

AIRSPACE AGREEMENTITEM/SEGMENT NO.: 4084161/2424844MANAGING DISTRICT: Five - Temp. Surplus File #15-75-01F.A.P. NO.: 0042 2201 - Section #75280STATE ROAD NO.: 400 (I-4) plus SR 50 & Central Florida Rail CorridorCOUNTY: OrangePARCEL NO.: Parcels 276 & 278

THIS AGREEMENT, made this _____ day of _____, 2015, between
The City of Orlando at 400 South Orange Ave. Orlando, FL 32801
(Lessee) and the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (Department), an agency of the State of Florida
(State).

WITNESSETH:

WHEREAS, the Department may convey a leasehold in the name of the State, in any land, buildings, or other property, real or personal, acquired under Section 337.25, Florida Statutes; and

WHEREAS, the United States Department of Transportation, Federal Highway Administration (FHWA), requires any use of airspace above, and/or below the highway's established gradeline, lying within the approved right of way limits on a Federal Aid System, to be accomplished pursuant to an airspace agreement in accordance with 23 CFR, Part 710, and

WHEREAS, the Department has acquired sufficient legal right, title, and interest in the right of way of SR 400 (I-4) (Pond), SR 50, and CFRC which includes the property described in Exhibit "A" attached hereto and made a part hereof, which right of way is part of a highway on a Federal Aid System; and

WHEREAS, the Department desires to lease to Lessee the airspace above or below the gradeline of the property described in Exhibit "A", attached and made a part hereof for the following purpose: Construction and use of pedestrian bridge which will cross over SR 50, the CFRC, and I-4 pond in I-4 Right of Way.

WHEREAS, the proposed use will not impair the full use and safety of the highway, require or permit vehicular access to such space directly from the established gradeline of said highway, or interfere with the free flow of traffic on said highway.

NOW, THEREFORE, in consideration of the premises made a part hereof, and the covenants, promises, understandings, and agreements made by each party to the other as set forth herein, the Department and the Lessee do hereby mutually agree as follows:

1. Premises

The premises hereto are true and correct and form an integral part of this Agreement.

2. Term

The Department does hereby lease unto Lessee the airspace above or below gradeline of the property for a period of 99 years beginning with the date of this Agreement. One renewal of this Agreement may be made for Negotiable. However, except for a public purpose conveyance, such renewal may not exceed five years. Nothing herein shall be construed to in any way grant an interest in the property lying below said airspace.

3. Rent

a. Lessee shall pay to the Department as rent each ☐ month ☐ quarter ☐ year on or before the first day of each rent payment period, N/A - Public Purpose plus applicable sales tax. When this Agreement is terminated, any unearned rent and sales tax payment shall be refunded to Lessee. However, no such refund shall be made where termination is due to Lessee's violation of a term or condition of this Agreement.

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b. The Department reserves the right to review and adjust the rental fee biannually and at renewal to reflect market conditions.

c. All rental payments are to be made by check or money order, payable to the State of Florida Department of Transportation and delivered on or before the due date to: 719 S. Woodland Blvd. DeLand, FL 32720 ATTN: Right of Way - Dana English

d. Lessee shall be responsible for all state, county, city, and local taxes that may be assessed, including real property taxes and special assessments. In the event that no rent is specified herein, then it has been determined that either the use by Lessee is a nonproprietary use by a governmental agency or an exception from the current fair market rental value requirement (23 U.S.C. Section 156) has been obtained for social, environmental, or economic mitigation (SEE) purposes. In the event that it should be determined at any time that the use is not a nonproprietary use by a governmental agency or that the SEE exception does not apply or has been revoked, Lessee agrees to pay, at that time, rent as determined to be the fair market rental value by an independent appraiser certified by the Department, and Lessee further agrees to pay such rent, under the remaining terms and conditions of this Paragraph 3, for the remaining term (including renewals) of this Agreement.

e. Any installment of rent not received within ten (10) days after the due date shall bear interest at the highest rate allowed by law from the due date thereof, per Section 55.03(1), Florida Statutes. This provision shall not obligate the Department to accept late rent payments or provide Lessee a grace period.

4. Use, Occupancy, and Maintenance

a. The Lessee shall be responsible for developing and operating the airspace as set forth herein.

b. The Lessee's proposed use of the airspace is as follows: Public Purpose Airspace Lease for a pedestrian bridge over SR 50 and Central Florida Rail Corridor and I-4 Right of Way pond.

c. The general design for the use of the airspace, including any facilities to be constructed, and the maps, plans, and sketches setting out the pertinent features of the use of the airspace in relation to the highway facility are set forth in composite Exhibit "B" attached hereto and by this reference made a part hereof. In addition, said composite Exhibit "B" also contains a three-dimensional description of the space to be used, unless the use is of a surface area beneath an elevated highway structure or adjacent to a highway roadway for recreation, public park, beautification, parking of motor vehicles, public mass transit facilities, or other similar uses, in which case, a metes and bounds description of the surface area, together with appropriate plans or cross sections clearly defining the vertical use limits, may be substituted for said three-dimensional description in said composite Exhibit "B".

d. Any change in the authorized use of the airspace or revision in the design or construction of the facility described in Exhibit "B" shall require prior written approval from the appropriate District Secretary of the Department, subject to concurrence by the FHWA.

e. The Department, through its duly authorized representatives, employees, and contractors, and any authorized FHWA representative, may enter the facility at any time for the purpose of inspection, maintenance, or reconstruction of the highway and adjacent facilities, when necessary; or for the purpose of surveying, drilling, monitoring well installations, sampling, remediation, and any other action which is reasonable and necessary to conduct an environmental assessment or to abate an environmental hazard.

f. Lessee, at Lessee's sole cost and expense, shall maintain the facility to occupy the airspace so as to assure that the structures and the area within the highway right of way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with the highway use. In the event that Lessee fails to so maintain the facility, the Department, through its duly authorized representatives, employees, and contractors, may enter the facility to perform such work, and the cost thereof shall be chargeable to the Lessee and shall be immediately due and payable to the Department upon the performance of such work.

g. Portable or temporary advertising signs are prohibited.

h. The design, occupancy, and use of the airspace shall not adversely affect the use, safety, appearance, or enjoyment of the highway by smoke, fumes, vapors, odors, droppings, or any other objectionable discharges or emissions, or nuisances of any kind therefrom.

i. When, for the proposed use of the airspace, the highway requires additional highway facilities for the proper operation and maintenance of the highway, such facilities shall be provided by the Lessee without cost to either the Department or the FHWA and subject to both Department and FHWA approval.

j. The proposed use shall not cause or allow any changes in the existing drainage on the property under the airspace.

k. Lessee shall not occupy, use, permit, or suffer the airspace, the property, the facility, or any part thereof to be occupied or used for any illegal business use or purpose, for the manufacture or storage of flammable, explosive, or hazardous material, or any other hazardous activity, or in such manner as to constitute a nuisance of any kind, nor for any purpose or in any way in violation of any present or future federal, state, or local laws, orders, directions, ordinances, or regulations.

l. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations, or as those terms are understood in common usage, are specifically prohibited. The use of petroleum products, pollutants, and other hazardous materials affecting the property is prohibited. Lessee shall be held responsible for the performance of and payment for any environmental remediation that may be necessary, as determined by the Department. Similarly, if any contamination either spread to or was released onto adjoining property as a result of Lessee's use of the airspace under lease, the Lessee shall be held similarly responsible. The Lessee shall indemnify, defend, and hold harmless the Department from any claim, loss, damage, cost, charge, or expense arising out of any such contamination.

m. Existing utilities and all corresponding easements shall remain in place and Lessee shall not disturb or interfere with the same.

5. Indemnification. (select applicable paragraph)

☒ **Lessee is a Governmental Agency**

To the extent provided by law, Lessee shall indemnify, defend, and hold harmless the Department and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by Lessee, its officers, agents, or employees, during the performance of the Agreement, except that neither Lessee, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Department or any of its officers, agents, or employees during the performance of the Agreement.

When the Department receives a notice of claim for damages that may have been caused by Lessee in the performance of services required under this Agreement, the Department will immediately forward the claim to Lessee. Lessee and the Department will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the Department will determine whether to require the participation of Lessee in the defense of the claim or to require that Lessee defend the Department in such claim as described in this section. The Department's failure to promptly notify Lessee of a claim shall not act as a waiver of any right herein to require the participation in or defense of the claim by Lessee. The Department and Lessee will each pay its own expenses for the evaluation, settlement negotiations, and trial, if any.

Note: No longer required for local governments.

☐ **Lessee is not a Governmental Agency**

Lessee shall indemnify, defend, save, and hold harmless the Department, its agents, officers, and employees, from any losses, fines, penalties, costs, damages, claims, demands, suits, and liabilities of any nature, including attorney's fees (including regulatory and appellate fees), arising out of or because of any acts, action, neglect, or omission by Lessee, or due to any accident, happening, or occurrence on the leased property or arising in any manner from the exercise or attempted exercise of Lessee's rights hereunder whether the same regards person or property of any nature whatsoever, regardless of the apportionment of negligence, unless due to the sole negligence of the Department.

Lessee's obligation to indemnify, defend, and pay for the defense or at the Department's option, to participate, and to associate with the Department in the defense and trial of any claim and any related settlement negotiations, shall be triggered by the Lessor's notice of claim for indemnification to Lessee. Lessee's inability to evaluate liability or its evaluation of liability shall not excuse Lessee's duty to defend and indemnify within seven days after such notice by the Department is given by registered mail. Only an adjudication or judgment after the highest appeal is exhausted specifically finding the Department solely negligent shall excuse performance of this provision by Lessee. Lessee shall pay all costs and fees related to this obligation and its enforcement by the Department. The Department's failure to notify Lessee of a claim shall not release Lessee of the above duty to defend.

Note: No longer required for local governments.

6. Insurance. Lessee at its expense, shall maintain at all times during the term of this Agreement, public liability insurance protecting the Department and Lessee against any and all claims for injury and damage to persons and property, and for the loss of life or property occurring in, on, or about the land arising out of the act, negligence, omission, nonfeasance, or malfeasance of Lessee, its employees, agents, contractors, customers, licensees, and invitees. Such insurance shall be carried in a minimum amount of not less than see construction terms/conditions (\$ 0.00) for bodily injury or death to any one person or any number of persons in any one occurrence and not less than see attached terms/conditions (\$ 0.00) for property damage, or a combined coverage of not less than see attached terms/conditions (\$ 0.00). All such policies shall be issued by companies licensed to do business in the State of Florida and all such policies shall contain a provision whereby the same cannot be canceled or modified unless the Department is given at least sixty (60) days prior written notice of such cancellation or modification. Lessee shall provide the Department certificates showing such insurance to be in place and showing the Department as additional

insured under the policies. If self-insured or under a risk management program, Lessee represents that such minimum coverage for liability will be provided for the property.

7. Termination

a. This Agreement may be terminated by either party without cause upon N/A () days prior written notice to the other party.

b. It is understood and agreed to by the Lessee that the Department reserves the right to terminate this Agreement immediately without prior notice, in the event the Lessee violates any of the conditions of this Agreement and such violation is not corrected within a reasonable time after written notice of noncompliance has been given. In the event the Agreement is terminated and the Department deems it necessary to request the removal of the facility on the property, the removal shall be accomplished by the Lessee in a manner prescribed by the Department at no cost to the Department or the FHWA.

c. The Lessee must notify the Department of its intention to renew this Agreement not later than thirty (30) days prior to the expiration of the original term. Lessee's failure to comply with the foregoing notice provision may result in the Department's refusal to renew the Agreement.

d. Upon termination of this Agreement, Lessee shall deliver the property to the Department, or its agents, in the condition existing at the commencement of this Agreement, normal wear and tear excepted, unless a facility, any improvement, or any part thereof has been constructed on the property.

e. If removal of the facility, improvements, or any part thereof is requested by the Department, any such structures shall be removed by the Lessee at Lessee's expense by midnight of the day of termination of this Agreement and the property restored as nearly as practicable.

f. This Agreement is terminable by the Department in the event that the facility ceases to be used for its intended purpose or is abandoned.

8. Eminent Domain

Lessee acknowledges and agrees that its relationship with the Department under this Agreement is one of landlord and tenant and no other relationship either expressed or implied shall be deemed to apply to the parties under this Agreement. Termination of this Agreement for any cause shall not be deemed a taking under any eminent domain or other law so as to entitle Lessee to compensation for any interest suffered or lost as a result of termination of this Agreement, including any residual interest in the Agreement or any other facts or circumstances arising out of or in connection with this Agreement.

Lessee hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort, including special damages, severance damages, removal costs, or loss of business profits, resulting from Lessee's loss of occupancy of the property specified in this Agreement, or any such rights, claims, or damages flowing from adjacent properties owned or leased by Lessee as a result of Lessee's loss of occupancy of the property specified in this Agreement. Lessee also hereby waives and relinquishes any legal rights and monetary claims which it might have for full compensation, or damages of any sort as set out above, as a result of Lessee's loss of occupancy of the property, when any or all adjacent properties owned or leased by Lessee are taken by eminent domain proceedings or sold under the threat thereof. This waiver and relinquishment applies whether this Agreement is still in existence on the date of taking or sale or has been terminated prior thereto.

9. Miscellaneous

a. The airspace and Lessee's rights under this Agreement shall not be transferred, assigned, or conveyed to another party without the prior written consent of the Department, subject to concurrence by the FHWA.

b. In conformance with the Civil Rights Act of 1964 (Title VI, Appendix "C") and 49 CFR Part 21, Lessee agrees as follows:

1. That as a part of the consideration hereof, Lessee does hereby covenant and agree as a covenant running with the land that (1) no person, on the ground of race, color, sex, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said property and facility; (2) that in connection with the construction of any improvements on said property and facility and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors, by contractors; and (3) that the Lessee shall use the property and facility in compliance with all other requirements imposed pursuant to 15 CFR Part 8, Subpart A.

2. That in the event of breach of any of the above covenants, the Department shall have the right to terminate this Agreement and to re-enter and repossess said property and the facility thereon, and hold the same as if this Agreement had never been made or issued.

c. During the term of this Agreement Lessee shall, at Lessee's own cost and expense, promptly observe and comply with all present or future laws, requirements, orders, directions, ordinances, and regulations of the United States of America, the State of

Florida, county or local governments, or other lawful authority whatsoever, affecting the land, property, and facility or appurtenances or any part thereof, and of all insurance policies covering the property, land, and facility, or any part thereof.

d. In addition to or in lieu of the terms and conditions contained herein, the provisions of any Addendum of even date herewith which is identified to be a part hereof is hereby incorporated herein and made a part hereof by this reference. In the event of any conflict between the terms and conditions hereof and the provisions of the Addendum(s), the provisions of the Addendum(s) shall control, unless the provisions thereof are prohibited by law.

e. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.

f. Lessee acknowledges that it has reviewed this Agreement, is familiar with its terms, and has had adequate opportunity to review this Agreement with legal counsel of Lessee's choosing. Lessee has entered into this Agreement freely and voluntarily. This Agreement contains the complete understanding of the parties with respect to the subject matter hereof. All prior understandings and agreements, oral or written, heretofore made between the parties and/or between Lessee and any previous owner of the property and landlord of Lessee are merged in this Agreement, which alone, fully and completely express the agreement between Lessee and the Department with respect to the subject matter hereof. No modification, waiver, or amendment of this Agreement or any of its conditions or provisions shall be binding upon the Department or Lessee unless in writing and signed by both parties.

g. Lessee shall be solely responsible for all bills for electricity, lighting, power, gas, water, telephone, and telegraph services, or any other utility or service used on the property.

h. This Agreement shall be governed by the laws of the State of Florida, and any applicable laws of the United States of America.

i. All notices to the Department shall be sent to the address for rent payments and all notices to Lessee shall be sent to the property address provided herein or otherwise provided in writing to the Department.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, the day and year first above written.

City of Orlando
LESSEE (Company Name, if applicable)

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____
District Secretary

Name: _____

Name: Noranne Downs

Title: _____

Attest: _____

Attest: _____ (Seal)

Name/Title: _____

Name: _____

Legal Review: _____

Title: _____

District Counsel

Name: _____

ADDENDUM

This is an Addendum to that certain Lease Agreement between City of Orlando

and the State of Florida Department of Transportation dated the _____ day of _____, _____.
In addition to the provisions contained in said Agreement, the following terms and conditions shall be deemed to be a part thereof pursuant to Paragraph 9 (d) of said Agreement:

THIS IS AN AIRSPACE LEASE AGREEMENT OVER SR 50 AND THE CFRC RAILROAD TRACK. THIS IS NOT AN AT GRADE GROUND LEASE.

To the extent permitted by law and in lieu of lease payments hereunder, Lessee agrees to reimburse Lessor for all payments required to be made by Lessor to the freight rail operator, or its successors pursuant to Chapter 341.302(17), Florida Statutes, and as said statute may be amended from time to time, and arising out of or associated with the construction, operation, and maintenance of Lessee's pedestrian bridge.

The Lessee assumes any and all liability and risk associated with, or arising out of, the Lessee's construction, maintenance and use of the Project and the Lessee's use and maintenance of the stormwater retention pond associated with I-4 in which the Project piers will be constructed. This assumption of risk and liability specifically includes any and all risk and any and all liability associated with any exacerbation of dissolved contaminated groundwater plumes in the area. Lessee shall hold Lessor harmless from any and all claims associated with or arising out of Lessee's activities under this Lease Agreement.

Lessee agrees that all construction work and any maintenance work for the pedestrian bridge must be specifically coordinated with the Department's I-4 Concessionaire. Lessor shall not be responsible for any delays and costs incurred by Lessee that may arise out of or that may be incurred by the Lessee as a result of the required coordination. Further, Lessee shall hold Lessor harmless from any and all delay claims or damages incurred by Lessor, if any, arising out of or directly connected with Lessee's activities under this Lease Agreement.

Lessee recognizes and is fully aware that any work or construction within or over the CFRC/SunRail corridor requires specific training and qualifications for anyone working in said space. The Lessee shall insure that the Lessee's bid process and construction contract describes and requires the specific training, insurance and qualifications that are necessary to work within or over the corridor.

By the terms of this Lease Agreement, the Lessee will be responsible for the permanent, perpetual maintenance of all aspects of the Project and of the stormwater retention area associated with I-4 and within which the piers for the Project are to be constructed. The Agency's maintenance responsibility of the stormwater retention area will begin on the date the Lessee undertakes any construction activity within the area of the stormwater retention area and will include the entire stormwater retention area.

See attached "Airspace Lease Agreement Construction Terms and Conditions" (13 pages)

See attached CSX Clearance Diagrams (2604) & CSX Standard Clearance Matrix (2605), both dated June 1, 2007.

See attached Letter of Support from Orlando Mayor, Buddy Dyer and City of Orlando/FDOT MOU.

See attached concept plans showing approximate location of pedestrian trail from Concord St. north and over SR 50 and the CFRC railroad tracts. These plans are to be superseded by the final plans and surveys completed by the City of Orlando and filed with this lease.

Plans, specifications and drawings, approved by CFRC/FDOT and FHWA shall be incorporated and deemed a part of this Lease Agreement. Design Build Plans shall be submitted to and approved by CFRC/FDOT. Upon approval, the Design Build Plans will be attached to this Lease Agreement by way of an Amendment to this Lease, executed with the same formality as the original. In the alternative, Lessee shall designate, through official Board action, an individual who shall have the authority to execute said Agreement on behalf of the Board. Lessee may not take any action or undertake any work in the rail corridor or State Road 50 unless and until a Notice to Proceed is issued by CFRC/FDOT after the plans/specifications are reviewed and approved.

City of Orlando
LESSEE (Company Name, if applicable)

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____
District Secretary

Name: _____

Name: Noranne Downs

Title: _____

Attest: _____

Attest: _____ (Seal)

Name/Title: _____

Name: _____

Legal Review:

Title: _____

District Counsel

Name: Daniel McDermott

AIRSPACE LEASE AGREEMENT CONSTRUCTION TERMS AND CONDITIONS

Plans, Specifications, Survey and Legal Description

- 1.1 Preparation and Approval.** All plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project on the property covered by in this Lease shall be prepared, at Lessee's sole cost and expense, by the Lessee or CFRC/FDOT or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of Lessee shall be subject to the review and approval of CFRC/FDOT. Such plans, specifications and drawings, as prepared or approved by CFRC/FDOT, are referred to as the "Plans", and shall be incorporated and deemed a part of this Lease Agreement. Design Build Plans shall be submitted to and approved by CFRC/FDOT. Upon approval by CFRC/FDOT, the Design Build Plans will be attached to this Lease Agreement by way of an Amendment to this Lease, executed with the same formality as the original. In the alternative, Lessee shall designate, through official Board action, an individual who shall have the authority to execute said Amendment on behalf of the Board. Lessee may not take any action or undertake any work in the rail corridor unless and until a Notice to Proceed is issued by CFRC/FDOT after the plans are reviewed and approved.
- 1.2 Effect of CFRC/FDOT Approval or Preparation of Plans.** By its review, approval or preparation of Plans pursuant to this Agreement, CFRC/FDOT signifies only that such Plans and improvements constructed in accordance with such Plans satisfy CFRC/FDOT's requirements. CFRC/FDOT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Lessee or any other persons of the Plans or improvements constructed in accordance with the Plans.
- 1.3 Compliance with Plans.** The Project shall be constructed in accordance with the Plans and Specifications. Upon completion, Lessee to provide Lessor "as built" construction plans.
- 1.4 Survey and Legal Description.** Lessee to provide CFRC/FDOT with "as built" Boundary Survey and Legal Description.

Allocation and Conduct of Work

Work in connection with the Project shall be allocated and conducted as follows:

- 2.1 CFRC/FDOT Work.** Lessee agrees that CFRC/FDOT shall provide all services that CFRC/FDOT deems necessary or appropriate to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all

applicable federal, state and local regulations and CFRC/FDOT's contractual obligations, including, but not limited to, CFRC/FDOT's existing or proposed third party agreements. The construction within the CFRC corridor shall be limited to the overhead bridge superstructure – no foundations or substructure will be permitted in the CFRC right-of-way.

- 2.2 Lessee Work.** Lessee shall perform, or cause to be performed, all work as described in the Plans and Specifications (to be attached) as approved by CFRC/FDOT at Lessee's sole cost and expense.
- 2.3 Lessee's Contractor Qualifications.** Lessee's Contractor shall have specific expertise and experience in completing construction of railroad bridge crossings, preferably a Class I railroad carrying both passenger and freight traffic. Lessee's Prime Contractor may utilize a subcontractor to meet the expertise and experience requirement for any work element associated with the bridge crossing. The Contractor must also have experience in bridge construction over railroads. Lessee's Contractor must also demonstrate they meet all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect this work. A minimum of 5 years of railroad bridge construction is required. Lessee's contractor must be approved in writing by CFRC/FDOT prior to any work in and/or above the rail corridor.
- 2.4 Conduct of Work.** CFRC/FDOT shall commence its work under this Agreement following: (i) delivery to CFRC/FDOT of a notice to proceed from Lessee; (ii) contribution of funds as required under the terms of that certain Local Funding Agreement, if any, entered into by and between the CFRC/FDOT and Lessee, (iii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; and (iii) delivery of proof of insurance acceptable to CFRC/FDOT, as required herein.

Easements, Licenses and Permits

- 3.1 Temporary Construction Licenses.** Subject to the review and approval of Lessees plans for the Project and subject to the terms and conditions stated herein, CFRC/FDOT grants Lessee a non-exclusive license to access and cross CFRC/FDOT's property, to the extent necessary for the construction of the Project (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by CFRC/FDOT.
- 3.2 Permits.** At its sole cost and expense, Lessee shall procure all permits and approvals required by any federal, state, or local governments or governmental agencies for the construction, maintenance and use of the Project, copies of which shall be provided to CFRC/FDOT.

Termination

- 4.1 By Lessee.** For any reason, Lessee may, as its sole remedy, terminate construction activities undertaken pursuant to this Lease by delivery of notice to CFRC/FDOT. Lessee shall not be entitled to otherwise pursue claims for consequential, direct, indirect or incidental damages or lost profits as a consequence of CFRC/FDOT's default or termination of this Agreement or Work on the Project by either party.
- 4.2 By CFRC/FDOT.** In addition to the other rights and remedies available to CFRC/FDOT under this Agreement, CFRC/FDOT may terminate any construction activity undertaken pursuant this Lease by delivery of notice to Lessee in the event Lessee or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by CFRC/FDOT to Lessee.
- 4.3 Consequences of Termination.** If the Lease is terminated by either party, the parties understand that it may be impractical for them to immediately stop the Work. Accordingly, they agree that, in such instance a party may continue to perform Work until it has reached a point where it may reasonably and safely suspend the Work.

Insurance

- 5.1 Workers' Compensation Insurance:** Lessee shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If subcontracting any of the work, ensure that the subcontractor(s) have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent Contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.
- 5.2 Commercial General Liability Insurance:** Lessee shall carry Commercial General Liability insurance providing continuous coverage for all work or operations performed under the Lease. Such insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01) as filed for use in the State of Florida. Lessee shall cause the Department, and Central Florida Commuter Rail Commission, Volusia County, Seminole County, Orange County, Osceola County, and City of Orlando, each in the State of Florida, to be each made an Additional Insured as to such insurance. Such coverage shall be on an "occurrence" basis and shall include Products/Completed Operations coverage. The coverage afforded to the Department and to each of the other Additional Insureds stated above as an Additional Insured shall be primary as to any other available insurance and shall not be more restrictive than the

coverage afforded to the Named Insured. The limits of coverage shall not be less than \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of coverage described herein shall apply fully to the work or operations performed under the Lease, and may not be shared with or diminished by claims unrelated to the lease. The policy/ies and coverage described herein may be subject to a deductible. Lessee shall pay all deductibles as required by the policy. No policy/ies or coverage described herein may contain or be subject to a Retention or a Self-Insured Retention. Prior to the execution of the Lease, and at all renewal periods which occur prior to termination of the Lease, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights or defenses the Department may have.

5.3 Insurance Required for Construction at Railroads: When the Lease includes the construction of a railroad grade crossing, railroad overpass or underpass structure, or any other work or operations within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, Lessee shall, in addition to the insurance coverage required pursuant to INSURANCE subsection (2) above, procure and maintain Railroad Protective Liability Coverage (ISO Form CG 00 35) where the Department is the Named Insured, and Central Florida Commuter Rail Commission, Volusia County, Seminole County, Orange County, Osceola County, and City of Orlando, each in the State of Florida, are each an Additional Insured, and where the limits are not less than \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence, and with an annual aggregate limit of not less than \$6,000,000. Prior to the execution of the Lease, and at all renewal periods which occur prior to termination of the lease, the Department shall be provided with an ACORD Certificate of Liability Insurance reflecting the coverage described herein. The insurance described herein shall be maintained through the duration of the lease. The Department shall be notified in writing within ten days of any cancellation, notice of cancellation, renewal, or proposed change to any policy or coverage described herein. The Department's approval or failure to disapprove any policy/ies, coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure and maintain the insurance required herein, nor serve as a waiver of any rights the Department may have.

5.4 Insurance for Protection of Utility Owners: When the Lease involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department, and Central Florida Commuter Rail Commission, Volusia County, Seminole County, Orange County, Osceola County, and City of Orlando, each in the State of Florida, as an Additional Insured on the policy/ies procured pursuant to INSURANCE subsection (2) above.

5.4 Insurance for Protection of Utility Owners: When the Lease involves work on or in the vicinity of utility-owned property or facilities, the utility shall be added along with the Department, and Central Florida Commuter Rail Commission, Volusia County, Seminole County, Orange County, Osceola County, and City of Orlando, each in the State of Florida, as an Additional Insured on the policy/ies procured pursuant to INSURANCE subsection (2) above.

5.5 Insurance by Others: Lessee shall require every subcontractor or other third party who may have a contract with Lessee and who may require access on the Corridor during construction to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated in INSURANCE subsections (1), (2), (3), and (4) above, including causing each of the Named Insureds and the Additional Insureds stated in those paragraphs to be Named Insureds and Additional Insureds on such subcontractor and third party policy or policies.

For purposes of this subsection (5) the following applies: "Corridor" has the meaning stated in the "INTERLOCAL OPERATING AGREEMENT FOR OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM By and Between FLORIDA DEPARTMENT OF TRANSPORTATION AND CENTRAL FLORIDA COMMUTER RAIL COMMISSION," Appendix A, at page A-3. That agreement definition mentioned above, and as heretofore amended, is incorporated by reference and may be accessed at www.sunrail.com.

Independent Contractor

6.1 The parties agree that neither Lessee nor its Contractors shall be deemed either agents or independent contractors of CFRC/FDOT. Except as otherwise provided herein, CFRC/FDOT shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Lessee or Lessee's Contractors, or the construction practices, procedures, and professional judgment employed by Lessee or its Contractor to complete the Project. Notwithstanding the foregoing, this shall in no way affect the absolute authority of CFRC/FDOT to prohibit Lessee or its Contractors or anyone from entering CFRC/FDOT's property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.

Special Provisions

7.1 Lessee shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions set forth below. To the extent that Lessee performs Project work itself, Lessee shall be deemed a Contractor for purposes of this Agreement. Lessee further agrees that, prior to the commencement of Project work by any third party Contractor, such Contractor shall execute and deliver to CFRC/FDOT executed

acknowledgement of Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

Definitions

8.1 The following terms shall have the meanings ascribed to them below:

1. "CFRC/FDOT" shall mean Central Florida Rail Corridor and/or the Florida Department of Transportation, its successors and assigns.
2. "CFRC/FDOT Representative" shall mean the authorized representative of CFRC or FDOT.
3. "Lessee" shall mean the City of Orlando, Florida.
4. "Lessee Representative" shall mean the authorized representative of the City of Orlando, Florida.
5. "Work" shall mean the Project as described in the Agreement.

Authority of CFRC/FDOT Engineer

9.1 The CFRC/FDOT Representative shall have final authority in all matters affecting the safe maintenance of CFRC/FDOT operations and CFRC/FDOT property, and his or her approval shall be obtained by the Lessee or its Contractor for methods of construction to avoid interference with CFRC/FDOT operations and CFRC/FDOT property and all other matters contemplated by the Agreement.

Safety and Operational Requirements

10.1

1. CFRC Requirement: Construction of the Pedestrian Overpass shall not interfere with railroad operations.
2. Contractor will be required to have an additional crane(s) on standby in the event of a failure. Therefore equipment should be within a 100 mile radius and can be onsite and operational within two hours.
3. Contractor will need to provide a work plan describing the area where the span will be assembled, how the span will be moved from the assembly area to its final resting place and procedures for connecting span to substructure.
4. Contractor will need to provide site safety plan when working within the right of way.
5. Contractor will need to provide a final schedule for review.
6. CFRC will provide CSXT and Amtrak operational schedule.
7. Storm water needs to be diverted away from track and right-of-way.

8. Lessee to install ROW fence along the east side approach to the ramp, the parking area, and the west side approach to the ramp. This will help keep trespassers off the railroad ROW. Stationing to cover these areas are:

West Side: of RR ROW: 104+64 to the road crossing (approx. 100 LF)

East Side: 91+00 to 98+82 & 501+00 to 503+50 (1032 LF)

On-Track Protection Coordination

- 11.1 The point of contact for requesting a flagger is SunRail Chief Engineer, Michael Dier. Mr. Dier can be reached at 407-304-7921 or via email at michael.dier@us.transport.bombardier.com.

1. Bombardier requires that all flagger requests be submitted 7 days prior to the start of actual work.
2. Bombardier Engineering and Dispatcher will coordinate with the contractor in determining best possible work windows

Interference with CFRC/FDOT Operations

- 12.1 Lessee or its Contractor shall arrange and conduct its work so that there will be no interference with CFRC/FDOT operations, including train, signal, telephone and telegraphic services, or damage to CFRC/FDOT's property, or to poles, wires, and other facilities of tenants on CFRC property or right-of-way. Lessee or its Contractors shall store materials so as to prevent trespassers from causing damage to trains, or CFRC/FDOT Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the CFRC/FDOT Representative for approval, but such approval shall not relieve Lessee or its Contractor from liability in connection with such Work.
- 12.2 If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or CFRC/FDOT's property, Lessee or its Contractor shall make such provision. If the CFRC/FDOT Representative determines that such provision is insufficient, CFRC/FDOT may, at the expense of Lessee or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately.

Notice of Starting Work

Lessee or its Contractor shall not commence any work on CFRC/FDOT Property or rights-of-way until it has complied with the following conditions:

- 13.1** Notify CFRC/FDOT in writing of the date that it intends to commence Work on the Project. Such notice must be received by CFRC/FDOT at least ten (10) business days in advance of the date Lessee or its Contractor proposes to begin Work on CFRC/FDOT property. The notice must refer to this Agreement by date.
- 13.2** If roadway worker protection service is required, such notice shall be submitted at least thirty (30) business days in advance of the date scheduled to commence the Work.
- 13.3** Obtain authorization from the CFRC/FDOT Representative to begin Work on CFRC/FDOT property, such authorization to include an outline of specific conditions with which it must comply.
- 13.4** Obtain from CFRC/FDOT the names, addresses and telephone numbers of CFRC/FDOT's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

Work For The Benefit of the Contractors

- 14.1** If temporary or permanent changes to wire lines or other facilities (other than third party fiber optic cable transmission systems) on CFRC/FDOT property are considered necessary to the Work or if any such changes are, or become, necessary in the opinion of CFRC/FDOT or Lessee, such changes will be covered by appropriate revisions to the Plans and by preparation of a force account estimate. Such force account estimate may be initiated by either CFRC/FDOT or Lessee, but must be approved by both CFRC/FDOT and Lessee. Lessee or Contractor shall be responsible for arranging for the relocation of the third party fiber optic cable transmission systems, at no cost or expense to CFRC/FDOT.
- 14.2** Should Lessee or Contractor desire any changes in addition to the above, then it shall make separate arrangements with CFRC/FDOT for such changes to be accomplished at the Lessee or Contractor's expense.

Haul Across Railroad

- 15.1** If Lessee or Contractor desires access across CFRC/FDOT property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, Lessee or Contractor must first obtain the specific written permission of CFRC/FDOT to do so and Lessee and its Contractor agree to bear all costs and liabilities related to such access.
- 15.2** Lessee and Contractor shall not cross CFRC/FDOT's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted in writing by CFRC/FDOT.

Cooperation and Delays

- 16.1** Lessee or Contractor shall arrange a schedule with CFRC/FDOT for accomplishing stage construction involving work by CFRC/FDOT, if any. In arranging its schedule, Lessee or Contractor shall ascertain, from CFRC/FDOT, the lead time required for assembling crews and materials and shall make due allowance therefore.
- 16.2** Lessee or Contractor may not charge any costs or submit any claims against CFRC/FDOT for hindrance or delay caused by railroad traffic; work done by CFRC/FDOT or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Terms and Conditions.
- 16.3** Lessee and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- 16.4** Lessee and Contractor understand and agree that CFRC/FDOT does not assume any responsibility for work performed by others in connection the Project. Lessee and Contractor further understand and agree that they shall have no claim whatsoever against CFRC/FDOT for any inconvenience, delay or additional cost incurred by Lessee or Contractor on account of operations by others.

Storage of Materials and Equipment

- 17.1** Lessee and Contractor shall not store their materials or equipment on CFRC/FDOT's property or where they may potentially interfere with CFRC/FDOT's operations, unless Lessee or Contractor has received CFRC/FDOT Representative's prior written permission. Lessee and Contractor understand and agree that CFRC/FDOT will not be liable for any damage to such materials and equipment from any cause and that CFRC/FDOT may move, or require Lessee or Contractor to move, such material and equipment at Lessee's or Contractor's sole expense. To minimize the possibility of damage to the railroad tracks resulting from the unauthorized use of equipment, all grading or other construction equipment that is left parked near the tracks unattended by watchmen shall be immobilized to the extent feasible so that it cannot be moved by unauthorized persons.

Construction Procedures

18.1 General

1. Construction work on or above CFRC/FDOT property shall be subject to CFRC/FDOT's inspection and approval.
2. Construction work on or above CFRC/FDOT property shall be in accord with CFRC/FDOT's written outline of specific conditions and with these Terms and Conditions.
3. Contractor shall observe the terms and rules of the CFRC/FDOT and in accord with any other instructions furnished by CFRC/FDOT or CFRC/FDOT's Representative.

Blasting

- 19.1** Lessee or Contractor shall obtain CFRC/FDOT Representative's and Lessee Representative's prior written approval for use of explosives on or adjacent to CFRC/FDOT property. If permission for use of explosives is granted, Lessee or Contractor must comply with the following:

1. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Lessee or Contractor.
2. Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.
3. No blasting shall be done without the presence of an authorized representative of CFRC/FDOT. At least 10 days' advance notice to CFRC/FDOT Representative is required to arrange for the presence of an authorized CFRC/FDOT representative and any RWP that CFRC/FDOT may require.
4. Lessee or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Lessee's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Lessee's expense) any track misalignment or other damage to CFRC/FDOT's property resulting from the blasting, as directed by CFRC/FDOT Representative, without delay to trains. If Lessee's or Contractor's actions result in delay of any trains, including Amtrak passenger trains, Lessee shall bear the entire cost thereof as outlined in the CFOMA and Transition Agreement, as amended.
5. Lessee and Contractor shall not store explosives on CFRC/FDOT property. CFRC/FDOT Representative will:
 - a. Determine the approximate location of trains and advise Lessee or Contractor of the approximate amount of time available for the blasting operation and clean-up.
 - b. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Terms and Conditions.

Maintenance of Ditches Adjacent To CFRC/FDOT Tracks

- 20.1** Lessee or Contractor shall maintain all ditches and drainage structures free of silt or

other obstructions that may result from their operations. Lessee or Contractor shall provide erosion control measures during construction and use methods in accordance with applicable FDOT Standard Specifications for Road and Bridge Construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Lessee's or Contractor's operations shall be performed at Lessee's expense.

Roadway Worker Protection/Inspection Service

- 21.1** CFRC/FDOT has sole authority to determine the need for roadway worker protection (RWP) required to protect its operations and properly. In general, RWP may be required whenever Lessee or Contractor or their equipment are, or are likely to be, working within twenty-five (25) feet of live track or other track clearances specified by CFRC/FDOT, and will be required for work on /over tracks.
- 21.2** Lessee shall reimburse the Third Party designated by CFRC/FDOT directly for all costs of RWP that is required on account of construction within CFRC/FDOT property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- 21.3** Lessee or Contractor shall give a minimum of 30 days advance notice to CFRC/FDOT Representative for anticipated need for RWP service. No work shall be undertaken until the Employee-in-Charge (EIC) is at the job site.
- 21.4** CFRC/FDOT shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of CFRC/FDOT Representative, such inspection may be necessary. Inspection service shall not relieve Lessee or Contractor from liability for its Work.
- 21.5** The Third Party designated by CFRC/FDOT shall render invoices for, and Lessee shall pay for, the actual pay rate of the persons used. If the rate of pay that is to be used for inspector or RWP service is changed before the work is started or during the progress of the work, whether by law or if the tax rates on labor are changed, bills will be rendered by the Third Party designated by CFRC/FDOT and paid by Lessee using the new rates. Lessee and Contractor shall perform their operations that require RWP or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

Utilities

- 22.1** On CFRC/FDOT Property Lessee shall arrange, upon approval from CFRC/FDOT, to have any utility facilities on or over CFRC/FDOT Property changed as may be necessary to provide clearances for the proposed trackage.

- 22.2** Lessee shall have the affirmative responsibility to locate all existing utilities, both aerial and underground. All of the utility locations shall be represented on the construction plans, including plan view and cross-sections. All utility conflicts shall be fully resolved directly with the applicable utility. Lessee shall be obligated to design around any utility installation for which the conflict cannot be resolved. If Lessee desires to relocate existing utilities to accommodate Lessee's facilities, the Lessee shall be responsible for making all arrangements directly with the affected utility, including, but not limited to, obtaining an FDOT utility permit for each utility to be relocated. Lessee acknowledges that any relocation will be subject to the voluntary cooperation of the utility and Lessee may have to bear the expense of the relocation.

Clean-Up

- 23.1** Lessee or Contractor, upon completion of the Project, shall remove from CFRC/FDOT's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Lessee or Contractor. Lessee or Contractor, upon completion of the Project, shall leave CFRC/FDOT Property in neat condition, satisfactory to CFRC/FDOT Representative.

Failure to Comply

- 24.1** If Lessee or Contractor violate or fail to comply with any of the requirements of these Terms and Conditions, (a) CFRC/FDOT may require Lessee and/or Contractor to vacate CFRC/FDOT Property; and (b) CFRC/FDOT may require Lessee to withhold monies due Contractor; and (c) CFRC/FDOT may cure such failure and the Lessee shall reimburse CFRC/FDOT for the cost of curing such failure.

Bonds

- 25.1** Lessee shall require Lessee's contractor to post a bond in accordance with sections 255.05 and 337.18, Florida Statutes.

Environmental Permits

- 26.1** The work performed may require authorization, under the Clean Water Act, by the U.S. Environmental Protection Agency for Storm Water Discharges from construction sites. Lessee is responsible for obtaining the National Pollutant Discharge Elimination System Permit and all other necessary permits for construction of the bridge. This Airspace Agreement shall constitute the existence of a sufficient interest for Lessee to obtain all permits in Lessee's name.

Testing

- 27.1** Lessee shall perform all required testing associated with the design and construction of the necessary improvements in accord with DEPARTMENT standards and requirements. Lessee shall, as directed by the DEPARTMENT representative, procure independent assurance testing. Said testing results shall be provided to the DEPARTMENT representative. The DEPARTMENT shall have the right, but not the obligation, to perform such independent testing from time to time during the course of the construction.

Contractor's Acceptance

- 28.1** CFRC requires the Lessee's Contractor to comply with all of the terms and conditions of the contract, including these special provisions. The Lessee shall obtain the following acceptance of these terms and conditions from the Contractor prior to initiating any work in the corridor:

To and for the benefit of the Central Florida Rail Corridor and the Florida Department of Transportation ("CFRC/FDOT") and to induce CFRC/FDOT to permit Contractor on or about CFRC/FDOT property for the purposes of performing work in accordance with the Agreement dated _____, 2015, between the City of Orlando, Florida and CFRC/FDOT, Contractor hereby agrees to abide by and perform all applicable terms of the Agreement, including, but not limited to these terms and conditions.

Contractor: _____

By: _____

Name: _____

Title: _____

Date: _____