


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Robert Johnson 
Manager of Procurement

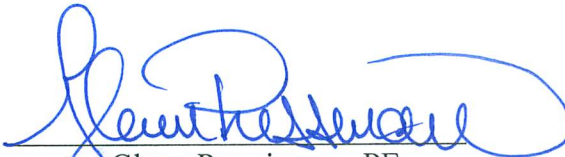
DATE: March 29, 2016

SUBJECT: Approval of Railroad Agreement in Support of
S.R. 453 (Wekiva Parkway) from Orange/Lake County Line to SR 46
Project 429-206, Contract No. 001138
Contract No. 001198

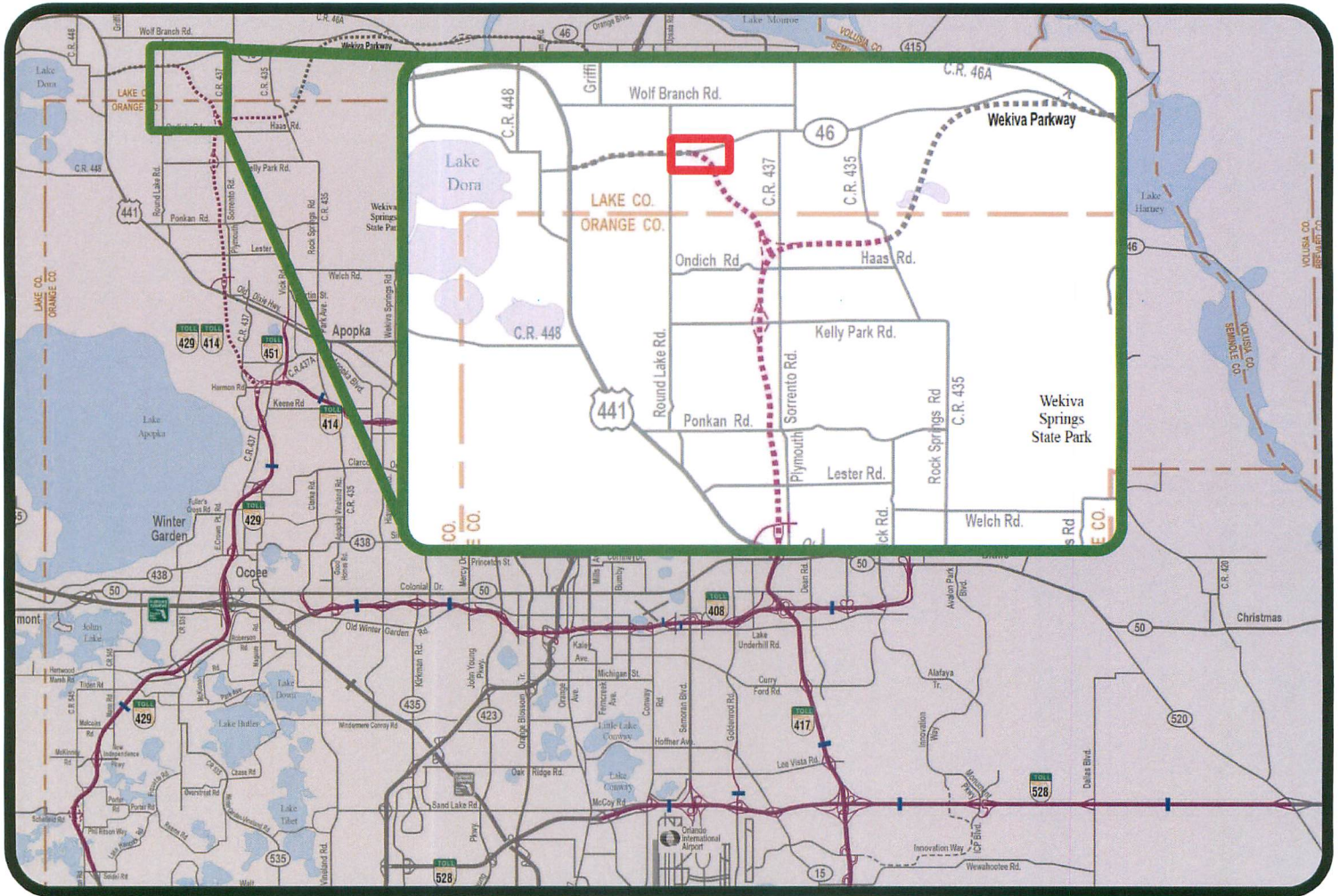
Board approval is requested for CFX to enter into an agreement with Florida Central Railroad Company Inc. (FCRR) to facilitate construction of S.R. 453 (Wekiva Parkway) over property owned by CSX and leased to FCRR. This agreement details the payment of fees to FCRR from CFX associated with flagging operations, inspection, administration and management that will be required as part of the construction of this project within railroad property.

Execution of a Railroad Agreement with FCRR is required by the Federal Highway Administration (FHWA) as part of the project documentation prior to FHWA's approval to move forward into the construction phase.

Reviewed by:


Glenn Pressimone, PE
Director of Engineering





Project Location Map for
S.R. 453 (Wekiva Parkway) from Orange/Lake County Line to S.R. 46 (429-206)

AGREEMENT FOR RAILROAD PROPERTY AND
PAYMENT OF ~~FLAGGING~~ FEES AND COSTS

THIS AGREEMENT, made this ____ day of ~~April~~, 2016 by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a public corporation and an agency of the State of Florida ("Expressway Authority"), and FLORIDA CENTRAL RAILROAD COMPANY, INC., a Florida corporation (the "Railroad").

RECITALS:

WHEREAS, Railroad occupies and uses ~~the~~ certain railroad rights of way and facilities in Lake County, Florida (the "Railroad Property") owned by CSX Transportation, Inc. (~~the~~ "CSX Transportation"), pursuant to a certain Conditional Lease by and between CSX Transportation and Railroad dated November 21, 1986 and Supplemental Agreement dated July 30, 1987, as reflected in the Memorandum of Lease recorded in Official Records Book 1465, Page 0484, Public Records of Lake County, Florida.

WHEREAS, the Expressway Authority acquired Parcels 827 ~~and~~ /727, for a permanent easement and temporary construction easement, ~~respectively~~, on or about November 13, 2015, pursuant to a deposit made in accordance with an Order of Taking, in connection with the construction of the Wekiva Parkway, Project 429-206, (the "Project"), including the construction of bridges and appurtenances over and upon the Railroad Property as more particularly described on composite **Exhibit "A"** attached hereto and incorporated by reference herein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the Expressway Authority and the Railroad as follows:

Section 1. Plans and Specifications. The plans and specifications prepared by the Expressway Authority or its consultant and approved by the Railroad for the construction of the aforesaid Project are identified as 429-206 100% Plans dated June 2015 and referred to as the "100% Plans." The approved-for Construction Plans involving the portion relating to the crossing of said Railroad Property by the Project will not be materially changed from the 100% Plans. That portion of the approved-for Construction Plans relating to the crossing of said Railroad Property by the Project, together with any revisions and additions thereto, will be reviewed by the Railroad and any comments will be provided to the Expressway Authority, who shall consider and respond to the comments. ~~In the event that pedestrian or bicycle traffic is allowed on any of the CFX bridges over Parcel 827, appropriate fencing or other type of barrier shall be required and installed at no cost to the Railroad.~~

Section 2. Reiteration of Expressway Authority's Parcel 827 Easement Interest and Parcel 727 Temporary Construction Easement ("TCE") Interest and Payment of Costs. Pursuant to the deposit made in accordance with the Order of Taking in eminent domain, the Expressway

Authority obtained from CSX Transportation the permanent easement and temporary construction easement interests set forth on **Exhibit "A"**. The permanent easement shall run with the land in perpetuity, and shall be binding upon the successors and assigns of CSX Transportation and Railroad, for the use and benefit of the Expressway Authority, and its successors and assigns.

2.1 Parcel 727: Temporary Construction Easement ("TCE"). The TCE shall run for a period of twenty (20) months from the date of commencement of the Project and no longer, subject, however, to written extension. The TCE includes: (a) a temporary nonexclusive right of entry through, on, under, over and upon those parcels of the Railroad Property as shown on the 100% Pre-Bid Plans for the construction of Project; (b) necessary temporary nonexclusive rights of ingress to and egress from land upon which the aforesaid right of entry is granted, on adjoining lands of the Railroad, excluding, however, any grade crossing, provided such rights of ingress and egress shall be exercised along such routes and upon such terms as may be defined and imposed by the Railroad's General Manager or his Authorized representative; and (c) temporary construction easements for the purpose of the construction of the aforesaid described Project.

~~Upon receipt of a proper invoice, the Expressway Authority shall pay Railroad flagging fees while the Project is under construction and the TCE is being used in the amount of \$_____ per occurrence or Railroad's then-prevailing rates for such items, whichever is lower, as needed when cars are crossing the property described on **Exhibit "A."**~~

~~In addition to flagging fees, and upon receipt of a proper invoice, the Expressway Authority will pay all inspection, administration and management fees, and additional costs consisting of:~~

- ~~• Administration costs at 18% of all third-party invoices related to the Project to cover but not limited to:
 - Administration of agreements; review & processing;
 - Accounting Functions; tracking, paying, invoicing, and reconciling; and
 - Coordination of work.~~
- ~~• The cost of train delays or movements as follows:
 - \$195/hour for each train delay;
 - \$1560 minimum for an 8-hour period;
 - A delay over 8 hours at a cost of \$95/hour (based on published Tariff for movements).~~
- ~~• Loss of revenue in an amount not to exceed \$_____, to be calculated at \$3.75 per day for each railroad car unable to be stored due to a loss of needed storage capacity.~~
- ~~• The cost of safety protection including the cost of flagging derails at \$500/each (Note: active rate is \$746/day for active tracks)~~
- ~~• The cost of oversight in an amount not to exceed \$_____, including:
 - Weekly meeting attendance during construction (For a 20-month project, there would be 160 meetings): _____~~

○ The cost of inspection by Railroad:

Railroad will execute and deliver to the Expressway Authority a release from liability for all ~~such~~ condemnation damages and compensation substantially in the form and content attached hereto as **Exhibit "B."** ~~The Railroad shall provide the Expressway Authority with a minimum of 48 hours prior notice of each occurrence requiring flagging and provide an invoice with sufficient detail and backup to support the amount due. It is understood that the Expressway Authority has reimbursed or will reimburse Railroad for its preliminary engineering relating to review and coordination of the Pre-Bid Plans dated November 2015 in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000), upon receipt of proper invoices.~~

2.2 Parcel 827: Perpetual Easement. The Perpetual Easement for the location, construction and maintenance of said Project to be built wholly or partly on the Railroad Property is shown on the ~~100% Pre-Bid~~ Plans, which Parcel is identified and distinguished as a permanent easement on the ~~100% Pre-Bid~~ Plans, as well as an exclusive air rights easement for the overhead occupation. The Expressway Authority has furnished to Railroad descriptions, sketches of descriptions and plan sheets for said nonexclusive easement parcels.

2.3 Rights Reserved By Railroad. Railroad shall retain unto itself, its successors, assigns and licensees, all rights, including, but not limited to, those which it now deems, or from time to time may deem, desirable or necessary for its operations or the operations of its successors, assigns, and licensees as they now are or may lawfully be engaged in from time to time, and in order to be enabled to construct, reconstruct, relocate, operate, maintain, repair, renew and remove such of its facilities as now are, or such additional facilities as the Railroad or its successors, assigns, and licensees may deem desirable or necessary to be located in, upon, over, under or across the land involved, so long as such use and occupancy do not interfere with the land's use for the purposes of the Project as contemplated herein. Any proposed use of said land by the Railroad in a manner which ~~would interfere with may be detrimental to~~ the land's use for the Project and its purposes shall require the written approval of the Expressway Authority. Railroad shall have the right to remove and relocate or otherwise dispose of as Railroad shall determine in its discretion all rails, rail ties and appurtenant structures and improvements lying within the Railroad Property and appurtenant corridors. The Expressway Authority acknowledges that Railroad is a common carrier by rail with certain rights and obligations under federal law, and that the Railroad Property and Railroad's operations thereon are subject to the jurisdiction of the U.S. Surface Transportation Board and the Federal Railroad Administration.

2.4 Maintenance of Easements. ~~The parties agree that the Project shall be constructed, maintained, repaired, renewed, reconstructed and/or removed in accordance with the provisions contained in this Agreement, and the approved for construction Plans and Specifications for the said Project, which Agreement and approved for construction Plans and Specifications are to be on file in the respective offices of the parties; and the provisions of the said Agreement shall survive the vesting of title. It is the intent of the parties hereto to confirm to the Expressway Authority the identical easements which the Expressway Authority acquired through the condemnation proceedings.~~ The provisions of this Agreement shall survive the vesting of title.

Section 3. Construction of Project

3.1 The Project shall be constructed, maintained, repaired, renewed, reconstructed and/or removed in accordance with the provisions contained in this Agreement, and the approved-for -Construction Plans and Specifications for the said Project, which Agreement and approved-for -Construction Plans and Specifications are to be on file in the respective offices of the parties.

3.2 The Project shall be constructed in accordance with CSX Transportation's Criteria for Overhead Bridges, dated September 14, 2007 (the "Overhead Bridge Criteria"), attached hereto as Exhibit "C" and made a part hereof, provided, however, that Section V of the Overhead Bridge Criteria shall not apply if pedestrian or bicycle traffic is not permitted on the Expressway Authority's roadway bridges over the Railroad Property. In the event that pedestrian or bicycle traffic is allowed on either Expressway Authority bridge over Parcel 827, appropriate fencing or other type of barrier shall be required and installed at no cost to the Railroad.

3.3 The Project Shall be constructed in accordance with the Florida Central Railroad Special Provisions (the "FCEN Special Provisions"), attached hereto as Exhibit "D" and made a part hereof.

3.4 The parties acknowledge that Railroad currently utilizes the Railroad Property for the storage of railcars. While the Project is under construction and the TCE is being used, Railroad will create a 400-foot safe zone, as delineated on the drawing attached hereto as Exhibit "E", from which stored railcars will be removed and on which railroad operations will not be conducted without prior notice from the Railroad to the Expressway Authority and its contractor (the "Contractor") in accordance with the provisions of Section 3.5. Railroad will install track derails at each end of the safe zone.

3.5 In the event that Railroad desires to move locomotives, railcars or trains across the Railroad Property while the Project is under construction and the TCE is being used, Railroad shall provide 48-hours prior notice to the Expressway Authority and the Contractor and shall provide, at the Expressway Authority's expense, appropriate flagging protection for such movements.

Section 43. Requirements For Contractor. The Expressway Authority shall require its contractor (the "Contractor"):

4.13.1 To perform all work in connection with the construction of the Project upon or adjacent to the Railroad Property in accordance with the provisions of this Agreement, the approved-for Construction Plans for the Project, the Overhead Bridge Criteria and the FCEN Special Provisions, the approved-for construction Plans and Specifications for the Project; and CSX Transportation's Criteria for Overhead Bridges, dated September 14, 2007, attached hereto as Exhibit "C" and made a part thereof; and in a manner agreeable to the Railroad's General Manager or his authorized representative.

4.23.2 To use at all times reasonable care and diligence to cooperate with officials of the Railroad in order to avoid accidents, damages or unnecessary delay to, or interference with trains of the Railroad. The Contractor ~~is prohibited from shall perform no work by~~ operating, ~~or from placing equipment or material~~, upon the Railroad's tracks ~~or rails~~, and shall not place or operate any equipment, nor place any material closer than the ~~following~~ minimum construction clearances as shown in the approved ~~for Construction~~ Pplans without first obtaining approval from the Railroad's General Manager or his authorized representative.

4.33.3 To remove, upon completion of the work and before final payment is made, from within the limits of the Railroad Property, all machinery, equipment, surplus material, falsework, rubbish or temporary buildings and other property of such Contractor's and to leave the said land in a condition reasonably equal to the condition prior to the construction of the Project and reasonable satisfactory to the General Manager of the Railroad or his authorized representative.

Section 5. Payment of Costs.

~~Upon receipt of a proper invoice, the Expressway Authority shall pay Railroad flagging fees while the Project is under construction and the TCE is being used in the amount of \$ _____ per occurrence or Railroad's then-prevailing rates for such items, whichever is lower, as needed when cars are crossing the property described on Exhibit "A."~~

~~and u~~Upon receipt of a proper invoice, ~~with sufficient detail and backup to support the amount due,~~ the Expressway Authority ~~shall will~~ pay Railroad the following costs incurred by the Railroad in connection with the Project: ~~all inspection, administration and management fees, and additional costs consisting of:~~

- ~~For flagging, the amount of Sixteen Hundred Dollars (\$1,600) per occurrence, with all events of flagging within a single calendar day counting as one occurrence.~~
- ~~Administration costs at 18% of all third-party invoices related to the Project to cover but not limited to:~~
 - ~~Administration of agreements; review & processing;~~
 - ~~Accounting Functions; tracking, paying, invoicing, and reconciling; and~~
 - ~~Coordination of work.~~
- ~~The cost of train delays in an amount of Ninety-Five Dollars (\$95) per hour for each actual train delay after the 48-hour period specified in Section 3.5.~~
- ~~rain delays or movements as follows:~~
 - ~~for each train delay;~~
 - ~~for an 8-hour period;~~
 - ~~delay over 8 hours at a cost of \$95/hour (based on published Tariff for movements).~~
- ~~Loss of revenue in an amount of Nine Hundred Fifty Dollars (\$950) per month for each month or portion thereof that the safe zone implemented pursuant to Section 3.4 remains in place, as compensation for the not to exceed \$ _____, to be calculated at~~

\$3.75 per day for each railroad car unable to be stored due to a loss of needed railcar storage capacity.

- The cost of track derails at safety protection including the cost of flagging derails at Five Hundred Dollars (\$500) /each. (Note: active rate is \$746/day for active tracks)
- The cost of oversight in an amount not to exceed Fifteen Thousand Dollars (\$15,000) \$ _____, including:
 - Actual travel expenses and a reasonable hourly charge for personnel time relating to required weekly meeting attendance before and during construction (For a 20 month project, there would be 160 meetings):
_____.
- The cost of inspection by Railroad in an amount of Two Hundred Thirty-Four Dollars and Forty-Two Cents (\$234.42) per occurrence:
_____.
- Preliminary Railroad engineering relating to review and coordination of the 100% Plans and, as necessary, the approved-for Construction Plans, in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000). The parties acknowledge that Railroad has submitted an invoice for Six Thousand Nine Hundred Nineteen Dollar and Six Cents (\$6,919.06) of such expenses, and the Expressway Authority has made payment of Five Thousand Two Hundred Ninety-One Dollars and Fifty Cents (\$5,291.50) on such invoice.

Section 64. Commencement of Work; Coordination. It is anticipated that work shall begin in May of 2016 and be completed in January 2018. Neither this paragraph nor any other provision of this Agreement shall be construed as being for the benefit of the Contractor or any other third party. Contractor shall coordinate with Railroad as needed during the construction of the Project.

Section 75. Insurance.

~~5.1 — The Expressway Authority shall will require its Contractor to purchase at no cost to Railroad and to maintain until work on the Project is completed and accepted; insurance policies that satisfy the requirements of Section XIV of the FCEN Special Provisions. Railroad Protective Liability Insurance in a combined single limit of \$5,000,000 for all personal injury and property damage per occurrence, subject to an aggregate limit of \$10,000,000 per annual policy period. The policy of insurance shall name the Expressway Authority and Railroad as the named insureds. A copy of the policy shall be sent to Railroad prior to Contractor's entry on the job site.~~

~~5.2 — The Expressway Authority shall also require its Contractor(s) to procure and maintain throughout the Project a Commercial General Liability Policy on a form no more restrictive than the latest edition of the commercial General Liability Policy filed by the Insurance Services Office and must include minimum limits of \$5,000,000 per occurrence and \$10,000,000 aggregate for bodily injury liability and a minimum limit of \$5,000,000 for property~~

~~damage liability or \$10,000,000 aggregate. The Expressway Authority and Railroad shall be specifically named as additional insureds. A copy of the policy shall be sent to Railroad prior to any work being performed on the Railroad Property.~~

Section 86. Continuing Maintenance. Upon completion of the Project herein contemplated, the Expressway Authority shall maintain, repair and renew, at its expense, all parts of the Wekiva Parkway built or changed under the terms of this Agreement. ~~Expressway Authority structures located on and above the Railroad right-of-way shall be maintained in good repair and so as not to interfere with Railroad operations. Any future entrance by Expressway Authority or its contractors onto Railroad Property to conduct inspection, maintenance or rehabilitation of Wekiva Parkway structures shall be subject to the prior approval of Railroad, which shall be reasonably provided. The Railroad shall, at its cost and expense, maintain its facilities altered or changed as a part of this Project.~~

Section 97. Binding Agreement. This Agreement, when properly executed, shall be binding upon the parties hereto, their successors and assigns.

Section 108. Notices.

10.18.1 All notices on the part of the Expressway Authority to Railroad shall be given in writing to the General Manager, FLORIDA CENTRAL RAILROAD COMPANY, INC., P.O. Box 967, Plymouth, FL 32768.

10.28.2 All notices, on the part of Railroad to the Expressway Authority, shall be given in writing to Executive Director, CENTRAL FLORIDA EXPRESSWAY AUTHORITY, 4974 ORL Tower Road, Orlando, Florida 32807.

Section 119. Captions. All titles or captions are inserted only for convenience and they in no way shall be construed to define, limit or describe the scope of this Agreement or any provision thereof.

Section 1210. Severability. If any clause or provision of this Agreement shall be deemed to be invalid or unenforceable under present or future laws, then, in that event it is the intention of the parties that the remainder of this Agreement shall not be affected thereby.

Section 1311. Choice Of Law. This instrument is being delivered and is intended to be performed in the state of Florida and shall be construed and enforced in accordance with the laws of that state. Any aggrieved party may proceed to enforce its rights in the appropriate action at law or in equity. Venue for all suits arising out of this instrument shall lie exclusively in the Courts of Orange County, Florida. By execution or adoption of this agreement, each party hereby submits itself to the in personam and exclusive jurisdiction of the Courts of Florida.

Section 1412. This Agreement ~~along with the Florida Central Railroad Special Provisions~~ resolves all compensation to the Railroad arising out of the use of the permanent easement and temporary construction easement, designated as Parcels 827 and 727, against the Central Florida Expressway Authority. The provisions of 23 C.F.R., subpart B and 23 C.F.R., part

140, subpart I, are incorporated by reference. The Railroad agrees to cooperate with the Expressway Authority and execute a mutually agreeable Stipulated Final Judgment.

IN WITNESS WHEREOF, the ~~Central Florida~~ Expressway Authority and the Railroad have caused their names to be signed and seals affixed by their duly authorized officials as of the date hereof:

WITNESSES FOR EXPRESSWAY
AUTHORITY

CENTRAL FLORIDA
EXPRESSWAY AUTHORITY

By: _____

Name: _____

Title: _____

WITNESSES FOR RAILROAD

FLORIDA CENTRAL RAILROAD
COMPANY, INC.

By: _____

Name: _____

Title: _____

Exhibit "A." Description of Properties

Exhibit "B." Release

Exhibit "C." CSX Transportation's Criteria for Overhead Bridges, dated September 14, 2007

Exhibit "D." Florida Central Railroad Special Provisions

Exhibit "E." Sheet Showing Safe Zone

Exhibit "B"

RELEASE

THIS RELEASE ("Release") is given by **FLORIDA CENTRAL RAILROAD COMPANY, INC.**, a Florida corporation (the "Railroad") to and in favor of the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY** ("Authority"). (Railroad and Authority shall include singular and plural, heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

RECITALS:

WHEREAS, Railroad occupies and uses the certain railroad rights of way and facilities in Lake County, Florida (the "Railroad Property") owned by CSX Transportation, Inc. (the "CSX Transportation"); pursuant to a certain Conditional Lease by and between CSX Transportation and Railroad dated November 21, 1986 and Supplemental Agreement dated July 30, 1987, as reflected in the Memorandum of Lease recorded in Official Records Book 1465, Page 0484, Public Records of Lake County, Florida.

WHEREAS, the Authority acquired Parcels 827/727, for a permanent easement and temporary construction easement, on or about November 13, 2015, pursuant to a deposit made in accordance with an Order of Taking, in connection with the construction of the Wekiva Parkway, Project 429-206, (the "Project"), including the construction of bridges and appurtenances over and upon the Railroad Property as more particularly described on composite **Exhibit "A"** attached hereto and incorporated by reference herein.

WHEREAS, pursuant to that certain Agreement for Railroad Property and Payment of ~~Flagging Fees~~ and Costs, dated April _____, 2016 (the "~~Railroad Agreement~~"), by and between the Railroad and the Authority, it was agreed that in consideration for the payments to Railroad set forth in the Agreement, that Railroad would execute and deliver to Authority a release from liability for all such condemnation damages ~~dan-lages~~ and compensation.

NOW, THEREFORE, Railroad, for and in consideration the terms and conditions of the Agreement and payment by Authority to Railroad, Railroad hereby releases and forever discharges Authority, its members, directors, officers and agents, of and from causes of action, suits, claims, debts, agreements, damages, including business or severance damages, and demands whatsoever, in law or equity, including attorney's fees, whether based upon monetary or non-monetary claims, relating to Authority's acquisition of its interests in the Railroad Property ~~and any leasehold or other interest therein~~. Nothing herein shall be deemed to release Authority from any obligations under the Agreement or any agreements between Railroad and Authority related thereto nor to waive or release any claim for damages incurred by Railroad or its property arising out of construction, operation, maintenance or repair of the Project by Authority, its employees, agents or contractors.

IN WITNESS WHEREOF, Railroad has executed this Release this _____ day
of April _____, 2016.

WITNESSES FOR RAILROAD	FLORIDA CENTRAL RAILROAD COMPANY, INC.
_____ _____ _____	By: _____ Name: _____ Title: _____ (CORPORATE SEAL)

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of April, _____
2016, by _____ of **FLORIDA**
CENTRAL RAILROAD COMP-ANY, a Florida corporation, as its _____
_____, who is personally known to me or who has produced _____
_____ as identification and who did take an oath.

WITNESS my hand and official seal in the County and State last aforesaid.

Notary Public

Printed Name

FLORIDA CENTRAL RAILROAD SPECIAL PROVISIONS

DEFINITIONS:

As used in these Special Provisions, all capitalized terms shall have the meanings ascribed to them by the Agreement, and the following terms shall have the meanings ascribed to them below:

“FCEN” shall mean Florida Central Railroad Company, Inc., its successors and assigns.

“FCEN Representative” shall mean the authorized representative of FCEN ~~Florida Central Railroad~~.

“Agreement” shall mean the Agreement for Railroad Property and Payment of Fees and Costs between Agency and FCEN ~~and Agency~~ dated as of April _____, 2016~~4~~ as amended from time to time.

“Agency” shall mean the Central Florida Expressway Authority (CFX).

“Agency Representative” shall mean the authorized representative of CFX.

“Contractor” shall have the meaning ascribed to such term by the Agreement.

“Work” shall mean the Project as described in the Agreement.

- I. **AUTHORITY OF FCEN ENGINEER.** The FCEN Representative shall have final authority in all matters affecting the safe maintenance of FCEN operations and FCEN property, and his or her approval shall be obtained by the Agency or its Contractor for methods of construction to avoid interference with FCEN operations and FCEN property and all other matters contemplated by the Agreement and these Special Provisions.
- II. **INTERFERENCE WITH FCEN OPERATIONS.**
 - A. Agency shall cause its Contractor to arrange and conduct its work so that there will be no interference with FCEN operations, including train, signal, telephone and telegraphic services, or damage to FCEN’s property, or to poles, wires, and other facilities of tenants on FCEN’s Property or right-of-way, except for work to be performed in the easement areas described as Parcels 727 and 827 as set forth in the approved-for Construction Pplans. Agency shall cause its Contractor to store materials so as to prevent trespassers from causing damage to trains, or FCEN Property. Whenever Work is likely to affect the operations or safety of trains, the method of doing such Work shall first be submitted to the FCEN Representative for approval, but such approval shall not relieve Agency’s Contractor from liability in connection with such Work. FCEN’s approval shall be provided to Agency or its Contractor in a commercially reasonable time frame to prevent delay to the Project.
 - B. If conditions arising from or in connection with the Project require that immediate and unusual provisions be made to protect train operation or FCEN’s property,

Agency or its Contractor shall make such provision. If the FCEN Representative determines that such provision is insufficient, FCEN may, at the expense of Agency or its Contractor, require or provide such provision as may be deemed necessary, or cause the Work to cease immediately after notifying Agency or its Contractor of the insufficient provisions and allowing Agency or Contractor an opportunity to respond, unless such notice is not possible.

III. NOTICE OF STARTING WORK. Agency or its Contractor shall not commence any work on FCEN Property or rights-of-way until it has complied with the following conditions:

- A. Notify FCEN in writing of the date that it intends to commence Work on the Project. Such notice must be received by FCEN at least ten (10) business days in advance of the date Agency or its Contractor proposes to begin Work on FCEN property. The notice must refer to this Agreement by date. If flagging service is required, such notice shall be submitted at least ten (10) business days in advance of the date scheduled to commence the Work.
- B. Obtain authorization from the FCEN Representative to begin Work on FCEN property, such authorization to include an outline of specific conditions with which it must comply. Authorization from FCEN Representative to be provided as needed and will not be unreasonably withheld or delayed.
- C. Obtain from FCEN the names, addresses and telephone numbers of FCEN's personnel who must receive notice under provisions in the Agreement. Where more than one individual is designated, the area of responsibility of each shall be specified.

IV. WORK FOR THE BENEFIT OF THE CONTRACTOR

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

V. HAUL ACROSS RAILROAD. No hauling is contemplated.

- A. If Agency or Contractor desires access across FCEN property or tracks at other than an existing and open public road crossing in or incident to construction of the Project, the Agency or Contractor must first obtain the permission of FCEN and shall execute a license agreement or right of entry satisfactory to FCEN, wherein Agency or Contractor agrees to bear all costs and liabilities related to such access.
- B. Agency and Contractor shall not cross FCEN's property and tracks with vehicles or equipment of any kind or character, except at such crossing or crossings as may be permitted pursuant to this section.

VI. COOPERATION AND DELAYS

- A. Agency or Contractor shall arrange a schedule with FCEN for accomplishing stage construction involving work by FCEN in the event that such work is required within the proposed Project limits. In arranging its schedule, Agency or Contractor shall ascertain, from FCEN, the lead time required for assembling crews and materials and shall make due allowance therefore
- B. Agency or Contractor may not charge any costs or submit any claims against FCEN for hindrance or delay caused by railroad traffic; work done by FCEN or other delay incident to or necessary for safe maintenance of railroad traffic; or for any delays due to compliance with these Special Provisions. The Agency, its Contractor, and FCEN agree to cooperate for the mutual benefit of each other's interests.
- C. Agency and Contractor shall cooperate with others participating in the construction of the Project to the end that all work may be carried on to the best advantage.
- D. Agency and Contractor understand and agree that FCEN does not assume any responsibility for work performed by others in connection with the Project. Agency and Contractor further understand and agree that they shall have no claim whatsoever against FCEN for any inconvenience, delay or additional cost incurred by Agency or Contractor on account of operations by others.

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

VIII. CONSTRUCTION PROCEDURES

A. General

1. Construction work on FCEN property shall be subject to FCEN's inspection and approval. Construction work on FCEN property done in accordance with the approved-for Construction Plans shall be deemed approved.
2. Construction work on FCEN property shall be in accord with FCEN's written outline of specific conditions and with these Special Provisions.
3. Contractor shall observe the terms and rules of the FCEN Safe Way manual, which Agency and Contractor shall be required to obtain from FCEN, and in accord with any other instructions furnished in writing by FCEN or FCEN's Representative.

B. Blasting. No blasting is contemplated, and none shall be permitted without further agreement of FCEN.

- ~~1. Agency or Contractor shall obtain FCEN Representative's and Agency Representative's prior written approval for use of explosives on or adjacent to FCEN property. If permission for use of explosives is granted, Agency or Contractor must comply with the following:~~
 - ~~a. Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of Agency or Contractor.~~
 - ~~— Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way train radios.~~
 - ~~b. No blasting shall be done without the presence of an authorized representative of FCEN. At least 10 days' advance notice to FCEN Representative is required to arrange for the presence of an authorized FCEN representative and any flagging that FCEN may require.~~
 - ~~b. Agency or Contractor must have at the Project site adequate equipment, labor and materials, and allow sufficient time, to (i) clean up (at Agency's expense) debris resulting from the blasting without any delay to trains; and (ii) correct (at Agency's expense) any track misalignment or other damage to FCEN's property resulting from the blasting, as directed by FCEN Representative, without delay to trains. If Agency's or Contractor's actions result in delay of any trains, including Amtrak passenger trains, Agency shall bear the entire cost thereof.~~
 - ~~b. Agency and Contractor shall not store explosives on FCEN property.~~
- ~~1. FCEN Representative will:~~
 - ~~b. Determine the approximate location of trains and advise Agency or Contractor of the approximate amount of time available for the blasting operation and cleanup.~~

~~e. Have the authority to order discontinuance of blasting if, in his or her opinion, blasting is too hazardous or is not in accord with these Special Provisions.~~

- IX. MAINTENANCE OF DITCHES ADJACENT TO FCEN TRACKS. Agency shall require its Contractor to maintain all ditches and drainage structures free of silt or other obstructions that may result from their operations. Agency shall require its Contractor to provide erosion control measures during construction and use methods that accord with applicable state standard specifications for road and bridge construction, including either (1) silt fence; (2) hay or straw barrier; (3) berm or temporary ditches; (4) sediment basin; (5) aggregate checks; and (6) channel lining. All such maintenance and repair of damages due to Agency's Contractor's operations shall be performed at Agency's Contractor's expense.
- X. FLAGGING / INSPECTION SERVICE
- A. FCEN has sole authority to determine the need for flagging required to protect its operations and property. In general, flagging protection will be required whenever Agency or Contractor or their equipment are, or are likely to be, working within twenty-five feet of live track or other track clearances specified by FCEN, or over tracks.
- B. Agency shall reimburse or shall cause its Contractor to reimburse FCEN directly for all costs of flagging that is required on account of construction within FCEN property shown in the Plans, or that is covered by an approved plan revision, supplemental agreement or change order.
- C. Agency shall or Agency shall cause its Contractor to give a minimum of ten (10) days' advance notice to FCEN Representative for anticipated need for flagging service. No work shall be undertaken until the flag person(s) is/are at the job site. If it is necessary for FCEN to advertise a flagging job for bid, it may take up to 90-days to obtain this service and FCEN shall not be liable for the cost of delays attributable to obtaining such service.
- D. FCEN shall have the right to assign an individual to the site of the Project to perform inspection service whenever, in the opinion of FCEN Representative, such inspection may be necessary. Agency shall or shall cause its Contractor reimburse FCEN for the costs incurred by FCEN for such inspection service. Inspection service shall not relieve Agency or Contractor from liability for its Work.
- E. FCEN shall render invoices for, and Agency shall pay for or cause its Contractor to pay for, the actual pay rate of the flagpersons and inspectors used, plus standard additives, whether that amount is above or below the rate provided in the Estimate. If the rate of pay that is to be used for inspector or flagging service is changed before the work is started or during the progress of the work, whether by law or agreement between FCEN and its employees, or if the tax rates on labor are changed, bills will

be rendered by FCEN and paid by Agency using the new rates, subject to Agency's approval. Agency or its Contractor shall perform their operations that require flagging protection or inspection service in such a manner and sequence that the cost of such will be as economical as possible.

- XI. UTILITY FACILITIES ON FCEN PROPERTY. Agency shall arrange, upon approval from FCEN, to have any utility facilities on or over FCEN Property changed as may be necessary for the Project.
- XII. CLEANUP. Agency shall cause its Contractor, upon completion of the Project, to remove from FCEN's Property any temporary grade crossings, any temporary erosion control measures used to control drainage, all machinery, equipment, surplus materials, falsework, rubbish, or temporary buildings belonging to Agency or its Contractor. Agency shall cause its Contractor, upon completion of the Project, to leave FCEN Property in neat condition, satisfactory to FCEN Representative.
- XIII. FAILURE TO COMPLY. If Agency or its Contractor violate or fail to comply with any of the requirements of these Special Provisions, (a) FCEN may require Agency or its Contractor to vacate FCEN Property; and (b) FCEN may withhold monies due Agency or its Contractor; (c) FCEN may require Agency to withhold monies due Contractor; and (d) FCEN may cure such failure, after written notice to Agency and its Contractor and a reasonable opportunity to cure, and the Agency or its Contractor shall reimburse FCEN for the cost of curing such failure.
- XIV. INSURANCE REQUIREMENTS
 - A. Insurance Policies: Agency shall cause its Contractor, if and to the extent that either is performing work on or about FCEN's property, to procure and maintain the following insurance policies:
 - 1. Commercial General Liability coverage at the cost and expense of Agency's Contractor with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name FCEN as an additional insured.
 - 2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against FCEN and its affiliates [if permitted by state law].
 - 3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name FCEN as an additional insured.
 - 4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per

occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:

- a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. FCEN must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of Contractor and Agency must be shown on the Declaration s page.
 - d. Description of operations must appear on the Declarations page and must match the Project description, including project or contract identification numbers.
 - e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
 - f. Authorized endorsements may include:
 - i. Broad Form Nuclear Exclusion - IL 00 21
 - ii. 30-day Advance Notice of Non-renewal or cancellation
 - iii. Required State Cancellation Endorsement
 - iv. Quick Reference or Index - CL/IL 240
 - g. Authorized endorsements may not include:
 - i. A Pollution Exclusion Endorsement except CG 28 31
 - ii. A Punitive or Exemplary Damages Exclusion
 - iii. A "Common Policy Conditions" Endorsement
 - iv. Any endorsement that is not named in Section 4 (e) or (f) above.
 - v. Policies that contain any type of deductible
5. All insurance companies must be A. M. Best rated A- and Class VII or better.
- ~~6. Such additional or different insurance as FCEN may require.~~
- 8.6. Insurance by Others - Require every subcontractor or other third party who may have a contract or work in conjunction with Agency or its Contractor and who may require access on, or to FCEN property to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated in paragraphs 1-4-, including causing each of the named insureds and the additional insureds stated in those paragraphs to be

named insureds and additional insureds on such subcontractor and third party policy or policies.

- B. Additional Terms: Contractor must submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Karen Kuivinen~~Judy Austerman~~
Florida Central Railroad
Insurance Department
(O) 407-880-8500
(F) 407-880-7748
~~jrob@ferr.com~~karen@pinsly.com

Neither Agency nor Contractor may begin work on the Project until it has received FCEN's written approval of the required insurance.

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**AGREEMENT FOR RAILROAD PROPERTY AND
PAYMENT OF FEES AND COSTS**

THIS AGREEMENT, made this ____ day of April, 2016 by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a public corporation and an agency of the State of Florida ("Expressway Authority"), and FLORIDA CENTRAL RAILROAD COMPANY, INC., a Florida corporation (the "Railroad").

RECITALS:

WHEREAS, Railroad occupies and uses certain railroad right of way and facilities in Lake County, Florida (the "Railroad Property") owned by CSX Transportation, Inc. ("CSX Transportation"), pursuant to a certain Conditional Lease by and between CSX Transportation and Railroad dated November 21, 1986 and Supplemental Agreement dated July 30, 1987, as reflected in the Memorandum of Lease recorded in Official Records Book 1465, Page 0484, Public Records of Lake County, Florida.

WHEREAS, the Expressway Authority acquired Parcels 827 and 727, for a permanent easement and temporary construction easement, respectively, on or about November 13, 2015, pursuant to a deposit made in accordance with an Order of Taking, in connection with the construction of the Wekiva Parkway, Project 429-206 (the "Project"), including the construction of bridges and appurtenances over and upon the Railroad Property as more particularly described on composite **Exhibit "A"** attached hereto and incorporated by reference herein.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the Expressway Authority and the Railroad as follows:

Section 1. Plans and Specifications. The plans and specifications prepared by the Expressway Authority or its consultant and approved by the Railroad for the construction of the aforesaid Project are identified as 429-206 100% Plans dated June 2015 and referred to as the "100% Plans." The approved-for Construction Plans involving the portion relating to the crossing of said Railroad Property by the Project will not be materially changed from the 100% Plans. That portion of the approved-for Construction Plans relating to the crossing of said Railroad Property by the Project, together with any revisions and additions thereto, will be reviewed by the Railroad and any comments will be provided to the Expressway Authority, who shall consider and respond to the comments.

Section 2. Reiteration of Expressway Authority's Parcel 827 Easement Interest and Parcel 727 Temporary Construction Easement Interest. Pursuant to the deposit made in accordance with the Order of Taking in eminent domain, the Expressway Authority obtained from CSX Transportation the permanent easement and temporary construction easement interests set forth on **Exhibit "A"**. The permanent easement shall run with the land in perpetuity, and

shall be binding upon the successors and assigns of CSX Transportation and Railroad, for the use and benefit of the Expressway Authority, and its successors and assigns.

2.1 Parcel 727: Temporary Construction Easement ("TCE"). The TCE shall run for a period of twenty (20) months from the date of commencement of the Project and no longer, subject, however, to written extension. The TCE includes: (a) a temporary nonexclusive right of entry through, on, under, over and upon those parcels of the Railroad Property as shown on the 100% Plans for the construction of Project; (b) necessary temporary nonexclusive rights of ingress to and egress from land upon which the aforesaid right of entry is granted, on adjoining lands of the Railroad, excluding, however, any grade crossing, provided such rights of ingress and egress shall be exercised along such routes and upon such terms as may be defined and imposed by the Railroad's General Manager or his Authorized representative; and (c) temporary construction easements for the purpose of the construction of the aforesaid described Project.

Railroad will execute and deliver to the Expressway Authority a release from liability for all condemnation damages and compensation substantially in the form and content attached hereto as **Exhibit "B."**

2.2 Parcel 827: Perpetual Easement. The Perpetual Easement for the location, construction and maintenance of said Project to be built wholly or partly on the Railroad Property is shown on the 100% Plans, which Parcel is identified and distinguished as a permanent easement on the 100% Plans, as well as an exclusive air rights easement for the overhead occupation. The Expressway Authority has furnished to Railroad descriptions, sketches of descriptions and plan sheets for said nonexclusive easement parcels.

2.3 Rights Reserved By Railroad. Railroad shall retain unto itself, its successors, assigns and licensees, all rights, including, but not limited to, those which it now deems, or from time to time may deem, desirable or necessary for its operations or the operations of its successors, assigns, and licensees as they now are or may lawfully be engaged in from time to time, and in order to be enabled to construct, reconstruct, relocate, operate, maintain, repair, renew and remove such of its facilities as now are, or such additional facilities as the Railroad or its successors, assigns, and licensees may deem desirable or necessary to be located in, upon, over, under or across the land involved, so long as such use and occupancy do not interfere with the land's use for the purposes of the Project as contemplated herein. Any proposed use of said land by the Railroad in a manner which would interfere with the land's use for the Project and its purposes shall require the written approval of the Expressway Authority. Railroad shall have the right to remove and relocate or otherwise dispose of as Railroad shall determine in its discretion all rails, rail ties and appurtenant structures and improvements lying within the Railroad Property and appurtenant corridors. The Expressway Authority acknowledges that Railroad is a common carrier by rail with certain rights and obligations under federal law, and that the Railroad Property and Railroad's operations thereon are subject to the jurisdiction of the U.S. Surface Transportation Board and the Federal Railroad Administration.

2.4 Maintenance of Easements. It is the intent of the parties hereto to confirm to the Expressway Authority the identical easements which the Expressway Authority acquired through

the condemnation proceedings. The provisions of this Agreement shall survive the vesting of title.

Section 3. Construction of Project

3.1 The Project shall be constructed, maintained, repaired, renewed, reconstructed and/or removed in accordance with the provisions contained in this Agreement, and the approved-for Construction Plans for the said Project, which Agreement and approved-for Construction Plans are to be on file in the respective offices of the parties.

3.2 The Project shall be constructed in accordance with CSX Transportation's Criteria for Overhead Bridges, dated September 14, 2007 (the "Overhead Bridge Criteria"), attached hereto as **Exhibit "C"** and made a part hereof, provided, however, that Section V of the Overhead Bridge Criteria shall not apply if pedestrian or bicycle traffic is not permitted on the Expressway Authority's roadway bridges over the Railroad Property. In the event that pedestrian or bicycle traffic is allowed on either Expressway Authority bridge over Parcel 827, appropriate fencing or other type of barrier shall be required and installed at no cost to the Railroad.

3.3 The Project shall be constructed in accordance with the Florida Central Railroad Special Provisions (the "FCEN Special Provisions"), attached hereto as **Exhibit "D"** and made a part hereof.

3.4 The parties acknowledge that Railroad currently utilizes the Railroad Property for the storage of railcars. While the Project is under construction and the TCE is being used, Railroad will create a 400-foot safe zone, as delineated on the drawing attached hereto as **Exhibit "E"**, from which stored railcars will be removed and on which railroad operations will not be conducted without prior notice from the Railroad to the Expressway Authority and its contractor (the "Contractor") in accordance with the provisions of Section 3.5. Railroad will install track derails at each end of the safe zone.

3.5 In the event that Railroad desires to move locomotives, railcars or trains across the Railroad Property while the Project is under construction and the TCE is being used, Railroad shall provide 48-hours prior notice to the Expressway Authority and the Contractor and shall provide, at the Expressway Authority's expense, appropriate flagging protection for such movements.

Section 4. Requirements For Contractor. The Expressway Authority shall require its contractor (the "Contractor"):

4.1 To perform all work in connection with the construction of the Project upon or adjacent to the Railroad Property in accordance with the provisions of this Agreement, the approved-for Construction Plans for the Project, the Overhead Bridge Criteria and the FCEN Special Provisions, and in a manner agreeable to the Railroad's General Manager or his authorized representative.

4.2 To use at all times reasonable care and diligence to cooperate with officials of the Railroad in order to avoid accidents, damages or unnecessary delay to, or interference with trains of the Railroad. The Contractor is prohibited from operating, or from placing equipment or material, upon the Railroad's tracks or rails, and shall not place or operate any equipment, nor place any material closer than the minimum construction clearances as shown in the approved-for Construction Plans without first obtaining approval from the Railroad's General Manager or his authorized representative.

4.3 To remove, upon completion of the work and before final payment is made, from within the limits of the Railroad Property, all machinery, equipment, surplus material, falsework, rubbish or temporary buildings and other property of such Contractor and to leave the said land in a condition reasonably equal to the condition prior to the construction of the Project and reasonable satisfactory to the General Manager of the Railroad or his authorized representative.

Section 5. Payment of Costs.

Upon receipt of a proper invoice, with sufficient detail and backup to support the amount due, the Expressway Authority shall pay Railroad the following costs incurred by the Railroad in connection with the Project:

- For flagging, the amount of Sixteen Hundred Dollars (\$1,600) per occurrence, with all events of flagging within a single calendar day counting as one occurrence.
- Administration costs at 18% of all third-party invoices related to the Project to cover but not limited to:
 - Administration of agreements; review & processing;
 - Accounting Functions; tracking, paying, invoicing, and reconciling; and
 - Coordination of work.
- The cost of train delays in an amount of Ninety-Five Dollars (\$95) per hour for each actual train delay after the 48-hour period specified in Section 3.5.
- Loss of revenue in an amount of Nine Hundred Fifty Dollars (\$950) per month for each month or portion thereof that the safe zone implemented pursuant to Section 3.4 remains in place, as compensation for the loss of needed railcar storage capacity.
- The cost of track derails at Five Hundred Dollars (\$500) each.
- The cost of oversight in an amount not to exceed Fifteen Thousand Dollars (\$15,000) including:
 - Actual travel expenses and a reasonable hourly charge for personnel time relating to required meeting attendance before and during construction.
- The cost of inspection by Railroad in an amount of Two Hundred Thirty-Four Dollars and Forty-Two Cents (\$234.42) per occurrence.
- Preliminary Railroad engineering relating to review and coordination of the 100% Plans and, as necessary, the approved-for Construction Plans, in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000). The parties acknowledge that Railroad has submitted an invoice for Six Thousand Nine Hundred Nineteen Dollar and Six Cents (\$6,919.06) of such expenses, and the Expressway Authority has made payment of Five Thousand Two Hundred Ninety-One Dollars and Fifty Cents (\$5,291.50) on such invoice.

Section 6. Commencement of Work; Coordination. It is anticipated that work shall begin in May of 2016 and be completed in January 2018. Neither this paragraph nor any other provision of this Agreement shall be construed as being for the benefit of the Contractor or any other third party. Contractor shall coordinate with Railroad as needed during the construction of the Project.

Section 7. Insurance. The Expressway Authority shall require its Contractor to purchase at no cost to Railroad and to maintain until work on the Project is completed and accepted insurance policies that satisfy the requirements of Section XIV of the FCEN Special Provisions.

Section 8. Continuing Maintenance. Upon completion of the Project herein contemplated, the Expressway Authority shall maintain, repair and renew, at its expense, all parts of the Wekiva Parkway built or changed under the terms of this Agreement. Expressway Authority structures located on and above the Railroad right-of-way shall be maintained in good repair and so as not to interfere with Railroad operations. Any future entrance by Expressway Authority or its contractors onto Railroad Property to conduct inspection, maintenance or rehabilitation of Wekiva Parkway structures shall be subject to the prior approval of Railroad, which shall be reasonably provided.

Section 9. Binding Agreement. This Agreement, when properly executed, shall be binding upon the parties hereto, their successors and assigns.

Section 10. Notices.

10.1 All notices on the part of the Expressway Authority to Railroad shall be given in writing to the General Manager, FLORIDA CENTRAL RAILROAD COMPANY, INC., P.O. Box 967, Plymouth, FL 32768.

10.2 All notices, on the part of Railroad to the Expressway Authority, shall be given in writing to Executive Director, CENTRAL FLORIDA EXPRESSWAY AUTHORITY, 4974 ORL Tower Road, Orlando, Florida 32807.

Section 11. Captions. All titles or captions are inserted only for convenience and they in no way shall be construed to define, limit or describe the scope of this Agreement or any provision thereof.

Section 12. Severability. If any clause or provision of this Agreement shall be deemed to be invalid or unenforceable under present or future laws, then, in that event it is the intention of the parties that the remainder of this Agreement shall not be affected thereby.

Section 13. Choice Of Law. This instrument is being delivered and is intended to be performed in the state of Florida and shall be construed and enforced in accordance with the laws of that state. Any aggrieved party may proceed to enforce its rights in the appropriate action at law or in equity. Venue for all suits arising out of this instrument shall lie exclusively in the

Courts of Orange County, Florida. By execution or adoption of this agreement, each party hereby submits itself to the in personam and exclusive jurisdiction of the Courts of Florida.

Section 14. This Agreement resolves all compensation to the Railroad arising out of the use of the permanent easement and temporary construction easement, designated as Parcels 827 and 727, against the Central Florida Expressway Authority. The provisions of 23 C.F.R, subpart B and 23 C.F.R., part 140, subpart I, are incorporated by reference. The Railroad agrees to cooperate with the Expressway Authority and execute a mutually agreeable Stipulated Final Judgment.

IN WITNESS WHEREOF, the Expressway Authority and the Railroad have caused their names to be signed and seals affixed by their duly authorized officials as of the date hereof:

WITNESSES FOR EXPRESSWAY
AUTHORITY

CENTRAL FLORIDA
EXPRESSWAY AUTHORITY

By: _____

Name: _____

Title: _____

WITNESSES FOR RAILROAD

FLORIDA CENTRAL RAILROAD
COMPANY, INC.

By: _____

Name: _____

Title: _____

Exhibit "A." Description of Properties

Exhibit "B." Release

Exhibit "C." CSX Transportation's Criteria for Overhead Bridges, dated September 14, 2007

Exhibit "D." Florida Central Railroad Special Provisions

Exhibit "E." Sheet Showing Safe Zone