

**RAIL OPERATING AGREEMENT**

THIS RAIL OPERATING AGREEMENT (“Agreement”) is made and effective as of \_\_\_\_\_, 2024, by and between the CITY OF HAINES CITY, FLORIDA (“CITY”), a political subdivision of the State of Florida, and FLORIDA MIDLAND RAILROAD COMPANY, LLC, a Florida limited liability company (“RAIL OPERATOR”).

RECITALS:

- A. CITY is the owner of a private industrial railroad spur extending from a connection with CSX Transportation, Inc. (“CSXT”) at Valuation Station 0+00 in Haines City to the end of track at approximately Valuation Station 167+00 southeast of the intersection of Detour Road and Lake Marion Road/County Road 544, a distance of approximately 2.8 miles, along with ancillary trackage, switches, turnouts, rail and road crossings (collectively the “Spur”), generally depicted in **Exhibit A**, attached hereto and incorporated herein by reference.
- B. CITY issued Solicitation Request for Proposals #23-05 on August 8, 2023 (the “SRP”).
- C. RAIL OPERATOR submitted a Proposal in response to the SRP dated October 3, 2023, and CITY found RAIL OPERATOR to be qualified to satisfy the requirements as stated in the Proposal.
- D. RAIL OPERATOR will operate agreed portions of the Spur as a common carrier by rail, and interchange rail traffic with CSXT at Haines City, consistent with the terms of this Agreement, including but not limited to the terms of **Exhibit B**, attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual undertakings hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and RAIL OPERATOR hereby agree as follows:

**SECTION 1**

**RAIL SWITCHING OPERATING AUTHORITY**

**Section 1.01. EXCLUSIVE GRANT OF AUTHORITY.** Subject to the terms, conditions, and limitations stated herein, in exchange for an annual rights payment from RAIL OPERATOR of One Dollar (\$1.00), CITY grants RAILROAD OPERATOR the exclusive authority during the Term to operate over and serve as a common carrier rail switching operator on the Spur, as such Spur may be changed, modified, improved, extended, or expanded by written agreement of the parties. During the Term of this Agreement, CITY shall not grant to any other third-party rail operator the right to provide any rail operations on the Spur, whether as a common carrier or otherwise. Attached hereto as **Exhibit A** and incorporated herein by reference is an aerial map generally depicting the Spur in dashed red, and the portion of the Spur that RAIL OPERATOR is allowed hereunder to operate as regulated main line trackage is shown in solid orange on **Exhibit A**.

Section 1.02. ACCESS TO REAL PROPERTY. In the course of providing the rail services hereunder, RAIL OPERATOR shall have full access to CITY'S railroad right of way beneath and adjacent to the Spur. On the date of execution of this Agreement, CITY shall provide RAIL OPERATOR with all documentation in its possession reflecting the width of the Spur right of way, including any easements or agreements for use of privately owned side tracks.

Section 1.03. CHANGES OR ENLARGEMENTS. No changes, reductions, rearrangements, extensions, improvements, or enlargements of the Spur may be undertaken without the written concurrence of CITY and RAIL OPERATOR.

Section 1.04. INDEPENDENT CONTRACTOR. RAIL OPERATOR is and shall be an independent contractor in operating and providing services under this Agreement, and RAIL OPERATOR is not and shall not be deemed to be an agent or employee of CITY. As an independent contractor, RAIL OPERATOR has no authority to bind the CITY with respect to any legal, operational, or commercial matters with any third parties, including, but not limited to, potential customers ("Customers") that may be seeking rail service at any location on the Spur. By way of example only, RAIL OPERATOR has no authority to grant any Customers rights to operate over any portion of the Spur.

Section 1.05. ASSIGNMENT; SUBLETTING. RAIL OPERATOR may not assign this Agreement or any aspects of services to be provided hereunder, nor sublet (sublicense) any portion of the Spur without securing the prior written consent of CITY from the City Manager. RAIL OPERATOR also may not grant a security interest in, pledge, or otherwise mortgage its interest in this Agreement.

Section 1.06. INTERRUPTIONS IN USE. Use of the Spur may be interrupted by reason of accident, emergency, or other causes beyond CITY'S control, or may be prevented or diminished temporarily until certain repairs, alterations, or improvements can be made. CITY does not represent or warrant the uninterrupted availability of the Spur and any interruptions in the use of such shall not be deemed a disturbance or eviction of RAIL OPERATOR'S rights to operate. Such interruptions also shall not make CITY liable to RAIL OPERATOR for any damages such as loss of any fees payable under this Agreement.

## SECTION 2 CONDITIONS PRECEDENT

This Agreement will be effective as of the Effective Date. Notwithstanding the Effective Date, all of the terms and conditions stated in this Section 2 must be fully satisfied before RAIL OPERATOR will have any obligation to provide any rail service at any location on the Spur, except as otherwise agreed between CITY and RAIL OPERATOR in writing.

Section. 2.01. CITY'S CONDITIONS PRECEDENT. CITY, as a result of solicitation RFP#23-05 agrees to contract with RAIL OPERATOR for rehabilitation of the Spur, substantially as outlined in RAIL OPERATOR'S Proposal, including but not limited to:

- (a) Installation of not less than 400 crossties, replacing rotted ties from the original 2005 construction, with emphasis on the replacement of crossties on the Spur's three curves (at CSXT junction and Lake Marion Rd);
- (b) Addition of ballast near Grace Ave overpass to restore the shoulder;
- (c) Brush clearing along the Spur, at multiple locations, as needed;
- (d) Hi-rail vegetation spray along the Spur to reduce vegetation; and
- (e) Detour Rd grade crossing asphalt approaches to be addressed, in cooperation with the appropriate road authority;
- (f) Return two grade crossing warning devices installations to service (Detour Rd #928558X and Lake Marion Rd/CR 544#928577C) to include 6 new gates, 2 new flasher heads and required Federal Railroad Administration testing;
- (g) Construct of a double-ended siding ("Siding") allowing for no less than 1,500 feet of railcar placement clear of the existing track to be located south of the Lily Ave overpass to permit interchange of inbound/outbound Customer railcars with CSXT; and
- (h) Conform gauge of rail on the entire Spur to Federal Railroad Administration ("FRA") Class I standards.

Section 2.02. RAIL OPERATOR'S CONDITIONS PRECEDENT. RAIL OPERATOR shall have completed the following tasks at RAIL OPERATOR'S sole cost and expense, except as otherwise agreed between CITY and RAIL OPERATOR in writing:

- (a) Full execution of an interchange agreement with CSXT providing for interchange of railcars between RAIL OPERATOR and CSXT at the Siding when completed;
- (b) Establishment of tariffs and freight rates reasonably acceptable to CITY;
- (c) Setup of WABTEC RAILCONNECT car accounting;
- (d) Secure insurance as specified in Section 11 hereof; and
- (e) Effective authority or exemption from the Surface Transportation Board ("STB") for RAIL OPERATOR'S provision of common carrier rail services on the crosshatched portion of the Spur identified in Exhibit A.
- (f) Responsible for performing Contractor Services related to the rehabilitation repairs and upgrade enhancements of the spur as described in Section 2.01 items (a)-(h) to include subcontractor selection & management and compliance with all relevant regulations and standards

Section 2.03. Compensation and Payment of Contractor Services

The City shall pay the RAIL OPERATOR for the rehabilitation repairs and upgrade enhancements as specified in RFP#23-05 rendered hereunder and completed in accordance with the terms and conditions of this Agreement an amount not to exceed **\$646,853**, as the total agreement amount. Said total amount to be all inclusive of costs necessary to provide all services as outlined in this Agreement.

The City shall pay RAIL OPERATOR for the Contractor Services through payment issued by the Finance Department in accordance with the Local Government Prompt Payment Act, Section

218.70, et seq., F.S., upon receipt of the RAIL OPERATOR's invoice and written approval of same by the City indicating that services have been rendered in conformity with this Agreement. The RAIL OPERATOR shall submit an invoice for payment to the City on a monthly basis for those specific services that were completed during that invoicing period.

### SECTION 3 TERM

Section 3.01. TERM. The term of this Agreement shall be fifteen (15) years (“Initial Term”) commencing as of the effective date of RAIL OPERATOR’S STB approval or exemption to provide common carrier rail service on the Spur (the “Commencement Date”). After the Initial Term, this Agreement shall automatically renew for fifteen (15) years (“Renewal Term”) unless terminated by either party upon one (1) year advance written notice to the other party prior to the end of the Initial Term, provided any such termination shall meet STB regulatory requirements.

Section 3.02. TERMINATION. The Term is subject to early termination in accordance with Section 12.02 of this Agreement.

Section 3.03. CONTINUITY OF SERVICES. RAIL OPERATOR recognizes that the rail services to be performed by RAIL OPERATOR under this Agreement are vital to CITY and must be continued without interruption and that, upon expiration or early termination of this Agreement, RAIL OPERATOR agrees to transition operations and rail switching and other services in a cooperative, orderly and efficient manner to a successor operator as provided in Section 12.02.

### SECTION 4 NET EARNINGS, BUDGETING, REPORTING, AND INVOICING

Section 4.01. INCOME COLLECTION AND NET INCOME SHARE. RAIL OPERATOR assumes sole responsibility for invoicing and collecting all revenues from any source arising from the rail services provided by RAIL OPERATOR, including but not limited to switching fees, ancillary and assessorial charges (such as weighing and intra-plant switching), and car storage charges (collectively, “Gross Income”).

If the Gross Income collected by RAIL OPERATOR in a calendar year does not equal at least six hundred thousand dollars (\$600,000.00) (the “Revenue Sharing Threshold”), RAIL OPERATOR shall remit to the CITY, within thirty (30) days after the end of each calendar year, Five (5%) Percent of the Net Income, if any.

If the Gross Income collected by RAIL OPERATOR equals or exceeds the six hundred thousand dollars (\$600,000.00) Revenue Sharing Threshold, RAIL OPERATOR shall remit to City, within thirty (30) days after the end of each calendar year, Twenty Percent (20%) of the Net Income, if any, collected by RAIL OPERATOR.

“Net Income” is defined as the Gross Income collected by RAIL OPERATOR for the calendar year in excess of all expenses actually incurred by RAIL OPERATOR in the provision of all rail

services for the calendar year. Expenses include but are not limited to payroll, taxes, fuel, track and equipment maintenance, capital expenses, administrative support (reasonably allocated by RAIL OPERATOR, if incurred for one or more of RAIL OPERATOR’s affiliates), casualty losses, and depreciation/amortization. All revenues, costs, expenses, and Net Income shall be recorded and calculated in accordance with Generally Accepted Accounting Principles (“GAAP”), applied consistently on an accrual basis.

By way of illustration and not as limitation, the parties agree that the following examples accurately reflect their understanding of the revenue sharing formula set out in this Section 4.01:

Example 1: In an annual calendar year, RAIL OPERATOR collects \$450,000.00. RAIL OPERATOR calculates the Net Income, if any, and remits to CITY five percent (5%) of the Net Income calculation.

<b>Net Income Profit Share Example</b>	
Annual Revenue	\$450,000
Operating Expenses	\$436,000
Net Income	\$14,000
<b>5% share of Net Income to City</b>	<b>\$700</b>

Example 2: In an annual calendar year, RAIL OPERATOR collects \$604,500. RAIL OPERATOR calculates the Net Income, if any, and remits to CITY twenty percent (20%) of the Net Income calculation.

<b>Net Income Profit Share Example</b>	
Annual Revenue	\$604,500
Operating Expenses	\$508,357
Net Income	\$96,143
<b>20% share of Net Income to City</b>	<b>\$19,228</b>

Section 4.02. ESCALATION OF REVENUE SHARING THRESHOLD. No later than January 1 for each year of the Term, RAIL OPERATOR shall adjust the prior calendar year’s Revenue Sharing Threshold by the Railroad Cost Recovery Index, as published quarterly in the Association of American Railroads (“AAR”) Railroad Cost Indexes. RAIL OPERATOR will promptly advise CITY of the results of the calculation and will thereafter use the adjusted Revenue Sharing Threshold calculation for the ensuing calendar year.

Section 4.03. ANNUAL STATEMENTS/PAYMENTS. Within thirty (30) days of each calendar year, RAIL OPERATOR will provide an accounting summary of the revenues and expenses that were collected and incurred by RAIL OPERATOR in the prior calendar year. Annual statements will include calculation of any Net Income. If there is a positive Net Income, then the CITY’S share of any Net Income, as calculated pursuant to Section 4.01, will be remitted by RAIL OPERATOR to CITY.

Section 4.04. METHOD AND MANNER OF PAYMENT. Payment by RAIL OPERATOR to CITY of CITY’s portion of Net Income shall be made concurrently with the

information provided by RAIL OPERATOR to CITY pursuant to Section 4.03 by Automatic Clearing House (“ACH”) unless designated to another place or use of another manner of payment as the parties may subsequently and mutually agree to in writing.

SECTION 5  
ACCEPTANCE AND MAINTENANCE OF SPUR

Section 5.01. ACCEPTANCE. Upon completion of CITY’S CONDITIONS PRECEDENT as outlined in Section 2.01, CITY shall notify RAIL OPERATOR of the completion of all work. Thereafter, the parties shall schedule and conduct a mutual inspection of the entire length of the Spur. CITY shall correct all deficiencies identified by RAIL OPERATOR during the mutual inspection at CITY’S sole cost and expense. Upon remediation of all identified deficiencies to RAIL OPERATOR’S reasonable satisfaction, RAIL OPERATOR will accept the Spur in its then “AS-IS” condition.

Section 5.02. MAINTENANCE AND REPAIR. After the Commencement Date, RAIL OPERATOR shall be responsible for maintaining, repairing, and replacing the Spur and all portions thereof, except for maintenance, repair and replacement as necessary of current and future grade crossing roadway surfaces and approaches, and all damages at or around highway-rail grade crossings caused by or contributed to by motorists and vandals, all of which shall be performed by CITY at CITY expense. With the exception of the CITY’S responsibilities as stated in the previous sentence, after the Commencement Date, RAIL OPERATOR shall keep and maintain the Spur in good condition as it reasonably determines to allow RAIL OPERATOR to perform rail switching operations and services in compliance with FRA Class 1 Track Safety Standards set forth in 49 CFR Part 213 *et seq.*, as may be amended from time to time, along with all other applicable governmental regulations.

Section 5.03. IMPROVEMENTS. RAIL OPERATOR may not modify, alter, or improve the Spur without CITY’S prior written consent, which may not be unreasonably withheld, delayed or conditioned.

SECTION 6  
RAIL OPERATOR SERVICES

Section 6.01. RAIL SERVICES. RAIL OPERATOR agrees to serve as the exclusive common carrier railroad switching operator on the Spur. RAIL OPERATOR shall provide rail switching services and operations on the Spur as set forth in **Exhibit B** attached hereto.

Section 6.02. RAIL OPERATION FREQUENCY. RAIL OPERATOR shall provide rail switching services Monday through Friday on an as needed basis, making commercially reasonable efforts to meet the operational needs of Customers.

Section 6.03. RAIL TARIFF. Rail services and operations provided over the Spur are subject to the pricing, terms, and conditions set forth in the rail freight and other tariffs published by the RAIL OPERATOR (collectively “Tariffs”). Tariffs are subject to change, amendment, supplement, or revision from time-to-time by the RAIL OPERATOR, including increasing or

decreasing any rates and charges specified therein. The Tariffs are available to the public. RAIL OPERATOR agrees to comply with and take reasonable action to cause Customers to comply with the Tariffs. RAIL OPERATOR also is responsible for notifying CITY promptly of any Customer's non-compliance with the Tariffs.

Section 6.05. MARKETING/BUSINESS DEVELOPMENT. RAIL OPERATOR agrees to work jointly and in good faith with CITY to identify potential business opportunities and grow rail business on the Spur.

## SECTION 7 RAIL OPERATION STANDARDS

Section 7.01. OPERATOR STANDARDS. RAIL OPERATOR shall operate and provide services in accordance with RAIL OPERATOR'S FRA approved safety and operating rules (the "Operating Rules"), a current copy of which is attached hereto as Exhibit C, and may be subsequently reasonably amended by RAIL OPERATOR. In the event of any such changes, RAIL OPERATOR shall provide CITY with an updated copy of RAIL OPERATOR's Operating Rules in advance of implementation.

Section 7.02. COMPLIANCE WITH LAWS. RAIL OPERATOR shall operate the Spur and provide rail switching and other services under this Agreement in accordance with any and all applicable and non-preempted federal, state and local laws, codes, statutes, ordinances, orders, rules, and regulations (collectively, "LAWS"). By way of example only, RAIL OPERATOR shall comply with FRA, Occupational Safety and Health Administration, and STB LAWS applicable to common carrier railroad operations, along with the AAR Interchange Rules.

Section 7.03. CLEARANCES. Except as noted below, clearances for the Spur are set at twenty-two feet (22') above top of rail and ten feet (10') each side from the center of track, with clearances on curves as provided by the standards set by the FRA or applicable State LAWS, whichever is more restrictive (collectively, "Minimum Clearances"). The Minimum Clearances herein are subject to modification to meet changes in legal, operating or safety requirements.

Section 7.04. SUSPENSION OF OPERATIONS. RAIL OPERATOR may, in its sole discretion, suspend via embargo the operation of the Spur immediately and without notice if RAIL OPERATOR determines that the condition of any portion thereof or the sidetracks of any Customer is unsafe. Upon such occurrence, RAIL OPERATOR will notify CITY as quickly as practicable of the reason for the suspension of operations or service and will resume operations and service as soon as the unsafe condition has been eliminated or appropriate safety measures implemented.

Section 7.05. ACCESS AND INSPECTIONS. CITY has the right to monitor RAIL OPERATOR and access and inspect the Spur from time to time after not less than twenty-four (24) hours notice to determine and confirm compliance with the terms of this Agreement.

SECTION 8  
RAIL OPERATOR AUTHORITY

RAIL OPERATOR represents and warrants the following:

- A. RAIL OPERATOR is a limited liability company duly organized, validly registered with the Secretary of State of Florida, in good standing with the laws of the State of Florida, and validly registered to do business in the State of Florida.
- B. RAIL OPERATOR has the full power and authority to enter into this Agreement and to carry out the functions which it has undertaken to perform in this Agreement.
- C. All corporate and other proceedings required to be taken by or on the part of the RAIL OPERATOR to authorize it to enter into this Agreement and perform the operations and services under this Agreement will have been duly taken by the Commencement Date.
- D. Execution of this Agreement and performance of the operations and services under this Agreement will not violate any statute, rule, regulations, order, writ, injunction or decree of any court, administrative agency or governmental body.
- E. RAIL OPERATOR has not employed or retained any company or person (other than a bona fide employee working solely for RAIL OPERATOR), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for RAIL OPERATOR; any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- F. RAIL OPERATOR agrees that it and its employees shall communicate with CITY employees and members of the public in a civil manner. All aspects of RAIL OPERATOR'S performance, including complaints received from CITY employees or members of the public, may impact CITY'S decision to renew or terminate this Agreement in accordance with the provisions contained herein. CITY further reserves the right to suspend or debar RAIL OPERATOR from consideration for award of future contracts in accordance with the City of Haines City Procurement Code if RAIL OPERATOR does not abide by the terms of this subsection.
- G. Pursuant to §287.133(2)(a), F.S., a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017 for



CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

- H. RAIL OPERATOR shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- I. RAIL OPERATOR shall maintain books, records, documents, and other evidence directly pertaining to or connected with the services under this Agreement which shall be available and accessible at RAIL OPERATOR offices for the purpose of inspection, audit, and copying during normal business hours by CITY, or any of its authorized representatives. Such records shall be retained for a minimum of five (5) fiscal years (from October to September) after completion of the Term.
- J. Florida statute §287.135 prohibits agencies from contracting with companies for goods or services that are on the Scrutinized Companies that Boycott Israel List, or with companies that are engaged in a boycott of Israel, and from contracting with companies for goods or services of \$1,000,000 or more that are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are engaged in business operations in Cuba or Syria. The lists are created pursuant to §215.473 and §215.4725, F.S. Contractor certifies that it is not listed on the Scrutinized Companies that Boycott Israel List, the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria, and understands that pursuant to §287.135, F.S., the submission of a false certification may subject RAIL OPERATOR to civil penalties, attorney's fees, and/or costs. In accordance with §287.135, F.S., CITY may terminate this RAIL OPERATOR if a false certification has been made, or the RAIL OPERATOR is subsequently placed on any of these lists, or engages in a boycott of Israel or is engaged in business operations in Cuba or Syria.
- K. RAIL OPERATOR shall notify the City at least one (1) business day in advance of any meeting between RAIL OPERATOR and any CITY Commissioner, regulatory agency or private citizen related to this Agreement.
- L. Consistent with Section 1.04, RAIL OPERATOR is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. RAIL OPERATOR is not an employee, agent or servant of CITY and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to RAIL OPERATOR'S sole direction, supervision and control. RAIL OPERATOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects RAIL OPERATOR's relationship and the relationship of its employees to CITY shall be that of an independent contractor and not as employees of the CITY. RAIL OPERATOR shall be solely responsible for providing benefits and insurance to its employees.

SECTION 9  
HAZARDOUS MATERIALS

Section 9.01 COMPLIANCE; STANDARDS. RAIL OPERATOR shall comply with all LAWS relating to the security, storage, transport, release or disposal of Hazardous Materials, substances, or waste on the Spur. For purposes of this Agreement, Hazardous Materials is defined in the United States Department of Transportation Hazardous Material Regulations (Section 49 of the Code of Federal Regulations). RAIL OPERATOR also shall comply with the policies and practices recommended by the AAR relating to safe handling, storage and disposition of the Hazardous Materials.

Section 9.02 WASTE DISPOSAL. RAIL OPERATOR shall not dispose of any wastes of any kind, whether or not hazardous, on the Spur, and RAIL OPERATOR shall not conduct any activity on the SPUR which may or does require a hazardous waste treatment, storage or disposal facility permit from either the federal or state agencies.

Section 9.03 SHIP/RECEIVE LIST. RAIL OPERATOR shall maintain an updated list of Customers served by RAIL OPERATOR which shipped or received Hazardous Materials in the previous calendar year. The list shall include the name of each Customer, the specific Hazardous Material shipped/received by rail, along with the number of carloads of such shipped/received material. RAIL OPERATOR shall also maintain with the Hazardous Material list copies of Material Safety Data sheets for materials included on the list. At CITY's request, RAIL OPERATOR shall provide CITY with a copy of the current list, along with MSDS sheets. RAIL OPERATOR shall be responsible for monitoring any changes to this list.

SECTION 10  
INDEMNIFICATION

RAIL OPERATOR agrees to indemnify and save harmless CITY from and against any and all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorneys' fees) for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, the rail operations and other services provided by RAIL OPERATOR or its agents, contractors or employees on the Spur, to the extent such liability, losses, damages, claims, actions, causes of action, costs and expenses shall have been caused or contributed to by the negligence of RAIL OPERATOR.

SECTION 11  
INSURANCE

Section 11.01 On or before the Commencement Date, RAIL OPERATOR shall present to CITY one or more insurance certificates reflecting the coverages stated below. RAIL OPERATOR shall also require all of its contractors and subcontractors to secure identical coverages. All insurance policies shall be with insurers qualified and doing business in Florida, and shall remain in place during the Term.

- A. RAIL OPERATOR and its contractors and subcontractors shall maintain the following types of insurance, with the respective limits:
1. BODILY INJURY LIABILITY
    - a. \$1,000,000 operations each claim per person
    - b. \$1,000,000 completed operations each claim per person;
  2. AUTOMOBILE PUBLIC LIABILITY
    - a. Bodily Injury:
      - i. \$1,000,000 each claim per person
      - ii. \$1,000,000 aggregate
    - b. Property Damage:
      - i. \$1,000,000 each claim per person
      - ii. \$1,000,000 aggregate;
  3. PROPERTY DAMAGE LIABILITY (other than automobile)
    - a. \$500,000 each claim per person
    - b. \$500,000 operations per claim
    - c. \$500,000 protective per claim (covering automobile)
    - d. \$500,000 contractual per claim;
  4. GENERAL LIABILITY
    - a. One Million Dollars (\$1,000,000), single occurrence;
    - b. Two Million Dollars (\$2,000,000) aggregate;
  5. EXCESS COVERAGE – One Million Dollars (\$1,000,000);
  6. FELA/RAILROAD LIABILITY – One Million Dollars (\$1,000,000) per occurrence.
  7. Evidence of qualified self-insurance status will suffice for this subsection.
- B. Certificates of Insurance: RAIL OPERATOR shall provide the CITY’S Finance Department with a Certificate of Insurance evidencing such coverage for the duration of the Term. Said certificate shall be dated and show:
1. The name of the insured Bidder/Contractor;
  2. The specified job by name and job number;
  3. The name of the insurer;
  4. The number of the policy;
  5. The effective date;
  6. The termination date; and
  7. A statement that the insurer or RAIL OPERATOR will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy

- C. City as Additional Insured: RAIL OPERATOR shall name CITY as an additional insured, to the extent of the service to be provided under this Agreement, on all required insurance policies, and provide CITY with proof of same.
- D. Waiver of Subrogation: RAIL OPERATOR shall have a waiver of subrogation instead of listing the City as additionally insured for FELA coverage.
- E. Waiver: Receipt of certificates or other documentation of insurance or policies or copies of policies by CITY, or by any of its representatives, which indicates less coverage than is required, does not constitute a waiver of RAIL OPERATOR'S obligations to fulfill the insurance requirements specified herein.
- F. Loss Deductible Clause: CITY shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of RAIL OPERATOR, the contractor, and/or the subcontractor providing such insurance.

SECTION 12  
DEFAULT AND REMEDIES

Section 12.01. DEFAULT. RAIL OPERATOR shall be in default should it fail to perform any services, responsibilities, covenants, or other obligations or adhere to or comply with any service or operating standards and requirements under this Agreement. Failure to provide insurance as required herein is a default under this Agreement.

Section 12.02. REMEDIES. Upon the occurrence of any Default, CITY may exercise separately or in combination any of the following remedies:

- A. Issue a written directive ordering RAIL OPERATOR, at its sole cost and expense, to take immediate action to cure such default, and to cure such default within fifteen (15) business days of the date of such written directive; provided, however, if such default is of a character or kind that it would not be possible for RAIL OPERATOR to cure within such fifteen (15) business day period, CITY, at its sole and absolute determination, may provide RAIL OPERATOR with additional time, determined at its sole and absolute discretion, to cure such default. With respect to any additional time provided by CITY, RAIL OPERATOR shall prosecute such cure with reasonable diligence.
- B. Terminate this Agreement triggering a transition and continuity of operations and services under Section 13.02.
- C. Exercise any other right of remedy available to CITY at law or equity in addition to or as an alternative to any of the other rights and remedies stated herein.

Section 12.03. EXPENSES. CITY shall be entitled to recover all of its reasonable attorney fees incurred with respect to enforcement of any remedy for default of RAIL OPERATOR under this Agreement.

SECTION 13  
SURRENDER, TRANSITION AND CONTINUITY OF OPERATIONS

Section 13.01. SURRENDER. Upon expiration or earlier termination of this Agreement, and expiration of any Transition Period as contemplated in Section 13.02 below, RAIL OPERATOR shall vacate and surrender the Spur to CITY in a similar or improved condition and repair as measured from the Commencement Date. RAIL OPERATOR shall remove all its equipment and other personal property from the Spur by such date and any property remaining thereafter shall be deemed abandoned by RAIL OPERATOR. CITY, at its sole election, may take the following action with respect to any property abandoned under this Agreement: (a) retain such property as its own; (b) dispose of such property in any manner as CITY determines, without responsibility or accountability to RAIL OPERATOR or any other person or entity; or (c) remove and store such property at RAIL OPERATOR's sole cost and expense. CITY shall not be responsible for any loss or damage occurring to any property left or abandoned by RAIL OPERATOR at the Spur after the expiration or termination of this Agreement.

Section 13.02. CONTINUITY OF OPERATIONS. RAIL OPERATOR recognizes that rail switching and other rail operations and services performed under this Agreement are essential to the CITY. RAIL OPERATOR agrees that upon expiration or earlier termination of this Agreement, a successor may continue such operations and, to facilitate continuity in operations, RAIL OPERATOR agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor. RAIL OPERATOR agrees, upon written request of CITY, to do the following:

- A. Furnish phase-in and phase-out services for up to ninety (90) days after expiration or earlier termination of this Agreement ("Transition Period").
- B. Cooperate and work in good faith with CITY and successor to prepare and implement a plan providing for continuity of rail services and operations without disruption and at the level of services and operations called for under this Agreement.
- C. Allow RAIL OPERATOR personnel to remain on the job to help the successor maintain the continuity and consistency of the services required by this Agreement.
- D. Disclose necessary personnel records, to the extent allowed by LAWS, and allow the successor to conduct on-site interviews, walk-through of the Spur, observe rail switching operations and services, including allowing successor employees to ride along with CITY employees while RAIL OPERATOR provides rail services.
- E. Introduce successor to Customers and participate in transition of rail services and operations meetings.

RAILROAD OPERATOR shall be reimbursed for all reasonable costs and expenses incurred during the Transition Period.

Section 13.03. SURVIVAL. Notwithstanding the expiration or earlier termination of this Agreement, RAIL OPERATOR shall be obligated to pay and/or perform all amounts and indemnities set forth in this Agreement, which obligations shall survive the termination of this Agreement.

## SECTION 14 GENERAL PROVISIONS

Section 14.01. REMEDIES CUMULATIVE - NON-WAIVER. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises. No delay or omission to exercise any right or power by either party shall impair any such right or power or be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Agreement by either party shall not be construed by the other party as a waiver of a subsequent or continuing breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

Section 14.02. COMPLETE AGREEMENT. The headings of the several sections contained herein are for convenience only and do not define, limit or construe the contents of such sections. All negotiations, considerations, representations and understandings between the parties are incorporated herein and may be modified or altered only by agreement in writing signed by the party to be bound.

Section 14.03. GOVERNING LAW. This Agreement and any questions of interpretation thereof shall be governed by the laws of the State of Florida.

Section 14.04. SEVERABILITY OF INVALID PROVISIONS. If any provision of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

Section 14.05. AGREEMENT BINDING UPON SUCCESSORS. The covenants, agreements and obligations herein contained shall extend to, bind and inure to the benefit not only of the parties hereto, but their respective successors and permitted assigns. RAIL OPERATOR shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of CITY, except that claims for the money due or to become due to RAIL OPERATOR from CITY under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from CITY. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to CITY.

Section 14.06. NOTICES. All notices required to be given by either Party to the other (unless expressly stated otherwise in this Agreement), must be in writing and shall be delivered to

the other Party by overnight messenger service, United States certified mail with return receipt requested, or by overnight courier, and addressed as follows: (a) Florida Midland Railroad Company, LLC, 505 South Broad Street, Kennett Square PA 19348, Attention: President, and City of Haines City, Florida. Any party may, from time to time, designate an alternate or different address by sending notice of such intent to the address listed in this Section, or to the last known address for such party.

Section 14.07. COUNTERPARTS. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or by e-mail in portable document format “PDF”, is as effective as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective as of the date first written above.

Section 14.08. THIRD PARTY BENEFICIARIES. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the parties hereto.

Section 14.09. PROPERTY RIGHTS. RAIL OPERATOR may not use any marks, logo, branding, name or likeness of CITY without CITY’S prior written consent.

Section 14.10. AUDITS. RAIL OPERATOR acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with LAWS, and audit guidelines specified by the State of Florida or by CITY’S representative(s), including independent certified public accountants. CITY retains the right to review RAIL OPERATOR’S accounting and financial books and records pertaining to revenue, costs, expenses, services and operations under this Agreement as it may request. All accounting and financial books and records submitted to CITY pursuant to this provision shall be kept confidential by CITY, to the extent permitted by LAWS.

Section 14.11. FORCE MAJEURE. RAIL OPERATOR specifically agrees that all work performed under the terms and conditions of this Agreement shall be completed consistent with the obligations of a common carrier by railroad, subject only to delays caused by force majeure, or as otherwise defined herein. “Force majeure” shall be deemed to be any cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of RAIL OPERATOR.

Section 14.12. COMPLETE AGREEMENT. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.

Section 14.13. TERMS. The language of this Agreement shall be construed, in all cases, according to its fair meaning and not for or against any party hereto.

SECTION 15  
DISPUTE RESOLUTION

Section 15.01. To the extent Chapter 558, F.S. is applicable, the parties expressly opt out of the requirements of Chapter 558, F.S., within the meaning of §558.005(1), F.S.

Section 15.02. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in City of Haines City, Florida, with the parties sharing equally in the cost of such mediation.

Section 15.03. Disputes arising under this Agreement must first be mediated by a Florida Supreme Court-certified Civil Mediator in accordance with Chapter 44, Florida Statutes. The parties agree that the mediation shall occur within thirty (30) days of the date mediation is requested by either party. The Mediator shall be agreed upon, but if the parties are unwilling or unable to agree, the parties agree that a Civil Mediator from Miles Mediation and Arbitration shall be selected by striking names from the mediators in that Group. The parties agree to mediate in good faith, be bound by the Mediation Agreement (if any), pay Mediator fees promptly and share them on an equal basis unless otherwise agreed upon by the parties. Litigation may not be commenced until after mediation has been (i) declared an impasse by the Mediator, or (ii) terminated in writing by one or both of the parties. The confidentiality provisions of the Mediation Confidentiality and Privilege Act (Section 44.403, Florida Statutes) shall apply to any such pre-suit mediation. Pre-Suit Mediation shall occur within Polk County, Florida. The parties agree that the mediation provided for herein shall constitute an agreed-upon alternative dispute resolution process and the parties waive the applicability of the Florida Governmental Conflict Resolution Act to disputes arising under this Agreement pursuant to Section 164.1041(1) of the Florida Statutes. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.

Section 15.04. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Polk County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.

Section 15.05. The parties hereby waive all rights to trial by jury for any litigation concerning this Agreement.

Section 15.06. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.

Section 15.07. Unless otherwise agreed in writing, RAIL OPERATOR shall be required to continue its services and all other obligations under this Agreement during the pendency of claim or dispute including, but not limited to, actual period of mediation or judicial proceedings.



SECTION 16  
PUBLIC RECORDS

IF 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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

City of Haines City  
City Clerk's Office 620 E Main St  
Haines City, FL 33844  
Phone: 863-421-3600  
Email: [sharon.lauther@hainescity.com](mailto:sharon.lauther@hainescity.com)

***(Signature Page of Florida Midland Railroad Company, LLC to Rail Operating Agreement)***

IN WITNESS WHEREOF, the parties hereto have executed this Rail Operating Agreement, as of the day, and month and year written above.

**FLORIDA MIDLAND RAILROAD COMPANY, LLC**

By: \_\_\_\_\_

Print Name:

Title:

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

*(Signature Page of City of Haines City, Florida to Rail Operating Agreement)*

IN WITNESS WHEREOF, the parties hereto have executed this Rail Operating Agreement, as of the day, and month and year written above.

**CITY OF HAINES CITY, FLORIDA**

By: \_\_\_\_\_

Print Name:

Title:

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

EXHIBIT A  
AERIAL MAP OF SPUR  
RFP 23-05 Rail Spur Repair and Operations (Haines City, FL)

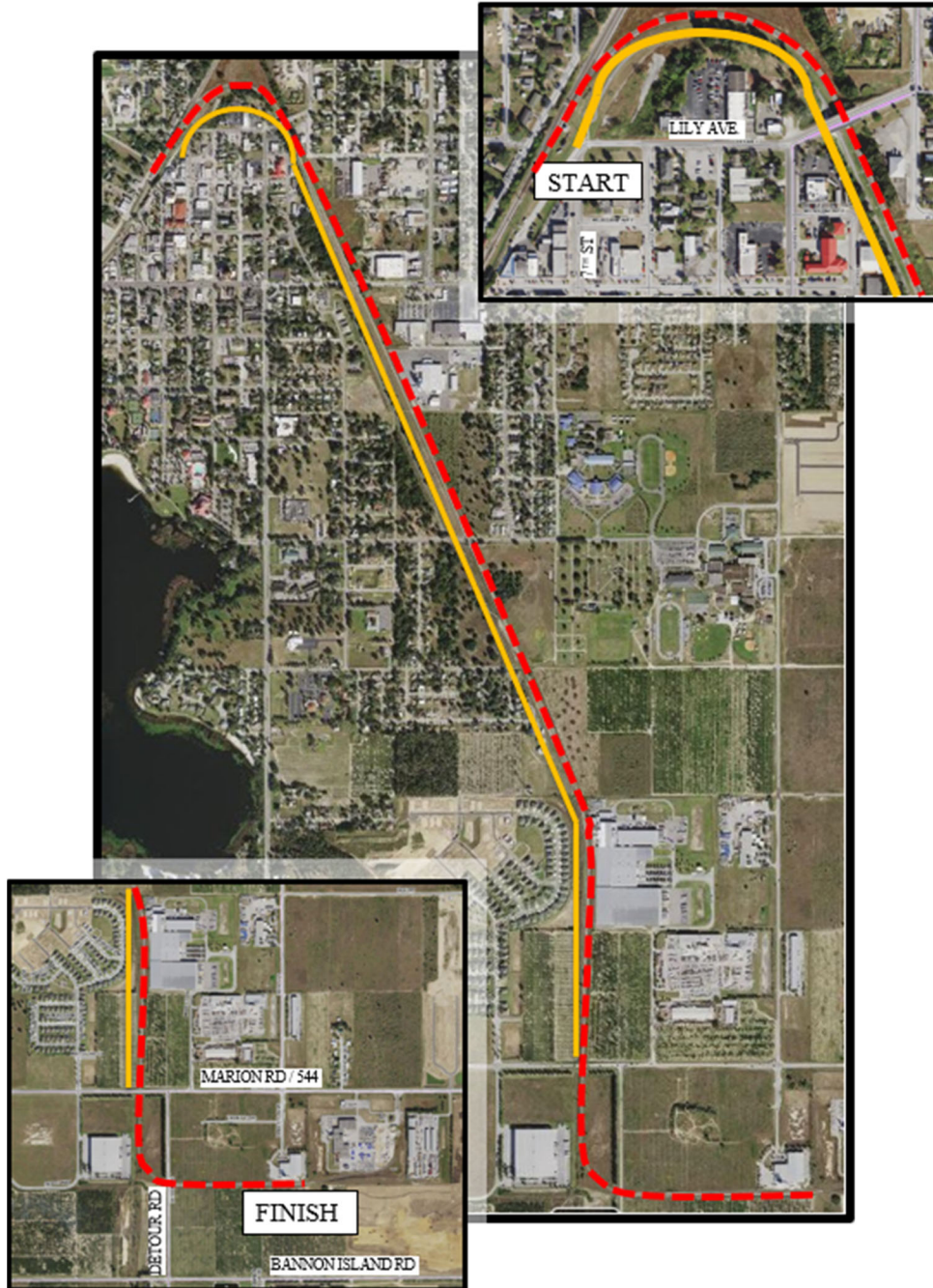


EXHIBIT B  
SCOPE OF RAIL OPERATIONS AND SERVICES

Scope of Rail Operations:

CITY desires to obtain high-quality operating services that meet the needs of current or future Customers on the Spur. RAIL OPERATOR shall:

1. Manage and operate the Spur and related rail facilities (except as otherwise provided for herein) in a high quality and efficient manner;
2. Operate the Spur and related rail facilities in a manner so as to enhance rail revenues while ensuring that the Spur remains economically competitive;
3. Work cooperatively with adjoining landowners to facilitate expansion and operations when agreed upon for new and expanding businesses;
4. Properly maintain and safeguard CITY'S investment in the Spur through the maintenance of the Spur in accordance with applicable (i) FRA Class 1 Track Safety Standards, (ii) Florida Department of Transportation (FDOT) standards, (iii) CSXT and any future Class 1 rail carrier standards (where necessary to maintain operation with any connecting carrier's facilities and services), and (iv) industry best practices, where commercially reasonable. RAIL OPERATOR will also, where approved by CITY, recommend capital improvements to improve the Spur;
5. Maximize the economic impact to CITY in the utilization of rail in the region as it may benefit CITY;
6. Implement appropriate marketing activities to attract new Customers to be served by the Spur;
7. Accomplish all objectives required RAIL Operator in a professional manner, in compliance with best railroad industry practices and LAWS; and
8. Work in cooperation with adjacent Class One rail carrier, currently CSXT, for interchange via written agreement.

Scope of Services: RAIL OPERATOR shall:

1. Provide a detailed Preventive Maintenance Program for the duration of the Term, Which would begin at the Commencement Date, and remain in effect for the Term.
2. Establish emergency plans for hazardous chemicals, crashes, derailments or other incidents that could impact the health or wellbeing of the community.
3. Provide inspection services consistent with LAWS, and incorporate the solutions for

these issues into the Preventive Maintenance Program.

4. Provide design/engineering services for future growth of the Spur. Provide these services to existing Customers to enhance their use of the Spur.
5. Provide construction services to expand rail service to new customers and additions of sideline rails as needed for enhanced service to Customers and the Spur.
6. Operational Readiness:
  - a. Hours and days of operation.
  - b. Identify what equipment RAIL OPERATOR needs to conduct operations and how they access that equipment.
  - c. Ability and method that allows the RAIL OPERATOR to consistently provide expected service in a timely manner.
  - d. Customer service process (account set-up, customer service call center, service request response time, etc.)
7. Implement, monitor, and provide on-going safety training and updates to all personnel working on the Spur.
8. Ability to take a leading role in all contract negotiations and execution between the CITY, RAIL OPERATOR, and any and all Customers.
9. Any and all activities, procedures, and projects performed under this Agreement shall be performed in accordance with industry best practices, and in compliance with applicable FRA, and Florida Department of Transportation guidelines, plus CSX when necessary to maintain operations with their facilities and service.

EXHIBIT C  
RAIL OPERATOR OPERATING STANDARDS AND PROCEDURES

See copy of the Code of Operating and Safety Rules, published by Rail Operator, and as may be subsequently revised.