

*HIS AGREEMENT IS DELIVERED WITH THE EXPRESS UNDERSTANDING THAT
CSX TRANSPORTATION, INC.'S LEGAL COUNSEL WILL HAVE THE RIGHT OF FINAL REVIEW AND APPROVAL
PRIOR TO EXECUTION.*

Confidential

**FACILITY LONGITUDINAL (PIPELINE)
AGREEMENT**

dated as of _____, 2017

between

CSX TRANSPORTATION, INC.
a Virginia corporation,

and

DeKalb County Department of Watershed Management,
a DeKalb County, Georgia governmental organization

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FACILITY LONGITUDINAL (PIPELINE) AGREEMENT

THIS FACILITY LONGITUDINAL (PIPELINE) AGREEMENT (this “Agreement”), is made as of the * _____ day of * _____, 2017, (the “Effective Date”), by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, (“Railroad”), whose mailing address is 500 Water Street, Jacksonville, Florida 32202, and DeKalb County, Georgia, a political subdivision of the State of Georgia, a governmental entity (“Utility”), whose mailing address is 1300 Commerce Drive, Decatur, Georgia 30030.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for the sum of Ten and No/100 Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Railroad and Utility agree as follows:

1. CERTAIN DEFINITIONS.

1.1 General Interpretive Principles. For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, (i) the use of the singular shall be deemed to include the plural and vice versa, (ii) the use of any gender shall be deemed to include every other gender; (iii) the word “including” means “including, but not limited to,” and (iv) the article, section and paragraph headings in this Agreement are for convenience only and are not intended to describe, interpret, define or limit the scope, extent, or intent of any of the provisions of this Agreement.

1.2 Definitions. As used in this Agreement, the following terms shall have the following respective meanings (unless otherwise expressly provided):

“Abandonment”, when applied to a Rail Corridor, shall mean the application to (and approval of) the necessary and applicable governmental body for permission to cease all public rail transportation over any Segment of Rail Corridor, and the removal of all Railroad property, tracks and ties, excluding permitted or required rail banking conveyances.

“Affiliate” shall mean any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, another Person. The term “control,” for this purpose, shall mean the ability, whether by the ownership of shares or other equity interest, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or the managing member of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity. Control shall be conclusively presumed in the case of the direct or indirect ownership of fifty percent (50%) or more of the equity interests in an entity.

“Approved Plans” shall mean the Construction Plans or other plans and/or designs which have been reviewed and approved in writing by Railroad's Engineer for engineering criteria; but any such review and approval shall not constitute or imply any warranty or guarantee by Railroad of the quality of plans or designs or acceptance of

performance thereof or construction thereunder, nor Utility's compliance with all of the provisions of this Agreement.

"As-Built Drawing" shall comprise Utility's Construction Plans, revised to reflect all approved changes made during actual construction, and shall show, without limitation, the exact location of Utility's Facilities in relation to the nearest track. As-Built Drawings shall be submitted to Railroad in both electronic (Microstation.dgn files or Autocad.dxf files) and written form.

"Broadform Pipeline Rights" shall mean, exclusive of the rights, if any, granted hereunder, the right to grant occupancies for pipeline transmission purposes over all or any portion of the Rail Corridor.

"Construction Plans" shall mean the drawings, plans and specifications for the construction and installation of Utility's Facilities, showing the proposed location of all Utility's Facilities, in sufficient detail, with distance shown from nearest track, with separate detailed drawings of all junctions, bridge and tunnel occupancies, showing depth of installation, details and methods of the proposed construction, with number and size of pipes to be placed in each Segment, as shown on Exhibit B, attached hereto and incorporated herein. Construction Plans shall clearly note Railroad Valuation Map references, Railroad Survey Station and Milepost references for all beginning and ending points and all alignment transition points. Each set of Construction Plans for each Segment shall have an overview map showing all of the required information.

"Contracted Employees" shall mean, for purposes of the establishment of liability between and among the contracting parties of this Agreement only, those employees of Railroad utilized in performing or facilitating the route designation, inspection, survey, design, plan, installation, construction, maintenance or operation of Utility's Facilities, upon request of Utility or as otherwise required or permitted by this Agreement; and the same shall be considered as sole agents or servants of Utility when performing such activity.

"Default Rate" shall mean a rate of interest equal to the lesser of (a) the Prime Rate plus five percent (5%) per annum, or (b) the highest non-usurious rate permitted under applicable law.

"Discontinuance" when related to Utility's Facilities, shall mean cessation of transmission through such Segment for more than six (6) consecutive months. Such term shall not include a temporary cessation of transmission during periods of maintenance or repair of Facilities.

"Engineer" shall mean the Chief Engineer of Railroad, or the authorized representative(s) thereof.

"Facilities", when applied to property of or installed by Utility in a single installation in accordance herewith, shall mean pipeline of the dimensions set forth in Section 2.1 hereof and appurtenant equipment and attachments utilized for the installation, operation, maintenance, repair, replacement in-kind, relocation or removal of such Facilities, as set forth

on the Construction Plans.

“Fouling of Tracks” or “Fouled” shall mean the existence, movement or placement of equipment and/or personnel on a railroad track or within twelve feet (12’) of the centerline of any track within the Rail Corridor.

“Non-operated Right-of-Way” shall mean strips or parcels of former Rail Corridor, not utilized for active rail operations. Such term shall also include parcels of Railroad-owned lands adjacent to and outside of active Rail Corridors but not actually used for the movement of railcars, locomotives or freight or passenger traffic. Non-operated Right-of-Way is excluded from this Agreement.

“Person” shall mean any individual, association, partnership, limited liability company, corporation or other legally recognized entity.

“Prime Rate” shall mean the prime rate of U.S. money center commercial banks as published in *The Wall Street Journal* from time to time.

“Railroad” shall mean Railroad as defined in the introductory paragraph of this Agreement, any of its predecessor railroads, any successor by merger, consolidation or reorganization, permitted assignees, any Person whose tracks, right-of-way or other property may be leased to or operated by Railroad (subject to any applicable agreement relating thereto), or any operating lessee. For the purposes of the indemnification obligations in Section 18.2, the term Railroad shall be limited to Railroad as defined in the introductory paragraph of this Agreement or its operating lessee. For purposes of Article 19, the term “Railroad” shall also include all Affiliates of Railroad and their respective officers, employees, and agents.

“Rail Corridor” or “Corridor” shall mean the contiguous area of owned, operated, leased or controlled property, on which Railroad has placed and utilizes railroad track(s), but not to exceed a width of one hundred feet (100’), measured fifty feet (50’) to each side of the centerline of the main track(s) of Railroad.

“Restricted Working Area” shall mean the area parallel to and located thirty feet (30’) (or the top of any ditch slope if that distance is greater than thirty (30’) feet) from the centerline of the outermost track (on each side) in the Rail Corridor.

“Segment” shall mean a longitudinal section of Rail Corridor on which Facilities are installed by Utility in accordance with this Agreement.

“Title Deficient Areas” shall mean those portions of Rail Corridor, if any, for which Railroad holds title in less than fee simple absolute and for which Railroad may not otherwise have the right to grant to Utility the Occupancy as contemplated by this Agreement.

“Trackage Rights” shall mean the rights arising by agreement of one railroad to use the tracks or rights-of-way of another railroad for the carriage of rail traffic; said agreement ordinarily imparts no ownership interest in the burdening carrier relating to the tracks or rights-of-way of the burdened carrier.

“Utility” shall mean Utility as defined in the introductory paragraph of this Agreement, any successor by merger, consolidation or reorganization, and its permitted assignees. For purposes of Utility's construction, maintenance, repair, replacement or removal of Utility's Facilities, “Utility” shall also mean Utility's employees, Contracted Employees, agents, servants, contractors and subcontractors.

“Valuation Maps” shall mean Railroad's Rail Corridor maps, prepared by Railroad originally in 1913-1919 under 49 U.S. Code Sections 19 and 19a (now Sections 10781-10783) for the U.S. Surface Transportation Board, successor to the Interstate Commerce Commission (“S.T.B”), and the S.T.B. regulations, as updated from time to time.

2. OCCUPANCY; CONSIDERATION; PAYMENT OF FEES.

2.1 Occupancy; Consideration.

(a) That Railroad, for and in consideration of the sum of TWO HUNDRED, NINETY-FIVE THOUSAND AND NO/100 DOLLARS (\$295,000.00) (the “Compensation”) to be paid upon execution hereof (the “Consideration”), hereby permits, insofar as the quality of its title and the limits of its exclusive possessory interest enable it so to do, unto Utility, a non-exclusive facility longitudinal occupancy (the “Occupancy”) over, through, or under certain portions of Rail Corridor, together with ancillary surface rights, solely for the construction, use, maintenance, operation, repair, renewal, replacement in-kind or removal of certain Facilities, including a sixteen__ inch (16”) pipeline, solely for the transmission of water, as more fully described as follows:

Along the northern side of E. Ponce de Leon Avenue as shown on Exhibit A, attached hereto and incorporated herein, and on Construction Plans.

EXCEPTING and RESERVING unto Railroad: (1) the paramount right to continue to occupy, possess and use the Rail Corridor for any and all purposes consistent with Railroad's operations and needs, including, but not limited to, the right to construct, reconstruct, relocate, operate, maintain, repair, renew, replace and remove Railroad's tracks, signals, wires, communications systems and other facilities as now exist or which may in the future be located in, upon, over, under or across the Rail Corridor; and (2) the right to grant crossings, wireline, fiber optic, pipeline and other nonexclusive occupations of the Rail Corridor.

TO HAVE AND TO HOLD the Occupancy for the Term, as hereinafter defined, SUBJECT, however, to any existing Railroad facilities, public utilities, and other wireline, fiber optic, pipeline or other facilities located in, on, over, under or across the Rail Corridor, and to all existing instruments, agreements, easements and rights therefor, whether recorded or not; and SUBJECT TO the terms, conditions, covenants and limitations as set forth in this Agreement.

2.2 Term.

Unless sooner terminated in accordance with the provisions of this Agreement, this Agreement shall be for an initial term of fifteen (15) years commencing as of the Effective Date (the “Initial Term”), and shall automatically renew for up to seven (7) additional terms of ten (10) years (the “Renewal Term”; together with the Initial Term, the “Term”), unless Utility provides Railroad with written notice of Utility’s intent not to renew this Agreement at least one hundred eighty (180) days prior to the expiration of the Initial Term.

2.3 Right to Acquire Broadform Pipeline Rights.

(a) Utility understands that portions of the Rail Corridor, including the Segments, may be in Title Deficient Areas. With respect to any portion of the Rail Corridor occupied pursuant to the Occupancy granted hereunder that is located in a Title Deficient Area, the Occupancy herein granted Utility shall include the additional right to procure all nonexclusive Broadform Pipeline Rights (i.e., specifically limited to Utility) from third parties as Utility determines are necessary to enable it to construct, install, operate, maintain, repair, replace and remove Utility’s Facilities in such Title Deficient Areas.

(b) Utility shall not acquire exclusive Broadform Pipeline Rights (such that the underlying fee owner no longer has the right to grant such rights to third parties) without the prior written consent of Railroad, which may be withheld in Railroad’s sole discretion.

(c) All provisions of this Agreement, including, but not limited to, Utility’s obligation to pay the Consideration to Railroad, shall apply as between Railroad and Utility with respect to any Title Deficient Areas and Utility shall not be entitled to any refund of any portion of the Consideration, notwithstanding that Utility’s right to use and occupy the Title Deficient Areas is derived, in whole or in part, from Broadform Pipeline Rights obtained by Utility from third parties.

2.4 Removal.

(a) Within ninety (90) days after termination of this Agreement, Utility, at its own risk, cost and expense, shall remove all Facilities from the Rail Corridor and restore such Rail Corridor and other affected property of Railroad to the functional or operational condition existing immediately prior to Utility’s removal of such Facilities. If, within such ninety (90) day period, Utility fails to remove the Facilities and restore the Rail Corridor and other affected property as provided in the preceding sentence, Utility shall be deemed to have abandoned its Facilities in place, in which event such Facilities shall become the property of Railroad, for purposes of resale, use or operation by Railroad in any manner and for any purpose Railroad deems appropriate, in its sole discretion; or Railroad may cause such removal and restoration to be performed and all costs incurred by Railroad in such removal and restoration, together with interest thereon at the Default Rate, shall be due and payable by Utility to Railroad upon written demand.

(b) The termination of this Agreement shall not release any party from any liability or obligation incurred prior to such termination or terminate any right or obligation which would have continuing relevance after the termination of this Agreement and which are reasonably intended to have continuing validity.

2.5 Right to Audit. Railroad shall have the right, during regular business hours, upon reasonable notice to Utility, and at mutually agreeable times, to conduct field examinations of Utility's Facilities in the presence of an authorized representative of Utility and to examine and audit such books and records of Utility as are appropriate and necessary, in Railroad's sole discretion, to determine and verify (i) the Facilities installed by Utility in the Rail Corridor pursuant to this Agreement, and (ii) such other items as reasonably determined by Railroad. This audit right shall survive the termination of this Agreement for a period of three (3) years.

2.6 Payment of Fees. All payments to Railroad, including all applicable taxes, are to be made in U.S. Funds to CSX Transportation, Inc., c/o CSX Real Property, Inc., Attention: c/o Corridor Occupancy Services, Attention: Real Estate Manager, 500 Water Street (1180), Jacksonville, Florida 32202, unless otherwise directed in writing by Railroad..

3. LIMITATION OF RIGHTS; INDUCTIVE INTERFERENCE.

3.1 Limitation of Rights. Utility, at Utility's sole risk, cost and expense, shall furnish all materials, construct, maintain, use, change or remove Utility's Facilities or any part thereof, in accordance with the design, specifications and plans approved as provided in this Agreement, at a time and in a manner reasonably satisfactory to Railroad, all in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public body having jurisdiction thereof, and so as not to interfere with or endanger, in the sole judgment of Railroad, any property, traffic (freight or passenger), operations (direct or via Trackage Rights), maintenance, employees or patrons of Railroad, or of others occupying or using the property of Railroad at each location, including other lessees or licensees of Railroad.

3.2 Inductive Interference.

(a) Utility assumes all risk of, and waives any claim for, any electrical or inductive interference with the operation, use, maintenance or repair of Utility's Facilities by existing or future facilities of Railroad, or its assignees, licensees or lessees; and Railroad shall not be in any way responsible therefor.

(b) If the future operation or use of Utility's Facilities or the use of the Rail Corridor by Utility is determined by Railroad, or by any governmental agency regulating rail carriers, to be causing or likely to be causing electrical or inductive interference or any other kind of physical, technical or energetic interference with any facilities of Railroad or its assignees, licensees or lessees, Utility, at its sole cost and expense, shall take immediate measures to adequately eliminate or prevent any such interference.

(c) Railroad shall promptly provide Utility with the results of any test(s) procured by or furnished to Railroad, so that Utility may verify, for its own purposes, the results of such test(s). Utility shall, at its sole cost and expense, undertake such tests as Railroad may

deem necessary, on Utility's Facilities and/or on facilities of Railroad or its assignees, licensees or lessees, in order to determine the cause of any electrical, inductive, technical, physical or energetic interference. Utility shall also, at its sole cost and expense, provide Railroad with the results of any such tests.

(d) Utility acknowledges that in order to eliminate any form of interference as described in this Section 3.2, Utility may be required to undertake, at its sole cost and expense (i) the replacement, relocation or modification (including shielding) of the facilities of Railroad and its assignees, licensees and/or lessees, and/or (ii) the replacement, relocation or modification (including shielding) of Utility's Facilities.

(e) Utility shall design, construct, relocate, operate, maintain, repair, renew, replace and remove Utility's Facilities to avoid such electrical or inductive interference.

4. THIRD PARTY JOINT FACILITIES AND TRACKAGE RIGHTS.

This Agreement does not pertain to any occupancies over or structures upon rights-of-way owned jointly by Railroad with another Person which is not an Affiliate of Railroad or upon any Rail Corridor on which Railroad has only Trackage Rights. Railroad, however, agrees to cooperate with and assist Utility in obtaining any approvals of third parties necessary to permit Utility to use any such jointly owned rights-of-way along the Rail Corridor, and agrees not to block Utility's application to use any portion of the Rail Corridor on which Railroad only has Trackage Rights; provided, however, that Utility shall reimburse Railroad for any costs, including attorneys' fees, incurred by Railroad in connection with such cooperation.

5. CONSTRUCTION PLANS FOR UTILITY'S FACILITIES; ALTERATIONS.

5.1 Construction Plans. Utility shall plan, install, and implement the Facilities in accordance with the Construction Plans.

Modification, Alteration of Facilities. Once the Facilities are installed in accordance herewith, Utility shall not alter, modify or expand such Facilities, including, but not limited to, changes in location, nature, use, size, number or capacity, without the prior written consent of Railroad, which consent may be withheld in Railroad's sole discretion, provided that, Utility may make such changes upon written notice to Railroad and compliance with the terms and conditions hereof if such changes result in less than a ten percent (10%) increase in capacity. For any increase in capacity over ten percent (10%), Railroad reserves the right to assess additional consideration for the expansion of the occupancy, which Utility hereby agrees to pay.

6. TRACK SUPPORT.

6.1 Utility Track Support. During any work of any character at any locations on the Rail Corridor, Utility, at its sole risk, cost and expense, shall support the tracks and roadbed of Railroad to prevent any interference or danger as necessary in the sole judgment of Railroad's Engineer. Upon the completion of all work, Utility shall restore such tracks, roadbed and other property of Railroad to the same functional and operational condition existing immediately prior thereto, as approved by Railroad's Engineer.

6.2 Railroad Track Support. Railroad may perform or contract to have performed any or all the work of supporting the tracks and roadbed and of restoring the same, at the sole risk, cost and expense of Utility, if (a) Utility fails to perform such work timely or satisfactorily, (b) such work is required by Railroad's labor agreements in existence at the time, or (c) requested by Utility (subject to availability of Railroad's personnel and equipment and satisfactory security for payment of costs by Utility).

7. PERMITS.

7.1 Permit Requirements. Utility, at its sole cost and expense, shall secure and maintain in effect all federal, state and local approvals, authorizations, permits and licenses required for the construction, installation, operation, maintenance, repair, replacement and/or removal of Utility's Facilities, including zoning, building, health, environmental and communication service permits and licenses, and shall indemnify Railroad to the extent allowed under applicable law against claims for payment therefor and against any claims for fines or penalties that may be levied for failure to procure, or to comply with, such approvals, authorizations, permits or licenses, and any remedial costs to cure any violations thereof. Without limiting the foregoing, any development or environmental impact statements required for the Facilities shall be prepared by Utility, at Utility's sole risk, cost and expense, and all costs for local zoning, construction and subdivision compliance, approval and permits, shall be borne solely by Utility.

7.2 Railroad Cooperation. Railroad shall not hinder Utility's attempts to secure, and shall cooperate with and assist Utility, at Utility's cost and expense, in obtaining, any permits, licenses or approvals of governmental agencies or authorities, or of any necessary third parties, for use of any structures or facilities (including streets, roads or utility poles) along the Rail Corridor not solely owned by Railroad.

8. FOULING TRACK; SAFETY RULES.

8.1 Railroad Safety and Operating Rules. Utility employees, agents, contractors and/or subcontractors seeking to engage in Fouling of Tracks or enter upon any portion of the Rail Corridor (including tunnels and bridges) shall be trained in the safety and operating rules established by Railroad from time to time (the "Railroad Safety and Operating Rules"), and shall at all times wear required identification badges and safety equipment (shoes, hardhat, goggles, etc.). Utility shall bear all costs of any program given or administered by Railroad to train such persons.

8.2 Contracted Employees. Railroad shall provide Contracted Employees, as necessary, at Utility's sole risk, cost and expense as provided more fully herein, to accompany Utility's employees, agents, transferees, invitees, customers, permitted assignees contractors, subcontractors or other representatives during their presence on the tracks or the Rail Corridor.

8.3 Restriction Right. Notwithstanding any contrary provision contained herein, Railroad reserves the right, in its sole discretion, to exclude or bar specifically-named individuals from entrance upon Railroad's tracks or Rail Corridor for demonstrating actions

dangerous to themselves or others, or for refusing to comply with Railroad's Safety and Operating Rules or other regulations or directions of Railroad, or for any other specific cause deemed sufficient in Railroad's sole discretion.

9. TRACK USE; CLEARANCES; CROSSINGS.

9.1 Restricted Working Area. No goods, materials, equipment or fuel shall be placed or stored within the Restricted Working Area.

9.2 No Vehicles. Utility shall not use Railroad's tracks or the Rail Corridor for maintenance or the placement of its vehicles without the prior written approval of such use by Railroad's Engineer.

9.3 Track Integrity. Track integrity shall be protected by Utility at all times, as set forth in Article 6.

9.4 Crossing Specifications. Crossings of Railroad's track and Rail Corridor necessitated by difficulties in construction (i.e., locations of manmade or natural structures, waterways, streets, etc.) shall be coordinated with and approved in writing by Railroad's Engineer.

10. FLAGGING; WATCHMEN.

10.1 General. Railroad shall have the right, in its sole discretion and at any time during any period of construction, maintenance, repair, renewal, alteration or removal of Utility's Facilities, to place outside service providers, watchers, flaggers, inspectors or supervisors, for the protection of the operations of Railroad (including freight and passenger service) or the property of Railroad, Utility or others on the Rail Corridor or other Railroad property, at the sole risk, cost and expense of Utility. Notwithstanding any contrary provision contained herein, outside service providers, watchmen, flagmen, inspectors or supervisors placed upon the Rail Corridor or other Railroad property while working on the Utility's Facilities under this Article 10 shall be deemed to be Contracted Employees of Utility.

10.2 Scheduling. Utility recognizes that because of Railroad's labor and employment agreements: (a) the furnishing of any watchers or flaggers needs to be requested at least thirty (30) days for short term flaggers or forty-five (45) days for long term flaggers prior to actual work date, or such watchers/flaggers may not be available; (b) once a watcher/flagger is designated, he/she cannot be pulled from the job less than seven (7) days prior to work date, or cost thereof may be incurred by Utility; (c) once assigned, for any period of time, such watcher/flagger must be paid for at least an eight (8) hour shift, regardless of lesser hours worked; and (d) if Utility's needs overlap ordinary shift turns (or "tricks"), Utility may incur flagging costs for both shifts/tricks.

11. FACILITY LOCATION SIGNS.

Utility, at its sole cost and expense, shall furnish, erect and thereafter maintain, signs showing the location of all Facilities and Utility's contact telephone number and shall place such

other signs as required by governmental or industry standard.

12. MAINTENANCE OF RAIL CORRIDOR AND FACILITIES.

12.1 Maintenance of Rail Corridor. Unless Railroad and Utility otherwise agree in writing, Railroad shall not be responsible for maintenance of that portion of the Rail Corridor on which Utility's Facilities are located, or for clearing or removing of trees, shrubs, plants, ice, snow or debris therefrom. If Utility requests and Railroad agrees, Railroad shall extend its routine maintenance to cover that portion of the Rail Corridor on which Utility's Facilities are located. Railroad shall conduct such maintenance only at the same time as Railroad performs its own track or Rail Corridor maintenance. Railroad shall perform such extended maintenance at Utility's sole risk, cost and expense and Railroad's employees performing such extended maintenance shall be deemed to be Contracted Employees of Utility. Railroad shall be reimbursed for all costs incurred, including, without limitation, any and all billable expenses, labor costs (Railroad or contract), supplies, parts, materials, etc., directly associated with such extended maintenance program.

12.2 Maintenance of Facilities. Utility shall maintain its Facilities and all ancillary structures, at Utility's sole risk, cost and expense.

13. RAILROAD APPROVALS; ADMISSIONS.

Any approval given or supervision exercised by Railroad hereunder, or failure of Railroad to object to any work done, material used or method of construction or maintenance of Utility's Facilities, shall not be construed as an admission of responsibility by Railroad or as a waiver of any of the obligations of Utility under this Agreement.

14. RAILROAD EXPENSES; EMPLOYEE COSTS.

14.1 General Allocation of Responsibility; Permitted Costs and Expenses. As set forth more fully herein, Utility shall be responsible for all Railroad costs and expenses for work performed for or at the request of Utility pursuant to this Agreement, including, without limitation, review and approval of Utility's plans and designs. Documented costs and expenses directly or indirectly attributable to work performed for Utility (collectively "Railroad Costs") shall include only: (a) labor costs, plus payroll overhead and additives applicable to each Railroad employee's salary or hourly rate; (b) for contracted labor, outside service providers and consultants, as billed to and paid by Railroad plus Railroad's then current administrative fee; (c) necessary and reasonable travel and transportation expenses; (d) the total cost of materials used and equipment rentals, plus actual cost of freight charges and handling; and (e) reasonable rental cost for any Railroad equipment used by Railroad or Utility or their respective employees, agents or contractors in connection with Utility's Facilities or System. Costs and expenses for Railroad's own labor and personnel, and non-contract administrative overhead, shall be limited to the sum of (i) then current hourly rate plus, (ii) applicable overhead and additives (which shall include, but not be limited to, vacation, holiday, health and welfare, insurance and supervision) in accordance with the applicable rates set forth in the then current "EB-2 Schedule" in effect at the time the expense is incurred, published by Railroad and amended from time to time. The current EB-2 Schedule applicable as of the Effective Date is attached hereto as Exhibit D. Updated EB-2 Schedules will be available upon Utility's written request.

14.2 Advance Reserve. Railroad will assign Utility an Outside Party number (OP#), which will be utilized for the tracking, collection and billing of reimbursable Railroad costs. Upon Railroad's approval of Utility's Construction Plans, Utility may submit an OP# request online at www.csx.com. Based on the information provided by Utility, an initial advance reserve of funds for payment of Railroad Costs will be stipulated in the Railroad's approval letter to Utility. The advance reserve shall be submitted to Railroad within twenty (20) days after receipt of Railroad's approval letter and shall be a condition precedent to Utility's commencement of work. Railroad shall be entitled to utilize such reserve to reimburse itself for Railroad Costs applicable to the OP# assigned to Utility's work. If Railroad has utilized more than sixty percent (60%) of the reserve, Railroad shall have the right, in its sole discretion, to require Utility to increase the reserve to an amount equal to the Railroad Costs reasonably estimated by Railroad for Utility to complete its work. Upon completion of the work, any unused portion of the reserve will be returned to Utility. If any additional funds are required in excess of the reserve, an invoice will be issued to Utility for final payment and Utility will remit payment to Railroad within thirty (30) days of receipt of such invoice. If Utility fails to timely pay such invoice, interest shall accrue at the Default Rate until paid in full.

14.3 Consultant. Railroad shall have the right, in its sole discretion, to place a consultant on any installation site in lieu of Railroad's own supervisory personnel, at Utility's sole risk, cost and expense, to monitor installation and compliance with approved Construction Plans, to log progress, and to log the time that Railroad employees, including Contracted Employees (by name, date and purpose), are utilized in connection with Utility's Facilities or System. Such consultant shall advise Railroad and Utility of any deviation from approved Construction Plans requested by Utility or any of Utility's contractors.

14.4 Records. Railroad shall keep accurate records of all costs and expenses attributable to Utility pursuant to this Agreement, and Utility shall have the right, at Utility's sole cost and expense, to examine and copy the applicable records of Railroad to verify that such charges accurately reflect the costs and expenses thereof.

15. LIENS AND ENCUMBRANCES.

Utility shall not permit any mortgage, pledge, security interest, lien or encumbrance, including, without limitation, tax liens or encumbrances and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, operation, repair, maintenance, replacement or removal of the Facilities (collectively, "Liens or Encumbrances"), to be established or remain against the Rail Corridor or any other property of Railroad. In the event that any Railroad property becomes subject to any Lien or Encumbrance, Utility agrees to pay, discharge or remove the same within ten (10) days of Utility's receipt of notice that such Lien or Encumbrance has been recorded, filed or docketed against such Railroad property; provided, however, that if Utility provides a bond or other security acceptable to Railroad for the payment and removal of such Lien or Encumbrance, Utility shall have the right to challenge, at its sole expense, the validity and/or enforceability of any such Lien or Encumbrance.

17. INDEPENDENT CONTRACTOR STATUS; LABOR PROVISIONS.

17.1 Independent Contractor Status. Except with respect to Contracted Employees, Railroad reserves no control whatsoever over the employment, discharge, compensation of or services rendered by Utility's employees, agents or contractors, and it is the intention of the parties that Utility shall be and remain an independent contractor, and that nothing herein shall be construed as inconsistent with that status or as creating or implying any employer-employee, principal-agent, partnership or joint venture relationship between Utility and Railroad.

17.2 Labor Provisions. Each party shall promptly notify the other party if it has knowledge or learns of any actual or potential labor dispute which is delaying or could delay the timely performance of any obligation under this Agreement. In the event of any dispute, work stoppage, picketing, strike or any similar or like activity by Utility's employees, agents, contractors or subcontractors which prevents or hinders rail operations, Utility shall, at its expense, immediately reverse the act or omission that caused such dispute, work stoppage, picketing, strike or similar or like activity, and immediately take all reasonable actions to resolve the issues underlying the same. Utility shall also assume, release, defend, indemnify, protect and save Railroad harmless from and against all claims, liabilities, losses, damages,

causes of action, costs, expenses, attorneys' fees and other costs associated with such dispute, work stoppage, picketing, strike or similar or like activity to the extent allowed under applicable law.

18. LIABILITY; INDEMNITY.

18.1 Utility's Release and Indemnification. Recognizing that Railroad has owned and/or operated the Rail Corridor for many years prior to the Effective Date and prior to entry thereupon by employees, agents, sublessees, sublicensees, transferees, invitees, customers, contractors, subcontractors, permitted assignees or other representatives of Utility, and in addition to the indemnities contained elsewhere in this Agreement, to the extent allowed under applicable law, Utility hereby assumes, releases and shall defend, indemnify, protect and save Railroad harmless from and against all claims, liabilities, losses, damages, causes of action, costs, expenses, attorneys' fees and other costs (for purposes of Section 18, collectively "Claims") arising from:

(a) (1) damage to or destruction of Utility's Facilities, (2) interruption or loss of service or use of Utility's Facilities, (3) loss of revenue, income or profit therefrom, (4) restoration of service, the inability to effect such restoration, any delay in such restoration or the acquisition of substitute service, or (5) any Claim of any employee, agent, sublessee, sublicensee, transferee, invitee, customer, contractor, subcontractor, permitted assignee or other representative arising from the foregoing, irrespective of whether such Claims result from the negligence, gross negligence or willful misconduct of Railroad, its employees (including Contracted Employees), agents, contractors, or other parties performing services for Railroad;

(b) damage or destruction to property, including Railroad, Utility and others, or injury to or death of any persons on or about the Rail Corridor, including, but not limited to, Utility's employees, Contracted Employees, agents, contractors, subcontractors, invitees, trespassers, customers, purchasers, transferees, permitted assignees, sublessees, sublicensees or other representatives, resulting from the existence, construction, maintenance, operation, use, repair, change, placement, replacement, relocation and/or subsequent removal of Utility's Facilities, or any part thereof, or the related use of the Rail Corridor or other property, acts of God, regardless of any approvals, reviews, controls or standards imposed by Railroad or other actions of Railroad, unless such Claims result solely from the willful misconduct or gross negligence of Railroad;

(c) any breach of this Agreement by Utility, unless such Claims result solely from the willful misconduct or gross negligence of Railroad;

(d) any slide, soil disturbance or environmental damage or impairment resulting from the existence, construction, installation, maintenance, operation, use, repair, change, placement, replacement, relocation and/or subsequent removal of Utility's Facilities, unless such Claims result solely from the willful misconduct or gross negligence of Railroad;

(e) any claim (regardless of merit), loss or damages awarded, whether civil or criminal, under any antitrust laws, or under any federal, state or local regulatory actions, related to this Agreement; in any such actions, Railroad shall have the right to designate and/or employ independent counsel, if deemed necessary by Railroad, to protect its interests, and the expense of such representation shall be paid or reimbursed by Utility;

(f) any damage or injury (including interruption or loss of service or use, loss of revenue, income or profit therefrom, restoration of service, the inability to effect such restoration, any delay in such restoration or the acquisition of substitute service) to any facilities, cables, wires, pipes, casings, conduits, innerducts, equipment, ducts or other property of any other party or user, licensee, lessee, transferee, purchaser, permitted assignee or other person, unless such injury or damage results solely from the willful misconduct or gross negligence of Railroad; and

(g) any act or omission of, or unauthorized entry upon the Rail Corridor or other Railroad property by, Utility or Utility's employees (including Contracted Employees), agents, contractors, subcontractors, purchasers, lessees, transferees, invitees, licensees, customers, permitted assignees or other third parties acting at the direction thereof.

18.2 Railroad's Indemnification. Railroad hereby assumes responsibility for, and shall indemnify and hold Utility harmless from all Claims arising from:

(a) Death of or injury to any employee of Railroad, other than Contracted Employees;

(b) Destruction of or damage to any Railroad facilities, equipment (moving or stationary) or property; or

(c) Interruption to or cessation of freight rail service;

UNLESS such Claim is caused by, arises from, or results in whole or in part from:

(i) any act or omission of Utility or its employees (including Contracted Employees), agents, contractors, subcontractors, invitees, customers, purchasers, transferees, permitted assignees, licensees, lessees or other representatives, including, but not limited to, any improper or negligent plan and/or design, construction, installation, maintenance, placement, replacement, operation, repair, relocation, use or removal of Utility's Facilities;

(ii) any rescheduling, delay or diversion costs, based upon actions by Utility

on the Rail Corridor; or

- (iii) any matter which is the subject of Utility's release and indemnification in Section 18.1.

18.3 Wrecks and Derailments. Notwithstanding any contrary provision contained herein, Railroad shall not have any liability whatsoever for and Utility, to the extent allowed under applicable law, shall release, defend, indemnify and hold Railroad and its Affiliates harmless from and against any and all Claims relating to (i) personal injury or death of any person on or about the Rail Corridor or other property in connection with Utility's Facilities or this Agreement, including, but not limited to Utility's employees, Contracted Employees, agents, contractors, subcontractors, invitees, trespassers, purchasers, transferees, lessees, permitted assignees, customers, licensees, or other third persons, and (ii) damage to or destruction of Utility's Facilities (including, without limitation, interruption or loss of service or use, loss of revenue, income or profit therefrom, restoration of service, the inability to effect such restoration, any delay in such restoration or the acquisition of substitute service) arising from or resulting in connection with any train accident or derailment.

18.4 Notice of Claims; Indemnification Procedures. Upon receipt of notice by Railroad or Utility, as applicable, (the "Indemnitee"), of any loss, event, happening or occurrence which would be the basis of a claim by the Indemnitee under the provisions of this Agreement (an "Indemnified Claim"), the Indemnitee shall immediately provide written notice to the other party (the "Indemnitor") of such Indemnified Claim. As between the Indemnitee and the Indemnitor, the Indemnitor shall retain the primary responsibility for the conducting of any legal and/or administrative action or other proceeding regarding any such Indemnified Claim (an "Indemnified Claim Proceeding") and the defense (and any appropriate appeal) thereof. Legal counsel retained with respect to any Indemnified Claim Proceeding shall be selected by the Indemnitor, but shall be subject to the reasonable prior approval of the Indemnitee. As between the Indemnitee and the Indemnitor, all costs incurred with respect to any Indemnified Claim Proceeding (including, but not limited to, costs and attorneys' fees) shall be borne by the Indemnitor, and the Indemnitor's indemnification obligations set forth herein shall extend to all such costs. Nothing contained herein shall in any way limit the Indemnitee's right to participate and/or retain independent legal counsel, at the Indemnitee's expense (except as otherwise provided in Sections 18.1 and 24.5), with respect to any Indemnified Claim Proceeding, but the Indemnitee shall cooperate with the Indemnitor and coordinate Indemnitee's participation and/or use of such independent counsel in a matter not inconsistent with Indemnitor's positions and interests in such Indemnified Claim Proceeding, to the extent reasonably possible and not adverse to the interests of Indemnitee. Notwithstanding the foregoing, in the event Indemnitee determines, in Indemnitee's opinion, that there is a conflict of interest or other circumstance whereby such Indemnitor's retained legal counsel cannot adequately represent Indemnitee's interests in any Indemnified Claim Proceeding, Indemnitee shall have the right to retain independent legal counsel and Indemnitor's indemnification obligations set forth herein shall extend to all costs incurred with respect to such separate representation. Indemnitor's obligation to conduct and undertake any required Indemnified Claim Proceeding or the defense (or appeal) thereof, and to bear the costs incurred with respect thereto, shall apply even in the event that there is an ultimate adjudication or other determination of liability of the Indemnitee attributable to the negligence, gross negligence or other tortious conduct of such Indemnitee. Any settlement of an Indemnified Claim shall be

subject to the written approval of both the Indemnitee and the Indemnitor. Indemnification payment shall be made within thirty (30) days of such approval.

18.5 Material Inducement. Utility recognizes that the indemnities contained herein are a material inducement to Railroad's execution of this Agreement.

18.6 Survival. The provisions of this Article 18 shall survive the expiration or termination of this Agreement.

19. INSURANCE.

19.1 Railroad Protective Liability Insurance. Before and during any period of construction or maintenance of any portion of the Facilities (including preliminary surveys and inspections) or any physical presence upon the Rail Corridor, Utility shall purchase and maintain in full force and effect, Railroad Protective Liability Insurance ("RPL") naming Railroad as the sole named insured. Said RPL policy shall be written on the form prescribed in the Federal Aid Highway Program Manual, Volume 6, Chapter 6, Section 2, Subsection 2, as amended from time to time, or as superseded by the AAR/AAHSTO form, or on an ISO/RIMA form, and shall provide available limits of not less than \$5,000,000 per occurrence, \$10,000,000 aggregate, for bodily injury and property damage (unless Utility designates a hazardous material Rail Corridor as a Conduit Right-of-Way, and then \$10,000,000 per occurrence, \$20,000,000 aggregate). Said RPL policy shall not contain any deductible provision or language that would result in the coverage limits being shared with any entity not affiliated with Railroad. The original of said RPL policy shall be furnished to and approved by Railroad's Risk Management Department, CSX Corporation, 500 Water Street (J907), Jacksonville, Florida 32202, prior to the commencement of any entry upon the Rail Corridor or other operations under this Agreement. Acceptance and approval of RPL insurance shall be at the sole discretion of Railroad's Risk Management Department.

19.2 Liability Insurance. Utility shall purchase and maintain, until all of its obligations under this Agreement (including any agreements entered into between the parties pursuant hereto) have been fully discharged and performed, the following insurance coverage: (a) Commercial General Liability Insurance ("CGL"), with contractual liability covering actions assumed in this Agreement (including any agreements entered into between the parties pursuant hereto) by Utility, providing for available limits of not less than \$10,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence, including Federal Employers Liability Act claims ("FELA") against the Railroad, or other liability arising out of or incidental to railroad operations; (b) Statutory Workers' Compensation, Employer's Liability Insurance with available limits of not less than \$1,000,000 and Occupational Disease Insurance. If any motor vehicles are used in connection with the work to be performed hereunder (or in connection with any agreements entered into between the parties pursuant hereto), Utility shall purchase and maintain Business Automobile Liability Insurance with limits of not less than \$2,000,000 single limit, bodily injury and/or property damage combined, for damages to or destruction of property including the loss of use thereof, in any one occurrence. If, in Railroad's opinion, a

higher limit of liability is necessary for any insurance policy required hereunder, Railroad shall so notify Utility and Utility shall, within thirty (30) days of receipt of such notice, provide a copy of the endorsement to the appropriate policy increasing the liability coverage to the required limit.

19.3 Policy Requirements. All insurance required hereunder shall be effected by valid and enforceable policies issued by insurer(s) of financial responsibility and authorized to do business in the states where the Facilities are located, all subject to the reasonable prior approval of Railroad. Except for the RPL policy (on which Railroad shall be the sole named insured), Utility’s liability insurance policies shall name Railroad as an additional insured and will not have any exclusions for liability relating to railroad operations or contractual liability for construction or demolition within fifty (50) feet of Railroad’s tracks by endorsement. Utility’s Workers’ Compensation and property insurance policies shall include waivers of subrogation rights endorsements in favor of Railroad. All policies shall contain a provision for thirty (30) days’ written notice to Railroad prior to any expiration or termination of, or any change in, the coverage provided. Utility shall provide Railroad with at least thirty (30) days’ written notice prior to such expiration, termination or change in any insurance coverage. Prior to any entry upon the Rail Corridor pursuant to this Agreement and upon Railroad’s request thereafter, Utility shall provide or shall cause its insurer to provide Railroad with complete certified copies of the liability insurance policies in effect for the term of this Agreement. The liability assumed by Utility under this Agreement, including, but not limited to, Utility’s indemnification obligations, shall not be limited to the insurance coverage stipulated herein.

19.4 Additional Remedy for Failure to Comply. Notwithstanding any contrary provision hereof, in the event that Utility fails during the term hereof to comply and continue its compliance with the provisions of this Section 19, Railroad may, in its sole and absolute discretion, thereafter immediately deny or revoke access to the Rail Corridor. The parties agree that Utility’s breach of this Section 19 shall not be subject to the provisions of either Section 26.3 relating to cure of breach or Section 27 relating to dispute resolution.

20. NOTICES.

20.1 General. Unless otherwise provided herein, all notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be (a) delivered personally, (b) sent by overnight commercial air courier (such as Federal Express), or (c) mailed, postage prepaid, certified or registered mail, return receipt requested; to the parties at the addresses hereinafter set forth:

Utility:

Attention: _____

With Copy To:

Attention: _____

Railroad:
 CSX Real Property, Inc.
 6737 Southpoint Drive South (Bldg. 1, J180)
 Jacksonville, Florida 32216

Attention: President

With Copy To:
 CSX Transportation, Inc.
 500 Water Street (J150)
 Jacksonville, Florida 32202

Attention: General Counsel

or at such other address(es) as a party shall have duly notified the other party.

In addition to the foregoing, any notice, communication or delivery required or permitted under Sections 18 and 19 shall also be sent to:

	CSX Corporation
	500 Water Street (J907)
	Jacksonville, Florida 32202
	<u>Attention:</u> Risk Management

Any such notice, communication or delivery shall be deemed delivered upon the earliest to occur of: (a) actual delivery; (b) one (1) business day after shipment by commercial air courier as aforesaid; or (d) three (3) business days after certified or registered mailing as aforesaid.

20.2 Design and Construction Phase Access Notice. During the design and construction phase, Utility shall give Railroad's Engineer at least thirty (30) days' written notice before commencing construction or bringing any vehicle or equipment onto the Rail Corridor, and forty-eight (48) hours' notice before any other entry thereon. Any such written notice shall state the name(s) of Utility employee(s) in charge or contractor(s) or subcontractor(s) performing work or making such entry.

20.3 Maintenance and Operation Phase Access Notice. During the Maintenance and Operation Phase, in order to maximize the safety of operated trains, crews, passengers and cargo of Railroad and others, and the safety of the entrants upon the Rail Corridor, Utility shall complete and submit Railroad's Outside Party Number Request Form (Form # OP), which is located at www.csx.com. Entry shall be subject to the consent and prior approval of Railroad's Engineer as to method and timing. Any such notice shall state the names of the individuals and/or entities performing work or making such entry.

20.4 Emergency Notice. For emergencies, Utility shall complete all of the steps outlined in Section 20.3 above, and shall also include detailed information of the emergency. Utility shall also call and report details of the emergency to Railroad's Rail Operations Emergency Telephone Number: 1-800-232-0144. In the event Railroad needs to contact Utility concerning an emergency involving Utility's Facility(ies), the emergency phone number for Utility is: * _____. In case of disaster (such as a train wreck or derailment or System or Facility failure) or other emergency demanding immediate examination or repairs to the existing System or Facilities, notice shall be given by either party to the other in person or by telephone to the Emergency Response Center(s) designated on Exhibit C attached hereto or as otherwise designated in writing by each party to the other from time to time. Any verbal or telephonic notice must be confirmed in writing within forty-eight (48) hours.

21. RELOCATIONS.

21.1 Relocation to Accommodate Railroad. If Railroad determines that any portion of Utility's Facilities or System should be changed, altered or relocated after initial construction, Railroad shall promptly give written notice thereof to Utility. Within sixty (60) days of receipt of such notice, Utility shall protect or move such Facilities or System, at Utility's sole cost and expense, and in a manner satisfactory to Railroad.

21.2 Replacement Land. In the event of any relocation of Utility's System or Facilities under this Article, Railroad shall not be required to purchase for Utility any replacement land or right-of-way or to pay Utility the cost to secure same if there is not available Rail Corridor. However, Railroad agrees to allow Utility to relocate to any other available adjacent or nearby Rail Corridor or other land owned by Railroad at Utility's sole cost; provided, however, that Railroad shall not be entitled to any additional payment for such replacement Railroad land or Rail Corridor.

22. LINE SALES; ABANDONMENT.

In the event of a sale of any portion of Rail Corridor upon which Utility's Facilities are located, such sale shall be made expressly subject to this Agreement and the rights of Utility hereunder. Notwithstanding any provision herein to the contrary, Railroad shall have the absolute right, in its sole discretion, to effect an Abandonment of all or any portion of the Rail Corridor.

23. CONDEMNATION.

23.1 Severance of Interests. In the event that any portion of the Rail Corridor upon which Utility's Facilities are located becomes the subject of a condemnation or appropriation proceeding or offer to acquire, Utility's interest (in its Facilities and in the Occupancy) shall be severed from Railroad's interest (both physical and ownership rights) in such proceedings, and the parties agree to have any such condemnation or appropriation awards specifically allocated between Utility's interest and Railroad's interest.

23.2 Removal of Facilities. Should any Segment of the Rail Corridor upon which Utility's Facilities are located be condemned, appropriated and/or acquired by any governmental agency (or other party cloaked with the power of eminent domain) for public purpose or use, then any Facilities of Utility within such Rail Corridor not condemned, appropriated and/or acquired by such agency or authority shall be promptly removed by Utility at Utility's cost, unless Utility makes other arrangements with the condemning or appropriating agency or authority.

23.3 Notice. Railroad shall promptly notify Utility of any condemnation or appropriation action filed against any portion of the Designated Rail Corridor. Railroad shall also promptly notify Utility of any threatened condemnation or offer to acquire by any governmental agency (or other party cloaked with the power of eminent domain) affecting the Designated Rail Corridor (provided the Railroad employee(s) administering this Agreement have actual knowledge thereof). Further, any voluntary sale to the condemning or appropriating agency or authority pursuant to any threatened condemnation or offer to acquire shall be in accordance with the provisions of Article 22.

24. TITLE LIMITS.

24.1 General. Utility understands and acknowledges that Railroad occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership

rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality or quantity of Railroad's title in and to any particular Segment occupied, used or enjoyed in any manner by Utility under any rights created in this Agreement. Except as otherwise provided herein, this Agreement shall not include any rights, licenses, grants or other interests of Railroad in any Title Deficient Areas. It is expressly understood that Railroad does not warrant title to any portion of the Rail Corridor, and Utility hereby accepts the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights or interests in and to the Rail Corridor, and all leases, licenses and easements or other interests previously granted to or reserved by others therein.

24.2 Limitations of Occupancy. The term "Occupancy" herein shall mean: (a) with regard to any portion of Rail Corridor which is owned by Railroad in fee simple absolute or in which the uses contemplated hereunder are otherwise statutorily authorized or approved by the state in which such Rail Corridor is located, merely a nonexclusive "easement"; (b) with regard to any portion of Rail Corridor owned, occupied, used or controlled by Railroad in less than fee simple absolute (e.g., fee simple determinable, fee simple conditional, lease or rail easement), where the applicable law permits such grants by Railroad to Utility, merely "a right of occupancy" commensurate with the term and extent of Railroad's ownership, occupancy, etc.; and (c) with regard to any other portion of Rail Corridor occupied, used or controlled by Railroad under any other facts or rights, Railroad merely waives its exclusive rights to occupy, use and control the Rail Corridor and grants no rights whatsoever under this Agreement, such waiver continuing only so long as Railroad continues its own occupation, use or control of such portion of the Rail Corridor.

24.3 Title Deficient Areas. Notwithstanding anything contained in this Agreement to the contrary, Utility hereby agrees that, with respect to any Segment of the Rail Corridor in Title Deficient Areas, Railroad shall have the right to revoke the Occupancy unless Utility provides Railroad with reasonable evidence, acceptable to Railroad, in Railroad's sole discretion, that Utility has obtained Broadform Pipeline Rights over the Segment in question. Utility understands and agrees that any Broadform Pipeline Rights acquired by Utility within the Rail Corridor are subject to the terms and conditions of this Agreement.

24.4 Waiver of Claims. Utility agrees it shall not have and hereby completely and absolutely waives its right to any claim against Railroad for damages or any other legal or equitable relief on account of any deficiencies in title to the Rail Corridor.

24.5 Title Indemnity. Utility shall indemnify and hold Railroad harmless from and against any and all claims, liabilities, losses, causes of action, (including litigation for trespass, slander of title, overburden of easement, or similar title related claims) damages, costs and expenses (including attorneys' fees and costs) to the extent allowed under applicable law arising out of or based upon (i) the placement of Utility's Facilities, or the presence of Utility's Facilities in, on or along the Rail Corridor, (ii) Utility's use and occupancy of the Rail Corridor or other property of Railroad and/or Railroad's grant of the Occupancy under this Agreement, or otherwise concerning Railroad's title to the Rail Corridor or other property in, on or over which Utility has constructed Utility's Facilities, (iii) the presence of Utility's purchasers, licensees, sublicensees, customers, agents, invitees or any other third party acting for the

benefit or at the direction of Utility or any such third party, on the Rail Corridor, or their individual or collective use of Utility's Facilities in, on or along the Rail Corridor, and/or (iv) the title related claims of Utility's purchasers, sublicensees, customers, agents, invitees or any other third party acting for the benefit or at the direction of Utility or any such third party. In connection with any of the foregoing, Railroad shall have the right to designate and/or employ independent counsel, if deemed necessary by Railroad, to protect its interests, and the expense of such representation shall be paid or reimbursed by Utility. The term damages as used in this Section 24.5 shall include all claims for damages, including, but not limited to, civil, criminal, compensatory, consequential, direct, indirect, treble, punitive, exemplary or special damages and all other damages or penalties of any kind available at law or in equity. This indemnity shall survive the termination of this Agreement.

25. UTILITY DISCONTINUANCE.

Utility shall give prompt written notice of any Discontinuance by Utility of its Facilities or any substantial portion thereof. Irrespective of such notice or the lack thereof, Railroad shall have the option, to be exercised in Railroad's sole discretion, to terminate this Agreement as to the affected Facilities upon written notice to Utility. Upon such termination, removal of Utility's Facilities and restoration of the Rail Corridor shall be governed by Section 2.3.

26. BREACH; REMEDIES.

26.1 Material Breach; Remedy. If Utility or Railroad fails to perform, violates or defaults under any material terms or conditions of this Agreement ("Material Breach"), and fails to remedy any such Material Breach in accordance herewith, then and in that event, the non-defaulting party may, at its option (and in addition to any other remedy available hereunder), forthwith terminate this Agreement. Upon such termination, Utility, at its expense, shall remove all Facilities and restore the Rail Corridor and other affected property to a condition satisfactory to Railroad, or abandon the Facilities in place, all as provided in Section 2.3.

26.2 Examples of Material Breach. For purposes of this Article, any substantial noncompliance, or any repeated noncompliance, each of which might be considered minor or singular, shall when considered in the aggregate constitute a Material Breach.

26.3 Notice and Cure Period. Utility and Railroad agree that neither party shall proceed against the other for any alleged Material Breach before the offending party has had written notice and reasonable time to respond and cure such Material Breach; provided, however, that neither party shall be required to give time to respond and cure if any such delay will cause irreparable harm or increased risk of liability or injury. Reasonable time to respond and cure shall be presumed to be five (5) days, except in case of railroad safety hazard or emergency, in which event it shall be forty-eight (48) hours. If such Material Breach cannot reasonably be cured within such cure period, but the party proceeds promptly to cure the same and prosecutes such cure with due diligence, the time for curing such Material Breach shall be extended for such reasonable period of time as may be necessary under the circumstances to complete the cure, but under no circumstances shall such additional period extend beyond thirty (30) days without the specific written approval of the non-breaching party, which such approval may be

withheld in such party's sole discretion, provided that there shall be no extension of the five (5) day cure period in the case of a monetary default. With respect to any Material Breach (i) which is not cured by the breaching party within the applicable cure period set forth herein, or (ii) for which an opportunity to cure is not required to be given hereunder, the non-breaching party may, at its sole option, cure any such Material Breach in the manner it deems appropriate. In such event, the breaching party, within five (5) days of written demand and without deduction, set-off or abatement, shall reimburse the non-breaching party for any and all expenses incurred as a result of the non-breaching party's curing of such default. Nothing contained herein shall create an obligation on the part of the non-breaching party to cure any uncured Material Breach existing at any time hereunder.

26.4 Segment Specific Termination. If Utility commits a Material Breach relative to a specific Segment, and fails to remedy or cure any such Material Breach as herein provided, Railroad, at its option, may elect to terminate only the specific right to occupy that certain Segment. Upon such Segment specific termination, removal of Utility's Facilities in such Segment and restoration of the affected Rail Corridor shall be governed by Section 2.3.

26.5 No Continuing Waiver. Any waiver by any party at any time of any of its rights hereunder shall not be deemed to be a continuing waiver of any breach or default or other matter subsequently occurring.

26.6 Waiver of Certain Damages. Except as otherwise specifically provided to the contrary in this Agreement, neither party shall be liable to the other party for any consequential, indirect, special, exemplary, criminal or punitive damages, including, but not limited to, damages attributable to or based upon any loss of present or future profits, any loss of use, any loss of or injury to customer goodwill, or any lost or foregone investments and opportunities.

26.7 Assumption/Rejection in Bankruptcy. In the event of the filing of a petition for relief by the Utility pursuant to the provisions of the United States Bankruptcy Code, the Utility agrees that it will not object to, and will and hereby does consent to, the entry of an order granting the request of Railroad to terminate this Agreement or to set a deadline for the Utility to assume or reject this Agreement (with such deadline to be determined by Railroad in its sole discretion). The Utility also agrees that it will not seek to sell, assign, sublease or sublicense or otherwise transfer this Agreement, or the Utility's rights hereunder, to any party in any such bankruptcy case without the consent of Railroad.

27. LIAISON; COORDINATION AND DISPUTE RESOLUTION.

27.1 Specified Disputes. The parties intend that any disputes which may arise between them relating to access to the Rail Corridor, or the design, plan, construction, installation, operation, maintenance, repair, replacement, and removal of Utility's Facilities or the safe and uninterrupted operation of the rail system of Railroad (a "Specified Dispute") be resolved as quickly as possible, which may, in certain instances, necessitate immediate decisions. When such quick resolution is not possible, or depending upon the phase of development of Utility's Facilities, the parties agree to resolve such Specified Disputes as herein provided.

27.2 Field Representatives. Within thirty (30) days after the execution hereof (but, in any event, prior to any entry upon the Rail Corridor), Railroad and Utility shall each designate in writing the division or field representative(s) as point(s) of contact for decision making concerning the Specified Disputes.

27.3 Railroad Operations. Questions of Railroad operations or track safety shall in all instances be referred to Railroad's Engineer, whose decision shall, for any emergency situation, be made within twenty-four (24) hours, or for any non-emergency situations, be made as provided in Section 27.6.

27.4 Access. Specified Disputes concerning Utility's right of access to Rail Corridor during design, construction, maintenance and/or operation of Utility's Facilities, shall be referred initially to the designated representative of the Engineer, who shall render such decision within forty-eight (48) hours. Decisions of the Engineer's designated representative shall be referable within forty-eight (48) hours of such decision, by Utility to the Engineer of Railroad, whose decision shall be issued within forty-eight (48) hours of the notice from Utility of dispute with the authorized representative of Engineer.

27.5 Facilities. Specified Disputes arising out of or in conjunction with the Facilities of Utility, or the capacity and/or installation, maintenance and/or use of the same, shall be referred initially to Utility's system manager (or other representative designated by Utility) for decision, which shall be rendered, in writing, within sixty (60) days after submission.

27.6 Remaining Specified Disputes. Any other Specified Dispute between the parties shall be referred initially to the Engineer for decision, which shall be rendered, in writing, within sixty (60) days after submission.

27.7 Mediation. Either party may appeal any decision made pursuant to Sections 27.2 through 27.6 by requesting mediation within thirty (30) days after the date of receipt of such decision in writing. Failure to request mediation within such thirty (30) day period shall result in such decision becoming final and conclusive. The mediation shall proceed in accordance with the Mediation Resolution Procedures attached hereto as Exhibit E. Any mediation agreement, or other final decision herein, may be enforced by any court having jurisdiction hereof.

27.8 Work Pending Resolution of Specified Dispute. During the period in which any Specified Dispute is unresolved, any work on the Rail Corridor by or for Utility shall commence or proceed only with maximum security for Railroad operations, as determined by Railroad's Engineer, and the determination or allocation of any costs or additional costs therefor shall be resolved thereafter in accordance with this Article.

27.9 Exclusion. Notwithstanding the foregoing, disputes relating to Utility's obligation to pay the Consideration or to reimburse Railroad for Railroad Costs hereunder shall not be subject to the terms of this Article 27.

28. PARTIAL TERMINATION.

28.1 Partial Termination. Utility may terminate this Agreement with respect to any Facilities installed hereunder by providing Railroad with six (6) months' prior written notice of such termination. Such partial termination shall be only with respect to the Facilities identified in the termination notice. With such partial termination, all further rights and obligations shall cease only as to such terminated Facilities, except that, with respect to such terminated Facilities, (a) Utility shall not be relieved of (i) any obligation which arose prior to such partial termination, and (ii) any obligations hereunder which are intended to survive termination, and (b) Utility shall not be entitled to any refund, rebate or set off relating to any fees paid or payable hereunder. Such partial termination shall not affect the continuation of this Agreement with respect to the remaining Facilities and all terms and conditions of this Agreement shall remain unchanged and in full force and effect as to such remaining Facilities.

28.2 Removal of Facilities. In the event of any partial termination under Section 28.1, the disposition of Utility's Facilities and restoration of the Rail Corridor in each terminated Segment shall be governed by Section 2.4.

29. DOCUMENT CONFIDENTIALITY.

29.1 General. Railroad and Utility understand and agree that this Agreement, and all materials, maps, documents and other information that are referred to herein or attached hereto, exchanged between the parties in negotiating this Agreement, or utilized in fulfilling the provisions and intent hereof or thereof, are and shall be confidential, except as may be required by law or regulation. Any public announcement or press release concerning this Agreement by either party shall be subject to the prior approval of the other party, which approval shall not be unreasonably withheld.

29.2 Restricted Distribution. Railroad and Utility each agree to respect such confidentiality, and shall restrict the distribution of this Agreement and such materials only to those Persons designated to implement the provisions hereof, and shall not disclose or furnish to any third parties copies of this Agreement or any materials referred to herein, without the prior written consent of the other party hereto or, subject to Section 29.3, a court order or administrative subpoena requiring same, except as may be required by law or regulation. The parties agree that in distributing copies or portions of these materials to Persons necessary to implement the same, such copies or materials shall be clearly marked as confidential, and indicating that the further distribution, copying or reproduction of the same is expressly prohibited.

29.3 Redacted Copy. The parties shall jointly prepare a redacted copy of this Agreement which may be furnished, as necessary to implement the provisions hereof, to (a) court, (b) administrative tribunal, or (c) mortgagee(s) or other financial backers of either party.

29.4 Injunctive Relief. The parties recognize and acknowledge that any actual or threatened disclosure of such confidential information by either party, its agents, employees or contractors, will cause irreparable harm to the other party, such that monetary remedies available at law will not provide adequate relief, and therefore the aggrieved party shall be entitled to receive injunctive relief as an equitable remedy.

29.5 No Right to Non-Material Information. Neither party shall have the right to obtain any information or documents from the other which are not material to the provisions or implementation of this Agreement.

30. GENERAL TERMS.

30.1 Entire Agreement. This Agreement, and any exhibits or amendments which may be attached hereto from time to time, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be modified only by a writing executed by both parties.

30.2 Incorporation by Reference. This Agreement, as amended by the parties hereto from time to time in accordance herewith, shall be incorporated by reference into any separate finance agreement or other related documents between the parties hereto, and such incorporation shall include all amendments and exhibits hereto, even if made or attached subsequent to the date of this Agreement.

30.3 No Third Party Beneficiaries. Except as otherwise provided herein, nothing contained in this Agreement, in any provision or exhibit hereof, or in any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

30.4 Interpretation. Neither the form of this Agreement, nor any provision herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

30.5 Force Majeure. The parties agree that a party shall not be liable for its failure to perform its obligations hereunder during any period in which such performance is delayed by fire, flood, war, embargo, riot, labor strike or unrest, the intervention of any government authority, train derailment, or any other event or condition outside the reasonable control of such party, provided that such party promptly notifies the other party of the delay. The provisions of this Section shall not apply to Utility's payment obligations under this Agreement.

30.6 Reasonableness. Wherever the term "reasonable" is used in this Agreement, the term shall mean: for Railroad, application of standard and established Railroad engineering, operating and safety rules, regulations and procedures; for Utility, application of standard and established industry, engineering and operating rules.

30.7 Approval or Consent. Wherever the term "approval" or "consent" is used in this Agreement, unless otherwise specifically qualified, the term shall mean that such "consent" or "approval" shall not be unreasonably withheld, delayed or conditioned.

30.8 Parties. Wherever used herein, the terms "Railroad" and "Utility" shall be construed in the singular or plural as the context may require or admit, and shall include the permitted successors and assigns of such parties.

30.9 Severability. This Agreement is executed under the current interpretations of

applicable federal, state, county, municipal and local statutes, ordinances and laws. However, each separate division (section, paragraph, clause, item, term, condition, covenant or agreement) hereof shall have independent and severable status for the determination of the legality thereof. If any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

30.10 Governing Law. This Agreement shall be construed and governed under the laws of the State of Georgia. It is the particular intent of the parties that all waiver, release and indemnity obligations provided herein, including those relating to punitive and/or exemplary damages, shall be enforceable and shall not be deemed to be against public policy. Therefore, Railroad shall have the unlimited right, in its sole and absolute discretion, to change the law under which this Agreement will be governed by notifying Utility of the change of jurisdiction; provided, however, that Railroad agrees to notify Utility of any such change within a reasonable time after filing or responding to a complaint or otherwise initiating or responding to a proceeding in connection with any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof.

30.11 Prohibition. No Facilities shall be used for communication purposes.

30.12 Assignability.

(a) Utility shall not assign this Agreement or transfer any right or interest herein without the prior written consent of Railroad, which consent may be withheld in Railroad's sole discretion.

(b) Railroad may, in its sole discretion, assign this Agreement in whole or in part, or any rights or interests of Railroad hereunder, to any Affiliate, any purchaser(s) of the Rail Corridor or any Person in connection with any merger or consolidation of Railroad.

30.13 Time is of Essence. Time is of the essence in the performance of each party's obligations under this Agreement.

30.14 Incorporation of Exhibits. All exhibits attached to this Agreement are incorporated by this reference and made a part of this Agreement for all purposes.

30.15 Multiple Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

30.16 WAIVER OF JURY TRIAL. RAILROAD AND UTILITY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENTS CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS

(WHETHER ORAL OR WRITTEN) OR ACTIONS, RIGHTS OR OBLIGATIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS AGREEMENT OR ANY CLAIMS OR DEFENSES ASSERTING THAT THIS AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO AND ACCEPT THIS AGREEMENT.

30.17 Authorization. Railroad and Utility represent and warrant that each has obtained all necessary corporate approvals authorizing the execution and delivery of this Agreement, and that the execution and delivery of this Agreement does not violate the organizational or governing documents of such party, and will not constitute a material breach of any contract by which such party is bound.

30.18 Intentionally Omitted

30.19 Attorneys' Fees. In the event Utility (i) fails to timely remit any portion of the Consideration described in Article 2, (ii) fails to timely remit any reimbursement for Railroad Costs, or (iii) files a petition for relief under the provisions of the United States Bankruptcy Code, then Railroad shall be entitled to recover from the Utility, and the Utility shall pay, its attorneys' fees and costs incurred in regard to the collection thereof or incurred in connection therewith. Utility shall have a 60 day period to cure any unpaid costs or Consideration to the Railroad, with proper notice to Utility regarding past due amounts or Consideration.

EXECUTED as of the Effective Date.

IN WITNESS WHEREOF, the parties hereto have set their hands and caused their seals to be affixed hereupon in four (4) counterparts, each to be considered as an original by their authorized representatives.

CSX TRANSPORTATION, INC.

DEKALB COUNTY, GEORGIA

By: _____
Signature (SEAL)

by Dir.(SEAL)
MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

Name (Typed or Printed)

Date

Title

Federal Tax I.D. Number

Date

ATTEST:

ATTEST:

BARBARA H. SANDERS, CCC
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

Signature

Name (Typed or Printed)

Title

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

DeKalb County Department Director

County Attorney Signature

**County Attorney Name
(Typed or Printed)**

EXHIBIT A

GENERAL LOCATION MAP AND SEGMENT DESIGNATION

EXHIBIT B
CONSTRUCTION PLANS

EXHIBIT C**EMERGENCY AND DISASTER RESPONSES**

In the event of an emergency or disaster which results in actual damage to Facilities or System or to Railroad's facilities or operations, or creates a situation wherein it is reasonably possible that such damage may occur, immediate contact shall be established between Railroad's Operations Center, and applicable division personnel, and Utility's Operation Center and applicable Area Representatives. Detailed procedures effectuating the above notification shall be mutually established.

Railroad and Utility will fully cooperate with each other and coordinate their efforts to jointly and severally restore operation of their respective rail and communication systems, with each being solely responsible for all costs incurred in repairing its own facilities. In the event such cooperation results in one party incurring costs that are for the benefit of the other (e.g., Railroad providing railroad equipment to Utility), such costs shall be subsequently fully reimbursed.

Utility will maintain emergency material and repair kits at various points throughout its System.

Railroad shall have the right to establish priorities for making repairs which impact upon rail operations, but shall permit Utility to move forward in making repairs to Utility's System or Facilities when to do so would not impair rail operations.

EXHIBIT D

CSX TRANSPORTATION – EB3 SCHEDULE OF RATES AND SURCHARGES USED FOR ESTIMATING AND BILLING GOVERNMENT FUNDED PROJECT (FEDERAL AID)

Labor surcharges to be applied to direct labor effective 12/31/2016:

ENG	ME	TRANS
180.4%	166.2%	203.2%

ENG: Engineering
ME: Mechanical
TRANS: Transportation (Train & Engine)

EXHIBIT E**MEDIATION RESOLUTION PROCEDURES**

A. In the event of any controversy, claim or dispute between Utility and Railroad, the same shall be referred to mediation pursuant to this Agreement (hereinafter referred to as "Dispute"), and the parties agree to use the procedure herein.

B. The parties agree that the only circumstances in which a Dispute will not be subject to the provisions of this Exhibit are: (i) where a party makes a good faith determination that a breach of the terms of the Agreement by the other party will cause irreparable damage to the complaining party unless such breach is enjoined by a court of competent jurisdiction; or (ii) where one party has been made a party to a judicial proceeding, and the other party is an appropriate additional party to such proceeding. Breach of the Agreement will be deemed to cause irreparable damage if it is incapable of adequate redress if not promptly enjoined, so that a temporary or preliminary restraining order or other immediate injunctive relief is the only adequate remedy. If one party files a pleading seeking injunctive relief, and such pleading is challenged by the other party, and the injunctive relief sought is not awarded in substantial part, the party filing the pleading seeking immediate injunctive relief shall pay all the costs, attorneys' fees and expenses of the party successfully challenging the pleading.

C.. Mediation Procedures. Mediation is a voluntary process in which a neutral third party, who lacks authority to impose a solution, helps participants reach their own agreement for resolving a dispute or transaction. Utility and Railroad agree to act in good faith negotiation, with the jointly appointed mediator, to reach an agreement, utilizing the following basic roles of the mediator in the Dispute resolution:

- urging participants to agree to talk;
- helping participants understand the mediation process;
- carrying messages between parties;
- helping participants agree upon an agenda;
- setting an agenda;
- providing a suitable environment for negotiation;
- maintaining order;
- helping participants understand the problem(s);
- defusing unrealistic expectations;
- helping participants develop their own proposals;
- helping participants negotiate;
- persuading participants to accept a particular solution.

(a) Mediation shall be held in Jacksonville, Florida.

(b) Each party shall be responsible for its own attorney fees, and costs (including exhibits, witness fees, etc.), and shall each pay one-half (1/2) of the Mediator's fee(s).

(c) The mediator shall be jointly selected as follows:

(1) Railroad shall designate five (5) members from the listed panel of the U.S. District Court, Middle District of Florida as a Potential Mediation Panel;

(2) Utility shall select one (1) of such Panel as the mediator;

(3) If the selected mediator does not accept the mediation appointment, Utility shall designate an alternative, and continue until a selected mediator accepts the mediation appointment;

(4) If none of the Panel accepts the appointment, Utility shall designate a new Potential Mediation Panel of five (5) from the list in Paragraph 2.(b)(1), and Railroad shall select one (1) of such Panel, as in Paragraphs (2) and (3).

(d) The form of the Agreement to Mediate shall be as follows:

AGREEMENT TO MEDIATE

Railroad and Utility, through their respective counsel, stipulate that:

1. The Dispute embodied in the Agreement stated is hereby submitted to mediation.
2. The parties have selected _____ to be the mediator in this case.
3. Parties agree to meet with the mediator at _____ on _____, and continue to engage in the mediation process thereafter, if appropriate, as agreed to by the parties.
4. The mediator shall be paid an hourly fee of \$_____, with said fee apportioned equally among the parties.
5. The mediation shall be private, unless the parties and the mediator otherwise agree. No session shall be recorded, and there shall be no stenographic record maintained.
6. Parties and counsel agree that the mediator's work product, case file and any communication made in the course of the mediation (other than the final signed Mediation Agreement) shall be confidential and not subject to disclosure in any subsequent judicial, administrative or private proceeding.
7. Parties and counsel agree that any information, writings or disclosures made during the mediation process are governed by Rule 408 of the Federal Rules of Evidence, and shall not be admissible in any subsequent proceedings unless otherwise discoverable.
8. Parties and counsel agree to participate fully in the mediation process and to do so in good faith.

9. The mediator shall not be liable to any party for any act or omission in connection with the mediation conducted in this case.

10. If possible, officers of the parties with full authority to settle the Dispute shall be present at the Mediation. Should officers of the parties, for whatever reason, not be present, counsel for each party agrees to attend the mediation and have full and immediate access to the person authorized to settle during the entire course of the mediation.

11. An agreement shall be executed by the parties if the Dispute is resolved.

12. The mediation shall commence at the offices of _____, on _____, at _____.

E. Confidentiality. The parties, their representatives, the mediators and any other participants in the mediation shall treat all aspects of the mediation as confidential, including but not limited to all documents, testimony, information or other things produced, inspected or otherwise made available in connection with the mediation. Neither the parties nor the mediators may disclose the existence, content or results of the mediation, except as necessary to comply with applicable law or regulatory requirements. Before making any such disclosure, the party seeking disclosure shall give written notice to the other party, and shall afford such party a reasonable opportunity to protect its interests. In no event shall a disclosure necessary to comply with legal or regulatory requirements be deemed to waive the confidential nature of the disclosed information.

RAILROAD: By: _____ Date: _____

RAILROAD ATTORNEY: _____

UTILITY: By: _____ Date: _____

UTILITY ATTORNEY: _____

Accepted by Mediator: _____ Date: _____

D. Modification. These procedures may be modified by the parties hereto without necessity of amending the Agreement.