discretion of CSXT and FDOT shall not have been enacted by the Legislature and signed by the Governor and be in full force and effect prior to the Closing Date; and

**WHEREAS**, failure of the Florida Legislature during the 2009 Legislative Session to enact legislation set forth in Appendix G to the Interlocal Operating Agreement or legislation which is substantially similar or which accomplishes the same purpose would be a material adverse financial or operational burden to the Local Government Partners; and

**WHEREAS**, failure of the FTA to award a Full Funding Grant Agreement and execute the same with FDOT would be a material adverse financial or operational burden to the Local Government Partners; and

**WHEREAS**, the Volusia County Council affirms its strong commitment to the acquisition and implementation of the Commuter Rail System reiterating the understanding of the Volusia County Council that the parameters and intent of the Interlocal Agreements including exhibits set forth a logical sequence for funding, acquisition, and implementation of the Commuter Rail System whereby the execution of the Full Funding Grant Agreement and enactment of acceptable legislation occur prior to issuing any Fixed Guideway Bonds for which the Local Government Partners are liable to repay and closing with CSXT on the rail Corridor; and

**WHEREAS**, Section 3.02 (D) of the Interlocal Operating Agreement needs to be amended to extend the date to provide additional time for accomplishing the following: 1) the requisite legislative enactment; 2) the completion of all exhibits to the Interlocal Operating Agreement which includes the CFOMA plus all exhibits and the Contract for Purchase and Sale plus all exhibits in a form acceptable to the Local Government Partners; 3) execution of a Full Funding Grant Agreement between FDOT and FTA consistent with the Local Government Partners' obligations under the Interlocal Agreements; 4) closing on the Contract for Purchase and Sale after completion of all the foregoing contingencies numbered 1 through 3 inclusive; and 5) issuance of Fixed Guideway Bonds after all the foregoing contingencies numbered 1 through 3 inclusive have been fully performed to effect the closing described in contingency numbered 4; and

**WHEREAS**, the Volusia County Council finds that Section 4.03 of the Interlocal Funding Agreement should be amended to reflect that the FDOT shall not issue Fixed Guideway Bonds for which the Local Government Partners shall be liable to repay prior to 1) the effective date of legislation by the Florida Legislature which is consistent with the sovereign immunity liability and insurance requirements as expressed in Section 3.02 at subsections (C) and (D) and contained in Appendix G of the Interlocal Operating Agreement; and 2) the effective date of a completely executed Full Funding Grant Agreement between FDOT and the Federal Transit Administration consistent with the obligations of the Local Government Partners under the Interlocal Funding Agreement; and

**WHEREAS**, the Volusia County Council consents to the execution by the Central Florida Rail Commission of the First Amendment to Interlocal Operating Agreement with FDOT upon the condition that FDOT and the other Local Government Partners agree to execute the First Amendment to Interlocal Funding Agreement which amends Section 4.03 thereof as set forth above.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF VOLUSIA COUNTY, FLORIDA:**

**SECTION 1. THE RECITALS OF THIS RESOLUTION ARE MATERIAL TO THE ACTION TAKEN HEREBY.**

**SECTION 2. AUTHORIZATION OF FIRST AMENDMENT TO THE INTERLOCAL GOVERNANCE AGREEMENT.** The Volusia County Council hereby approves the First Amendment to the Interlocal Governance Agreement among the Local Government Partners, attached hereto in Exhibit 1 and incorporated by this reference. The County Chair is hereby authorized to execute the First Amendment to the Interlocal Governance Agreement and the Manager/Clerk is directed to attest the same.

**SECTION 3. CONSENT TO FIRST AMENDMENT TO THE INTERLOCAL OPERATING AGREEMENT.** The Volusia County Council hereby conditionally consents to execution by the Commuter Rail Commission of the First Amendment to the Interlocal Operating Agreement between the Commuter Rail Commission and FDOT, attached hereto in Exhibit 2 and incorporated by this reference, but such consent is subject to each and every recital of this Resolution and will remain conditional and without effect until FDOT and all the other Local Government Partners execute the First Amendment to Interlocal Funding Agreement referenced in Section 4 hereof.

**SECTION 4. AUTHORIZATION OF FIRST AMENDMENT TO THE INTERLOCAL FUNDING AGREEMENT.** The Volusia County Council hereby approves the First Amendment to the Interlocal Funding Agreement among FDOT and the Local Government Partners, attached hereto in Exhibit 3 and incorporated by this reference. The

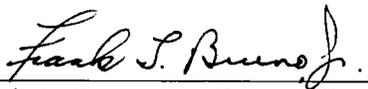
County Chair is hereby authorized to execute the First Amendment to the Interlocal Funding Agreement and the Manager/Clerk is directed to attest the same.

**SECTION 5. CONFLICTS AND SEVERABILITY.** All sections or parts of section of all resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict. If any section, subsection, sentence, clause or provisions of this Resolution is held unconstitutional, inoperative, or void by a court of competent jurisdiction, such holding shall not affect the remainder of the Resolution.

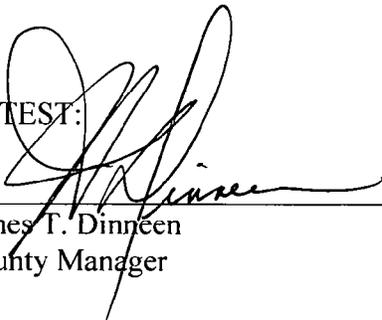
**SECTION 6. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**DULY ADOPTED** this 13th day of November, 2008.

**COUNTY COUNCIL  
VOLUISA COUNTY, FLORIDA**

By:   
Frank T. Bruno, Jr., County Chair

ATTEST:

  
James T. Dinneen  
County Manager  
  
(SEAL)

**FIRST AMENDMENT TO  
INTERLOCAL GOVERNANCE AGREEMENT**

**THIS FIRST AMENDMENT TO INTERLOCAL GOVERNANCE AGREEMENT**

(the "First Amendment"), 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") and the City of Orlando, a municipal corporation of the State of Florida (the "City of Orlando").

**WITNESSETH:**

**WHEREAS**, Orange County, Osceola County, Seminole County, the County of Volusia and the City of Orlando (collectively, the "Local Government Partners") have previously entered into an Interlocal Governance Agreement for Creation of the Central Florida Commuter Rail Commission (the "Original Governance Agreement"); and

**WHEREAS**, the Local Government Partners desire to amend the Original Governance Agreement to provide for the designation or election of alternate "Members" of the Central Florida Commuter Rail Commission "Governing Board" and for the designation of alternate members of the "Technical Advisory Committee," as such terms are defined in the Original Governance Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. DEFINITIONS.** The definition of "Member" set forth in the Master Glossary of Terms for the Florida Commuter Rail System Agreements attached to the Original Governance Agreement as Appendix A is hereby amended as follows:

"Member" means a member of the Governing Board or an alternate, as designated or elected, as applicable, pursuant to ~~in~~ Section 3.03 of the Interlocal Governance Agreement.

**SECTION 2. GOVERNING BOARD.** Section 3.03 of the Original Governance Agreement is hereby amended as follows:

**SECTION 3.03. GOVERNING BOARD.** All powers, privileges and duties vested in or imposed upon the Commission shall be exercised by a Governing Board comprised of the following five Members:

(A) the Orange County Mayor, or an Orange County Commissioner designated by the Orange County Mayor;

(B) an Osceola County Commissioner elected by the Osceola County Board of County Commissioners;

(C) a Seminole County Commissioner elected by the Seminole County Board of County Commissioners;

(D) a member of the Volusia County Council elected by the Volusia County Council; and

(E) the Mayor of the City of Orlando, or an Orlando City Councilmember designated by the Mayor of the City of Orlando.

Each of the Local Government Partners may designate or elect, as applicable, a second member of its governing board to serve as an alternate Member.

**SECTION 3. TECHNICAL ADVISORY COMMITTEE.** Section 3.07(A) of the Original Governance Agreement is hereby amended as follows:

**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~~ Committee 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, Maitland, 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.~~ The chief executive officer of each such entity shall designate one primary representative and one alternative representative, each of whom shall serve without compensation from FDOT or the Commission.

**SECTION 4. EFFECTIVE DATE.** This First Amendment shall become effective when a fully-executed copy is filed with the clerk of the circuit court for each of the Local Government Partners.

**SECTION 5. COUNTERPARTS.** This First Amendment may be executed in multiple counterparts. Each such counterpart shall be deemed an original of this First Amendment, so that in making proof of this First Amendment, it shall only be necessary to produce or account for one such counterpart.

Exhibit 1 to  
Resolution No. 2008-\_\_\_

**SECTION 6. STATUS OF ORIGINAL GOVERNANCE AGREEMENT.** Except as expressly modified by this First Amendment, the Original Governance Agreement shall be and remain in full force and effect.

Exhibit 1 to  
Resolution No. 2008-\_\_\_\_

**IN WITNESS WHEREOF**, the Board of County Commissioners of Orange County,  
Florida, has caused this Interlocal Governance Agreement to be executed and delivered this \_\_\_\_  
day of \_\_\_\_\_, 2008.

**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: \_\_\_\_\_  
Richard T. Crotty  
Orange County Mayor

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

By: \_\_\_\_\_  
Deputy Clerk  
Print Name: \_\_\_\_\_

IN WITNESS WHEREOF, the Board of County Commissioners of Osceola County, Florida, has caused this Interlocal Governance Agreement to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 2008.

**OSCEOLA COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chairman/Vice Chairman  
Board of County Commissioners

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk/Deputy Clerk to the Board of  
County Commissioners

IN WITNESS WHEREOF, the Board of County Commissioners of Seminole County, Florida, has caused this Interlocal Governance Agreement to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA**

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida.

By: \_\_\_\_\_  
Brenda Carey, Chairman

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

For the use and reliance  
of Seminole County only.

As authorized for execution by the Board of County  
Commissioners at its \_\_\_\_\_, 2008 regular meeting

Approved as to form and  
legal sufficiency.

\_\_\_\_\_  
County Attorney

**IN WITNESS WHEREOF**, the County Council of the County of Volusia, Florida, has caused this Interlocal Governance Agreement to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_ 2008.

**ATTEST:**

**COUNTY OF VOLUSIA**

By: \_\_\_\_\_  
Name: James T. Dinneen  
Title: County Manager/Clerk  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Frank T. Bruno, Jr.  
Title: County Chair  
Dated: \_\_\_\_\_

IN WITNESS WHEREOF, the City Council of the City of Orlando, Florida, has caused this Interlocal Governance Agreement to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 2008.

**CITY OF ORLANDO**

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY for the use and reliance of the City of Orlando, Florida, only.  
\_\_\_\_\_, 2008

\_\_\_\_\_  
Assistant City Attorney  
Orlando, Florida

STATE OF FLORIDA  
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned authority, \_\_\_\_\_ and Alana C. Brenner, well known to me and known by me to be Mayor \_\_\_\_\_ and City Clerk, respectively, of the City of Orlando, Florida, and acknowledged before me that they executed the foregoing instrument on behalf of the City of Orlando as its true act and deed, and that they were duly authorized to do so.

WITNESS MY hand and official seal this \_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public - State of Florida at Large  
Print Name: \_\_\_\_\_  
My commission expires:

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

**THIS FIRST AMENDMENT TO INTERLOCAL OPERATING AGREEMENT FOR  
THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** (the  
"First Amendment") dated as of \_\_\_\_\_, 2008 (the "Effective Date") is  
entered into between the State of Florida, Department of Transportation, an agency of  
the State of Florida ("FDOT") and the Central Florida Commuter Rail Commission (the  
"Commission"), a legal entity and public body created by the Interlocal Governance  
Agreement for Creation of the Central Florida Commuter Rail Commission By and  
Among Orange County, Florida, Osceola County, Florida, Seminole County, Florida,  
County of Volusia, Florida, and City of Orlando, Florida pursuant to Section 163.01,  
Florida Statutes.

**WITNESSETH:**

**WHEREAS**, FDOT and the Commission desire to amend Section 3.02(D) of the  
**INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM** to change the date therein from  
December 31, 2008 to December 31, 2009, and

**WHEREAS**, the Local Government Partners have all consented to the execution  
of this First Amendment.

**NOW THEREFORE**, FDOT and the Commission hereby agree to amend the  
**INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE  
CENTRAL FLORIDA COMMUTER RAIL SYSTEM** as follows:

1. The date of December 31, 2008 contained in Section 3.02(D) shall be changed to the new date of December 31, 2009.
2. Other than expressly set forth herein, all other terms and conditions of the **INTERLOCAL OPERATING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereby have caused this First Amendment to be executed as of the Effective Date.

By and For the Central Florida Commuter Rail Commission:

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

By and For The State of Florida, Department of Transportation:

\_\_\_\_\_ Date: \_\_\_\_\_  
Secretary, District Five

\_\_\_\_\_ Date: \_\_\_\_\_  
Legal Review

**FIRST AMENDMENT TO  
INTERLOCAL FUNDING AGREEMENT FOR THE  
OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM**

**THIS FIRST AMENDMENT TO INTERLOCAL FUNDING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** (the "First Amendment") is entered into by and among the State of Florida Department of Transportation, an agency of the State of Florida ("FDOT"); 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"); and the City of Orlando, a municipal corporation of the State of Florida (the "City of Orlando"), hereinafter collectively "Local Government Partners,"

**WITNESSETH:**

**WHEREAS**, FDOT and the Local Government Partners desire to amend Section 4.03 of the **INTERLOCAL FUNDING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** to add a new subsection (E).

**NOW THEREFORE**, FDOT and the Local Government Partners hereby agree to amend the **INTERLOCAL FUNDING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** by adding a new subsection (E) so that Section 4.03 shall read as follows:

**SECTION 4.03. 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 3.04 of the Interlocal Operating Agreement) by the Local Government Partner's percentage of track miles, as shown in the following tables.

**Before Phase II Opens for Service**

Local Government Partner	Track Miles	Percentage of Track Miles
Orange County	9.10 miles	27.9656 percent
Seminole County	16.44 miles	50.5224 percent
County of Volusia	1.50 miles	4.6097 percent
City of Orlando	5.50 miles	16.9023 percent

**After Phase II Opens for Service**

Local Government Partner	Track Miles	Percentage of Track Miles
Orange County	16.30 miles	26.9243 percent
Osceola County	9.60 miles	15.8573 percent
Seminole County	16.44 miles	27.1556 percent
County of Volusia	12.70 miles	20.9779 percent
City of Orlando	5.50 miles	9.0849 percent

(C) Each Local Government Partner shall pay its respective Share of FDOT Bond Debt Service on each Interest Payment Date by wire transfer in immediately

Exhibit 3 to  
Resolution No. 2008-\_\_\_

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.

(D) Each Local Government Partner understands and agrees that its commitment to pay its respective Share of FDOT Bond Debt Service shall survive any termination of the Interlocal Operating Agreement or the discontinuance of any service as provided for in the Interlocal Operating Agreement, unless otherwise agreed in writing by FDOT.

(E) FDOT shall not issue Fixed Guideway Bonds for which the Local Government Partners shall be liable to repay prior to:

- 1) the effective date of legislation by the Florida Legislature which is consistent with the sovereign immunity liability and insurance requirements as expressed in Section 3.02 at subsections (C) and (D) and contained in Appendix G of the Interlocal Operating Agreement; and
- 2) the effective date of a completely executed Full Funding Grant Agreement between FDOT and the Federal Transit Administration consistent with the obligations of the Local Government Partners under the Interlocal Funding Agreement.

This First Amendment is incorporated into the **INTERLOCAL FUNDING AGREEMENT FOR THE OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM** as if fully set forth therein. Except as provided above, all other terms and conditions of the Interlocal Agreement shall remain unchanged and in full force and

Exhibit 3 to  
Resolution No. 2008-\_\_\_\_

effect. In the event of any conflict or inconsistency between the provisions set forth in this Amendment and the Interlocal Agreement, the provisions of this Amendment shall govern and control.

**IN WITNESS WHEREOF**, the parties hereby have caused this First Amendment to be executed as of the Effective Date.

By and For Orange County:

By: Board of County Commissioners

By: \_\_\_\_\_  
Richard T. Crotty  
Orange County Mayor

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

By: \_\_\_\_\_  
Deputy Clerk  
Print Name: \_\_\_\_\_

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Exhibit 3 to  
Resolution No. 2008-\_\_\_

By and For Osceola County:

**IN WITNESS WHEREOF**, the Board of County Commissioners of Osceola County, Florida, has caused this First Amendment to the Interlocal Funding Agreement to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 2008.

**OSCEOLA COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chairman(SEAL)  
Board of County Commissioners

ATTEST:

\_\_\_\_\_  
Clerk to the Board of  
County Commissioners

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Exhibit 3 to  
Resolution No. 2008-\_\_

By and For County of Volusia:

IN WITNESS WHEREOF, the County Council of the County of Volusia, Florida, has caused this First Amendment to the Interlocal Funding Agreement to be executed and delivered this \_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

COUNTY OF VOLUSIA

By: \_\_\_\_\_  
Name: James T. Dinneen  
Title: County Manager/Clerk  
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Frank T. Bruno, Jr.  
Title: County Chair  
Dated: \_\_\_\_\_

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Exhibit 3 to  
Resolution No. 2008-\_\_\_\_

By and For City of Orlando:

IN WITNESS WHEREOF, the City Council of the City of Orlando, Florida, has caused this First Amendment to the Interlocal Funding Agreement to be executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF ORLANDO

By: \_\_\_\_\_  
Mayor / Mayor Pro Tem

ATTEST:

\_\_\_\_\_  
Alana C. Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY for  
the use and reliance of the City of Orlando, Florida,  
only.

\_\_\_\_\_, 2008

\_\_\_\_\_  
Assistant City Attorney  
Orlando, Florida

STATE OF FLORIDA  
COUNTY OF ORANGE

PERSONALLY APPEARED before me, the undersigned  
authority, \_\_\_\_\_ and Alana C. Brenner, well known to  
me and known by me to be Mayor \_\_\_\_\_ and City Clerk, respectively, of the City  
of Orlando, Florida, and acknowledged before me that they executed the foregoing  
instrument on behalf of the City of Orlando as its true act and deed, and that they were  
duly authorized to do so.

WITNESS MY hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public - State of Florida at Large  
Print Name: \_\_\_\_\_  
My commission expires:

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Exhibit 3 to  
Resolution No. 2008-\_\_

By and For The State of Florida Department of Transportation:

\_\_\_\_\_  
Secretary, District Five

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

\_\_\_\_\_  
Legal Review

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

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

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