

LAW OFFICES OF
LOUIS E. GITOMER, LLC

ENTERED
Office of Proceedings
October 29, 2021
Part of
Public Record

LOUIS E. GITOMER
Lou@lgraillaw.com

MELANIE B. YASBIN
Melanie@lgraillaw.com
410-296-2205

600 BALTIMORE AVENUE,
SUITE 301
TOWSON, MARYLAND 21204-4022
(410) 296-2250 * (202) 466-6532
FAX (410) 332-0885

October 29, 2021

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Docket No. FD 36553, *3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC—Control Exemption—Carolina Coastal Railway, Inc.*

Dear Ms. Brown:

Enclosed for efilings is a Notice of Exemption under 49 CFR 1180.2(d). A filing fee of \$1,500.00 has been paid through Pay.gov.

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for 3i RR Holdings GP LLC,
3i Holdings Partnership L.P., 3i RR Intermediate
Holdings LLC, 3i RR LLC, Regional Rail Holdings,
LLC, and Regional Rail, LLC

Enclosure

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36553

3i RR HOLDINGS GP LLC, 3i HOLDINGS PARTNERSHIP L.P., 3i RR INTERMEDIATE
HOLDINGS LLC, 3i RR LLC, REGIONAL RAIL HOLDINGS, LLC, AND REGIONAL
RAIL, LLC—CONTINUANCE-IN-CONTROL EXEMPTION—PORT MANATEE RAILROAD
LLC

VERIFIED NOTICE OF EXEMPTION

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

Attorney for 3i RR Holdings GP LLC,
3i Holdings Partnership L.P., 3i RR
Intermediate Holdings LLC, 3i RR LLC,
Regional Rail Holdings, LLC, and Regional
Rail, LLC

Dated: October 29, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. FD 36553

3i RR HOLDINGS GP LLC, 3i HOLDINGS PARTNERSHIP L.P., 3i RR INTERMEDIATE
HOLDINGS LLC, 3i RR LLC, REGIONAL RAIL HOLDINGS, LLC, AND REGIONAL
RAIL, LLC-CONTINUANCE-IN-CONTROL EXEMPTION-PORT MANATEE RAILROAD
LLC

VERIFIED NOTICE OF EXEMPTION

3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR Intermediate Holdings LLC, 3i RR LLC, and Regional Rail Holdings, LLC (collectively “3i RR”), and Regional Rail, LLC (“Regional Rail”), all noncarriers, pursuant to 49 C.F.R. §§1180.2(d)(2) and 1180.4(g), file this Verified Notice of Exemption with the Surface Transportation Board (the “Board”) seeking exemption from the prior approval requirements of 49 U.S.C. §§11323-11325, to continue in control of Port Manatee Railroad LLC (“PMR”) located in State of Florida upon PMR becoming a rail carrier.

PMR has concurrently filed a Notice of Exemption to operate the approximately 7-mile line of railroad within the Port of Manatee, in Manatee County, FL. *Port Manatee Railroad LLC-Operation Exemption -Manatee County Port Authority*, Docket No. 36552.

a. 1180.6(a)(1)(i). A brief summary of the proposed transaction, the name of applicants, their business address, telephone number, and the name of the counsel to whom questions regarding the transaction can be addressed.

Pursuant to an Operating and Maintenance Agreement dated as of December 1, 2021, PMR, a noncarrier wholly owned subsidiary of Regional Rail, will acquire from the Manatee

County Port Authority the right to operate in the Port of Manatee as a common carrier (the “Proposed Transaction”).

3i RR Holdings GP LLC controls 3i Holdings Partnership L.P., which in turn controls 3i RR Intermediate Holdings LLC, which controls 3i RR LLC, which in turn controls Regional Rail Holdings, LLC, which controls Regional Rail. Regional Rail is a non-carrier holding company that directly controls the following seven class III railroads: (1) East Penn Railroad, LLC (“ESPN”), which operates in Delaware and Pennsylvania; (2) Middletown & New Jersey Railroad, LLC (“MNJ”), which operates in New York; (3) Tyburn Railroad LLC (“Tyburn”), which operates in Pennsylvania¹; (4) the Florida Central Railroad Company, Inc. (“Central”) which operates in Florida; (5) Florida Midland Railroad Company, Inc. (“Midland”) which operates in Florida; (6) Florida Northern Railroad Company, Inc. (“Northern”) which operates in Florida;² and (7) Carolina Coastal Railway, Inc. (“CLNA”) which operates in North Carolina and South Carolina (all seven railroads are collectively referred to as the “Subsidiary Railroads”).³ As a result of the Proposed Transaction, the instant Notice of Exemption seeks exemption for 3i RR to acquire indirect control of and for Regional Rail to acquire direct control of the PMR.

PMR operates in Manatee County, FL, across Tampa Bay from St. Petersburg and Tampa. The Florida Railroads do not operate in Manatee County. PMR does not connect with

¹ ESPN, MNJ, and Tyburn are referred to as the “Northeast Railroads.”

² Central, Midland and Northern are referred to as the “Florida Railroads.”

³ Holdings acquired control of the Northeast Railroads pursuant to *Regional Rail Holdings, LLC-Acquisition of Control Exemption-Regional Rail, LLC*, Docket No. FD 35945 (served August 5, 2015). Direct control of Holdings and indirect control of the Northeast Railroads was acquired pursuant to *3i RR Holdings GP LLC, 3i Holdings Partnership L.P., and 3i RR LLC—Control Exemption—Regional Rail Holdings, LLC*, Docket No. FD 36289 (served April 19, 2019). Control of the Florida Railroads was acquired pursuant to *3i RR Holdings GP LLC, 3i Holdings Partnership L.P., and 3i RR LLC, and Regional Rail LLC-Control Exemption-Florida Central Railroad LLC, Florida Midland Railroad Company, Inc., and Florida Northern Railroad Company, Inc.*, Docket No. FD 36365 (served November 22, 2019). Control of CLNA was acquired pursuant to *3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC—Control Exemption—Carolina Coastal Railway, Inc.*, Docket No. FD 36383 (served February 14, 2020).

the Subsidiary Railroads, the acquisition of control of the PMR is not intended to connect with any railroads in the corporate family of 3i RR or Regional Rail, and a Class I carrier is not involved. The proposed transaction meets the requirements of 49 C.F.R. §1180.2(d)(2).

3i RR and Regional Rail are located at 505 South Broad Street, Kennett Square, PA 19348, (610) 925-0131.

Counsel to whom questions concerning the transaction can be addressed is:

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgraillaw.com

b. 1180.6(a)(1)(ii). The proposed time schedule for consummation of the proposed transaction.

3i RR and Regional Rail intend to continue in control of PMR on or after December 1, 2021.

c. 1180.6(a)(1)(iii). The purpose sought to be accomplished by the proposed transaction, e.g., operating economies, eliminating excess facilities, improving service, or improving the financial viability of the applicants.

3i RR and Regional Rail intend to implement operating economies where feasible without disrupting service to shippers and to use its financial resources to provide for the financial viability of PMR.

d. 1180.6(a)(5). A list of the State(s) in which any part of the property of each applicant carrier is situated.

CLNA is a Class III railroad that operates in North Carolina and South Carolina.

Central is a Class III railroad that operates in Florida.

Midland is a Class III railroad that operates in Florida.

Northern is a Class III railroad that operates in Florida.

ESPN is a Class III railroad that operates in Pennsylvania and Delaware.

MNJ is a Class III railroad that operates in New York.

Tyburn is a Class III railroad that operates in Pennsylvania.

PMR will operate in Florida.

e. 1180.6(a)(6). Map (Exhibit B). Submit a general or key map indicating clearly, in separate colors or otherwise, the line(s) of applicant carriers in their true relations to each other, short line connections, other rail lines in the territory, and the principal geographic points in the region traversed. If a geographically limited transaction is proposed, a map detailing the transaction should also be included. In addition to the map accompanying each application, 20 unbound copies of the map shall be filed with the Board.

See Exhibit B.

f. 1180.6(a)(7)(ii). Agreement (Exhibit A). Submit a copy of any contract or other written instrument entered into, or proposed to be entered into, pertaining to the proposed transaction.

A redacted copy of the Operating and Maintenance Agreement dated as of December 1, 2021 is attached hereto in Exhibit A. A non-redacted Confidential copy of the Operating and Maintenance Agreement is being concurrently been filed under seal along with a Motion for Protective Order.

g. Labor Protection.

CLNA, Central, Midland, Northern, ESPN, MNJ, and Tyburn are all class III railroads. PMR will become a class III railroad. As such, under 49 U.S.C. §11326(c), labor protection does not apply to this transaction.

h. Interchange Commitment.

3i RR and Regional Rail certify that the Proposed Transaction will not create a provision or agreement that may limit future interchange with a third-party connecting carrier.

i. Environmental and Historical Documentation.

This transaction qualifies for classification under 49 C.F.R. §§1105.6(c)(1)(i) and 1105.8(b)(3), and thus neither an Environmental Report nor a Historic Report is required to be filed.

Respectfully submitted,

/s/ *Louis E. Gitomer*

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorney for 3i RR Holdings GP LLC,
3i Holdings Partnership L.P., 3i RR LLC,
Regional Rail Holdings, LLC, and Regional
Rail, LLC

Dated: October 29, 2021

VERIFICATION

I, Benjamin Krause, Partner of 3i RR LLC, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on October 27, 2021.



Benjamin Krause

CERTIFICATE OF SERVICE

I hereby certify that I have caused the Verified Notice of Exemption in Docket No. FD 36553, 3i RR Holdings GP LLC, 3i Holdings Partnership L.P., 3i RR Intermediate Holdings LLC 3i RR LLC, Regional Rail Holdings, LLC, and Regional Rail, LLC–Continuance-In-Control Exemption–Port Manatee Railroad LLC, to be served by first class mail, postage pre-paid on the Secretary of the United States Department of Transportation, the Attorney General of the United States, the Federal Trade Commission and on the Governor, Public Service Commission, and Department of Transportation of the State of Florida.

/s/ *Louis E. Gitomer*

Louis E. Gitomer
October 29, 2021

**EXHIBIT A-AGREEMENT
(REDACTED)**

Operating and Maintenance Agreement
Between the Authority Manatee and Port Manatee Railroad LLC

Table of Contents

	<u>Page</u>
1. Glossary of Terms.....	1
2. Effective Date and Term	
3. Exclusive Use of Rail Facilities	
4. Use by Other Carriers or Third parties	
5. Operating Fees	
6. Non-Transferability.....	
7. Defects in Title.....	
8. Right to Inspect	
9. Taxes and Utilities	
10. Existing Agreements	
11. Condition of Rail Facilities	
12. Provision of Personnel, Additional Equipment and Facilities	
13. Maintenance	
14. Maintenance	
15. Railroad Operations	
16. Restrictions	
17. Indemnification	
18. Insurance	
19. Relationship between the Rail Operator and the Authority	
20. Conflicts of Interest.....	
21. Annual Reporting.....	
22. Confidentiality	
23. Performance Audit	
24. Non-Operating Properties	
25. Public Crossings.....	
26. Condemnation of Rail Facilities	
27. Termination.....	
28. Force Majeure	
29. Discontinuance of Operations.....	
30. Notice	
31. Regulatory Jurisdiction	
32. Access to Records.....	
33. Labor Conditions	
34. Dispute Resolution.....	
35. Successors and Assigns.....	
36. Entire Agreement	
37. Severability	
38. Nondiscrimination.....	
39. Applicable Law	

Exhibits

- A Description of Rail Facilities
- B Operating Fees
- C Discrimination Policy
- D. Locomotives Lease

Operating and Maintenance Agreement
Between the Authority and Port Manatee Railroad LLC

December 1, 2021

This Operating and Maintenance Agreement ("**Agreement**"), entered into and effective as of December 1, 2021 ("**Effective Date**"), is by and between the Manatee County Port Authority ("**Authority**") Port Manatee Railroad LLC, a foreign limited liability company, who is authorized to transact business in the State of Florida, with its principal place of business located at 505 South Broad Street, Kennett Square, PA 19348 ("**Rail Operator**"), also referred to herein individually as "Party" or collectively as "Parties".

WITNESSETH:

WHEREAS, the Authority owns certain property located in Manatee County Florida consisting of ten berths that handle various commodities via sea, rail and truck ("**Port Manatee**");

WHEREAS, the Authority owns approximately 7 miles of railroad property as depicted in more detail on **Exhibit A** and hereinafter referred to as ("**Rail Facilities**") where it currently operates a Class III Shortline Railroad;

WHEREAS, the Authority has issued a Request For Proposals ("**RFP**") to procure a rail operations and infrastructure maintenance provider to operate and maintain the Authority's Rail Facilities;

WHEREAS, the Authority and the Rail Operator desire to enter into an Operating and Maintenance Agreement whereby the Rail Operator will be responsible for providing third party switching services to the customers of and tenants at the Port Manatee and maintaining the Authority's Rail Facilities; and

NOW THEREFORE, in consideration of the covenants and conditions herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Glossary of Terms

TERM	Meaning
AAR	Association of American Railroads, a policy, research, standard setting, and technology organization representing the North American rail industry
Annual Maintenance Program	Plan submitted by the Rail Operator outlining annual plans to repair and maintain the Rail Facilities as further described in Section 13
Car hire (per diem)	A payment made by railway holding a railcar to the owner of the railcar, on a time or mileage basis
Carrier	Railway
Class I Railway	Any of the seven largest freight railways operating in North America: BNSF, CN, CP, CSX, KCS, NS and UP
Connecting carrier	Term used herein to describe a Railroad that connects with CSX, with an origin or destination of the Port
Control	The rail industry term for the party responsible for managing a railcar
CSX	CSX, CSX Transportation, a US Class I railway
Destination	Typically refers to the final destination of a shipment
FRA	US Federal Railroad Administration
Interchange	The point or junction where railways exchange loaded or empty railcars, also the act of passing traffic from one railway to another
Leased Locomotives	2 each NRE 2GS14B Gen Set Switch Engines owned by Manatee County Port Authority
Operating Fees	Fees paid to the Authority by the Rail Operator as further described in Exhibit B
Origin	The origin of a shipment
Port	Port Manatee
Port Standards	Maintaining track at FRA Class I track safety standards
Rail Facilities	Railroad infrastructure depicted on Exhibit A
Rail Operator	Party selected by the Authority to operate and maintain the Rail Facilities under the terms of this Agreement
Receiver	End-customer that receives a shipment from a shipper
Shipper	A customer that ships goods by rail; the originator of a shipment
STB	US Surface Transportation Board, the government agency that regulates US railways
Tariff	A schedule of charges published by a railway under which it moves goods (as opposed to contract rates, which are private)

TERM	Meaning
Terminal	A transloading facility, such as a port terminal (ship-to-rail or ship-to-truck) or rail-to-truck terminal

2. **Effective Date and Term.** The term of this Agreement (the “Term”) shall be fifteen (15) years beginning December 1, 2021 and continuing through and including November 30, 2036. The Rail Operator or the Authority may extend the Term for up to three (3) five-year periods, provided that written consent of the other party is obtained. If either Party desires to so extend the Term of this Agreement for up to three (3) additional five-year periods, the Party desiring to extend shall submit a written request to the other Party to extend the Term each additional five-year period at least two (2) years but not more than three (3) years prior to the expiration of the Term. The other Party shall then, within one hundred twenty (120) days of receipt of such notice, render a decision on the first Party's request and notify the Party in writing of its decision. If the extension is approved, the Term shall be extended an additional five-year period beginning on December 1, 2036 and continuing until November 30, 2041. A second and third five-year extensions may be initiated with the same terms given in this section. All terms and conditions of this Agreement shall apply throughout the Term as extended unless amended by mutual written agreement of the Parties. There shall be no other extension of the Term thereafter under this Agreement.

3. **Exclusive Use of Rail Facilities.** The Authority shall provide the Rail Operator exclusive access to and use of the Rail Facilities but only to provide rail freight service and maintenance thereon during the Term of this Agreement, or any permitted extension or renewal thereof, subject to the terms and conditions hereinafter contained. The Agreement shall not be construed as conveying any ownership interest to Rail Operator. Any use of the Rail Facilities to accomplish purposes other than rail freight service and maintenance shall require prior written permission of the Authority. The Rail Facilities will not be used for any unlawful purposes, and the Rail Operator will not use the Rail Facilities in such a manner as to create a nuisance or otherwise violate any law, rule, or regulation of any governmental authority that is applicable to the Rail Facilities or Rail Operator's operations at Port Manatee. The Rail Operator will neither suffer nor commit any waste of the Rail Facilities. The Rail Operator may not act or fail to act in a manner that would adversely affect the title of the Authority.

4. **Use by Other Carriers or Third Parties.** In the event that the Rail Operator desires to allow any other person or entity access to or upon the Rail Facilities to accomplish any purpose other than the provision of rail freight service and maintenance hereunder, the Rail Operator shall secure prior written approval from the Authority. Nothing herein shall prohibit the Rail Operator from providing access to or upon the Rail Facilities by persons or entities as required to enable the

Rail Operator to provide rail freight service and maintain the subject rail infrastructure as provided herein.

5. **Operating Fees.** The Rail Operator shall pay certain operating fees ("Operating Fees") to use the Rail Facilities as set forth in **Exhibit B**, entitled "Operating Fees," which is attached hereto and incorporated herein by reference. It is expressly understood that the Operating Fees shall be paid by the Rail Operator to the Authority without off-set for any charges incurred by Rail Operator in the provision of rail freight service and maintenance. Such charges include, but are not limited to, car hire fees incurred by the Rail Operator, interchange fees and payments to CSX for crossing signal inspection and repair covered under the agreements listed in Section 10.

6. **Non-Transferability.** This Agreement and the rights herein granted may not be assigned, sold, leased or transferred, in whole or in part, without the prior written consent of the Authority, which may be withheld in the Authority's discretion for any reason. For purposes of this section, an assignment shall include any transfer of any rights under this Agreement, whether voluntary or involuntary or by operation of law, including any merger or consolidation or change in control of the Rail Operator made without the Authority's prior written consent. The terms and provisions of this Agreement shall be binding upon the Parties and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The Authority may assign its rights and obligations under this Agreement to any successor to the rights and functions of the Authority or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent the Authority deems necessary or advisable under the circumstances.

7. **Defects in Title.** The rights contained herein as to the Rail Facilities are granted only insofar as the Authority's federal regulatory authorization and title permits. The Authority specifically disavows any implied or other warranty of title and the Authority shall not be liable to the Rail Operator regarding any defects in or encumbrances upon the title to the Rail Facilities, the Authority and the Rail Operator shall cooperate with each other and take action as necessary to preserve the Rail Facilities for the Rail Operator's intended uses hereunder.

8. **Right to Inspect.** The Authority, its agents, contractors and/or assignees, shall have the right, upon reasonable notice, to enter upon the properties constituting the Rail Facilities for the purpose of making reasonable inspections. The Authority and the Rail Operator shall make reasonable arrangements to assure that the inspections can be performed safely, without undue interference or disruption of the Rail Operator's railroad operations and maintenance, in a manner consistent with the security of the Rail Facilities. The Rail Operator shall, upon adequate advance notice from the Authority, provide the Rail Facilities for inspection. These inspections are to be completed at least once annually. In the event of an emergency or natural disaster that could cause

damage to the Rail Facilities, the inspection to assess the condition of the Rail Facilities will be conducted jointly by the Authority and the Rail Operator.

9. **Taxes and Utilities.** The Rail Operator shall pay, on or before the last day on which payment may be made without penalty or interest, any and all taxes (including, without limitation, all real property taxes), assessments, charges assessed by public utilities, excise, license and permit fees assessments, sewer rentals and other governmental impositions and charges which shall or may during the Term hereof be charged, assessed, imposed, become due and payable, or a lien upon, or arising in connection with the use by the Rail Operator of the Rail Facilities. The Rail Operator shall have the right to contest any such taxes or other charges by appropriate legal proceedings, conducted at its own expense, provided that the Rail Operator shall furnish to the Authority a surety bond or other security satisfactory to the Authority sufficient to cover the amount of the contested item or items when such item or times exceed _____ with interest and penalty covering the period which such proceeding may be expected to take. The Rail Operator shall also pay any and all charges in connection with water, gas, electricity and other utility services provided to the Rail Facilities and used by the Rail Operator in the provision of rail freight service and maintenance hereunder.

10. **Existing Agreements.** The Rail Operator's use of the Rail Facilities is subject to all of the terms and conditions contained in the following existing agreements, copies of which have been previously delivered to the Rail Operator:

Agreement Dated December 29, 1983 for crossing maintenance and inspection at Piney Point (DOT 624748J).

Agreement dated April 15, 2010 for interchange between the Port and CSXT, entitled Interchange Agreement Between CSXT Transportation, Inc. and Port Manatee Railroad at Port Manatee Junction, Manatee County, FL.

11. **Condition of Rail Facilities.** The Rail Operator has inspected the Rail Facilities and accepts the same "as is." The Rail Operator acknowledges that the Rail Facilities are suitable to accomplish the Rail Operator's intended uses and responsibilities under this Agreement. The Authority makes no representation or warranty to the Rail Operator as to the physical condition of the Rail Facilities or the condition of the legal title. The Rail Operator shall return the Rail Facilities to the Authority upon the termination or expiration of this Agreement in compliance with FRA Class I Track Safety Standards or better condition as received or as improved. The Rail Operator must comply with its annual maintenance responsibilities as set forth in Section 13 of this Agreement.

12. **Provision of Personnel, Additional Equipment and Facilities.** The Rail Operator shall have the responsibility of providing all personnel, equipment and facilities legally and

reasonably necessary to conduct safe, timely and adequate rail freight service and maintenance on the Rail Facilities. Such personnel shall be under the sole control and direction of the Rail Operator and shall be properly qualified and trained in the operation of rail freight service and maintenance. Such equipment and facilities shall include, but shall not be limited to, locomotives, rolling stock, maintenance equipment, office space, and such other facilities and equipment as are reasonably necessary to provide rail freight service and maintenance on the Rail Facilities and maintain the Rail Facilities as contemplated under this Agreement. Notwithstanding the above, the Rail Operator shall not be found in default if cars which must be obtained from a Class I Carrier are not available at that time for which they are requested.

13. Maintenance. The Rail Operator shall perform or cause to be performed monthly track inspections and required maintenance of the Rail Facilities, as may be necessary for the safe operation of rail freight service and maintenance, and as further provided in this section.

(a) The Rail Operator shall have sole responsibility to maintain the Rail Facilities in accordance with FRA Class 1 track safety standards as found in the Code of Federal Regulations Chapter II (49 CFR Ch. II) hereinafter referred to as, "Port Standards." Any portion of the Rail Facilities that does not presently comply with Port Standards shall be improved to a condition that complies with Port Standards over a reasonable period of time, through the Annual Maintenance Program hereinafter described, and which shall thereafter be maintained to Port Standards. Without limiting the foregoing, the Parties further agree as follows:

1) On or before January 15 of each year, the Rail Operator shall prepare and submit to the Authority a program (the "Annual Maintenance Program") setting forth the maintenance items to be performed on the Rail Facilities during the remainder of the calendar year to ensure that the Rail Facilities are maintained in accordance with Port Standards;

2) The Rail Operator will review the Annual Maintenance Program with the Authority's Staff who shall review and amend the same to ensure that it complies with the Port Standards not later than March 1 of said year.

3) The Rail Operator, at its own cost, shall have sole responsibility to maintain the Rail Facilities in accordance with the Port Standards as set forth in the Annual Maintenance Program approved by the Authority.

4) The Authority shall inspect the Rail Facilities at least once each calendar year to ensure that the Rail Operator is maintaining same in accordance with the Annual Maintenance Program adopted by the Authority and the Rail Operator as regards the Rail Facilities. Any deficiencies noted by the Authority or by inspectors from the FRA in routine inspections of the Rail Facilities shall be communicated to the Authority immediately and promptly remedied by the Rail Operator at its sole cost and expense.

- a) Any and all rails, ties or other items of track and signaling equipment replaced by the Rail Operator in the performance of required maintenance ("the Replaced Materials") shall become the property of the Authority.
- b) Any and all rails, ties or other items of track and signaling equipment removed by the Rail Operator in the performance of required maintenance (the "Removed Materials") shall become the property of the Rail Operator regardless of whether such removed property is sold or retained by the Rail Operator as materials and supplies.
- c) In the event of damage to the Rail Facilities as a result of flood, hurricane, geological disturbance or natural disaster, the Rail Operator shall bare the sole responsibility of paying the full costs to repair the Rail Facilities to the condition they were in prior to such damage, except where the cost of such repairs are reimbursed by any local, state or federal government agency.

5) The Rail Operator, at its own expense, shall have the sole responsibility to maintain the Leased Locomotives in accordance with CFR 49 Part 229 – Railroad Locomotive Safety Standards. The Rail Operator shall perform any daily maintenance, 92-day blue card inspections, air brake tests and inspections that may be necessary for the safe operations of the Leased Locomotives.

- a) The Authority shall have the right to inspect the Leased Locomotives at least once each calendar year to ensure that the Rail Operator is in accordance with CFR 49 Part 229 – Railroad Locomotive Safety Standards. Any deficiencies noted by the Authority or by inspectors from the FRA in routine inspections of the Leased Locomotives shall be communicated to the Authority immediately and promptly remedied by the Rail Operator at its sole cost and expense.
- b) In the event of damage to the Leased Locomotives as a result of flood, landslide, geological disturbance or natural disaster, the Rail Operator shall bare the sole responsibility of paying the full costs to repair the Leased Locomotives to the condition they were in prior to such damage, except where the cost of such repairs are reimbursed by any local, state or federal government agency.
- c) Lease Agreement is attached hereto and incorporate herewith at Exhibit D.

14. **Capital Improvements.** The Rail Operator shall have the right, but not the obligation, with the prior written approval of the Authority, to make, at the Rail Operator's own expense, Capital Improvements to accomplish railroad purposes on the Rail Facilities during the Term of this Agreement. In the event it undertakes such voluntary Capital Improvements, the Rail Operator shall be required to pay the cost of removing appurtenant structures, excluding track improvements, if required by the Authority. Where such Rail Operator-financed Capital

Improvements require or involve the replacement of an asset in place, such assets will belong to the Authority. The Rail Operator shall have no other obligations to finance or pay for any Capital Improvement to the Rail Facilities under the terms of this Agreement. The Rail Operator shall be responsible for any and all improvements to the Rail Facilities and the office space leased by the Rail Operator from the Port. Any improvements or alterations to the Rail Facilities and office space must be approved by the Authority in writing.

15. Railroad Operations. The Rail Operator shall at all times during the Term of this Agreement:

a) Pay all charges and fees required to be paid under this Agreement, including, but not limited to the Operating Fees, at such time as the same are due and payable, which charges and fees may be recovered by the Authority in the same manner as any charge or fee due or in arrears. Additionally, to the extent same are not in conflict with or in derogation of the terms and conditions of this Agreement, the Rail Operator shall throughout the Term of this Agreement including any renewal or extension thereof, abide by and comply with all of the rates, rules and regulations of the Authority set forth in the current Tariff as published by the Authority;

b) Operate rail freight service and provide rail infrastructure maintenance of a Class 1 Railroad in accordance with all federal, state and local requirements and obtain all governmental approvals, authorizations, franchises, licenses and permits as may be prerequisite to the rendering of such service;

c) Observe and comply with any and all requirements of all constituted public authorities, including, but not limited to, any inspections of the Rail Operator's equipment or facilities, and with all federal, state and local statutes, ordinances, regulations and standards applicable to the Rail Operator or its use of the Rail Facilities;

d) Maintain and operate, at its own expense, the Rail Facilities, including any buildings used or leased and leased locomotives, by the Rail Operator thereon, in accordance with Section 13 of this Agreement. Such operations shall include, but not be limited to, the removal of all wrecks and derailments within five (5) days following any such occurrence, restoration of the derailment site to safe operating condition within five (5) days following such occurrence and restoration of a derailment site to its original condition or better within thirty (30) days following the occurrence, unless the Authority otherwise agrees to extend such deadlines for good cause shown by the Rail Operator.; and

e) Operate rail freight service on the rail lines of the Authority at such levels and at such frequency as reasonably acceptable to the Authority, subject to the following guidelines:

1) The Rail Operator shall offer to provide Rail Freight Service a minimum of five days per week or a level of service that the Authority and Rail Operator mutually agree to given existing volumes. Nothing herein shall require the Rail Operator to operate a scheduled train when there are no cars to be picked up from or delivered to customers on the Rail Facilities. Failure to provide Rail Freight Service over five (5) consecutive days (exclusive of Saturdays, Sundays and holidays) after need for such Rail Freight Service has

been communicated to the Rail Operator and Maintainer, according to subsection (e)(2) hereof, shall constitute default by the Rail Operator;

2) Shipments destined to and from stations on the Rail Facilities shall be handled in accordance with applicable AAR Interchange rules. The Rail Operator shall exercise reasonable efforts to provide prompt car placement. When CSX interchanges to the Rail Operator, the Rail Operator shall have 120 hours to spot cars at tenant's facilities and have them back out at the interchange loaded / unloaded or they will incur car hire charges. The Rail Operator must monitor when the car is interchanged and notify the tenant/consignee when it is placed for loading or unloading, specifying the date for the placement of the railcar(s). However, nothing in this paragraph contemplates the Rail Operator's providing better levels of Rail Freight Service to certain customers with similar, but not identical, characteristics without collection of the applicable contract or appropriate published charges for such special Rail Freight Service. Nothing in this paragraph precludes the Rail Operator from providing more frequent Rail Freight Service than that agreed upon in accordance with subsection (e)(1) above;

3) The Rail Operator shall provide safe and efficient rail freight service, including, but not limited to: i) delivery of and access to empty rail cars subject to car availability; ii) prompt handling of loaded rail cars with reasonable dispatch to and from points of interchange with CSX and iii) maintenance and repairs, clearing of train derailments and wrecks on the Rail Facilities, all as specified in this Agreement. The Rail Operator shall provide the name, address, telephone number, and point of contact of new customers it acquires on the Rail Facilities to the Authority within thirty (30) days of acquiring additional customers. The Authority shall survey rail customers during the Term of this Agreement to determine the perceived quality of rail freight service provided by the Rail Operator, provided, however, that such survey shall not seek information concerning confidential rail transportation contracts, rates or price negotiations covering rail freight service by the Rail Operator or its connecting carriers and that survey results will be provided to the Rail Operator;

4) The Rail Operator shall have exclusive control of the operation, performance and pricing of the rail freight service, including, but not limited to, the dispatching and control of trains, assignment of available cars in good order, assignment of crews and other employees, and assignment of use of power. The Rail Operator shall use its reasonable best efforts to provide such rail freight service in an efficient manner;

5) The Rail Operator shall provide Rail Freight Service to all Port users subject to reasonable rules adopted by the Rail Operator. The Rail Operator shall have the exclusive authority to promulgate and adopt rules, regulations and tariffs consistent with regulations issued by the Surface Transportation Board (STB) and FRA and the provisions of Title 49 of the United States Code, Subtitle IV, Part A and

6) The Rail Operator shall report any accidents/incidents, including but not limited to derailments, involving any actual or potential damage or injury to person or

property occurring on the Rail Facilities or other railroad properties used by the Rail Operator to provide rail freight service under this Agreement, immediately to the Authority and, if necessary, the Federal Railroad Administration. The Rail Operator shall, within three (3) days of receiving notice of any such incident, furnish a written report to Authority including a brief statement of the facts and an estimate by the Rail Operator as to the approximate potential claim that may arise. If a notice or claim of damage or injury is made to the Rail Operator, then the Rail Operator shall promptly furnish the Authority with a copy of each such notice or claim. Thereafter, the Rail Operator shall provide the Authority with copies of any further records or reports involving such incident and shall periodically report to the Authority concerning the status of the incident and, upon resolution, the final disposition of the matter;

f) Notify the Authority in writing within ten (10) days of any management and supervisory personnel changes. In the event that any member of the Rail Operator's management or supervisory personnel is no longer part of the Rail Operator's organization, the Rail Operator shall advise the Authority of the action taken to ensure that it will continue to be able to provide rail freight service and maintenance under this Agreement;

g) Perform marketing and sales activities pursuant to a marketing plan prepared by the Rail Operator and periodically reviewed by the Authority, which shall include the following:

1) proactive support to economic development agencies, Manatee County, the State of Florida and the Authority in the recruitment of industry to the area;

2) other activities to promote increased rail traffic to and from the Rail Facilities and to support the Authority's mission of furthering economic development through the retention, improvement and expansion of rail infrastructure and rail service.

h) Annually, on the anniversary date of this Agreement, provide the Authority with the following information, which to the extent possible under applicable law and this Agreement, shall be maintained by the Authority in confidence:

1) Complete listing of names and addresses of all officers, directors and other senior management of the Operator.

2) Complete listing of names and addresses of all owners (whether stockholders, members, partners or other owners) in the Operator, including the total ownership interest owned by each owner;

i) Provide sixty (60) days' written notice of any proposed assignment or change in control of the Rail Operator. This Authority shall have the right to terminate this Agreement if any actual assignment or change in control occurs without Authority approval;

j)

k) Prepare a proposed annual budget setting forth the estimated revenue and expenditures projected to occur in the upcoming calendar year (the "Annual Budget"). The Annual Budget shall be made available to the Authority for review by the Authority's staff on or before January 15 of each year. The Annual Budget shall include projected expenditures on the Rail

Operator's transportation and rail freight service operations and a preliminary estimate of projected expenditures to meet the Rail Operator's maintenance obligations, among other items.

1) On or before February 1 of the year to which the Annual Budget relates, the Rail Operator will review the Annual Budget with the Authority's staff at the Authority's offices. The Authority's staff shall review: A) the rail freight service operations portion of the Annual Budget, to evaluate whether the Rail Operator is making an appropriate investment in the rail freight service operations in light of the Rail Operator's requirements under this Agreement to maintain Port Standards and B) the maintenance portion of the Annual Budget in light of the Annual Maintenance Program requirements under Section 13 of this Agreement; provided, however, this review of the maintenance portion of the Annual Budget shall be secondary to the Annual Maintenance Program review performed by the Authority which may, but shall not be obligated to, consider the results of the Annual Budget review in connection with its review of the Annual Maintenance Program as required by Section 13 of this Agreement. The Authority's staff may propose reasonable modifications to the Annual Budget to promote good faith efforts by the Rail Operator to meet the requirements of this Agreement in the particular calendar year. The Rail Operator, in good faith, shall revise its Annual Budget to incorporate the Authority's proposed modifications;

2) If the Authority determines that the Rail Operator is failing to meet the requirements of Section 13 of this Agreement, the Rail Operator shall provide an explanation of the reason underlying such failure;

3) As part of its submission of its Annual Budget, the Rail Operator also shall submit a proposed timetable of rail freight service operations on the Rail Facilities effective the balance of the upcoming year, which shall be subject to Authority Approval or affirm that the timetable is the same as the prior year;

l) By executing this Agreement and each and every renewal, the Rail Operator certified to the Authority with the intent that the Authority rely thereon as a major inducement to the Authority to enter into this Agreement and any renewal that:

1) The Rail Operator represents and warrants to the Authority that to its actual and constructive knowledge: 1) neither Rail Operator (which includes for purposes of this section its parent and affiliate companies, owners, members, managers, shareholders, directors, officers, representatives, agents, employees, distributors, vendors and suppliers collectively) nor any of its funding sources are identified on the Special Designated Nationals and Blocked Persons List of the U.S. Treasury Office of Foreign Asset Control; 2) neither Rail Operator, nor any person(s) who, in the aggregate or individually, directly or indirectly own 50% or more of the Rail Operator, nor any guarantor of all or any part of Rail Operator's obligations under this Agreement are directly or indirectly owned or controlled by a government or country that is subject to an embargo imposed by the U.S. Government; or 3) neither Rail Operator nor any person(s) who, in the aggregate or individually, directly or indirectly own 50% or more of the Rail Operator, or guarantor of

all or any part of the Rail Operator's obligations under this are acting on behalf of a government or have been in the past five years involved in business arrangements or other transactions with any country that is subject to such embargo. Rail Operator agrees to notify the Authority in writing immediately upon the occurrence of any of that, which would cause the foregoing representation, and warranties of this section to be incorrect in any respect and the Authority will have the right then or thereafter to terminate this Agreement at its sole and absolute discretion.

2) In connection with any aspect of this Agreement or other transaction involving Rail Operator, neither Rail Operator (which includes for purposes of this section its parent and affiliate companies, owners, members, managers, shareholders, directors, officers, representatives, agents, employees, distributors, vendors and suppliers collectively) has engaged or will engage in prohibited conduct, as defined in the Foreign Corrupt Practices Acts, directly or indirectly in the performance of this Agreement or otherwise on behalf of itself or Rail Operator. In the event of or during the term of this Agreement, if Rail Operator is not in compliance with this section, Rail Operator shall make prompt disclosure of such non-compliance to the Authority and the Authority shall have the right to terminate the Agreement.

3) The Rail Operator (which includes its officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of the Rail Operator) has not been placed on the convicted vendor list following a conviction for a public entity crime within the last 36 months. In the event of or during the Term of this Agreement, if Rail Operator is placed on the convicted vendor list, in accordance with section 287.133 of the Florida Statutes as may be amended, Rail Operator shall make prompt disclosure of such non-compliance to the Authority and the Authority shall have the right to terminate the Agreement immediately.

4) Pursuant to section 287.135, Florida Statutes, the Rail Operator certifies, represents, and warrants that: (a) it is not on the Scrutinized Companies with Activities in Sudan List, (b) it is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, (c) that it does not have business operations in Cuba or Syria, and (d) that it is not participating in a boycott of Israel, and that all such certifications were true at the time it submitted its bid or proposal for this Agreement and as of the effective date of any renewal. Notwithstanding anything contained in this Agreement to the contrary, the Authority may terminate this Agreement immediately if: (1) Rail Operator is found to have submitted a false certification regarding (a) – (d) above in accordance with section 287.135(5), Florida Statutes, or (2) Rail Operator is found to have been placed on the Scrutinized Companies that Boycott Israel List as that term is defined and such list is maintained pursuant to Section 287.135, Florida Statutes, or is otherwise engaged in a boycott of Israel. Such termination shall be in addition to any and all remedies available to the Authority at law.

5) The Rail Operator shall utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: (a) all persons employed by the Rail Operator throughout the Term of this Agreement; and (b) all persons, including subcontractors, retained or hired by the Rail Operator, regardless of compensation, to perform work under this Agreement.

16. **Restrictions.** The Rail Operator further agrees that it will not:

a) Occupy the Rail Facilities in any way or for any purposes unrelated to the provision of Rail Freight Service;

b) Assign, mortgage, pledge or encumber the Rail Facilities or any part thereof;

c) Assign all or any part of its obligations under this Agreement without the prior written consent of the Authority;

d) Permit to be created or knowingly allow to exist upon the Rail Facilities any use or storage (except as necessary for the provision of Rail Freight Service), or the disposal or release of Hazardous Materials, public or private, and the Rail Operator shall indemnify, protect, defend and hold harmless the Authority in accordance with **Section 17** against any losses arising out of the same. The Rail Operator shall cause all necessary actions to be taken immediately to remediate any conditions from the disposal or release of Hazardous Materials upon the Rail Facilities or by the Rail Operator during the Term of this Agreement under applicable laws, ordinances or governmental regulations. If Rail Operator fails to promptly take action to contain, remove, or remediate, as appropriate, the Hazardous Materials, the Authority will be entitled to take all actions that it deems appropriate to contain, remove or remediate the Hazardous Materials released in a manner that is not in compliance with applicable laws, at the Rail Operator's sole expense and Rail Operator shall immediately reimburse the Authority for all such reasonable expenses due upon demand. The Rail Operator shall comply with all applicable federal, state and local laws, rules and regulations pertaining to air, water, noise and wastes and other pollution or relating to the storage, transport, disposal or release of Hazardous Materials, and shall bear the expense of any and all pollution control structures, devices or equipment required during the Term of this Agreement under applicable laws, ordinances or governmental regulations as a result of the Rail Operator's provision of Rail Freight Service. The Rail Operator shall exercise due care in its use and operation of the Rail Facilities, including taking precautions against reasonably foreseeable acts or omissions or the release of Hazardous Materials into the environment;

e) Except upon the Authority's prior written consent, enter into negotiations or agreements with any other railroad, including, specifically, Class I railroads, which in the reasonable opinion of the Authority affects the interests of the Authority, directly related to i) the competitive access of the Authority's rail customers within Port Manatee Facilities to Class I rail services; ii) the proper maintenance of the Rail Facilities or iii) the carrying out of the Authority's stated mission to preserve rail service in Florida and to further economic development through the retention, improvement and expansion of rail infrastructure within the Port;

f) Amend, modify, cancel or terminate any interchange agreement with any railroad which relates to Rail Freight Service on the Rail Facilities without 30 days prior written notice to the Authority.

17. Indemnification.

a) The Rail Operator, and its parents, subsidiaries and affiliates, jointly and severally agree to indemnify, protect, defend and hold harmless the Authority and the Authority's members, directors, officers, agents and employees (each, an "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal (collectively, "Losses"), arising out of the execution, performance or nonperformance of the duties of the Rail Operator, or its agents, employees or contractors, under this Agreement, the enforcement of this Agreement, or resulting from the activities of the Rail Operator, or its agents, employees or contractors, in any way connected to this including, but not limited to:

1) any bodily injury, death or damage to tangible property, suits in equity of whatever kind or nature, relief, or loss of use, to the extent caused by the Rail Operator or relating to or arising out of the Rail Operator's performance of this Agreement; ii) any collision or derailment; iii) any claims, grievances or lawsuits brought by or on behalf of the Rail Operator's own employees or their representatives, pursuant to any state or federal law, including, but not limited to, the Federal Employer's Liability Act, or pursuant to employee protective conditions imposed by a governmental agency or a collective bargaining agreement arising out of the Rail Operator's operations hereunder;

2) (i) any environmental contamination on the Rail Facilities (whether arising out of any environmental protection or pollution law, or any liability in tort (strict liability or otherwise) or resulting from Rail Operator's operations or (ii) any default under this Agreement or failure of Rail Operator to perform any obligation under this Agreement. Provided, however, the Rail Operator's obligation to indemnify under this section shall be proportionately reduced to the extent any such loss is judicially determined to be attributable to the negligence or willful misconduct of the Authority;

b) An Indemnified Party seeking indemnification under this Agreement shall: i) give the Rail Operator prompt written notice of the claim; ii) cooperate with the Rail Operator in connection with the defense and settlement of the claim and iii) permit the Rail Operator to control the defense and settlement of the claim; provided that the Rail Operator will not settle the claim without the prior written consent of the Indemnified Party. Rail Operator shall assume control of the defense of any claim asserted by a third party against the Indemnified Party for which Rail Operator is obligated to indemnify, defend, and hold harmless the Authority and, in connection of such defense, shall appoint lead counsel in each case at Rail Operator's expense. The Indemnified Party shall have the right, at its option, to participate in the defense of any third-party claim, without

relieving Rail Operator of any of its obligations hereunder. If Rail Operator assumes control of the defense of any third-party claim in accordance with this section, Rail Operator shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such claim. Notwithstanding anything to the contrary in this section, Rail Operator shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the Indemnified Party and all expenses, including experts' fees, if (a) an adverse determination with respect to the third party claim would, in the good faith judgment of the Indemnified Party, be detrimental in any material respect to the Indemnified Party's reputation; (b) the third party claim seeks an injunction or equitable relief against the Authority; or (c) Rail Operator has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third-party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

c) This indemnification provision includes claims made by any employees of Rail Operator against the Indemnified Party, and Rail Operator hereby waives its entitlement, if any, to immunity under section 440.11, Florida Statutes. Nothing contained in this Agreement and specifically this indemnification provision is intended to nor shall it be construed as an additional waiver of sovereign immunity beyond the expressed written contractual obligations of the Authority contained within this Agreement. Excluded from the Indemnified Party's indemnification obligation are any claims for which the Indemnified Party is immune from suit under the doctrine of sovereign immunity or for any amount of a claim exceeding the limitations of liability established by section 768.28, Florida Statutes. The Indemnified Party does not in any manner waive its rights and immunities provided by applicable federal or state law and/or regulation under this section or otherwise under this Agreement.

d) The Rail Operator's obligations under this section shall survive termination or expiration of this Agreement and shall not be limited by any amount of insurance required to be obtained or maintained under this Agreement.

18. Insurance.

GENERAL INSURANCE REQUIREMENTS:

- 18.01 During the Term of the Agreement, the Rail Operator shall provide, pay for, and maintain with insurance companies satisfactory to the Manatee Port Authority (the Authority) the types and amounts of insurance described herein.
- 18.02 All insurance shall be from responsible insurance companies eligible to do business in the State of Florida. The required policies of insurance shall be performable in Manatee County, Florida, and shall be construed in accordance with the laws of the State of Florida.
- 18.03 The Authority shall be specifically included as an additional insured on the Rail Operator's Liability policies with the exception of the Rail Operator's Professional Liability policies

- (if required) and shall also provide the "Severability of Interest" provision (a/k/a "Separation of Insured's" provision). The Authority's additional insured status should be extended to all Completed Operations coverages.
- 18.04 The Rail Operator shall deliver to the Authority, prior to commencing work/activities under this Agreement, properly executed "Certificate(s) of Insurance" setting forth the insurance coverage and limits required herein. The Certificates must be signed by an authorized representative of the insurance company(s) shown on the Certificate of Insurance. In addition, certified, true, and exact copies of the insurance policies required herein shall be provided to the Authority, on a timely basis, if requested by the Authority.
- 18.05 If the Rail Operator fails to provide or maintain the insurance coverages required in this Agreement at any time during the Term of the Agreement and if the Rail Operator refuses or otherwise neglects to deliver the required Certificate(s) of Insurance signed by an authorized representative of the insurance company(s) to the Authority, the Authority may, at the Authority's sole discretion, terminate or suspend this Agreement and seize the amount of the Rail Operator's performance bond, letter of credit, or other security acceptable to Authority.
- 18.06 The Rail Operator shall take immediate steps to make up any impairment to any Aggregate Policy Limit upon notification of the impairment. If at any time the Authority requests a written statement from the insurance company(s) as to any impairment to the Aggregate Limit, the Rail Operator shall promptly authorize and have delivered such statement to the Authority.
- 18.07 The Rail Operator authorizes the Authority and/or its insurance consultant to confirm all information furnished to the Authority, as to its compliance with its Bonds and Insurance Requirements, with the Rail Operator's insurance agents, brokers, surety, and insurance carriers.
- 18.08 All insurance coverage of the Rail Operator shall be primary to any insurance or self-insurance program carried by the Authority. The Authority's insurance or self-insurance programs or coverage shall not be contributory with any insurance required of the Rail Operator in this Agreement.
- 18.09 The acceptance of delivery to the Authority of any Certificate of Insurance evidencing the insurance coverage and limits required in the Agreement does not constitute approval or agreement by the Authority that the insurance requirements in the Agreement have been met or that the insurance policies shown in the Certificates of Insurance are in compliance with the Agreement requirements.
- 18.10 No work/activity under this Agreement shall commence or continue unless and until the required Certificate(s) of Insurance are in effect and the written Notice to Proceed is issued by the Authority.
- 18.11 The insurance coverage and limits required of the Rail Operator under this Agreement are designed to meet the minimum requirements of the Authority. They are not designed as a recommended insurance program for the Rail Operator. The Rail Operator alone shall be responsible for the sufficiency of its own insurance program. Should the Rail Operator

have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, it should seek professional assistance.

- 18.12 During the Term of this Agreement, the Authority and its agents and contractors may continue to engage in necessary business activities during the operations of the Rail Operator.
- 18.13 All of the required insurance coverages shall be issued as required by law and shall be endorsed, where necessary, to comply with the minimum requirements contained herein.
- 18.14 All policies of insurance required herein shall require that the insurer give the Authority thirty (30) days advance written notice of any cancellation, intent not to renew any policy and/or any change that will reduce the insurance coverage required in this Agreement, except for the application of the Aggregate Limits Provisions.
- 18.15 Renewal Certificate(s) of Insurance shall be provided to the Authority at least twenty (20) days prior to expiration of current coverage so that there shall be no termination of the Agreement due to lack of proof of the insurance coverage required of the Rail Operator.
- 18.17 If the Rail Operator utilizes contractors or sub-contractors to perform any operations or activities governed by this Agreement, the Rail Operator will ensure all contractors and sub-contractors maintain the same types and amounts of insurance required of the Rail Operator. In addition, the Rail Operator will ensure that the contractor and sub-contractor insurances comply with all of the Insurance Requirements specified for the Rail Operator contained within this Agreement. The Rail Operator shall obtain Certificates of Insurance comparable to those required of the Rail Operator from all contractors and sub-contractors. Such Certificates of Insurances shall be presented to the Authority upon request. Rail Operator's obligation to ensure that all contractor's and sub-contractor's insurance as provided herein shall not exculpate Rail Operator from the direct primary responsibility the Rail Operator has to the Authority hereunder. Authority may look directly to Rail Operator for any such liability hereunder and shall not be obligated to seek recovery from any contractor or subcontract or under such contractor's or sub-contract's insurance coverages.

SPECIFIC INSURANCE COVERAGES AND LIMITS:

- 18.18 All requirements in this Insurance Section shall be complied with in full by the Rail Operator unless excused from compliance in writing by the Authority.
- 18.19 The amounts and types of insurance must conform to the following minimum requirements. Current Insurance Service Office (ISO) or National Council on Compensation Insurance (NCCI) policies, forms, and endorsements or broader shall be used where applicable. Notwithstanding the foregoing, the wording of all policies, forms, and endorsements must be acceptable to the Authority.
- 18.20
- 18.22

- 18.23 **Business Automobile Liability Insurance** shall be maintained by the Rail Operator as to ownership, maintenance, use, loading and unloading of all owned, non-owned, leased, or hired vehicles with limits of such coverage of not less than:

Bodily Injury
Property Damage Liability

or

Bodily Injury &
Property Damage Liability

- 18.24 **Railroad Liability Insurance** including Federal Employers Liability Act (FELA) Coverage (45 U.S.C.S. § 51-60) shall be maintained by the Rail Operator using a Claims Made policy form. Coverage shall include, but not be limited to, claims arising out of Railroad Operations, Premises and Operations, Personal Injury, Independent Contractors and Railroad Contractual for this Agreement. The limits of such coverage shall not be less than:

The self-insured retention (SIR) must be maximum of \$

Completed Operations Liability Coverage shall be maintained by the Rail Operator for a period of not less than four (4) years following expiration or termination of this Agreement.

The use of an Excess or Umbrella policy shall be acceptable if the level of protection provided by the Excess or Umbrella policy is equal to or more comprehensive than the Primary Rail Liability policy.

19. Relationship between the Rail Operator and the Authority. Whenever the Rail Operator requires written approval from the Authority pursuant to Sections 15 and 15, the signature of the Executive Director will suffice to validate such written approval, and for all other Sections the signature of the Authority will be required to validate such written approval. Whenever the Authority requires written approval from the Rail Operator, the signature of the President or other highest ranking officer will suffice to validate the written approval of the Rail Operator. The Rail Operator shall inform the Authority and affected shippers of any action or event that may limit Rail Freight Service as soon as the Rail Operator knows of such action or event. The Authority will inform the Rail Operator of any problems or concerns related to the Rail Freight Service of which it receives notice.

20. Conflicts of Interest. The Rail Operator represents that it has completely disclosed to the Authority all facts bearing upon any possible interests, direct or indirect, that the Rail Operator believes any member, director, officer, employee or agent of the Authority presently has, or will have, in this Agreement or in the performance of this Agreement. The Rail Operator shall comply with all codes of conduct and/or conflict of interest policies provided for in the Port's procurement policy, Port Tariff, and state statutes as may be amended from time to time. The Rail Operator covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of its obligations under this Agreement. The Rail Operator represents to the Authority that the Rail Operator has no present, and will have no future, conflict of interest between providing the Authority the services contemplated by this Agreement and any interest the Rail Operator may presently have, or will have in the future, with respect to any other person or entity that has any interest adverse or potentially adverse to the Authority, as determined in the reasonable judgment of the Authority. The provisions of this section shall remain fully effective indefinitely after the expiration or termination of this Agreement.

21. Annual Reporting. During the Term, the Rail Operator shall prepare an annual report (the "Annual Report") including, at a minimum: 1) the number of revenue producing carloads; 2) the number of reportable accidents/incidents as defined by FRA and their location; (3) reportable derailments as defined by FRA and their location; 4) financial statements; 5) construction and maintenance expenses; 6) FRA, and/or Authority inspection reports with corrective action taken or planned; 7) a report of other occurrences having a significant impact on the condition of the Rail Facilities or the rail traffic handled thereon; 8) a current list of all subsidiaries and affiliates; 9) an organizational chart setting forth the current ownership of the Rail Operator and 10) a proactive risk management program and emergency response plan if required of the Rail Operator by the FRA. Federal and state income tax returns of the Rail Operator and any subsidiaries and affiliates shall be made available to the Authority's auditors to confirm the summary of income tax information provided in the Annual Report. The Annual Report shall cover the Rail Operator's fiscal years or parts of fiscal years from the date of execution of this Agreement to its termination. The Annual Report shall be submitted to the Authority within three (3) months after the close of each fiscal year, provided Rail Operator's tax filings are completed by that time, and shall be submitted to the Authority subsequent to a deferred tax filing upon completion by Rail Operator's accountant, in which instance a preliminary Annual Report shall be submitted within three (3) months after the close of the Rail Operator's fiscal year.

22. Confidentiality.

a. The Rail Operator and the Authority acknowledge that this Agreement requires the Rail Operator to provide certain records, documents or instruments (collectively, "records") that may include proprietary or confidential information, the disclosure of which to third parties may be damaging to the Rail Operator or other third parties who contract with the Rail Operator. At the

time of providing such records, the Rail Operator's highest-ranking officer shall certify in writing as to the confidentiality of any such records submitted to the Authority that are deemed confidential and proprietary by the Rail Operator, and include a statement specifying the legal basis (including specifying the applicable legal citation) of treating such records as confidential and proprietary in light of Florida's Public Records Act. To the extent possible under law, the Authority shall hold such records and information in strict confidence and shall use such records and information only in connection with this Agreement, except where required to be disclosed under any applicable federal or state law requiring public disclosure of information relating to the business of the Authority or any order of a court or public agency having jurisdiction requiring disclosure. The Rail Operator shall comply with any policy or policies adopted by the Authority from time to time concerning the treatment of confidential information of third parties provided to the Authority. The Rail Operator shall not discuss this Agreement, or any matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without the Authority's prior written consent. The Rail Operator shall have the right, however, without the Authority's further consent, to communicate with persons (including third parties) or public bodies where necessary to perform under this Agreement.

b. Pursuant to section 119.0701, Florida Statutes, for any tasks performed by Rail Operator on behalf of the Authority, Rail Operator shall: (a) keep and maintain all public records, as that term is defined in chapter 119, Florida Statutes ("Public Records"), required by the Authority to perform the work contemplated by this Agreement; (b) upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion or termination of this Agreement, if Rail Operator does not transfer the records to the Authority in accordance with (d) below; and (d) upon completion or termination of this Agreement, (i) if the Authority, in its sole and absolute discretion, requests that all Public Records in possession of Rail Operator be transferred to the Authority, Rail Operator shall transfer, at no cost, to the Authority, all Public Records in possession of Rail Operator within thirty (30) days of such request or (ii) if no such request is made by the Authority, Rail Operator shall keep and maintain the Public Records required by the Authority to perform the work contemplated by this Agreement. If Rail Operator transfers all Public Records to the Authority pursuant to (d)(i) above, Rail Operator shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements within thirty (30) days of transferring the Public Records to the Authority and provide the Authority with written confirmation that such records have been destroyed within thirty (30) days of transferring the Public Records. If Rail Operator keeps and maintains Public Records pursuant to (d)(ii) above, Rail Operator shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Authority, upon request from the Authority's

custodian of public records, in a format that is compatible with the information technology of the Authority. If Rail Operator does not comply with a Public Records request, or does not comply with a Public Records request within a reasonable amount of time, the Authority may pursue any and all remedies available in law or equity including, but not limited to, specific performance and termination of this Agreement. The provisions of this section only apply to those tasks in which Rail Operator is acting on behalf of the Authority.

IF THE RAIL OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RAIL OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Telephone number: (941) 722-6621; E-mail address: Tdaughtery@portmanatee.com; Mailing address: 300 Tampa Bay Way, Suite One, Palmetto, Florida 34221.

23. **Performance Audit.** The Authority at its expense, from time to time, may conduct a performance audit of marketing, operating, maintenance and other obligations and functions of the Rail Operator, and the Rail Operator shall cooperate with the Authority in the performance of the audit.

24. **Non-Operating Properties.** The Authority is solely responsible for entering into, extending, or terminating all non-operating leases, licenses and easements on all Authority property, including the Rail Facilities. The Authority shall receive any and all payments arising from any leases, private crossings, easements, licenses and occupations or renewals thereof on any portion of the Rail Facilities, including, but not limited to, rents, license fees, crossing fees, easement fees, and other revenues paid by any party occupying a portion of the Rail Facilities with poles and wire, and rentals and fees from signboards, platform locations, driveways, storage facilities, side tracks, pipe lines, water rights, fiber optics, land rents, building rents and water tank rents, among other things. The Authority shall collect such amounts as they become due and such amounts shall not accrue to the Rail Operator unless otherwise agreed by the Authority and the Rail Operator in writing. The Authority shall determine the properties classified as "Non-Operating Properties," except that any such designation shall not interfere with Rail Operator's ability to fulfill its obligations under this Agreement. In addition, the Authority shall have the unilateral right to withdraw such portions of the Rail Facilities from the provisions of this Agreement, including any tracks, railroad lines, buildings, land or any other property, as it deems appropriate so long as such withdrawal will not unreasonably interfere with Rail Operator's ability to fulfill its common carrier obligations and to provide Rail Freight Service to customers under this Agreement. Furthermore, the Authority may add additional premises to the Rail Facilities as it reasonably determines are necessary for the Rail Operator's performance of this Agreement, in the Authority's sole discretion. In such event, the Rail Operator and the Authority will cooperate

in obtaining approval of the STB and any other applicable governmental agencies, to the extent required, to include such additional premises within the Rail Facilities under this Agreement.

25. Public Crossings. During the Term of this Agreement or any renewal thereof, the Rail Operator shall assume and shall indemnify the Authority against all obligations with respect to all public crossings or the railroad by public streets and highways, pedestrian walkways and bikeways, bridges, or utilities, including such obligations as presently exist or which may be hereinafter imposed, and any orders issued thereunder with respect to the Rail Facilities, except those "Non-Operating Properties" over which the Authority has sole responsibility under **Section 24** of this Agreement.

26. Condemnation of Rail Facilities. If the Authority's ownership interest in the Rail Facilities, or any portion thereof, are condemned or taken by any competent authority for public use, the award for payment of damages resulting therefrom, or any amount paid in settlement thereof, shall be paid to and retained by the Authority, except as hereinafter provided. If the Rail Operator's occupancy interest in the Rail Facilities or any portion thereof are condemned or taken by any competent authority for public use, the award or payment of damage resulting or any amount paid in settlement thereof shall be paid to and retained by the Rail Operator. If the entire Rail Facilities are so taken or such substantial part thereof as shall materially impair or interfere with the Rail Operator's proper use and enjoyment thereof, this Agreement shall automatically terminate as of the date of the taking. If only such portion of the Rail Facilities is taken as shall not materially impair or interfere with the Rail Operator's proper use and enjoyment thereof, this Agreement shall continue in full force and effect, and all proceeds of the condemnation award or payment to either party shall first be used as may be required to restore the Rail Facilities in such manner as will enable the continuing operation thereof of Rail Freight Service hereunder.

27. Termination By Authority. Upon the occurrence of an Event of Default (as hereinafter defined), and subject to subsection b) below, this Agreement may be terminated by the Authority by written notice to the Rail Operator in accordance with this section.

a) Any one or more of the following events shall constitute an event of default under this Agreement (an "Event of Default"):

- 1) (i) The Rail Operator's failure to pay any Operating Fees due to the Authority within thirty (30) days of the date due and payable hereunder;
- 2) ii) The Rail Operator's failure to observe and perform any of the terms, covenants, conditions, limitations or commitments under this Agreement on the Rail Operator's part to be observed or performed (other than payment of Operating Fees);
- 3) iii) The Rail Operator shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy or insolvency statute or

law (collectively, "insolvency laws"), or shall seek, consent to or acquiesce in the appointment of any bankruptcy or insolvency trustee, receiver or liquidator of the Rail Operator or of all or any substantial part of its properties;

4) iv) The commencement of any action, case or proceeding against the Rail Operator seeking: A) any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any insolvency laws, or B) the appointment, without the consent or acquiescence of the Rail Operator, of any trustee, receiver or liquidator of the Rail Operator or of all or substantially all of its properties, and such proceeding shall continue un-dismissed for a period of sixty (60) days;

5) v) The Rail Operator shall discontinue service or vacate any portion of the Rail Facilities without the Authority's prior written consent;

6) vi) A federal or state tax lien is filed against the Rail Operator affecting the Rail Facilities and remains undischarged within thirty (30) days after its filing;

7) vii) A final judgment for the payment of money in excess of \$25,000 shall be rendered against the Rail Operator and such judgment shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed and

8) viii) An assignment or change in control of the Rail Operator shall occur without the Authority's prior written consent

9) ix) The discovery of any material misrepresentation or fraudulent statement made to the Authority in connection with any agreement or other application or forms submitted to the Authority in connection with this Agreement or the Rail Facilities, following written notice by Authority and a failure by the Rail Operator to explain the matter to the Authority's satisfaction within thirty (30) calendar days; or

b) Notwithstanding the preceding subsection a), upon an Event of Default described only in subsection a) ii) above, such Event of Default may be cured (and no Event of Default will be deemed to have occurred) if the Rail Operator, after receiving written notice from Authority demanding cure of such default: 1) either cures the default within thirty (30) days; or 2) if the cure requires more than thirty (30) days, immediately initiates to cure the default within thirty (30) days to the satisfaction of the Authority and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical, but in no event later than one hundred twenty (120) days after written notice demanding cure of such default was delivered.

c) In the event the Rail Operator commits an Event of Default, which Event of Default is not timely cured (to the extent curable as provided in subsection b) above), the Authority shall have the right, in addition to any other rights and remedies available at law or equity, which shall not be limited, to immediately terminate this Agreement upon written notice to the Rail Operator.

d) Upon termination of this Agreement, the Authority will use its best efforts to engage a replacement operator to provide Rail Freight Service on the Authority's rail lines. The Rail

Operator agrees to fully cooperate with the Authority in transitioning operations on the Authority's rail lines to the replacement operator. In the event no replacement operator can be engaged by the Authority, and in the event the Rail Facilities are abandoned by the Authority by reason of such termination, the Rail Operator shall cooperate fully with the Authority in settling any and all claims sought by any party as a result.

28. Termination By Rail Operator. Should the annual revenue earned by Rail Operator fall below _____ per year in the initial five (5) years of operations (December 1, 2021 – November 30, 2026), the Authority shall reimburse the Rail Operator for lease payments made in the year (December – November). Rail Operator may elect to terminate this Agreement, upon one year's written notice to Authority after November 30, 2026. Should Rail Operator issue written notice of termination of this Agreement, and the Authority determines that it desires to engage a replacement operator to provide Rail Freight Service on the Authority's rail lines, the Rail Operator agrees to fully cooperate with the Authority in transitioning operations on the Authority's rail lines to the replacement operator, within the one-year notice period.

29. Force Majeure. In no event shall any party be deemed in default of this Agreement for any loss, damage, injury, delay, failure or inability to meet all or any portion of its commitments hereunder caused by or arising from any cause which is unavoidable or beyond its reasonable control, including without limitation, war, hostilities, invasion, insurrection, riot, terrorist activities the order of any competent civil or military government, explosion, fire, strikes, lockouts, AAR service orders, actions of other carriers that materially affects Rail Operator's operations, maintenance, labor disputes, perils of water including floods, ice, breakdowns, Acts of God including storms or other adverse weather conditions, washouts, wrecks or derailments that cannot be removed within thirty (30) days pursuant to **Section 15(d)** or other causes of a similar or dissimilar nature which wholly or partially prevent a party from carrying out the terms of this Agreement; provided that such party experiencing a force majeure event shall promptly give to the other party written notice that the disabling effect of such force majeure shall be eliminated as soon as and to the extent reasonably possible and that either party shall have the right to determine and settle any strike, lockout and labor dispute in which the party may be involved in its sole discretion. For the avoidance of doubt, Force Majeure shall not include (1) financial distress or the inability of either party to make a profit or avoid a financial loss; (2) changes in market prices or conditions; or (3) a party's financial inability to perform its obligations hereunder. The obligations of the party affected by the event of Force Majeure (the "Affected Party") shall be suspended, to the extent that those obligations are affected by the event of Force Majeure, from the date the Affected Party first gives notice in respect of that event of Force Majeure until cessation of that event of Force Majeure (or the consequences thereof). The Affected Party shall use commercially reasonable efforts to resume, with the shortest possible delay, compliance with obligations under this Agreement. Upon the cessation of the event of Force Majeure, the Affected Party shall promptly give notice to the other party of such cessation. In the event that the Rail Operator's performance is suspended in whole or in part by force majeure, its obligation to perform hereunder

shall be suspended or commensurately reduced during the duration of the force majeure and for such additional reasonable period as may be required because of the existence of the force majeure. In the event the Rail Operator's performance hereunder is suspended by force majeure and cannot be resumed within a reasonable period of time, either party shall have the right to seek STB authorization to abandon and/or seek a discontinuance of service with respect to that portion of the Rail Facilities adversely affected by the force majeure condition and upon receipt of such authorization to terminate this Agreement with respect thereto.

30. Discontinuance of Operations. Upon expiration or termination of this Agreement for any reason, the Rail Operator immediately shall file a discontinuance notice with the STB and shall cease operations on the Rail Facilities promptly upon grant of discontinuance authority or qualification of a successor pursuant to a change in operator filing with the STB and shall assist the Authority in making the transition to a new operator. Notwithstanding the foregoing, in the event the Rail Operator contests any asserted termination by reason of default or as otherwise provided in this Agreement, the Rail Operator shall not be required to file a discontinuance of Rail Freight Service until such date as such arbitration has been concluded and a determination has been rendered by the arbitrators that the Rail Operator has defaulted under this Agreement. At expiration or termination of this Agreement, the Rail Operator shall peacefully deliver up and surrender possession of the Rail Facilities to the Authority in the condition described in Section 11 of this Agreement and shall allow its successor to monitor its information and systems in the week preceding the changeover.

31. Notice. All notices required or made pursuant to this Agreement shall be made in writing and must be delivered by email (with a requirement that the recipient acknowledge receipt), third party overnight courier (including overnight couriers' services such as Federal Express) or Certified Mail, Return Receipt Requested, postage paid addressed to the party to whom notice is given at the following addresses:

To the Authority:

Manatee County Port Authority.

Address: Attention; Executive Director
300 Tampa Bay Way, Suite One
Palmetto, Florida 34221
Telephone: (941) 722-6621
Facsimile: (941) 729-1463
Email: cbuqueras@portmanatee.com

Copy to: Port Counsel
Bryant Miller Olive P.A.
201 North Franklin Street, Suite 2700
Tampa, FL 33602
Telephone: (813) 273-6677
Email: jcowan@bmlaw.com

To the Rail Operator:

Port Manatee Railroad LLC
Alfred Sauer
550 South Broad Street, Kennett Square, PA 19348
Email: asauer@regional-rail.com
Telephone: (610) 925-0131

or to such other address as either party may, from time to time designate to the other in writing.

32. Regulatory Jurisdiction. This Agreement is subject to the orders, rules and regulations of appropriate regulatory authorities, including the STB, the FRA and the AAR Interchange Rules, having jurisdiction over the Rail Operator and the Authority. In the event that either Party determines that it is necessary to participate in an administrative or judicial proceeding or to take a position before any governmental body which may affect the interests of the other or the Rail Freight Service provided hereunder, each Party shall provide the other Party reasonable advance notice of its intent to do so and the nature of the interest or position it will assert. In such case, the Parties shall use their best efforts to communicate and coordinate their participation and/or positions.

33. Access to Records. The Rail Operator shall establish and maintain all necessary accounting services appropriate to conducting business as a railroad and complying with its obligations under this Agreement. The Rail Operator shall maintain sufficient records and reports to permit the Authority to fully verify statements of traffic, revenue and expenditures furnished to the Authority by the Rail Operator. The Authority shall maintain the information contained in such records and reports in confidence to the extent possible under applicable law and under **Section 22** of this Agreement. The Authority, or its agents, shall have full access to these records and reports during normal business hours and the right to make copies at the Rail Operator's office upon 48 hours written notice, duly given to the Rail Operator.

34. Labor Conditions. If during the Term of this Agreement or renewal thereof, any labor protective conditions should be imposed as a result of an STB order or pursuant to the federal Railway Labor Act, 45 U.S.C. § 151 et seq., as amended and supplemented, the Rail Operator agrees to fully indemnify the Authority from the costs of such labor protective conditions.

35. Entire Agreement. This Agreement, including the Request for Proposal dated June 29, 2021, and the Operator's Response dated August 13, 2021, and any exhibits or other agreements expressly incorporated herein by reference, contains the entire understanding of the Parties with respect to its subject matter. It is expressly understood that this Agreement shall

supersede and replace any other agreements between the Parties for Rail Freight Service on the Rail Facilities. No oral statement or prior written matter shall have any force or effect. The Parties hereby acknowledge that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be amended or modified except by a written instrument executed by the Rail Operator and the Authority. There are no understandings, representations, warranties, or agreements between the Parties with respect to the subject matter hereof unless set forth explicitly in this Agreement.

36. **Severability.** If any term, covenant, condition or provision (or part thereof) of this Agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. It is understood that the Authority shall not be subject to any liability to the Rail Operator in the event any term herein is found to be invalid or unenforceable.

37. **Nondiscrimination.** The Rail Operator shall comply with the nondiscrimination clause attached hereto and incorporated herein as **Exhibit C**.

38. **Grants.** The Rail Operator has reviewed the Standard Terms and Conditions of all Department of Transportation Federal Railroad Administration Grant Agreements with the Authority ("**Grant Agreements**"). The Rail Operator understands and represents that it will operate the Rail Facilities funded from the Grant Agreements for the originally authorized purposes of those Grant Agreements and that it will comply with all applicable federal requirements and federal guidance and the applicable requirements of the Grant Agreements.

39. **Security.** The Authority is subject to minimum standards, procedures and requirements imposed by federal and state laws and regulations, rules, policies, and procedures in effect from time to time concerning security at Port Manatee, including the U.S. Maritime Transportation Security Act of 2002; Title 33, parts 101 and 105 of the U.S. Code of Federal Regulations; Chapter 311 of the Florida Statutes; and the security provisions of all tariffs in effect at Port Manatee, each as amended, supplemented, restated or otherwise modified from time to time, in connection with the security of Port Manatee as a seaport. Port Manatee consists of various facilities operated by the Authority and various facilities operated by lessees pursuant to leases with the Authority, and the security of facilities operated by the Authority and facilities operated by the Rail Operator pursuant to this Agreement are beneficial to both Parties necessitating that there be a degree of cooperation between the Authority and the Rail Operator. The Rail Operator shall comply with all of the provisions of the above-mentioned laws and regulations applicable to the activities and operations of the Rail Operator at Port Manatee.

40. Applicable Law. This Agreement shall be construed by and controlled under the laws of the State of Florida. The Parties consent to jurisdiction over them in the State of Florida and agree that venue for any state action arising under this Agreement shall lie solely in the Circuit Court of the 12th Judicial Circuit in Manatee County, Florida, and for any federal action shall lie solely in the United States District Court for the Middle District of Florida.

EACH PARTY BY EXECUTION HEREOF DOES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, FOR THEMSELVES AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, ANY RIGHT WHICH EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT ANY LITIGATION, ACTION, SUIT, OR PROCEEDING WHETHER AT LAW OR IN EQUITY BASED ON THIS AGREEMENT, ANY AMENDMENT OR ADDITION TO THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY OR THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, PRINCIPALS, EMPLOYEES, AGENTS, OR REPRESENTATIVES IN CONNECTION HEREWITH, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE. NO PARTY SHALL SEEK TO CONSOLIDATE ANY LITIGATION, ACTION, SUIT, OR PROCEEDING WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PROVISION IS MATERIAL AND MUTUAL INDUCEMENT TO ENTERING INTO THIS AGREEMENT.

41. Waiver. No waiver of any default or failure to perform shall be valid unless set forth in writing by the waiving party and shall not constitute a waiver of any other default or failure to perform under this Agreement, or of any rights or remedies to which either Party may be entitled to on account of any such default or failure to perform.

42. Headings and Section References. The headings and section references in this Agreement are inserted only for the purpose of convenience and shall not be construed to expand or limit the provisions contained in such sections.

43. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and shall not be construed as a benefit to any third parties, including but not limited to the general public, constituents or citizens of the Authority, nor shall it be construed as enforceable by any third parties.

44. Computation of Time. Any reference in this Agreement to time periods shall be computed by calendar days unless otherwise specified. In the computation thereof, any time period

which end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day. The computations stated in this paragraph shall only apply to time periods referenced in this Agreement and shall not apply to any deadlines for which a date certain is provided.

45. Authority. The Parties represent and warrant that each is authorized to enter into this Agreement without the consent and joinder of any other party and that the individuals executing this Agreement have full power and authority to bind their respective party to the terms hereof.

46. Environmental Matters. The Rail Operator shall comply with all federal, state, Regional and Authority laws, statutes, ordinances, rules and regulations applicable to its activities and operations of the Rail Facilities, including but not limited to such Port Manatee Master Plan, Memorandum of Agreement for Land Use Controls between the Authority and the Florida Departments of Environmental Protection, agency agreements, rules and regulations of general application at Port Manatee, adopted by the Authority.

The Authority shall have the right at any time to examine or inspect the Rail Facilities for any reason, including but not limited to performing an Environmental Site Assessment and determining the existence of hazardous substances. The Authority's examination or inspection must take place during the normal business hours of the Rail Operator with reasonable notice to the Rail Operator and at no cost or expense to the Rail Operator, unless such examination or inspection is an emergency, in which case the Authority or its representatives may immediately inspect the Rail Facilities.

A copy of any written assessment, audit or survey obtained by the Authority will be immediately furnished to the Rail Operator. If any worsening of the environmental condition of is evidently attributable to the Rail Operator activities and operations from that disclosed in any Environmental Site Assessment Reported carried is evident from this written assessment, audit or survey, the Rail Operator shall cause any necessary action to be immediately taken to remediate such worsening.

Throughout the Term of this Agreement, Rail Operator must not use, generate, release, discharge, store, dispose, or transport any substances in, under, in, above, to or from the demised premises in any manner other than in strict compliance with all applicable laws.

Rail Operator shall immediately notify the Authority of any accumulation, deposit, placement, release, spill, storage or use of any of said substances upon or under the Rail Facilities. Such notification shall be in addition to and shall not replace any notice required by applicable laws. In the event any federal, state, regional or county governmental authority with jurisdiction to enforce or regulate the construction and operation of the facilities of the Rail Operator determines that there is any significant or substantial deviation from the conditions, restrictions and limitations of applicable environmental laws and if Rail Operator fails to correct the violation within the period of time required or any extensions thereof approved by the Authority, then and in that event, the Authority shall have the right to terminate the operation of any such facilities by

the Rail Operator until such violation has been corrected or take such lawful action as may be appropriate under the circumstances.

The environmental provisions of this Agreement shall survive the expiration, early termination, or other cessation of this Agreement and shall continue in full force and effect so long as the possibility exists of any environmental liability obligation or loss of or claim against the Authority and is attributable to any act or omission of Rail Operator, its agents or invitees.

47. Foreign Country of Concern. Pursuant to section 286.101, Florida Statutes, the Rail Operator shall disclose any current or prior interest of, any contract with, or any grant or gift received from a Foreign Country of Concern, as defined below, if such interest, contract, or grant or gift has a value of _____ and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five (5) years.

For purposes of this section, "Foreign Country of Concern" means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, or the Syrian Arab Republic, including any agency of or any other entity under significant control of such foreign country of concern.

Rail Operator's disclosure shall include the name and mailing address of the disclosing entity, the amount of the contract or grant or gift or the value of the interest disclosed, the applicable foreign country of concern and, if applicable, the date of termination of the contract or interest, the date of receipt of the grant or gift, and the name of the agent or controlled entity that is the source or interest holder. The Rail Operator represents that within one (1) year before proposing any contract to the Authority, the Rail Operator provided a copy of such disclosure to the Florida Department of Financial Services.

THE REMAINDER OF THIS PAGE IS LEFT BLANK INTENTIONALLY.

IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be executed by themselves or by their respective duly authorized officers as of the date and year first above written to be effective on the Effective Date.

ATTEST: ANGELINA "ANGEL" COLONNESO
Clerk of Circuit Court

MANATEE COUNTY PORT
AUTHORITY

By: _____

By: _____
Chairman
PORT AUTHORITY

WITNESSES:

PORT MANATEE RAILROAD LLC

By: _____

Printed: _____

Title: _____

"RAIL OPERATOR"

Exhibit A
Description of Rail Facilities (Map)

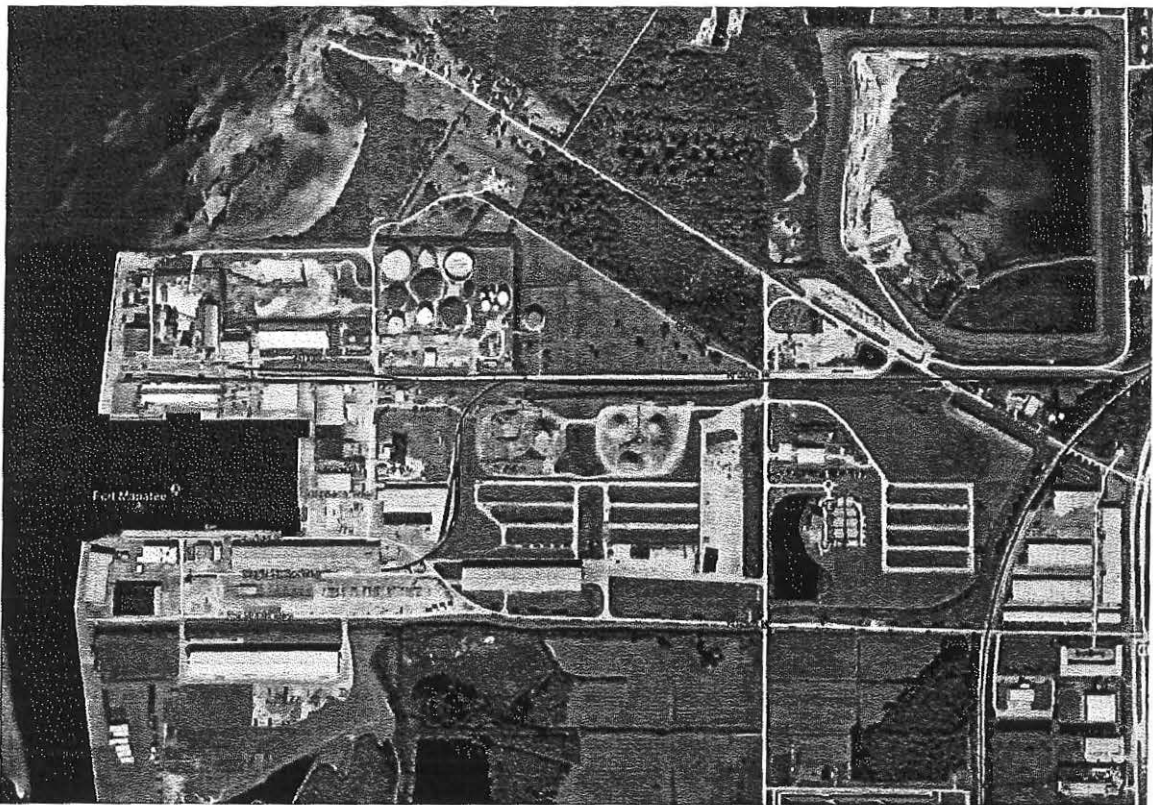


Exhibit B

Operating Fees

The Rail Operator shall pay certain operating fees as described below ("Operating Fees") for the use of the Rail Facilities. It is expressly understood that the Operating Fees shall be paid by the Rail Operator to the Authority without off-set for any charges incurred by Rail Operator in the provision of rail freight service and maintenance. Such charges include, but are not limited to, car hire fees incurred by the Rail Operator, interchange fees and payments to CSX for crossing signal inspection and repair covered under the agreements listed in Section 10 of this Agreement.

Beginning on the Effective Date of this Agreement, the Rail Operator shall pay to the Authority as part of the Operating Fees the following amounts:

- _____ for both locomotives, as more fully described in Exhibit D to this Agreement; and
- _____ for the use of Class III Shortline Railroad with approximately seven (7) miles of track and a 300-railcar capacity that connects directly to CSXT; and
- Office space rent – office space and rent to be determined and negotiated by the Parties as evidenced by a separate lease agreement; and
- _____ of all railroad gross revenue, including revenue from any assessorial charges and railcar storage fees, shall be paid to the Authority once Rail Operator's annual railroad gross revenue exceeds _____ each year.

All Operating Fees and base revenue amounts will escalate annually based upon the year over year percentage change in the Rail Cost Adjustment Factor-Unadjusted (RCAF-U), as published by the Association of American Railroads (AAR).

Exhibit C

Discrimination Policy

The Agreement awarded as a result of this Request for Proposals will be awarded without discrimination based on race, color, religion, age, sex, sexual preference, or national origin. Execution of this Agreement constitutes a certification of the Rail Operator that no person shall, on the grounds of race, color, religion, sex, handicap, or national origin, be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under this Agreement, or any project, program, or activity that receives or benefits from this Agreement. The Rail Operator agrees to comply with Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause contained in 41 CFR section 60-1.4 is included in this Agreement by reference. Further, execution of this Agreement constitutes a certification that the Rail Operator will comply with all the requirements imposed by: (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.) and the regulations of the federal government issued thereunder; (2) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.), which among other things, prohibits discrimination in employment on the basis of race, color, national origin, creed, sex, and age; and (3) the ADA (42 U.S.C. 12102, et seq.), the regulations of the federal government issued thereunder.

Exhibit D
Locomotives Lease
[Follows]

**LOCOMOTIVES LEASE AGREEMENT
BETWEEN THE PORT AUTHORITY AND PORT MANATEE RAILROAD LLC**

This Locomotives Lease Agreement ("**Lease**"), entered into and effective as of December 1, 2021 ("**Effective Date**"), is by and between the Manatee County Port Authority ("**Authority**") and Port Manatee Railroad LLC, a foreign limited liability company, who is authorized to transact business in the State of Florida, with its principal place of business located at 505 South Broad Street, Kennett Square, PA 19348 ("**Rail Operator**"), also referred to individually as "Party" or collectively as "Parties."

WITNESSETH:

WHEREAS, the Authority owns certain property located in Manatee County Florida consisting of ten berths that handle various commodities via sea, rail, and truck ("**Port Manatee**"); and

WHEREAS, the Authority owns and operates a Class III Shortline Railroad with approximately seven (7) miles of railroad track and a 300 railcar capacity that connects directly to CSXT ("**Rail Facilities**"); and

WHEREAS, the Authority has issued a Request For Proposals on June 29, 2021 ("**RFP**") to procure a rail operations and infrastructure maintenance provider to operate and maintain the Authority's Rail Facilities; and

WHEREAS, the Rail Operator is the successful proposer selected by the Authority to be responsible for providing third party switching services to the customers of and tenants at the Port Manatee and maintaining the Authority's Rail Facilities; and

WHEREAS, the Parties entered into that certain Operating and Maintenance Agreement, effective December 1,, 2021 (the "**Agreement**"); and

WHEREAS, pursuant to the Agreement, the Parties wish to enter into a locomotives lease agreement whereby the Rail Operator is responsible for leasing two (2) each an NRE 2GS14B Gen Set Switch Engines owned by the Authority; and

WHEREAS, the Parties agree that all capitalized terms used in this Lease, which are not otherwise defined, shall have the meaning defined in the Agreement.

NOW THEREFORE, in consideration of the covenants and conditions herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. RECITALS. The above recitals are true and correct and agreed to by the Parties as if such recitals were fully set forth in the Lease.

2. LEASED PROPERTY. The Authority hereby grants, lets and rents unto Rail Operator, and Rail Operator hereby leases from the Authority, two (2) locomotives, together with the parts, accessories, attachments and devices, if any, and other such equipment as identified and described in Schedule "1" attached to and made a part of this Lease (collectively, the "Locomotives"). The Locomotives shall be located on and remain in operation on the rail lines of the Authority located in the State of Florida.

3. TERM. The term of this Lease shall be for the same duration as the "Term" which is defined in section 2 of the Operating and Maintenance Agreement titled "**Effective Date and Term**" and will be automatically renewed and extended if the Term of the Agreement is extended in accordance with section 2 of the Agreement, or terminated simultaneously with any termination which is defined in section(s) 27 and/or 28 of the Operating and Maintenance Agreement.

4. RENT. During the Term of this Lease, as may be renewed or extended from time to time, the Rail Operator shall pay the Authority the amount as shown in Schedule "1" for each Locomotive. Rent shall commence on the effective date of the Agreement, unless otherwise mutually agreed to in writing by the Parties ("**Commencement Date**").

A. If the Commencement Date for any Locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.

B. Payments past due for more than twenty (20) days shall bear interest at the rate of twelve percent (12 %) per annum.

C. All rental payments shall be paid to the Authority at the Authority's address or at such other address as the Authority may direct in writing.

5. TAXES, CUSTOMS AND DUTIES. Rail Operator shall pay all customs, duties, use, excise, ad valorem, stamp, documentary and similar taxes on or relating to this Lease, or the use, registration, rental, maintenance, possession or operation of the Locomotives, and shall file any returns required therefor, and shall hold the Authority harmless and indemnify the Authority against any liability and expense, including attorney fees and costs, on account of the Rail Operator's failure to do the same.

6. OWNERSHIP AND INSPECTIONS BY THE AUTHORITY.

A. The Locomotives shall at all times remain the sole and exclusive property of the Authority.

B. Upon reasonable notice to Rail Operator, the Authority or its agents shall have free access to the Locomotives at reasonable times and in a reasonable manner for the purpose of inspections.

C. No accessions, additions, alterations or improvements to the Locomotives of any nature, shall be made without the Authority's written consent, but if any are made, they immediately shall become part of the Locomotives and shall become the Authority's property unless otherwise agreed by the Parties.

D. Rail Operator shall keep the Locomotives, at all times, free and clear from all claims, liens and encumbrances, arising by, through or on account of the Rail Operator.

E. This Lease is intended to be a true lease of the Locomotives and is not and shall not be construed as a sale of the Locomotives to the Rail Operator.

7. DELIVERY, ACCEPTANCE, AND RETURN. Transportation expenses shall be paid as shown in Schedule "1" to this Lease. Rail Operator's appointed representative shall, for the purpose of final acceptance, inspect the Locomotives prior to the Commencement Date, execute the Certificate of Acceptance attached to Schedule "1" and provide the executed Certificate of Acceptance to the Authority. If during such inspection, Rail Operator reasonably determines that the Locomotives do not meet the Parties' agreed upon delivery configuration set forth in Schedule "1", Rail Operator may reject the Locomotives by providing to the Authority, in writing, notice of such rejection and the reasons thereof. Upon such rejection, the Authority may elect to (i) repair the Locomotives to a condition which satisfies delivery configuration stated in Schedule "1"; or (ii) replace the Locomotives with similar locomotives which satisfies delivery configuration in Schedule "1". If Rail Operator waives its right to inspect each Locomotive prior to the Commencement Date, each Locomotive will be deemed acceptable by Rail Operator in its then current condition. Possession of the Locomotives shall pass to Rail Operator as of the Commencement Date. Locomotives shall be returned fully operational and with no missing parts, free of any wreck, derail or collision damage, and free of FRA defects and washed clean. The Locomotives wheel rim thickness shall be returned at the same measurement as delivered. Normal wear and tear accepted. At Lease expiration, Rail Operator shall at its sole cost and expense, return the Locomotives to the East Complex Track at Port Manatee, Florida.

8. USE AND MAINTENANCE. Rail Operator shall cause the Locomotives to be operated and used in strict compliance with all applicable FRA, Occupational Safety and Health Administration, and United States Coast Guard regulations and rules, together with any other applicable federal, state or local government laws, ordinances, regulations or rules having control or jurisdiction over the activities and uses of railroad locomotives. The operation and use of the Locomotives shall be carried out by qualified operators selected and trained by Rail Operator to optimize productivity and safety in the operation of the Locomotives.

In addition to the Maintenance provisions specified in section 13 of the Agreement, Rail Operator agrees to:

A. Rail Operator shall be responsible for the payment of all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Authority or Rail Operator.

B. The Locomotives shall be used and operated only by properly qualified, trained personnel authorized by Rail Operator.

C. Rail Operator shall comply with all applicable federal, state, municipal and local laws, ordinances, rules and regulations relating to the Lease, possession, insuring, use and operation of the Locomotives.

D. Rail Operator shall be solely responsible for the payment of any and all fines, penalties, or forfeitures, including without limitation the confiscation of the Locomotives levied upon or arising out of the use, operation, maintenance or insuring of the Locomotives in violation of any law, ordinance, rule or regulation of any governmental authority.

E. Rail Operator shall pay all costs, expenses and charges incurred in connection with the maintenance, lease, use and operation of the Locomotives.

F. Rail Operator or maintenance provider shall obtain an engine and air compressor lube oil sample quarterly and have an analysis completed for metallic wear and foreign substances. The Authority shall be provided with the results of each sample obtained on each Locomotive.

G. Rail Operator shall maintain all records, logs and other materials required by any governmental agency or authority having jurisdiction to be maintained by Rail Operator or the Authority in respect of each Locomotive. All such records, logs and other materials shall be the property of the Authority.

9. RESPONSIBILITY FOR LOSS OR DAMAGE/INSURANCE. Rail Operator shall be responsible for all loss or damage to the Locomotives, normal wear and tear excepted, including but not limited to, damages resulting from negligent acts or omissions of Rail Operator or Rail Operator's employees, agents or subcontractors. If the Locomotive(s) is rendered unusable as a result of any damage or loss, Rail Operator shall immediately notify the Authority and make the Locomotive(s) available for inspection by the Authority. In such event, this Lease shall continue until full repairs to any damage are made by Rail Operator. At its option, after such damage or loss, Rail Operator may pay the Authority an amount equal to the Casualty Value as set forth in Schedule "1" in which case the Authority will arrange for the title to pass to Rail Operator or its assignee and this Lease will terminate.

Rail Operator shall provide the Authority with a certificate of insurance naming the Authority as loss payee in an amount not less than the Casualty Value for the Locomotives as set forth in Schedule "1." The Authority shall also be named as an additional insured as its interest may appear on Rail Operator's Commercial General Liability Insurance and Railroad Liability Insurance policy as provided in section 18 of the Agreement titled "Insurance."

10. INDEMNIFICATION. In addition to the Indemnification provided in Section 17 of the Agreement, the Rail Operator, and its parents, subsidiaries and affiliates, jointly and severally agree to indemnify, protect, defend and hold harmless the Authority and the Authority's members, directors, officers, agents and employees (each, an "Indemnified Party") from and against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs through appeal (collectively, "Losses"), arising out of the execution, performance nonperformance of the duties of the Rail Operator, or its agents, employees or contractors, under this Lease, the enforcement of this Lease, or resulting from the activities of the Rail Operator, or its agents, employees or contractors, in any way connected to this including, but not limited to:

- 1) any bodily injury, death or damage to tangible property, suits in equity of whatever kind or nature, relief, or loss of use, to the extent caused by the Rail Operator or relating to or arising out of the Rail Operator's performance of this Lease or operation of the Locomotives; ii) any collision or derailment; iii) any claims, grievances or lawsuits brought by

or on behalf of the Rail Operator's own employees or their representatives, pursuant to any state or federal law, including, but not limited to, the Federal Employer's Liability Act, or pursuant to employee protective conditions imposed by a governmental agency or a collective bargaining agreement arising out of the Rail Operator's operations hereunder;

- a) An Indemnified Party seeking indemnification under this Lease shall: i) give the Rail Operator prompt written notice of the claim; ii) cooperate with the Rail Operator in connection with the defense and settlement of the claim and iii) permit the Rail Operator to control the defense and settlement of the claim; provided that the Rail Operator will not settle the claim without the prior written consent of the Indemnified Party. Rail Operator shall assume control of the defense of any claim asserted by a third party against the Indemnified Party for which Rail Operator is obligated to indemnify, defend, and hold harmless the Authority and, in connection of such defense, shall appoint lead counsel in each case at Rail Operator's expense. The Indemnified Party shall have the right, at its option, to participate in the defense of any third party claim, without relieving Rail Operator of any of its obligations hereunder. If Rail Operator assumes control of the defense of any third party claim in accordance with this section, Rail Operator shall obtain the prior written consent of the Indemnified Party before entering into any settlement of such claim. Notwithstanding anything to the contrary in this section, Rail Operator shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the Indemnified Party and all expenses, including experts' fees, if (a) an adverse determination with respect to the third party claim would, in the good faith judgment of the Indemnified Party, be detrimental in any material respect to the Indemnified Party's reputation; (b) the third party claim seeks an injunction or equitable relief against the Authority; or (c) Rail Operator has failed or is failing to prosecute or defend vigorously the third party claim. Each Party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such

records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

- b) This indemnification provision includes claims made by any employees of Rail Operator against the Indemnified Party, and Rail Operator hereby waives its entitlement, if any, to immunity under section 440.11, Florida Statutes. Nothing contained in this Lease and specifically this indemnification provision is intended to nor shall it be construed as an additional waiver of sovereign immunity beyond the expressed written contractual obligations of the Authority contained within this Lease. Excluded from the Indemnified Party's indemnification obligation are any claims for which the Indemnified Party is immune from suit under the doctrine of sovereign immunity or for any amount of a claim exceeding the limitations of liability established by section 768.28, Florida Statutes. The Indemnified Party does not in any manner waive its rights and immunities provided by applicable federal or state law and/or regulation under this section or otherwise under this Lease.
- c) The Rail Operator's obligations under this section shall survive termination or expiration of this Lease and shall not be limited by any amount of insurance required to be obtained or maintained under this Lease.

11. ASSIGNMENT. This Lease and the rights herein granted may not be assigned, sold, leased or transferred, in whole or in part, without the prior written consent of the Authority, which may be withheld in the Authority's discretion for any reason. The terms and provisions of this Lease shall be binding upon the Parties and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The Authority may assign its rights and obligations under this Lease to any successor to the rights and functions of the Authority or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent the Authority deems necessary or advisable under the circumstances.

12. RECORDATION OF THE AUTHORITY'S INTEREST. Rail Operator agrees to execute all recording documents requested by the Authority to show Authority's interest in the Locomotives. Rail Operator further authorizes the Authority to execute and file financial statements or other documents evidencing the Authority's interest in the Locomotives without Rail Operator's signature.

13. DEFAULT. Rail Operator shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default");

A. Default in the payment when due of any installment of rent, fees, charges, or of any other obligation for the payment of money owed by Rail Operator to the Authority that are not received by the Authority within thirty (30) business days after receipt of written notice of non-payment from the Authority.

B. Default in the timely performance of any other term, liability, obligation, covenant or agreement of Rail Operator and in failure to cure within thirty (30) days of written notice from the Authority notifying Rail Operator of the default.

C. If Rail Operator transfers substantial control of Rail Operator's assets or Rail Operator's business operations or activity to any other entity without prior written consent of the Authority.

D. If Rail Operator files a voluntary petition for bankruptcy or otherwise seeks the benefit of any bankruptcy, reorganization, arrangement, or insolvency law or makes a general assignment for the benefit of creditors.

E. The discovery of any material misrepresentation or fraudulent statement made to the Authority in connection with any lease or other application or forms submitted to the Authority in connection with this Lease or the Locomotives, including the response to the RFP and Agreement, following written notice by Authority and a failure by Rail Operator to explain the matter to the Authority's satisfaction within thirty (30) calendar days.

F. If Rail Operator uses or permits the use of the Locomotive(s) by anyone else not approved by the Authority or in violation of any law, rule, or regulation.

G. A lapse in coverage occurs with respect to any insurance required by this Lease or the Authority is not timely provided with any documentation required in this Lease with respect to such insurance.

H. If Rail Operator is placed on the convicted vendor list, pursuant to section 287.133, Florida Statutes, as may be amended from time to time.

I. If the Rail Operator is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, that has business operations in Cuba or Syria or participates in a boycott of Israel.

14. REMEDIES UPON DEFAULT. Upon the occurrence of any Event of Default or at any time hereafter, the Authority, in its sole and absolute discretion, may take any one or more of the following actions with respect to the Locomotives:

- A. Declare all unpaid amounts of rent to be immediately due and payable.
- B. Terminate the Lease of any or all Locomotives by providing written notice to Rail Operator.
- C. Require that Rail Operator shall, upon written demand by the Authority and at Rail Operator's expense, promptly make available to the Authority, any one or all Locomotives at a place designated by the Authority.
- D. Proceed by appropriate action either at law or in equity to enforce performance by Rail Operator of the applicable covenants of this Lease or to recover damages for the breach of the Lease or to rescind the Lease of any Locomotive(s).
- E. Exercise any and all rights and remedies available to the Authority under any applicable law. In addition, Rail Operator shall be charged with and shall pay to the Authority all reasonable costs and expenses the Authority incurred as a result of each Event of Default by Rail Operator.

None of the rights and remedies in this paragraph is intended to be exclusive, but each such right or remedy shall as to each Locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to the Authority at law or in equity. Any repossession or subsequent sale or lease by the Authority of any Locomotive(s) shall not bar an action against Rail Operator for a deficiency. To the extent permitted by applicable law, **RAIL OPERATOR WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY THE AUTHORITY AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY RAIL OPERATOR.**

Without limitation of any rights of the Authority otherwise existing or otherwise available to the Authority, it is expressly covenanted and agreed by the Parties that in the event of any assignment by operation of law of this Lease, or of an adjudicated bankruptcy of Rail Operator within the meaning of the Federal Bankruptcy Act, then the Authority may, at the Authority's election, terminate this Lease upon five (5) days prior written notice to Rail Operator.

16. INSOLVENCY. If Rail Operator becomes insolvent or bankruptcy proceedings are begun by or against Rail Operator, and within sixty (60) days thereof, Rail Operator fails to secure a discharge thereof, or if Rail Operator should make an assignment for the benefit of creditors before the end of the term of this Lease, it shall be an Event of Default under this Lease. The Authority may elect to accept rent and other required compensation from the receiver, trustee or other judicial officer during the term of their authority in their fiduciary capacity, without affecting the Authority's rights under this Lease, but no receiver, trustee, or other judicial officer will have any right, title, or interest in the Locomotives.

17. LEASE ADMINISTRATION. The Authority authorizes the Executive Director of Port Manatee, or his designee, to administer the terms and conditions of this Lease on behalf of the Authority and to make all managerial decisions on behalf of the Authority as they relate to the provisions of this Lease.

18. PUBLIC RECORDS. Pursuant to section 119.0701, Florida Statutes, for any tasks performed by Rail Operator on behalf of the Authority, Rail Operator shall: (a) keep and maintain all public records, as that term is defined in chapter 119, Florida Statutes ("Public Records"), required by the Authority to perform the work contemplated by this Lease; (b) upon request from the Authority's custodian of public records, provide the Authority with a copy of the requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided in chapter 119, Florida Statutes, or as otherwise provided by law; (c) ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Lease and following completion or termination of this Lease, if Rail Operator does not transfer the records to the Authority in accordance with (d) below; and (d) upon completion or termination of this Lease, (i) if the Authority, in its sole and absolute discretion, requests that all Public Records in possession of Rail Operator be transferred to the Authority, Rail Operator shall transfer, at no cost, to the Authority, all Public Records in possession of Rail Operator within thirty (30) days of such request or (ii) if no such request is made by the Authority, Rail Operator shall keep and maintain the Public Records required by the Authority to perform the work contemplated by this Lease. If Rail Operator transfers all Public Records to the Authority pursuant to (d)(i) above, Rail Operator shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements within thirty (30) days of

transferring the Public Records to the Authority and provide the Authority with written confirmation that such records have been destroyed within thirty (30) days of transferring the Public Records. If Rail Operator keeps and maintains Public Records pursuant to (d)(ii) above, Rail Operator shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Authority, upon request from the Authority's custodian of public records, in a format that is compatible with the information technology of the Authority. If Rail Operator does not comply with a Public Records request, or does not comply with a Public Records request within a reasonable amount of time, the Authority may terminate this Lease and pursue any and all remedies available in law or equity including, but not limited to, specific performance. The provisions of this section only apply to those tasks in which Rail Operator is acting on behalf of the Authority.

IF THE RAIL OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RAIL OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS LEASE, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Telephone number: (941) 722-6621; E-mail address: Tdaughtery@portmanatee.com; Mailing address: 300 Tampa Bay Way, Suite One, Palmetto, Florida 34221.

19. **FEDERAL MARITIME COMMISSION REQUIREMENTS.** If it is determined by the Federal Maritime Commission or by either of the Parties that this Lease is subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, the Parties, in cooperation with each other, shall promptly comply with said requirements. If the activities and operations of Rail Operator at Port Manatee pursuant to the provisions of this Lease result in a determination that Rail Operator is a marine terminal operator and if the charges, fees, rates and other income received by Rail Operator from others in connection with the activities and operations of Rail Operator as a marine terminal operation are subject to approval or filing requirements under federal laws or regulations administered by the Federal Maritime Commission, Rail Operator shall promptly comply with said requirements as a marine terminal operator including any required tariffs. If the Federal Maritime Commission by a duly entered order disapproves of any of the provisions of this Lease subject to the jurisdiction or

regulations of the Federal Maritime Commission, the particular disapproved provisions shall be deemed null and void and of no force and effect, with all of the remaining provisions of this Lease remaining in full force and effect.

20. **ATTORNEYS' FEES.** In the event of legal action or other proceeding arising under this Lease, the prevailing party shall be entitled to recover from the adverse party all its reasonable attorneys' fees and costs incurred by the prevailing party in the prosecution or defense of such action, or in any post-judgment or collection proceedings and whether incurred before suit, at the trial level or at the appellate level. This shall include any bankruptcy proceedings. The prevailing party also shall be entitled to recover any reasonable attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining the amount of attorneys' fees and costs due to the prevailing party. The reasonable costs to which the prevailing party will be entitled include costs that are taxable under any applicable statute, rule, or guideline, as well as costs of investigation, copying costs, electronic discovery costs, mailing and delivery charges, costs of conducting legal research, consultant and expert witness fees, travel expenses, court reporter fees and mediator fees, regardless of whether such costs are taxable under any applicable statute, rule or guideline.

21. **MISCELLANEOUS.**

- A. Amendments. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the Parties.
- B. Waiver or Delay. No delay or omission by the Authority in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by the Authority of any Event of Default by Rail Operator shall not be construed as a waiver of any future occasion.
- C. Notice. All notices required or made pursuant to this Lease shall be made in writing and must be delivered by email (with a requirement that the recipient acknowledge receipt), third party overnight courier (including overnight couriers' services such as Federal Express) or Certified Mail, Return Receipt Requested, postage paid addressed to the party to whom notice is given at the following addresses:

To the Authority:

Manatee County Port Authority.

Address: Attention: Executive Director
300 Tampa Bay Way, Suite One
Palmetto, Florida 34221

Telephone: (941) 722-6621

Facsimile: (941) 729-1463

Email: cbuqueras@portmanatee.com

Copy to: Port Counsel
Bryant Miller Olive P.A.
201 North Franklin Street, Suite 2700
Tampa, FL 33602

Telephone: (813) 273-6677

Email: jcowan@bمولaw.com

To the Rail Operator:

Port Manatee Railroad LLC

Alfred Sauer

550 South Broad Street, Kennett Square, PA 19348

Email: asauer@regional-rail.com

Telephone: (610) 925-0131

or to such other address as either party may, from time to time designate to the other in writing.

- D. Governing Law. This Lease shall be construed by and controlled under the laws of the State of Florida. The Parties consent to jurisdiction over them in the State of Florida and agree that venue for any state action arising under this Agreement shall lie solely in the courts located in Manatee County, Florida, and for any federal action shall lie solely in the United States District Court for the Middle District of Florida.
- E. No Third Party Beneficiaries. This Lease is entered into solely for the benefit of the Parties and shall not be construed as a benefit to any third parties, including but not limited to the general public, constituents or citizens of the Authority, nor shall it be construed as enforceable by any third parties.
- F. Authority. The Parties represent and warrant that each is authorized to enter into this Lease without the consent and joinder of any other party and that the

individuals executing this Lease have full power and authority to bind their respective party to the terms hereof.

- G. Severability. If any term, covenant, condition or provision (or part thereof) of this Lease or the application thereof to any person or circumstances shall, at any time or to any extent, be judicially determined to be invalid or unenforceable, the remainder of this Lease or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. It is understood that the Authority shall not be subject to any liability to the Rail Operator in the event any term herein is found to be invalid or unenforceable.
- H. Mutual Drafting. This Lease is the product of mutual drafting, each party having been represented by or having the opportunity to be represented by counsel, and therefore shall not be construed against either party.
- I. Entire Agreement. This Lease sets forth the entire agreement between the Parties as to the subject matter hereof and supersedes all previous written or oral negotiations, agreements, bids, and/or understandings.
- J. Counterparts; Signatures. This Lease will become effective upon the Effective Date if the Lease has been executed by all of the undersigned. This Lease may be executed in counterparts, each of which constitutes an original and all of which together will constitute one and the same instrument. This Lease may be executed by electronic signature technology and such electronic signature shall act as the Parties' legal signatures on this Lease and shall be treated in all respects as an original handwritten signature.

The remainder of this page is left blank intentionally.

IN WITNESS WHEREOF, the Parties have caused this Locomotives Lease Agreement to be duly executed this 21st day of October, 2021.

ATTEST: ANGELINA "ANGEL" COLONNESO
Clerk of Circuit Court

MANATEE COUNTY PORT
AUTHORITY

By: _____

By: _____

Chairman
PORT AUTHORITY

WITNESSES:

PORT MANATEE RAILROAD LLC

s/ _____

Print name:

s/ _____

Print name:

By:  _____

Printed: Alfred M Sauer

Title: President & CEO

RAIL OPERATOR

SCHEDULE "1"

This Schedule incorporates the terms and conditions of the above referenced Locomotive Lease Agreement and shall supersede those terms which are affected.

Unit Numbers and Models: NRE 2GS14B Gen Set Switch Engines, 1001 and 1011

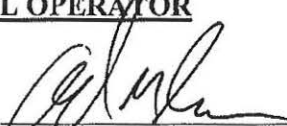
Quantity: Two (2)

Rent Rate: for two Locomotives per month paid
in arrears, together with any applicable Florida sales taxes
on said rent.

Casualty Value: NRE 2GS14B Gen Set Switch Engines 1001 =
NRE 2GS14B Gen Set Switch Engines 1011 =
Values will be depreciated based on straight line method.

Warranty: No Warranty

RAIL OPERATOR

BY: 
NAME: Alfred M Sauer
TITLE: President
DATE: 10/20/21

AUTHORITY

BY: _____
NAME: _____
TITLE: _____
DATE: _____

CERTIFICATE OF ACCEPTANCE

The undersigned, a duly authorized representative of the _____
(Railroad Operator) does hereby certify that (s)he has caused to be inspected and, on the date set
forth below, has accepted on behalf of Railroad Operator the following described locomotives,
which are in good order, condition and repair and conform in all material respects to terms,
provisions, requirements and standards of the Locomotives Lease Agreement dated
_____, 2021 by and between the Manatee County Port Authority
("Authority") and the _____ as Railroad Operator.

Locomotive Number: (Model) _____

Locomotive Number: (Model) _____

Authorized Representative:

Printed: _____

Signed: _____

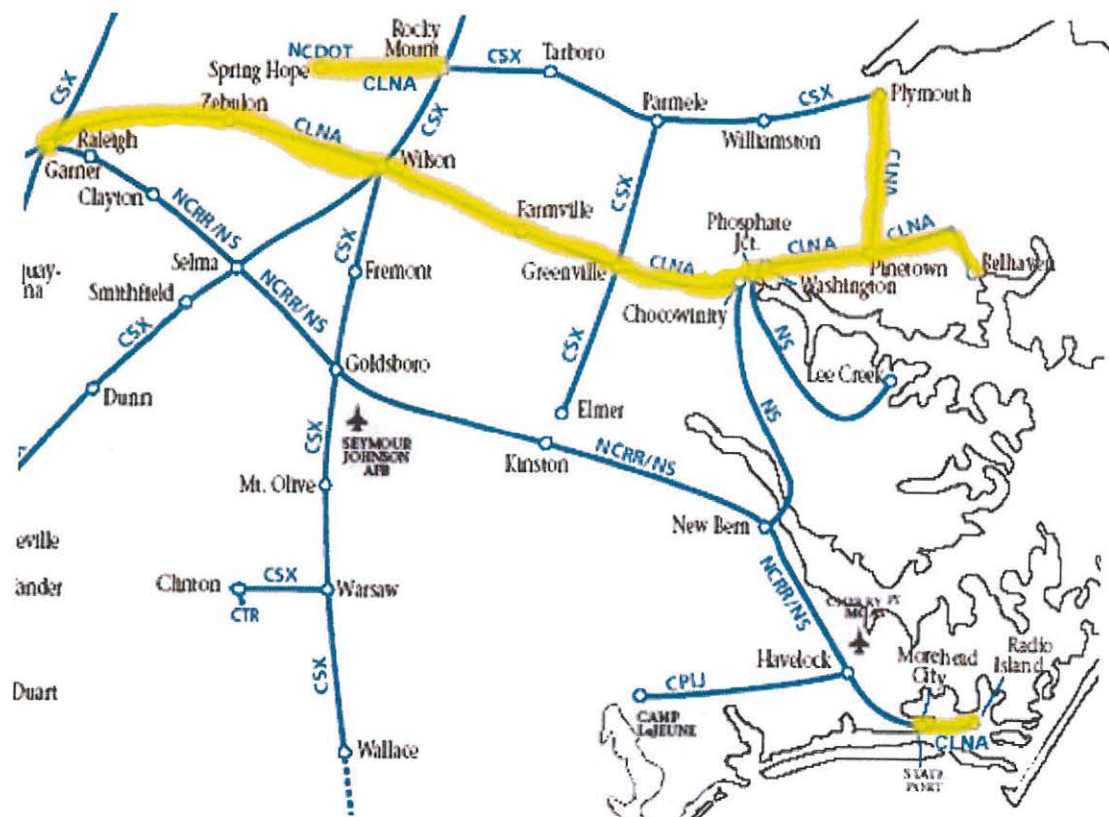
Dated: _____

EXHIBIT B—MAPS

8

PORT MANATEE RAILROAD LLC - MAP





Regional Rail, LLC

