



## *Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

ANANTH PRASAD, P.E.  
SECRETARY

Date: April 16, 2012

To: All Prospective Proposers

From: Roger Masten,  
Procurement Services, District Five  
Florida Department of Transportation

RE: Industry Review  
RFP-DOT-11-12-5006-O&M  
Central Florida Rail Corridor (CFRC) Operations and Maintenance

Prospective Proposer:

The Florida Department of Transportation will be soliciting Technical and Price Proposals for the Central Florida Rail Corridor Operations and Maintenance Services. A draft copy of the Request for Proposal (RFP) document for is being made available for industry review and comment through May 7, 2012. Interested Contractors are encouraged to review the contract documents including the request for proposals and scope of services posted for Industry Review and provide the Department with feedback including questions, comments or suggestions to the solicitation. The Department is interested in hearing from Contractors within the industry in terms of innovative approaches to ridership incentives included within the contract as well as marketing incentives.

The Department is very interested in receiving feedback on the Scope of Services and contract documents for this project. Please review these documents and send comments to the website below. The input provided will be considered in preparation of the final document to be advertised and will help ensure a successful procurement and project for all parties involved.

The RFP may be accessed at:

The VBS site: [http://myflorida.com/apps/vbs/vbs\\_www.search.criteria\\_form](http://myflorida.com/apps/vbs/vbs_www.search.criteria_form)

Use Commodity Code

Or the FDOT Question and Answer site at:

<https://www3.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchResultByDistrict?district=05>

All questions and comments shall be submitted through the Question and Answer site above.

Central Florida Rail Corridor, (CFRC)

Operations and Maintenance

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Request for Proposal Documents, RFP-DOT-11-12-5006-O&M

Request for Proposal (RFP), Pages 1 through 35

Bid Forms, Forms No. 1 through 12, included in Request for Proposal

- No. 1, Registration Form
- No. 2, Exhibit "C", Price Proposal Form,
- No. 3, Vendor Data Sheet
- No. 4, Drug Free Workplace Certification:
- No. 5, DBE Participation Statement:
- No. 6, Bid Opportunity List
- No. 7, Vendor Certification Regarding Scrutinized Companies Lists
- No. 8a, Certification of Railroad maintenance Experience
- No. 8b, Certification of Railroad Experience, Project Experience
- No. 8c Certification of Operations and Maintenance Experience, Key Staff Experience
- No. 9, Bid or Proposal Bond
- No. 10 "Proposal Of" form

Contract Documents and Exhibits included in this Request for Proposal:

- Standard Written Agreement, Pages 1 through 10
- Exhibit A. Scope of Services, Pages A-1 through A-17.4
- Exhibit B. Method of Compensation, Pages B-1 through B- 2
- Exhibit C-1 Price Proposal Form, Form No. 2

State of Florida  
Department of Transportation  
District Five  
Procurement Services, M.S.#524  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

**REQUEST FOR PROPOSAL REGISTRATION**

\*\*\*\*\*

**PLEASE COMPLETE AND RETURN THIS FORM AS SOON AS POSSIBLE  
TO THE ABOVE ADDRESS OR FAX TO (386) 943-5405**

\*\*\*\*\*

Bid Number: **RFP-DOT-11-12-5006-O&M INDUSTRY REVIEW**

Title: **Central Florida Rail Corridor (CFRC) Operations and Maintenance**

Bid Due Date & Time: N/A 12:00 noon, This form will be used when the advertisement is posted, and does not need to be submitted at this time.

Potential bidders should notify our office by returning this Bid Registration Form as soon as possible after downloading. Complete the information below and fax **this sheet only** to the Florida Department of Transportation Procurement Office at (386) 943-5405, or mail to the address noted above.

**THE REQUEST FOR PROPOSAL DOCUMENT YOU RECEIVED IS SUBJECT TO CHANGE. Notice of changes (addenda), will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) , under this bid number (click on “BUSINESS”, click on “Doing Business with the State”, under “Everything for Vendors and Customers”, click on “Vendor Bid System (VBS)”, then click on “Search Advertisements”, click on the drop-down arrow beside the box under Advertisement Type, select Competitive Solicitation, click on the drop-down arrow beside the box under Agency, select DEPARTMENT OF TRANSPORTATION, then go to the bottom of the same page and click on Initiate Search). It is the responsibility of all potential bidders to monitor this site for any changing information prior to submitting your bid.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Fax Number: (\_\_\_\_) \_\_\_\_\_

Contact Person: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

# PRICE PROPOSAL

Form No. 2

BID #: RFP-DOT-11-12-5006-O & M

BID TITLE: Central Florida Rail Corridor (CFRC) Operations and Maintenance

<u>Items</u>	<u>Units</u>	<u>Description</u>	<u>Amount</u>
1.	Lump Sum	Maintenance Mobilization	\$ _____
2.	Lump Sum	Operations Mobilization	\$ _____
3.	<u>Lump Sum</u>	<u>Operations and Maintenance (Annual)</u>	<u>\$ _____</u>
DO NOT BID ITEMS			
4.	1	Contingency	\$ <u>150,000.00</u>
5.	1	Partnering	\$ <u>16,500</u>
<b>TOTAL LUMP SUM AMOUNT ** No. 3 X Seven (7) Plus No. 1 and No. 2</b>			<b>**\$ _____</b>

Price evaluation is the process of examining a prospective price without evaluation of the separate cost elements and proposed profit of the potential provider. Price analysis is conducted through the comparison of price quotations submitted.

\*\* This Total Lump Sum Amount will be used in calculating the Proposer's Awarded Points  
The criteria for price evaluation shall be based upon the following formula:

$$\frac{\text{Low Price}}{\text{Proposer's Price}} \times \text{Price Points} = \text{Proposer's Awarded Points}$$

Company Name: \_\_\_\_\_

Contractor Number: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Note: Successful Contractor is required to submit a Schedule of Values prior to the first invoice.

**CONTRACTOR DATA SHEET**  
**CENTRAL FLORIDA RAIL CORRIDOR (CFRC) OPERATIONS AND MAINTENANCE**  
**RFP-DOT-11-12-5006-O&M**

CORPORATE INFORMATION

DATE: \_\_\_\_\_

FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEID): \_\_\_\_\_  
(State Purchasing System (SPURS) Contractor Number)

CONTRACTOR NAME: \_\_\_\_\_

CORPORATE STRUCTURE: (Inc./LLC): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

CELLULAR: \_\_\_\_\_

TOLL FREE NO.: (800) \_\_\_\_\_ FAX NO.: \_\_\_\_\_ / \_\_\_\_\_

INTERNET E-MAIL ADDRESS: \_\_\_\_\_

INTERNET WEBSITE URL: \_\_\_\_\_

LOCAL OFFICE INFORMATION, (If other than above)

CONTACT NAME: \_\_\_\_\_

ALTERNATE CONTACT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

CELLULAR: \_\_\_\_\_

TOLL FREE NO.: (800) \_\_\_\_\_ FAX NO.: \_\_\_\_\_ / \_\_\_\_\_

INTERNET E-MAIL ADDRESS: \_\_\_\_\_

**RFP Requirements**

1) REGISTERED IN MYFLORIDAMARKETPLACE: (Y/N) \_\_\_\_\_ Attach Proof

5.2) LICENSED TO CONDUCT BUSINESS IN THE STATE OF FLORIDA (Y/N) \_\_\_\_\_ Attach Proof

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DRUG-FREE WORKPLACE PROGRAM CERTIFICATION**

287.087 Preference to businesses with drug-free workplace programs. --Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the state or by any political subdivision for the procurement of commodities or contractual services, a bid, proposal, or reply received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

**Does the individual responding to this solicitation certify that their firm has implemented a drug-free workplace program in accordance with the provision of Section 287.087, Florida Statutes, as stated above?**

YES

NO

Form No. 5

375-030-21  
PROCUREMENT  
10/01

**DBE PARTICIPATION STATEMENT**

**Note:** The Contractor is required to complete the following information and submit this form with the technical proposal.

Project Description: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

This Contractor (is\_\_\_\_) (is not\_\_\_\_) a Department of Transportation certified Disadvantaged Business Enterprise (DBE).

The Department of Transportation and the Federal Transportation Administration have set a goal of 8.14% for DBE participation on this project.

Expected percentage of contract fees to be subcontracted to DBE(s): \_\_\_\_\_%

If the intention is to subcontract a portion of the contract fees to DBE(s), the proposed DBE sub-Contractors are as follows:

DBE Sub-Contractor/Contractor	Type of Work/Commodity
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

Title: \_\_\_\_\_

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

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**BID OPPORTUNITY LIST FOR PROFESSIONAL CONSULTANT  
SERVICES, AND COMMODITIES & CONTRACTUAL SERVICES**

375-040-62  
PROCUREMENT  
04/07

Form No. 6

Prime Contractor/Prime Consultant: \_\_\_\_\_

Address/Phone Number: \_\_\_\_\_

Procurement Number/Advertisement Number: \_\_\_\_\_

49 CFR Part 26.11 The list is intended to be a listing of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts, or bid or quote subcontracts and supplies materials on DOT-assisted projects, including both DBEs and non-DBEs. For consulting companies this list must include all subconsultants contacting you and expressing an interest in teaming with you on a specific DOT-assisted project. Prime contractors and consultants must provide information for Numbers 1, 2, 3 and 4, and should provide any information they have available on Numbers 5, 6, 7, and 8 for themselves, and their subcontractors and subconsultants.

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

1. Federal Tax ID Number: \_\_\_\_\_  
2. Firm Name: \_\_\_\_\_  
3. Phone: \_\_\_\_\_  
4. Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
5. Year Firm Established: \_\_\_\_\_

6.  DBE  
 Non-DBE  
7.  Subcontractor  
 Subconsultant

8. Annual Gross Receipts  
 Less than \$1 million  
 Between \$1 - \$5 million  
 Between \$5 - \$10 million  
 Between \$10 - \$15 million  
 More than \$15 million

**AS APPLICABLE, PLEASE SUBMIT THIS FORM WITH YOUR:**

**BID SHEET (Invitation to Bid – ITB)  
LETTERS OF RESPONSE (LOR)  
PRICE PROPOSAL (Request for Proposal – RFP)  
REPLY (Invitation to Negotiate – ITN)**



**STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**  
**CONTRACTOR CERTIFICATION REGARDING**  
**SCRUTINIZED COMPANIES LISTS**

Respondent Contractor Name: \_\_\_\_\_

Contractor FEIN: \_\_\_\_\_

Contractor's Authorized Representative Name and Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

SECTION 287.135, FLORIDA STATUTES, PROHIBITS AGENCIES FROM CONTRACTING WITH COMPANIES, FOR GOODS OR SERVICES OF \$1 MILLION OR MORE, THAT ARE ON EITHER THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST. BOTH LISTS ARE CREATED PURSUANT TO SECTION 215.473, FLORIDA STATUTES.

AS THE PERSON AUTHORIZED TO SIGN ON BEHALF OF RESPONDENT, I HEREBY CERTIFY THAT THE COMPANY IDENTIFIED ABOVE IN THE SECTION ENTITLED "RESPONDENT CONTRACTOR NAME" IS NOT LISTED ON EITHER THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR THE SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM ENERGY SECTOR LIST. I UNDERSTAND THAT PURSUANT TO SECTION 287.135, FLORIDA STATUTES, THE SUBMISSION OF A FALSE CERTIFICATION MAY SUBJECT COMPANY TO CIVIL PENALTIES, ATTORNEY'S FEES, AND/OR COSTS.

CERTIFIED BY: \_\_\_\_\_,

WHO IS AUTHORIZED TO SIGN ON BEHALF OF THE ABOVE REFERENCED COMPANY.

Authorized Signature Print Name and Title: \_\_\_\_\_

**Certification of Railroad Maintenance Experience  
Project Experience**

Experience and Reference Form  
State of Florida Department of Transportation

Contract No.: RFP-DOT-11-12-5006-O & M

Project Description: Central Florida Rail Corridor (CFRC) Operations and Maintenance

Firm Name: \_\_\_\_\_

Project Name:		
Begin Date	End Date	Contract Amount:
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

Project Name:		
Begin Date	End Date	Contract Amount
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

Project Name:		
Begin Date	End Date	Contract Amount:
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

**Certification of Railroad Operations Experience  
Project Experience**

Experience and Reference Form  
State of Florida Department of Transportation

Contract No.: RFP-DOT-11-12-5006-O & M  
 Project Description: Central Florida Rail Corridor (CFRC) Operations and Maintenance

Firm Name: \_\_\_\_\_

Project Name:		
Begin Date	End Date	Contract Amount:
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

Project Name:		
Begin Date	End Date	Contract Amount
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

Project Name:		
Begin Date	End Date	Contract Amount:
Description of Work:		
Safety Record:		
Reference:	Name & Title: Address: Phone Number: Email Address:	

**Certification of Operations and Maintenance Experience  
Key Staff Experience**

Experience and Reference Form  
State of Florida Department of Transportation

Contract No.: RFP-DOT-11-12-5006-O & M  
 Project Description: Central Florida Rail Corridor (CFRC) Operations and Maintenance

Position: Signal Maintenance Manager

Name: \_\_\_\_\_

Firm: \_\_\_\_\_

Degree(s): \_\_\_\_\_

Experience: \_\_\_\_\_

Begin Date	End Date	Employer:
		Description of Work:
Reference:		Name & Title Address: Phone Number Email Address:

Begin Date	End Date	Employer:
		Description of Work:
Reference:		Name & Title Address: Phone Number Email Address:

Begin Date	End Date	Employer:
		Description of Work:
Reference:		Name & Title Address: Phone Number Email Address:

BID BOND

KNOW ALL MEN BY THESE PRESENTS: That we, \_\_\_\_\_,  
as Principal (Bidder), and \_\_\_\_\_  
as Surety, are held and firmly bound unto the Florida Department of Transportation (hereinafter called the Obligee), in  
the full and just sum of FIVE PERCENT (5%) of the actual total of the Proposal referred to herein (do not enter figures),  
in lawful money of the United States of America, to be paid to the Obligee, to which payment will and truly to be made we  
bind ourselves, our heirs, executors, administrators, successors and assignees, jointly and severally and firmly be these  
presents:

WHEREAS, The said Principal is herewith submitting a proposal to the obligee for constructing or otherwise  
improving a road(s) and/or bridge(s) or building(s) in Orange, Osceola, Seminole and Volusia Counties  
County, particularly known as Federal Aid Project No.(s) N/A Proposal ID: RFP-DOT-11-12-5006-O&M  
Financial Project No.(s) 412994-8-82-01

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Principal shall execute a  
contract and give bond for the faithful performance thereof within the time period as stipulated by the Contract after being  
notified in writing of the award of such contract to Principal, or if the Surety shall pay the Obligee the full amount of this  
bond, then this obligation shall be void; otherwise it shall remain in full force and effect.

SIGNED, SEALED AND DATED THIS \_\_\_\_\_ Day of \_\_\_\_\_, 2012

NAME OF SURETY: \_\_\_\_\_ Affix Surety Seal

\_\_\_\_\_  
Florida Licensed Insurance Agent or Attorney-In-Fact (Signature) Type/Print

\_\_\_\_\_  
Countersigned Florida Licensed Insurance Agent Type/Print

The following Statement to be completed regarding the Florida Licensed Insurance Agent:

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

Before me, the above signed authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_

(Type of identification) identification and is duly sworn, deposes and says that he/she is a duly authorized insurance agent  
properly licensed under the laws of the State of Florida to represent \_\_\_\_\_

\_\_\_\_\_ of \_\_\_\_\_ a company authorized to make corporate Surety Bonds under the laws of  
Florida and acceptable as Surety on Federal Bonds and that he has signed or countersigned the above bond on their behalf.

Sworn, and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012

\_\_\_\_\_  
(Notary Signature) Notary Public, State of \_\_\_\_\_  
My commission expires:

NOTE: The principal bidder is not required to sign this document, as execution of Form No. 10 specifically binds the principal  
bidder to the obligations arising from this document. Failure of the principal bidder to execute Form No. 10, or failure of the  
surety to execute this document, shall result in the bid being declared nonresponsive.

NOTE: Power of Attorney showing authority of Florida Licensed Insurance Agent to sign on behalf of, and bind, surety must be furnished with  
this form. Affix Corporate Seal of Surety.



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**PROPOSAL OF**  
**RFP-DOT-11-12-5006-O&M**

\_\_\_\_\_  
(Proposer's Firm Name) (Prequalified Name, if Applicable)

\_\_\_\_\_  
(Proposing Firm's Physical Address - City - State - Zip)

FEID No. \_\_\_\_\_ Telephone No. ( ) \_\_\_\_\_ FAX No ( ) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

For constructing or otherwise providing services this contract known as: Central Florida Rail Corridor (CFRC) Operations and Maintenance

In Volusia, Seminole, Orange and Osceola Counties

Contract No.: \_\_\_\_\_

Financial Project No.'s: 412994-8-82-01

TO THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION: Submitted: \_\_\_\_\_

The Bidder, hereby declares that no person or persons, firm or corporation, other than the Bidder, is interested, in this proposal, as principals, and that this Proposal is made without collusion with any person, firm or corporation, and we have carefully and to our full satisfaction examined the Proposal forms, and contract documents, and that we have made a full examination of the location of the proposed work and the sources of supply of materials, and we hereby agree to furnish all necessary labor, equipment, and materials, fully understanding that the quantities shown herewith are approximate only, and that we will fully complete all necessary work in accordance with the Contract documents and the requirements under them of the Engineer, within the time limit specified in this Proposal.

Was an addendum issued on this project?

Yes          No

I (We) hereby acknowledge receipt of the following Addenda issued during the bidding period.			
Addendum No.	Dated	Addendum No.	Dated

The Bidder agrees to perform all necessary work, as provided for in the contract, and if awarded the contract, to execute the Contract within 10 calendar days, excluding Saturdays, Sundays, and state holidays, after the date on which the notice of award has been given, and to fully complete all necessary work under the same within the time as stated in the Scope of Services. It is understood and agreed that the date on which calendar days will begin to be charged to the project shall be as stated in the Notice to Proceed. The Bidder further agrees to furnish a sufficient and satisfactory bond in the sum of Five Percent (5%) of the total Bid Price. The Bidder further agree(s) to bear the full cost of maintaining all work until final acceptance, as provided in the Contract.

A bid guaranty of Five Percent (5%) of the bid, payable to the Florida Department of Transportation, must accompany this proposal. The guaranty amount shall include all bid items. If this proposal is accepted and the Bidder fails to execute the Contract under the conditions of this proposal, the bid guaranty shall be forfeited to the Department; otherwise, said guaranty is to be returned to the Bidder upon delivery of a satisfactory bond. The Florida Department of Transportation officials and employees are prohibited by law from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with the Department pursuant to Section 334.195, Florida Statutes.

The Bidder, hereby certifies that it has carefully examined this proposal after the same was completed, and has verified each item placed thereon. The Bidder agrees to indemnify, defend, and save harmless, the Department against any cost, damage, or expense which it may incur or be caused by any error in the Bidder's preparation of same. By signing and submitting this proposal, the Bidder certifies that no principal (which includes officers, directors, or executives) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

The Bidder hereby certifies and obligates its firm as "Principal (bidder)" to the attached Bid Bond, (Form 8.1) as if and to the same effect as if the Bidder had affixed its signature thereon.

Section 287.134(3)(a), Florida Statutes, requires: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

Section 553.62, Florida Statutes, incorporates the Occupational Safety and Health Administration's (OSHA) safety standards, 29 CFR s. 1926.650 Subpart P, as the state standard. The Department of Labor and Employment Security may adopt updated or revised versions by rule. Other state or political subdivisions may also have standards that are applicable. If trench excavation will be required on the project in excess of five feet in depth, the Bidder must identify the cost of compliance with the applicable trench safety standards below. If there will be no trench excavation on the project in excess of five feet in depth, write "not applicable" below.

Trench Safety Measure (Description)	Units of Measure	Quantity	Unit Cost	Extended Cost
A. _____				
B. _____				
C. _____				
<u>Total Cost</u>				

**(ATTACH SEPARATE SHEET IF NECESSARY)**

Job No(s): 412994-8-82-01

If applicable, this certifies that all trench excavation done within the control of the contractor will be in accordance with all applicable standards and with the specifications, and all requirements of Sections 553.63(1 )(a), 553.63(1 )(b), and 553.63(1 )(c), Florida Statutes.

The Bidder hereby declares that the undersigned is the person or persons responsible within the firm for the final decision as to the price(s) and amount of this bid and the Bidder further declares that:

1. The price(s) and amount of this bid have been arrived at independently, without consultation, communication, or agreement for the purpose of restricting competition with any other contractor, bidder or potential bidder.
2. Neither the price(s) nor the amount of this bid have been disclosed to any other firm or person who is a bidder or potential bidder on this project, and will not be so disclosed prior to the bid opening.
3. No attempt has been made or will be made to solicit, cause, or induce any firm or person to refrain from bidding on this project, or to submit a bid higher than the bid of this firm, or any intentionally high or non-competitive bid or other form of complementary bid.
4. The bid is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any other firm or person to submit a complementary bid.
5. The Bidder has not offered or entered into a subcontract or agreement regarding the purchase of materials or services from any other firm or person, or offered, promised, or paid cash or anything of value to any other Bidder or person, whether in connection with this or any other project, in consideration for an agreement or promise by any other firm or person to refrain from bidding or to submit a complementary bid on this project.
6. The Bidder has not accepted or been promised any subcontract or agreement regarding the sale of materials or services to any other firm or person, and has not been promised or paid cash or anything of value by any other firm or person, whether in connection with this or any other project, in consideration for the firm's submitting a complementary bid, or agreeing to do so, on this project.
7. The Bidder has made a diligent inquiry of all members, officers, employees, and agents of the Bidder with responsibilities relating to the preparation, approval or submission of the firm's bid on this project and have been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act, or other conduct inconsistent with any of the statements and representations made in this Declaration.
8. As required by Section 337.165, Florida Statutes, the Bidder has fully informed the Florida Department of Transportation in writing of all convictions of the firm, its affiliates (as defined in Section 337.165(1)(a), Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract or for violation of any state or federal law involving fraud, bribery, collusion, conspiracy, or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees of the firm or affiliates who were convicted of contract crimes while in the employ of another company.
9. The Bidder certifies that, except as noted below, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:
  - i. is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s 29.110(a), by any federal department or agency
  - ii. has within a three year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - iii. is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and
  - iv. has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.
10. The Bidder certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the Florida Department of Transportation.
11. The firm certifies that the bidder is not a nonresident alien, or a foreign corporation/entity formed under the laws of a country other than the United States.
12. The Bidder certifies that the company is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.



Where the Bidder is unable to declare or certify as to any of the statements contained in the above stated paragraphs numbered (1) through (12), the Bidder has provided an explanation in the "Exceptions" portion on page 4 of 4 or by attached separate sheet.

EXCEPTIONS:

Any exception listed above will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted, indicate to whom it applies, initiating agency, and dates of agency action. Providing false information may result in criminal prosecution and/or administrative sanctions. I declare under penalty of perjury that the foregoing is true and correct.

CORPORATION: _____	INDIVIDUAL OR FIRM TRADING AS: _____
Bidder Signature: _____ President or Vice President (Circle Title)	Bidder Signature: _____ Individual or Owner
Print Name (Affix Corporate Seal)	Print Name JOINT VENTURE:
PARTNERSHIP Bidder Signature: _____ General Partner (Circle Title)	Bidder Signature: _____ Attorney-in-Fact _____ Print Name
Print Name Signature: _____ General Partner (Circle Title) _____ Print Name	CONTRACTOR: _____ (Seal) Signature: _____ President or Vice President (Circle Title) CONTRACTOR: _____ (Seal) Signature: _____ President or Vice President (Circle Title)
LIMITED LIABILITY COMPANY: _____ Contractor Signature: _____ Manager or Member (Circle Title) Print Name: _____	CONTRACTOR: _____ (Seal) Signature: _____ President or Vice President (Circle Title)

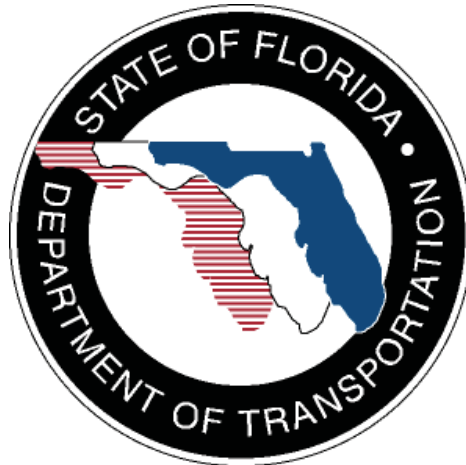
Organized and existing under the laws of the State of \_\_\_\_\_ and authorized to do business in the State of Florida, pursuant to the laws of the State of Florida, certificate of incorporation or organization or certificate of authority having been issued by the Florida Department of State.

FAILURE TO FULLY COMPLETE AND EXECUTE THIS DOCUMENT MAY RESULT IN THE BID BEING DECLARED NONRESPONSIVE

ATTACH BID BOND

Job No(s): 412994-3-52-05, 412994-3-52-07, 412994-3-52-08, 412994-3-52-09, 412994-3-52-10, 412994-3-52-12 and 412994-3-52-13

**State of Florida  
Department of Transportation**



**REQUEST FOR PROPOSAL  
Central Florida RAIL CORRIDOR (CFRC) OPERATIONS  
AND MAINTENANCE**

**RFP-DOT-11-12-5006-O&M**

**PURCHASING AGENT:**

P. Diane Warnock  
diane.warnock@dot.state.fl.us  
Fax: (386) 943-5405  
Phone: (386) 943-5513  
Florida Department of Transportation  
District Five Professional Services, M.S.#524  
719 South Woodland Boulevard  
DeLand, FL 32720-6834

# INTRODUCTION SECTION

## 1) INVITATION

The State of Florida Department of Transportation (hereinafter referred to as the "Department") is soliciting interested Contractors for the Procurement of an Operations and Maintenance Contractor.

The services to be performed under this contract are:

- Maintenance of Way for the 61.3 mile Central Florida Rail Corridor
- Operation of the SunRail Commuter Rail System
- Maintenance of the SunRail vehicle fleet
- Dispatching of the SunRail and tenant freight and passenger rail services

Elements required under this Request for Proposal are specifically defined in Exhibit "A", Scope of Services

The Contractor will be required to coordinate the implementation of the SunRail system with the CFCRT Design/Build/Maintain Firm who is responsible for the design and construction of improvements in the corridor as well as the Maintenance of Way for the corridor.

Interested Contractors are encouraged to review the contract documents including the request for proposals and scope of services posted for Industry Review and provide the Department with feedback including questions, comments or suggestions to the solicitation. The Department is interested in hearing from Contractors within the industry in terms of innovative approaches to ridership incentives included within the contract as well as marketing incentives.

Interested Contractors must submit, a Technical Proposal and Price Proposal by the date and time to the location cited in Section 3 below. Specific requirements for the Technical and Price Proposals are outlined in Section 11 of this Request for Proposal. All Proposals will be evaluated in accordance with Section 18 below.

The process for selecting a single Contractor to represent the Department requires submission of the Competitive Sealed Technical Proposal to provide the Operations and Maintenance Services. Subject to the Qualifications outlined in this Request for Proposal, the Department will select a single firm to provide Operations and Maintenance Services. The selected Contractor will fully coordinate with the Department's Project Manager in the performance of all services hereunder.

The Department intends to award this contract to the responsive and responsible Proposer whose Proposal is determined to be the most advantageous to the State. After the award, said Proposer will be referred to as the "**Contractor**". For the purpose of this document, the term "Proposer" means the prime Contractor acting on its own behalf and those individuals, partnerships, firms, or corporations comprising the Proposer team. The term "Proposal" means the complete response of the Proposer to the Request for Proposals (RFP), including properly completed forms and supporting documentation.

The deadline for obtaining contract bid documents shall be 24 hours prior to the due date and time for the Technical Proposal.

Funding for this project will be provided under Financial Project Number: 412994-8-82-01

## **2) SCOPE OF SERVICES**

Details of the desired services, information and items to be furnished by the Contractor are described in Exhibit "A", Scope of Services attached by reference hereto and made a part hereof.

### 3) TIMELINE

Provided below is a list of critical dates and actions. These dates are subject to change. Notices of changes (addenda) will be posted on the Florida Contractor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this RFP number. It is the responsibility of all potential Proposers to monitor this site for any changing information prior to submitting your Proposal.

<u>ACTION / LOCATION</u>	<u>DATE</u>	<u>LOCAL TIME</u>
<b><u>REQUEST FOR PROPOSAL POSTED FOR INDUSTRY REVIEW</u></b>	April 16, 2012	4:00PM
<b>DEADLINE FOR SUBMITTING COMMENTS, INDUSTRY REVIEW</b>	May 7, 2012	10:00 AM
<b>ADVERTISEMENT VBS -</b>	May 22, 2012	12:00PM
<b>MANDATORY PRE-PROPOSAL MEETING</b> Cypress A & B Conference rooms, first floor Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834	June 5, 2012	9:00AM
<b>DEADLINE FOR TECHNICAL QUESTIONS -</b>	July 24, 2012	12:00PM
<b>ANSWERS TO TECHNICAL QUESTIONS POSTED</b>	July 31, 2012	12:00PM
<b>TECHNICAL PROPOSALS DUE</b> Diane Warnock, M.S.#524 Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834 Phone 386-943-5513	August 16, 2012	12:00PM
<b>PUBLIC OPENING (Technical Proposal)</b> Cypress A & B Conference Rooms First floor Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834	August 16, 2012	1:00PM
<b>PUBLIC MEETING OF THE TECHNICAL REVIEW COMMITTEE AND ADVISORS, if applicable and necessary</b> Osceola County Conference room, Fourth floor Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834	September 6, 2012	10:00AM
<b>PRICE PROPOSALS DUE:</b> P. Diane Warnock, M.S.#524 Florida Department of Transportation 719 South Woodland Boulevard DeLand, Florida 32720-6834	September 20, 2012	9:00AM

**PUBLIC MEETING TO AVERAGE TECHNICAL SCORES,  
OPEN PRICE PROPOSALS AND DETERMINE  
INTENDED AWARD -**

**September 20, 2012**

**4:00PM**

Cypress A & B Conference rooms, First floor  
Florida Department of Transportation  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

**SELECTION COMMITTEE MEETING TO AWARD -**

**September 24, 2012**

**8:15 AM**

Secretary's Conference room, fourth floor  
Florida Department of Transportation  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834

**POSTING OF INTENDED AWARD -**

**September 24, 2012**

**9:00 AM**

**ANTICIPATED AWARD -**

**September 27, 2012**

**9:00AM**

**ANTICIPATED EXECUTION -**

**October 15, 2012**

**4) AGENDA FOR PUBLIC MEETINGS**

**Agenda – Pre-Proposal Meeting**

Starting Time, See "Timeline" section

- Opening Comments, Introductions
- Review of Project and Response Requirements
- Questions from Contractors
- Adjourn meeting

**Agenda - Opening of Technical Proposals**

Starting Time, See "Timeline" section

- Opening Comments, Introductions
- Open Technical Proposals and announce names of submitting firms
- Adjourn meeting

**Agenda - Technical Review Committee and Advisor Meeting, if applicable**

Starting Time, See "Timeline" section

- Opening Comments, Introductions
- Project overview, Timeline
- Review of Scope
- Evaluation Requirements
- Review of Submittals and Requirements
- Comments from Technical Advisors, if applicable
- Questions from Technical Review Committee to the Advisors and responses, if applicable
- Adjourn meeting

**Agenda - Public Meeting to Average Technical Scores,  
Open Price Proposals and Determine an Intended Award**

Starting Time: see the "Timeline"

- Opening Comments, Introductions
- Calculate Average Technical evaluation scores
- Announce Firms that have achieved a Technical Score of 70 Points or better
- Announce the firms and their price(s) as Proposals are opened
- Calculate Price Scores
- Calculate Total Scores (Technical Scores plus Price Scores)

- Announce time and date of Selection Committee Intended Award meeting.
- Adjourn

**Agenda – Selection Committee Meeting to Summarize Evaluations and Determine Anticipated Award**

Starting Time: see the “Timeline”

- Summarize Technical Evaluation Scores
- Summarize Price Proposal Scores
- Summarize Total Scores (Technical Scores plus Price Proposal Scores)
- Announce Anticipated Award decision
- Announce time and date decision will be posted on the Contractor Bid System (VBS)
- Adjourn

**5) SPECIAL ACCOMMODATIONS**

Any person with a qualified disability requiring special accommodations at a Pre-Proposal conference, public meeting, oral presentation and/or opening shall contact the contact person at the phone number, e-mail address or fax number provided on the title page at least five (5) working days prior to the event. If you are hearing or speech impaired, please contact this office by using the Florida Relay Services which can be reached at 1 (800) 955-8771 (TDD).

**SPECIAL CONDITIONS**

**1) MyFloridaMarketPlace**

Since July 1, 2003, the Department has been using the State of Florida’s web-based electronic procurement system, MyFloridaMarketPlace. PROPOSERS MUST BE REGISTERED IN THE STATE OF FLORIDA’S MYFLORIDAMARKETPLACE SYSTEM BY THE TIME AND DATE OF THE TECHNICAL PROPOSAL OPENING OR THEY WILL BE CONSIDERED NON-RESPONSIVE (see Special Condition 17). All prospective Proposers that are not registered should go to <https://Contractor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

**2) QUESTIONS & ANSWERS**

In accordance with section 287.057(23), Florida Statutes, respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

No negotiations, decisions, or actions will be initiated or executed by a Proposer as a result of any oral discussions with a State employee. Only those communications which are in writing from the Department will be considered as a duly authorized expression on behalf of the Department.

All questions arising from this Request for Proposal must be forwarded in writing as described herein. Direct all questions to the Department by posting them to the Department’s website at the following URL address:

<https://www3.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchResultByDistrict?district=05>  
 Questions posted to this site before 12:00 P.M. (EST) on Tuesday July 24, 2012, will be responded to by the Department as they are received. For questions posted after these times, an answer cannot be assured. For all questions posted before the deadline, the Department will provide and post responses at the VBS website and the Department website by 12:00PM: EST on Tuesday July 31, 2012. Proposers must take responsibility to review and be familiar with all questions and responses posted to this website

and to make any necessary adjustments in the proposal accordingly. If the Department's web site cannot be accessed, contact Jonathan Duazo at (386) 943-5347. When, in the sole judgment of the Department, responses require revisions to any procurement document an addendum will be posted on the VBS website and the Department website shown below.

The Department's written response to written inquiries submitted timely by Proposers will be posted on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements"), Responses will also be posted to the Department's website at the following URL address:

<https://www3.dot.state.fl.us/BidQuestionsAndAnswers/Proposal.aspx/SearchResultByDistrict?district=05> under this RFP number. **It is the responsibility of all potential Proposers to monitor these sites for any changing information prior to submitting their Proposal.**

Notices of changes and Addenda will be posted on the Department's website at the following URL address: <http://www2.dot.state.fl.us/construction/D5/> and on the Florida Vendor Bid System at [www.myflorida.com](http://www.myflorida.com) (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", click on "Search Advertisements") under this RFP number. It is the responsibility of all potential Proposers to monitor this site for any changing information Each Proposer must acknowledge the receipt of all addenda by signature and subsequent submission of addenda signed addenda via fax to the Department.

### **3) QUALIFICATIONS AND REQUIREMENTS**

The requirements of sections 3.1, 3.2, 3.3, 3.4, and 3.5 below are threshold requirements and failure to meet these requirements shall disqualify the Proposer.

#### **3.1 Operations and Maintenance Experience**

The Proposer shall have specific expertise and experience in the performance of the Operations and Maintenance of a railroad, preferably a Class I railroad carrying both passenger and freight traffic. A Prime Contractor may utilize a subcontractor to meet the expertise and experience requirement for any work element. The Proposer shall have experience in providing this type of Service for a Government or Transportation agency. The Proposer must also demonstrate they meet all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect this work. A minimum of 10 years of both maintenance and operations is required. Experience beyond the minimum is preferred. Both Class I railroad freight traffic and passenger traffic is required. Shared use of the corridor by freight and passenger traffic is preferred.

#### **3.2 Authorized To Do Business in the State of Florida**

In accordance with Sections 607.1501, 608.501, and 620.9102, Florida Statutes, foreign corporations, foreign limited liability companies, and foreign limited partnerships must be authorized to do business in the State of Florida. Such authorization must be obtained prior to submitting a Technical and Price Proposal. Failure to obtain the required authorization by the deadline will result in the Proposer being declared non-responsive and the contract may be awarded to the next highest ranked responsive Proposer.

For information regarding authorization, contact:

Florida Department of State  
Tallahassee, Florida 32399  
(850) 245-6051

#### **3.3 Licensed to Conduct Business in the State of Florida**

If the business being provided requires that individuals be licensed by the Department of Business and Professional Regulation, such licenses must be obtained prior to submitting a Technical and Price Proposal. Failure to obtain the required authorization by the deadline will result in the Proposer being declared non-responsive and the contract award being made to the next ranked Proposer. For licensing information contact:

Florida Department of Business and Professional Regulation  
Tallahassee, Florida 32399-0797  
(850) 487-1395

The Proposer must submit in a separate section of its Technical Proposal copies of any and all Licenses, Registrations and/or Certifications that apply to the work described in Exhibit "A", Scope of Services, These Certificates will not count towards any page limit.

### 3.4 Unauthorized Aliens

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A(e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

### 3.5 Bid Bond:

A Bid Bond of in the amount of FIVE PERCENT (5%) of the actual total of the Proposal referred to herein, in the form of either a certified check, cashier's check, trust company treasurer's check, bank draft of any national or state bank, or Surety Bid Bond made payable to the Florida Department of Transportation must accompany each bid. Bid Bonds must be furnished using the attached Bid Bond form (Form No. 9).

#### 3.5.1 Release of Bid Bond.

The Department will release all Bid Bonds except those of the two highest scoring Proposers immediately following the opening and checking of the proposals. The Department will immediately release the Bid Bonds of the two highest scoring Proposers after the successful Proposer delivers the executed contract and a satisfactory contract bond to the Department, except that the Department will not retain the proposal guaranty of the second ranked Proposer longer than 50 days after the opening of the proposals unless the Department awards the contract to the second ranked proposer prior to the expiration of this time limit.

### 3.6 Florida Department of Financial Services (DFS) W-9 INITIATIVE

The Florida Department of Financial Services (DFS) is requiring all vendors that do business with the state to submit an electronic W-9 by March 5, 2012. Vendors must submit their W-9 forms electronically at <https://flvendor.myfloridacfo.com> before March 5, 2012 to receive further payments from the state. Contact the DFS Customer Service Desk at (850) 413-5519 or [FLW9@myfloridacfo.com](mailto:FLW9@myfloridacfo.com) with any questions.

## **4) PROPOSERS FACILITIES**

### 4.1 Review of Proposer's Facilities

After the Proposal due date and prior to contract execution, the Department reserves the right to perform or have performed an on-site review of the Proposer's facilities and qualifications. This review will serve to verify data and representations submitted by the Proposer and may be used to determine whether the Proposer has an adequate, qualified, and experienced staff to provide the required services. The review may also serve to verify whether the Proposer has financial capability adequate to meet the contract



requirements.

#### 4.2 Disqualification

Should the Department determine that the Proposal has material misrepresentations or that the size or nature of the Proposer's facilities or the number of experienced personnel (including professional and/or technical staff) are not adequate to ensure satisfactory contract performance, the Department has the right to reject the Proposer and no longer consider it for this procurement.

### 5) DIVERSITY ACHIEVEMENT

#### DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The Department encourages DBE firms to compete for Department contractual services projects, and also encourages non-DBE and other minority contractors to use DBE firms as sub-contractors. The DBE goal for this contract and all current FTA contracts is 8.14%. The Department, its contractors, suppliers, and consultants shall take all necessary and reasonable steps to ensure that disadvantaged businesses have an opportunity to compete for and perform contract work for the Department in a nondiscriminatory environment. The Department shall require its contractors, suppliers, and consultants to not discriminate on the basis of race, color, national origin, religion, gender, age, or disability in the award and performance of its contracts.

Proposers are requested to indicate their intention regarding DBE participation on the **Anticipated DBE Participation Statement** and to submit that Statement with the Original copy of their Technical Proposal only.

Federal law requires states to maintain a database of all firms that are participating or attempting to participate in DOT-assisted contracts. To assist the Department in this endeavor, Proposers are requested to submit **Bidder's Opportunity List** with the original copy of their Technical Proposal only. The list should include yourself as well as any prospective sub-contractor that you contacted or who has contacted you regarding the project.

To request certification or to locate DBEs, call the Department of Transportation's Equal Opportunity Office at (850) 414-4747, or access an application or listing of DBEs on the Internet at [www.dot.state.fl.us/equalopportunityoffice](http://www.dot.state.fl.us/equalopportunityoffice).

### 6) COSTS INCURRED IN RESPONDING

This Request for Proposal does not commit the Department or any other public agency to pay any costs incurred by an individual firm, partnership, or corporation in the submission of a Proposal or to make necessary studies or designs for the preparation thereof, nor to procure or contract for any articles or services.

### 7) PROTEST OF REQUEST FOR PROPOSAL SPECIFICATIONS

Any person who is adversely affected by the contents of this Request for Proposal must file the following with the Department of Transportation, Clerk of Agency Proceedings, Office of the General Counsel, 605 Suwannee Street, Mail Station 58, Tallahassee, Florida 32399-0450:

1. A written notice of protest within seventy-two (72) hours after the posting of the solicitation, and
2. A formal written protest in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall

constitute a waiver of proceedings under Chapter 120, Florida Statutes.

## 8) **TECHNICAL REVIEW AND SELECTION COMMITTEE**

The Department will appoint a Technical Review Committee that will be composed of a minimum of three (3) persons who collectively have experience and knowledge in contract procurement. The committee will be involved in the reviews/evaluations, presentations, and recommendation for award. The Technical Review Committee may be assisted by one or more technical advisors with specific expertise required to review the Technical Proposals. A Selection Committee will be established and will make all final procurement decisions.

## 9) **AWARD OF THE CONTRACT**

The contract will be awarded to the responsible and responsive Proposer whose Proposal is determined to be the most advantageous to the State. The Department will hold a public meeting of the Selection Committee to review the Technical Proposal scores, Price Proposal scores and Total scores of the Proposers. The Selection Committee will adjust the Technical and Price Proposal scores as it deems appropriate. After review and adjustment, if any, the total of the Technical Proposal score and the Price Proposal score will be determined for each responsive Proposer. The Proposer with the highest total score will be the apparent winner. If the Department is confronted with identical scoring from multiple Proposers, the Department shall determine the order of award in accordance with Rule 60A-1.011, Florida Administrative Code. The final decision will be determined by the Selection Committee. A statement will be placed in the procurement file that explains the basis for Proposer selection.

The Department reserves the right to accept or reject any or all Technical Proposals and Price Proposals received. The Department reserves the right to reject any Proposal submitted with an un-reasonably high or unreasonably low Price Proposal Amount. The Department is not obligated to execute a contract and may terminate this solicitation at any time.

## 10) **PRE-PROPOSAL CONFERENCE**

A MANDATORY pre-proposal conference will be held at the date, time and location in the Timeline. The purpose of this meeting is to provide an open forum for the Department to review the Procurement requirements and respond to questions from potential proposers regarding the RFP requirements, contractual requirements, method of compensation, Plans, Specifications and other conditions or requirements that may, in any manner, affect the work to be performed. Any changes and/or resulting addenda to the RFP will be the sole prerogative of the Department.

**Attendance at this pre-proposal conference is MANDATORY. Failure by a proposer to attend or be represented at this pre-proposal conference will constitute a non-responsive determination of their proposal package. Proposals found to be non-responsive will not be considered.**

### **LATE ARRIVALS TO MANDATORY PRE-BID MEETINGS**

**All bidders must be present and signed in prior to the start of the mandatory pre-bid meeting. Anyone not signed in at the commencement of the meeting will be considered late and will not be allowed to bid on the project.**

## 11) **PROPOSAL FORMAT INSTRUCTIONS**

### 11.1 General Information

This section contains instructions that describe the required format for the Proposal. All Proposals submitted shall contain two parts and be marked as follows, and shall be delivered in accordance with the Timeline in Section 3

PART I TECHNICAL PROPOSAL NUMBER **RFP-DOT-11-12-5006-O&M**  
(One Separately Sealed Package for Technical Proposal)

PART II PRICE PROPOSAL NUMBER **RFP-DOT-11-12-5006-O&M**

(One Separately Sealed Package for Price Proposal)

This package should contain properly executed Forms No. 2, Bid Price Proposal, Form No. 9, Bid or Proposal Bond, Form No. 10 Proposal Of, and properly completed appropriate Buy American Certification and the Certification Regarding Lobbying

11.2 Technical Proposal

**TECHNICAL AND PRICE PROPOSALS**

All Contractors interested in this procurement are required to submit both a Technical and Price Proposal. Technical Proposals will become part of the contract and the price shall be a firm fixed price in U.S. Dollars at which the Contractors shall perform all work required under the contract.

Technical Proposal:

Proposer shall submit the following quantities of the Technical Proposal, one (1) Original hard copy (Clearly marked "ORIGINAL"), Twelve (12) hard copies, and one (1) copy on CD/DVD to be included in the Original hard copy.

The Technical Proposals shall be on 8-1/2" x 11" with a minimum font size of 11 point and minimum margins of 1" on all sides. The Technical Proposal shall be a maximum of 50 single sided pages, including graphics, but excluding required forms listed in the paragraph below. No oversized pages (larger than 8-1/2" x 11") are permitted in the Technical Proposal.

**TECHNICAL PROPOSAL**

- Bid Forms, Forms No. 1, 3, 4, 5, 6, 7, and 8 as described below shall be properly executed and included in the Original copy of the Technical proposal.
  - No. 1, Registration Form
  - No. 3, Contractor Data Sheet
  - No. 4, Drug Free Workplace Certification
  - No. 5, DBE Participation Statement
  - No. 6 Bid Opportunity List for Professional Consultant Services, &Commodities and Contractual Services, form no. 375- 040-62
  - No. 7 Contractor Certification Regarding Scrutinized Companies Lists
  - No. 8a Certification of Railroad Maintenance Experience – Project Experience
  - No. 8b Certification of Railroad Maintenance Experience – Project Experience
  - No. 8c Certification of Operations and Maintenance Experience – Key Staff

**PRICE PROPOSAL**

- Bid Forms 2, 9, 10 and the appropriate Buy American Certification and the Certification Regarding Lobbying (Exhibit "F," Required Contract Provisions for Federal Transit Administration Federal Aid), shall be properly completed and submitted in a sealed envelope on the date and time shown in Section 3, Timeline
  - No. 2, Bid Price Proposal Form, to be submitted in a separate sealed envelope.
  - No. 9, Bid Bond Form
  - No. 10, Proposal Of Form

The following elements must be addressed in the Technical Proposal:

## **Technical Approach – Maximum 25 Pages**

Provide a written narrative that outlines the Proposers approach to providing the operations and maintenance services for CFRC and SunRail. The narrative shall address the following elements:

- a. Discuss how the operations and maintenance mobilization work will be performed, including participation with FDOT and the Design/Build/Maintain Firm in the systems testing and commissioning for SunRail.
- b. Discuss the proposed maintenance program, including how FRA and Department requirements will be met.
- c. Discuss the proposed coordination with the Design/Build/Maintain Firm responsible for the Design and Construction of the track, stations, and signal systems; with the Stations Finishes Contractors responsible for the integration of components into the Operations Control Center to be located at the Vehicle Storage and Maintenance Facility; with various utilities for service connections; and other coordination which may be required.
- d. Discuss the proposed operations of the fleet including the dispatch of trains, crew assignments, fleet maintenance, and other operations elements
- e. Discuss the proposed vehicle maintenance program, including those operations to occur at the Vehicle Storage and Maintenance Facility and those to be completed by Amtrak.
- f. Discuss employee training and certifications, including how FRA and Department requirements will be met.
- g. Discuss the safety program to be developed and implemented throughout the duration of the contract.

## **Past Performance – Maximum 10 Pages**

This Project requires the Proposer to have specific expertise and experience in the operation and maintenance of a passenger rail system, preferably a commuter rail system and a Class I freight rail system. The Prime Proposer may utilize a subcontractor to meet the expertise and experience requirement for some of the work elements. To verify compliance with this requirement, the Proposer must provide as part of the Technical Proposal a summary of operations and maintenance experience on passenger rail systems and freight rail systems in a narrative form. In addition to the summary, the Proposer shall provide Form No. 8a completed for all Maintenance Experience and Form N. 8b completed for all Operations Experience. The forms shall include the complete description of the work effort completed for the contract, including the track mileage, number of trains per day (separated by freight and passenger trains), and on-time performance statistics. The safety record shall be described and include all FRA violations/citations as well as any accidents which occurred during the contract period. Mitigating circumstances may be included in the documentation. The Proposer shall use the format of Form Nos. 8a and 8b for the experience of all firms to meet the minimum 10 years of experience. The forms may be enlarged to provide all the required information to satisfy the minimum project experience requirements. There is no page limitation on the number of pages for Form Nos. 8a and 8b. Each project must include a reference with current contact information to be counted toward the minimum years of experience.,

## **Staffing Plan – 4 Pages**

Provide an organization chart of proposed firms and key personnel, including reporting relationships within the organization and between the Proposer and the Department. In the organization chart shall indicate the coordination with the Design/Build/Maintain Firm and the Stations Finishes Contractors. Provide brief (1/4 page maximum) biographies of the proposed key individuals to be assigned to this project. Key individuals include the lead person for each of the primary work elements and at a minimum include the following key positions with the following minimum years of experience:

- a. General Manager/Lead Contract Manager – 10 years minimum (15 years preferred)
- b. Operations Manager/Trainmaster – 10 years minimum (15 years preferred)

- c. Maintenance Manager – 5 years minimum (8 years preferred)
- d. Safety and Training Manager – 5 years minimum (8 years preferred)
- e. Transportation Manager – 8 years minimum (10 years preferred)
- f. Signal Manager – 8 years minimum (10 years preferred)
- g. Track Manager – 5 years minimum (8 years preferred)
- h. Mechanical Manager (CMO) – 8 years minimum (10 years preferred).

The Proposer shall complete Form No. 8c for each of the key staff. The forms may be enlarged to provide all the required information to satisfy the minimum project experience requirements. There is no page limitation on the number of pages for Form No. 8c.

The Proposer may elect to include additional key positions beyond the minimum stated above.

The Proposer shall not add or replace named individuals or firms/subcontractors to complete the work efforts without written permission from the Department. The Contractor shall not replace key personnel to assign personnel to another project. Replacements key personnel shall be submitted to the Department for their review and approval.

Provide a plan that outlines the Proposer's intended use of Disadvantaged Business Enterprises, and how the Proposer intends to meet or exceed the overall DBE goal of 8.14% participation.

### 11.3 Price Proposal

Proposers shall submit one (1) original and one (1) copy of the Price Proposal, and "Proposal Of" form. The Price Proposal information shall be submitted on the Bid Price Proposal form (Form No. 2) and the Proposal Of Form, (Form No. 10) provided in this RFP. The Contract will be awarded based on the formula shown in section 18.2. Only the Price Proposals of the proposers that receive a score of 70 points or higher on the Technical Proposal will be evaluated. The Price Proposal shall be shown on the Price Proposal Form, (Form No. 2). The Bid Bond shall be submitted in this package. See Section 22 for Bid Price Proposal submittal requirements.

## 12) PROPRIETARY INFORMATION

### 12.1 COPYRIGHTED MATERIAL

Copyrighted material will be accepted as part of a Proposal only if accompanied by a waiver that will allow the Department to make paper and electronic copies necessary for the use of Department staff and agents. It is noted that copyrighted material is not exempt from the Public Records Law, Chapter 119, Florida Statutes. Therefore, such material will be subject to viewing by the public, but copies of the material will not be provided to the public.

### 12.2) TRADE SECRETS

The Proposer must include any materials it asserts to be trade secrets under Florida law in a separate bound document labeled "**Attachment to Request for Proposal, Number RFP-DOT- 11-12-5006-O&M Trade Secrets**". Any claim of confidentiality on materials placed elsewhere in the Proposal will be considered waived by the Proposer upon submission of the documents.

## 13) ADDITIONAL TERMS & CONDITIONS

No conditions may be applied to any aspect of the RFP by the Proposer. Any conditions placed on any aspect of the Proposal documents by the Proposer may result in the Proposal being rejected as a conditional Proposal (see "RESPONSIVENESS OF PROPOSALS"). **DO NOT WRITE IN CHANGES ON ANY RFP SHEET.** The only recognized changes to the RFP prior to Proposal opening will be a written addenda issued by the Department.

## **14) SUBMISSION OF PROPOSALS**

### **MAIL OR DELIVER PROPOSALS TO: (DO NOT FAX or E-MAIL)**

Diane Warnock, Purchasing Agent  
Florida Department of Transportation  
District Five Procurement Services M.S.#524  
719 South Woodland Boulevard  
DeLand, FL 32720-6834

It is the Proposer's responsibility to assure that the Proposal (Technical and Price Proposal) is delivered to the Proper place on or before the Proposal Due date and time (See Introduction Section 3 Timeline). Proposals which for any reason are not so delivered will not be considered.

By submitting a Proposal, the Proposer represents that it understands and accepts the terms and conditions to be met and the character, quality and scope of services to be provided.

All Proposals and associated forms shall be signed and dated in ink by a duly authorized representative of the Proposer.

Each Proposer shall fully acquaint itself with the conditions relating to the performance of the services under the conditions of this Request for Proposal.

## **15) MODIFICATIONS, RESUBMITTAL AND WITHDRAWAL OF PROPOSALS**

Proposers may modify Proposals at any time prior to the Proposal due date. Modifications must be submitted in the same format and manner as the original Proposal. Requests for withdrawal will be considered if received by the Department, in writing, within seventy-two (72) hours after the Price Proposal opening time and date. Requests for withdrawal received prior to opening of the Technical Proposals will be automatically granted. Requests for withdrawal received after the opening of the Technical Proposals will be granted by the Department upon proof of the impossibility to perform based upon obvious error on the part of the Proposer. Withdrawal will result in that Proposer no longer being considered for this procurement; however, the public records law prohibits the return of documents other than original bonds which can be returned for cancellation and premium rebate purposes. Withdrawal of any proposal after the Price Proposal Opening may result in forfeiture of the Contractor's Bid Bond.

## **16) OPENING OF PROPOSALS**

All Proposal openings are open to the public. Proposals will be opened by the Department at the date, time and location in the Timeline. The public may attend the opening but may not review any Proposals submitted until they become public records in accordance with the law.

## **17) RESPONSIVENESS OF PROPOSALS**

### **17.1 Timeliness of Proposals**

Proposals will not be considered if not received by the Department on or before the date and time specified. A responsive Proposal is an offer to perform the Scope of Services called for in this Request for Proposal in accordance with all requirements of this Request for Proposal and receiving a score of seventy (70) points or more on the Technical Proposal evaluation. Proposals that do not make a Technical Score of 70 points or more will be considered "Non-Responsive" and the corresponding Price Proposals will not be considered. Proposals found to be non-responsive shall not be considered. Proposals may be rejected if found to be irregular or not in conformance with the requirements and instructions herein contained.

### **17.2 Other Conditions**

Other conditions which may cause rejection of Proposals include, but are not limited to, evidence of

collusion among Proposers, obvious lack of experience or expertise to perform the required work, failure to perform or meet financial obligations on previous contracts, being on the United States Comptroller General's List of Ineligible Contractors for Federally Financed or Assisted Projects, submissions of more than one Proposal by a Proposer, failure to utilize or complete prescribed forms, conditional Proposals, incomplete Proposals, indefinite or ambiguous Proposals, improper and/or undated signatures, or failure to comply with any of the requirements contained in this RFP.

### 17.3 Determination of Responsiveness

All Proposals will be reviewed by the Department's Procurement Office and/or Project Manager for responsiveness. The final determination of responsiveness is reserved to the Selection Committee. The Department reserves the right to accept or reject any or all Proposals received and reserves the right to make an award without further discussion of the Proposals submitted. Therefore, the Proposals should be submitted initially in the most favorable manner. It is understood that the Proposal will become a part of the Department's official file, without obligation to the Department.

### 17.4 Waiver of Irregularities

The Department may waive minor informalities or irregularities in documents received where such is merely a matter of form and not substance, and the correction or waiver of which is not prejudicial to other Proposers. Minor irregularities are defined as those that will not have an adverse effect on the Department's interest and will not affect the price of the Proposals by giving a Proposer an advantage or benefit not enjoyed by other Proposers.

### 17.5 Multiple Proposals

Proposals may be rejected if more than one Proposal is received from a Proposer. Such duplicate interest may cause the rejection of all Proposals in which such Proposer has participated. Subcontractors may appear in more than one Proposal

## 18 PROPOSAL EVALUATION

### 18.1 Evaluation Process:

The Procurement Office will distribute to each member of the Technical Review Committee a copy of each Technical Proposal. The Technical Review Committee will meet with the Advisors if any to seek clarification and information regarding each Technical Proposal. The Technical Review Committee members will then independently evaluate the Technical Proposals based on the criteria established in the section below entitled "Criteria for Evaluation". The Technical Review Committee will assign points, utilizing the technical evaluation criteria identified herein and complete a Technical Summary of each responsive Technical Proposal submitted. A public meeting will be held to announce the Technical Proposal scores, calculate the Price Proposal scores and the Total score for each responsive Proposer. The Total Score for each Proposer will be the sum of the Technical Proposal Score and the Price Proposal Score. The outcome of this will be the intended Award. The results will be submitted to the Selection Committee. The Selection Committee will review the scores and adjust the points as it deems appropriate and confirm the intended Award. The Award will become final in accordance with Florida Statutes.

### 18.2 Criteria for Evaluation

Proposals will be evaluated and graded in accordance with the criteria detailed below.

a. Technical Proposal (100 Points)

Technical evaluation is the process of reviewing the Proposer's Technical Proposal for understanding of project, qualifications, approach and capabilities, to assure quality services.

The following point system is established for scoring the Technical Proposals:

1. Technical Approach (Maximum 25 points)

Proposer's Technical Proposal will be evaluated to determine how well the provided narrative defines the coordination with other entities, including the Department, the Design/Build/Maintain Firm and the Stations Finishes Contractor. The narrative will be evaluated for determining understanding of various contract requirements. The narrative will be evaluated to determine understanding of how work needs to be integrated with other, ongoing activities. The narrative will be evaluated based on the Proposers understanding of the unique requirements of a shared use corridor.

2. Experience and Past Performance (Maximum 50 points)

Proposer's Technical Proposal will be evaluated to determine if Proposer has met the necessary minimum years of experience in providing operations and maintenance services to Class I railroads, including passenger service. If the Proposer fails to provide specific expertise and experience in the performance of operations and maintenance services for Class I railroads and passenger service as required, the Proposer will not receive a score of more than 10 points for this section. The Proposer will be evaluated on the safety record for each of their past projects, including the compliance with FRA requirements. The Proposer will be evaluated on the past performance of the work used to verify their experience, by client references and any records of past performance available.

3. Staffing Plan – Maximum 25 points

Proposer's Technical Proposal will be evaluated to determine that proposed firm and key personnel have appropriate relevant experience. If the Proposer fails to provide specific expertise and experience for the key staff positions cited in this RFP, the Proposer will not receive a score of more than 10 points for this section. The Proposer will be evaluated to review the proposed relationships within the organization and between the Proposer and the Design/Build/Maintain Firm and the Department. The Proposer will be evaluated on anticipated utilization of Disadvantaged Business Enterprises to determine if it meets/exceeds Department's 8.14% utilization goal.

c. Price Proposal (25 Points)

Price evaluation is the process of examining a prospective price without evaluation of the separate cost elements and proposed profit of the potential provider. Price analysis is conducted through the comparison of price quotations submitted.

The criteria for price evaluation shall be based upon the following formula:

$$\frac{(\text{Low Price} / \text{Proposer's Price}) \times \text{Price Points} = \text{Proposer's Awarded Points}}$$

The Price that will be used for calculating Price Proposal Score is the Total of Items 1 through 5 on form No. 2

## **19) POSTING OF DECISIONS**

19.1 Decisions to be posted will be posted on the Florida Vendor Bid System, at [www.myflorida.com](http://www.myflorida.com), (click on "BUSINESS", click on "Doing Business with the State", under "Everything for Vendors and Customers", click on "Vendor Bid System (VBS)", on date and time in the Timeline, and will remain posted for a period of seventy-two (72) hours. Any Proposer who is adversely affected by the Department's recommended award or intended decision must file the following with the Department of Transportation, Clerk of Agency Proceedings, Haydon Burns Building, 605 Suwannee Street, Room #550, Mail Station #58 Tallahassee, FL 32399-0450:

1. A written notice of protest within seventy-two (72) hours after posting of the Intended Award, and;



2. A formal written protest and protest bond in compliance with Section 120.57(3), Florida Statutes, within ten (10) days of the date on which the written notice of protest is filed. At the time of filing the formal written protest, a bond (a cashier's check or money order may be accepted) payable to the Department must also be submitted in an amount equal to one percent (1%) of the estimated contract amount based on the contract price submitted by the protestor.

Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes.

#### 19.2 Inability to Post:

If the Department is unable to post as defined above, the Department will notify all Proposers by electronic notification on the Florida Contractor Bid System or by mail, fax, and/or telephone. The Department will provide further notification of any future posting.

### **20) CONTRACT DOCUMENT**

The Department and Contractor shall execute the Departments Standard Written Agreement attached hereto for services relating to this Request for Proposal, which contract document shall include the attachments as shown below:

- The Department's Standard Written Agreement
- Exhibit "A", Scope of Services, including Form PUR 1000
- Exhibit "B" Method of Compensation
- Contract Bond, Form No. 375-020-27
- 

### **21) "DRUG-FREE WORK PLACE" PREFERENCE**

Whenever two or more bids which are equal with respect to price, quality, and service are received, the Department shall determine the order of award in accordance with Rule 60A-1.011, Florida Administrative Code, which includes a preference for bid responses that certify the business has implemented a drug-free workplace program in accordance with Section 287.087, F.S. The "Drug-Free Workplace Program Certification" must be completed and submitted with the bid response for this preference.

### **22) ATTACHED FORMS, To be included in a separate section of the Technical Proposal marked "Required Forms"**

- Bid Forms, Forms No. 1, 3, 4, 5, 6, 7 and 8, shall be included in the Original copy of the Technical Proposal.
  - No. 1, Registration Form
  - No. 3, Contractor Data Sheet
  - No. 4, Drug Free Workplace Certification
  - No. 5, DBE Participation Statement
  - No. 6, Bid Opportunity List
  - No. 7 Contractor Certification Regarding Scrutinized Companies Lists
  - No. 8a Certification of Railroad Maintenance Experience – Project Experience
  - No. 8b Certification of Railroad Operations Experience – Project Experience
  - No. 8c Certification of Railroad Operations and Maintenance Experience – Key Staff
- Bid Price Proposal Forms 2, 8 and 9, shall be submitted in a sealed envelope on the date and time shown in Section 3, Timeline
- Bid Forms 2, 9, 10, and the appropriate Buy American Certification and the Certification

Regarding Lobbying (Exhibit “F,” Required Contract Provisions for Federal Transit Administration Federal Aid), shall be properly completed and submitted in a sealed envelope on the date and time shown in Section 3, Timeline

- No. 2, Bid Price Proposal Form, to be submitted in a separate sealed envelope.
- No. 9, Bid Bond Form
- No. 10, Proposal Of Form

### **23) ATTACHED TERMS AND CONDITIONS**

All responses are subject to the terms and conditions of this solicitation, which, in case of conflict, shall have the following order of precedence listed:

- Exhibit “X”, Required Contract Provisions for Federal Transit Administration Federal Aid Contract
- Exhibit “A”, Scope of Services
- Exhibit “B”, Method of Compensation
- Standard Written Agreement
- Special Conditions and Introduction RFP-DOT\_11-12-5006- O&M
- Form PUR 1001, General Instructions to Respondents

### **24) ATTACHED FORM PUR 1001, GENERAL INSTRUCTIONS TO RESPONDENTS**

This is a standard form that the Department is required to include in all formal solicitations. The below listed paragraphs do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph.

#### **PUR 1001**

- Paragraph 3, Electronic Submission
- Paragraph 4, Terms and Conditions
- Paragraph 5, Questions
- Paragraph 7, Convicted Vendors
- Paragraph 8, Discriminatory Vendors
- Paragraph 10, Manufacturer’s name and Approved Equivalentents
- Paragraph 11, Performance Qualifications
- Paragraph 12, Public Opening
- Paragraph 13, Electronic Posting
- Paragraph 14, Firm Response
- Paragraph 19, Public Records
- Paragraph 20, Protests
- Paragraph 21, Limitation on Vendor Contact

## PROCUREMENT CHECKLIST

(CHECKLIST DOES NOT NEED TO BE RETURNED WITH YOUR PROPOSAL)

This Checklist is provided as a guideline, only, to assist Proposers in the preparation of their RFP response. Included are some important matters that the proposer should check. This checklist is just a guideline, and is not intended to include all matters required by the RFP. Proposers are responsible to read and comply with the RFP in its entirety.

Verify each the following:

- \_\_\_ 1. The Price Proposal has been completed, as specified, and enclosed in the RFP response.
- \_\_\_ 2. The Federal Employers Identification Number or Social Security Number has been entered in the space provided.
- \_\_\_ 3. The “Drug-Free Workplace Program Certification” form has been read, signed, and enclosed in the RFP response, if applicable.
- \_\_\_ 4. The “DBE Participation Statement” form has been read, completed, and enclosed in the RFP response, if applicable.
- \_\_\_ 5. The “Bid Opportunity List” has been read, completed, and enclosed in the RFP response, if applicable.
- \_\_\_ 6. The “Contractor Data Sheet” has been read, completed, and enclosed in the RFP response, if applicable.
- \_\_\_ 7. The Technical Proposal (one (1) original and the specified number of copies) have been completed, as specified, and enclosed in the RFP response.
- \_\_\_ 8. All Forms have been completed and included in the Technical Proposal as specified. \_
- \_\_\_ 9. The [www.myflorida.com](http://www.myflorida.com) website has been checked and any Addendums posted have been completed, signed, and included in the RFP response.
- \_\_\_ 10. The RFP response must be received, at the location specified, prior to the Opening Date and Time designated in the RFP.
- \_\_\_ 11. On the Lower Left Hand Corner of the Envelope transmitting your RFP response, write in the following information:

RFP No.: RFP-DOT-11-12-5006-O&M

Title: Central Florida Rail Corridor (CFRC) Operations and Maintenance

**State of Florida**  
**PUR 1001**  
**General Instructions to Respondents**  
**Central Florida Rail Corridor (CFRC) Operations and Maintenance**

**Contents**

1. Definitions.
2. General Instructions.
- ~~3. Electronic Submission of Responses.~~
- ~~4. Terms and Conditions.~~
- ~~5. Questions.~~
6. Conflict of Interest.
- ~~7. Convicted Vendors.~~
- ~~8. Discriminatory Vendors.~~
9. Respondent's Representation and Authorization.
- ~~10. Manufacturer's Name and Approved Equivalents.~~
- ~~11. Performance Qualifications.~~
- ~~12. Public Opening.~~
- ~~13. Electronic Posting of Notice of Intended Award.~~
- ~~14. Firm Response.~~
15. Clarifications/Revisions.
- ~~16. Minor Irregularities/Right to Reject.~~
- ~~17. Contract Formation.~~
18. Contract Overlap.
- ~~19. Public Records.~~
- ~~20. Protests.~~
- ~~21. Limitation on Vendor Contact with Agency During Solicitation Period~~

**1. Definitions.** The definitions found in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

- (a) "Buyer" means the entity that has released the solicitation. The "Buyer" may also be the "Customer" as defined in the PUR 1000 if that entity meets the definition of both terms.
- (b) "Procurement Officer" means the Buyer's contracting personnel, as identified in the Introductory Materials.
- (c) "Respondent" means the entity that submits materials to the Buyer in accordance with these Instructions.
- (d) "Response" means the material submitted by the respondent in answering the solicitation.
- (e) "Timeline" means the list of critical dates and actions included in the Introductory Materials.

**2. General Instructions.** Potential respondents to the solicitation are encouraged to carefully review all the materials contained herein and prepare responses accordingly.

~~**3. Electronic Submission of Responses.** Respondents are required to submit responses electronically. For this purpose, all references herein to signatures, signing requirements, or other required acknowledgments hereby include electronic signature by means of clicking the "Submit Response" button (or other similar symbol or process) attached to or logically associated with the response created by the respondent within MyFloridaMarketPlace. The respondent agrees that the action of electronically submitting its response constitutes:~~

- ~~• an electronic signature on the response, generally,~~
- ~~• an electronic signature on any form or section specifically calling for a signature, and~~
- ~~• an affirmative agreement to any statement contained in the solicitation that requires a definite confirmation or acknowledgement.~~

~~**4. Terms and Conditions.** All responses are subject to the terms of the following sections of this solicitation, which, in case of conflict, shall have the order of precedence listed:~~

- ~~• Technical Specifications,~~
- ~~• Special Conditions and Instructions,~~
- ~~• Instructions to Respondents (PUR 1001),~~
- ~~• General Conditions (PUR 1000), and~~

~~•—Introductory Materials.~~

~~The Buyer objects to and shall not consider any additional terms or conditions submitted by a respondent, including any appearing in documents attached as part of a respondent's response. In submitting its response, a respondent agrees that any additional terms or conditions, whether submitted intentionally or inadvertently, shall have no force or effect. Failure to comply with terms and conditions, including those specifying information that must be submitted with a response, shall be grounds for rejecting a response.~~

~~**5. Questions.** Respondents shall address all questions regarding this solicitation to the Procurement Officer. Questions must be submitted via the Q&A Board within MyFloridaMarketPlace and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline. Questions shall be answered in accordance with the Timeline. All questions submitted shall be published and answered in a manner that all respondents will be able to view. Respondents shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the MyFloridaMarketPlace site for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained within the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 19 of these Instructions.~~

**6. Conflict of Interest.** This solicitation is subject to chapter 112 of the Florida Statutes. Respondents shall disclose with their response the name of any officer, director, employee or other agent who is also an employee of the State. Respondents shall also disclose the name of any State employee who owns, directly or indirectly, an interest of five percent (5%) or more in the respondent or its affiliates.

~~**7. Convicted Vendors.** A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list:~~

- ~~•—submitting a bid on a contract to provide any goods or services to a public entity;~~
- ~~•—submitting a bid on a contract with a public entity for the construction or repair of a public building or public work;~~
- ~~•—submitting bids on leases of real property to a public entity;~~
- ~~•—being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and~~
- ~~• transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.~~

~~**8. Discriminatory Vendors.** An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not:~~

- ~~•—submit a bid on a contract to provide any goods or services to a public entity;~~
- ~~•—submit a bid on a contract with a public entity for the construction or repair of a public building or public work;~~
- ~~•—submit bids on leases of real property to a public entity;~~
- ~~•—be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or~~
- ~~•—transact business with any public entity.~~

**9. Respondent's Representation and Authorization.** In submitting a response, each respondent understands, represents, and acknowledges the following (if the respondent cannot so certify to any of following, the respondent shall submit with its response a written explanation of why it cannot do so).

- The respondent is not currently under suspension or debarment by the State or any other governmental authority.
- To the best of the knowledge of the person signing the response, the respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last ten (10) years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

- Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.
- The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.
- The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.
- The respondent has fully informed the Buyer in writing of all convictions of the firm, its affiliates (as defined in section 287.133(1)(a) of the Florida Statutes), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.
- Neither the respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:
  - Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
  - Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.
- The product offered by the respondent will conform to the specifications without exception.
- The respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.
- If an award is made to the respondent, the respondent agrees that it intends to be legally bound to the Contract that is formed with the State.
- The respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.
- The respondent shall indemnify, defend, and hold harmless the Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.
- All information provided by, and representations made by, the respondent are material and important and will be relied upon by the Buyer in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Buyer of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817 of the Florida Statutes.

~~**10. Manufacturer's Name and Approved Equivalents.** Unless otherwise specified, any manufacturers' names, trade names, brand names, information or catalog numbers listed in a specification are descriptive, not restrictive. With the Buyer's prior approval, the Contractor may provide any product that meets or exceeds the applicable specifications. The Contractor shall demonstrate comparability, including appropriate catalog materials, literature, specifications, test data, etc. The Buyer shall determine in its sole discretion whether a product is acceptable as an equivalent.~~

~~**11. Performance Qualifications.** The Buyer reserves the right to investigate or inspect at any time whether the product, qualifications, or facilities offered by Respondent meet the Contract requirements. Respondent shall at all times during the Contract term remain responsive and responsible. In determining Respondent's responsibility as a vendor, the agency shall consider all information or evidence which is gathered or comes to the attention of the agency which demonstrates the Respondent's capability to fully satisfy the requirements of the solicitation and the contract.~~

~~Respondent must be prepared, if requested by the Buyer, to present evidence of experience, ability, and financial standing, as well as a statement as to plant, machinery, and capacity of the respondent for the production, distribution, and servicing of the product bid. If the Buyer determines that the conditions of the solicitation documents are not complied with, or that the product proposed to be furnished does not meet the specified requirements, or that the qualifications, financial standing, or facilities are not satisfactory, or that performance is untimely, the Buyer may reject the response or terminate the Contract. Respondent may be disqualified from receiving awards if respondent, or anyone in respondent's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts. This paragraph shall not mean or imply that it is obligatory upon the Buyer to make an investigation either before or after award of the Contract, but should the Buyer elect to do so, respondent is not relieved from fulfilling all Contract requirements.~~

~~**12. Public Opening.** Responses shall be opened on the date and at the location indicated on the Timeline. Respondents may, but are not required to, attend. The Buyer may choose not to announce prices or release other materials pursuant to s. 119.071(1)(b), Florida Statutes. Any person requiring a special accommodation because of a disability should contact the Procurement Officer at least five (5) workdays prior to the solicitation opening. If you are hearing or speech impaired, please contact the Buyer by using the Florida Relay Service at (800) 955-8771 (TDD).~~

~~**13. Electronic Posting of Notice of Intended Award.** Based on the evaluation, on the date indicated on the Timeline the Buyer shall electronically post a notice of intended award at [http://fen.state.fl.us/owa\\_vbs/owa/vbs\\_www\\_main\\_menu](http://fen.state.fl.us/owa_vbs/owa/vbs_www_main_menu). If the notice of award is delayed, in lieu of posting the notice of intended award the Buyer shall post a notice of the delay and a revised date for posting the notice of intended award. Any person who is adversely affected by the decision shall file with the Buyer a notice of protest within 72 hours after the electronic posting. The Buyer shall not provide tabulations or notices of award by telephone.~~

~~**14. Firm Response.** The Buyer may make an award within sixty (60) days after the date of the opening, during which period responses shall remain firm and shall not be withdrawn. If award is not made within sixty (60) days, the response shall remain firm until either the Buyer awards the Contract or the Buyer receives from the respondent written notice that the response is withdrawn. Any response that expresses a shorter duration may, in the Buyer's sole discretion, be accepted or rejected.~~

~~**15. Clarifications/Revisions.** Before award, the Buyer reserves the right to seek clarifications or request any information deemed necessary for proper evaluation of submissions from all respondents deemed eligible for Contract award. Failure to provide requested information may result in rejection of the response.~~

~~**16. Minor Irregularities/Right to Reject.** The Buyer reserves the right to accept or reject any and all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Buyer determines that doing so will serve the State's best interests. The Buyer may reject any response not submitted in the manner specified by the solicitation documents.~~

~~**17. Contract Formation.** The Buyer shall issue a notice of award, if any, to successful respondent(s), however, no contract shall be formed between respondent and the Buyer until the Buyer signs the Contract. The Buyer shall not be liable for any costs incurred by a respondent in preparing or producing its response or for any work performed before the Contract is effective.~~

~~**18. Contract Overlap.** Respondents shall identify any products covered by this solicitation that they are currently authorized to furnish under any state term contract. By entering into the Contract, a Contractor authorizes the Buyer to eliminate duplication between agreements in the manner the Buyer deems to be in its best interest.~~

~~**19. Public Records.** Article 1, section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public record. As such, all responses to a competitive solicitation are public records unless exempt by law. Any respondent claiming that its response contains information that is exempt from the public records law shall clearly segregate and mark that information and provide the specific statutory citation for such exemption.~~

~~**20. Protests.** Any protest concerning this solicitation shall be made in accordance with sections 120.57(3) and~~

~~287.042(2) of the Florida Statutes and chapter 28-110 of the Florida Administrative Code. Questions to the Procurement Officer shall not constitute formal notice of a protest. It is the Buyer's intent to ensure that specifications are written to obtain the best value for the State and that specifications are written to ensure competitiveness, fairness, necessity and reasonableness in the solicitation process.~~

~~Section 120.57(3)(b), F.S. and Section 28-110.003, Fla. Admin. Code require that a notice of protest of the solicitation documents shall be made within seventy two hours after the posting of the solicitation.~~

~~Section 120.57(3)(a), F.S. requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."~~

~~Section 28-110.005, Fla. Admin. Code requires the following statement to be included in the solicitation: "Failure to file a protest within the time prescribed in Section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Florida Statutes."~~

~~**21. Limitation on Vendor Contact with Agency During Solicitation Period.** Respondents to this solicitation or persons acting on their behalf may not contact, between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award, excluding Saturdays, Sundays, and state holidays, any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the procurement officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.~~



STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD WRITTEN AGREEMENT**

375-040-19  
PROCUREMENT  
OGC – 06/11  
Page 1 of 8

Agreement No.: \_\_\_\_\_  
Financial Project I.D.: 412994-4-82-02  
F.E.I.D. No.: \_\_\_\_\_  
Appropriation Bill Number(s) for 1<sup>st</sup> year of contract,  
pursuant to s.216.313, F.S.: \_\_\_\_\_  
(required for contracts in excess of \$5 million)  
Procurement No.: RFP-DOT-11-12-5006-O&M  
D.M.S. Catalog Class No.: 955-240, 955-920

BY THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called "Department" and of \_\_\_\_\_ duly authorized to conduct business in the State of Florida, hereinafter called "Vendor", hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Central Florida Rail Corridor (CFRC) Operations and Maintenance the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibits "A" Scope of Services and Exhibit "D" Signal Maintenance of Way Requirements attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statute, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the District Five Secretary.

## 2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through the FDOT funding period, Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate)

Services shall commence \_\_\_\_\_ and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.

Services shall commence upon written notice from the Department's Contract Manager and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.

Other: See Exhibit "A" Scope of Services

- B. RENEWALS (Select appropriate box):

This Agreement may not be renewed.

This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original agreement, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Any renewal or extension shall be in writing and shall be subject to the same terms and conditions set forth in this Agreement.

- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

## 3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statute and Chapter 3 - Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor.

Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering procurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subvendors performing work on the project, and all other records of the Vendor and subvendors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### 4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**PAYMENT FOR CLAIMS:** The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subvendor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

## B. LIABILITY INSURANCE AND WORKER'S COMPENSATION

**(1) FELA and Workers' Compensation Insurance:** Vendor shall provide coverage under the Federal Employers' Liability Act (FELA) in the greater of the amount required by federal law or a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence.

To the extent that FELA does not apply, Vendor shall provide Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all employees. If subletting any of the work, ensure that the employees of the subcontractors are covered by similar insurance. Ensure that any equipment rental agreements that include operators who are employees of independent Contractors, sole proprietorships or partners are covered by similar insurance. The Department will accept equivalent approved protection in lieu of insurance.

**(2) Contractors' Public Liability and Property Damages Liability Insurance:** Vendor shall furnish evidence to the Department that, with respect to the operations performed, regular Contractors' Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Vendor shall cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, to be each an additional insured party on the Contractor's Public Liability and Property Damages Liability policies that insure the Contractor for the described work that it performs under the Contract.

**(3) Contractors' Protective Public Liability and Property Damage Liability Insurance:** Vendor shall furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors' Protective Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Vendor shall cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, to be each an additional insured party on the Contractor's Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

### **(4) Insurance Required for Construction at Railroads:**

**(A) General:** In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, Vendor shall provide insurance of the types set forth below and in amounts not less than specified herein.

**(B) Railroads' Protective Public Liability and Property Damage Liability Insurance:** Vendor shall

furnish the Department with an original insurance policy that, with respect to the operations performed, will provide, in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy.

CSX Transportation, Inc. and the Department are to be each a Named Insured on the policy. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando are to be each an additional insured on the policy.

**(5) Insurance for Protection of Utility Owners:** When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, Vendor shall furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried.

The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, are each to be additional insured on the policy. Vendor shall not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

**(6) Insurance by Others:** Vendor shall require every subcontractor or other third party who may have a contract with Vendor and who may require access on or to State Property or the Corridor or the Sun Rail Corridor or the FCEN Corridor to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated in this section 4. B. paragraphs (1), (2), (3), (4), and (5), and including causing each of the Named Insureds and the additional insureds stated in those paragraphs to be Named Insureds and additional insureds on such subcontractor or third party policy or policies.

For purposes of this section 4.B. paragraph (6) the following apply: "State Property" has the meaning stated in the "TRANSITION AGREEMENT Between State of Florida Department of Transportation and CSX Transportation, Inc.," Appendix A, at page A-4; and "Corridor" has the meaning stated in the "INTERLOCAL OPERATING AGREEMENT FOR OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM By and Between FLORIDA DEPARTMENT OF TRANSPORTATION AND CENTRAL FLORIDA COMMUTER RAIL COMMISSION," Appendix A, at page A-3; and Sun Rail "Corridor" has the meaning stated in the "AGREEMENT BETWEEN NATIONAL RAILROAD PASSENGER CORPORATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION," Definitions, at page 6; and "FCEN Corridor" has the meaning stated in the "OPERATING AGREEMENT Between State of Florida Department of Transportation, an agency of the State of Florida, and Florida Central Railroad Company, Inc., a Florida Corporation," Definitions, at page 6. Those agreement definitions mentioned above, and as heretofore amended, are incorporated by reference and may be accessed at [www.sunrail.com](http://www.sunrail.com). At that website click on "Updates & Documents," and then click on "Contract Documents" except regarding the Interlocal Operating Agreement click on "Local Agreements."

**(7) Submission and Approval of Policies; Termination:** Certificates of insurance (and other evidence of insurance requested by the Department) for each required policy shall be provided by Vendor at the time of Contract execution.

Vendor shall provide all insurance policies in such form and with insurers that are acceptable to the Department. Keep such insurance in force, in the full amount specified herein, until this contract is ended.

C. PERFORMANCE AND PAYMENT BOND.

No Bond required.

Within ten (10) calendar days of Notice to Proceed for maintenance mobilization services (MMS) and Operations Maintenance (OMS) at all times during the term hereof, including extensions, the Vendor will supply to the Department and keep in force a Performance and Payment bond in the annual amount of the Operations and Maintenance portion of the contract provided by a surety authorized to

do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment and supplies therefore. On or before ninety (90) days prior to the expiration of any Performance and Payment bond the Vendor shall provide the Department written proof from the Surety that an acceptable Performance and Payment bond will be issued prior to the expiration of the current bond.

- D. CERTIFICATION. With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect and showing the Department to be an additional certificate holder. Such policies shall provide for cancellation notice to the Department as required by law.

## 5. COMPLIANCE WITH LAWS

- A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information is works made for hire and the property of the Department.
- C. The Vendor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then section 337.162, Florida Statutes, applies as follows:
- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
  - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a

public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subvendor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.

- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subvendor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

## 6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department further reserves the right to terminate or cancel this Agreement in the event an assignment be made for the benefit of creditors.
- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) take whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. If the Agreement is for goods or services of \$1 million or more and was entered into or renewed on or after July 1, 2011 and the Department determines that the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Vendor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall have the option of (a) terminating the Agreement after it has given the Vendor notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (b) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.
- F. If the Vendor fails to comply with the Vendor's obligations under this contract, the Vendor shall be liable to the Department for all damages associated with the Vendor's breach of contract. Damages shall include, but not necessarily be limited to, all costs, all attorney's fees, all penalties assessed against the Department, as well as all incidental and consequential damages.

## 7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subvendors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign or transfer any work under this Agreement to other than subvendors specified in the proposal, bid and/or Agreement without the written consent of the Department.

## B. Select the appropriate box:

The following provisions are not applicable to this Agreement.

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in section 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement, the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned.

The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises  
12425 - 28<sup>th</sup> Street, North  
St. Petersburg, Florida 33716-1826  
Telephone: (800) 643-8459

This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subvendors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subvendors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subvendors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all



privileges and rights it may have under Chapter 47 and section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.

G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.

H. Vendor/Vendor:

- 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Vendor during the term of the contract;  
and
- 2. shall expressly require any subvendors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subvendor during the contract term.

I. Time is of the essence as to each and every obligation under this Agreement.

J. The following attachments are incorporated and made a part of this agreement:

Exhibit "A", Scope of Services; Exhibit "B", Method of Compensation; Exhibit "C", Price Proposal,

K. Other Provisions: In case of conflict the contract documents shall have the following order of precedence.

- Exhibit "A" Scope of Services
- Exhibit "B" Method of Compensation
- Standard Written Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

\_\_\_\_\_  
Name of Vendor

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
(Print/Type)

Noranne B. Downs, P.E.  
\_\_\_\_\_  
(Print/Type)

Title: \_\_\_\_\_

Title: District Five Secretary

FOR DEPARTMENT USE ONLY

APPROVED: \_\_\_\_\_

LEGAL REVIEW: \_\_\_\_\_

Procurement Office

Central Florida Rail Corridor, Operations and Maintenance

EXHIBIT "B"

METHOD OF COMPENSATION

1.0 PURPOSE:

This Exhibit defines the limits of compensation to be made to the Vendor for the services set forth in Exhibit "A" and the method by which payments shall be made.

2.0 COMPENSATION:

This is a Term Contract for an Indefinite Quantity whereby the Vendor agrees to furnish services during a prescribed period of time. The specific period of time completes such a contract. The Department, based on need and availability of budget, may increase or decrease the Maximum Limiting Amount by Amendment. Execution of this Agreement does not guarantee that the work will be authorized.

For the satisfactory performance of services detailed in Exhibit "A", the Vendor shall be paid up to a Maximum Limiting Amount of \$\_\_\_\_\_.

Currently Funding in the amount of \$\_\_\_\_\_ is available for services under this contract. At such time as funding is made available by the Department for future years a written "Letter of Authorization" will be issued authorizing the additional funds and work.

The Maximum Limiting Amount consists of the following:

Maintenance Mobilization \$ \_\_\_\_\_, One time Lump Sum Payment  
Operations Mobilization \$ \_\_\_\_\_, One time Lump Sum Payment  
Operations and Maintenance \$ \_\_\_\_\_, Monthly Lump Sum Payment

The Maximum Amount shall be made up of:

\$ \_\_\_\_\_ from Fiscal Year 2012/2013  
\$ \_\_\_\_\_ from Fiscal Year 2013/2014  
\$ \_\_\_\_\_ from Fiscal Year 2014/2015  
\$ \_\_\_\_\_ from Fiscal Year 2016/2017  
\$ \_\_\_\_\_ from Fiscal Year 2017/2018  
\$ \_\_\_\_\_ from Fiscal Year 2018/2019  
\$ \_\_\_\_\_ from Fiscal Year 2019/2020  
\$ \_\_\_\_\_ from Fiscal Year 2020/2021

The Vendor shall not provide services that exceed the Fiscal Year amount(s)

without a properly executed letter of Authorization from the Department.

3.0 PROGRESS PAYMENTS:

The Vendor shall submit 4 (monthly, quarterly, etc) invoices (3 copies) in a format acceptable to the Department. Payment shall be made to the Vendor for the monthly Lump Sum Amount as approved by the Department. Payment for extraordinary expenses shall be made on the basis of actual allowable cost incurred as authorized and approved by the Department.

Invoices shall be submitted to: Florida Department of Transportation  
SunRail Project Manager  
719 S. Woodland Blvd.  
DeLand, FL 32720

If DBE utilization was certified, DBE payments are to be input each month at the following link: <https://www3.dot.state.fl.us/EqualOpportunityOffice/bizweb/>

New users reporting DBE payments will need to contact the FDOT Service Desk at [FDOT.ServiceDesk@dot.state.fl.us](mailto:FDOT.ServiceDesk@dot.state.fl.us) to get a BizWeb user ID and password to access the application.

4.0 DETAILS OF COSTS AND FEES:

Details of costs and fees for the performance of the services are contained in Exhibit "C", Price Proposal attached hereto and made a part hereof.

5.0 TANGIBLE PERSONAL PROPERTY:

This contract does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, F.S.

Exhibit “A”,  
Scope of Services  
Central Florida Rail Corridor (CFRC)  
Operations and Maintenance  
Issued for Industry Review  
Financial Project No. 412994-8-82-01

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REFERENCES

- 1) City of Orlando Joint Use Agreement
- 2) Volusia County Joint Use Agreement
- 3) Orange County Joint Use Agreement
- 4) Seminole County Joint Use Agreement
- 5) Draft Safety and Security Matrix
- 6) Interlocal Operating Agreement (July 4, 2007)
- 7) 1<sup>st</sup> Amendment to the Interlocal Operating Agreement (December 19, 2008)
- 8) 2<sup>nd</sup> Amendment to the Interlocal Operating Agreement (December 18, 2009)
- 9) 3<sup>rd</sup> Amendment to the Interlocal Operating Agreement (June 25, 2010)
- 10) Interlocal Funding Agreement (July 19, 2007)
- 11) Amendment to the Interlocal Funding Agreement (June 25, 2010)
- 12) Interlocal Governance Agreement (July 19, 2007)
- 13) 1<sup>st</sup> Amendment to the Interlocal Governance Agreement (December 19, 2008)
- 14) 2<sup>nd</sup> Amendment to the Interlocal Governance Agreement (June 25, 2010)

## **SECTION 1. INTRODUCTION**

### **1.1 CFRC and SUNRAIL OVERVIEW**

#### **1.1.1 Agency Description**

The Florida Department of Transportation (FDOT, “the Department”) in cooperation with the Federal Transit Administration (FTA), Central Florida Regional Transportation Authority (LYNX), MetroPlan Orlando (MPO), the City of Orlando, Volusia, Seminole, Orange, and Osceola Counties are working in concert for the Central Florida Commuter Rail Transit (CFCRT) Project to implement a commuter rail transit service in the four-county corridor that extends north and south of Orlando, Florida.

The Department, Volusia, Seminole, Orange, and Osceola County Governments, and the City of Orlando have entered into Interlocal Agreements for this project. The purpose of these Interlocal Agreements is to establish the ownership and management structure for the commuter rail service on an interim basis and to set the foundation for a permanent ownership and management structure. The Signatory Member Agencies to these Interlocal Agreements have agreed to plan, develop, and, with assistance from the federal government, and implement a commuter rail transit system that will serve the Central Florida area, including Volusia County, Seminole County, Orange County, Osceola County and the City of Orlando.

FDOT purchased the 61-mile CSXT A-Line railway ROW from CSXT on November 3, 2011. FDOT is the owner and responsible for maintenance along the entire railroad corridor. The Project Corridor has received the Federal Railroad Administration (FRA) alpha designation Central Florida Rail Corridor or CFRC. The Department, as a railroad operator, will be subject to review by the FRA. The Department has selected SunRail as the name for the new passenger rail service that will operate on this corridor.

#### **1.1.2 Description of the System**

The CFCRT project uses an existing and active Class IV freight A-Line railway right-of-way (ROW) for rail operations and property adjacent to the ROW for station site parking, park-‘n-ride and bus circulation. The new SunRail commuter rail service will be implemented in three phases.

Phase 1, known as the Initial Operating Segment (IOS), is the 32 mile long corridor from DeBary Station at Ft. Florida Road to Sand Lake Road Station with a total of 12 stations. The IOS has approximately 18 miles of additional 2<sup>nd</sup> track being added to the existing 11 miles of double track. The Revenue Operations Date for first phase is projected to be May 2014.

Phase 2 South is the south corridor from Sand Lake Road to Poinciana Station. The second phase will complete the Locally Preferred Alternative (LPA) which extends the IOS southward such that the north terminus is the DeBary Station and the south terminus is Poinciana Station. The southern extension adds a total 17.2 miles of proposed track while adding 13.5 miles of new 2<sup>nd</sup> track to the existing 5 miles of double track, bringing the total miles of track for the LPA

to approximately 50 miles. Four stations will be added in the second phase bringing the total number of stations for the LPA to sixteen. The LPA is proposed to be operational in 2015.

The third phase (North Extension) is a twelve mile extension north of Ft. Florida Road DeBary Station to DeLand Amtrak Station in DeLand. This additional station will complete the Full Build Alternative (FBA) that extends from a northern terminus at the DeLand Amtrak station in DeLand to a southern terminus at Poinciana Station, with a total of seventeen (17) stations.

The Phase 1 (IOS) commuter rail station stops will be at DeBary, Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park, Florida Hospital Health Village, LYNX Central Station, Church Street, Orlando Amtrak and Sand Lake Road. Stations at Meadow Woods, Osceola Parkway, Kissimmee Amtrak, and Poinciana will be added in the LPA and DeLand Amtrak added in the FBA.

Maximum operating speeds in the corridor will be 79 mph using Federal Railroad Administration (FRA) compliant Diesel Locomotive and coaches/cabcars to operate weekday service at 30-minute peak period and 120-minute off-peak frequencies. Feeder bus service will be provided through a combination of new and modified existing bus routes.

### **1.1.3 O&M Firm Responsibilities**

The O&M Firm shall comply with all applicable federal, state, local industry and Department requirements, regulations, and guidelines.

#### *1.1.3.1 Vehicle Maintenance / Vehicle Maintenance Program*

The O&M Firm will be directly responsible for all maintenance and servicing of revenue vehicles including: preventive maintenance, corrective maintenance, cleaning and servicing, and major campaigns. Car and locomotive daily service and inspections are the responsibility of the O&M Firm. Performance of Corrective and Preventive Maintenance are split between the O&M Firm and Amtrak. The Draft Amtrak Vehicle Maintenance Service Agreement (Attachment 19) delineates the preventive maintenance, FRA periodic testing, and repair functions that will be performed by Amtrak personnel at the AutoTrain Facility.

#### *1.1.3.2 Train Service*

The O&M Firm will be directly responsible for providing sufficient, qualified personnel for the performance of train services including, but not limited to, SunRail commuter service and yard service. Each SunRail train crew will consist of an FRA-qualified Locomotive Engineer and an FRA-qualified Conductor. Upon reporting for duty and receiving assignment, each crew will board the train; walk through it to inspect for cleanliness, vandalism, or defects; and correct and report any noted deficiencies. Locomotive Engineers and Conductors also will perform pre-departure inspections and tests.

Following their preparation for revenue service, Locomotive Engineers will move the trains through the yard and onto the mainline according to instructions from the Operations Control Center (OCC). The OCC Train Dispatcher will be responsible for dispatching trains according to scheduled departure times.

At the end of their revenue service runs, trains will be taken to the VSMF to be made ready for service the next morning. Locomotive Engineers will move and locate their trains according to instructions from OCC. After shutting down the locomotive, each Locomotive Engineer, Conductor or both will walk through to ensure that no passengers remain aboard and identify and document any defects in the passenger coaches.

#### *1.1.3.3 The Operations Control Center*

The O&M Firm will be directly responsible for the staffing and functions of the Operations Control Center located within the Vehicle Storage and Maintenance Facility (VSMF), as specified in Section 2.5.6. The OCC will be staffed 24-hours a day, seven days a week with O&M Personnel. The Dispatcher will have responsibility for mainline operations from DeBary to Poinciana with other O&M personnel having responsibility for operations within the yard and yard leads; coordination with Transportation, Engineering and Mechanical Department personnel; and monitoring of security/fire alarms; communications with outside agencies (i.e., Police, Fire, and the Department). O&M Supervisors along the mainline and in the yard will support the OCC during all shifts.

The OCC will respond to emergencies as reported by the radio, telephone, alarm monitoring system, or other sources by directing transportation, engineering, safety and field personnel, and as specified in Section 2.8.2. When there is a disruption to the service, O&M personnel will be responsible for implementing emergency procedures depending on the nature of the problem as defined by the applicable policy or procedure.

#### *1.1.3.4 Infrastructure Maintenance*

The O&M Firm and the Department will develop a Maintenance Standard Operating Procedures (SOP) manual containing detailed instructions for performing all aspects of revenue vehicle maintenance, facilities and systems maintenance. Maintenance SOPs will be prepared and updated by technical and training staff. Each different aspect of the Maintenance SOP Manual will apply to a specific topic of maintenance and will be compiled into a complete Maintenance SOP Manual separated into functional categories. Function specific SOPs will be provided to each craft for their individual tasks.

In addition, a Revenue Vehicle Maintenance, Facilities and Systems Maintenance Plan should establish a preventive maintenance system, personnel training requirements, and a plan for a capital cost replacement program for equipment nearing life expectancy. The Design Build Maintain Firm (DBM), during construction, and O&M Firm, at mobilization, will be responsible for the development of the maintenance management system, and that system's policies and procedures will be subject to Department oversight and approval. A maintenance management system with appropriate staffing levels for related disciplines and clear definitions for in-house or contracted functions will be developed as part of the overall maintenance strategy.

Basic maintenance will include routine preventive and corrective signal, track, structures and communications maintenance functions and emergency repairs. The O&M Firm shall be responsible for major and specialized maintenance and replacement work performed on an irregular basis, such as rail grinding, major rail replacement, major signal construction projects,

bridge inspection and replacement. Typical maintenance equipment will be used and provided by the O&M Firm as part of the Scope of Work.

## 1.2 DEFINITIONS

For purposes of this Document:

“Agreement Year” means the twelve- month period starting on the O&M Firm Commencement Date.

“Amtrak” means the National Railroad Passenger Corporation.

“Bridge Tender” means the occupant of that position on the O&M Firm who controls railroad drawbridges over waterways to permit passage of vessels.

“Central Florida Rail Coordination Center (CFRCC)” means the communication center within the OCC that coordinates with the Train Dispatcher and initiates emergency response notifications, records information relevant to incidents and coordinates service recovery. Telephone number: 1-877-235-7245. The CFRCC operates on a 24/7 basis.

“Central Florida Rail Corridor (CFRC)” means the FRA alpha designation for the railroad corridor from MP A 449.61 to MP A813.82, including the railroad right-of-way, track, signals, structures contained herein.

“Chief Operating Officer (COO)” means the occupant of that position at the Department or designated by the Department, responsible for management and oversight of the Department’s railroad operations.

“Commencement Date” means the date after O&M Firm Mobilization Period that O&M Firm begins providing O&M Services.

“Computer Equipment” means the hardware, firmware, and all related devices, articles, components, peripherals, cabling, routers, switches, wireless communication devices, and incidentals that function together as a platform for operating the RMIS.

“Computer Services” means the services necessary to develop, operate, manage, and maintain a fully operational RMIS, including without limitation the services and work outlined in Section 2.6 Information Systems Management.

“Data” means all records in any database, data record, or other information contained in the RMIS or used in the performance of Maintenance Services, all files generated by the Software and the Third Party Software, and any digital or hard copy reports or other outputs generated by records from any such database, or the results of queries of any such database, or the Software or Third Party Software.

“DBM Firm” means Design Build Maintain Firm selected by the Department for construction of the CFCRT Project and providing Maintenance Services during the construction period.

“Department” see “The Department” below.

“Delay Reports” means the reports related to train delays described in Section 2.8, Incident Management and Notifications.

“Dispatcher” during the O&M Mobilization Period, means the Central Florida Dispatcher Desk as defined in the Transition Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc. After the Commencement Date, means the O&M Firm personnel



responsible for all train operations over the CFRC and controlling the movement of all Maintenance of Way equipment, and personnel on the CFRC corridor.

“Emergency” means an event that, in the sole discretion of the Department, involves or exposes the Department, O&M Firm Personnel, Freight Users, or the general public to the risk of service disruption, personal injury, property damage, liability for regulatory noncompliance, or environmental hazard. Emergency includes, but is not limited to (1) derailment; (2) fatality or other incident at a grade crossing; (3) employee fatality, or a serious illness or injury to one or more employees requiring admission to a hospital; (4) an evacuation of a passenger train; (5) vandalism; (6) strike or work stoppage; (7) fire; (8) oil spill or threat of release of hazardous material; or (9) severe weather conditions.

“Environmental Services” means, without limitation, the operation, maintenance, and service of all Environmental Systems located throughout the Service Property; the maintenance of all environmental permits, certificates and licenses; the proper disposal of any waste or hazardous material; and all other services related to compliance with all applicable environmental laws and regulations, as further described in the Section 2.3, Maintenance of Way.

“Environmental Services Work Item” means any task included in the Section 16, Environmental Services.

“Environmental System” means any system or equipment on the Service Property that is operated or designed to improve environmental quality, or reduce the environmental impacts of Department O&M Services, including but not limited to underground and aboveground tank systems, oil/water separator systems, catch basins, onsite subsurface disposal systems, wastewater pretreatment facilities and wastewater reuse facilities.

“Extra Work” means something that is done in addition to the requirements of the contract. The O&M Firm will, generally, be entitled to charge for extra work that consists of labor and materials not contemplated by or subsumed within the original O&M Agreement subject to prior written approval by the COO.

“Hot Backup” means a standby train which shall be ready to provide revenue service or act as a rescue train, as needed.

“Information Management Plan” means the plan referred to in Section 2.6, Information Systems Management herein.

“Initial Joint Audit” means the audit of the Service Property and Support Inventory performed jointly by the Department and O&M Firm and required by this O&M Agreement.

“Lump Sum Price” means the amount that Department agrees to pay the O&M Firm for the performance of O&M Services for the term of the Agreement. The Lump Sum Price shall not include compensation for Extra Work, which shall be reimbursed separately according to other provisions of the O&M Agreement between the Department and the O&M Firm.

“Maintenance of Rolling Stock” means the day to day, light, and heavy maintenance of all vehicles, including locomotives, cabcars and coaches.

“Material Breach” means Substantial failure in the performance of a contract, significant enough to release the aggrieved party from its obligation and accrues to it the right to sue for damages.

“Material Damage” means damage, other than normal wear and tear to Service Property or Support Inventory, excluding O&M Firm-owned or leased property or equipment which, in the aggregate for any occurrence, costs more than \$10,000 to repair or reconstruct or, if such damage is not repairable, the property that is damaged costs more than \$10,000 to replace or reconstruct.

“Mobilization Period” means the period beginning on the Notice to Proceed Date and ending at the O&M Firm Commencement Date.

“Mobilization Services” means, without limitation and as more fully described in Section 2.2, Mobilization/Transition, all preparation for the commencement of O&M Services, including taking steps necessary to establish a seamless transition; preparing all operational plans required by the Department; developing or procuring and implementing the RMIS; hiring and training O&M Firm Personnel; developing procedures and internal guidelines; and transitioning equipment and facilities from the DBM Firm and dispatching services from CSXT.

“Obsolete material” is inventory that is no longer readily, economically, and commonly available to the O&M Firm, is no longer in the catalog, is no longer a standard item supplied by an Original Equipment Manufacturer (OEM), or is made unnecessary by an action of the Department.

“O&M Firm” means the Contractor that is selected by the Department, to operate and maintain the CFRC commuter rail services.

“O&M Agreement” means the agreement between the Department and the O&M Firm.

“O&M Services” means Operating, Maintenance of Way, Rolling Stock, Environmental, Safety Management, Information Management, Administrative, and Financial Services related to and necessary for the performance of operating commuter rail service and maintaining the Department’s right-of-way, including without limitation the tasks described in this Scope of Services, and all other tasks, functions and responsibilities O&M Firm is obligated to perform under the O&M Agreement between the Department and the O&M Firm.

“On-Time Performance” has the meaning set forth in each railroad’s Operating Agreement with the Department for railroads operating on Department Service Property.

“Operating Agreement” means an agreement between the Department and each non-Department tenant railroad operating on the Service Property.

“Other Contractors” means any contractor hired by the Department other than O&M Firm, or Third Parties.

“Rail Management Information System” (or “RMIS”) means the integrated network comprising the Computer Network, the Computer Services, the Computer Equipment, the Software, and additional hardware and software, all as described in Section 2.6, Information Systems Management , and including without limitation a reliable Internet based e-mail system, wireless communications devices, end-user computers, network servers, storage devices, backup devices, cabling, routers, switches, and incidentals that function together as a platform for the O&M Firm’s performance of the O&M Services.

“Right-of-Way Assets” means without limitation railroad rights-of-way, track and structures, surface, subsurface, and aerial property (including utilities), bridges and related structures, and communication and signal systems, which may be added or deleted by the Department during the term of the O&M Agreement, owned or controlled by the Department and used by O&M Firm in providing O&M Services, as more specifically described in Section 2.3, Maintenance of Way.

“Rolling Stock” means all commuter rail vehicles, including locomotives, cab cars and coaches.

“Salvage material” is an item acquired by demolition of existing facilities or equipment and excess construction materials that is placed into inventory.

“Scrap material” is an item of inventory where the actual cost to repair or repair-and-return may exceed the economic cost to replace.

“Safety and Security Administrator” means the occupant of that position at the Department or designated by the Department, responsible for performing the duties of that position for the Department’s railroad operations.

“Safety and Security Manager” means the occupant of that position at the Department or designated by the Department, responsible for performing the duties of that position for the Department’s railroad operations.

“Service Delay” means any delay or combination of delays that result in a train arriving or departing any station platform late and is not considered on-time in accordance with the Operating Agreement with the Railroad operating the delayed train, which shall trigger the notification procedures detailed in Section 7 Incident and Emergency Management Plans.

“Service Disruption” means a delay to one or more trains due to the following causes: Emergencies, derailments, fires, fatalities, injuries, serious mechanical problems, or other disruptions that cause a significant impact on service.

“Service Equipment” means the locomotives, rail passenger cars, and non-revenue rolling stock that are owned or controlled by the Department and made available for use by O&M Firm in providing the O&M Services, as more specifically described in Section 4, Maintenance of Vehicles.

“Service Property” means the Right-of-Way Assets, tracks, signals, stations and platforms, yards, bridge, structures, buildings and offices, parking lots, and other land and facilities, including improvements thereto, that are owned, controlled, or used by the Department or O&M Firm in providing the O&M Services, as more specifically described in Section 2.3, Maintenance of Way.

“Service Schedules” means the Department and Amtrak’s schedules for the arrival and departure times of SunRail and Amtrak rail trains, as displayed in the public timetables.

“Software” means all custom software and all Third Party Software including without limitation source code, data files and System Documentation necessary to operate, manage, maintain and, if necessary, regenerate, the integrated RMIS.

“Standard Operating Procedures” means the established procedure to be followed in carrying out a given operation or in a given situation as pertains to the provision of O&M Services.

“State of Good Repair” means safe, fully functional, not in need of repair, and meeting or exceeding the minimum threshold for Department standards or other applicable regulations or standards, as detailed in this Scope of Services.

“Support Inventory” means spare parts, consumables, removed and rebuilt spare parts, capital spares, manuals, forms, keys and other property and materials that may be used or consumed in the provision of the O&M Services.

“Support Property” means equipment, tools, machines (including the RMIS, computer equipment, and software), non-revenue vehicles (including automobiles, work equipment), and other equipment

related to the maintenance of the Service Property or otherwise used in the provision of the O&M Services.

“Surplus material” is inventory for which there is more than a five (5) year supply.

“System Documentation” means user documentation and user manuals related to the RMIS.

“Third Party” means any individual or entity other than the Department, a Department authorized representative, O&M Firm or Other Contractor.

“Third Party Software” means commercial, off-the-shelf software that is part of the integrated RMIS.

“The Department” means Florida Department of Transportation (FDOT) or its designated representatives, as applicable.

“Transition Agreement” means the Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc pertaining to the Central Florida Rail Corridor, a line of railroad between DeLand, Florida and Poinciana, Florida and related properties dated November 30, 2007 and all amendments.

“Transition Services” means all services necessary to ensure a seamless transition between O&M Firm and a successor O&M Firm.

“VSMF” means Vehicle Storage and Maintenance Facility at Rand Yard in Sanford.

### 1.3 ACRONYMS

AAR - Association of American Railroads

ADA - Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq

ANSI - American National Standards Institute

APTA - American Public Transportation Association

AREMA- American Railway Engineering and Maintenance of Way Association

ASME - American Society of Mechanical Engineers

ASTM - American Society for Testing and Materials

ATCS - Advanced Train Control System

AWI - Agency for Workforce Innovation

BSP - Basic Service Plan

BTNA - Bombardier Transportation North America

C&S - Communications and Signal

CCTV - Closed-Circuit Television

CEI - Construction Engineering and Inspection

CFCRT - Central Florida Commuter Rail Transit

CFOMA - Central Florida Operations and Maintenance Agreement

CFR - Code of Federal Regulations

CFRC - Central Florida Rail Corridor

CFRCC - Central Florida Rail Coordination Center

CFRTA - Central Florida Regional Transportation Authority

COO - Chief Operating Officer

COOP - Continuity of Operation Plan

COT&S - Cleaned, Oiled, Tested & Stenciled

CP - Control Point

CSA - Customer Service Agent

CSXT - CSX Transportation, Inc.

CTC- Centralized Traffic Control

CWR - Continuous Welded Rail

DBE - Disadvantaged Business Enterprise

DBM - Design-Build-Maintain Firm

DHCP - Domain Host Control Protocol

DHS - Department of Homeland Security

DOT - United States Department of Transportation

ECN - Engineering Change Notice

EIC - Employee in Charge

EMS - Emergency Medical Services

EOC - Emergency Operations Center

EPA - United States Environmental Protection Agency

ERG - Emergency Response Guidebook

ERP - Emergency Response Plan

FBA – Full Build Alternative

FCC - Federal Communications Commission

FCEN - Florida Central Railroad

FDEP - Florida Department of Environmental Protection

FDOT - Florida Department of Transportation

FELA - Federal Employers' Liability Act

FEMA- Federal Emergency Management Agency

FIFO - First-in, First-out

FPSC - Florida Public Service Commission

FRA - Federal Railroad Administration

FTA - Federal Transit Administration

FY - Fiscal Year

G&A - General and Administrative Overhead Costs

GAAP - Generally Accepted Accounting Principles

GPS - Global Positioning System

HAZMAT - Hazardous Material

HMSSHASP - Hazardous Materials Site Specific Health and Safety Plan

HVAC - Heating, Ventilation, and Air Conditioning

ICS - Incident Command System

IOS - Initial Operating Segment

IT - Information Technology

LAN - Local Area Network

LPA - Locally Preferred Alternative

MOW - Maintenance of Way

MOWSP – Maintenance of Way Services Plan

MP - Milepost

MPI - MotivePower, Inc.

MPO - Metropolitan Planning Organization

MSDS - Material Safety Data Sheet

MUTCD - Manual on Uniform Traffic Control Devices

NIMS - National Incident Management System

NEPA - National Environmental Policy Act

NFPA - National Fire Protection Association

NOI - Notice of Intent

NTD – National Transit Database

NTP – Notice to Proceed

NTSB - National Transportation Safety Board

OCC - Operations Control Center

O&M - Operations and Maintenance

OEM - Original Equipment Manufacturer

OHA - Operations and Support Hazard Analysis

OSHA - Occupational Safety and Health Administration

OTM - Other Track Material

OTP - On-time Performance

OWA - Outlook Web Access

PA - Public Address

PDA - Personal Digital Assistant

PNA - Passenger Needing Assistance

POP - Proof-of-Payment

PRESS - Passenger Rail Equipment Safety Standards

PTC - Positive Train Control

PTEPP - Passenger Train Emergency Preparedness Plan

PWD - Passenger with Disability

QAPP - Quality Assurance Project Plan

RAP – Rail Activation Plan

RMIS - Rail Management Information System

RSP – Rail Services Plan

ROW- Right-of-Way

RWP - Roadway Worker Protection

SAE - Society of Automotive Engineers

SAPR - Supplemental Agreement Proposal Request

SCADA - Supervisory Control and Data Acquisition

SEMS - Standardized Emergency Management System

SEPP - Security Emergency Preparedness Plan

SIP - Project Safety Integration Plan

SIT - System Integration Tests

SITP - Systems Integration Testing Plan

SOGR - State of Good Repair

SOP - Standard Operating Procedure

SPCC - Spill Prevention Control and Countermeasures Plan

SSCC - Safety and Security Certification Committee

SSO - Safety and Security Oversight

SSCP - Safety and Security Certification Plan

SSMP - Safety and Security Management Plan

SSPP - System Safety Program Plan

SSP - System Security Plan

SWPPP - Storm Water Pollution Prevention Plan

TCP/IP - Transmission Control Protocol/Internet Protocol

TSA - Transportation Security Administration

T&E - Train and Engine Crews



TVM -Ticket Vending Machine

UPS - Uninterruptible Power Supply

USDOT - United States Department of Transportation

VMS - Variable Message Sign

VSMF - Vehicle Storage and Maintenance Facility

## **SECTION 2. SCOPE OF SERVICES**

### **2.1 OVERVIEW**

Although the O&M Firm is an independent contractor of the Department, the O&M Firm shall be guided in the performance of its responsibilities by the O&M Agreement that delegates to it a public function it performs as the representative of the Department. The O&M Firm shall be mindful that the O&M Agreement makes it the instrument for providing a public service on the Department's behalf, rather than granting it the right to operate SunRail as a commercial venture.

The O&M Firm shall be responsible for providing and managing all of the services, functions, facilities, and associated resources required for the operation and maintenance of SunRail, unless otherwise provided by the Department, including, without limitation:

- General management
- Train crewing
- Train movement control and dispatching
- Maintenance of cars and locomotives
- Maintenance and improvement of track, structures, signals, and communications
- Maintenance and improvement of station platforms, with the exception of fare collection equipment, including any structure, device or system located on the station platform, CCTV devices and systems, communication systems, system information, water fountains and critical lighting.
- Maintenance of ticket vending machines, ticket validators and handheld validators (optional service).
- Maintenance of VSMF and other facilities
- Materials management
- Safety program management, including System Safety Program Plan (SSPP) , System Security Plan (SPP), Security Emergency Preparedness Plan (SEPP) and Passenger Train Emergency Preparedness Plan (PTEPP) implementation and environmental services
- Construction Support, including providing training, testing and rules qualifications for Department staff (assume 10 Department personnel to be included in scheduled classes for the purposes of the proposal – no special class(es) will be provided for Department personnel) and third-party construction contractor personnel
- Employee training and certification
- Customer Service of the highest quality, including services to Passengers Needing Assistance (PNAs) in accordance with Americans with Disabilities Act (ADA) regulations and established Department policies; service announcements via station and onboard public address and visual messaging; and posting and stocking of public information
- Regulatory compliance, reports and notifications
- Financial accounting, reporting and control

All Support Inventory purchased with Department funds shall become the property of the Department.

During the term of the O&M Agreement, the O&M Firm may subcontract any portion of the performance of the O&M Services with firms that are fit and eligible to perform the work and have the financial capacity to satisfy the insurance requirements of the O&M Agreement. The O&M Firm shall not subcontract without the prior written approval of the Department – a list of all subcontractors will be required with procurement documents. The Department's failure to approve a subcontract (or to state a reasonable basis for its disapproval) within 14 calendar days of written notice from the O&M Firm of the proposed subcontract shall be deemed to be approval. The O&M Firm shall remain solely responsible for any work for which it employs subcontractors, and the Department shall have no obligation to them whatsoever. Thereafter, the Department shall be notified of all subcontracting changes including terminations, replacements and additional functions being subcontracted.

2.2 Required Programs and Plans

<b>Program or Plan Name</b>	<b>Due Dates</b>	<b>Event</b>	<b>Update</b>
Rail Services Plan (Section 2.2.6.4)	90 days	After Notice to Proceed	Prior to Phase 2 South operations
Mobilization Services Plan (Section 2.2.6.1)	15 days	After Notice to Proceed	None
Information Management Plan (Section 2.6.1)	60 days	After Notice to Proceed	None
Emergency Spill Response/Spill Prevention Control and Countermeasures Plan (SPCC)(Section 16.1, 16.2.2 and 16.5)	90 days	Before Commencement	Annually
System Safety Program Plan (Section 2.7)	No later than 180 Days	Before Commencement	Annually plus tri-annual audit
System Security Program (Section 2.7)	No later than 180 Days	Before Commencement	Annually plus tri-annual audit
Safety and Security Emergency Preparedness Plan (SEPP) (Section 2.7)	No later than 180 Days	Before Commencement	Annually plus tri-annual audit
Safety Integration Plan (SIP) (Section 2.7)	No later than 180 Days	Before Commencement	Annually
Passenger Train Emergency Preparedness Plan (PTEPP) (Section 2.7)	No later than 180 Days	Before Commencement	within 7 days of submitting changes to FRA
Operations and Support Hazard (OHA) Analysis (Section 2.7.12)	90 days	Before Commencement	Annually

<b>Program or Plan Name</b>	<b>Due Dates</b>	<b>Event</b>	<b>Update</b>
Training Program Plan (Section 10)	No later than 90 days	After Notice to Proceed	Annually
Environmental Compliance Program for Operations (Section 16.1)	No later than 90 days	Before Commencement	Annually
Hazardous Materials Site Specific Health and Safety Plan (HMSSHASP) (Section 16.6 and SSPP Section 2.7)	No later than 30 days	Before Commencement	Annually
Mechanical Services Plan (Section 4.3)	120 days	After Notice to Proceed	Annually
Maintenance of Way Services Plan	90 days	After Notice to Proceed	Annually

## 2.2.1 DBE Requirements

### 2.2.1.1 DBE Availability Goal Percentage

The Department of Transportation has an overall eight point one percent (8.14%) race-neutral DBE goal. This means that the State’s goal is to spend at least 8.14% of the dollars with Certified DBE’s as prime O&M Firms or as subcontractors. Race-neutral means that the Department believes that the 8.14% overall goal can be achieved through the normal competitive procurement process. The Department has reviewed this project and assigned a DBE availability goal shown on the bid blank/contract front page under “% DBE Availability Goal”. Although not a contract requirement, the Department believes that this DBE percentage can realistically be achieved on this project based on the number of DBE’s associated with the different types of work that will be required.

Per 49 CFR 26, if the 8.14% goal is not achieved, the Department may be required to return to a race-conscious program where goals are imposed on individual contracts. The Department encourages all O&M Firms to actively pursue obtaining bids and quotes from Certified DBEs.

### 2.2.1.2 Anticipated DBE Participation Statement

The Department is reporting the planned commitments to use DBE’s. This information is being collected through the Anticipated DBE Participation Statement. This Statement shall be submitted at or before the Notice to Proceed through the Equal Opportunity Reporting System or to the District Contract Compliance Manager/ Resident Compliance Officer who will mail or fax it to the Equal Opportunity Office at (850) 488-3914. Although these statements WILL NOT become a mandatory part of the contract, they will assist the Department in tracking and reporting planned or estimated DBE utilization.

### 2.2.1.3 Equal Opportunity Reporting System

The O&M Firm is required to report monthly, through the Department’s Equal Opportunity Reporting System on the Internet at <http://www.dot.state.fl.us/equalopportunityoffice/>, actual payments, minority status, and the work type of all subcontractors and suppliers. All DBE

payments must be reported whether or not the prime initially planned to utilize the company. Each month the prime must report actual payments to all DBE subcontractors and suppliers. Payments to all non-DBE subcontractors will need to be reported either monthly or annually. Payments to non-DBE suppliers need not be reported at all. In order for the race neutral DBE Program to be successful, cooperation is imperative.

#### *2.2.1.4 DBE Supportive Services Providers*

The Department has contracted with a consultant, referred to as DBE Supportive Services Provider, to provide managerial and technical assistance to DBE's. This consultant is also required to work with prime O&M Firms, who have been awarded contracts, to assist in identifying DBE's that are available to participate on the project. The successful O&M Firm should meet with the DBE Supportive Services Provider to discuss the DBE's that are available to work on this project. The current Provider for the State of Florida is serviced by Blackmon Roberts Group and can be reached at (863) 802-1280 in Lakeland or (305) 777-0231 in Coral Gables.

#### *2.2.1.5 DBE Affirmative Action Plan*

A DBE Affirmative Action Plan must be approved and on file with the Equal Opportunity Office prior to award of the contract for each prime O&M Firm. The Plan shall be updated and resubmitted every three years. No Contract will be awarded until the Department approves the Plan. The DBE Affirmative Action Plan must be on your company's letterhead, signed by a company official, dated and contain all elements of an effective DBE Affirmative Action Plan. These Plans should be mailed to:

Florida Department of Transportation  
Equal Opportunity Office  
605 Suwannee Street, MS 65  
Tallahassee, FL 32399-0450

Questions concerning the DBE Affirmative Action Plan may be directed to the Equal Opportunity Office by calling (850) 414-4747.

## **SECTION 2. SCOPE OF SERVICES**

### **2.2 MOBILIZATION/TRANSITION**

During the O&M Firm mobilization period, the O&M Firm will coordinate, as required by the Department, with CSXT and Amtrak project representatives to assure that all operations and work are accomplished safely and with minimum disruption to existing train service during the construction period, and to coordinate during SunRail start-up, operations and maintenance activities.

Prior to the Notice to Proceed Date, the Department and the O&M Firm shall enter into a Mobilization Agreement for the O&M Firm's performance of Mobilization Services.

#### **2.2.1 Term**

The term of the Mobilization Agreement shall begin on the Notice to Proceed Date and end on the Commencement Date. The Mobilization Period shall be approximately 14 months.

#### **2.2.2 Training**

Before system operation, O&M personnel staffing and training will be implemented as part of the transition from construction to operations, and maintenance tooling and spares will be procured to support safe and reliable system operation. The O&M Firm will work with Project representatives to establish detailed training schedules compatible with system test program schedules. During all phases of system testing, training opportunities for the O&M Firm personnel will include on-site orientation, witnessing of tests, and hands-on operation of equipment.

##### *2.2.2.1 CSXT Training*

The following CSXT training shall be included in the Mobilization Period:

- Orientation Training – CSXT will provide orientation on operating rules and procedures training to the Department, the O&M Firm management and trainers (“Train the Trainer” course). It is the intent of this training to provide the O&M management and trainers with the ability to train and qualify the O&M personnel. This training will consist of up to four (4) weeks of classroom instruction and up to two (2) weeks of field/hands-on work (with a maximum class size of 16).
- Dispatching Training with CSXT – CSXT will provide orientation and training using CSXT's (US&S) dispatch simulator to instruct the Department personnel and O&M Firm personnel involved in dispatching of the corridor. The training shall take place at least 30 days prior to the transfer of dispatch services to the O&M Firm and shall not exceed 20 days (with a maximum class size of eight (8)). The trainees will consist of the O&M Firm management and dispatcher personnel responsible for dispatching the corridor.

This training will be scheduled at a mutually agreed upon location and dates between CSXT, the Department and the O&M Firm.

##### *2.2.2.2 Other Training*

###### Operations

In advance of providing dispatching services for the CFRC, the O&M Firm shall prepare a CFRC Timetable and special instructions during the maintenance mobilization period for the Department's approval and submission to FRA no later than 90 days prior to revenue service. The O&M Firm shall use the current version of the CSXT Timetable and the draft CFRC Timetable as source documents. The CFRC timetable shall be consistent with, to the extent possible, the CSXT Timetable.

The O&M Firm shall convene jointly with the CFRC Officers a railroad operating practices and rules committee on a scheduled basis that will include designated O&M personnel and others as determined by the Department. The committee will produce an updated Railroad Operating Timetable and Special Instructions, as necessary.

The O&M Firm shall operate SunRail commuter trains using this approved CFRC Timetable and ensure that the Timetable is accessible, through electronic or print copy, to all employees whose duties are affected by the Timetable. The O&M Firm will also provide the Timetable to CFCRT Project contractors, employees of foreign railroads, the Department or its designee and regulatory agencies as necessary.

#### Maintenance-of-Way

During the O&M Mobilization period, the O&M Firm will collaborate with the DBM Contractor to ensure that all operations and maintenance manuals and other related data are received in accordance with contract schedules.

The O&M Firm will provide Operations and Maintenance (O&M) procedures and manuals for all fixed facilities and systems for the Department's and O&M personnel.

When new equipment is installed, the O&M Firm will ensure that personnel responsible for operating this new equipment complete an orientation by the applicable equipment suppliers or in-house training to familiarize themselves with the new installations. This orientation will include instruction, on the job training, and testing. The O&M Firm shall maintain records of personnel training, certification, and recertification and make the records available to the Department or its designee.

#### Railroad Worker Protection

The O&M Firm shall require all personnel maintain their qualifications as detailed within the Department's RWP Safety Plan. Training and qualification records must be maintained by the O&M Firm and made available to the Department or its designee upon request.

The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work within the CFRC.

The O&M Firm shall ensure that the CFRC RWP Safety Plan is accessible, through electronic and print copy, to all employees required to comply with this plan. The O&M Firm will also

provide the plan to CFCRT Project Construction Contractors, officers of the CFRC and regulatory agencies as necessary and in accordance with the Department's approval.

### Rolling Stock

The O&M Firm shall require that all employees who perform safety-related inspections and tests of passenger equipment are trained, tested and certified in accordance with programs which comply with both 49CFR238.109 and current APTA requirements and guidelines.

The O&M Firm shall accept previous training and certification of mechanical employees who have been issued training certification indicating that they are a "Qualified Maintenance Person" as required by 49CFR238.109. The O&M Firm shall comply with SunRail Training Program standards and shall require that all employees who perform safety-related inspections and tests of passenger equipment are trained, tested and certified in accordance with programs which comply with both 49CFR238.109 and current APTA requirements and guidelines.

It should be noted that a formal course of training is being provided for the two vehicles procurements. Training for locomotives and cars can be found in Attachment 10, Cab Car and Locomotive Design Criteria. The O&M Firm should expect to participate in review of Training Plans submitted under the two contracts included in the Attachment.

### **2.2.3 Operating Rules**

For the Mobilization Period, the O&M Firm shall use the current version of the CSX Operating Rules and the draft CFRC Operating Rules as source documents.

### **2.2.4 Facilities and Equipment**

#### *2.2.4.1 Office Space*

Beginning on the Notice to Proceed Date, the O&M Firm must find and secure temporary office space for use in O&M Firm's performance of O&M Services, as well as parking for a mutually agreed upon number of vehicles. This temporary office space must be within Volusia, Seminole or Orange County. Permanent office space, located at the Vehicle Storage and Maintenance Facility and the S&I Shop at Rand Yard in Sanford, shall be available to the O&M Firm on January 30, 2013. The O&M Firm shall be responsible to provide and maintain in a State of Good Repair building furniture, office equipment and related supplies for the VSMF and the S&I Shop as necessary to perform the O&M Services.

#### *2.2.4.2 Equipment and Vehicles*

All office equipment excluding computers, furniture, and other items purchased by the O&M Firm shall become transferred to the successor O&M Firm. All such property shall be bar-coded for tracking property, and inventoried. Any O&M Firm-owned equipment shall be bar-coded as such. Equipment leased for use in the performance of O&M Services shall be assigned to the O&M Firm, bar-coded and identified as leased equipment and shall be removed from the Service Property upon termination of the O&M Agreement.



#### *2.2.4.3 Phone and Related Communications*

The O&M Firm shall provide all office and mobile phone lines, including high speed internet access used in the execution of O&M Services, and shall provide to the Department a complete telephone list for all O&M Firm personnel. The O&M Firm shall make provisions for both temporary (to be used during Mobilization) and permanent communications equipment during the Mobilization period. The O&M firm shall provide an additional multi-line internet based telephone system with recording capabilities for the CFRCC and a Delorme mapping program with railroad overlay.

#### *2.2.4.4 Security*

The O&M Firm shall provide security services for the Mobilization Facilities, and shall provide the Department with access to the facilities 24 hours a day, seven (7) days a week. O&M Firm shall ensure that it complies with applicable security measures detailed in the O&M Agreement.

#### *2.2.4.5 System Access*

The DBM Firm shall provide the O&M Firm with keys for existing systems locks (switch locks, track, signal, structures padlocks, etc.) and the O&M Firm shall acquire any additional keys and locks as needed. The DBM Firm shall provide the O&M Firm with keys, access codes or access cards for the VSMF Yard, the OCC, the Service and Inspection Shop and any other secured facilities. The O&M Firm will change these locks, access codes or access card authority on Commencement Date or as soon as possible on completion of the DBM Firm construction work to limit access to the CFRC facilities to the O&M Firm personnel and duly authorized personnel including authorized personnel from the Department.

### **2.2.5 Personnel**

#### *2.2.5.1 Reporting*

The O&M Firm shall submit a bi-weekly report to the Department during the Mobilization Period documenting the progress made by O&M Firm in assembling a qualified workforce of adequate size to perform the O&M Services including a complete and updated organizational chart.

### **2.2.6 Mobilization Services**

Mobilization Services shall include, without limitation, all preparation for the commencement of O&M Services, including taking all steps necessary to establish a seamless transition from DBM Firm maintenance activities; preparing to establish a safe startup of commuter service; preparing all operational plans required by the Department; transitioning the Rail Management Information System (RMIS) from the DBM Firm to the O&M Firm; hiring and training O&M Firm Personnel; developing procedures and internal guidelines; and transitioning equipment and facilities from the DBM Firm.

#### *2.2.6.1 Mobilization Services Plan*

Not more than 15 calendar days after the Notice to Proceed Date, O&M Firm shall submit to the Department a Mobilization Services Plan for acceptance. The Mobilization Services Plan shall

identify all Mobilization Services to be performed by O&M Firm prior to the Commencement Date, and shall include a detailed schedule identifying the progress and sequence for completing all tasks detailed within the plan. The Mobilization Services Plan shall include a schedule for the submission of all plans that the O&M Agreement requires to be prepared prior to the Commencement Date. The plan shall also include an organizational chart to include all proposed O&M positions and shall list the individuals filling the positions listed as personnel.

The Mobilization Services Plan shall identify costs for items that will transition from the DBM Firm versus those items will have to be purchased new by the O&M Firm (i.e. consumables such as oil, lubricants, anti-freeze, brake shoes for rolling stock, office supplies, and cleaning supplies). The Mobilization Services plan shall also identify costs for items that are on the Service Property that may be surplus from the DBM, (such as ballast, cross ties, rail, and signals).

#### *2.2.6.2 Dispatching*

Prior to the transfer of the dispatch services from CSXT to the O&M Firm, the OCC will operate in “shadow mode”. During this period, the OCC will monitor all track conditions but not have control over any functions of the signal system. The O&M Firm will have dispatch personnel on duty to monitor and identify any items to be addressed by the DBM prior to revenue operations. A cut-over date will be determined at least one month prior to the transfer of control from CSXT to the OCC and the O&M Dispatchers. CSXT will maintain both staffing and all associated equipment at the Central Florida Dispatcher Desk for seven (7) days thereafter and will maintain the associated equipment for two months thereafter.

#### *2.2.6.3 Rail Activation Plan*

The Rail Activation Plan (RAP) will detail the transition of the CFRC from construction to revenue operation of the SunRail Commuter System. Participants in rail activation come from the Department’s Construction Management representatives, the DBM, the COO, the Safety and Security Administrator and Manager, Project Management Consultants and the O&M Firm.

The O&M Firm has the responsibility to assist the Department with development of the RAP and participate on all three committee functions identified in the RAP. The duties of the O&M Firm within the RAP include, at a minimum:

- Create, develops and provides all services necessary to complete the Rail Services Plan (RSP) and provides staff to monitor and coordinate all activities of the Rail Services Program
- Provide staff in support of safety and security certification and system integration testing; and as a participant of the RSC has safety and security certification review responsibility of certification elements relevant to Commuter Rail Services.
- Provide appropriate personnel to support DBM’s system integration testing and Pre-Revenue Operations activities.
- Provide safety and security certification review responsibility of certification elements related to fixed facilities including Track, Stations, Communications, Ticket Vending Machines, Signals, and Grade Crossings.

- Participate in Safety Certification review of passenger stations.
- Observe testing of locomotives, passenger cars and cab cars in support of the System Integration Testing, System Safety Certification, and Rail Services plans; and provides Safety Certification review of locomotives, passenger cars and cab cars.
- Participate in safety certification review of telephones and communications system.

#### *2.2.6.4 Rail Services Plan*

The Rail Services Plan (RSP), a subsidiary to the RAP, describes the activities required to prepare the CFRC system to safely and securely operate SunRail commuter service.

As part of the RSP, the O&M Firm will be responsible for:

- Developing the RSP
- Verifying the operational schedule as provided is functional, including how trains will be placed in and out-of-service and special/excursion trains.
- Developing procedures for maintaining facilities and corridor property.
- Modifying the Passenger Train Emergency Preparedness Plan (PTEPP) to include SunRail commuter service.
- Participating in emergency preparedness and coordinating with local fire and emergency services. Participate in emergency readiness drills as operational training exercises to verify the effectiveness of Emergency Response Plans and to serve as a tool to familiarize fire/life/safety personnel on the CFRC alignment and SunRail commuter vehicles.
- Performing pre-revenue operations, including normal and abnormal operating scenarios to refine operational schedules and procedures, emergency response procedures, and to familiarize train operators and supervisors with the new route and equipment and familiarize other O&M Personnel (dispatchers, maintenance of way, etc.) with the system and operational functions of the system.
- Developing a Customer Service Plan, including a Lost and Found, a customer assistance program, including passengers with disabilities, services for bicycle customers, complaint procedures, a customer service improvement team, procedures for station and onboard information and customer service training program for O&M personnel.
- Preparing staffing and training plans. Preparation of O&M Personnel to include all necessary and required training. Training will include on-site orientation, witnessing of tests and hands-on operation of equipment during final contract acceptance testing and system integration testing.
- Developing or modifying Standard Operating Procedures.
- Developing and modifying the operating rules, safety rules and procedures, as necessary
- Developing the SSPP and SSP and verifying procedures and policies derived from them are effective.
- Participating in the safety certification of safety and security critical items.
- Coordinating with the Department and the Department's Public Information Representatives to educate the public with the route and schedule, enhancing community relations and preparing publications for service schedule.

- Interfacing and coordinating with the car and locomotive contractors as necessary to facilitate any warranty work to be done by MPI or Bombardier.
- Preventive Maintenance and Inspections when the cars and locomotive arrive on the property.

The O&M Firm will be responsible for developing the Rail Services Plan in conformance with all federal and other legal requirements, regulations, and standards, and will submit this document to the Department and applicable regulatory agencies for review and approval. The O&M Firm shall comply with and participate in the applicable activities and tasks identified in the Rail Services Plan. The O&M Firm shall designate one or more persons to serve as a member of the Rail Services Committee.

#### *2.2.6.5 Maintenance Mobilization*

##### General

After receiving Notice to Proceed and before commencement of Maintenance, O&M Firm shall perform Maintenance Mobilization in preparation for performing Maintenance Services.

##### Facilities and Equipment

The O&M Firm shall provide its own temporary office space for use in performance of Maintenance Services, including procurement of all equipment, vehicles, furniture and office equipment necessary to perform maintenance services. Permanent office space shall be available on January 30, 2013 at the VSMF at Rand Yard. The O&M Firm shall provide security services for its Facilities.

The O&M Firm shall provide all office and mobile phone lines, internet access, and security, and shall provide to the Department a complete telephone list of O&M Firm personnel.

##### Initial Audit

The Department and O&M Firm shall conduct an Initial Joint Audit to perform a Condition Assessment of Service Property and Support Inventory. This audit shall occur within 30 calendar days of assuming maintenance responsibilities.

##### Mobilization Materials

Signs will be in place by the DBM Firm. Replacement signs will be the responsibility of the O&M Firm.

Trespassing signs shall be provided on both sides of the track in each direction at bridges and overpasses, at the VSMF facility, and at other locations where unauthorized access is evident.

Crossing Identification signs identify the DOT#, Milepost, and Emergency Contact Information at each crossing and shall be provided on the crossing warning devices at the crossings. Two (2) signs with specific location information for each crossing shall be provided and shall be installed in accordance with the Transition Agreement. Twenty-four (24) blank signs (no DOT or MP number) shall also be provided to the O&M Firm to be placed in Support Inventory.

Additional or replacement signs needed in excess of the signs initially provided by the Department are the responsibility of the O&M Firm.

#### Electrical

During the Mobilization Period, the O&M Firm shall review the electrical and lighting equipment; and field inspect all of the Service Property to familiarize O&M Firm Personnel with the type and quantity of equipment that requires testing and maintenance.

During the Mobilization Period, the O&M Firm shall develop complete records for all electrical and lighting equipment on the Service Property in the RMIS. These records shall contain, at a minimum, specific information with regard to the types of maintenance and testing required, and the testing frequency. After the Commencement Date, the O&M Firm shall update these records with any changes in equipment or procedures.

#### *2.2.6.6 Information Management Systems*

##### Hardware Requirements

During the Mobilization Period, the O&M Firm shall inspect and inventory any existing computer hardware provided by the DBM Firm for the performance of O&M Services and determine which components are suitable for reuse as part of the O&M Firm Computer Network. The O&M Firm shall operate and maintain existing hardware to be re-used, as directed by the Department. The O&M Firm shall replace any existing hardware that does not meet the software vendor's recommended configuration with new hardware by the Commencement Date. For the purposes of the O&M Agreement, "software vendor" means any commercial vendor of software either supplied by the DBM Firm or provided by the O&M Firm to perform O&M Services, including the operating system vendor. In addition, the O&M Firm shall replace any existing end-user computer to be used for O&M Services that is more than three (3) years old with new equipment by the Commencement Date, regardless of its ability to qualify under the software vendor's recommended configuration.

##### Network Requirements

During the Mobilization period, the DBM will provide the existing TCP/IP (Transmission Control Protocol/Internet Protocol) address scheme and other pertinent settings to be used to configure end-user computers, output devices, servers, scanners and other network devices to the O&M Firm.

#### **2.2.7 Testing**

Upon completion of construction, the Department (the DBM with oversight from the Department, CEI and O&M Firms) is responsible for the commissioning, all inspections and tests necessary to demonstrate compliance with state and federal standards, rules and regulations, and for obtaining all government approvals so that the system can accept paying passengers for transportation.

#### *2.2.7.1 Contract Acceptance Testing*

The O&M Firm shall be responsible for verification of contract acceptance testing of rolling stock (vehicle vendors), Service Property (DBM Firm), and fare collection system (Manufacturer). Contract Acceptance Tests are conducted at the subsystem level to verify the performance of each element and subsystem/assembly is in compliance with specification requirements. Some earlier tests may be repeated as acceptance tests to verify proper operation of the element after installation. These tests are performed on-site and are pre-requisites to the contract acceptance and the system integration tests.

Examples of Acceptance Tests are:

- Train Control Interlocking Tests
- Radio Coverage Tests

As specified in the CFCRT SSCP, during the construction phase, a construction specification conformance process will be used to verify that CFCRT as-built facilities and systems incorporate the safety and security-related requirements identified in the CFCRT specifications and other contract documents, including approved changes since the final design. Construction/installation/testing verification using a construction conformance checklist, as provided in Figure 6 of the CFCRT SSCP, will identify the tests and verification methods necessary to ensure that the as-built configuration contains the safety-related requirements identified in the applicable specifications and other contract documents, and provide documentation that the delivered project meets these requirements. The O&M Firm shall be responsible for completion of construction/installation/testing conformance checklists within their scope.

#### *2.2.7.2 System Integration Testing*

The O&M Firm shall be responsible for verification of integration testing completed by the DBM Firm and participation in the certification process. System Integration Tests (SIT) are conducted to confirm that all elements of the rail system will function properly as an integral system. This will confirm that all CFRC/SunRail systems can be operated as designed and constructed. The tests involve end-point-to-end-point verification of the system's functionality when more than one subsystem is involved.

Examples of System Integration Tests include:

- Verification of train detection and interface with traffic control system
- Station Communication Tests
- Vehicle Clearance Tests

Satisfactory completion of the integration tests and readiness drills provides the basis for certifying that the system is capable of providing a safe and dependable revenue service operation.

#### *2.2.7.3 System Readiness Testing*

The System Readiness Drills are conducted during the System Integration Testing period. The drills are performed in coordination with involved outside agencies such as fire services,

coroner's office, and other specialized emergency response departments (bomb squad, SWAT, emergency medical, etc.) These are designed to verify that the system is capable of developing the appropriate response to an abnormal or emergency operational condition. The drills involve the simulation of an abnormal or emergency situation that generates a response by Operations and/or Emergency personnel. They also provide an opportunity for verifying operational readiness, testing planned emergency response procedures, and providing a training exercise for personnel.

Other objectives of the drills are:

- To evaluate procedures, both before and after the emergency drill.
- To familiarize and train involved organizations, including outside agencies on handling emergencies.
- To ascertain if any improvements may be effected, including facility or equipment modifications and procedures.
- To help determine system readiness for handling emergencies.

Examples of System Readiness Drills are:

- Train collision that will require evacuation of passenger by the Fire Department.
- Train derailment.

#### *2.2.7.4 Pre-Revenue Operations Testing*

The O&M Firm shall be responsible for RSP testing. Pre-Revenue Operations Tests are conducted by CFRC Operations at the system level to simulate revenue service operations during normal, abnormal and emergency conditions. Schedules, timetables and consist lengths are determined by CFRC Operations. These tests verify and augment the training of operating personnel and central control personnel, maintenance personnel and security and safety personnel. They require the full operational capability of all systems, equipment and facilities on the Service Property.

#### *2.2.7.1 Reliability and Maintenance Testing*

O&M Firm shall be responsible for Reliability and Maintenance Testing. Reliability/Maintainability tests are conducted at the subsystem level beginning with the system pre-revenue phase and continuing into the revenue service phase to demonstrate that reliability and maintainability of individual elements meet specified levels.

Examples of Reliability/Maintainability Tests are:

- Highway-Rail Grade Crossing Warning Systems Reliability Test
- Locomotive Reliability Tests

The test category titles above are generic in nature and may be identified under other names. Detailed integration test procedures for tests to be performed will be prepared by the respective contractor or supplier. The test procedures will describe test objectives, test prerequisites, success/failure parameters, equipment and instrumentation to be used, test set-

up, methodology, data evaluation procedures, sequence of test steps, and the type of report or data to be submitted.

During performance of each test, the test engineer may be required to revise the approved test procedures to reflect the as-built conditions and incorporate field changes. These modifications shall be brought to the attention of the test manager for review and approval. The test manager determines if the modifications can be included as part of the final test report or if a revision to the procedure needs to be issued.

Upon successful test completion, a copy of the approved test procedures and associated annotated data sheets is documented and a status report distributed to affected program participants according to the SITP schedule. Each report shall include a signed Safety Certification that will be reviewed by the Safety and Security Certification Committee and presented to the CFRC/SunRail Safety and Security Administrator.

### **2.2.8 Environmental Requirements**

The O&M Firm shall manage the transfer, updating and record keeping for all environmental permits, licenses, and certificates.

### **2.2.9 DSLE Services**

The O&M Firm shall provide Designated Operator services that are in compliance with all applicable Federal regulations. The CFRC (Department) has elected to designate the O&M Firm DSLE as the Designated Operator for train service on the Central Florida Rail Corridor in accordance with Part 240.105 (C).

These services are required after Notice to Proceed and the CFRC Safety and Security Manager shall coordinate with the O&M Firm to qualify the designated individual as the DSLE.

The O&M Firm will provide Designated Operator services that are in compliance with all applicable Federal regulations beginning in January 2013. FDOT/CFRC hereby elects to designate the qualified DSLE over the CFRC territory under 240.105 (C).

The O&M Firm will be responsible for performing all necessary services as required by law and industry practice to provide services as a Designated Operator, including, but not limited to, compliance with the following FRA regulations:

- Part 217 Railroad Operating Rules: consistent with CFRC's selection of CSXT to provide train dispatching services, the O&M Firm will operate under CSXT Operating, Safety, Equipment Handling, Air Brake/Train Handling Rules and special instructions.
- Part 218 Railroad Operating Practices: consistent with CFRC's selection of CSXT to provide train dispatching services, FCEN will operate under CSXT Operating, Safety, Equipment Handling, Air Brake/Train Handling Rules and special instructions.
- Part 219 Control of Drug and Alcohol Use..
- Part 220 Railroad Communications: as it related to CFRC locomotives and train crew members.



- Part 221 Rear End Marking Devices for Freight Trains
- Part 222 Use of Locomotive Horns at Public Highway-Rail Grade Crossings
- Part 225 Railroad Accident/Incident Reporting
- Part 227 Occupation Noise Exposure
- Part 228 Hours of Service: for train crew employees.
- Part 232 Power Brake Law
- Part 240 Qualification of Locomotive Engineers.

## **SECTION 2. SCOPE OF SERVICES**

### **2.3 MAINTENANCE OF WAY**

#### **2.3.1 Description**

The O&M Firm shall inspect, service, repair, and maintain the Service Property and Support Inventory owned and controlled by the Department and included in this Section in accordance with the procedures and standards set forth in this Scope of Services. The Service Property and Support Property must be suitable for service in the Department's region and as the ridership and stakeholders require.

##### *2.3.1.1 Operating Conditions*

The O&M Firm must understand the operating environment of the rail service. This operating environment includes:

- All weather conditions,
- Highway and transit interfaces,
- Derailments and accidents,
- Vandalism, trespassing, and other crimes,
- Operations among other railroad traffic, including Amtrak and freight carriers, and
- Regulatory requirements and standards of the Federal Railroad Administration, Federal Transit Administration, APTA, AREMA, DHS, FPSC, the Department, the U.S. Coast Guard, and state and local authorities.

##### *2.3.1.2 Maintenance Performance*

In the performance of the O&M Services, the O&M Firm shall maintain the infrastructure assets of the Department, and shall not defer maintenance of these assets so as to reduce the O&M Firm's costs, or for any other reason. These assets include the Service Property and Support Inventory assets themselves; the inventories of material and spares; the intellectual and engineering property; the control of the assets' configuration; and the information required for a safe, quality, and economical rail service. In addition to the foregoing activities, the Department may require extra work activities. Extra Work activities are those that are not included in the Lump Sum Price for the O&M Services.

##### *2.3.1.3 Cooperation*

The O&M Firm shall maintain the condition and availability of the Service Property and Support Inventory for the operation of the Department's trackage. This effort will require that the O&M Firm cooperate with Other Contractors; cooperate with the Department's efforts to procure, renew, and dispose of Service Property and Support Inventory; and cooperate with various public agencies and communities.

#### *2.3.1.4 Scope of Services*

All of the services set forth in this Maintenance of Way Scope of Services are part of the O&M Services and shall be performed by the O&M Firm as part of the Lump Sum Price unless specifically noted otherwise in this Maintenance of Way Scope of Services.

#### **2.3.2 O&M Firm Obligations**

- 1) The O&M Firm shall inspect, service, repair, and maintain the Vehicle Storage and Maintenance Facility (VSMF) at Rand Yard, Support Properties, and Support Inventory in accordance with this Scope of Services. The O&M Firm shall, at all times, keep the Service Property and Support Property in a State of Good Repair.
- 2) The O&M Firm shall (i) comply fully with the terms of every manufacturer's warranty on the Service Property, including the VSMF at Rand Yard, Support Property, and any other property used in the provision of O&M Services; (ii) cooperate with the Department regarding the fulfillment of any warranty obligations; (iii) administer such warranties on behalf of the Department; and (iv) provide the Department with any information necessary to the administration of any such warranties at Final Acceptance of the O&M Agreement.
- 3) The O&M Firm shall update a Maintenance of Way Services Plan, further described in Section 2.3.3.3, for acceptance by the Department. The O&M Firm shall also submit for Department approval plans for specific service disruptions required for maintenance projects in accordance with the terms of the "Central Florida Operations and Maintenance Agreement (CFOMA) and the Operating Agreement between the Department and the National Railroad Passenger Corporation (Amtrak), latest versions ." In addition, the Department may request changes to any such plans, and the O&M Firm shall make and agree to implement such proposed changes within 10 Calendar days of the Department's request, or shall suggest, within 30 Calendar days of the Department's request, alternatives reasonably designed to meet the Department's needs as stated in its request. All maintenance of way activities of the O&M Firm under this Scope of Services shall be conducted in accordance with the plans referred to in this section.
- 4) The O&M Firm shall operate and maintain all environmental systems and permits in existence on or in the Service Property or Support Property, as detailed in Section 16, Environmental Services.

#### **2.3.3 General Provisions**

##### *2.3.3.1 Administration*

- a) The O&M Firm shall perform and oversee the O&M Services as defined by this Operations and Maintenance Scope of Services, from the O&M Firm's office, located at the VSMF at Rand Yard.
- b) The O&M Firm designee responsible for implementing the Maintenance of Way Scope of Services along with other staff and technical managers shall have offices located in the VSMF. The O&M Firm designee shall be available for on-site meetings as required. The O&M Firm designee shall be available 24 hours per day, 365 days per year. Any temporary or permanent replacement must be approved, in writing, by the Department.
- c) At the VSMF, the O&M Firm shall establish an office, material storage area, and equipment maintenance area for performance of O&M Services during the term of the O&M

Agreement. The O&M Firm shall not increase, decrease or delete the level of utility of any existing location without approval, in writing, by the Department.

- d) The O&M Firm shall provide certain materials for the Chief Operating Officer (COO), including: technical and reference books and materials, industry reference manuals and documents, any other equipment and materials as may be required by the Department to verify compliance with, and oversee, the O&M Services. Updates shall be provided to the COO so that materials are up-to-date at all times.
- e) The O&M Firm shall establish computerized work orders and shall establish the method of responding to them in terms of a prioritized ranking system. Rankings shall be established for Service Property assets based on its importance to providing safe transportation services.
- f) The O&M Firm shall provide a staffed emergency response desk at the VSMF at Rand Yard. Personnel operating this desk shall be on-call and operate 24 hours per day, 365 days per year. Such personnel shall be (i) duly authorized to make decisions in the absence of senior O&M Firm management personnel, (ii) familiar with the physical characteristics of the Service Property, and (iii) qualified to perform this task. The O&M Firm shall enter all communication regarding trouble calls, equipment failures, alarms, or any unusual occurrence into the RMIS. The O&M Firm shall document all responses to calls for assistance in the appropriate RMIS, and the O&M Firm shall conduct follow-up investigations to determine the root cause for any equipment failures.
- g) The O&M Firm shall provide all office and mobile phones, including high speed internet access used in the performance of the O&M Services, and shall provide to the Department a complete list of telephone numbers for all O&M Firm personnel. At a minimum, the O&M Firm shall provide cell phones to all personnel at a management level and above.
- h) The O&M Firm shall provide a full-time dedicated manager at the VSMF. This manager shall oversee O&M Firm facility maintenance activities, including those described in this Operations and Maintenance Scope of Services, and in the applicable Attachments. The managers shall investigate and be responsible for producing reports on all damage to the VSMF and Support Property contained therein. Refer to Section 11.1, Reporting and Recordkeeping Requirements for further information about damages and reporting requirements.
- i) The O&M Firm shall maintain a membership in the American Railway Engineering and Maintenance of Way Association (AREMA), the American Public Transportation Association (APTA) and the Florida Railroad Association, in the name of the Department, during the Term of the O&M Agreement.

#### *2.3.3.2 Reporting and Recordkeeping*

The O&M Firm shall maintain all records necessary to provide and support the O&M Services in accordance with FRA requirements. The O&M Firm shall keep, store, and maintain, during the term of the O&M Agreement, and for three (3) years after the termination of said agreement, a full and accurate record of all aspects of its performance of the O&M Services and other activities carried out under the O&M Agreement.

The O&M Firm shall maintain and furnish to Department, in writing and in electronic format, the required reports set forth in this Operations and Maintenance Scope of Services, including

without limitation Section 11.1, Reporting and Recordkeeping Requirements. The O&M Firm shall deliver to the Department for acceptance all Annual Program Plans and other deliverables thirty (30) days prior to the anniversary date of its initial submittal.

The O&M Firm shall enter historical maintenance data into the RMIS detailed in Section 2.6, Information Systems Management. During the Mobilization phase, the DBM Firm shall transition the existing RMIS, which has been developed in support of the Maintenance Services specified in the DBM Agreement, to the O&M Firm. The O&M Firm shall enter five (5) years of historical maintenance data, as necessary to complete the records kept by the DBM, and to the extent it is available electronically. Where additional historical data is required for scheduling of tests, inspections, and maintenance activities, such as rail and tie maintenance, data entry from manual records is required. All required tests and inspections shall be scheduled from the historical last-occurrence date and other inspections and preventive maintenance activities shall be scheduled from the historical last-occurrence date or based on the State of Good Repair for each Service Property and Support Property item.

#### *2.3.3.3 Maintenance of Way Service Plan*

The O&M Firm shall be provided a copy of the Maintenance of Way Services Plan prepared by the DBM Firm. This Plan will include a number of component plans and programs relating to all functional areas of the Maintenance Services. The O&M Firm shall review and concur or review and provide a proposed alternative Maintenance of Way Services Plan and submit the Plan to the Department for review and approval 90 days after the Notice to Proceed Date. Thereafter the O&M Firm shall adhere to and implement this Plan, and shall submit the updated Plan 30 days prior to the anniversary date of its initial submittal annually. The Maintenance of Way Services Plan shall identify the inspection and maintenance activities to be undertaken by the O&M Firm, Maintenance of Way Service Standards, frequencies of tasks, staffing plan, specific schedules for accomplishing such work, and proposed work windows or service diversions.

The Maintenance of Way Services Plan shall be structured to maintain FRA Class IV track, except in locations with permanent speed restrictions. All required tests, inspections and preventative maintenance activities shall be included in the Lump Sum Price; however, capital improvements will not be included in the Lump Sum Price. The cost to develop the Maintenance of Way Services Plan shall be included in the Lump Sum Price. This Plan will include, but not be limited to, the following components:

1. Recommended Capital Improvement Program
2. Rail Maintenance Program (including Rail Grinding and Rail Replacement Programs)
3. Tie Maintenance Program (including Tie Replacement Plan and Track Surfacing)
4. Special Trackwork Maintenance Program
5. Ballast and Roadbed Maintenance Program
6. Right-of-Way Maintenance Program
7. Grade Crossing Improvement Program
8. Drainage Maintenance Program (including Drainage Ditch Reshaping Plan)
9. Fencing Maintenance Program (including Fencing Installation Plan)
10. Building and Facility Maintenance Program

11. Switch Machine Maintenance Program
12. Bridge Inspection and Maintenance Program
13. Signal Failure Reduction Program
14. Grade Crossing Event Recorder Program
15. Switch Machine Replacement Program
16. Maintenance of Way Service Standards
17. Material Management Plan

The O&M Firm shall update the Maintenance of Way Services Plan more frequently as required by significant changes to the O&M Services, or as directed by the Department. In the event that the Department requests changes to the Maintenance of Way Services Plan, the O&M Firm shall make and agree to implement such proposed changes within 10 days of the Department's request, or shall suggest, within 30 days of the Department's request, alternatives reasonably designed to meet the Department's needs as stated in its request.

#### *2.3.3.4 Capital and Productivity Improvements*

##### Rolling Stock

The Final Vehicle Maintenance Agreement between the Department and Amtrak will provide the basis for a long term Overhaul Schedule for locomotive complete, locomotive HEP, locomotive top deck (and perhaps other locomotive rotating equipment at the same interval), locomotive and coach trucks, coaches/cab cars complete; and car and locomotive HVAC units. The plan should be a "long term capital plan" with multi-year intervals, and associated capital funding budget program.

##### Service Property and Equipment

- a) The O&M Firm shall test potential improvements to work methods used on the Service Property.
- b) The O&M Firm shall work cooperatively with the Department to conduct tests on new or prototype materials or equipment. The O&M Firm shall purchase the required materials or equipment as well as provide the necessary labor and non-prototype materials and equipment.
- c) The O&M Firm shall work with the Department to identify areas that can result in cost savings, such as but not limited to, maintenance materials, construction techniques or use of Third Party vendors.
- d) The O&M Firm shall recommend in an annual plan all capital improvements, which in the O&M Firm's estimation will enhance the delivery of O&M Services. This Recommended Capital Improvement Program, as part of the Maintenance of Way Services Plan, shall be delivered to the Department at the start of each Agreement Year.

#### *2.3.3.5 Warranty Provisions*

The O&M Firm shall not jeopardize any warranty covering any portion of the Department Service Property or Support Inventory. The O&M Firm shall comply with the terms and conditions of any manufacturer's maintenance and service schedules, except as otherwise modified by industry standards or otherwise explicitly directed in writing by the Department.

The O&M Firm shall make all repairs to Service Property using the standards and practices described in the Maintenance of Way Service Standards as minimum standards. In the event that the O&M Firm is found to be in violation with the procedures and practices described in the Maintenance of Way Service Standards, the O&M Firm shall rectify at the earliest possible time the incorrect work at no additional cost to the Department.

The O&M Firm shall aggressively administer warranties owned by the Department. The O&M Firm shall conduct inspections, troubleshooting, and repair work in a manner to reveal circumstances where the Department's warranties apply. Such work shall be part of Lump Sum Price and shall not be considered Extra Work.

The O&M Firm shall obtain all material and parts for warranty repairs from suppliers without cost to the Department.

The O&M Firm shall prepare and maintain the data necessary to advance claims, and meet locally with vendors or contractors as the Department requests. The O&M Firm shall use the RMIS to prepare and maintain data and claims.

#### *2.3.3.6 Flag Protection and Track Outages*

The O&M Firm shall provide flagging for all O&M Firm Maintenance of Way work at the O&M Firm's expense as part of the Lump Sum Price. The O&M Firm shall also provide flagging services for work performed by Other Contractors engaged by the Department at the request of the Department or such Other Contractor. The O&M Firm shall also provide flagging services for work performed by Third Parties. The O&M Firm shall be compensated by Third Parties or Other Contractors for flagging for Third Parties or Other Contractors, based on the hourly rate submitted by the O&M Firm and accepted by the Department.

The O&M Firm shall perform all maintenance work in a manner that does not unnecessarily delay or cause disruption to Rail Service. Track outages shall be requested by the O&M Firm in writing to the Department at least 60 days in advance of the date needed and in accordance with any notification requirements in the Operating Agreements with other railroads. The O&M Firm shall explore all available alternatives to the outages and shall provide the reasons, if such alternatives are not viable.

### **2.3.4 Maintenance of Way Services**

#### *2.3.4.1 Performance Standard*

All activities undertaken in the performance of the O&M Services shall further the Department's stated goal of FRA Class IV track. The Department reserves the right to establish Maximum Authorized Speeds for specific track segments, based on the maintenance class of track. The O&M Firm shall maintain the performance level of the Service Property to at least allow transportation services to be provided at speeds no less than the Maximum Authorized Speeds in existence on the Commencement Date.

#### *2.3.4.2 Maintenance of Way Services Standards*

- a) The O&M Firm shall be provided a copy of the Maintenance of Way Service Standards prepared by the DBM Firm and adhere to these Standards. The O&M Firm shall review, edit and create additional Service Standards as necessary to provide a complete set of Standards for operating and maintaining all aspects of the Department's Service Property. Revisions to and additional Service Standards shall be submitted to the Department for review and approval. Upon approval, the Maintenance of Way Service Standards will be updated and the O&M Firm will comply with these standards.
- b) At a minimum, all Service Property and Support Property shall be maintained in a State of Good Repair. Additional requirements include, but are not limited to:
  1. Inspection and test cycles shall be tied to FRA regulations or the Department standards, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date. Additional testing may be required, as specified in this Scope of Services or the Maintenance of Way Service Standards, prior to the regulated test date.
  2. The O&M Firm shall provide inspection and maintenance service for all aspects of the Service Property to maintain the Service Property in a condition equal to or greater than minimum maintenance standards for that class of track.
  3. If a temporary speed restriction is imposed for any reason, the O&M Firm shall submit to the Department a schedule to be approved by the Department for performing the work necessary to remove each such temporary speed restriction. The O&M Firm shall perform the work in accordance with the approved schedule. The failure of the O&M Firm to complete the work and remove any such temporary speed restriction by the last day of the approved schedule or within the approved time window on any given day during the approved schedule will result in a penalty. Designation of a speed restriction as permanent requires prior approval by the Department.
  4. Maintenance of all Service Property and Support Property shall be the O&M Firm's responsibility. The entire Service Property shall be kept clean and all Service Property and Support Property shall be maintained in a State of Good Repair. The O&M Firm shall maintain any new or reconstructed assets that are added or modified after the Commencement Date to the level at which the O&M Firm received such property.
  5. Levels of maintenance to the Service Property shall be performed per any manufacturer's recommendations and instructions to the extent that they exist or as otherwise directed herein.
  6. All Service Property, Support Property, and associated systems shall be maintained by the O&M Firm in accordance with all applicable local, state, and federal codes, laws, and regulations. Maintenance of the Department's Service Property shall also be sensitive to the historical nature of the Service Property.

#### *2.3.4.3 Standard Control Documents*

Listed below in order of priority are the standards to be applied for track, structures and signal and communications maintenance and construction work performed in accordance with the O&M Agreement:

- Maintenance of Way Services Standards;



- American Railway Engineering and Maintenance of Way Association (AREMA) Manual for Railway Engineering and Portfolio of Track Work Plans, current edition; and
- FRA Track and Railroad Workplace Safety Standards (49CFR213 and 214), Bridge Safety Standards (49CFR237), FRA rules and regulations governing Signal and Train Control Systems (49CFR233 through 236).

### **2.3.5 Maintenance of Way Responsibilities**

#### *2.3.5.1 General*

- a) The O&M Firm shall provide cleaning including without limitation rubbish removal, sand and dirt removal, and vandalism-related repairs within the CFRC right-of-way.
- b) The O&M Firm shall operate and maintain, repair or replace all Service Property exhaust ventilation systems, dampers, air curtains, equipment and components. Graffiti shall be removed expeditiously, and in no event longer than 24 hours after receipt of a report of graffiti at any location on the Service Property. The removal of graffiti shall be prioritized by the Department but in every case graffiti containing ethnic, racial, obscene or otherwise offensive content shall be removed immediately upon notification or discovery. In stations or highly visible locations, graffiti can be temporarily covered until the entire surface can be cleaned or repainted as weather permits.
- c) The O&M Firm shall maintain all HVAC systems and purchase heating fuels and other utilities at locations on the Service Property.
- d) All Department supplied machinery, equipment, buildings and facilities used by the O&M Firm shall be kept clean and maintained, or repaired so as to be kept in a State of Good Repair.
- e) The O&M Firm will not eliminate, modify or remove from service any Department-owned track structure, signal, grade crossing warning system, bridge, trestle, culvert or other structure/facility, unless used to protect the safe passage of trains, without the prior written approval of the Department.
- f) Non revenue vehicles used in the provision of the O&M Services shall be maintained in a State of Good Repair and washed and cleaned inside and outside at least monthly.
- g) All maintenance of way reporting locations, tool houses, and shop facilities, including buildings, equipment, utilities, sanding facilities and train storage areas, driveways, roadways and access ways shall be kept clean and maintained in a State of Good Repair.
- h) Oil, engine coolant and any other waste or hazardous material drainings shall be captured, labeled and disposed of by the O&M Firm in accordance with environmental regulations.
- i) The O&M Firm shall be responsible for the proper operation, repair and maintenance of all communications systems contained within the CFRC right-of-way. These services shall include, but are not limited to the following: supervisory control systems, data transmission systems, supervisory control workstations, local area networks, supervisory control servers, un-interruptible power supply systems (UPS), fire detection and suppression systems, padlocks (switch, communications and electrical), and test equipment.

### 2.3.5.2 Track

The O&M Firm shall maintain and comply with all aspects of CFRC Track Safety Standards and 49 CFR 213.

The O&M Firm shall also be required to maintain and comply with all aspects of the CFRC Continuous Welded Rail Plan. O&M Firm's track work shall include, without limitation, the following:

#### Inspection

- a) At a minimum, the O&M Firm shall perform the following inspections in accordance with the following schedules:
  1. FRA mandated track and right-of-way inspections at the required frequency.
  2. Supervisory track and right-of-way inspections shall be performed at least monthly.
  3. System-wide Service Property inspections by train shall be performed once every week by O&M Firm management.
  4. Department staff, without limitation, may make unannounced inspections with the O&M Firm's track inspector. With 48 hours' prior notice from the Department, the O&M Firm may expect and shall provide up to 12 hi-rail inspection trips per year.
  5. Track geometry car inspection shall be performed once every six months.
  6. Grade crossing inspections shall be performed at least annually.
  7. Special inspection of track and right-of-way shall be performed during and immediately after severe weather conditions.
  8. Walking turnout inspection shall be performed monthly.
  9. Switch inspections shall be performed monthly with representatives of both track and signal departments, commonly referred to as joint switch inspections.
- b) The results of all inspections shall be recorded on the prescribed form, including digital photographs, as appropriate, and signed by the inspector(s) and a summary report of all inspections shall be submitted monthly to the Department. The RMIS shall be updated to reflect the inspection findings, detail any conditions found during the inspections and propose a plan for repairing or replacing any defects discovered. Any conditions discovered that could affect the safe operation of trains shall be immediately reported and repaired or replaced.

#### Rail

- a) The O&M Firm shall test running rail for internal defects at least once annually on mainline, passing sidings, and any track used in passenger revenue service with continuous welded rail (CWR), rail in accordance with FRA Part 213.
- b) The O&M Firm shall test running rail for internal defects twice annually on mainline, passing sidings, and any track used in passenger revenue service with jointed rail in accordance with FRA Part 213.
- c) The O&M Firm shall test all replacement rails for internal defects before installation.
- d) Additional tests shall be performed if, in either the opinion of the Department, the O&M Firm or a regulatory agency having competent jurisdiction, conditions warrant additional testing.

- e) All internal defects shall be addressed in accordance with FRA and Maintenance of Way Service Standards, but in no case shall a temporary repair to an internal defect be allowed to remain in track longer than 10 days.
- f) The O&M Firm shall develop an Optimized Rail Head Profile for Curves and Tangents; and recommended commuter rail car wheel profile that compliments the approved or specified rail head profile within the first nine months of the Commencement Date. The Profile shall consider anticipated freight and commuter rail traffic. Development shall include an analysis of the existing rail using a geometry car with an optical rail profile device. Profiles shall be designed to reduce the need for premature replacement of the rail or where otherwise required to mitigate hazardous conditions that may jeopardize the safety of train operations. Developing the Optimized Rail Head Profile for Curves and Tangents shall be included in the Lump Sum Price.
- g) The O&M Firm shall develop a Rail Maintenance Program as part of the Maintenance of Way Services Plan which will address rail maintenance activities including but not limited to Corrective Rail Profile Grinding, Preventative Rail Profile Grinding, Rail Transposition, Rail Slotting, Rail Surface Welding Repair, Rail Joint Elimination and Rail Cascading. The Program shall consider anticipated freight and commuter rail traffic and shall indicate the approximate location and schedule of the work. The O&M Firm shall avoid performing rail grinding during times of high fire risk to adjacent vegetation. Rail maintenance activities including but not limited to Rail Transposition, Rail Joint Elimination, and Rail Cascading shall be paid by Supplemental Agreement if submitted as part of the Rail Maintenance Program and approved by the Department. Other rail maintenance activities including but not limited to, Rail Slotting and Rail Surface Welding Repair shall be included in the Lump Sum Price.
- h) The O&M Firm shall be completely familiar with proper installation and maintenance of CWR as outlined in the Maintenance of Way Service Standards and shall ensure strict compliance with 49 CFR 213.119 and the CFRC CWR Plan. The O&M Firm shall provide approved annual training for the installation and maintenance of CWR.
- i) The O&M Firm shall purchase, weld, and position one (1) track mile of CWR in the first six months of each Maintenance Agreement Year and shall install such CWR each Maintenance Agreement Year. A Rail Replacement Plan indicating the approximate location of the new rail shall be developed by the O&M Firm and submitted to the Department for approval as part of the annual Maintenance of Way Services Plan. Replacement rails shall be kept neatly stacked in accordance with AREMA recommendations. Replacement rails shall only be stacked at Department approved locations.
- j) The O&M Firm shall install all necessary thermite welds per fiscal year at locations determined by the O&M Firm and approved by the Department. The O&M Firm shall document all thermite welds in the RMIS. Records shall include, at a minimum, the ambient temperature, the rail temperature, the length/weight of rail installed and removed, the use of a rail heater, the length of pull if any, the name of the welder and any other conditions that may affect the proper de-stressing of rail. The O&M Firm is responsible for qualified testing of thermite welds and rail end welding as required by the FRA and the Maintenance of Way Service Standards. The individual performing testing shall have current certification in non-destructive testing applications in a Department-approved course of study, and the O&M

- Firm shall provide written proof that the individual is currently qualified when requested by the Department.
- k) The O&M Firm shall provide to the Department complete and accurate reports of all rail failures, defects, replacements, thermite welds, and weld failures. The O&M Firm shall document all rail failures, defects, replacements, thermite welds, and weld failures in the RMIS. Rail installation records shall include milepost, rail replaced-left or right, weight, date rolled, manufacturer, heat number and methods taken to ensure proper installation and de-stressing.
  - l) The O&M Firm shall provide inspection and maintenance services for all aspects of the rail in order to maintain the Service Property in a State of Good Repair.

#### Ties and Timber

- a) All crossties shall be renewed as required for the designated maintenance class. A minimum of 10,000 new crossties shall be installed each Maintenance Agreement Year. The O&M Firm shall submit a Tie Maintenance Program to the Department for approval as part of the annual Maintenance of Way Services Plan indicating the approximate location of the new ties.
- b) Upon initiation of tie program work, the O&M Firm shall work continuously without interruption until the tie program work is complete.
- c) The O&M Firm shall purchase and install a minimum of an additional 250 ties per Maintenance Agreement Year for spot replacement due to track conditions.
- d) The O&M Firm shall not use White Oak timber ties.
- e) Tie replacement incidental to other work including but not limited to grade crossing replacement, switch panel replacement, joint ties on side tracks to the property line, and wreck repair shall be included in the Lump Sum Price and are in addition to the Tie Maintenance Program and the spot replacement ties.
- f) The O&M Firm shall perform all tie replacement in conformance with AREMA recommendations and track buckling procedures in the Maintenance of Way Services Standards.
- g) Turnout Ties shall be changed as required to maintain the Service Property in a State of Good Repair. A minimum of 15 mfbm (thousand board feet) of turnout ties shall be replaced each Maintenance Agreement Year.
- h) Bridge ties and timber shall be changed as required to maintain the Service Property in a State of Good Repair.
- i) Ties shall be replaced with ties made from the same type of material as that removed and meeting current standards unless otherwise approved by the Department.
- j) The O&M Firm shall be responsible to purchase, deliver, and install all ties and timbers.
- k) Within 30 days of removal, the O&M Firm shall sort all removed ties and timbers, separating ties to be reused on the Service Property from ties for disposal.
- l) Within 60 days of removal, the O&M Firm shall stack and neatly stockpile ties to be reused on the VSMF. Within 10 days of sorting, the O&M Firm must dispose of all remaining ties through a properly certified and licensed Hazardous Materials Disposal Contractor, pursuant to all applicable laws and regulations. Ties must be disposed of off the Department property at no additional cost to the Department. Ties fit for reuse off the Service Property may be

- sold by a properly certified and licensed Hazardous Materials Disposal Contractor, pursuant to all applicable laws and regulations. The O&M Firm shall submit a record disposal or sale of ties to the Department, including disposal certification documents.
- m) The O&M Firm shall provide inspection, maintenance, and replacement services for all ties and timbers in order to maintain the Service Property in a State of Good Repair.

#### Track Structure

- a) Gauge rods are prohibited. Any exception to the requirements in this section shall be submitted to the Department for prior written approval.
- b) Discovery by the O&M Firm of an improperly anchored track shall require the implementation of a temporary speed restriction and immediate notification of the condition to the Department. The O&M Firm shall perform corrective measures to anchor the track in accordance with the Maintenance of Way Service Standards.
- c) Discovery by the O&M Firm of any track not spiked or fastened pursuant to Maintenance of Way Service Standards shall require the O&M Firm to bring the track up to all applicable standards within thirty (30) days.
- d) The O&M Firm shall be responsible for surfacing track as necessary to ensure that tracks are safe for the passage of trains at the maximum authorized speeds as specified in the Maintenance of Way Service Standards and in accordance with FRA regulations for the specified class of track. A qualified foreman or manager shall inspect all surfacing work before the passage of any train.
- e) The Department requires that the surfacing equipment will tamp out the entire CFRC corridor every five (5) years or a minimum of 25 miles per fiscal year. In addition, spot tamping, without limitation, shall be performed as needed to maintain the railroad in a State of Good Repair and at minimum to the class of track for trains to operate at timetable speeds. The Department must approve in writing track raises or track shifts in excess of 2", and survey stakes will be provided by the O&M Firm if required. Uniform and thorough runoff shall be executed at the end of all track raises.
- f) The temporary speed restrictions in existence on the Commencement Date shall be removed as quickly as practical.
- g) Tracks and turnouts shall always be resurfaced and realigned as part of any re-timbering work and included within the submitted work schedule. At a minimum, inspection and maintenance of the tracks, turnouts, crossovers and sidings shall be performed to maintain the Service Property in a State of Good Repair and comply with the Maintenance of Way Service Standards. The O&M Firm may be required to renew existing turnouts or crossovers.
- h) Under no circumstances are any changes to track geometry to be made and existing platform elevations must not be changed without prior written approval of the Department. The O&M Firm shall be responsible for all costs involving unloading ballast, including any work train equipment, fuel, and crews. Under no circumstances will trains be allowed to operate on tracks with insufficient ballast, except work trains while unloading ballast, or in an emergency, and only then with an appropriate slow order.
- i) Frogs, switch points and stock rails shall be kept ground in accordance with Rail Industry Standards as part of the required inspection and maintenance services.

- j) All at-grade crossings shall be inspected bi-annually and maintained to maintain the Service Property in a State of Good Repair. Crossings shall be maintained in a manner that is safe, convenient and compliant with all applicable uses, rules and regulations including FRA, USDOT, MUTCD, and FPSC.
- k) The O&M Firm shall ensure that all components of the warning system are in place and functioning. The O&M Firm shall notify Third Parties as necessary to remedy noted deficiencies.
- l) The Department may direct the O&M Firm to participate in the upgrade of grade crossings under the Department grade crossing replacement program. The O&M Firm shall submit estimated costs for participation in program for approval. Costs associated with participation shall be paid under Extra Work.
- m) Rail lubricators shall be maintained, repaired or replaced as necessary to lubricate curves of four (4) degrees or greater. Lubricating materials shall be replenished on an as-needed basis.
- n) All switch components and other track materials removed from track and deemed as reusable by mutual agreement of the Department and the O&M Firm shall be repaired for reuse by the O&M Firm and placed in the Support Inventory.

#### Crossing Repair and Rehabilitation

- a) Minor repairs to at-grade vehicle or pedestrian crossings shall be completed within two business days of notification from the Department. Minor repairs include asphalt grinding or patching, sliding concrete panels, and end restraint replacement. Any condition considered hazardous to the public, as determined by the COO, shall be reported and repaired as soon as discovered.
- b) At the direction of the Department, the O&M Firm shall undertake rehabilitation of those crossings which have deteriorated to an extent such that minor repairs cannot keep the crossing in service. The Department shall identify the number and locations of the crossings to undergo such rehabilitation, if any, in advance of each Fiscal Year for inclusion in the O&M Firm's annual budget submittal.

#### Rights Of Way

- a) The O&M Firm shall not permit and shall monitor and report to the Department any encroachment, construction, or modification of any facility which reduces existing clearance dimensions at any location along the right-of-way. The O&M Firm shall take immediate actions to comply with all applicable laws and regulations concerning any storage, handling, or release of a hazardous material or contaminant on or within the Service Property or released from any vehicle.
- b) The Department does not allow dumping or stockpiling of debris and spoils on its property. The O&M Firm shall secure and use legal disposal locations to ensure the Service Property is kept clean. The O&M Firm shall remove all trash, debris and animal carcasses immediately, and in no event longer than 24 hours after discovering same or receiving notice from the Department of the existence of same. In the event that the O&M Firm fails to remove such trash or debris following written notice by the Department of the continued existence of the

- condition, the Department shall have the right to take corrective measures at the O&M Firm's expense.
- c) Railroad materials and equipment removed from service shall be removed from the right-of-way within 30 days except where otherwise specified. Materials awaiting installation shall not be permitted to lie along the right-of-way for more than 30 days, unless otherwise permitted or agreed to by the Department, with the exception of any material that is considered a safety hazard by the Department which shall be immediately removed or repositioned upon discovery by the O&M Firm or notification by the Department. Continuous welded rail strings longer than 200 feet awaiting installation are accepted with prior written approval from the Department.
  - d) Scrap rail and relay rail shall be removed from the rights of way within 30 days of removal from the track.
  - e) The O&M Firm shall report to local law enforcement, and shall attempt to control, illegal dumping activities, trespassing, and unauthorized use of the Service Property. In addition, the O&M Firm shall also participate with the Department in programs to educate the public to the dangers of trespassing on the railroad rights of way.
  - f) The O&M Firm shall comply with Department requirements regarding signal lines, utility company standards, and "Sunshine One-Call" procedures in regard to any excavations on the Service Property. When excavating in proximity to underground fiber optics or communications lines, the work must be coordinated with the utility.
  - g) The O&M Firm shall be responsible for any brush and weed cutting and removal which interferes with train movement, signal observation or signal system operation and for removal of dry weeds and grass which may constitute a fire hazard. Removal of vegetation shall be made to maintain visibility of signals, clearance of track, to keep vegetation clear of signal and communication lines and to remove any hazards associated with trees or brush. Special attention will also be given to removing groups of vegetation being used as encampments for the homeless. Vegetation shall be kept back to the existing width of the right-of-way, and the O&M Firm shall promptly chip and remove all vegetation from the right-of-way. Within three days of notification, any vegetation identified by the Department as a nuisance or safety hazard shall be removed with due diligence and as expeditiously as possible. All work shall include removal of cut vegetation from the Service Property. The O&M Firm shall dispose of all refuse materials in accordance with applicable laws and shall conduct cleanup activities in accordance with applicable rules regarding Roadway Worker Protection.
  - h) Using hi-rail spray equipment, the O&M Firm shall not less than bi-annually apply herbicides to prevent vegetation growth from all track beds and other designated areas within the Service Property, to the extent that regulations allow. All work shall be performed in accordance with applicable local, state and federal regulations as well as applicable the Department's environmental and health and safety policies. Repetitive applications may be required. Mechanical removal of vegetation will be as directed by the Department. Upon notification by the Department, additional mechanical cutting of overhanging brush and trees which originate on or off the Service Property will be performed by the O&M Firm without limitation, using on-rail extendable boom equipment.
  - i) The O&M Firm shall not cut vegetation beyond the Service Property without the knowledge and permission of the affected property owner.

- j) The O&M Firm shall maintain and install right-of-way signage pursuant to the Department's and the CFRC's standards and the Maintenance of Way Service Standards, and shall promptly repair or replace damaged or missing signs.
- k) Rights-of-way fences and fence gates shall be kept well maintained. Holes discovered in right-of-way fences shall be repaired immediately upon discovery or upon notification by the Department.
- l) The O&M Firm is responsible for maintenance of the station fences, intertrack fences and right-of-way fences. The O&M Firm shall install right-of-way fencing each Fiscal Year, at locations and quantities determined by the Department. The O&M Firm may expect and shall provide up to 1000 feet of new fence to be installed in each Agreement year. The O&M Firm shall inspect right-of-way fence at least twice per Fiscal Year, with at least 150 days between inspections. Repairs are to be completed within 30 days of completion of inspection and if the fence in need of repair is near a school, park or publicly accessible location, repairs shall be undertaken immediately.

#### Other Track Maintenance and Repair

Other responsibilities of the O&M Firm shall include, without limitation, the following:

- a) Joint maintenance, documentation and replacement, including incidental installation of new joint bars and bolt replacement/tightening.
- b) Track geometry car testing and car maintenance and upgrades.
- c) Ultrasonic rail inspection and ultrasonic hand testing of turnouts.
- d) Repair or replacement of hand-throw and power-operated switch components.
- e) Rail de-stressing and neutral temperature verification and adjustments.
- f) Repair of damages to Rail Line caused by derailments or other accidents where such repairs are within the limits of the Service Property or otherwise described above or elsewhere in the Agreement. The O&M Firm shall develop and enter into an agreement for an "on-call" derailment and emergency response contractor with the term, scope and price structure of the agreement subject to Department approval.
- g) Maintaining curve lubricators as specified in the SPTMC. Curve lubricators must be kept in operating condition at all times. The O&M Firm shall be responsible for repairing all broken or damaged components, whether caused by use, derailment, or vandalism, and proper adjustment of wiping bars and lubrication flow. The O&M Firm shall provide lubricant. The Department may choose to install new, upgrade, or relocate existing lubricators without limitation. The O&M Firm shall provide the labor, parts, and equipment necessary to relocate or upgrade any or all of the existing lubricators. The O&M Firm shall have two weeks to relocate or install wayside lubricators upon written notification.

#### *2.3.5.3 Maintenance of Bridges, Culverts and Drainage Systems*

##### General

- a) The O&M Firm shall inspect and maintain in a State of Good Repair all facilities, drainage systems, culverts, and those overhead and undergrade rail bridges that are part of the Service Property for which the Department has the maintenance responsibility.



- b) The O&M Firm shall perform structural inspections not less than once per Maintenance Agreement Year, and more frequently as required, on all structures that are part of the Service Property.
- c) All inspections shall be documented by the O&M Firm and recorded in an electronic format that is compatible with the RMIS. Bridge inspections shall include digital photographs. An annual report summarizing each structural inspection and findings regarding structural condition shall be provided to the Department.
- d) The O&M Firm shall perform preventive, routine and corrective maintenance measures on all structures owned or used by the Department as identified in this Scope of Services.
- e) Undergrade track bridges, bridge seats, trestles and culverts shall be kept free of debris, vegetation, trash, etc. so that waterways are clear and there are no combustibles that could cause a fire. Vegetation, trash, debris, etc. and all combustibles shall be removed.
- f) The O&M Firm shall inspect, repair and maintain in working order at all times all pump stations on the Service Property. The Department shall receive immediate notification from the O&M Firm if any pumping station is out of order or not functioning at 100% capacity. The O&M Firm will maintain a written record at each pumping station of all pump house inspections and all scheduled maintenance and servicing

#### Maintenance of Drainage Systems

- a) Track drainage systems shall be fully and consistently maintained to their design capacity.
- b) Flooding on the right-of-way must be controlled by the use of drainage systems. The use of pumping to remove water from the right-of-way and track shall be performed as necessary.
- c) Culverts used to pass water under tracks shall be maintained by the O&M Firm for their entire length.
- d) Drainage ditches shall be kept open and at proper design profiles (depth, grade and alignment). The O&M Firm shall rehabilitate at least 800 lineal feet of drainage ditches per Maintenance Agreement Year in accordance with the design profiles. The O&M Firm shall establish and provide an annual Drainage Ditch Rehabilitation Program to the Department for approval as part of the annual Maintenance of Way Services Plan.
- e) Any structure or system used intentionally or otherwise to direct the flow of water shall be considered a drainage system.
- f) The O&M Firm shall maintain all drainage manholes, catch basins, clean-outs and other drainage structures and systems in a State of Good Repair.
- g) All parking lot drainage and drainage systems, for which the Department has maintenance responsibility, shall be maintained by the O&M Firm in a State of Good Repair.
- h) The O&M Firm shall keep all closed drainage systems clean and free of obstructions.
- i) When the O&M Firm replaces any drainage systems or portion thereof, they shall be designed and constructed based on an evaluation of the current drainage conditions and applicable regulatory requirements. At a minimum, the drainage system shall be designed to handle a 50-year storm.
- j) The O&M Firm shall repair or replace water, sewer or other pipes leading to or from or residing within the Department-owned or leased facilities, except those pipes which cannot be visually or videographically inspected.

Structural Inspections and Preventive Maintenance for Railroad Bridges, Pedestrian Structures and Culvert

- a) The O&M Firm shall develop a Bridge Inspection and Maintenance Program as part of the Maintenance of Way Services Plan which will address inspection and maintenance activities for all facilities, drainage systems, culverts, overhead bridges, undergrade bridges that are part of the Service Property. A brief synopsis of the Bridge Inspection and Maintenance Program is provided below and the O&M Firm's program should include, at a minimum, these requirements:
- 1) Developing and maintaining an accurate inventory of Department railroad bridges. The inventory shall identify the bridge location, configuration, construction type, number of spans, span lengths and all other information necessary to provide for the safe management of the bridges.
  - 2) A record of the estimated safe load rated capacity of each bridge which carries track. The load rating methodology of structures will be in accordance with Department guidelines.
  - 3) If available, preserve the original design documents of each bridge and without exception documentation of all repairs, modifications and bridge inspections.
  - 4) Scheduling bridge visual inspections at least once each year (with not more than 540 days between any successive inspections) and measured inspections at a least every five (5) years. The Department will make joint periodic inspections of bridge facilities with the O&M Firm's bridge manager.
  - 5) The bascule span at MP A763.1 St. John's River will be visually inspected quarterly, focusing on the movable span operation (e.g. mechanical, shafts, trunnions, bearings, couplings, electrical, interlocking, limit switches, etc.)
  - 6) The quarterly inspections will also assess the potential for scour problems by observing changes in the channel or flow by probing or using soundings. If an inspection detects scouring, an underwater inspection will be scheduled. Underwater inspections will be scheduled at a minimum of five (5) years.
  - 7) Maintaining records of inspections that include the date on which the inspection was performed, the precise identification of the bridge inspected, the items inspected and an accurate description of the condition of those items, definitions of defect levels, and a narrative of any inspection item that is found by the inspector to be a potential problem. Bridge inspection reports are to be reviewed by a qualified railroad bridge engineer registered in the State of Florida. An initial report of each bridge inspection shall be placed in the location designated by the Bridge Inspection and Maintenance Program within 30 calendar days of completing the field portion of the inspection. Bridge inspection records will become permanent and retained in a central location.
  - 8) Addressing risks inherent in working at heights and around moving vehicles within the bridge inspection program. Bridge inspection procedures shall ensure that the level of detail and the inspection procedures are appropriate to the bridge configuration. Employees responsible for inspections must:
    - Demonstrate the proper use of fall protection equipment and safe climbing techniques;
    - Possess at least three (3) years of bridge inspection or maintenance experience;
    - Qualify under operating and safety rules;

- Annually certify for safety rules and roadway worker protection; and
  - Demonstrate knowledge of structures and their failure modes, methods of inspection, ability to identify and record defects, deterioration and distress, and competently prepare inspection reports.
- 9) Qualifying and designating persons who perform safety critical functions that affect the integrity and safety of railroad bridges.
  - 10) Defining requirements for special bridge inspections when the bridge is involved in an event which might have compromised the integrity of the bridge, including but not limited to flood, fire, derailment, vehicular or vessel impact and hurricane.
  - 11) Defining more detailed inspection(s) to further characterize deterioration where inspection reports show any bridge conditions that might lead to a reduction in capacity or the need for repair work.
  - 12) Authority for exceptions under the Control of Loads. Equipment exceeding the nominal weight restriction on a bridge should be operated only under conditions determined by a competent railroad bridge engineer who has properly analyzed the stresses resulting from the proposed loads and has determined that the proposed operation can be conducted safely without damaging the bridge.
  - 13) Repairs, component replacement or modifications which materially modify the capacity of a bridge or the stresses in any primary load-carrying component of a bridge shall be designed by a railroad bridge engineer. Plans for the repair, replacement or modifications to bridges or any bridge component are subject to Department review, comment and approval.

The Bridge Inspection and Maintenance Program will include a five year bridge maintenance program, estimates to complete the work identified and assigned priorities.

- b) The O&M Firm shall perform structural inspections and repairs on all aspects of all structures that are part of the Service Property and for which the Department has responsibility to ensure safe and proper operation.
- c) At a minimum, the O&M Firm structural inspectors shall be responsible for the following activities for structures that are part of the Service Property:
  1. Bi-Annual inspection reports on safety and integrity, including recommendations for any necessary repairs (minor and major) as well as a summary of all maintenance activities that have occurred during the previous year.
  2. Emergency inspections immediately after a railroad bridge has been struck or after noticeable defects are reported.
  3. Special bridge inspections shall be conducted quarterly when warranted by bridge condition, on fracture-critical bridges, or at the direction of the Department.
  4. Performance of underwater inspections of all structures (railroad bridges, culverts, and the like) crossing over water where damage could occur and be hidden by the water. The underwater inspections shall be performed not more than five (5) years from the previous inspection date by a certified professional underwater inspector.
  5. Quarterly inspections of the moveable bridges, performed jointly with Signals and Communications, Structures, Track and Electrical personnel.
- d) Protective screening under railroad bridges and structures for pest and bird control and protective fencing along railroad bridges shall be installed or replaced, and maintained by the

O&M Firm as may be necessary to function as intended. Additional screening shall be installed as directed by the Department under a Supplemental Agreement to protect the general public.

#### Overhead and Undergrade Railroad Bridge Maintenance

- a) The O&M Firm shall perform maintenance activities and Minor Repairs on all Department-owned railroad bridges (overhead and undergrade) that are part of the Service Property. The O&M Firm shall repair any and all "wear and tear" damage to the Service Property resulting from normal operations. Bridge maintenance will include but is not limited to the following:
1. Track alignment, profile, ballast and ties
  2. Repair or replacement of walkway posts, handrails, mounting brackets, walkway surfaces, hardware and fasteners
  3. Replacement of loose rivets with the appropriate high strength bolts on steel bridges.
  4. Repair of deteriorated concrete, spalling, scaling, cracking and exposed reinforcing
  5. Tightening loose or replacing missing anchor bolts
  6. Repair or replacement of bridge bearings
  7. Repair or replacement of timber caps, stringers, bracing, curb timbers and piles
  8. Removing debris from streams
  9. Repair or replacement of steel beams, girder webs, flanges, floor beams, stringers, bracing, truss members, connection plates or worn components
  10. Repair or replacement of mechanical, hydraulic or electrical lift bridge components
  11. Repair or replacement of members damaged by flood, fire, derailment, vehicular or vessel impact and hurricane
- b) Minor Repairs are defined as repairs performed on bridge or retaining structures or components of such structures in which the structural functionality and capacity will remain unchanged after the repair work is performed. Such work performed shall not require the use of Third Party contractors or experts, but shall not preclude their engagement if the O&M Firm deems it cost effective or more expeditious. A Minor Repair shall be any repair that is not a Major Repair, including but not limited to: painting of structural steel members, railings, concrete surfaces; repairing spalls and minor cracks of concrete members; welding; installing temporary support measures such as pony trusses or cribbing; repairing or replacing protective fencing; cleaning bridge bearings and deck joints; and cleaning and resealing of expansion joints. Regular maintenance such as clearing of vegetation, maintaining railroad clearance, cleaning and painting over graffiti shall also be considered Minor Repairs and shall be the responsibility of the O&M Firm.
- c) Major structural repairs to any Department-owned bridges by the O&M Firm are not included in the Lump Sum Price, with the exception of damage caused in whole or in part by the actions of the O&M Firm. The Lump Sum Price shall include any temporary measures required to keep a bridge in service until such time as major repairs are complete. Major Repairs are defined as repairs performed on a bridge or retaining structures or components of such structures in which the structural functionality and capacity will change after the repair work is performed. Examples of Major Repairs include but are not limited to: strengthening of structural supporting members including beams, girders and truss members; and replacing and repairing bridge bearings that require jacking of superstructure. The Department shall

- make the final determination as to whether the repair work shall be considered a Minor Repair or a Major Repair. The O&M Firm shall be required to submit a separate price for any major structural repair services requested by the Department.
- d) The O&M Firm shall repair and maintain in a State of Good Repair all crash walls, retaining walls, back walls, wing walls, abutments, bracing, track structures and signal apparatus, and other structures, appurtenances and systems associated with the Department-owned railroad bridges located within the Service Property.
  - e) Maintenance plans for each bridge shall be submitted to the Department and the O&M Firm shall adhere to all such plans.
  - f) The O&M Firm shall repair and maintain in a State of Good Repair all controls, contacts, mechanical components, and other appurtenances and systems associated with the Department-owned St. John's River moveable bridge located within the Service Property.
  - g) The O&M Firm shall record all drawbridge openings and failures in the RMIS, and shall submit a monthly report to the Department.
  - h) The O&M Firm shall install or replace, and maintain, bridge mile markers and clearance designations on all bridges located on the Service Property.
  - i) The O&M Firm shall keep all bridge seats, bearings and abutments clean and free of debris at all times.
  - j) The O&M Firm shall maintain all stairs, walkways, sidewalks, catwalks, railings and other bridge attachments and devices associated with the Department-owned bridges located within the Service Property in a State of Good Repair.
  - k) The O&M Firm shall be responsible for painting services pertaining to bridge maintenance requirements and removal of graffiti.
  - l) The O&M Firm shall safely attach and/or remove banners, posters and signage to/from bridges within the Service Property as requested by the Department.
  - m) The O&M Firm shall remove all unauthorized attachments immediately after such are reported or found during inspection.

#### Maintenance of Culverts

- a) The O&M Firm shall develop a Culvert Replacement Plan, as part of the Drainage Maintenance Program, which is part of the Maintenance of Way Services Plan, and submit such plan to the Department for acceptance.
- b) The O&M Firm shall be responsible for all culverts located on the Service Property. A culvert is any undergrade structure less than ten (10) feet in span. All undergrade structures greater than or equal to ten (10) feet in span will be inspected and maintained in accordance with structure requirements in this Maintenance of Way Scope of Services.
- c) The O&M Firm shall annually inspect, clean and perform maintenance and repairs as needed on all culverts contained within the Service Property to maintain the culverts in a State of Good Repair consistent with original design profiles. Inspections shall include digital photographs of the culvert condition. All inspection and repair activity shall be recorded in the RMIS.
- d) The O&M Firm shall maintain and repair all culverts to greater than or equal to design capacity.
- e) The O&M Firm shall keep all culvert approaches free and clear of all debris and vegetation.

- f) Culvert replacement is not included in the Lump Sum Price, with the exception of damage caused in whole or in part by the actions of the O&M Firm. The O&M Firm shall be required to submit a separate price for any culvert replacement services approved by the Department and the O&M Firm will be compensated as Extra Work. The Lump Sum Price shall include any temporary measures required to keep a culvert in service until such time as the replacement culvert installation is complete.

#### Operation of St. John's River Moveable Bridge

The O&M Firm shall hire and train people to operate moveable bridges (herein known as 'Bridge Tender'). The Bridge Tenders shall be responsible for operating the moveable bridge at the St. John's River, located at Milepost A763.10, including but not limited to communication with the Dispatcher, operating the bridge controls, notification of bridge deficiencies, and other tasks to efficiently operate the St. John's River Bridge. Bridge Tenders shall be stationed at the St. John's River Bridge at all times, 24 hours per day and 365 days per year.

#### *2.3.5.4 Signals and Communications*

##### General

- a) The O&M Firm will be responsible for the complete wayside communication, wayside signal and highway-rail grade crossing warning systems including, but not limited to, maintenance and improvements of the Service Property and support of construction and third-party projects on the Service Property and other Extra Work as may be included by the Department.
- b) The O&M Firm shall be required to maintain all communication, wayside signal and highway-rail grade crossing warning systems, including, but not limited to, switches, signals, grade crossing equipment, track circuits, defect detectors, voice communications, radios, microwave, supervisory control system (dispatch system), visual messaging, public address, wayside signal equipment, and communication equipment.
- c) The O&M Firm shall provide inspection and maintenance services for all aspects of the signal systems in order to maintain these systems in a condition equal to or greater than minimum maintenance standards as defined in the Maintenance of Way Service Standards, in compliance with 49 CFR regulations and in a State of Good Repair.
- d) Levels of maintenance to the signal system shall be performed per each manufacturer's recommendations and instructions to the extent that they exist or as otherwise directed herein.
- e) At a minimum, all existing, reconstructed, or newly accepted signal and communications systems located within the Service Property shall be maintained, by the O&M Firm, in accordance with FRA Standards 49CFR233- 236, in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual and Maintenance of Way Service Standards, and in a State of Good Repair.
- f) Signal or communications systems shall not be installed, modified, or permanently removed from service without prior written approval from the Department or its designee. When such an approval is requested by the O&M Firm, they shall fully detail the request through drawings and/or text. After receiving Department approval, the O&M Firm is responsible for

- obtaining any federal approvals required under the 49 CFR prior to installing, modifying, or permanently removing from service any systems.
- g) Emergency modifications may be performed in the interest of safety. The O&M Firm shall promptly notify the Department or its designee by telephone, of such modifications within 1 hour after the event becomes known to the O&M Firm. The O&M Firm shall provide a written request for final modifications within 24 hours of such initiation, and shall include a detailed explanation of the required modifications and the reason emergency modification was initiated.
  - h) Any permanent modifications made to the signal or communication system shall be recorded in CADD format (latest version compatible with the Department) and submitted to the Department no later than 30 days after the modification is placed in service. Additionally, the O&M Firm shall obtain all applicable warranty agreements in the name of the Department and provide any and all associated documentation to the Department; however, the O&M Firm shall administer those warranties.
  - i) The O&M Firm shall be responsible for coordination with neighboring railroads on boundary or division of territory circuits. The signaling and communication systems being a complete “end to end” system shall be recognized by the O&M Firm. All testing, maintenance, and trouble resolution that may affect multiple railroads shall be done only after a complete understanding has occurred between the O&M Firm and the neighboring railroad.
  - j) Signal and communication cases and apparatus shall be kept sealed, locked, clean and free of all foreign material, such as brush, rodents, insects, rust, graffiti, etc.
  - k) Signal and Communications cases and apparatus shall be painted in accordance with the following specifications:
    - 1. One-third of all apparatus shall be painted each calendar year. Paint colors shall be determined by the Department.
    - 2. Aluminum equipment will not require paint, unless necessary to improve visibility (such as in the case of signal backgrounds and hoods), or to obscure graffiti.
    - 3. Switch Machines shall be painted and numbered for identification on the machine cover. Paint shall be reapplied annually, at a minimum, or as required to ensure machines may be identified.
    - 4. Acid and mildew resistant paint shall be used to protect signal cases and housings from battery acid, mildew and mold damage. This paint shall be applied as required to prevent corrosion.
  - l) Only Original Equipment Manufacturers (OEM) replacement parts and procedures shall be used to repair broken signal and communication equipment.
  - m) Temporary repairs shall be permanently repaired commencing on the next business day after the installation of the temporary repair.
  - n) Material that can be much more economically repaired, or has proprietary rights or patents established, or is covered by warranty, may be repaired by an outside vendor.
  - o) The O&M Firm shall follow applicable Maintenance of Way Service Standards and FRA regulations regarding investigation and reporting of false proceeds and activation failures.
  - p) A monthly Train Delay Report shall be forwarded to the Chief Operating Officer no later than the date of the submission by the O&M Firm of its monthly invoice to the Department.

1. The report shall include a breakdown of preventable and non-preventable signal and communications failures.
2. Adjustments to the report shall be made only after review and with concurrence of both the O&M Firm and the Chief Operating Officer.

#### Tests and Inspections

- a) All signal and communication systems in use on the Service Property shall be tested and inspected by the O&M Firm in accordance with Maintenance of Way Service Standards and the 49 CFR to assure that they are all in a State of Good Repair and comply with the 49 CFR requirements.
- b) Inspection and test cycles shall be tied to FRA regulations or Department standards, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date. Additional testing may be required, as specified in this Scope of Services or the Maintenance of Way Service Standards, prior to the regulated test date.
- c) The O&M Firm shall provide inspection and maintenance service for all aspects of the Service Property in order to maintain the Service Property in a condition equal to or greater than minimum maintenance standards for that class of track.
- d) Test, inspections and results documentation for all 49 CFR tests shall be maintained in the RMIS and the original signed copy of the test results, if required, shall be maintained in the O&M Firm's office for inspection by the FRA or other regulatory agency.
- e) The O&M Firm shall maintain, as directed by the Test and Maintenance Manual for Railroad Signals, a "Trouble Log" of each trouble call for each maintainer that will include such information as time of initial notification, exact location, type of problem reported, type of problem found, corrective action taken, time trouble cleared and any other information deemed appropriate by the Department. This log shall be kept in the RMIS, in such a format as to permit sorting of data on any of these fields. The Trouble Log will be reviewed at least monthly by the Department and O&M Firm management. At the request of the Department, further investigation of signal or communications problems may be required by the O&M Firm. The O&M Firm shall submit a report when requested providing details of findings and any action taken.
- f) In addition to meeting any applicable Maintenance of Way Service Standards and the 49 CFR FRA reporting requirements, the O&M Firm shall submit to the Department after every FRA signal and train control test or inspection written documentation indicating the test results and any the corrective action taken, or a plan to correct any defects shall be submitted by the O&M Firm in both hardcopy and electronic formats. Noted deficiencies that are not safety related must be corrected within 14 days. Safety-related deficiencies must be corrected immediately as mutually agreed to by the parties.
- g) The O&M Firm shall purchase spare or replacement equipment as directed by the Department. The O&M Firm also shall furnish all tools, test equipment and meters as necessary to maintain the signal system. All meters and test instruments shall be calibrated at a certified test facility on an annual basis, or whenever dropped, jarred or otherwise damaged.
- h) Test and inspection dates and results, including digital photographs where appropriate, shall be recorded in the RMIS and summarized in the monthly Report on FRA Test Compliance, as described in Section 11.1, Reports and Recordkeeping Requirements.



### Signal and Communications Repair Facilities

The O&M Firm shall provide for an off-site location where signal repair facilities shall repair relays, switch machines, switch circuit controllers, and other signal and communications apparatus as necessary to maintain the Service Property in a State of Good Repair.

### Signal Design

- a) The DBM Firm shall transfer to the O&M Firm a complete set of as-in-service, up-to-date, and legible plans for all wayside signal locations as required by FRA Parts 234 and 236 regulations. The O&M Firm shall review and maintain these plans; and provide the Department with a complete set of up-to-date plans in PDF format within 30 days of any changes.
- b) Two complete electronic sets of current line plans, track charts, and interlocking layouts within the Service Property shall be provided to the Department by the start of each Maintenance Agreement Year.

### Supervisory Control Systems

- a) The new wayside signal system within the CFRC corridor is controlled by a new CADD system at the OCC via a radio transmission based system. The O&M Firm shall provide expertise in the area of software and hardware required to maintain and support the office CADD system and the radio based Centralized Traffic Control (CTC) system.
- b) The existing system will be expanded by the Department to include control and indications from reconfigured or new interlockings as a part of the Phase 2 expansion project proposed to be started in 2013. This reconfiguration will be ongoing during the term of the O&M Services.

### Grade Crossings

- a) The O&M Firm shall develop a Grade Crossing Improvement Program as part of the Maintenance of Way Services Plan which will address upgrades, replacement and additions to the highway-rail grade crossing warning system to improve public safety at grade crossings, including but not limited to, the addition of flashing lights, alternative warning systems, quiet zones in conjunction with the local communities, etc.
- b) The O&M Firm shall develop a Crossing Event Recorder Program to propose installation of event recorder systems with the capability of central reporting to the OCC at crossings not so equipped. The Crossing Event Recorder Program shall include an office system capable of monitoring field recorders and providing alarms of crossing malfunctions to OCC personnel.
- c) Highway-rail grade crossing warning systems shall be maintained in accordance with Maintenance of Way Service Standards, in conformance with FRA Part 234 Regulations and with the appropriate sections of the USDOT MUTCD, current edition. Only 12” Light Emitting Diode (LED) signal lamps are approved for use on the Service Property.
- d) The O&M Firm will manage safety sensitive software for all crossing and train control systems in accordance with the CFRC Software Management Control Plan.

- e) The O&M Firm shall ensure all appropriate devices and appurtenances are in place and functioning, including but not limited to highway markings, signage and advance warning lights.
- f) The O&M Firm shall remove vegetation from the Service Property so that the view of the warning system from an approaching train or motorist is not obstructed.
- g) The O&M Firm shall report to the Department all gate and grade crossing malfunctions that result in activation failure. The O&M Firm shall submit a report within 24 hours to the Department that provides the failure cause and all planned corrective actions.
- h) The O&M Firm shall maintain crossing approach distances of sufficient length to accommodate the maximum authorized track speeds and adjust them as necessary due to permanent track speed changes.
- i) The O&M Firm shall maintain the crossing name, milepost designation, and maintenance phone number for each highway-grade crossing on each crossing bungalow, or at the crossing if there is no bungalow, in accordance with the Maintenance of Way Services Standards.
- j) As new highway-rail grade crossing technology is installed, the O&M Firm shall accept and maintain these systems. Technology included in the O&M Firm's responsibility shall include maintenance of the following systems:
  - 1. Warning gate systems
  - 2. Quiet zone systems (if installed)
  - 3. Vehicle detection systems
  - 4. Traffic light preemption systems coordinated with the highway crossings
  - 5. Visual monitoring systems
  - 6. Police and Fire Department notification systems
  - 7. Remote Terminal Units (such as SCADANet) if installed
  - 8. Other technologies associated with highway-rail grade crossing warning systems

#### Wayside Signals and Interlockings

- a) The O&M Firm shall develop a Signal Failure Reduction Program as part of the Maintenance of Way Services Plan which will address upgrades, replacement and additions to the wayside signal system or maintenance procedures to improve system operation in an effort to reduce train delays caused by signal failures or provide delay prevention by improved preventative maintenance methods or procedures. The O&M Firm will also develop a Switch Machine Replacement Program to track failures and equipment wear in an effort to reduce failures or schedule replacement prior to switch machine failure.
- b) Under no circumstances shall any railroad material be stored in or around signal cases or signal masts.
- c) Signal number plates shall be properly displayed so that signal identification cannot be mistaken. Signal interlocking bungalows shall have the interlocking identification name and Mile Post displayed on both sides of the bungalow at Central Instrument Locations, and at all entrances to the interlockings.
- d) The O&M Firm shall support the existing incandescent system until the new signal system is functional. The O&M Firm shall create and maintain a Lamp change out records showing last date changed and shall be kept at each location. In addition, the change out date for each lamp with an appropriate apparatus identification number shall be recorded in the RMIS.

#### Pole Line, Wire, and Cable

- a) Temporary repairs that result in temporary wires or twisted pair shall be replaced promptly, in accordance with FRA Regulations, but not to exceed 30 calendar days.
- b) All wiring and cabling shall be protected from damage, inspected, and tested in accordance with Maintenance of Way Services Standards. Wire and cable shall be replaced as part of the Lump Sum Price when damaged through negligence on the part of the O&M Firm.
- c) All pole line, wire and cabling shall be maintained in accordance with the Maintenance of Way Services Standards.

#### Communications

- a) The O&M Firm shall supply all radios for the performance of O&M Services. The DBM Firm will provide programming information to enable radios to operate on the existing communication system. The O&M Firm shall maintain, test, and certify that all system radios operate on the CFRC assigned frequencies and are in compliance with applicable FCC regulations.
- b) The O&M Firm will be responsible to maintain wayside communication systems including but not limited to the radio transceiver locations and antenna, Control Point radio equipment and antenna, Control Point cellular backup, grade crossing communication devices, etc.
- c) The O&M Firm will be responsible for maintaining station communications devices, including but not limited to the VMS signs, PA System, CCTV video surveillance system, and all associated control devices.
- d) The O&M Firm will be responsible for maintenance of field and office fiber optic communications equipment including the fiber optic cable installed within the right-of-way.
- e) The O&M Firm will be responsible for responding to communications failures, troubleshooting and repairing malfunctioning systems and shall document equipment maintenance, testing and failure information in the RMIS.

#### *2.3.5.5 Electrical*

##### General

- a) The O&M Firm shall provide complete electrical service and maintenance, and provide a reliable and adequate power source, for all of the Service Property, including but not limited to buildings, stations, layover facilities, roadways, grade crossings, area lighting and draw bridges.
- b) The O&M Firm shall include in the Building and Facility Maintenance Program rules and procedures for testing and maintenance requirements regarding lighting and electrical systems, standby power systems, fire alarms, detection and protection systems and security systems.

##### Testing and Maintenance Responsibilities

- a) The O&M Firm shall test and maintain all electrical and lighting equipment on the Service Property in accordance with the Building and Facility Maintenance Program, the Maintenance of Way Service Standards and the following standards:

1. The O&M Firm shall adhere to the current version of the International Electrical Testing Association Maintenance Testing Specifications, using the matrix multiplier of 1.0.
  2. Where requirements are not specifically detailed in the NETA reference standard, the O&M Firm shall test and maintain equipment per the Factory Mutual Publication 5-20.
  3. Where requirements are not specifically detailed in the NETA reference standards, the O&M Firm shall test and maintain equipment per the manufacturer's recommendations at a minimum, or in the absence of those, per good engineering practice.
- b) The O&M Firm shall be responsible for the implementation of all electrical and lighting testing and maintenance activities, including but not limited to scheduling, utility coordination, outage duration, and notification. The O&M Firm shall keep the Department apprised of activities in this area on a monthly basis, through the reporting and meeting requirements described in the Building and Facility Maintenance Program. The O&M Firm shall notify the Department at least 35 days prior to planned outages that affect the operation of trains, and shall notify the Department immediately in the case of unplanned outages.
  - c) The O&M Firm shall inspect and maintain all lighting on the Service Property, including without limitation, yards, roads, and parking lots in accordance with the Maintenance of Way Services Standards. All lighting shall be inspected and maintained so that no less than 90% of the lighting at every location is illuminated. Unlit areas, not to exceed ten percent (10%) of lighting at any one location, must be dispersed throughout the location. A lighting deficiency shall be corrected immediately if the unlit area is concentrated so as to create a dark spot. Every effort should be made to achieve 100% lighting at all locations.
  - d) The O&M Firm shall repair or replace all ballast, lenses and vandal shields if they are found to be defective. The O&M Firm shall clean all lenses when replacing bulbs, and on an annual basis, when needed or as directed by the Department. Lighting and electrical fixtures installed or replaced during the Term of the Contract shall be tamper-resistant and in accordance with the Maintenance of Way Services Standards.
  - e) The O&M Firm shall test and maintain fire alarm and detection systems on the Service Property as per NFPA 72. The frequency shall be as indicated in NFPA 72 Section 7-3.
  - f) The O&M Firm shall test and maintain fire protection systems on the Service Property as per NFPA 25. The frequency shall be as indicated in NFPA 25 Table 2-1.
  - g) The O&M Firm shall provide all resources and maintain inventory and parts required for the maintenance of electrical systems and lighting on the Service Property in a timely fashion. The O&M Firm shall record and monitor inventory in the RMIS.

#### Energy Conservation and Utilization

- a) The O&M Firm shall provide energy conservation and utilization audits for all of the Service Property maintained as part of the O&M Services.
- b) The O&M Firm shall be responsible for reviewing on a monthly basis all energy bills for correctness and consistency with invoicing and consumption over the previous 12 months. The O&M Firm shall investigate and reconcile any unusual energy consumption and invoicing.
- c) The O&M Firm shall develop and maintain in the RMIS all electric services that contain monthly kW and kWh consumption and related billing data, along with class of service, location information, service number and other data pertinent to the Department. The location

- information shall be listed in sufficient detail for a “non-railroad” person to interpret without confusion.
- d) The O&M Firm shall review, in conjunction with the appropriate utility companies, on an annual basis each electric service to determine if it is billed under the most cost beneficial electric tariff available. The O&M Firm shall re-negotiate the service tariffs for any services that are not on the best tariff to receive electric service under the most cost-effective tariff, subject to the Department’s approval.
  - e) The O&M Firm shall scan the energy market environment on a monthly basis to uncover the least expensive commodity prices available and secure such commodity if it proves to be both reliable and adequate.
  - f) The O&M Firm shall work with utilities and energy service companies to audit energy end-uses to implement cost effective load management strategies and electric service consolidations.
  - g) The O&M Firm shall work with utilities and energy service companies to audit each energy use at each building, facility and station for the purpose of investigating and implementing energy efficiency measures and equipment that are cost effective. These measures will include, but not be limited to lighting system improvements. The O&M Firm shall work with utilities and energy service companies to investigate and implement the most cost effective energy conservation measures that are outlined in energy audits.

#### *2.3.5.6 Maintenance of Facilities*

The O&M Firm is responsible for the maintenance of the Commuter Rail system, including the station platforms. During the construction and commissioning period, the DBM Firm, with assistance from the O&M Firm, is responsible for the maintenance of vehicular and pedestrian access.

After SunRail service begins, the Local Government Partner is responsible for the operation and maintenance of the vehicular, bicycle, bus and pedestrian access to and from the Station Platform and Station Property, including all traffic control devices not located on Department right-of-way or that do not control traffic on the state highway system. The Local Government Partner is also responsible for maintenance of utilities, housekeeping, trash removal, janitorial work and the general appearance of the station platform, as well as maintenance of any and all parking associated with the station.

The O&M Firm has maintenance responsibility for the station platform, including any structure or device or system located on the station platform, including ticket vending machines (see Section 17, Optional Service), ticket validators, CCTV devices and systems, communication systems, system information, water fountains and platform and sidewalk lighting. Maintenance includes the upkeep and repair of station platforms to include any structure or device or system located on the station platform.

General Building, Facility and Station Platform Maintenance

- a) The O&M Firm shall maintain all Department-owned roadways, sidewalks, buildings, facilities, stations, and parking facilities, exclusive of parking areas maintained and operated by the local municipalities, contained within the Service Property in a State of Good Repair.
- b) The O&M Firm shall maintain all building systems, equipment, components, and utilities (except utilities at station platforms) on the Service Property.
- c) The O&M Firm shall keep guard rails, inter-track fences and signage, railings and cross walks maintained in a State of Good Repair at all times.
- d) The O&M Firm shall maintain the telephone, intercom systems, public information systems, LED systems, security systems, automated building control systems, and other communication equipment in a State of Good Repair, consistent with manufacturer's warranties and recommendations.
- e) The O&M Firm shall inspect fire protection systems and fire call boxes and test such systems as required by law or insurance policy. The O&M Firm shall keep those systems fully operational at all times in a State of Good Repair consistent with manufacturer's warranties and recommendations. The O&M Firm shall keep all such systems up to code as codes and regulations change from time to time.
- f) Windows, roofs, foundations, containment berms, walls (inside and out), doors, floors, floor coverings, stairs or any related building components shall be maintained in a State of Good Repair by the O&M Firm.
- g) The O&M Firm shall implement a Building and Facility Maintenance Program as part of the Maintenance of Way Services Plan to include but not be limited to painting, roof and gutter repairs and replacement, stairs, drop ceiling, paneling and lighting upgrades. The Building and Facility Maintenance Program shall include a general work plan outlining the station, building, and facility maintenance activities for the coming year. Such plan shall include a spring cleaning and touchup for all stations, buildings and facilities. The O&M Firm shall obtain the approval by the Department prior to the use of any paint colors that may be different from those as of the Commencement Date.
- h) The O&M Firm shall provide interior improvements, including but not limited to painting, paneling, drop ceilings, and new lighting, in order to maintain the Service Property in a State of Good Repair.
- i) Station buildings, structures, and facades shall be maintained in a State of Good Repair. Station buildings will be pressure washed semi-annually and will be professionally painted approximately every ten years. The Department will determine the painting schedule. Painting will include preparation work, correction of dry rot, gutter repair/replacement and painting, and professional cleaning to the Department's satisfaction. The Department will identify the stations to be repainted (if any) in advance of each Fiscal Year. Spot painting of the buildings will be done as necessary to maintain appearance and a State of Good Repair.
- j) The O&M Firm shall maintain, repair, or replace building air conditioning, heating, ventilating and circulating units and other building systems and system components contained within the Service Property so that they are all in a State of Good Repair.
- k) The O&M Firm shall provide and maintain in a State of Good Repair building furniture, office equipment and related supplies required to perform the O&M Services.

- l) The O&M Firm shall keep all platforms, canopies, railings, and handicapped ramps in a State of Good Repair at all times.
- m) The O&M Firm shall inspect and maintain all lighting at buildings and facilities.
- n) Walkways and service aisles in shop facilities shall be delineated by non-slip yellow striping and shall be maintained free of obstructions, parts, grease, and debris. Concrete floors in shop facilities shall be inspected annually and re-coated with non-skid industrial coating as necessary.
- o) The O&M Firm shall perform inspections to ensure the safety of the customers and shall maintain, repair and/or replace platform surfaces, edges, structures, stripes and markings, safety devices, warning stripes, tactile edges or others items required to provide for safe and efficient use of the Service Property. The O&M Firm shall maintain platform safety stripes and tactile edges in a bright yellow and highly visible condition.
- p) As part of the Building and Facility Maintenance Program, the O&M Firm shall submit to the Department for approval an annual work program to insure the necessary landscape maintenance is performed including turf management, litter removal, mowing, edging, herbicide application, cleaning inlet throats and drainage structures, tree trimming, tree removal, landscaped area maintenance, and maintaining delineators and object markers. This section shall include the VSMF, highway-rail grade crossings, stations areas the O&M is responsible for landscaping, and any other public areas of the CFRC.
- q) The O&M Firm shall perform rubbish removal weekly, or more frequently as necessary, at all buildings, and facility locations on the Service Property.
- r) The O&M Firm shall procure, produce, install, add and replace signs as necessary and/or as directed by the Department.
- s) All landscaped or naturally vegetated areas surrounding the VSMF shall be kept free of all fallen leaves and debris on a year round basis. All landscaped areas that have a mulch bed shall be re-mulched on a yearly basis with current season pine bark mulch. All landscaped areas containing grass shall be cut at intervals to keep a neat and "not overgrown" appearance.
- t) Platforms and crosswalks shall be kept in a State of Good Repair. Asphalt or concrete surface failure will be corrected as soon as disclosed. Uneven walking surfaces with more than 1/2" elevation variation shall be repaired by the O&M Firm.
- u) All intertrack, and platform fencing shall be maintained and checked daily by the O&M Firm. Due to the safety importance of intertrack fencing, the O&M Firm shall repair such fencing within 24 hours of notice to repair. All other fencing shall be repaired as soon as the schedule will allow, but shall always be repaired within seven calendar days.
- v) Tactile platform marking stripe shall be maintained in accordance with ADA regulations, shall be kept free of dirt and grime, and shall be repaired or replaced immediately upon notification by the COO. Platform railing and center track fencing will be professionally painted approximately every ten years in a schedule determined by the Department.

#### Buildings and Facilities

- a) The O&M Firm shall be responsible for the inspection, management and maintenance of all buildings and facilities. Buildings and facilities are provided strictly for the performance of O&M Services. No other use shall be authorized by the O&M Agreement.
- b) All equipment and appurtenances shall be kept in a State of Good Repair in accordance with industry standards and the operating and maintenance manuals. If the operating and maintenance manuals are not available, the O&M Firm shall secure them if possible. The O&M Firm shall maintain, repair or replace all facility equipment so that it is in a State of Good Repair.
- c) The O&M Firm shall determine the warranty status of station, building, and facility equipment and appurtenances, and administer any warranties in effect during the Term of the O&M Agreement. The O&M Firm shall administer and pursue warranty claims on behalf of the Department. The O&M Firm should anticipate the need to perform reimbursable warranty work. If the O&M Firm fails to adequately protect the Department's warranty interests, as solely determined by the Department, all costs arising from such failure shall be the responsibility of the O&M Firm.

#### Building and Facility Inspections and Removal of Deficiencies

- a) Within 60 days of Notice to Proceed, the O&M Firm shall submit to the Department for review and approval a preliminary Building and Facilities Maintenance Program as part of the Maintenance of Way Services Plan. This Program shall describe the O&M Firm's proposed plan for operating and maintaining the Department's facilities, equipment and appurtenances. The preliminary plan shall address, at a minimum, proposed staffing, operation, maintenance, safety, regulatory, and evacuation plans for each of the major facilities. The Building and Facilities Maintenance Plan shall include annual maintenance projects, additions, modifications, and upgrades to existing facilities and a long-range facility plan which shall include an inventory of improvements to accommodate maintenance and repair of the revenue fleet. The annual Building and Facilities Maintenance Program shall also include budgeted and prioritized preventive maintenance projects for structures and installed equipment such as cranes, and other similar equipment.
- b) The O&M Firm shall implement the Building and Facilities Maintenance Program upon the Commencement Date.
- c) Within 60 days of Notice to Proceed, the O&M Firm shall provide a facility inspection form for the Department's approval. The O&M Firm shall make whatever revisions to the form that the Department requests, finalize the form and add the items contained on the form to the RMIS.
- d) The O&M Firm shall inspect each facility on the Service Property at least once per calendar quarter using the Department approved facility inspection form. The results of each inspection shall be entered into the RMIS.
- e) The O&M Firm shall restore, repair or replace all noted deficiencies within one week after the inspection. Exceptions shall require the prior written approval of the Department. Deficiencies which present a safety risk to employees, guests or the general public, as determined by the COO, shall be corrected immediately.
- f) The O&M Firm shall perform all inspection, maintenance and repair services for the VSMF and associated facilities, equipment and appurtenances in accordance with the Building and



- Facilities Maintenance Program. For other major facilities, the O&M Firm shall evaluate the maintenance requirements at each facility; determine the appropriate industry standards and warranties that cover each facility; and maintain each facility according to those requirements, standards and warranties.
- g) The O&M Firm shall not leave Service Property disconnected, defective, locked out, or deliberately left otherwise inoperative.

#### Building and Facility Operation

The O&M Firm shall have general responsibility for the daily operation and maintenance of the Department buildings and facilities, including, but not limited to, opening and closing the buildings and facilities as needed, lights, locks, heat, air conditioning, cleaning, and other duties agreed to by the O&M Firm and the Department in the Building and Facilities Maintenance Program. Except as otherwise explicitly directed by the Department, the O&M Firm shall comply fully with the terms and conditions of any manufacturer's maintenance and service schedules, and shall not jeopardize any manufacturer's warranty covering any portion of Support Property.

#### *Opening and Closing the Buildings and Facilities*

The O&M Firm shall open the buildings and facilities for operations each day. Opening and closing the buildings and facilities includes unlocking and locking doors, unlocking and locking security gates, turning on and off lights, HVAC, and other necessary systems, and otherwise preparing the buildings and facilities to perform the O&M Services.

#### *Lights*

The O&M Firm shall ensure that there is adequate lighting for the buildings and facilities during operating hours and lights are turned off when not needed. This includes turning lights on and off, replacing light bulbs and ballast, and performing routine maintenance to lighting systems, as necessary.

#### *HVAC*

The O&M Firm shall ensure that there is adequate heating, ventilation, and air conditioning to provide a safe and comfortable work environment for O&M Firm and Department personnel. This includes turning on and off the HVAC systems and performing routine maintenance (including window maintenance) to keep the HVAC operational.

#### *Cleaning*

The O&M Firm shall keep the buildings and facilities (including floors, work areas, and windows) clean and in a State of Good Repair, free from trash, debris, and graffiti. The O&M Firm shall promptly remove all trash, debris, and graffiti no more than 24 hours after discovery of, or receiving notice from, the Department of the existence of same.

The O&M Firm is responsible for cleaning all office space at the VSMF.

#### *Parking*

The Local Government Partners shall be responsible for the maintenance of parking lots at all station areas. The O&M Firm shall be responsible for maintenance at all other parking areas on the Service Property.

The Department shall provide designated parking areas for use by O&M Firm personnel performing work that is part of the O&M services. All parking areas are unsecured and each person using the parking area does so at his or her own risk. The Department shall not be responsible to O&M Firm for any damage or loss of any kind related to any person's use of any parking area. State and other laws regulating special needs parking will be strictly enforced.

No vehicles other than Service Equipment and Support Property (such as forklifts and Cushman vehicles) are permitted inside VSMF buildings and facilities. Canteen trucks and O&M Firm personnel vehicles are not permitted inside VSMF buildings and facilities or at any location other than the designated parking area, without the prior written approval of the Department. On-site parking is not guaranteed and may be changed, restricted or eliminated by the Department with due consideration of the needs of O&M Firm Personnel.

#### *2.3.5.7 Materials and Supplies*

The O&M Firm shall initiate the procurement process of all materials, parts and services, unless otherwise provided by the Department, and maintain inventory levels to ensure adequate inventory for the successful operation and maintenance of SunRail. The O&M Firm shall procure, store, secure, issue, account for, control and dispose of Department-provided materials and other assets in accordance with sound procurement practice and Department policies including the Maintenance of Way Services Plan and Mechanical Services Plan. The O&M Firm shall adhere to applicable policies and procedures when procuring materials and parts for the O&M Agreement.

The O&M Firm shall procure, manage, and disburse material and parts through the RMIS. The O&M Firm shall maintain an inventory of repair-and-return, unit exchange, and other spares required to support the O&M services. When requested by the Department, the O&M Firm shall keep separate inventory records in the Materials MIS for those items that have been purchased using capital funds. The Department has the final authority on supplier selection for any material, part or service. Before any substitution of a Department-approved supplier can occur, it must be approved in writing by the Department. The Department reserves the right to transfer management or procurement responsibility for some or all of the O&M Firm-managed materials, parts and services to the Department; approve the method, software, part numbers, forms, etc. used in maintaining inventory; or implement its own inventory management system during the term of the O&M Agreement.

The O&M Firm shall not use the materials for purposes not directly related to SunRail service without the express written approval of Department.

#### Substitutions for Equipment

The O&M Firm may request, in writing, permission from the COO to use equipment of a different size or type in place of the equipment specified in a Supplemental Agreement. Before

granting the request, the COO may require the O&M Firm to furnish, at the O&M Firm's expense, satisfactory evidence that the equipment proposed for use by the O&M Firm is capable of producing work equal to, or better than, that which can be produced by the equipment specified and at a reasonable cost. Permission to use alternative equipment in place of equipment specified will only be granted where the equipment is new or improved and its use is to be in furtherance of the purposes of O&M services.

If permission is granted, it shall be understood that the permission is granted for the purpose of testing the quality of work actually produced by the equipment and is subject to continuous attainment of results which, in the opinion of the Department, are equal to, or better than, that which can be obtained with the equipment specified. The COO shall have the right to withdraw permission at any time that the alternative equipment is not producing work that is equal, in all respects, to that which can be produced by the equipment specified. Upon withdrawal of permission, the O&M Firm will be required to use the equipment originally specified and shall remove and dispose of or otherwise remedy, at the O&M Firm's expense, any defective or unsatisfactory work produced with the alternative equipment.

Neither the Department nor O&M Firm shall have any claim against the other for either the withholding or the granting of permission to use alternative equipment, or for the withdrawal of the permission.

#### O&M Furnished Materials

Only materials conforming to the requirements of the Service Standards shall be incorporated in the work. The materials furnished and incorporated in the work shall be new, except as may be provided in the Supplemental Agreement. The materials shall be manufactured, handled, and used in a workmanlike manner to ensure that the work is completed in accordance with the terms of the Supplemental Agreement.

Materials to be used in the work will be subject to inspection and tests by the COO and the O&M Firm shall furnish without charge any samples of such materials as may be required. The COO may inspect, sample or test any materials at the source of supply or other locations, but the inspection, sampling or testing will not be undertaken until the O&M Firm has confirmed that the O&M Firm and supplier of the material will fully cooperate during the inspection, sampling and testing of such material. The O&M Firm shall provide the COO with free access at all times to the material to be inspected, sampled or tested.

It is understood that the inspections and tests if made at any point other than the point of incorporation in the work in no way shall be considered as a guaranty of acceptance of the material. Moreover, such inspections and tests shall not lead to the continued acceptance of material presumed to be similar to that upon which inspections and tests have been made. Furthermore, it is expressly understood and agreed that COO's inspections and tests shall not relieve the O&M Firm or the O&M Firm's suppliers of responsibility for quality control. The COO assumes no obligation to inspect materials at the source of supply.

Any manufacturers' warranties, guaranties, instruction sheets and parts lists that are furnished with certain articles or materials incorporated in the work shall be delivered to the COO before acceptance of the work covered by the Supplemental Agreement.

#### Department Furnished Materials

In the event that certain materials are to be furnished by the Department, a reasonable amount of such materials will be available to the O&M Firm at no charge. The O&M Firm shall reasonably use such materials and shall use its best efforts to avoid any undue waste of the materials. The O&M Firm shall not use the Department-furnished materials for any purpose other than as specified in the Supplemental Agreement.

Once the materials are delivered by the Department for the O&M Firm's use, the O&M Firm shall be solely responsible for the security of the materials, and shall pay all demurrage and storage charges. Any Department-furnished materials lost or damaged failure of the O&M Firm to comply with the requirements of this Agreement shall be replaced by the O&M Firm at the O&M Firm's expense, and those costs may be deducted at the COO's sole discretion from any monies due or to become due the O&M Firm.

#### Property Rights in Materials

The O&M Firm shall have no right of property in the materials used after they have been attached or affixed to the Service Property or after payment has been made by the Department. All such material shall become the property of the Department. All Department-furnished material that is not used for the purpose stated on the Supplemental Agreement or is stored under either the control of the O&M Firm or Department shall remain the property of the Department.

#### Certificates of Compliance

A Certificate of Compliance shall be furnished prior to the use of any materials for which the Supplemental Agreement requires that a certificate be furnished. In addition, when so authorized in the Supplemental Agreement, the Department may permit the use of certain materials or assemblies prior to sampling and testing if accompanied by a Certificate of Compliance. The manufacturer of the material or the manufacturer of assembled materials shall sign the certificate and shall state that the materials involved comply in all respects with the requirements. A Certificate of Compliance shall be furnished with each lot of material delivered to the work and the lot so certified shall be clearly identified in the certificate.

All materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the O&M Firm of its responsibility for incorporating material in the work which conforms to the requirements and any material not conforming will be subject to rejection whether in place or not.

The Department reserves the right to refuse to permit the use of material on the basis of the O&M Firm's failure to submit a proper Certificate of Compliance.

#### Inventory Management Obligation

- 1) The O&M Firm shall procure, store, secure, issue, account for, control, and manage the disposal of inventory necessary for the provision of O&M Services.
- 2) The O&M Firm shall procure and manage the purchasing of all inventory required to perform the O&M Services, as described herein. All inventory acquired by O&M Firm in order to perform the O&M Services shall be used solely for the purpose of providing the O&M Services. The O&M Firm shall not sell, loan, give away, or use for purposes other than O&M Services, inventory purchased or obtained for the O&M Services, without the express written consent of the Department. Title and ownership of such inventory shall pass to the Department upon purchase by the O&M Firm except as otherwise provided in the O&M Agreement. The inventory shall be available for inspection by the Department at all times.
- 3) The O&M Firm shall develop and institute, subject to the approval of the Department, a materials management process that will optimize efficiency and reduce inventory cost through forecasting of replenishment requirements and control the materials handling function to assure that adequate levels of critical inventory (particularly long lead-time items) are maintained throughout the term of the O&M Agreement. The O&M Firm shall use the Materials MIS to monitor levels of materials and inventory.

#### Storage Location

The Material Control warehouse at the VSMF shall be staffed as necessary to support the Mechanical Department's operation. The O&M Firm shall review the design of the VSMF to confirm that the VSMF has adequate inside and outside storage areas.

All other inventory must remain at a location accepted by the Department.

#### Material Storage

All material must be stored in an orderly manner, tagged or identified, such that it can be easily found, inventoried and placed and is not damaged, warped, twisted or otherwise distorted during storage. The Department may reject as non-compliant any Support Inventory not stored in conformance with this policy. Loss of value due to improper handling or storage of support property or support material shall be the responsibility of the O&M Firm.

#### Inventory

The Department will provide the O&M Firm the existing inventory of materials and parts as defined in Attachment 10, Cab Car and Locomotive Design Criteria.

All material taken into the warehouse must be verified as to count and condition prior to recording in the Material Management system. All material issued or received must be recorded and documented as to whom it was issued or withdrawn by or whom it was received from and received by, whichever the case may be.

The O&M Firm shall conduct and report to the Department or its designee the results of annual inventories of all materials in stores or warehouse locations, materials stored in "stockpile" locations, and all Department-provided property or other assets with a purchase price value of \$500 or more. The end of Fiscal Year inventory shall start on or after June 15th and be completed

no later than June 30th each year. The O&M Firm shall have a third-party O&M Firm conduct and report the inventory after the first Fiscal Year and every other year thereafter. The same inventory schedule, due date, and report requirements specified in the O&M Agreement shall be adhered to when the third-party O&M Firm performs the inventory.

The O&M Firm must provide consistent and accurate inventory data for the Department's monthly and year-end accounting reporting. This includes accurate exception reporting of price and quantity adjustments. The O&M Firm shall reconcile any inconsistencies in reported data, including payments to the Department for unaccounted shortages. The O&M Firm shall provide staff support for this function, as required.

Upon reasonable notice, Department shall have the right to inspect all O&M Firm-maintained inventories, Department-furnished vehicles, personal property and other assets. The Department, at its own expense, may conduct inventories of any Department-furnished materials or property.

#### Physical Inventory and Audit

The O&M Firm shall conduct an initial physical inventory and thereafter shall conduct an annual physical inventory throughout the term of the O&M Agreement.

Prior to the O&M Firm Commencement Date, the Department and the O&M Firm shall complete an initial physical inventory to determine the levels of Service Property, Support Property and Support Inventory. Such initial inventory and audit shall serve, among other things, as the basis for determining the O&M Firm's compliance and the Department's compliance. Upon completion of such initial physical inventory and initial audit, a listing of such inventory shall be attached to the Maintenance of Way Services Plan.

#### Obsolete, Surplus, Scrap and Salvage Inventory

As part of the annual physical inventory and annual audit, and routinely in the course of performing the O&M Services, the O&M Firm shall identify any inventory that is to be considered obsolete, surplus, scrap or salvage provided that the final determination of such status shall be made by the Department.

- 1) If an item of inventory is deemed obsolete by the Department, it may continue to be utilized until depletion, unless the item has been determined to be inappropriate due to safety or other failure considerations. On an annual basis the COO may conduct a joint audit with the O&M Firm aimed at identifying obsolete material. In accordance with Department policies and procedures, the O&M Firm shall dispose of any obsolete material identified through this process, but may do so only with written approval from the Department.
- 2) Surplus inventory may be disposed of with the prior written approval of the Department.
- 3) Scrap material is an item of inventory where the actual cost to repair or repair-and-return may exceed the economic cost to replace. In such cases, the O&M Firm may scrap the item of inventory if the O&M Firm replaces it with a new or completely remanufactured item. The O&M Firm may also scrap-and-replace such units of inventory where and when it realizes operating economies from standardized configurations with the prior written approval of the

- Department. For such standardization, the O&M Firm shall use only new or completely remanufactured items.
- 4) The O&M Firm shall, at least annually, dispose of any inventory identified as obsolete, surplus, or scrap. Disposal of non-capitalized units of property shall be accomplished through sale by competitive bidding. Capitalized units of property must be disposed of in accordance with instructions from the Department. Disposal of any obsolete, surplus, or scrap inventory shall be on a first-in, first-out (FIFO) basis. All inventory retained shall be the most recently acquired.
  - 5) All materials requiring special handling such as; waste oil, anti-freeze and battery acid shall be disposed of by a licensed contractor of hazardous wastes.
  - 6) The proceeds of sales of obsolete, surplus and scrap inventory shall be credited to the Department by means of a deductive change order.

#### Material Management Plan

The O&M Firm shall submit a Material Management Plan as part of the Maintenance of Way Services Plan that explains fully how the O&M Firm will manage the VSMF, S&I Shop, and manage and coordinate with Amtrak at the AutoTrain Facility and other storage locations in conformity with the requirements of the Department, including an inventory reordering plan, inventory control as a whole, staffing and all details of the O&M Firm's operational plan for Material Management. The plan shall also address quality control aspects, including inbound inspection of material, management of suppliers, material specification management and disposition of material.

The O&M Firm's Materials MIS shall be compatible with Amtrak's material management system to allow for ordering and storing parts at Amtrak's Sanford Yard AutoTrain Facility.

The O&M Firm shall prepare and maintain on an annual inventory basis, a list of Capital Spares, supplies and consumables that were in place at the time of NTP, and provide annual inventory those items. For all serialized capital spares, the O&M Firm will provide annual accounting. Any items scrapped and not replaced in kind, should be identified with explanation as to why they could not be reconditioned and put back into the inventory as spares.

#### Minimum and Maximum Levels

The O&M Firm shall determine, subject to Department acceptance, the minimum and maximum levels of each item of inventory to be maintained. The Department may, at its sole discretion, direct the O&M Firm to adjust minimum and maximum line item inventory levels.

The inventory maintained in the Materials MIS acquired for use in the O&M Services shall be subject to audit and verification by the Department. During the term of the O&M Agreement shall the inventory fall below the minimum level; the O&M Firm will return the inventory to the Department-approved minimum level.

#### Stocking Levels

The O&M Firm shall at all times maintain actual levels of inventory that exceeds Department approved minimum inventory levels. In the event that the Department determines that actual inventory levels fall below the approved minimum levels, the Department may deduct from the O&M Firm's next monthly payment the cost of acquiring the amount of inventory necessary to bring the actual inventory level up to the Department-approved minimum inventory level. The O&M Firm shall not deplete existing stocks to generate working capital for the O&M Firm's benefit. Consumption of existing stocks that results in replacement with consignment material is not permitted without prior written approval from the Department.

#### Replacement of Inventory

- 1) Items of inventory with a replacement value of less than \$1,000 that for any reason become unavailable for use in the provision of the O&M Services shall be promptly replaced by the O&M Firm, and the cost of any such replacement shall be included in the Lump Sum Price.
- 2) The O&M Firm shall replace all items in inventory or necessary to purchase to keep the rolling stock in a State of Good Repair. If an item that costs more than one thousand dollars (\$1,000) for any reason becomes unavailable for use in the provision of O&M Services, such item shall be promptly replaced by the O&M Firm. The cost of any such replacement shall be reimbursed to the O&M Firm on a monthly basis.
- 3) The O&M Firm shall replace all items in inventory or necessary to purchase to keep the rolling stock in a State of Good Repair. If an item that costs less than \$1,000 for any reason becomes unavailable for use in the provision of O&M Services, such item shall be promptly replaced by the O&M Firm. The cost of any such replacement shall be included in the Lump Sum Price.
- 4) In the event that inventory becomes unavailable, as described in paragraphs (1), (2), or (3) above, the O&M Firm shall submit reports to the Department within 24 hours of the occurrence of such unavailability.

#### Quality of Materials

Inventory material and services shall be selected to achieve or exceed performance requirements of the O&M Agreement. Materials and services include repairing and overhauling components. All inventory materials to be used in the provision of O&M Services shall be first quality products and shall conform to OEM specifications. If OEM specifications are not available, then other appropriate specifications or standards (such as AAR, ANSI, Aluminum Association, ASTM, AWI, NEC, NFPA, SAE, ASME, or others) should be utilized, unless otherwise specified by the Department. The O&M Firm shall not acquire or use materials that would result in a reduction in durability, reliability, safety, regulatory compliance, or operating economy relative to the original design or as modified through upgrades or improvements.

- 1) The O&M Firm shall acquire inventory that is identical to and interchangeable with parts, material, circuits, logic, ergonomics, and dimensions that will be used at the VSMF at Rand Yard. Unless otherwise specified in this O&M Agreement, the requirement for interchangeability shall apply to material used for repairs, maintenance, and replacements. Interchangeability shall be defined by form, fit, and function. The cost, durability, delivery time, and appearance are an integral part of function.



- 2) The O&M Firm may recommend substitutions in or changes to configurations of material and spares; however such substitutions or changes shall not lessen the reliability, appearance, availability, operating economy, compliance, or safety of the VSMF at Rand Yard and the CFRC. Should the Department provide approval for such substitution or change, the O&M Firm shall acquire sufficient spare materials for such substitution or change.
- 3) The O&M Firm shall not remove re-buildable components and replace them with earlier, superseded, obsolete, or discontinued models taken from other sources of inventory.
- 4) All inventories purchased for the O&M Services shall comply with all local, state, and federal regulations.

#### Failure to Maintain Adequate Levels

In the event that the O&M Firm is unable to perform the necessary maintenance on the VSMF at Rand Yard within the allocated maintenance schedule due to the O&M Firm's failure to maintain an adequate level of inventory, the O&M Firm shall be held liable for the maintenance delay condition, including all applicable penalties.

#### *2.3.5.8 Environmental Services*

The O&M Firm shall be responsible for ensuring the operations, maintenance and servicing of all environmental systems located throughout the Service Property as described in Section 16.0, Environmental Services. The O&M Firm may subcontract out these responsibilities, and shall ensure that their subcontractor maintains all environmental permits, certificates and licenses necessary to perform Maintenance Services and maintain the Service Property. Permits, certificates, and licenses shall be obtained in the name of the O&M Firm as an agent for the Department. The O&M Firm shall ensure that the subcontractor properly disposes of any waste or hazardous material in accordance with all applicable federal, state and local regulations. The O&M Firm or their subcontractor shall furnish all labor, materials, tools, and equipment to operate, test, service, maintain, and repair the Department's environmental systems.

#### Hazardous Material Disposal

Any regulated waste or hazardous materials located on the service property produced or generated while delivering the O&M Services shall be disposed of in accordance with all applicable environmental regulations. Copies of all waste management documentation, including manifests, bills-of-lading, weight slips, and receiving facility receipts shall be provided to the Department.

The O&M Firm shall develop the CFRC Hazardous Materials Instructions for the Department's approval and submission to FRA no later than 90 days prior to the Commencement Date. The O&M Firm shall use the current version of the CSX US Hazardous Materials document and the Final Draft US Hazardous Materials Instructions for Rail (dated 02-01-09) as source documents. The CFRC Hazardous Materials Instructions for Rail shall be consistent with, to the extent possible, the CSXT US Hazardous Materials Instructions. The O&M Firm shall ensure that the CFRC Hazardous Materials Instructions are accessible, through electronic or print copy, to all employees whose duties require adherence to these Rules. The O&M Firm will also provide the

CFRC Hazardous Materials Instructions to CFCRT Project contractors, employees of foreign railroads, officers of the CFRC and regulatory agencies as necessary.

The O&M Firm will provide appropriate training to their personnel who may impact hazardous material transportation safety. Employees who inspect or transport hazardous material by rail must have a copy of and comply with the United States Hazardous Materials Instructions for Rail, as well as a copy of the current Emergency Response Guidebook (ERG) readily accessible while on duty.

#### *2.3.5.9 Third-Party Projects*

##### Inspection and Compliance of Others' Work

The O&M Firm shall ensure the safety compliance of all work done on the service property by third-party contractors.

##### Inspection, Minor Repairs and Testing of O&M Firm's Work

The O&M Firm shall inspect, make minor repairs and correct deficiencies, and test other contractors' work performed as a part of the Department's construction and third-party projects. The purpose of inspection, repair and testing shall be to ensure that the work of such contractors satisfies all of the requirements for the safe operation of trains, including, but not limited to, all applicable FRA and Department requirements and standards.

The O&M Firm shall perform signal inspection and testing. Said services shall include, but are not limited to, the following types of work: (1) oversee the adjustments, installation and testing of the signal work, including the coordination of the signal work with any ongoing track construction work; (2) direct and certify the successful completion of all tests on any signaling and grade crossing warning device equipment and systems prior to releasing the system for service; (3) make minor repairs and correct minor deficiencies; and (4) complete all test documentation immediately after in-service testing is completed.

All O&M Firm employees performing testing, repair and inspection services shall complete daily reports, in a format approved by the Department. Each daily report shall be submitted at the end of each workday to the appropriate Department discipline manager.

##### Inspection and Testing of O&M Firm's Equipment

The O&M Firm shall inspect, test and certify other contractors' equipment used as a part of the Department's construction and third-party projects. The purpose shall be to determine whether the equipment is in a satisfactory condition to operate safely on Department Service Property, including, but not limited to, compliance with all FRA requirements. The O&M Firm shall notify the Department and the other contractors/subcontractors, if applicable, of non-compliant or unsuitable equipment determined by such inspection. All equipment inspections shall be documented and submitted in a format approved by the Department.

##### Supporting Communications and Signal Construction

The O&M Firm shall support any communications and signal construction work performed by other contractors as a part of the Department's construction and third-party projects. The O&M Firm's support shall include, but not be limited to, providing access to all Communication and Signal facilities and identifying, assisting with, and performing the testing of such facilities. Attention is directed to the O&M Firm's inspection and testing responsibilities.

#### Locating and Marking Underground Facilities

The O&M Firm shall locate all underground railroad facilities that exist at or near the area of other contractors' work performed as a part of the Department's construction and third-party projects. The O&M Firm shall perform such services in advance of other contractors' work, and the O&M Firm shall clearly identify the location of all facilities by markings on the ground. The O&M Firm will help support the Department in developing "As-Builts" for underground facilities at various locations. The O&M Firm also shall be required to provide minor protection of underground signal facilities and perform minor relocations, as necessary.

#### Training and Qualification of Department Employees and Department and Third-Party O&M Firm Personnel

The O&M Firm and the Department shall jointly develop training, testing and employee qualification programs for Department staff, Department contractors and third-party construction contractor personnel. Such training shall include, but not be limited to, all applicable FRA, RWP, and Maintenance of Way Service Standards.

#### *2.3.5.10 Other Maintenance of Way Services*

- a) The O&M Firm shall maintain files and provide copies of all Service Property construction and valuation plans for the Service Property maintained that are currently in the control of the O&M Firm. For any new work performed on or within the Service Property, the O&M Firm shall provide the Department with a complete set of updated plans and/or documents in electronic and hard copy formats within 30 days following completion of the work. The O&M Firm shall provide plans as necessary for control of encroachments. The O&M Firm shall provide testimony and work with the Department lawyers to control encroachments.
- b) The O&M Firm shall provide drafting services for property maintenance, presentation documents for the Department, and support capital acquisition appropriation requests or as otherwise requested by the Department.
- c) The O&M Firm shall provide inspection and testing of track and signal systems before placing or restoring these systems to service following an outage. The O&M Firm shall further ensure the safety compliance of all work done on the Service Property resulting from other Third Party work ordered by the Department.
- d) The O&M Firm shall comply with all of the Department's standard plans, material specifications, design criteria, work practices and methods, and use only the Department approved materials in performing the O&M Services and in designing modifications, improvements or additions to the Service Property.
- e) The O&M Firm shall provide all disciplines of engineering from its own staff or subcontracted consultants to properly inspect, maintain, design, engineer, review or to

- professionally ensure the Service Property maintained as part of the O&M Services is kept safe and properly maintained and constructed.
- f) The O&M Firm shall provide all survey services for maintenance and property control. Any plans requiring certification shall be certified by a Registered Surveyor licensed in the State of Florida at no additional cost to the Department.
  - g) The O&M Firm shall make available to the Department sufficient personnel that are qualified and authorized by the O&M Firm to support the Department, the O&M Firm and third party contractors for Extra Work...
  - h) The O&M Firm shall provide the Department with a complete set of "as-built" plans in electronic CADD file format (latest version compatible with the Department) within thirty (30) days after any new installation or modification to the Service Property is placed into service.
  - i) Existing "as-built" plans shall be maintained in accordance with FRA regulations at all times. Once plans are created in or converted to electronic CADD format, they shall be maintained without "mark ups" in a 100% correct and accurate state.
  - j) All CADD work shall utilize the latest version of CADD software compatible with the Department's software.
  - k) Electronic copies of any new or updated CADD files shall be forwarded to the Department so as to keep the Department set of plans current at all times.
  - l) The O&M Firm shall have staff operate and maintain electronic files. Specific duties include, without limitation, neat and orderly storage of plans, protecting plans from damage, controlling access to Third Parties, plan copying, safe and appropriate handling of plans, Third Party billing, and cataloging of new and updated plans.
  - m) The O&M Firm shall provide surveys, design, development of plans, layouts, sketches, pictures, staging and phasing plans, and other engineering functions that are normally required for the Maintenance Services.
  - n) The O&M Firm shall assist the Department, as requested, with Maintenance of Way Services related to Service Property permits, licenses and easements, including plan preparation.
  - o) The O&M Firm shall investigate, respond to, and attempt to resolve complaints and problems on and along the Service Property that result from the performance of the Maintenance Services.
  - p) The O&M Firm shall ascertain any and all railroad construction and maintenance requirements for fiber optic companies, utilities and other Third Party occupants of the Service Property and comply with such requirements. The Department shall provide copies of agreements upon request by the O&M Firm.

## **SECTION 2. SCOPE OF SERVICES**

### **2.4 TRANSPORTATION**

During the term of the O&M Agreement, the O&M Firm shall operate, manage, maintain and provide staff for the Department commuter rail services on the rail lines contained within the Service Property. The O&M Firm shall provide timely, efficient, clean, and courteous service to the public on a continuing basis in accordance with this Section. The O&M Firm shall provide transportation services in accordance with the commuter rail service schedules established by the Department, provided in Attachment 5, Transportation and Maintenance Operations Plan (TMOP), as may be revised in the future.

#### **2.4.1 Basic Service Plan**

The Basic Service Plan (BSP) shall be that level and type of train service initially in operation as of the Revenue Operations Date for first phase, projected to be no later than May 1, 2014, and unless otherwise modified by agreement between the parties, shall consist of the trains shown in Attachment 5, Transportation and Maintenance Operations Plan (TMOP), plus the trains/schedules described below.

SunRail service is projected to begin no later than May 1, 2014 with the IOS which will extend approximately 32 miles from the DeBary Station to Sand Lake Road Station. Twelve (12) stations will be located at DeBary, Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park/Amtrak, Florida Hospital, LYNX Central, Church Street (downtown Orlando), Orlando Health/Amtrak, and Sand Lake Road.

The IOS preliminary service plan features 32 train trips operated each weekday. Trains will run every 30 minutes in the peak period and every 120 to 150 minutes during the midday and evening hours (32 daily trips). For the 2014 IOS service plan, no service will be operated on Saturdays, Sundays or holidays. Trains will layover about 18 minutes at each terminal. Proposed train schedules are included in the TMOP.

It is anticipated that one stand-by train will be provided during peak periods, subject to availability. The stand-by train will be used to replace scheduled trains that must be removed from service for corrective maintenance or scheduled trains that have been delayed beyond 30 minutes. Each stand-by train would consist of one (1) locomotive, two (2) cab cars, and a train crew.

#### **2.4.2 Additions and Changes to the Basic Service Plan**

The Department reserves the right, at any time during the term of the O&M Agreement, to make changes to the service schedule and will provide advance notice to the O&M Firm of at least 60 calendar days, less notification may be made if both parties mutually agree. In making schedule changes, the Department shall consult with O&M Firm and shall consider the following: (i) schedule shall promote On-Time Performance with a high degree of reliability; (ii) schedule shall contain sufficient time to accommodate scheduled operations of all trains; and (iii) schedule shall include recovery time for contingencies. O&M Firm is expected to propose changes to the service

schedule, provided that final approval of all schedules shall be within the sole discretion of the Department.

The O&M Firm shall provide additional trains over and above the train services required for the BSP in accordance with the cost plus fee arrangement of Extra Work, at the sole determination of the Department, until the next BSP and budget are approved at which time the trains may be added to the BSP. Changes to the BSP may be made annually during the budget process. Prices for other additional services will be subject to negotiation between the parties.

### **2.4.3 Schedule Changes**

#### *2.4.3.1 Routine Schedule Changes*

The Department anticipates two system-wide changes of schedule per year. The O&M Firm shall provide to the Department, four months prior to a schedule change, any recommendations for running time revisions or other scheduling matters, which improve operating performance. There shall be no additional costs to the Department for these twice-annual changes in schedules or train sizes. In support of routine schedule changes, the O&M Firm shall provide one system-wide ridership count (typically in January, with results and Summary Reports due by March 1), and up to 25 topical counts per year. A topical count will cover, over the course of one day, terminal activity, one or more specific trains, and one or more specific stations. The results of topical counts shall be provided to the Department within one business day of the count.

#### *2.4.3.2 Construction Schedules*

The O&M Firm shall cooperate with the Department and third-party construction by developing alternate schedules peak and off-peak services, including making onboard and station public address and visual messaging board announcements, and posting applicable notices at affected stations and on trains, without any limit per year. Special schedules may result in service reductions or rearrangements, and the O&M Firm must have flexibility in rescheduling the operating/station workforces.

### **2.4.4 Train Operation, Crews and Performance**

#### *2.4.4.1 Engineer Qualifications*

The O&M Firm shall provide qualified and certified engineers as specified in Section 10.3. The safe operation of the train is of the utmost importance to the Department. Train engineers shall be qualified, certified and trained in accordance with 49CFR240 and shall have a valid driver's license issued by a state within the United States. The O&M Firm shall develop for the Department approval and submittal to the FRA a Part 240 plan a minimum of 90 days prior to the Commencement Date.

All engineers must be able to qualify on Department equipment, which includes train handling, operating rules, and physical characteristics through written and oral testing and demonstrated and observed train handling. In addition to the safe operation of the train, engineers must possess specific knowledge to be able to trouble shoot routine mechanical issues en route. The O&M Firm's training program must include provisions for such trouble shooting purposes.

#### *2.4.4.2 Onboard Personnel Qualifications*

All duties shall be performed as described in the Train and Engine Crew SOPs that will be developed by the O&M Firm for Department approval, the CFRC PTEPP as required by 49CFR239, and the Department SSPP, as well as all other applicable documents and regulations. The O&M Firm shall provide adequate staff to maintain the safe operation of the train, the safety of its passengers and customers on the platforms, provide a high degree of on-time performance and customer service and protect revenue through thorough fare enforcement. Collection and protection of revenue from customers is critical to the financial success of the Department. The Department reserves the right to assign Department personnel or other third-party O&M Firms to observe conductor's actions or to supplement their duties in non-railroad related areas, including but not limited to verifying tickets and validations, writing citations, and performing passenger counts.

#### Conductors

The O&M Firm shall provide qualified and certified conductors, subject to Federal licensing requirements and as specified in Section 10.3. Train conductors shall be qualified, certified, and trained in accordance with 49CFR242 and shall have a valid driver's license issued by a state within the United States. Conductors shall be qualified on Operating Rules, Air Brake Instruction, Safety Rules, PTEPP and Emergency Evacuation procedures, Security Awareness, Cardiopulmonary Resuscitation (CPR), Automated External Defibrillator (AED) and First Aid Training, Timetable Special Instructions, basic mechanical troubleshooting, and ADA and customer service requirements. Conductors shall be trained according to the O&M Firm's approved training plan and operate the train according to the approved Train and Engine Crew SOPs. The O&M Firm shall develop for the Department approval and submittal to the FRA a Part 242 plan a minimum of 90 days prior to the Commencement Date.

#### Fare Inspection

The O&M Firm shall be responsible for onboard (or other locale) verification of proper fare instruments required of customers. This verification shall be performed by conductors or other O&M Firm personnel as may be mutually agreed upon by the O&M Firm and the Department. The O&M Firm shall have, as a management objective, an onboard fare instrument inspection rate goal of 25%, subject to announced or unannounced audit by the Department.

O&M Firm fare inspection staff shall perform duties in accordance with all applicable CFRC fare policies as outlined in Department Codified Tariff. The O&M Firm personnel responsible for fare inspection and enforcement shall attend and satisfactorily complete a course of instruction administered by the O&M Firm. Such personnel must be eligible for appointment by the Department as a public officer and shall enforce Proof-of-Payment (POP) fare policies consistent with SunRail Fare Enforcement Policies and Procedures Training Manual, including writing citations as the situation may warrant and verifying tickets or passes using a card reader provided by the Department. The O&M Firm shall submit a Procedures Training Manual and a Fare Enforcement plan, inspection, validation and reporting procedures, for Department approval including 90 days prior to the Commencement Date.

All handheld card readers shall be furnished by the Department, including spares and replacements. The firm selected to maintain the ticket vending machines (TVMs), ticket validators (TVs), and handheld readers. O&M Firm personnel must be trained in the use of the readers, which will include removal from/replacement in recharging units on a daily basis. The O&M Firm shall be responsible for "First Line Maintenance" of the card readers, which involves (1) keeping the equipment clean and safe from damage, (2) contacting vendor or the Department to report device swap outs and request replacement units, (3) replacement of devices with a Department furnished spare, and (4) being responsible for securing/storing all on-site inventories.

#### *2.4.4.3 Train Crew Staffing*

O&M Firm shall, at all times during the Term of the O&M Agreement, provide competent and qualified employees, in sufficient numbers to perform the O&M Services. Each train crew will consist of one (1) FRA-qualified Locomotive Engineer and one (1) FRA-qualified Conductor.

- 1) By 0700 each day the O&M Firm must file a complete Daily Train and Engine Staffing Report with the Department detailing all assignments of train and engine crews for that day's trains. The report must highlight trains where the staffing levels will not be met that were established in the approved Customer Service Plan. The cover sheet of the report must list understaffed trains and tally the required penalty payments, as discussed in Section 15, Incentives and Penalties. During the course of the service day, the O&M Firm must notify the Department by fax or e-mail of any deficiencies in staffing levels that emerge during the course of that day with an updated penalty tally. Failure of the O&M Firm to prepare and submit the required daily reports in a timely manner will result in a penalty, in accordance with Section 15, Incentives and Penalties, for each day that the report is delivered late or not delivered.
- 2) Discovery by the Department or its agents of an unreported vacancy in a conductor's position will result in a penalty for each unreported conductor trip not staffed. Penalties shall be assessed in accordance with Section 15, Incentives and Penalties.
- 3) The O&M Firm shall post an operations supervisor/manager at the OCC and various stations to observe and manage terminal and road operations during the hours of commuter rail operation each service day.
- 4) Train and engine crews shall monitor all customer service systems while conducting their daily duties to ensure proper operation of the systems. Train crewmembers shall immediately notify train dispatchers when systems are not operating as intended. The systems to be monitored include, but are not limited to, signage, LED signs, HVAC systems, and public address systems.
- 5) Train and engine crews shall record and report any mechanical and safety-related defects discovered en route or while conducting their daily duties. Safety-related defects must be reported immediately. The O&M Firm shall ensure that such records are entered into the RMIS not more than 24 hours after each occurrence.
- 6) All crew members shall comply with all CFRC Standard Operating Procedures and:
  - Will be strictly prohibited from usage of cell phones and personal electronic devices, including sending of text messages, except for emergencies per FRA Regulations (49CFR229).



- Shall not be permitted to take up any revenue seats with their belongings.
- 7) Conductor's main responsibilities include but are not limited to:
- Ensure that Department policies are adhered to;
  - Be available for court appearances in relation to the issuance of a summons or any other time that is deemed necessary;
  - Provide accurate daily ridership counts for each train operated. The O&M Firm shall record the results of such counts in accordance with Section 11.1, Reporting and Recordkeeping Requirements;
  - Provide accurate delay reports, including arrival and departure time at each station and causes of delay;
  - Assist the Department staff with surveys or ridership audits as necessary;
  - Greet riders in a friendly manner when boarding/detraining (i.e., good morning/good afternoon);
  - Treat riders with respect, dignity, and courtesy at all times;
  - Make eye contact with riders when addressing question or concerns;
  - Open all platform doors and ensure that non-platformed doors remain closed;
  - Close all doors prior to train's departure from a station;
  - Wear a clean and tidy uniform, including hat and all safety equipment (safety glasses, and other equipment as necessary). Body piercings and/or tattoos must be tasteful. Small stud earrings are permitted for both sexes. Other piercings/tattoos should be discreet or appropriately covered. Overall appearance must be professional, hair must be neatly trimmed or if long, pulled back neatly, facial hair must be neatly trimmed, fingernails must be trimmed;
  - Walk through all cars and maintain a continuous presence on board the train. Prolonged socializing with riders, riding in the cab of the cab car, riding in the vestibule, sitting at any time, reading, or other non-work related functions will not be permitted;
  - Hand out Department-provided materials, including, but not limited to seat notices, candy, and other giveaways;
  - Report any and all unusual occurrences. Immediate report must be made to the OCC. Follow-up report must be provided in writing within one hour of train's arrival at end of shift. Incidents may include, but are not limited to: vandalism to train; use of fire suppression equipment; anytime Emergency Medical Services (EMS) or police have been requested; or in the case of verbal or physical altercations between passengers or between conductor and rider;
  - Make announcements regarding train destinations from station platforms to customers at intermediate and terminal stations as trains arrive and depart;
  - Operate communications, public information, or other on-board equipment which the Department may install, consistent with other duties;
  - Inform on-board customers of anticipated delays, in accordance with Section 2.8, Incident Management and Notifications;
  - Help persons with disabilities find a seat when all seats are fully occupied;

- Enforce common courtesy issues, including but not limited to: saving seats, queuing, blocking seats, feet on seats, loud music through head phones, loud cell phone conversations, and abusive or offensive language/behavior towards fellow riders; and
- Notify passengers if the train will be boarding/detraining passengers from a track that is not the normal track. Conductors must give exact location on train where riders will be able to detrain, including the car number and location of the car.
- Each SunRail consist will be equipped with at least one accessible car. Conductors must keep appropriate areas in those cars clear for PNA/PWD use and must be aware of and apply all fare policies with regard to PNA/PWDs. Conductors must ask able-bodied patrons to vacate the priority seating areas of the train, as necessary.
- Conductors must interview and provide assistance to customers waiting in Boarding Assistance areas or on the mini high accessible ramps on platforms. Conductors must deploy the mini-high ramps and assist persons with disabilities when boarding and alighting. Conductors must advise the OCC and other crew members of the destination and type of assistance required by PNAs, once on board. Conductors must be trained in the safe operation and troubleshooting of all onboard mechanical and manual platform lifts and must provide reasonable assistance to PNAs in the boarding and detraining process and use good judgment in doing so.
- Conductors must report all delays associated with the accommodation of PNAs to the OCC. Any boarding denials or other problems related to PWDs must be reported to a transportation manager as soon as possible.

#### 2.4.4.4 *On-time Standards*

- 1) The O&M Firm shall strive to operate the Department services on time according to the Service Schedule. Pursuant to this Scope of Services, the On-Time Performance standard is that trains shall always arrive on or ahead of schedule, provided, however, that no revenue train is allowed to leave an intermediate station before its scheduled departure time unless specifically authorized by the Department.
- 2) O&M Firm shall determine, record, calculate, and report to the Department the On-Time Performance of revenue trains for each route on which O&M Firm is providing Commuter Rail Services. On-Time Performance shall be reported in terms of an On-Time Performance percentage. The denominator for each calculation shall be the number of revenue trains scheduled during the reporting period for the appropriate route or group of routes. The numerator for the calculation shall be the number of scheduled trains LESS the sum of (a) number of trains cancelled and (b) the number of trains arriving at their final terminal more than four minutes and fifty-nine seconds (4:59) later than scheduled.
- 3) O&M Firm shall maintain On-Time Performance records for each trip for which O&M Firm is providing Commuter Rail Services for the Department. O&M Firm shall also maintain records of the number of Late Trains and Cancelled Trains. O&M Firm shall produce daily, monthly, and annual reports in both electronic and hard copy form. On-Time Performance shall be summarized for each route, division, and systemwide by morning peak, evening peak, and off-peak periods.

- 4) O&M Firm shall provide immediate notice to the Department of any situation that could affect the On-Time Performance of the O&M Services. The means of notice shall be in accordance with Section 2.8, Incident Management and Notifications.
- 5) Penalties assessed to the O&M Firm as a result of Unexcused Late or Cancelled trains will be calculated in accordance with Section 15, Incentives and Penalties.

#### *2.4.4.5 Standards and Protocol*

Upon reporting for duty and receiving assignment, each SunRail crew will board the train; walk through it to inspect for cleanliness, vandalism, or defects; and correct and report any noted deficiencies. Locomotive Engineers and Conductors also will perform pre-departure inspections and tests in accordance with FRA regulations and Department policies. Mechanical Department personnel shall also make inspections, test breaks, and make repairs as necessary.

Following their preparation for revenue service, Locomotive Engineers will move the trains through the yard and onto the mainline according to instructions from the Operations Control Center (OCC). The OCC Train Dispatcher will be responsible for dispatching trains according to scheduled departure times.

At the end of their revenue service runs, trains will be taken to the VSMF to be made ready for service the next morning. Train Engineers will move and locate their trains according to instructions from OCC. After shutting down the locomotive, each Train Engineer, Conductor or both will walk through to ensure that no passengers remain aboard and identify and document any defects in the passenger coaches.

### **2.4.5 Train Movement Control and Dispatching**

#### *2.4.5.1 Control Center*

The O&M Firm will be directly responsible for providing sufficient, qualified personnel for the performance of dispatcher services and all other communication duties of the Operations Control Center (OCC). The O&M Firm will staff, operate and maintain the OCC with a minimum of two qualified dispatchers' 24-hours a day, seven days a week. Dispatchers will have responsibility for mainline operations with other O&M personnel having responsibility for operations within the yard and yard leads and coordination with Transportation, Engineering and Mechanical Department personnel. OCC personnel will be responsible for maintaining communications with the Department and outside agencies, including, but not limited to local emergency operation centers (EOCs), Department of Homeland Security (DHS) and the Central Florida Intelligence Exchange (CFIX) fusion center. O&M Supervisors along the mainline and in the yard will support the OCC during all shifts.

The OCC will respond to emergencies as reported by the radio, telephone, station and yard alarm monitoring systems, or other sources in close coordination with O&M Firm CFRCC, by directing transportation, engineering, mechanical, safety and field personnel. When there is a disruption to the service, O&M personnel will be responsible for implementing emergency procedures depending on the nature of the problem as defined by the applicable policy or procedure as specified in Section 2.8, Incident Management and Notifications.

The Department may, at any time, enter the Department's Dispatching Offices for the purpose of observing train operations or monitoring proper adherence to agreed upon standards. O&M Firm also shall provide the Department, upon request, with copies of any records relating to dispatch functions. The existing telecommunications system in use at the OCC shall be made available to O&M Firm at no cost for licenses or equipment.

#### *2.4.5.2 Dispatching Priorities*

The Dispatcher shall prioritize trains as described below in accordance with the terms of the "Central Florida Operations and Maintenance Agreement" (CFOMA):

- The Dispatcher shall give the Department trains priority over regularly scheduled Amtrak intercity trains if such intercity trains are operating five (5) or more minutes late during Peak Periods or ten (10) or more minutes late during Off-Peak Periods. The Dispatcher shall give the Department commuter rail trains priority at all times over non-regularly scheduled Amtrak intercity trains, such as extra trains operated by Amtrak during holiday periods. The Dispatcher shall give both the Department's SunRail trains and Amtrak intercity trains' priority over freight trains at all times. Trains operating on the corridor include SunRail, Amtrak, CSX, and FCEN.
- Department commuter rail trains shall have priority over Amtrak intercity trains whenever the normal schedule of operation of trains is disrupted due to problems caused by Amtrak's intercity service, including but not limited to problems relating to disabled Amtrak trains.
- When normal train operations are disrupted in the event of an Emergency, the Dispatcher shall use best judgment to move all passenger trains in the most expeditious manner possible.
- The Department may impose temporary special orders relating to dispatching which shall be implemented by O&M Firm at the earliest practicable time. The O&M Firm shall not be assessed any On-Time Performance Penalties for O&M Services directly impacted by such orders.

#### *2.4.5.3 Qualifications and Training*

Dispatcher qualifications and training shall be consistent with industry standards and the requirements set forth in Section 10, Training of Contractor Personnel, and are subject to the approval of the Department. Training shall include, but not be limited to: Safety; Operating Rules; Physical Characteristics; Emergency Management, including Incident Command System (ICS); general troubleshooting and equipment familiarization. The O&M Firm shall also provide on the job training (posting) of sufficient duration as approved by the Department. Dispatchers shall participate in familiarization training, as approved by the Department, regarding how to communicate and work effectively with the CFRCC.

#### *2.4.5.4 Standards and Protocol*

O&M Firm dispatchers shall maintain all FRA-required logs and records including but not limited to: logs of train movements, Form W movement permits, and notes of extraordinary and unusual events. For each train operated on each day, O&M Firm shall complete a full computer record during that day in the Department approved system, including: departure time from initial terminal; arrival time at final terminal; arrival and departure times at two (2) intermediate stops

on each run; nature, duration, and location of any delays or unusual circumstances occurring en route; identification of all crew; identification of all equipment used; and the number of customers carried.

#### **2.4.6 Operating Rules**

The O&M Firm shall develop the CFRC Operating Rules as required by 49CFR217.7 for the COO approval and submission to FRA no later than 90 days prior to the Commencement Date.

The Operating Rules shall be consistent with, to the extent possible, CSX Operating Rules. The O&M Firm shall ensure that the Operating Rules are accessible, through electronic or print copy, to all employees whose duties require adherence to these Rules. The O&M Firm will also provide the Department Operating Rules to CFCRT Project contractors, employees of foreign railroads, officers of the Department and regulatory agencies as necessary.

The O&M Firm shall not permit its employees or subcontractors to perform any duty without proper training in safety and operating rules.

#### **2.4.7 Operating Rules Committee**

The O&M Firm shall convene jointly with the COO and others as determined by the Department a railroad operating practices and rules committee on an as needed basis. The committee will revise, as required, the CFRC Railroad Operating Rule Book.

#### **2.4.8 Daily Call**

The O&M Firm shall conduct a daily call with all operating departments to coordinate daily activities at a time mutually agreed to by the Department and the O&M Firm.

## **SECTION 2. SCOPE OF SERVICES**

### **2.5 CUSTOMER SERVICE**

The O&M Firm shall provide and deliver courteous, efficient customer service during performance of the O&M Services. All O&M personnel shall assist the Department in providing premier public transportation and customer service excellence.

The O&M Firm shall prepare and submit a Customer Service Plan with the technical proposal submission. The plan shall include train staffing levels for the O&M Services described in this Scope of Services. The plan shall also include all crew assignments necessary to serve regular passengers on each scheduled train. Staffing level will be supported with an analysis of ridership and boarding patterns and will include a summary of no more than two typewritten pages. The plan shall include a full set of “crew runs”.

Upon submission of the plan, the Department will have 10 working days to review and approve the plan. The O&M Firm will remedy any Department identified deficiencies in the plan within 10 working days of receipt of Department comments. Any disputes will be subject to the dispute resolution clauses of the contract.

The O&M Firm will update the plan on a quarterly basis subject to the same review and approval cycle described above. Each quarterly update will address anticipated surges in ridership due to special events, such as athletic events and concerts.

After approval from the COO, the O&M Firm shall be responsible for the posting and stocking of public information which includes but is not limited to train schedules, schedule changes, replacement service schedules, etc.

#### **2.5.1 Internal Service Quality Monitoring**

The O&M Firm shall develop, for Department approval, and implement a management-riding program in which all O&M Firm managers ride trains, at a frequency specified in the Customer Service Plan, to evaluate customer service. The O&M Firm’s transportation managers shall ride as a routine part of their duties. Managers shall use a Department-approved standardized evaluation form (to be developed by the O&M Firm). The supervisory personnel shall evaluate all aspects of customer service related to the onboard experience including but not limited to: fare inspection, passengers needing assistance (PNA)/passengers with disabilities (PWD) policies and services, station and onboard announcements, train exterior and interior cleanliness, restroom conditions, station cleanliness, onboard and station personnel compliance with approved policies and procedures, and customer service delivery. The goal shall be to evaluate the performance of frontline personnel, the condition of equipment and stations, and the level of customer service being delivered.

#### **2.5.2 Lost and Found**

The O&M Firm shall develop for Department approval, 30 days prior to the Commencement Date of the O&M Agreement, a lost and found policy consistent with all applicable State and

local agency statutes and requirements pertaining to public agency lost and found policies. The policy shall be implemented coincident with the Commencement Date of the O&M Agreement.

The O&M Firm shall provide Lost & Found services at the VSMF at Rand Yard. Lost and Found services shall include, but not be limited to, collecting lost items on trains and at stations and keeping a log of these items to assist patrons in retrieving their possessions. The O&M Firm shall continuously provide services from 0700 through 1900 on weekdays. O&M Firm personnel providing Lost and Found services shall perform their duties in a courteous, efficient, and competent manner.

### **2.5.3 Services to Bicycle Customers**

The O&M Firm shall permit passengers to bring bicycles on all trains that are equipped with cars designed to handle bicycles in accordance with established Department policies and the Operating Rules developed by the O&M Firm. The parties recognize that there may be issues of customer service and on-time performance associated with carriage of high numbers of bicycles and will work collaboratively on the development and implementation of actions to ensure a high-quality service. The Department will coordinate with the Commuter Rail Commission's Technical Advisory Committee for the purpose of understanding and reporting on issues relative to customers accessing the system with bicycles.

### **2.5.4 Complaint Investigation, Follow-up and Resolution**

The O&M Firm shall investigate all comments and complaints arising from the operation of O&M Services and O&M Firm staff as required by the Department. The O&M Firm shall be responsible for investigations that are conducted regarding customer complaints arising from the operation of services by the O&M Firm. Any such investigation is only considered "closed" upon the Department's adoption of the investigation report as its own. The O&M Firm shall collect comments and complaints in writing, in electronic form, and by telephone.

The O&M Firm shall prepare a formal written response stating the circumstances for complaints and any corrective action taken. Responses shall be submitted to the Department within three (3) business days after receipt of the complaint from the Department. If a comment or complaint requires additional investigation after the initial response, the O&M Firm shall provide the Department with written updates on the status of the investigation every three (3) business days, or at intervals agreed to by the Department. The O&M Firm shall make every reasonable effort to resolve all complaints as soon as possible. The O&M Firm shall maintain a record of all complaints received about individual employees. All records shall be made available at the request of the Department in either hard copy or electronic format.

### **2.5.5 Customer Service Improvement Team**

The O&M Firm shall hold monthly meetings with trainmasters and frontline supervisors to discuss customer concerns, trends, problem areas, ADA issues and the continuous improvement of the internal complaint handling process. The O&M Firm shall inform the applicable Department staff of these meetings and arrange for them to attend.

## **2.5.6 Station/Onboard Information Posting and Announcements**

### *2.5.6.1 Station Announcements and Electronic Messages*

The O&M Firm shall immediately inform customers of all train arrivals, departures, platform assignments, destinations, and intermediate stops through Public Address systems at the stations. The O&M Firm shall immediately inform customers of train arrivals, departures, platform assignments, destinations and intermediate stops or other applicable customer service information using computer monitors, electronic message boards and other systems provided by the Department. The O&M Firm shall provide, through these systems, timely and accurate service delay information, in accordance with the procedures outlined in this Section. The O&M Firm shall inform the public of delays, their causes and anticipated duration whenever anticipated delays are in excess of 5 minutes; updates shall be provided every 5 minutes until the situation has been resolved, as noted in Section 2.8, Incident Management and Notifications. The O&M Firm shall be responsible for immediately informing customers about emergencies and security issues. The O&M Firm shall make announcements concerning fare policy, system rules (such as the smoking policy), special events and other messages as required by the Department. The O&M Firm shall be responsible for the input of customer service information for all automated messages.

### *2.5.6.2 On-board Announcements*

Train conductors shall make announcements on board all trains in revenue service. Conductors shall announce from station platforms the train destinations to customers at intermediate and terminal stations as trains arrive and depart. Conductors shall operate communications, public information, or other on-board equipment which the Department may install, consistent with other duties. Conductors shall provide timely and accurate service delay information on-board, in accordance with the procedures outlined Section 2.8, Incident Management and Notifications, and Attachment 20, the Passenger Train Emergency Preparedness Plan (PTEPP). Conductors shall inform on-board customers of anticipated delays, their causes and anticipated duration whenever delays are in excess of five (5) minutes; updates shall be provided every five (5) minutes until the situation has been resolved. The O&M Firm shall immediately inform customers about emergencies and security issues. Conductors and crewmembers must be knowledgeable of all SunRail services and shall perform their duties in a courteous, efficient, and competent manner.

## **2.5.7 Passengers Needing Assistance and Passengers with Disabilities**

The O&M Firm is required to comply with all Federal, State and Department rules applicable to assisting PNA/PWDs. All crew members are responsible for complying with the rules, including boarding and alighting passengers, use of manual and mechanical lifts, coordination with the OCC and the treatment of service animals. Train crews must be alert to any radio communication from the Engineer or other employees regarding assistance requirements or requests.



## **SECTION 2. SCOPE OF SERVICES**

### **2.6 INFORMATION SYSTEMS MANAGEMENT**

This Section details specifications and O&M Firm responsibilities regarding Information Management. Specifications and responsibilities are provided in three major areas: Computer Network; required Management Information Systems and Control Systems; and operational requirements, including information input, storage, retrieval, report preparation, and real-time data access.

The DBM Firm will transition their latest version of the Rail Management Information System (RMIS) that has been developed during SunRail's construction to the O&M Firm. The RMIS refers to a network including software, hardware, network servers and storage devices. While the O&M Firm will not be required to procure a new RMIS, the O&M firm will need to develop modules consistent with the requirements defined in Section 2.6.6 for a fully integrated RMIS. If the O&M firm chooses to procure a new RMIS, expenses incurred to procure the RMIS will not be reimbursed.

The O&M Firm shall operate, manage and maintain the RMIS for the performance of O&M Services. The O&M Firm shall be required to implement the existing RMIS, as directed by the Department, and develop those modules not already included in the RMIS developed by the DBM Firm. The RMIS shall be operated, managed, and maintained in accordance with the terms of the O&M Agreement. At the end of the contract term, the O&M Firm shall be responsible for transitioning the RMIS to the successor O&M Firm.

All Computer Equipment, Software, and Third Party Software provided under the O&M Agreement shall comply in all material respects with this scope of services. All Software and Third Party Software must be operated on Computer Equipment that is (a) acquired for the purposes of the O&M services described herein and (b) located in the State of Florida.

#### **2.6.1 Information Management Plan**

During the 60 Calendar days after the Notice to Proceed Date, the O&M Firm shall submit a detailed and comprehensive Information Management Plan to the Department for acceptance. The Information Management Plan shall provide, at a minimum, (i) an itemized list of Computer Equipment that the O&M Firm intends to purchase and a proposed schedule for purchase; (ii) an itemized list of all Software the O&M Firm intends to develop, procure, install, and/or use in order to operate, manage, and maintain the RMIS and perform the O&M Services; and (iii) details of O&M Firm's intellectual property security procedures. Within 30 Calendar days of its receipt, the Department shall review and accept the Information Management Plan or provide the O&M Firm with an itemized list of items or issues that the O&M Firm must revise. The O&M Firm shall provide the Department with a revised Information Management Plan within 30 Calendar days of its receipt of the Department's comments.

## **2.6.2 Computer Network**

### *2.6.2.1 Buildings and Facilities*

- The O&M Firm will house and operate the O&M Firm Computer Network in the OCC. The O&M Firm shall provide suitable environmental controls specifically for computer operational requirements within the OCC. This includes, but is not limited to, heat, air conditioning, air circulation, humidity controls, dust controls and vibration control as required by the computer hardware manufacturers' recommended specifications.
- The O&M Firm shall be responsible for providing adequate Uninterruptible Power Supply (UPS) units capable of providing surge protection and configured to perform automatic clean shutdown of hardware in the event of a power failure lasting longer than five minutes. The O&M Firm shall maintain UPS units in working order in accordance with the manufacturers' recommendations.
- The O&M Firm shall be responsible for wiring within the physical spaces occupied by the O&M Firm to achieve interconnection between computers in the O&M Firm Computer Network.

### *2.6.2.2 Hardware Requirements*

- During the term of the Agreement, the O&M Firm shall replace end-user computers used for the performance of O&M Services in accordance with the Department's policy to replace end-user computers every three years. The O&M Firm shall also replace any end-user computer that does not meet the software vendor's recommended configuration with new hardware as necessary.
- The O&M Firm should anticipate upgrading the entire Computer Network during the term of the O&M Agreement. During such event, the O&M Firm shall upgrade all hardware and software it has provided as part of the O&M Agreement to maintain software operations. The O&M Firm shall also upgrade any hardware and software provided by the DBM Firm over which the O&M Firm has assumed operational and maintenance control, to maintain software operations. During this upgrade process, the O&M Firm shall maintain the O&M Firm Computer Network integration and software operation in accordance with the terms of the O&M Agreement.
- The O&M Firm shall dispose of hardware properly in accordance with all applicable laws. The O&M Firm shall bear the cost of such hardware disposal.

### *2.6.2.3 Computer Network Configuration*

#### Network Protocol

The O&M Firm shall be responsible for the configuration of all hardware in the O&M Firm Computer Network according to the Department's Computer Network specifications. The DBM will also provide the existing DHCP (Domain Host Control Protocol) services to the O&M Firm to allocate IP addresses to hardware in the O&M Firm Computer Network. The O&M will expand on these settings as necessary or develop their own.

#### User Management

The O&M Firm shall be responsible for providing a server or servers, located in the State of Florida, to perform user authentication for O&M Firm personnel. The O&M Firm shall be responsible for server administration for managing users and network-connected hardware and software on the O&M Firm Computer Network. The O&M Firm shall also be responsible for managing the specific user accounts on the RMIS.

#### Network Security

- No O&M Firm staff or computers on the O&M Firm Computer Network shall be allowed access to any resources on the Department's Computer Network, except as specified in the Data Access section. No access will be required for the Department's staff to computers on the O&M Firm Computer Network being used by the O&M Firm solely for non-specified administrative functions.
- The O&M Firm shall be responsible for providing, configuring and administering routers, firewalls, switches, cabling, patch panels, and interconnection between the Neutral Zone and the O&M Firm Computer Network. "Neutral Zone" is defined as a network segment that is configured to allow specific Department staff access to the database servers; and to allow specific O&M Firm staff and computers on the O&M Firm Computer Network access to those same database servers.
- The O&M Firm shall be responsible for providing and following best-practice security methods for any connection from the O&M Firm Computer Network to an external network, including connection to a third-party Internet Service Provider or wide-area-network connection to another non-Department location. A "best-practice method" is defined as one that follows the recommendations of the server hardware manufacturer and network operating system vendor, in areas including but not limited to routers, firewalls, user permissions, virus scanning, e-mail content filtering and protection of key network passwords. The O&M Firm shall be responsible for maintaining the security methods in a current state at all times throughout the term of the O&M Agreement. This shall include: applying virus and worm patches at a frequency recommended by the Software Vendor; applying operating system and application software patches at a frequency recommended by the Software Vendor; and modifying policies and procedures as necessary to prevent unwanted human access to the RMIS or to prevent human-initiated events from causing harm to, or preventing the normal operation of the RMIS.

### Availability of Service

The O&M Firm shall configure hardware and software and perform procedures as required to maintain the O&M Firm Computer Network availability during the hours of commuter rail operation. Maintenance of network and database servers shall be scheduled at times that do not interfere with SunRail operations. The Department reserves the right to restrict the times when the O&M Firm may perform maintenance of network and database servers.

#### *2.6.2.4 Wireless Communication Hardware*

The O&M Firm shall provide mobile telephones and Personal Digital Assistants (PDAs) to its those staff members that perform O&M Services. The O&M Firm shall subscribe to a service for and maintain these wireless devices throughout the term of the O&M Agreement. Purchases are subject to approval by the Department.

#### *2.6.2.5 Ownership of Hardware, Software and Data*

- The O&M Firm shall provide computers for the CEO, COO, Safety and Security Administrator and Safety and Security Managers offices at the OCC.
- The right to possess and use three licenses for software will be made available for use by the Department upon purchase by the O&M Firm. All other licenses required for the performance of O&M Services shall remain for use by the O&M Firm. All costs related to implementation of the Information Management Plan shall be part of the Lump Sum Price.
- The O&M Firm shall retain title and ownership of the Computer Equipment.
- All Software and Third Party Software provided or used by the O&M Firm to perform the O&M Services, including without limitation custom software developed by or on behalf of the O&M Firm, shall be licensed to the O&M Firm through the Software License Agreement.
- All data shall be considered the property of the Department, and the RMIS shall be transferred to the Successor O&M Firm at Final Acceptance or the O&M Firm shall grant the Successor O&M Firm a license to use the RMIS while a replacement is implemented. Data may only be used by the O&M Firm for the performance of O&M Services and as defined in this Scope of Services.

### **2.6.3 Operational Requirements**

#### *2.6.3.1 Information Input, Storage and Retrieval*

The O&M Firm shall use the O&M Firm Computer Network and RMIS on a day-to-day basis for the input, storage and retrieval of information related to the O&M Services.

#### *2.6.3.2 Preparation of Required Reports*

The O&M Firm shall use the O&M Firm Computer Network and RMIS to produce the daily, weekly, monthly and annual reports required as part of the O&M Services. Refer to Section 11.1, Reporting and Recordkeeping Requirements for further information about reporting and a summary of required reports.

### *2.6.3.3 Data Access*

- The O&M Firm shall use the O&M Firm Computer Network and required Management Information Systems to allow real-time access to data related to the O&M Services from specifically identified Department staff. “Real-Time Access” shall mean that approved Department staff members shall be able to run an ad-hoc database queries to the database server on the O&M Firm Computer Network that returns results from the current records in the RMIS. The validity of the data at the moment of the query will depend on the operational timeframes that are identified in the Information Management Plan. The Department shall identify which Department staff members shall have real-time access to data in the RMIS.
- The O&M Firm shall be responsible for the installation, configuration and support of client-software components on the specifically identified end-user computers on the Department’s Computer Network. The Department will be responsible for all other network protocol configuration settings on computers on the Department’s Computer Network, and will be responsible for router and firewall settings to allow connectivity to the database server on the O&M Firm Computer Network.

## **2.6.4 Information Management Policies and Procedures**

O&M Firm Personnel or any other entity performing any O&M Services related to the operation, management or maintenance of the RMIS shall comply with the Department Data Security Policy, as amended. The Department shall assign a designee to interpret information policies and procedures, including determining what software are acceptable to be installed on the RMIS.

### *2.6.4.1 Operational Requirements*

- The O&M Firm shall use the RMIS:
  - On a day-to-day basis for the input, storage, and retrieval of information related to the O&M Services;
  - To produce reports required as part of the O&M Services as described in Section 11.1 Reporting and Recordkeeping Requirements;
  - To allow and provide real-time access to data related to the O&M Services by the Department staff and computers specifically identified by the COO; and
  - For all other tasks and services related to the provision of the O&M Services as the O&M Firm sees fit or as contemplated or required in this Scope of Services.

For purposes of this Contract, “real-time access” means that the O&M Firm must input into the RMIS, and the RMIS must make available to the Department, information regarding each day’s activities or occurrences as soon as is practicable, but no later than 24 hours after the activity or occurrence takes place.

- The Department shall use the RMIS:
  - To review, inspect and audit data;
  - To have real-time access to data; and
  - For all other purposes necessary to fulfill or maintain the Department’s rights and obligations with regard to the Rail System.

#### *2.6.4.2 IT Equipment Utilization Policy*

The O&M Firm shall operate and maintain all IT Equipment (hardware and software) in accordance with Department policies. The Department policies shall prohibit removing updates and upgrades without expressed approval, and prohibit removal of equipment from other than approved locations.

Additionally, O&M Firm policies shall prohibit the use of computer equipment used during the provision of O&M Services for activities that are illegal, for personal profit, or for purposes other than in direct support of the Department business requirements.

### **2.6.5 Data Security and Ownership**

#### *2.6.5.1 Warranties*

- **System Warranties.** The O&M Firm hereby warrants the RMIS, as a whole, for the Term of this Contract (the “RMIS Warranty Period”), as follows:
  - The RMIS shall comply in all material respects and shall be fit for its intended purposes as described in this Section.
  - The RMIS as a whole will be free from any defects in materials or workmanship.
  - The RMIS as a whole does not infringe upon or violate any patent or copyright or trade secret or proprietary right of any other party.
- **Software Warranties.** The O&M Firm hereby warrants the Software and Third Party Software for the RMIS Warranty Period as follows:
  - The Software and the Third Party Software are free of any defects and shall remain in a State of Good Repair.
  - The Software License Agreement grants to the Department all rights necessary to operate and maintain the RMIS free and clear of any rights of any other parties.
  - The Software and Third Party Software shall comply in all material respects with and shall be fit for their intended purposes as described in this Section.
  - The Software, the Third Party Software, and any portion thereof may not infringe upon or violate any patent or copyright or trade secret or proprietary right of any other party.
  - The Software shall operate in accordance with the System Documentation.
- **Exclusions.** The warranties provided for in this Section do not apply (i) if the RMIS is subject to damage or misuse due to fault or negligence of the Department or Third Parties; or (ii) to the extent maintenance, modifications, or repairs are provided with respect to the RMIS by the Department or Third Parties without the O&M Firm’s approval, and such services cause damage to the RMIS or cause the O&M Firm to be unable to perform the services hereunder or to be able to perform the services only at additional costs to the O&M Firm, which are not reimbursed by the Department.
- **Remedies for Breach of Warranty.** The Department shall notify the O&M Firm in writing of any breach of warranty pursuant to the O&M Agreement. The O&M Firm shall repair or replace at no cost to the Department the relevant articles, items, components, or materials constituting Computer Equipment and/or Software and Third Party Software so that the RMIS Computer Equipment, Software and Third Party Software comply with the relevant warranties as provided herein. The O&M Firm’s duty to repair or replace shall be the

Department's sole and exclusive remedy for any breach of warranty, except that the provisions of this Section shall not restrict or limit the Department from exercising any other remedies under this Scope of Services.

#### *2.6.5.2 System Documentation*

The O&M Firm shall provide the Department with copies of user documentation and user manuals with respect to the RMIS, including all Computer Equipment, Software and Third Party Software (collectively "System Documentation") which are sufficient for the Department to use, operate, and maintain the RMIS. The Department, at its own expense, may make additional copies of the System Documentation for its use in operating and maintaining the RMIS.

#### *2.6.5.3 Restrictions on Use of Data*

All data used in the performance of the O&M Services shall become property of the Department. The O&M Firm shall not copy, distribute, alter, sell, or re-use any data used to meet the requirements of this Scope of Services unless it is for the sole purpose of performing the O&M Services. Any action taken with such data outside of normal day-to-day operation shall be done only at the direction of the Department.

#### *2.6.5.4 Department Proprietary Information*

The Department retains all right, title, and interest in and to all proprietary data, documentation, and copies thereof furnished by it to the O&M Firm hereunder, including all copyright and other proprietary rights therein ("Department Proprietary Information"). The O&M Firm and its employees shall hold all such information confidential and shall not, without the prior written consent of the Department, use, disclose or offer, sell or license, or otherwise transfer to others any Department Proprietary Information or disclose any Department Proprietary Information. Notwithstanding the foregoing, the O&M Firm may provide Department Proprietary Information in response to any proper governmental or court demand therefore.

#### *2.6.5.5 O&M Firm Inventions*

The O&M Firm shall grant to the Department a perpetual, non-exclusive, irrevocable, royalty-free license to use any and all features of the RMIS that are developed by the O&M Firm or its employees, subcontractors, consultants, agents, or suppliers for the Department in accordance with the O&M Agreement (including all patent, copyright, trade secret, and other proprietary rights) ("O&M Firm Inventions").

#### *2.6.5.6 O&M Firm Cures for Infringement.*

Without limiting the generality of the foregoing or limiting any other remedies of the Department, if the RMIS or any item of Computer Equipment, Software, or Third Party Software or any portion thereof is held to constitute an infringement and its use is or may be enjoined, the O&M Firm shall, at the option of the Department: (i) modify (or require that the applicable subcontractor, consultant, agent or supplier modify) the alleged infringing portion of the RMIS, Computer Equipment, Software or Third Party Software, at the O&M Firm's sole expense, without materially impairing the functionality or performance of the RMIS, at the option of the

Department; or (ii) procure for the Department, without any cost to the Department, a license to use the infringing portion of the RMIS item of Computer Equipment, Software or Third Party Software.

#### *2.6.5.7 O&M Firm Notice of Infringement*

The O&M Firm shall immediately inform the Department in writing if any subcontractor, consultant, agent, or supplier providing goods or services to the Department on the O&M Firm's behalf is a party to any actual or threatened litigation involving patent or copyright infringement, trademark violation, antitrust, or other trade regulation or proprietary rights claim, or is or may become subject to any injunction which may prohibit it from providing Computer Equipment, Software, or Third Party Software. The Department may reject any Computer Equipment, Software, or Third Party Software that is the subject to any such litigation or injunction if, in the Department's judgment, use thereof would delay the implementation of the RMIS or be unlawful.

### **2.6.6 Information Systems Software**

#### *2.6.6.1 General*

##### Software Provided by the Department

The O&M Firm shall install, configure, operate and maintain software for use on the RMIS.

##### Electronic Mail

The O&M Firm shall be responsible for operating and maintaining a reliable, efficient Internet-enabled e-mail system that performs without substantial delay. Connection to an Internet Service Provider is the responsibility of the O&M Firm.

##### Use of Software and Hardware not required by the Department

It is expected that the O&M Firm may use software and hardware to perform administrative functions not specifically required by the Department for the performance of O&M Services. Hardware and software provided by the O&M Firm for the sole purpose of performing these non-specified administrative functions shall remain the property of the O&M Firm. The O&M Firm shall be entirely responsible for providing all equipment, installation, configuration, wiring infrastructure and maintenance for hardware and software the O&M Firm uses solely to perform non-specified administrative functions.

#### *2.6.6.2 Required Management Information Systems*

During the Mobilization phase, the DBM Firm shall transition the existing RMIS, which has been developed in support of the Maintenance Services specified in the DBM Agreement, to the O&M Firm. The O&M Firm shall operate, maintain, and install, as necessary, the RMIS to include provisions for each of a number of functional areas of the O&M Services. The following subsections describe each of the required functional areas, along with the O&M Firm responsibilities with respect to each required MIS. These systems and responsibilities are summarized in a table at the end of this section. The Department will provide a server with three functioning licenses of the existing RMIS for O&M Firm use.



The RMIS shall be fully operational and up-to-date within 30 calendar days before the Commencement Date. The O&M Firm also shall ensure that existing data is loaded into the RMIS prior to the Commencement Date.

In the event that the Department provides or approves the use of another MIS to replace any current MIS, the O&M Firm shall operate and maintain such new system.

#### *2.6.6.3 Existing RMIS*

The existing RMIS includes provisions for the following functional areas:

##### Maintenance Facility Activity Monitoring System

The Maintenance Facility Activity Monitoring System will be used to monitor O&M Firm activities at maintenance facilities on the Service Property. Using this system, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of each facility on the Service Property (including buildings, stations and layover facilities) with a unique identifying number; (ii) recording required tests and inspections; (iii) recording preventive, predictive and corrective maintenance activities; (iv) scheduling and control of predictive, preventive, and corrective maintenance programs and associated labor and materials; (v) issuing work orders and purchase orders; (vi) issuing facility status and repair reports; (vii) retaining up to three (3) years worth of information on predictive, preventative and corrective maintenance for each facility or component to produce and analyze trends; and (viii) interfacing with the Engineering Maintenance MIS and Non-Revenue Vehicle MIS. The O&M Firm shall procure and incorporate a Maintenance Facility Activity System into the comprehensive RMIS and, upon approval by the Department, shall operate and maintain such system.

##### Maintenance of Way MIS

The Maintenance of Way MIS is the primary MIS that will be used to monitor O&M Firm inspection and maintenance of all Service Property other than facilities. Using the Maintenance of Way MIS, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of each component of railroad infrastructure on the Service Property (including track, Right-of-Way and associated components; grade crossing systems; signals and communication systems; and electrical systems) with a unique identifying number; (ii) recording required tests and inspections; (iii) recording preventive, predictive and corrective maintenance activities; (iv) scheduling and control of predictive, preventive, and corrective maintenance programs and associated labor and materials; (v) issuing work orders and purchase orders; (vi) issuing status and repair reports for railroad infrastructure components; (vii) retaining up to three (3) years worth of information on predictive, preventative and corrective maintenance for each railroad infrastructure component to produce and analyze trends; (viii) interfacing with the Maintenance Activity Monitoring System, and the Non-Revenue Vehicle MIS; and (ix) recording information necessary for warranty administration.

### Materials MIS

The Materials MIS is the primary MIS used to monitor O&M Firm materials control and handling. Using the Materials MIS, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of all existing materials and parts; (ii) optimizing stocking of materials and parts; (iii) calculating the costs of materials and parts used for work orders; (iv) controlling the ordering of materials and parts; and (v) tracking specific materials, budgets and project costs. The Materials MIS shall also: (a) automatically calculate the appropriate order level and order quantity for an inventory item, based upon inventory turnover, order frequency and expected delivery time; and (b) have the capability for the automatic calculation to be overridden by manual input for each inventory item.

The Materials MIS shall record the following types of information:

- 1) Inventory identification and description
- 2) Location identification and description
- 3) Manufacturer
- 4) Number of units on hand
- 5) Unit cost
- 6) Main supplier and alternative supplier
- 7) DBE status of suppliers
- 8) Number of units ordered and total cost per the Department's Fiscal Year
- 9) Total dollar value paid to each supplier during each the Department's Fiscal Year
- 10) Delivery time from when order is placed
- 11) Level at which an order shall be placed
- 12) For spare parts, list the equipment items(s) for which they are spares
- 13) Maintenance performed by piece of equipment coded by type (predictive, preventative, or ordered) and the staff-hours, parts and materials for providing such maintenance.

The O&M Firm shall separately identify and track materials used for Extra Work Projects in the Materials MIS.

### Financial MIS

The Financial MIS is the primary MIS used to monitor O&M Firm financial activity related to the performance of the O&M Services. Using the Financial MIS, the O&M Firm shall perform activities including, but not limited to: (i) recording daily ticket sales and revenues collected and deposited by the O&M Firm; (ii) recording Direct Costs and producing invoices associated with Force Account Work; (iii) recording Direct Costs and producing invoices associated with Service Changes until such time as a fixed price for the Service Change is established; (iv) reporting on DBE compliance; and (v) tracking receipts from sale of scrap materials, and purchases of supplies and materials from same.

### Permits and Licenses MIS

The Permits and Licenses MIS is the primary Management Information System used to manage permits, licenses and certifications necessary for the performance of O&M Services. Using the Permits and Licenses MIS, the O&M Firm shall record information including, but not limited to: the name of the permit, license, or certification; the applicable law or regulation; the governing agency or regulatory body; the name under which the permit, license, or certification is filed; and status information, including date of last application or renewal.

#### *2.6.6.4 Updates to the Existing RMIS*

The O&M Firm will need to procure and incorporate the following systems into the comprehensive RMIS. Upon approval from the Department, the O&M Firm shall operate and maintain such systems.

### Fleet Management System

The Fleet Management System will be used for fleet management and monitoring the O&M Firm maintenance of the Service Equipment. Using this system, the O&M Firm shall perform activities including, but not limited to: (i) recording vehicle histories, including dates and serial numbers of components, to be used for fleet performance analysis; (ii) recording the maintenance work on systems and components for reliability and warranty analysis; (iii) tracking the warranty of individual components and complete vehicles; (iv) maintaining the availability of the Service Equipment, including coordination regarding seat requirements and vehicle assignments; (v) providing hardcopy reports of vehicle histories to improve field troubleshooting; (vi) providing a vehicle-specific work order system for vehicle maintenance including the reporting of open work orders; (vii) recording and tracking defects by date, train, location, symptom, failure, and action; (viii) tracking in-service failures by date, time, train, location, symptom, failure, and action; (ix) recording and tracking mileage of each vehicle; (x) providing labor and material detail for warranty claims; (xi) providing status of modification and retrofit programs; and (xii) demonstrating compliance with FRA 49CFR238.105 and other regulatory requirements.

As part of the O&M Firm's fleet management activities, they must keep written forms documenting the maintenance performed on each vehicle. These forms must include the signature of the employee and supervisor conducting the maintenance, and detail the maintenance and corrective action procedures occurring at each inspection. These forms must be approved by the COO. In addition, repairs, adjustments, cleaning, inspections and renewals shall be promptly recorded so as to minimize the delay between the O&M Firm activities and recording of these activities. The O&M Firm shall update records within 24 hours of the completion of each maintenance and inspection activity.

A Maintenance Management System shall be included as part of the Fleet Management System. The MMS shall provide the following:

- The MMS shall become the property of FDOT.
- At a minimum, the system shall be capable of tracking resources applied to maintenance (labor, materials, shop space, etc.).

- FDOT shall have full access to the MMS through a direct network connection to the MMS server.
- O&M Firm shall provide to Amtrak a work station, software, license, training to input data for heavy maintenance and Preventive Maintenance at the Amtrak Sanford Yard AutoTrain
- The MMS shall be a relational database capable of creating flat file records for tracking work orders, material consumption and other resources associated with work performed on each vehicle.
- The MMS shall also be capable of tracking vehicle reliability and other measures of vehicle performance. The system shall account for vehicle availability by tracking vehicle status on a real-time basis.
- The MMS shall be capable of generating reports that utilize the data stored in the above records.
- The MMS shall retain all inspection reports required by the Code of Federal Regulations.
- The MMS shall be capable of tracking inspection dates and generating a schedule of required inspections for the fleet.

MMS Work Orders shall, at a minimum, capture the following information:

- Vehicle Number;
- Date Out-of-Service;
- Date and Time Work Started;
- Employee(s) Assigned to Perform Work;
- Work Location;
- Symptom or Trouble Code for Reason Vehicle is Shopped;
- Work Code for Work Task(s) performed (if multiple tasks are performed, they must be listed individually for tracking purposes);
- Labor Hours (by person) for the Work Task(s) Performed (if multiple tasks are performed, the hours must be listed individually for tracking purposes);
- Material Removed from the Vehicle (code for type and serial number);
- Material Applied to the Vehicle (code for type and serial number);
- Warranty Information;
- Supervisor Sign-off; and
- Date and Time Returned to Available Revenue Service Fleet.
- Material re-order requests

#### Non-Revenue Vehicle Maintenance MIS

The Non-Revenue Vehicle Maintenance MIS is the primary MIS that will be used to monitor and track O&M Firm maintenance of non-revenue vehicles and other Support Equipment used in performance of the O&M Services. Using the Non-Revenue Vehicle Maintenance MIS, the O&M Firm shall perform activities including, but not limited to: (i) maintaining an inventory of each non-revenue vehicle and piece of equipment, with a unique identifying number; (ii) recording required tests and inspections; (iii) recording preventative, predictive and corrective maintenance activities; (iv) scheduling and control of predictive, preventative, and corrective maintenance programs and associated labor and materials; (v) issuing work orders and purchase orders; (vi) issuing status and repair reports for each non-revenue vehicle or piece of equipment;

(vii) retaining up to three (3) years worth of information on predictive, preventative and corrective maintenance for each non-revenue vehicle and piece of equipment to produce and analyze trends; and (viii) interfacing with the Maintenance Activity Monitoring System and the Engineering Maintenance MIS.

#### Human Resources MIS

The Human Resources MIS is the primary MIS that will be used to monitor O&M Firm management of its personnel involved in performing O&M Services. Using the Human Resources MIS, the O&M Firm shall record information that includes, but is not limited to: employee certifications and qualifications; training received; disciplinary actions; drug and alcohol program status; and employee roster and assignments. The Human Resources MIS must include an interface to the Train Operations Monitoring System.

#### *2.6.6.5 Other Systems*

##### Train Operations Monitoring System

A Train Operations Monitoring System will be used to monitor the O&M Firm's operation of the Department's commuter rail services. Using this system, the O&M Firm shall record information that includes, but is not limited to, information about train movements including train number, date, equipment, crew members, detailed delay information and causes, and number of passengers carried. Refer to Section 2.4, Transportation, for further information about the O&M Firm's responsibilities in this area. The O&M Firm shall procure and install a Train Operations Monitoring System, and thereafter shall operate and maintain the system. The Train Operations Monitoring System is not required to be included as part of the comprehensive RMIS.

##### Dispatching System

A Dispatching System and additional systems required by the AAR will be used to provide train dispatching services for all lines in the Service Property that are under the dispatch control of the Department. The O&M Firm shall direct, supervise and control the movement of all trains on such lines, including but not limited to the Department's commuter rail trains, freight railroad trains, and other inter-city passenger trains. The O&M Firm shall be responsible for procuring, installing, operating and maintaining the Dispatching System, including all software and hardware components. Refer to Section 2.4, Transportation, for further information about O&M Firm responsibilities in this area. The Dispatching System is not required to be included as part of the comprehensive RMIS.

**Table 2.8-1 – Required Management Information Systems**

<b>Management Information System</b>	<b>Purpose of MIS</b>
Train Operations Monitoring System (not required to be included as part of the comprehensive RMIS)	Monitor O&M Firm operation of the Department's commuter rail services
Dispatching System (not required to be included as part of the comprehensive RMIS)	Provide train dispatching services for all lines in the Service Property under the dispatch control of the Department
Maintenance Activity Monitoring System	Monitor O&M Firm activities at maintenance facilities on the Service Property
Maintenance of Way MIS	Monitor O&M Firm inspection and maintenance of all Service Property other facilities
Fleet Management System	Manage the commuter rail fleet and monitor O&M Firm maintenance of Service Equipment
Non-Revenue Vehicle MIS	Monitor O&M Firm inspection and maintenance of non-revenue vehicles and other Support Equipment
Materials MIS	Monitor O&M Firm materials control and handling
Human Resources MIS	Monitor O&M Firm management of its personnel involved in performing O&M Services
Financial MIS	Monitor O&M Firm financial activity related to the performance of O&M Services
Permits and Licenses MIS	Manage permits, licenses and certifications necessary for the performance of O&M Services

**2.6.7 Asset Accounting, Inventory and Disposition**

All current Department-owned assets, including computer hardware and software, paid for by the Department and future procurements shall be clearly marked with asset labels identifying the Department as the equipment owner and identifying each asset with a unique ID number.

A Department master list of all supplied equipment shall be signed by the O&M Firm upon delivery. A copy of the signed inventory list shall be kept by both parties. Periodic inventories, not less than one per year, shall be performed by the O&M Firm, who will certify that all equipment is accounted for and in working condition, or has been declared surplus and is available for Department-directed disposition.

All IT equipment provided or owned by the Department shall be returned to the Department upon termination of the Agreement with the O&M Firm in useable condition, normal wear and tear excepted. All equipment purchased using Department funds shall become the property of the Department, and all surplus equipment shall be returned to the Department for disposition.

### **2.6.8 Business Continuity and Disaster Recovery**

The O&M Firm shall develop, provide, implement, and periodically test a disaster recovery and backup procedure for the RMIS. The O&M Firm shall restore data and network operations in the event of a failure or other occurrence related to the RMIS that delays or prevents the availability of accurate data on a real-time basis at all times during the Term of the Contract in accordance with the standards established in this Scope of Services. The O&M Firm shall provide an off-site location for storage and periodic backup of data. The O&M Firm shall, when necessary, restore or regenerate all software and data in order to seamlessly operate and maintain the RMIS.

The O&M Firm shall continue to meet reporting and deliverable requirements as described in Section 11.1 Reporting and Recordkeeping Requirements, without regard to the operational status of the RMIS or any component thereof.

## **SECTION 2. SCOPE OF SERVICES**

### **2.7 SYSTEM SAFETY AND SECURITY**

The safety and security of passengers, employees, and the surrounding communities shall be the primary concern of the O&M Firm in the performance of O&M Services. The O&M Firm will manage safety and security for the CFRC and SunRail with strict adherence to the procedures and standards set forth in this O&M Agreement, all applicable safety and operating rules, all safety provisions of the Scope of Services, and Federal, State, and local regulations.

Safety and security plans, training and activities for the Project will be coordinated as appropriate with the Department, Department contractors, freight and passenger railroads, and outside agencies including the Federal Transit Administration (FTA), Federal Railroad Administration (FRA), Florida Safety and Security Oversight (SSO), Department of Homeland Security (DHS), Transportation Security Administration (TSA), the Department's Central Office (deemed external for purposes of state safety oversight of the Fixed Guideway Transit System per Florida Statutes), counties and local municipalities having jurisdiction.

#### **2.7.1 Mobilization of O&M Firm**

The O&M Firm will assist the Department to develop policies and procedures to ensure coordination and compliance with existing safety and security standards and practices. The O&M Firm will assist the Department to provide the FRA with access to 49 CFR test procedures and results and any other documentation, information, and procedures necessary to satisfy FRA requirements for approval of start of revenue operations.

The SSMP identifies O&M Firm participation in Project committees that have a safety and security component. These specific assignments are described in Table 3, Safety and Security Responsibility and Authority of the SSMP. At a minimum, the O&M Firm will provide appropriate management representation on the following committees: Safety and Security, Safety and Security Certification, and Fire/Life Safety.

During the rail activation process to transition the Project from construction to revenue service, the O&M Firm will be responsible to develop, execute and/or revise, as required, safety and security plans. These documents are described in more detail in the sections below. To meet FRA/APTA, FTA and SSO safety oversight requirements for new commuter rail operations, these plans and subordinate activities must be completed as specified in Section 2.2 and include, at a minimum:

- System Safety Program Plan (SSPP)
- System Security Plan (SSP) and subordinate Safety and Security Emergency Preparedness Plan (SEPP)
- Safety Integration Plan (SIP)
- Passenger Train Emergency Preparedness Plan (PTEPP)
- Operations and Support Hazard Analysis (OHA)



In addition, the O&M Firm will comply with and support the Department's review and revision of the other Project safety and security plans, including the Safety and Security Management Plans and the Safety and Security Certification Plans for all Project phases.

### **2.7.2 O&M Firm Safety Management**

The O&M Firm has the responsibility to provide a Safety Manager with previous rail safety experience to ensure compliance with all requirements of this section. In addition, the O&M Firm will provide a supervisor qualified as a certified locomotive engineer and able to perform the duties of the Designated Supervisor of Locomotive Engineers (DSLE) under FRA Regulation Part 240. The DSLE may be the Safety Manager or hold another supervisory position in the Transportation Department. The DSLE will be responsible to test and evaluate skills and abilities of O&M Firm Locomotive Engineers and Student Engineers.

The O&M Firm's safety management duties will include, but are not limited to, auditing of rail operations and maintenance activities for compliance with Department, Federal, and State requirements including operating rules testing; 24 hours per day, seven (7) days a week to respond to all accidents or safety-related incidents; accident and incident investigation; assisting the Reporting Officer for Federal and State reporting requirements; use the Rail Management Information System (RMIS) for the purpose of entering safety-related information such as identified hazards, corrective actions, training records, accident/incident information, and audit reports (both internal and external), available to the Department and FRA upon request; completion of an annual internal audit to determine compliance with the SSPP and SSP; establishment and staffing of emergency operations; participation in the tri-annual SSPP and SSP third-party audit; coordination of required Emergency Response Drills with local agencies and in compliance with the PTEPP; coordination and participation of all safety and security committees and meeting requirements for these committees; participation in the Rules and Operating Practices Committee; oversight of O&M Firm training requirements as identified in the SSPP and SSP; handling of all environmental and employee health issues; and other duties as required by the O&M Agreement or as assigned by the Department.

The O&M Firm may use CFRC safety documents generated by the DBM Firm as source documents. All safety deliverables described in the SSPP must be submitted for Department approval at least 60 days prior to Revenue Operations Date, will be updated annually to be consistent with the most current version of the SSPP and will be submitted to the Safety and Security Manager for review and approval no later than December 31 each year. The System Safety Programs shall be created and published for CFRC/SunRail as CFRC/SunRail-specific documents. Investigation reports, forms and files shall be identified as CFRC/SunRail. The O&M Firm's standard "corporate" safety program and forms shall not be used.

The O&M Firm shall comply with all aspects of SOP S190.01 - Sensitive Security Information (SSI). All O&M personnel who interface with the Project and that originate or have access to or receive SSI related to this Project shall provide maximum distribution of this SOP throughout their organizations and among all of their contractors, grantees, consultants, licensees, and regulated entities that originate or have access to or receive SSI related to this Project. Such employees, individuals, persons, entities, and organizations are subject to the safeguarding and

non-disclosure restrictions of 49CFR15 and 49CFR1520 and this SOP. The O&M Firm shall bear the cost and be responsible for training requirements as outlined in the SOP.

### **2.7.3 Safety Rulebook**

The O&M Firm shall develop for the Department's approval a safety rule book for the CFRC. The O&M Firm shall use the current version of the CSX Safeway and any project-specific Safety Rules developed by the DBM as source documents. The document shall be ready for the Department's review and approval no later than 90 days prior to the Commencement Date. At a minimum, all employees shall complete safety training in accordance with these rules before commencing work on the Service Property and will be required to have appropriate identification while on duty to indicate they have received safety training. The O&M Firm shall conduct regular safety meetings and other safety programs for all employees. All supervisors shall be responsible for continuously monitoring the work operations of subordinates, correcting hazardous job practices and educating subordinates in safe job procedures.

The O&M Firm shall ensure that the Safety Rule Book is accessible, through electronic or print copy, to all employees whose duties are affected by these rules. The O&M Firm will also provide these rules to Project contractors, the Department's representatives, third party contractors, and regulatory agencies as necessary.

### **2.7.4 System Safety Program Plan (SSPP)**

The O&M Firm's Safety and Security Administrator shall oversee development of the System Safety Program Plan in conformance with all federal and other legal requirements, regulations, and standards, addressing the 23 elements recognized as good management practices for attaining effective controls on safety and security described in the current APTA Manual for the Development of System Safety Program Plans for Commuter Railroads. The O&M Firm will submit this document to the COO for review and approval. The O&M Firm may use both the SSPP generated during the construction period and the current Project SSMP as source documents for the development of this plan. The SSPP must be completed no later than 180 days prior to revenue service. The O&M Firm is responsible for developing and implementing the plans and programs identified within the SSPP in addition to those safety and security plans specified in this Section, and for taking all precautions, which are reasonable and necessary to safeguard against risks in the performance of O&M Services. The O&M Firm shall utilize an "All-Hazards" approach whereby the risks and mitigations identified hazards analyses, threat and vulnerability analyses, and capabilities assessments are considered simultaneously to facilitate the effective application of resources to reduce all risks. The O&M Firm shall update the plan annually, 30 days prior to the anniversary date of the initial plan submittal and shall detail the O&M Firm's safety policies, procedures and programs. O&M Firm's recommended revisions to the SSPP shall be submitted to the Department for approval prior to implementation. The O&M Firm and the Department shall be signatories to the SSPP to indicate agreement and compliance.

### **2.7.5 System Security Plan (SSP)**

The O&M Firm shall develop the SSP in conformance with all federal and other legal requirements, regulations, and standards and FRA, DHS and FTA guidance manuals. The O&M

Firm may use both the SSP generated during the construction period and the current draft of the SEPP as source documents for the development of this plan. The SSP must be provided to the Department for review and approval no later than 180 days prior to the Commencement Date. The O&M Firm shall update the plan annually, 30 days prior to the anniversary date of the initial plan submittal and shall detail the O&M Firm's security policies, procedures and programs. The O&M Firm is responsible for the interpretation, application and administration of security policies derived from the SSP.

The O&M Firm will coordinate with the Department to facilitate collaboration with DHS, local public safety and emergency planning agencies and other outside organizations during the development and revisions of this SSP. Within this Plan, the Safety and Security Administrator will have the primary role as the Rail Security Coordinator for liaising with the Transportation Security Administration. The O&M Firm will designate alternates with appropriate qualifications to ensure coverage at all times and days of the week.

The SSP may contain Security Sensitive Information (SSI), as described in the (SSI) 190.01 SOP. The O&M Firm is subject to the safeguarding and non-disclosure restrictions of 49CFR15, 49CFR1520 and SOP S190.01 - Sensitive Security Information in the handling of this document.

The O&M Firm shall register with e-RAILSAFE SHORTLINE and provide for e-RAILSAFE SHORTLINE employee security clearance for O&M Firm personnel and facilitate the registration of third-party contractors as part of the Corridor Management process for the CFRC.

### **2.7.6 Security and Emergency Preparedness Plan (SEPP)**

During the O&M mobilization period, the O&M Firm will develop a Security and Emergency Preparedness Plan (SEPP) that contains safety and security emergency preparedness policies, procedures, goals and objectives. Whereas the PTEPP under 49CFR239 describes the procedures and policies for SunRail commuter trains, the SEPP will describe emergency preparedness for the entire corridor, including facilities such as the VSMF and the station sites. This Plan will also effectively address preparation, cessation of operations and recovery from conditions resulting from major storms, such as hurricanes and tornadoes, and other natural occurrences that could disrupt railroad services.

The O&M Firm will ensure that the OCC and CFRCC can fulfill the function of an Emergency Operations Center (EOC) that is capable of sustaining and controlling CFRC/SunRail operations and communications for a minimum of 72 hours during a prolonged emergency. In addition to guidance provided by APTA and FTA, the O&M Firm will be provided with the current CFRC draft of the SEPP as a source document.

All O&M personnel are required to adhere to the policies, procedures, and requirements stated in the SEPP and to properly and diligently perform the security and emergency response-related functions of their jobs as a condition of employment. This document must be available for review by the regulatory agencies no later than 180 days prior to revenue operations.

The SEPP should also describe the process for identifying the critical risks to organizational readiness, the strategies that best mitigate the risks, planning for service recovery and a

Continuity of Operations Plan (COOP) to ensure the survival and recovery of SunRail commuter service critical operations, including, but not limited to communication capability, RMIS, staffing, payroll, and infrastructure. In the event that the OCC facilities cannot be used as an Emergency Operations Center (EOC), the O&M Firm shall staff an alternate EOC provided by the Department at a location other than the OCC that is capable of independent operations for a minimum of 72 hours during a prolonged emergency.

National Incident Management System (NIMS) training from Federal Emergency Management Agency (FEMA) will be required for managers along with training on standardized emergency management system from Florida's Division of Emergency Management/Regional Emergency Operation Centers. In addition, the O&M Firm shall plan for and staff the alternate EOC for one field drill/exercise and one table top/EOC drill annually, coordinated with the Department and regional EOC activities as appropriate. The O&M Firm shall include outside agencies, as necessary. The O&M Firm's Safety and Security Administrator shall collaborate with the Department of Safety and Health Manager during the planning stage of all emergency preparedness exercises and must submit an Incident Command System (ICS) compliant exercise plan for the Department approval no less than 60 days prior to any intended exercise.

The SEPP will contain Security Sensitive Information (SSI), as described in the (SSI) 190.01 SOP. The O&M Firm is subject to the safeguarding and non-disclosure restrictions of 49 CFR Part 15 and 49 CFR Part 1520 and SOP S190.01 - Sensitive Security Information in the handling of this document.

### **2.7.7 Safety Integration Plan (SIP)**

The SIP provides for effective communications and coordination between the railroads operating on the Corridor (CSXT, Florida Central Railroad (FCEN) and Amtrak), the Department and the O&M Firm and details the notification sequence for accidents and incidents reported to the Dispatcher and the CFRCC. Initiated during the Final Design phase of the Project, the SIP will continue to be updated during all phases through start-up of revenue operations. The O&M Firm shall be a party to this SIP, adhere to the principles and procedures of the plan and provide recommendations and comments when necessary to improve on the plan. The O&M Firm will take responsibility to implement the plan for themselves and the other applicable parties and be accountable for the standards set forth in the plan.

During the mobilization period, the O&M Firm will take part in the Safety Observation Program described in the SIP. Representatives of the O&M Firm will conduct safety observations independently or jointly with other Project representatives, including those railroads operating over the Project corridor. The O&M Firm will assume the responsibility to manage the Safety Observation Program at revenue service. These duties will include maintenance of the observation database, and preparing reports to be presented at Safety and Security meetings.

### **2.7.8 Safety and Security Certification**

The Safety and Security Certification (SSC) process culminates in the Project's self-certification of the SunRail service, as evidenced by a Project System Safety and Security Certificate and a Final Verification Report.

The O&M Firm will participate in testing and integration activities with the DBM Firm, CEI Consultant, Rolling Stock Manufacturer representatives and the Department's designee during the Pre-Revenue Operations phase of the Phase 1 (IOS) Project and future Phase 2 South Project. All testing subject to the provisions of the CFR Title 49 will be performed according to those standards and test procedures and will comply with the requirements.

Safety and security operational readiness by the O&M Firm will be verified during the SSC process. This may include, but is not limited to the following:

- Applicable operations, maintenance, and emergency procedures, and plans have been developed, reviewed and implemented;
- Manuals and Standard Operating Procedures (SOP), showing how to operate and maintain systems equipment and facilities have been developed, reviewed, approved, and accepted;
- Safety/security-related training for operations and maintenance personnel has been developed, performed and successfully completed by all personnel as required;
- Emergency drills and training has been developed, performed, and successfully completed by all O&M personnel as required, including local emergency medical services (EMS), fire services, law enforcement and Department of Homeland Security (DHS);
- Emergency and training have been conducted with outside agencies, evaluate response procedures and identify improvements to response procedures before a real emergency occurs.

The Safety and Security Certification Committee (SSCC) will review safety and security certification documentation provided by the contractors. As necessary, the SSCC will elevate open issues to the Safety and Security Administrator and the Executive Safety and Security Committee for review. The O&M Firm will appoint a representative and alternates to participate as a member of the SSCC, to begin during the O&M mobilization period and continuing into revenue service.

Once revenue service is initiated, the O&M Firm will not make modifications to the system that impact safety and security without prior written approval by the COO, unless immediate repair is necessary to ensure the safety and security of employees and users of the system. Where system modifications are necessary, the O&M Firm will conduct hazard analysis and ensure that the results are reviewed by the Safety and Security Committee to determine safety/security certification, in accordance with the SSPP. All work shall be subject to any applicable rules or regulations of the FRA and subject to Department review.

### **2.7.9 Roadway Worker Protection**

At mobilization, the O&M Firm will be provided with the CFRC Railroad Worker Protection Safety Plan and will be required to comply with all aspects of it. During the mobilization period the O&M Firm will participate in the development of revisions to the CFRC RWP Safety Plan, in preparation for submission to the FRA no later than 90 days before revenue service.

The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work on the

CFRC. The O&M Firm shall ensure that all affected persons comply with the program through an audit and inspection program.

The O&M Firm shall ensure that the CFRC RWP Safety Plan is accessible, through electronic or print copy, to all those required to comply with this plan.

#### **2.7.10 Passenger Train Emergency Preparedness Plan (PTEPP)**

The O&M Firm's Safety and Security Administrator will oversee completion of the Joint CFRC Passenger Train Emergency Preparedness Plan (PTEPP) for SunRail and Amtrak passenger rail services as required by 49CFR239, in preparation for submission to the FRA no later than 45 days before revenue service. The O&M Firm will be provided with the current CFRC PTEPP as a source document (Attachment 20) and the CFRC/Amtrak Operating Agreement as reference.

#### **2.7.11 Facility and Station Inspections**

The O&M Firm shall conduct safety inspections of system facilities, including scheduling, assignments of responsibility and method of documentation as defined in the SSPP and in accordance with the O&M Agreement. Copies of inspection reports shall be forwarded to the Department and findings of said inspections shall be recorded by the O&M Firm in the RMIS.

#### **2.7.12 Hazards Involving Projects**

The SSPP defines the hazard management role of the O&M Firm, including organizational structure and responsibility to halt hazardous practices for the all contractors performing work on CFRC property.

The O&M Firm shall complete all pre-revenue service emergency preparedness training and simulation activities of the plan. The O&M Firm shall perform Operations and Support Hazard Analysis (OHA) during Phase 1 (IOS) mobilization period and Phase 2 South pre-revenue service to identify and analyze hazards associated with personnel and procedures during installation, testing, training, operations, maintenance, and emergencies. The OHA is conducted on all tasks and human actions, including acts of omission and commission, by persons interacting with the system, subsystems, and assemblies, at any level. Particular emphasis will be on dispatcher, train and engine crews, CFRCC and Customer Service operations

The OHA will provide for corrective or preventive measures to be taken to minimize the possibility that any human error or procedure will result in injury or system damage. This includes recommendations for changes or improvements in design or procedures to improve efficiency and safety, development of warning and caution notes to be included in manuals and procedures, and special training of O&M personnel. The OHA will be reviewed on an annual basis to provide an updated list of recommendations.

#### **2.7.13 Injury Statistics**

The O&M Firm shall furnish to the Department a monthly report, including the number of FRA reportable employee injuries, in a format approved by the Department.

#### **2.7.14 Accident and Incident Investigation and Reporting**

The O&M Firm will be required to comply with all aspects of the CFRC Internal Control Plan (Attachment 19) which will be provided to the O&M Firm upon mobilization. The Safety and Security Administrator, as the designated Regulatory Reporting Officer, has the responsibility to review and submit FRA required documents and reports on a monthly basis.

The O&M Firm shall immediately investigate all accidents, incidents, injuries to employees or passengers, or damage to Service Property or Service Equipment. The Safety and Security Administrator shall immediately be notified of any such incidents as specified in CFRC Internal Control Plan. Investigations must be documented on appropriate forms as prescribed in the CFRC's Internal Control Plan for Accident and Incident Reporting. Completed investigative reports must include a brief narrative description of the accident/incident, a description of the immediate remedial actions taken by the O&M Firm, corrective actions outlining steps the O&M Firm will take to prevent the occurrence of the accident/incident in the future, and any applicable supporting documents. The O&M Firm will submit all investigation reports and required forms to the Department.

The O&M Firm shall also enter all incident and injury information into the RMIS within 48 hours of the incident. The O&M Firm shall designate a reporting officer as the primary contact for all reporting requirements, and the O&M Firm's reporting officer, as the O&M representative on the Safety and Security Committee, will report to the Committee the previous month's incidents and on-going issues involving reporting compliance.

The O&M Firm is responsible for ensuring that investigation and reporting requirements are included in any contracts or subcontracts entered into by the O&M Firm; said contracts will be approved by the Safety and Security Administrator. The O&M Firm is responsible for ensuring that O&M personnel receive National Incident Management System (NIMS) training appropriate to their job classification and responsibilities.

During any accident or incident the COO and the O&M Firm shall take whatever action is necessary to protect the safety, health, and welfare of the SunRail, its passengers and employees, and the general public.

During any emergency the COO and the O&M Firm shall take whatever action is necessary to protect the safety, health, and welfare of the SunRail, its passengers and employees, and the general public. After the conclusion of an emergency, the O&M Firm shall prepare a written report for the COO that will be provided to the Commission and Technical Advisory Committee (TAC) for their advice, within their respective roles, on any improved activities, methods, or equipment that could prevent or mitigate future emergencies.

Nothing in this section shall relieve the O&M Firm from notification requirements found elsewhere in this Scope of Services that require notification of accidents, incidents, or hazards to the Department officers. Final closeout reports of accidents or incidents provided to the COO shall contain summaries of discipline assessed, if any, and any recommended changes in operations, rules, standards or training resulting from the accident or incident investigation.

### **2.7.15 Revision of Safety Practices**

The O&M Firm shall, with prior COO written approval, revise its SOPs, emergency response practices, training techniques, or reporting practices if it is revealed to the O&M Firm through industry communiqué, employee communications, or the Department communication that such revisions will assist in the reduction or prevention of injury or loss of life to its employees, SunRail passengers, Department employees, the surrounding community, or Service Equipment or Property.



## **SECTION 2. SCOPE OF SERVICES**

### **2.8 INCIDENT MANAGEMENT AND SERVICE NOTIFICATIONS**

In the event of Service Delays, Service Disruptions or other incidents that impact commuter rail services, and pursuant to this Section and any other applicable provisions of this Incident Management and Notifications Scope of Services, the O&M Firm shall establish the Central Florida Rail Coordination Center (CFRCC) desk within the OCC facility. The CFRCC is responsible to communicate information to emergency responders, government agencies and designated CFRC officials, providing instructions and information on the nature and extent of the emergency and any/all other applicable information that may be necessary or required in order to affect the proper degree of emergency response. CFRCC shall make notifications in accordance with the CFRC SIP and PTEPP, investigate such delays and disruptions, and prepare reports. The CFRCC will have work stations available to facilitate two operators on duty 24/7 and onsite management oversight of CFRCC operations. The CFRCC will include hardware and software components as specified in Section 2.2.

In addition, the O&M Firm shall maintain the CFRCC emergency telephone number (1-877-CFL-RAIL/1-877-235-7245) that the O&M Firm will staff 24 hours a day, seven (7) days a week, to provide a means for the general public to report safety, security and environmental issues that occur on the Corridor. CFRCC personnel have the responsibility to forward to the Train Dispatcher and emergency responders any information that will impact train movement or compromise Corridor safety and security. If emergency response personnel need to communicate with a passenger train operating on CFRC tracks they must contact the CFRCC.

Notwithstanding any definition or provision in the O&M Agreement to the contrary, the O&M Firm's failure to follow these procedures and to provide the required notification information shall be considered a material breach of the terms of the O&M Agreement. The COO reserves the right to change the notification procedures identified herein at any time during the term of the O&M Agreement.

#### **2.8.1 Notification of Delays**

##### *2.8.1.1 Notification Sequence*

O&M Firm shall provide immediate notice to the COO of Service Delays in the following sequence:

- 1) Telephone call to the Operations Control Center (OCC) Train Dispatcher.
- 2) General electronic message to Department-specified officials at the instructions of the COO.
- 3) Notification to Customer Service Desk of information to be broadcast on public notification systems.

##### *2.8.1.2 Management During Service Delays*

The O&M Firm shall provide phone updates to the Passenger Service Desk and electronic updates to Department officials in a timely manner, approximately every 15 minutes for service delays that do not require emergency responders, and approximately every hour or immediately

after receiving relevant information to the CFRCC Desk when there is an incident that affects health, safety and security and emergency response activities are in progress, until the delay has been resolved.

### *2.8.1.3 Reporting*

The O&M Firm shall produce Delay Reports containing detailed information describing the impact of all delays to customers on all affected trains. O&M Firm shall generate Delay Reports utilizing the RMIS. For the purposes of reporting, each delay shall be classified as either a Customer Delay or a Penalty Delay. Delay Reports shall include all delays, regardless of duration. Delay Reports shall be produced in conformance with the requirements identified in Section 11.1, Reporting and Recordkeeping Requirements.

## **2.8.2 Emergencies and Service Disruptions**

### *2.8.2.1 Procedures*

Upon the occurrence of an Emergency, defined per 49CFR239.107(d) as “*an unexpected event related to the operation of passenger train service that results in serious injury or death to one or more persons and property damage...to railroad on-track equipment, signals, tracks, track structures, or roadbeds, including labor costs and the costs for acquiring new equipment and material,*” the O&M Firm shall immediately notify the COO following the procedures detailed in this Section. The CFRCC will relay this information in accordance with established FDOT procedure in the current CFRCC Procedures Manual.

When applicable, the CFRCC must also notify (as soon as practical) any adjacent rail lines with information on the nature and degree of the emergency situation and what actions may be required on their part to ensure that their properties do not become involved. In the event the CFRCC becomes aware of an incident or emergency on the CFRC involving Amtrak or SunRail trains by means other than communication from the Dispatcher, the CFRCC shall immediately notify the Train Dispatcher and emergency responders of the situation.

The O&M Firm shall assure the readiness of and maintain standby power and back-up telephone systems for emergency use at the OCC. The O&M Firm shall ensure that staffing and on-site equipment is capable of independently sustaining and controlling CFRC/SunRail operations for a minimum of 72 hours during a prolonged emergency as an Emergency Operations Center (EOC).

### Field Management and Personnel

In the event of a Service Disruption in which there are events or occurrences on or off the Service Property including, without limitation, collisions, derailments, fires, fatalities or injuries, or other emergencies whose potential impact on service requires close coordination of multiple activities, the O&M Firm shall follow the policies and procedures described in the CFRC SIP and PTEPP and as developed in the SEPP for the service property by the O&M Firm, as described in Section 2.7.6.

The O&M Firm shall respond to emergencies and incidents within 30 minutes of initial notification. In all cases they shall initiate actions to restore service within 30 minutes. Where

the O&M Firm does not provide 24-hour on-duty coverage in any functional area, the O&M Firm shall provide key O&M Firm Personnel with the appropriate vehicles, equipment, tools and materials in order to respond directly to a service problem or interruption at all times, from locations including their primary residence. The O&M Firm shall provide a list of key employees, assigned vehicles, and the reason for their inclusion on this list.

The O&M Firm management employees authorized to conduct all phases of the operation shall be available to the Department without interruption during storm events and emergencies. At a minimum these O&M Firm management employees shall include senior managers with oversight of track, signals, communications, materials, and bridges.

The O&M Firm shall respond to Emergencies and Service Disruptions with sufficient resources without regard for time, day or otherwise, to resolve all such situations. Overtime, night, weekend and holiday work is expected and shall not be restricted for monetary reasons.

The O&M Firm shall provide appropriately trained personnel with spill-containment kits ready for immediate deployment at all times, equipped for cleanup and containment of small fuel, oil and hazardous materials spills. This is intended to be initial response equipment under the O&M Firm's control. The provision and deployment of this equipment does not relieve O&M Firm of responsibilities included in Section 16, Environmental Services of this Scope of Services.

#### Notification Sequence

Incidents and accidents that require local emergency response reported to the CFRCC from the Train Dispatcher or from other sources will be cause to initiate the notification sequence described in the CFRC SIP and PTEPP and in accordance with the current CFRCC Procedures Manual.

##### *2.8.2.2 Reporting*

Following a Service Disruption, the O&M Firm shall adhere to the sequence of reporting procedures as described in the CFRC SIP and current CFRC Emergency Response SOPs.

#### **2.8.3 Notification of Delays to the Public**

The O&M Firm shall promptly notify Customers of delays, both at stations and on-board trains, whenever delays are in excess of five (5) minutes. The O&M Firm shall also notify Customers of potential delays immediately upon becoming aware of such potential delays. Notification shall be provided regardless of whether the event is considered a Service Delay or a Service Disruption, and shall be delivered according to the Section 2.4, Transportation. Following a significant delay, series of regular delays, or at the direction of the COO, the O&M Firm shall provide information to customers through the use of information fliers approved by the Department.

##### *2.8.3.1 Delay Notification at Stations*

At all commuter rail stations, the O&M Firm shall provide announcements of delays, their causes and anticipated duration, and the O&M Firm's planned response or corrective action, through public address systems, computer monitors, electronic message boards, and other systems

including but not limited to those provided by the Department. The O&M Firm shall update the notification message every five (5) minutes until the situation is resolved. In the event that the O&M Firm has no new information to change or add to the notification message, the O&M Firm shall, for all systems other than the public address systems, update the time stamp on the notification message.

#### *2.8.3.2 Delay Notification On-Board Trains*

Conductors on-board trains shall obtain relevant information and ensure that Customers are notified of delays, their causes and anticipated duration, and the O&M Firm's planned response or corrective action, through both public address systems and direct communication with Customers. The O&M Firm shall also be responsible for ensuring that the entire train crew has up-to-date information to provide to Customers. Updates shall be provided every five (5) minutes until the situation is resolved.

### **2.8.4 Wreck Clearing**

#### *2.8.4.1 General*

The O&M Firm shall clear all wrecks on the Service Property, including the VSMF at Rand Yard, and Supporting Property, and restore to operation all affected services. The O&M Firm shall respond to all wrecks and begin restoration efforts within 30 minutes of notification.

#### *2.8.4.2 Specific Other Wreck*

Other railroads or their contractors may assist with wreck clearing involving wrecks of that railroad equipment. The respective rights and obligations of the foreign railroad and the Department shall be governed by the terms and conditions of agreements, if any, between the Department and that railroad and by AAR protocol.

#### *2.8.4.3 Reimbursement*

The O&M Firm shall pursue the Direct Costs incurred in clearing wrecks. Such costs are not included in the Lump Sum Price and shall be separately reimbursed. The Department shall not reimburse the O&M Firm for any costs incurred in clearing wrecks caused in whole or in part by the O&M Firm. Where a wreck involves a foreign railroad operating on Department property, responsibility for reimbursement of expenses incurred in clearing the wreck shall be governed by AAR protocols.

The O&M Firm shall provide wreck clearing equipment.

### **2.8.5 Adjustments for Substantial Economic Impact**

Annually, the Department will provide additional compensation to the O&M Firm via Supplemental Agreement or Unilateral Payment if the O&M Firm experiences a combined substantial economic impact during the previous year due to compliance with any of the following four (4) possible occurrences.

- (a) A change to the operations and maintenance requirements, programs or practices for the Central Florida Rail Corridor.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Increased maintenance due to the construction of facilities beyond those required for the implementation of SunRail system (Phase 1 and Phase 2) at the time of the O&M Firm's proposal due date.
- (d) Increased maintenance due to the transfer of ownership to the Department of additional rail facilities extending the rail corridor limits.

A substantial economic impact is defined as documented financial burden on the O&M Firm exceeding five percent (5%) of the annual Lump Sum Price for O&M Services. If additional compensation is warranted, the Department will compensate only for the value of economic impact beyond the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of contract start date. The O&M Firm will not receive any additional compensation for maintenance of projects scheduled to accommodate the SunRail service in the Central Florida Rail Corridor (Phase 1 and Phase 2) at the time of the proposal due date.

Similarly, the Department will reduce payment to the O&M Firm if the O&M Firm experiences a combined substantial economic savings during the previous year due to occurrence of any of the following four (4) possibilities:

- (a) A change to the operations and maintenance requirements, programs or practices for the Central Florida Rail Corridor.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specs, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Reduced maintenance due to the elimination or planned destruction of rail facilities.
- (d) Reduced maintenance due to the transfer of ownership of Department-owned rail facilities within the Central Florida Rail Corridor to other non-Department entities.

A substantial economic savings is defined as a cost savings exceeding five percent (5%) of the annual contract amount. If cost savings are identified, payment to the O&M Firm will be reduced only for savings greater than the five percent (5%) threshold. The five percent (5%) is not cumulative year to year; it is reset each anniversary of contract start date.

#### **2.8.6 Recovery of Costs, Reimbursement and Coverage for Other Emergencies**

When an incident/event causes damage to the Service Property, which is subject to the terms of this Agreement, the Department authorizes the O&M Firm to pursue recovery against any responsible

party for reimbursement of costs incurred by the O&M Firm in accordance with this agreement (hereinafter Costs). Certain Property (assets) of the Department is insured by the Insurance Company under the State of Florida, Department of Transportation's Bridge, Property and Business Interruption Insurance Program (Insurance Program). The following procedures and terms shall apply to the recovery of Costs incurred by the O&M Firm, Reimbursement by the Department and Coverage by the Insurance Company (as defined herein).

Upon learning that damage has been caused to the Service Property covered by this agreement the O&M Firm will immediately notify the Department Project Manager and Department Claims Attorney (Office of the General Counsel) who will confirm whether the Service Property is an insured asset. The Department shall notify the Insurance Company.

- (a) The damaged asset is not insured under the Insurance Program (or the FDOT does not make a claim on the insurance coverage) and Costs are equal to or less than \$1,000,000.00.
  1. The O&M Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The O&M Firm will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.
- (b) The damaged asset is not insured under the Insurance Program (or the FDOT does not make a claim on the insurance coverage) and Costs are in excess of \$1,000,000.00.
  1. In this situation the Department may be responsible to reimburse the O&M Firm for any Costs incurred in excess of \$1,000,000.00. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the O&M Firm in excess of \$1,000,000.00 (hereinafter Reimbursement). The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement from the responsible parties, and not to execute any documents or take any actions which would impair or limit the other's right to recovery. The Department and O&M Firm may enter into an agreement for sharing attorney's fees and litigation costs. The Department and O&M Firm agree to share any recovery on a pro-rata basis based upon their respective Costs and Reimbursement, in accordance with Florida law, unless otherwise agreed to in a separate writing.
- (c) The damaged asset is insured under the Insurance Program (and FDOT makes a claim for insurance coverage) and Costs are equal to or less than \$1,000,000.00.
  1. In this situation the Insurance Company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the O&M Firm. The O&M Firm is authorized to pursue

recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any action which would impair or limit the others' right to recovery. The Department, O&M Firm and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, O&M Firm and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

- (d) The damaged asset is insured under the Insurance Program (and FDOT makes a claim for insurance coverage) and Costs are in excess of \$1,000,000.00.
1. In this situation the Department may be responsible to reimburse the O&M Firm for any Costs incurred in excess of \$1,000,000.00. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the O&M Firm in excess of \$1,000,000.00 (hereinafter Reimbursement) and the insurance company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the O&M Firm. The O&M Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the O&M Firm as necessary and will confirm the O&M Firm's authorization to pursue recovery. The Department and O&M Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any actions which would impair or limit the others' right to recovery in accordance with Florida law. The Department, O&M Firm and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, O&M Firm and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

In paragraphs 5C and 5D above, the O&M Firm shall submit all proposed settlement documentation (settlement agreement, release and order of dismissal) for review and approval by the Office of the General Counsel prior to execution. Approval by the Department shall not be unreasonably withheld.

- (e) Failure to coordinate and cooperate in pursuing recovery, or impairment or limitation of a party's right to recovery.
  - 1. With regard to paragraphs 5A, B, C and D, above, if either the Department or the O&M Firm fails to coordinate and cooperate in the pursuit of any recovery under these provisions or impairs or limits the lawful recovery of the other or the Insurance Company, it will be liable to the other and the Insurance Company for reasonable attorneys' fees and costs incurred in compelling coordination and cooperation or correcting any impairment or limitation to its lawful recovery. The O&M Firm shall not be entitled to any Coverage which may be available to the Department from the Insurance Company.

Although the O&M Firm is responsible for repairing damage resulting from an act that is officially declared by the State of Florida as an "act of terrorism", the Department will compensate the O&M Firm via Supplemental Agreement or Unilateral Payment for "act of terrorism" damage repair costs.

#### **2.8.7 Financial Relief for Severe Incidents**

For any single incident, the Department will reimburse the O&M Firm for any damage repair construction costs in excess of \$1,000,000.00.

Such financial relief for severe single incidents does not apply if the incident was caused, created, or magnified by the O&M Firm's negligence.



### **SECTION 3. SERVICE AND SUPPORT PROPERTY**

#### **3.1 RIGHT OF ACCESS**

The Department shall grant the O&M Firm the right to enter upon and use the Service Property, including the VSMF at Rand Yard, for the purposes of performing the O&M Firm's obligations under this Scope of Services.

The Department shall use reasonable efforts to ensure that Other Contractors or Third Parties do not unreasonably interfere with O&M Firm's performance of the O&M Services and that access by Other Contractors or Third Parties to the Service Property is limited to the degree of access granted by the Department or necessary for the performance of the duties of such parties.

#### **3.2 RIGHT TO INSPECT**

The Department and its contractors and subcontractors shall have the right to enter upon the Service Property, including the VSMF at Rand Yard, at any time and without notice for purposes of inspecting and examining the Service Property, the Support Property or the Support Inventory, or otherwise monitoring compliance with the terms of the O&M Agreement. The Department's representatives shall carry appropriate identification while on the Service Property. The Department shall also have the right to obtain any information related to the O&M Services or to the Service Property, Support Property, or Support Inventory promptly from any management employee of the O&M Firm.

#### **3.3 CONDITION OF PROPERTY**

Within 60 Calendar days prior to the Commencement Date, the Department and the O&M Firm shall conduct a Joint Audit of the Service Property, including the VSMF at Rand Yard, and Support Inventory. The purpose of such Joint Audit shall be to identify and establish the condition of the Service Property (Condition Assessment) and the quantities and condition of the Support Inventory as of the date of the audit. The Department shall, in its sole discretion correct, remedy, acknowledge, or resolve any previously hidden defects, missing materials, damage to, or failure of the Service Property and Support Inventory revealed by the Joint Audit so as to comply with applicable safety laws or regulations. The O&M Firm shall correct all other conditions in accordance with Section 2.3, Maintenance of Way.

The O&M Firm shall stock inventory with material listed in Attachment 25, Service Property, Service Equipment, and Support Property, prior to commencement of the O&M Services. Upon Final Acceptance, the O&M Firm shall turn over the same initial inventory to the Successor O&M. The cost to purchase inventory needed to meet the initial stocking level is included in the Lump Sum Price.

#### **3.4 ALTERATIONS OR MODIFICATIONS**

The O&M Firm shall not materially alter or modify, except in accordance with the requirements specified in the O&M Agreement, any of the Service Property, including the VSMF at Rand Yard, or Support Inventory without the prior written approval of the Department. If the O&M Firm determines that such alteration or modification is necessary, it shall notify the Department in writing at least 30

Calendar days prior to the date O&M Firm believes such work should commence, and shall proceed as directed by the Department. Each request from the O&M Firm must describe, in detail, the reason for the proposed modification, the scope of the work, the estimated cost, the labor, materials and equipment needed, and must contain a detailed schematic of the proposed work and a project schedule identifying the start date, completion date, and significant event dates. At the completion of the work, the O&M Firm shall submit to the Department appropriate documentation, including as-built drawings and any other documentation required by law or regulations. The Department or its subcontractors may remove, at the sole cost and expense of the O&M Firm, any unauthorized alteration or modification that is not removed by the O&M Firm within 24 hours after notice from the Department.

### 3.5 O&M FIRM'S DUTY OF CARE

During the Term of the O&M Agreement, the O&M Firm shall maintain the Service Property, including the VSMF at Rand Yard, and Support Inventory in accordance with the requirements of the O&M Agreement, applicable warranties, and applicable law. The O&M Firm shall deliver the Service Property and Support Inventory to the Successor O&M Firm in a condition consistent with the maintenance standards detailed in this Scope of Services. The O&M Firm shall reimburse the Department for the actual costs of any repairs to or maintenance of the Service Property or Support Inventory necessary to return the same to the condition, required by the standards detailed in this Scope of Services, excluding the replacement of obsolete Support Inventory or capital assets.

The Department shall have the right to reject any design, workmanship, or material which does not conform to accepted practice or design of the Department, AREMA, Original Equipment Manufacturer (OEM), or any vendor supplying materials or components, or to the standards as set forth in this Scope of Services. Any such rejection shall be corrected by the O&M Firm to the satisfaction of the Department. Repeated rejections may be cause for the Department to order discontinuance of all or a portion of the O&M Services, without commensurate relief from applicable penalties, pending resolution satisfactory to the Department. The currently accepted practice or design of the O&M Firm, OEM, or any other vendor that, in the written opinion of the Department, represents a diminution of value to the user from a previous practice, or design, may be rejected by the Department.

The O&M Firm shall not, without prior Department approval, post or affix any signs, notices, bumper stickers, advertisements or documents or materials of any kind that are not necessary for the performance of O&M Services on the Service Property, Support Property, or Support Inventory. The O&M Firm shall not post or affix any political notices or advertisements on the Service Property, Support Property, or Support Inventory; and shall immediately remove any such notices or advertisements. The O&M Firm shall post personal or union communications only on designated bulletin boards.

### 3.6 DAMAGE TO SERVICE OR SUPPORT PROPERTY

Responsibility for Material Damage to the Service Property and Support Inventory shall be determined by the Department after joint inspection by the Department and the O&M Firm or their respective designees, and, at the discretion of the Department, representatives of Third Parties. The determination of the Department pursuant to the procedures set forth in the immediately preceding

sentence shall be final and binding, subject to the rights of the O&M Firm pursuant to the Department Dispute Resolution Process. Material Damage that is deemed to have been caused in whole or in part by acts or omissions of the O&M Firm shall be repaired at the O&M Firm's sole expense, and shall include but not be limited to:

- 1) Mechanical, electrical, or engineering defects not found or not corrected by the O&M Firm during the performance of its work in accordance with the O&M Agreement;
- 2) Improper, inadequate, or temporary repairs, adjustments, cleaning, inspections, and renewals carried out by the O&M Firm; or
- 3) Unfit, inferior, un-inspected, or non-compliant material and overhaul services obtained by the O&M Firm.

In calculating the aggregate amount of damage from any occurrence to determine whether damage is Material Damage, the Department and the O&M Firm shall take into account damage to Service Property and Support Inventory and other assets of the Department, and substitute transportation and all other costs estimated by the Department to be necessary or desirable in order to repair or replace property that has suffered Material Damage. The O&M Firm shall submit to the Department within 24 hours of the occurrence of such damage a preliminary report detailing the cause and extent of the damage and estimate of repair costs, and measures undertaken by the O&M Firm to prevent future similar damage. Within 30 Calendar days of the occurrence of the damage, the O&M Firm shall submit to the Department a report further detailing the final estimate of costs of repair or replacement.

Material Damage to the Service Property or Support Inventory not caused in whole or in part by the O&M Firm's acts or omissions shall be repaired by the O&M Firm at the Department's expense and shall be treated as Extra Work. The Department may, in its discretion, elect to have such work performed by Other Contractors, who may, at the Department's discretion, utilize any facility on the Service Property for the performance of such work. O&M Firm shall not charge such Other Contractor for such use of facilities. Support Inventory on hand at such facilities and used by Other Contractors in the repair of Material Damage shall be replaced by the Department or Other Contractors or the appropriate adjustment shall be made to the inventory.

In the event that such Work by Other Contractors affects the O&M Firm's performance of the O&M Services, or its use of the Service Property, or Support Inventory such that O&M Firm is unable to comply with the requirements of the O&M Agreement, the Department shall review the penalty assessable as a result of the O&M Firm's failure to comply.

The O&M Firm may inspect, at its sole discretion and cost, any repairs performed by Other Contractors. In the event that, in the opinion of O&M Firm, repairs by Other Contractors are not performed in accordance with the standards required of the O&M Firm under the O&M Agreement, the O&M Firm shall notify the Department in writing. Any correction or repairs that the Department determines should be made by the O&M Firm to Service Property and Support Inventory as a result of inadequate repairs by Other Contractors shall be performed by such Other Contractor at such Other Contractor's sole cost and expense, or performed by the O&M Firm as Extra Work at the Department's sole discretion.

Where damage to Service Property and Inventory does not constitute Material Damage, the O&M Firm shall determine, to its best ability, the extent and cause of the damage, and provide a written report to the Department no later than the business day following the date on which the O&M Firm became aware of such damage. All damage reports filed pursuant to this paragraph must specify in detail the cause and extent of the damage and the measures taken by the O&M Firm to prevent similar future damage. Unless otherwise directed by the Department, the O&M Firm shall, within 60 calendar days following submission of a damage report, undertake repairs of the damaged Service Property or Support Inventory at the O&M Firm's sole cost and expense. The O&M Firm shall notify the Department upon completion of such repairs.

The O&M Firm shall promptly repair any damage to the Service Property or Inventory caused by derailments, collisions, or Third Parties that materially affects rail services, without regard for cause or responsibility. The O&M Firm shall maintain accurate cost records pertaining to these activities in the event they are eligible for any reimbursement.

The provisions of this section do not apply to or otherwise affect the O&M Firm's obligation to perform routine maintenance as required by this the O&M Agreement. All costs related to such routine maintenance are included in the Lump Sum Price.

**SECTION 4. MAINTENANCE OF VEHICLES**

The Department will furnish to the O&M Firm rolling stock as shown in Table 4-1 for use in providing SunRail service. The O&M Firm shall have an affirmative obligation to operate the service with the minimum number of train consists required and to undertake periodic reviews of equipment requirements with the goal of maximizing equipment utilization.

<b>Table 4-1 - SunRail (Department) Phase I - Fleet of Cars and Locomotives</b>					
<b>Passenger Cars</b>					
Car#	Type	#	Seats*	Year	Manufacturer
2000-2008	Cab Car	9	132	2013	Bombardier
3000-3004	Coach car	5	150	2013	Bombardier
Bi-Level Cars		Total	14		
All Cars		Total	14		
<b>Passenger Locomotives</b>					
Loc#	Type	#	Year	Manufacturer	
100 - 106	GP40WH	7	2013	MPI Remanufactured	

*\* Accommodates bicyclists and ADA customers and equipped with on-board wheelchair lifts*

All Rolling Stock (i.e., locomotives and passenger cars) operated for SunRail shall, at a minimum, comply with all applicable regulations of the FRA, and recommendations of APTA and Association of American Railroads (AAR). The Rolling Stock shall be maintained in accordance with the O.E.M. manufacturer’s specifications and otherwise maintained and worked on in compliance with the latest standards and recommended practices of the AAR, American Public Transportation Association (APTA), and National Fire Protection Association (NFPA), and the latest revisions of the applicable sections of 49 CFR 200 through 239 (FRA). The work shall also conform to the requirements of the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection.

**4.1 ROLLING STOCK AVAILABILITY AND FLEET REQUIREMENTS**

The O&M Firm shall provide a Fleet Requirement Plan for Rolling Stock as part of the Annual Mechanical Services Plan to support the service levels and quality expectations of the Department. The plan shall be submitted 90 days prior to the Commencement Date for Department approval and shall outline the manner in which the available fleet will be used within the guidelines provided below, including the following:

- Train consist requirements by equipment type and day of the week
- Locomotive requirements by day of the week
- Car requirements by car type and day of the week

The O&M Firm must have active train consists available to meet schedule requirements. All train consists will be two cab cars/coaches. One standby two-car consist with locomotive shall be available at the VSMF, five days per week. This to serve as a “hot backup” train should a rescue train be needed.

The O&M Firm shall have locomotives available for revenue service, planned maintenance and non-scheduled maintenance.

The Fleet Requirement Plan will be annually reviewed to consider alternatives that benefit SunRail either by reducing the equipment count requirement or increasing usage to successfully enhance the service or maintenance practices. Minimum equipment requirements shall be adjusted for conditions beyond the reasonable control of the O&M Firm (e.g., SunRail equipment offline for heavy overhaul without adequate replacement equipment furnished by the Department).

The O&M Firm shall perform all maintenance and repair activities associated with Rolling Stock modifications as directed by the Department. Rolling Stock modifications programs may originate with vendors, suppliers, regulatory agencies and/or the Department. The O&M Firm shall supply all labor and materials required to conduct such programs as On Call Extra Work– see Section 14.0.

#### 4.2 VEHICLE MAINTENANCE PROGRAM OVERVIEW

Car and locomotive daily service and inspections are the responsibility of the O&M Firm. Performance of Corrective and Preventive Maintenance are split between the O&M Firm and Amtrak. As part of the planning for maintenance of the SunRail fleet, the Department has entered into a Memorandum of Understanding with Amtrak (National Rail Passenger Corporation). As part of the Draft Vehicle Maintenance Agreement, the O&M Firm will have overall responsibility for proper maintenance, operation and safety of the SunRail fleet of passenger cars and locomotives. The Draft Amtrak Vehicle Maintenance Service Agreement (Attachment 9) delineates the preventive maintenance, FRA periodic testing, and repair functions that will be performed by Amtrak personnel at the AutoTrain Facility.

The Draft Vehicle Maintenance Agreement between the Department and Amtrak will include a procedure for the movement of cars between the VSMF and the Amtrak Sanford AutoTrain Facility which will require further definition between Amtrak and O&M Firm. The O&M Firm will be responsible for, purchase of materials and supplies for maintenance, responsibility for sending components out for reconditioning, coordination of maintenance records and spare parts ordering through the RMIS, QA/QC of repairs, movement of materials from the VSMF to the Amtrak Sanford AutoTrain Facility and back, when necessary. Amtrak will provide minor consumables, but the O&M Firm will purchase bulk consumables for use at the Amtrak Sanford AutoTrain Facility (such as engine oil filter, air filters, fuel filters, turbo soakback filters, engine oil, antifreeze, bulk lubricants such as traction motor grease, suspension bearing oil, governor oil, traction motor brushes, etc.). The O&M Firm shall jointly take inventory of capital spares.

Inspection, servicing, maintenance and repairs of all rolling stock shall be carried out in conformance with the maintenance instructions proposed by the O&M Firm and agreed to by the Department.

Six months prior to commencement of SunRail revenue service, the O&M Firm shall prepare a Rolling Stock Maintenance Plan that as part of the Annual Mechanical Services Plan for the SunRail Commuter Rail system. The O&M Firm should develop the plan and all documentation based upon FRA Requirements, APTA Standards, standard industry practice, Appendix 10 and general industry standards, knowledge of the basic EMD platform passenger locomotive and Bombardier “Go Transit” platform low level boarding bi-level). The Plan shall include:

- Inspection Procedures, Intervals and Criteria
- Perform Daily Inspections and Brake Test of Trainsets in VSMF and ready trainsets for daily service
- Test Procedures and Intervals
- Schedule Preventive Maintenance Intervals (Preventive Maintenance)
- Maintenance Procedures
- Special Test Equipment or measuring devices required to perform inspections and tests.
- Discussion of Corrective Maintenance

The O&M Firm shall review the Contract Requirements as well as Manuals and Parts Catalog deliverables from MotivePower, Inc. and Bombardier Transit Corporation. The O&M Firm should expect to participate in the review and approval of the O&M Manuals and Parts Catalogs being provided for cars and locomotives under Attachment 4, Cab Car and Locomotive Design Criteria. Attachment 4, describes both corrective and preventive maintenance for those specific vehicles. The specific inspection and servicing needs as well as the scheduled maintenance activities is site specific. Some of the maintenance and inspections will be performed at the VSMF, and some at the Amtrak Sanford Facility. The O&M Firm shall develop the Mechanical Services Plan, sign-off forms for daily, 92 day, 180 day, etc. and preventive maintenance activities, to be approved by the COO. The sign-off forms shall include all inspection, test, preventive maintenance and corrective maintenance activities. These documents shall be comprehensive and include both Preventive Maintenance and Corrective Maintenance. The documents shall include O&M Firm work as well as any work that may be performed by Amtrak under a separate agreement with the Department.

Car and locomotive daily service and inspections are the responsibility of the O&M Firm utilizing the S&I Shop at the VSMF in Sanford, FL.

The O&M Firm shall oversee Amtrak in its provision of the following periodic maintenance and related services utilizing Amtrak’s AutoTrain Facility located in Sanford, Florida.

As a minimum the following services will be provided by the O&M Firm at the VSMF:

- Daily inspections, brake tests, cleaning, servicing and minor repairs,
- 45 day Locomotive Inspection
- 45 day car servicing (HVAC filters and lubrication)
- Any and all corrective maintenance and troubleshooting that can be performed at the VSMF Faculty and Storage Yard maintain service

- Fuel and Oil Sampling/Testing and corrective action , such as oil changes
- Other Cleaning and servicing

### AMTRAK

The following services will be provided for the Phase 1 SunRail fleet including seven (7) locomotives, nine (9) cab cars and five (5) coaches by Amtrak at the AutoTrain facility.

- Periodic Maintenance Requirements
  - For Coaches: 184 Day, annual, Four Year Airbrake
  - For Cab Cars: 92 Day, annual, 184 day, bi-annual and Four Year Airbrake
  - For Locomotives: 92 Day, annual, bi-annual and Airbrake
- Periodic inspection, heavy maintenance, and corrective repair activities (as defined in the MOU) shall be performed by Amtrak under this Agreement.
- Washing the train exterior will be performed by Amtrak at intervals to be determined by the Department. The MOU is based upon unit pricing, so if exterior washing is needed more often, the MOU allows for additional washes. The Department and Amtrak have assumed exterior washing of trainsets at least every two weeks in the MOU.

#### 4.3 ANNUAL MECHANICAL SERVICES PLAN

The O&M Firm shall establish, prepare, and implement an annual Mechanical Services Plan which shall comply with 49CFR238.107. This Plan shall include a number of component plans and programs relating to functional areas of the Mechanical Services. These component plans and programs will constitute the annual Mechanical Services Plan. Contactor shall submit these plans and programs to the Department for review and approval 120 days after Notice to Proceed. Thereafter the O&M Firm shall submit these plans and programs by the end of each Calendar Year. The Mechanical Services Plan shall identify the inspection and maintenance activities to be undertaken by the O&M Firm; the O&M Firm's maintenance performance standards; frequencies of tasks; staffing plan; and specific schedules for accomplishing such work.

The annual Mechanical Services Plan shall include, but not be limited to, the following components:

- Recommended Capital Improvement Plan
- Rolling Stock Maintenance Plan
- Head-End Power Replacement Plan
- Quality Control Program
- FRA Compliance and Notice of Proposed Rule Changes

The COO review and approval process for the annual Mechanical Services Plan shall be conducted in accordance with this Scope of Service. In addition, the O&M Firm shall update the Mechanical Services Plan more frequently as required by changes to the O&M Services, such as, increase in size of the fleet, or as directed by the COO. The Plan shall include the work that may be performed by Amtrak at Sanford AutoTrain Facility under separate agreement with the Department. The SunRail COO will have the ability to seek additional services under this agreement with Amtrak (On-Call Extra Work). The O&M Firm could make such requests to SunRail as part of this annual plan. In the



event that the Department requests changes to the Mechanical Services Plan, the O&M Firm shall make and agree to implement such proposed changes within ten (10) days of the COO request, or shall suggest, within thirty (30) days of the COO's request, alternatives reasonably designed to meet needs as stated in the request.

#### 4.4 PREVENTIVE MAINTENANCE

The O&M Firm shall be responsible for maintaining all Rolling Stock in accordance with manufacturer maintenance standards and a scheduled maintenance program. The scheduled maintenance program may be modified from time-to-time by mutual agreement between the O&M Firm and the Department. New locomotives, overhauled locomotives, new passenger cars, and overhauled passenger cars may have identified warranted components for some period of the O&M Agreement (See current Fleet Procurement in Table 1.)

The O&M Firm shall provide for all scheduled and unscheduled maintenance and repair of Department equipment, including, without limitation:

- Replacement or repair of failed rotating parts, components, subsystems and support systems, including power assemblies and prime mover-associated components, and locomotive traction motors.
- Locomotive/car wheel truing and replacement of worn, broken or defective wheels and defective or worn brake shoes, brake heads, rigging, and brake discs.
- Replacement or repair of failed radiators, cooling fan motors, dynamic brake grids and grid cooling fans, and control devices and wiring, including Separate Head-End Power package radiator and cooling fan motor on units so equipped.
- Replacement of Separate Head-End Power unit components, including internal and external associated engine components, alternator and associated control circuits, contactors and electrical components in the AC power circuit.
- Running repairs to all electrical parts, air brakes, and car body, including AC and DC wiring and circuitry.
- Replacement of all air hoses and angle cocks.
- Replacement of failed or worn couplers, knuckles, and draft gears, including associated devices.
- Replacement or repair of failed trucks or components.
- Replacement or repair of failed air conditioning equipment.
- Replacement of broken coach and crew seats, including covers, foam, support springs, and arm rests.
- Replacement or repair of defective car doors, door operators, tracks, and electrical switches and safety devices associated with proper door operation.
- Replacement or repair of wheelchair lifts and all related components, wiring and control devices.
- Replacement of broken or damaged glazing, including graffiti, or scratched glazing.
- Replacement or repair of all signage, interior and exterior, that is damaged or defective in both passenger cars and locomotives.
- Repair of dents during routine maintenance, where practicable, and touch up of nicks, scratches, and faded paint.
- Repair of damage due to accidents or vandalism (including graffiti).

- Approved minor modifications.

To facilitate movement of equipment within the VSMF, the O&M Firm shall make available qualified maintenance craft personnel to operate the Rolling Stock. The qualified maintenance craftsmen shall operate rail car movers, locomotives, and cab-control cars to move Rolling Stock within the yard limits of VSMF to work and inspection locations at the maintenance facility in support of the mechanical department's needs.

#### 4.5 VEHICLE MAINTENANCE SERVICE STANDARDS

Inspection, servicing, maintenance and repairs of all rolling stock shall be carried out in conformance with the Vehicle Maintenance Service Standards prepared and proposed by the O&M Firm and approved by the COO (as described in Section 4.2). The O&M Firm shall participate in the review and approval of the O&M Manuals and Parts Catalogs being provided for cars and locomotives which are in Attachment 4, Cab Car and Locomotive Design Criteria. The O&M Firm should use these documents in preparation of the O&M Firm's Mechanical Services Plan. The O&M Firm's Plan will use the manufacturers' maintenance instructions and manuals as a guide. These instructions and sign-off record sheets shall be generated by the O&M Firm and submitted to the COO for review and approval, and shall include:

- Preventive Maintenance Cars
- Preventive Maintenance Locomotives
- Corrective Maintenance Cars
- Corrective Maintenance Locomotives

#### **Non-Revenue Locomotives**

Any switching locomotives or work equipment cars that the O&M Firm may bring on site will require the same preventive and corrective maintenance forms.

The forms will be generated from the O&M Firm's review of:

- Locomotive Service
- Engine Maintenance
- Maintenance Instructions
- Supplier Instructions
- Locomotive operating and service manuals provided by Motive Power, Inc.
- Passenger car manuals provided by Bombardier Transit Corporation

All maintenance, including programmed maintenance, will be performed in accordance with pertinent manuals, and must be done in accordance with manufacturers' or repair O&M Firms' warranty provisions. All maintenance inspections must conform to FRA, and APTA Passenger Rail Equipment Safety Standards (PRESS) rules and regulations.

Legible, full name signatures shall be used on all inspection/maintenance and federally required forms. Each maintenance task item identified on the form shall be signed as complete by the person that performed the task. Completed forms shall be signed by the foreman who is responsible for supervision of the maintenance work, and additionally signed by the manager in charge indicating

that the maintenance form has been reviewed. Forms shall be available for inspection by Department representatives no later than three days after completion and kept on file for at least three years.

The O&M Firm shall include in the RMIS: maintenance planning tools, generation of sign off sheets, parts catalogs and ordering/scheduling parts and training documentation. The O&M Firm shall generate all of the necessary maintenance records, planning, sign-off sheets, training records and parts history.

Costs for additional work required which may be associated with Department's acquisition of Rolling Stock of a different type than that existing at the Commencement Date of the O&M Agreement (e.g., mechanical training, spare parts, etc.) will be compensated for in accordance with the provisions for Extra Work as documented in the O&M Agreement until such time as the work can be included in the next Basic Service Plan.

#### 4.6 ALTERATIONS AND MODIFICATIONS

The O&M Firm shall not undertake any alteration or modification of cars or locomotives without express written permission of the COO. If the modification is originated by the O&M Firm, the O&M Firm shall submit a written description of the work, with sketches and wiring schematics as appropriate, and a detailed cost estimate for approval prior to performing any modifications. During the course of the modification program, the O&M Firm shall submit periodic progress reports at least monthly and shall keep a permanent record of those units which have been modified. Revised vendor components which replace obsolete components and which may require minor modifications in order to install, shall not be considered modifications under the intent of this section.

The O&M Firm shall perform, or oversee the work performed by others for all maintenance and repair activities associated with Rolling Stock modifications as directed by the Department. Rolling Stock modifications programs may originate with vendors, suppliers, regulatory agencies and/or the Department. The O&M Firm shall supply all labor and materials required to conduct such programs as On-Call Extra Work.

#### 4.7 LOCOMOTIVE MAINTENANCE AND CLEANING

Maintenance and cleaning specific for Locomotives are as follows:

All locomotives in service shall be maintained so as to develop their designed horsepower and speed and equipped with a functioning radio. Locomotives must not be operated with non-functional auxiliary equipment except in case of emergency. All trains will be equipped with spare jumper cables located in a readily accessible and standard location. This shall include all cables of non-fixed attachments.

- Locomotives shall not be allowed to idle unnecessarily. The O&M Firm shall follow written instructions for idling and fuel conservation which shall be developed jointly between the O&M Firm and the Department. Automatic fuel shutoff equipment on locomotives shall be maintained in working order at all times. Locomotives shall not be dispatched with fuel leaks.
- Any train in active service having a layover of more than one hour shall be connected to available standby ground power when required. Train shall be retained on ground power during any

cleaning or inspection process which requires electrical power. Locomotive Head-End power shall not be used for the equipment prior to twenty minutes before scheduled departure time. All passenger car side doors are to be closed except during cleaning of vestibule steps, and only left in open position twenty minutes before scheduled departure time. Ground power shall be used for layover trains on the storage tracks at VSMF.

- All Federal (EPA), State, and local air pollution control standards shall be met. No adjustment or modification shall be made to any equipment that would affect the emission quality standard.
- Midday Storage of trainsets requires drip pans and pads provided and serviced by the O&M Firm to prevent contamination of ballast by any leaks or spillage.

#### **4.7.1 Daily Cleaning (Locomotives)**

The following items shall be addressed on a daily basis on all locomotives:

- Clean cab of papers and other debris. Wet mop floor, and clean and wipe walls and bulkhead with approved liquid cleaner.
- Clean nose compartment of papers and debris. Wipe walls and doors with approved liquid cleaner.
- Clean windows and windshields, both interior and exterior surfaces, with approved liquid cleaner and flush with clear water. Ensure all insects are removed from windshield, and that it is free of residue that could cause glaring from opposed lighting conditions. Pressure wash the nose with a handheld pressure washer to remove spotting, debris and bugs.
- Empty trash receptacle and replace trash receptacle liner bag.
- Seats should be clean and in good serviceable condition. Replace if torn or not adjustable.
- Clean floors in engine room.
- Ensure an adequate stock of health and welfare supplies for the engineer.

#### **4.7.2 Additional Cleaning (Locomotives)**

The following items shall be attended to after completion of the required SunRail 45-day inspection and before the locomotive is returned to revenue service:

- Clean the engine room and exterior of the locomotive car body, using approved pressure washer. Special care is to be given to the edges of decals, signs, and painted striping so as not to increase peeling of edges (weather and facilities permitting).
- Steam clean trucks, fuel tanks, and underside of locomotive.
- Clean cab sidewalls and ceiling and wet mop cab floor.

### **4.8 PASSENGER CAR MAINTENANCE AND CLEANING**

Maintenance and cleaning specific to passenger cars are as follows:

Passenger cars shall be equipped with full seating except for seats removed for bicycle or luggage storage and ADA accessibility seating areas. Damaged seats shall be repaired within 24 hours, with material of comparable type (transportation grade woven fabric) and color to existing. When comparable materials are not available, materials of different type and color may be used with COO written approval.

- Lighting fixtures shall be adequately maintained. All lights must be of the same general color in each car. Defective lights, including overhead reading lights, shall be replaced daily.
- HVAC systems shall be maintained, with thermostatic controls functional and temperature maintained in the range as specified in the appropriate car maintenance manual by vehicle type and in accordance with the Mechanical Service Plan. Pre-season air conditioning and heating inspections shall be completed on all passenger cars prior to seasonal demand. Annually, or as defined by the Mechanical Services Plan, all passenger cars shall have HVAC pre-season inspections completed by March 15 (for air conditioning) and by November 15 (for heating).
- Floor coverings shall be repaired or replaced with materials, approved by the COO, when cracked.
- All doors shall open and close easily and latch properly. Door guides and tracks shall be cleaned and made free of debris during daily cleaning. All passenger enabled door controls shall be functional at dispatch. Bent step-wells shall be straightened within 24 hours. There shall be no loose treads, sills, or other tripping hazards.
- Car windows shall be maintained to be transparent in effect as of the Commencement Date. Passenger car windows include car body side windows, side door windows, bi-parting door windows, end door windows and all glazing in cab-control area. Broken, cracked or damaged windows shall be replaced in conformance with FRA glazing instructions using same color in all windows of any one car. In addition, all broken or cracked windows shall be taped promptly to prevent spalling. No car shall be operated with more than two cracked or damaged windows except to complete a round trip. All known or reported broken, cracked or damaged windows shall be replaced within three days.
- When a leaky roof or side sheet is detected, the source of the leak must be located and repaired, within one week. Painted surfaces must be retouched with approved paint and colors after repairs. All graffiti shall be removed daily. Offensive graffiti shall be removed prior to train dispatch.
- Cars shall not be dispatched with safety hazards or defects, including but not limited to damaged, frayed or missing holding cords on bike racks. All wheelchair lift equipment in service shall be checked daily and maintained in operable condition. Daily inspection and periodic scheduled maintenance of wheelchair lifts are to be performed as outlined in the Mechanical Services Plan.
- The O&M Firm shall replace damaged or missing signage for priority seating, wheelchair accessibility, bicycle and luggage stowage or any other signage providing information to patrons, as soon as the materials are available along with a replacement car. The O&M Firm shall be responsible for keeping all information racks on board trains stocked with materials approved and provided by the COO. Consists must be checked periodically throughout the day to ensure racks remain neat and stocked with materials.
- Public address systems shall be maintained in working order. In the event that a car is operating with a non-functioning public address system, due to a malfunction after being dispatched, crews will be required to make intelligible announcements in each car at each station. All mechanical and

electronic announcements, warning or other indicator systems shall be maintained in working order. Non-functioning equipment shall be replaced prior to dispatch.

- All passenger cars shall have all loose trash (newspapers, paper cups, etc.) picked up and disposed of in receptacles, and trash containers which are located in car vestibules. Toilet compartments shall be emptied after the termination of each one-way trip. Trash bins in the toilet room shall be attached to the wall after cleaning. All toilets shall be serviced prior to the beginning of the first trip of the operating day. Lavatory supplies shall be replenished as needed prior to each one-way trip. All cab cars shall have the toilets serviced, tank contents removed and tank recharged daily or more often as needed.

#### **4.8.1 Daily Cleaning (Cars)**

The O&M Firm shall sweep or vacuum or otherwise make clean and presentable every rail passenger car. The following items shall be addressed on a daily basis on all rail passenger cars:

- Remove debris under and around seats and wall area and vacuum floors.
- Wet mop floors in cab cars and remove grease and oil.
- Clean interior windows and sills with approved cleaner and wiping rag. Any unauthorized markings, dirt or general grime shall be removed daily from the interior windows prior to the first scheduled departure.
- Wet sponge seats where needed. Replace cushion if stained or soiled.
- Clean toilet and sink and check water supply and toilet for proper operations.
- Fill water tank.
- Clean interior and exterior of operating control cabs.
- All litter shall be removed. All beverage spills shall be removed. All chewing gum and like substances shall be removed. Torn advertising placards, damaged public notices, and other unsightly items shall be removed. Stickers, posters, and other unauthorized signs shall be removed, including any tape and adhesive residue. Expired SunRail notices and seat drops shall be removed.
- All cove moldings, joints, seat pedestals, and other interior service must be kept clean. All litter receptacles shall be completely emptied, and, if the receptacles are dirty, washed and sanitized.
- Handprints, footprints, and other dirty conditions on access panels, seats and interior panels, shall be removed.
- Pressure wash the nose with a handheld pressure washer to remove spotting, debris and bugs.

#### **4.8.2 Exterior Washing (Trainsets)**

The O&M Firm shall send trainsets to Amtrak AutoTrain facility for a complete exterior washing of all train sets including one locomotive, coach and cab car per train set, every other week.

#### **4.8.3 Additional Cleaning (Cars and/or Trainsets)**

When a trainset is returned by Amtrak after 180-day car maintenance, the O&M Firm shall be responsible for heavy car cleaning according to the Mechanical Services Plan. Additionally,

during the 180-day inspection of the cars, the following portions of the cars which are not normally cleaned should be cleaned:

- Hand cleaning of seats shells, walls, window masks, doors (but not necessarily all ceiling areas)
- Equipment lockers, vacuumed
- Cab and Cab controls, hand cleaned
- Seat fabrics shall be cleaned by material supplier instructions
- Floors, cleaned in a manner approved by the COO
- HVAC ducts
- Areas not cleaned by car wash, shall be cleaned by hand, these include, undercar equipment, battery boxed, HVAC compartment in roof
- Trucks
- Visible portion of battery box
- Visible portion of main reservoirs
- Diaphragm ends
- Exposed air brake components and piping

#### 4.9 TRAINING AND QUALIFICATION

O&M Firm is responsible for maintaining a trained workforce capable of performing all levels of maintenance on the SunRail fleet required during the term of the Contract. Training needs shall be evaluated annually with appropriate training sessions scheduled for employees on a regular basis. Initial training will be provided through the car and locomotive procurement contracts, and the O&M Firm will send all shop craft employees to attend, but will be responsible for their employees wages during that Training Program.

The O&M Firm shall train and certify no less than six (6) mechanical services employees (supervisors and maintenance staff) in accordance with the requirements noted below.

##### **4.9.1 Technical Training**

The O&M Firm shall establish and maintain a Training Program that complies with the requirements of the FRA 49 CFR 238.109, Training, Qualification and Designation program as described in Section 10.

The O&M Firm shall be responsible for maintaining qualified maintenance persons (QMPs) to perform all applicable inspection work as required by 49 CFR 238. The O&M Firm shall maintain qualified maintenance personnel certified in refrigerant handling in accordance with the Code of Federal Regulations – Part 40.

##### **4.9.2 Safety Training**

All Contractor Rail Vehicle Maintainer employees are required to have been certified to work by passing a test in conjunction with a Safety Training Course as described in Section 10.

#### 4.10 ON-CALL EXTRA WORK (SEE SECTION 14.0)

The O&M Firm, at the direction of the COO or the Department shall perform such On-Call Extra Work defined as work that the O&M Firm is engaged to perform that is outside the day to day operation and maintenance defined by this Contract. See Section 14.0.

The Department may request, and the O&M Firm shall provide, a detailed fair market price estimate of additional services specified by the Department. The O&M Firm may agree to enter into good faith negotiations to finalize the cost of additional services or materials. Should the Department and the O&M Firm agree upon a final price for additional services or materials, the Department shall authorize the O&M Firm in writing to perform said services. In no event shall the performance of additional services agreed upon exceed the original term of the Contract.

This provision shall not affect the Department's right to procure any and all additional services or materials from any third party or from directly performing said services; provided that any services performed at Amtrak's Sanford facility will require Amtrak's prior written approval.

the Department specifically reserves the right to contract with another person, corporation or other entity for performance of any tasks that are not specifically assigned to the O&M Firm by this Agreement.

##### **4.10.1 On-Call Extra Work Process (as defined in 14.0)**

The process for On-Call Extra Work is as follows:

- The Department will transmit a written request for proposal to O&M Firm with a scope of the On-Call Extra Work.
- O&M Firm shall endeavor to submit a scope of work and cost proposal in response to the Department's request within five 5 business days.
- O&M Firm's proposal shall contain the following information:
  - Statement of the scope of work to be performed;
  - Schedule for the work;
  - Detailed labor (hours and rates, including overhead, but not profit or G&A), materials and services costs; and
  - Project Manager.
  - Administrative Fee (G&A) not to exceed "15" %
  - Profit not to exceed "10" %
- The Department will review O&M Firm's proposal and provide written notification as to FDOT's disposition - whether to proceed, negotiate or reject the proposal.
- Upon Notice to Proceed, the O&M Firm shall be obligated to perform the work in accordance with the scope, schedule and budget that has been agreed to through this process. All other terms of the base contract between FDOT and the O&M Firm to all On-Call Extra Work shall be governed by the terms of this Contract.

The O&M firm shall submit, as part of the Proposal, a fixed labor rate schedule for On-Call Extra Work that shall remain fixed for the first year of the contract. The labor rate schedule



for subsequent years of the Contract shall be determined through application of the escalation mechanism to be developed as part of final Contract Negotiations.

#### **4.10.2 On-Call Extra Work Reporting**

The O&M Firm shall report progress on On-Call Extra Work in the form of a Progress Report. The frequency of the Progress Reports will be project-specific and will be determined by the Department. The Progress Report for On-Call Extra Work shall provide a detailed breakdown of project expenses (actual vs. budgeted), schedule and major events affecting the project.

The regular monthly invoice shall include a separate section to invoice for On-Call Extra Work.

#### **4.11 MAINTENANCE MANAGEMENT SYSTEM**

As part of the RMIS Fleet Management System as described in Section 2.6, the O&M Firm shall maintain a computer-based Maintenance Management System (MMS).

#### **4.12 MATERIALS MANAGEMENT PLAN**

O&M Firm shall develop and submit for the Department approval a Materials Management Plan as part of the Annual Mechanical Services Plan that will optimize efficiency and reduce inventory cost through forecasting of replenishment requirements as well as control of all phases of the materials handling function, and that will assure that adequate levels of critical inventory (particularly long lead-time items) are maintained throughout the term of this Contract. The approved Plan shall be presented for the Department review and approval as part of O&M Firm's Proposal and shall be implemented within 30 days of NTP.

Support inventory must remain on the Department property unless stored at Amtrak for Preventive and Heavy Corrective Maintenance unless the O&M Firm receives written approval to store such support inventory elsewhere.

All support property and support inventory shall be properly handled and stored to prevent damage. Appropriate measures shall be taken to protect support property and support inventory from the effects of precipitation, heat, sun, and other environmental conditions related to time and weather. Support property and support inventory shall be stored so that it does not warp, twist, or otherwise distort during storage. the Department may reject as non-compliant support inventory not stored in conformance with this Contract. Loss of value due to improper handling or storage of support property or support material shall be the responsibility of the O&M Firm.

On an annual basis, the Department, the O&M Firm and Amtrak (for Sanford Yard Inventory) will conduct a joint audit aimed at identifying obsolete material. In accordance with the Department policies and procedures, O&M Firm shall dispose of any obsolete material identified through this process.

#### **4.12.1 Material Quality Control**

O&M Firm shall submit a Material Quality Control Plan for the Department review and approval within 30 days after NTP. This Plan shall be implemented immediately upon approval and

maintained in place throughout the duration of the Contract. At a minimum, the plan shall address inbound inspection of material, management of suppliers, material specification management and disposition of material.

#### **4.12.2 Owner Furnished Inventory**

The Department shall purchase all material required for the execution of work for this Contract that is of value in excess of \$2,000.00 (OEM list price). All material with list price of less than \$2,000.00 would be the responsibility of the O&M Firm to purchase as part of this agreement. All material shall become the property of the Department. O&M Firm shall provide consumables to be allocated for normal maintenance activities, such as: governor oil, air compressor oil, towels, and rags. The Department shall provide lube oil, and anti-freeze in bulk. O&M Firm Amtrak will meter lube oil for HEP and prime mover, and present SunRail with a signed "delivery ticket" that shows type of oil, gallons, date/time, locomotive number and who delivered oil.

The Department will assign responsibility for certain SunRail material that is in at the Amtrak Sanford Yard inventory to O&M Firm. The intent of this Owner Furnished Inventory is to provide baseline inventory for Amtrak to apply to the SunRail fleet in support of the maintenance operation. The value of this SunRail fleet inventory shall be established at the commencement of this Contract. The content and value of the SunRail inventory at the termination of this Contract shall be equal to or greater than the content value of the inventory established at the commencement of the Contract. Content is an assessment by Amtrak and agreed to by the Department of the applicability of the items for use and the appropriateness of the quantity of the items for use in SunRail operations. Determination of the value of the SunRail inventory at the termination of the Contract shall be made jointly by the Department and Amtrak.

#### **4.12.3 Inventory Requirements**

O&M Firm shall present to SunRail any Proposed Inventory increases to COO for his/her review. The Inventory shall include all Capital Spares purchased for cars and locomotives, indicating which will likely be proposed to be housed at VSMF and also potentially Amtrak Sanford Shop Facilities. The list will indicate indoor or outdoor storage.

### **4.13 LIFE CYCLE MAINTENANCE PROGRAM AND FLEET MANAGEMENT PLAN**

The maintenance philosophy for the SunRail fleet shall be one in which LCM is the foundation for all maintenance related tasks. LCM will be combined with FRA, OEM and SunRail inspection and maintenance standards to form a comprehensive preventative maintenance and inspection program.

The O&M Firm shall develop a Preventive Maintenance Program as outlined in Section 2.0 through 7.0 of this draft agreement.

The LCM concept maximizes the availability and functionality of rolling stock through a regular-interval program of planned maintenance events occurring over the useful life of each vehicle. Under this approach, each repairable item on the vehicle is subject to a series of pre-defined inspection and maintenance activities. These activities shall be scheduled to occur prior to (or to coincide with) the anticipated service life requirements of each repairable component. The intent is to perform the appropriate maintenance activity (e.g., overhaul, repair, replace, renew, etc.) on a cycle which minimizes the chances of component failure and keeps the vehicle in an overall state-of-good-repair.

Under the LCM concept, a set of service intervals extending over the life of the vehicle are established and a defined set of inspection and maintenance activities is programmed for each interval. These activities are coordinated sequentially among the maintenance intervals, such that the longer intervals typically include all work conducted in preceding intervals. For example, 92-day work would include tasks unique to the 92-day interval, plus all work done during daily and weekly intervals. Similarly, annual work includes all 92-day work plus tasks unique to annual maintenance attention.

The goal of this philosophy is to prevent in-service failures through an extensive campaign of identifying milestones in a component's life where inspection, servicing and/or replacement are critical to maintain 100% reliability of the component and its system.

#### **4.13.1 LCM Development**

The O&M Firm shall develop the LCM Program using industry standards and maintenance practices appropriate for application to SunRail's fleet, for all maintenance to be performed by both O&M Firm and Amtrak. Once accepted by the Department, it shall be incorporated into the overall SunRail LCM Program that will include daily and other running repair maintenance activities to be performed at the SunRail VSMF and Amtrak Sanford Yard.

#### **4.13.2 Equipment List**

The Department shall conduct a thorough analysis of the fleet and provide a list of maintainable components for each vehicle system. This list shall be known as the Equipment List (ELIST). The ELIST shall be divided by system. For each fleet-type (locomotives and coaches (CTCs and BTCs separately), the following systems must be addressed in the ELIST:

<b>System</b>	<b>Description</b>
01	Propulsion (Locomotives and CTC's)
02	Cab Controls (Locomotives and CTC's)
03	Friction Brake
04	Auxiliary Power Supply
05	Car Body Exterior and Interior
06	Door System
07	Truck and Suspension / Coupler and Draft Gear
08	HVAC System
10	Communications
11	Main Engine, Air Intake and Exhaust and Cooling System (locomotive only)

<b>System</b>	<b>Description</b>
12	HEP System
13	Event Recorder
14	Diagnostics (where applicable)

All systems shall be maintained to an operable level.

#### **4.13.3 Maintenance Allocation Chart**

The ELIST shall be the basis for the development of a Maintenance Allocation Chart (MAC) for each vehicle system for each fleet-type. Each MAC will provide a list of items from the ELIST for the subject systems (01 through 14). The MAC will contain the following data relating to each ELIST item:

- OEM Part Number;
- Part Name;
- Part Description;
- Maintenance Required (inspect, calibrate, service, replace, overhaul);
- Ideal Maintenance Interval (expressed in days in service – miles based intervals must be converted);
- Useful Life (days of life of the component provided that all of the prescribed maintenance is performed);
- LCM Interval (actual interval when integrated with the overall LCM Plan);
- Maintenance Location (flat floor, pit track, crane track, etc.).
- Required procedures and special tools

The MACs for each fleet-type shall be submitted to the Department as part of Amtrak's Proposal. Maintenance intervals shall follow normally accepted guidelines. OEM guidelines shall be used as a basis for these intervals.

#### **4.14 LCM PROGRAM**

O&M Firm shall take the approved MACs and re-order the information to compile an interval-based LCM Program for each fleet-type. The LCM Program shall be submitted to the Department. This program shall take MAC-prescribed maintenance and sort the items by LCM interval to generate an interval-based maintenance program. The intervals shall be coordinated with FRA-mandated inspection and maintenance cycles.

##### **4.14.1 LCM Implementation**

The LCM Program will form a major component for the work plan for both O&M Firm's and Amtrak's maintenance activity. This LCM Program shall be applied to the entire fleet. O&M Firm shall prepare a maintenance schedule for each fleet-type for the term of the Contract and shall incorporate this schedule within the Maintenance Production Plan. This LCM schedule shall associate each LCM Maintenance Interval with an actual planned maintenance date (Day, Month, Year) for each vehicle in each fleet-type in a manner such that scheduled work is spread out to

maximize availability of the fleets. At no time should the LCM Program plan to have more than two (2) CTCs out of service for LCM work. The LCM Program schedule shall take into consideration all requirements relating to fleet availability for revenue service and shall ensure that these requirements are not compromised. This schedule shall form the basis for the annual maintenance program for the fleet.

This method shall be developed and communicated to Department through the Fleet Management Plan and the Fleet Management Plan and the Maintenance Production Plan that shall be maintained and transmitted to the Department as indicated.

#### 4.15 FLEET MANAGEMENT PLAN

The O&M Contractor shall develop a Fleet Management Plan as part of the Annual Mechanical Services Plan that establishes the specific maintenance requirements for each coach (CTCs and BTCs) and locomotive in the SunRail fleet for the term of the maintenance services contract. The Plan shall contain a matrix with vehicle number in the far left column, maintenance events across the top row and dates of expected maintenance events filling the matrix for each vehicle in the fleet. This matrix shall be updated as maintenance events occur and shall be provided to the Department on a monthly basis.

#### 4.16 MAINTENANCE PRODUCTION PLAN REPORT

The O&M Firm shall develop and submit a Weekly Maintenance Production Plan Report that shall provide an overview of planned maintenance activities for the 7 day work week, for all work shifts. The Report shall include a work breakdown detailing the following:

- Planned Date / Time / Shift for Maintenance Activity;
- Vehicle Number for each work activity;
- Scheduled Work - Narrative description of work to be performed;
- Planned Work Location;
- Supervisor Responsible for Work;
- Assigned Resource(s) (Type and Labor Hours Required);
- Material Requirements; and
- Planned Out- of- Service Time (hours) by vehicle;

The Report shall contain the projected work for the upcoming week and the actual work performed for the previous week. In addition to the information listed above, the report for the previous week shall contain the following information:

- Actual Date / Time / Shift;
- Additional Work Performed (if any);
- Actual Work Location (if different);
- Actual Supervisor and Employees Assigned to the Work with a breakdown of Labor Hours;
- Actual Material Consumed (if different); and
- Actual Out- of- Service Time.

The report format shall be submitted to the Department for review and approval within 90 days from NTP. This report shall be submitted to the Department no later than 10:00 am on Monday of each week.

#### **4.16.1 Inspection Standards**

Inspections shall be conducted in a manner consistent with OEM recommendations. Visual inspections shall be carried out to the fullest extent, utilizing if required, inspection mirrors, feeler gauges, measuring devices and any other apparatus required in performance of the inspection. Where inspection involves the use of equipment requiring calibration, Amtrak shall insure that all calibrated equipment is accurately calibrated and that procedures are in place for use of the equipment as well as the maintenance of its accuracy.

#### **4.16.2 Equipment Calibration**

The O&M Firm shall identify all tools and test equipment that require calibration, the frequency of calibration and the calibration standards and procedures. The O&M Firm shall be required to maintain a system for tracking the calibration status of the equipment and to be able to recall items for recalibration, as well as items discovered to have been processed with “out of calibration” equipment. The required system shall also provide for clear identification of calibration status and due dates on the calibrated items, retention of current calibration certificates, and storage of calibrated items under conditions that ensure their continued accuracy.

The O&M Firm shall submit a calibration management procedure for the Department review and approval. This procedure shall be included as part of the O&M Firm’s Procedures Manual.

#### **4.17 SPECIAL TOOLS**

Some tools, primarily diagnostic test equipment (laptops and software) is provided through the procurement of new bi-levels and remanufactured locomotives found in Attachment 4. The O&M Firm should expect to purchase some special tools for the proper maintenance of the fleet. These would include: EMD locomotive crab gun and sockets, main bearing wrench, (qty – 2) basket bolt wrench, (qty – 2) power assembly lift tool/head puller, HVAC service gauges and refrigerant recovery systems and single car tester.

The O&M Firm will also supply normal hand tools for maintenance including torque wrenches, air tools, battery chargers, amp meters/VOM, ladders, pressure washer, and steam cleaner.

The O&M Firm shall also furnish necessary shop tools, such as a manlift, forklift, rerailling equipment, come-alongs, ladders, pallet movers, welding machines, portable air compressors.

#### **4.18 PHASE 2 SOUTH FLEET EXPANSION**

The O&M Firm and Department shall negotiate increased scope and cost for any increase in fleet size that would be required for future system expansions. It is anticipated that the basis for negotiation would be on a pro-rata basis.

## **SECTION 5. REPLACEMENT SERVICES**

### **5.1 GENERAL**

In the event replacement services are required, the Department may elect, in its sole discretion, to continue operating the Commuter Rail System or dispose of the Commuter Rail System assets in accordance with law. The Department may provide notice to the O&M Firm of its intent to begin providing the O&M Services, and may provide those services itself with its own or other personnel without liability to the O&M Firm (“Replacement Services”). The Department may utilize Replacement Services as a substitute for all or any part of the O&M Services that the O&M Firm is prevented from performing by virtue of a force majeure event, as described in the O&M Agreement, or fails or refuses to perform in breach of any provision of the O&M Agreement, and may maintain such Replacement Services in effect until the O&M Firm is able to resume performance of the O&M Services in full compliance with the O&M Agreement. In the event that Replacement Services are implemented due to a breach of the O&M Agreement, the O&M Firm shall be liable to the Department for the costs of such services. The Department shall notify the O&M Firm in writing at least 24 hours prior to implementing Replacement Services.

### **5.2 COORDINATION WITH CONTRACTOR**

In the event the Department elects to provide Replacement Services, it shall take such steps as may be reasonably necessary in order to coordinate the activities of its subcontractors and in-house personnel with the activities of the O&M Firm personnel.

### **5.3 PRO RATA REDUCTION IN LUMP SUM PRICE**

During the period in which the Department utilizes Replacement Services, the O&M Firm shall be entitled to compensation only for the O&M Services that it actually provides, and the Annual Fixed Price for any month in which the Department utilizes Replacement Services shall be reduced on a pro rata basis to reflect that percentage of the total O&M Services performed as Replacement Services. The Department shall determine the pro rata share of O&M Services actually performed, and shall submit such determination to the O&M Firm. In the event that the O&M Firm disputes the Department’s determination, both parties shall resolve such disputes consistent with the standard terms and conditions.

## **SECTION 6. COORDINATION WITH FRA AND OTHER RAIL CARRIERS**

### **6.1 FRA COORDINATION**

The O&M Firm shall consult, closely coordinate with and receive approval from the Department, prior to contact with any regulatory agencies, including the Federal Railroad Administration (FRA). The O&M Firm shall keep the Department fully apprised, both by immediate oral notification and in writing, of any such discussions and negotiations with FRA or other regulatory personnel.

The O&M Firm shall be responsible for resolving all FRA violations including mitigating circumstances that led to violation, responding to regulators and paying fines. Any and all penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws shall be paid by the O&M Firm and shall be the responsibility of the O&M Firm inasmuch as the violation occurs as a result of the O&M Firm's negligence in O&M Agreement compliance.

The O&M Firm shall produce, for Department approval, all FRA-required plans, programs and documentation. All plans shall be CFRC and SunRail-specific, addressing only employees related to the contracted service. The O&M Firm shall keep all testing results and analysis relative to approved FRA plans and submittals accessible locally. The O&M Firm shall develop all submittals for the Department's written approval 90 days prior to the Commencement Date. In cases where the Department has preexisting plans, the O&M Firm shall review said plans and revise them as agreed to by the Department.

### **6.2 RAIL ACCESS**

Under contract to the Department and under the direction of the CFRC and COO, the O&M Firm will dispatch, manage, direct and control all railroad operations on the corridor and is responsible for issuing all rules, special instructions, timetables, practices, regulations and orders governing the Corridor.

As part of the purchase agreement with CSXT, passenger rail traffic will be allowed access for 19 hours per day with exclusive passenger rail access for 12 hours per day. The CFOMA provides for priority of on-time Amtrak trains as outlined in the Amtrak Operating Agreement.

The following generally describes the proposed use of the corridor for train operations.

- Weekdays
  - Exclusive passenger use 12 hrs/day
  - Exclusive freight use 5 hrs/day
  - Mixed traffic use 7 hrs/day
- Weekends
  - Mixed traffic use 24 hrs/day
- Passenger use - weekdays
  - 0530-0900 – every 30 minutes
  - 0900-1530 – every 2 hours
  - 1530-1830 – every 30 minutes



- 1830-2200 – every 2 hours
- 2200-0530 – none
- Freight use - weekdays
  - Exclusive – 2200-2359 and 0001-0500
  - Mixed 1000-1500
- Amtrak use - weekdays
  - 6 Amtrak trains per day – between 0530 and 1600

The O&M Firm will manage, direct and control the occupation, use and access to the corridor in substantially the same manner as provided prior to the sale. The O&M Firm will provide all necessary supervisory personnel, dispatchers and bridge tenders as necessary to perform rail activities for SunRail, CSXT, Amtrak and FCEN on the Corridor. The O&M Firm will ensure all of the personnel provided are qualified to perform these duties.

### **6.2.1 Freight Service**

Currently, freight rail traffic consists of CSXT through-freight service, CSXT local switching operations and freight transfers from FCEN entering at Robinson Street in Orlando and traveling to CSXT's Taft Yard.

#### CSX Transportation (CSXT)

The O&M Firm will not apply any restriction that precludes CSXT's provision for rail freight services on the Corridor in accordance with CFOMA. The O&M Firm and CSXT shall each appoint a representative for coordinating activities on the Corridor.

In accordance with CFOMA, CSXT will retain an easement over the corridor to continue to operate freight on the tracks, including freight movements under contract with FCEN; the O&M Firm shall not provide freight service on the corridor. In the event that a CSXT train becomes disabled on the Corridor, the O&M Firm may provide motive power as may be available to help, move, push or haul the train to a location off of the CFRC Corridor or may provide assistance in repairing the disabled equipment. CSXT shall reimburse the Department for providing assistance. The Department will reimburse the O&M Firm in the form of an Emergency Work Order/Supplemental Agreement as outlined in Section 14. Any assistance provided by the O&M Firm to move a disabled CSXT freight train will not be considered as providing freight rail service on the Corridor.

In accordance with CFOMA, CSXT shall, from time to time, operate special/excursion passenger trains over the corridor carrying CSXT employees and invited guests and such trains shall be considered as trains of CSXT. Such trains will not carry members of the general public and all passengers will be considered employees of CSXT.

Florida Central Railroad Company (FCEN)

The O&M Firm shall provide FCEN with access to the CFRC between MP A790.1 and MP A799.7 for the operation of freight service. The O&M Firm and FCEN shall each designate a single representative for coordinating activities on the Corridor.

The O&M Firm shall make every reasonable effort to permit FCEN trains access to all customary stops on the Corridor, to avoid delays to FCEN trains and to not require an FCEN train to depart the corridor prior to the completion of their freight services and related operations.

**6.2.2 Intercity Passenger Service**

The Department and Amtrak have an agreement allowing for Amtrak to provide services and facilities for intercity passenger operations over the CFRC corridor. The schedules and consists of Amtrak Trains shall be consistent with those in effect as of the July 11, 2011 execution date of the Amtrak Operating Agreement.

Amtrak currently operates two roundtrip passenger trains through the CFRC corridor daily and operates a daily roundtrip Auto Train from north of the CFRC corridor to the Auto Train facility in Sanford. It is anticipated that Amtrak will continue to operate these trains as scheduled and there are no known plans for increased service. Any increase in Amtrak service will require modification to the existing agreement with Amtrak and the Department.

Amtrak will be entitled to implement schedule changes and modification to services, subject to the physical capabilities of the Corridor and the efficiency of other operations. Amtrak and the Department shall each appoint a representative who shall be responsible for the coordination of all changes contemplated. In addition, these individuals will be responsible for coordinating activities between the Department and Amtrak and shall have the responsibility for ensuring the performance by the Department and Amtrak, respectively, of their obligations under the Amtrak Operating Agreement. In accordance with the Amtrak Operating Agreement, the individual assigned for the Department for coordination of any schedule changes is the Manager, Central Florida Rail Corridor in District 5 office in DeLand.

When either the Department or Amtrak desires to change an existing schedule or operate additional service on the Corridor, other than special trains, a minimum of 60 day's advance written notice shall be given to the other party specifying the desired change in service.

The O&M Firm, on behalf of the Department, shall make every reasonable effort to ensure that the Corridor is operated in a manner that will make it possible to:

- 1) Deliver Amtrak Trains to all scheduled passenger stops on the Corridor by the scheduled time
- 2) Avoid excessive delays to Amtrak Trains and, consistent with safety, to make up delays incurred on the Corridor or on rail lines of other railroads.
- 3) Not require an Amtrak Train to depart a station prior to completion of customary operations, passenger services or emergency work.

For each train deemed by Amtrak to be late, the Department may be required to pay Amtrak a late train penalty and seek reimbursement from the O&M firm, depending upon the nature of the delay as set forth in Section 15, Incentives and Penalties. The O&M Firm is responsible for documenting Amtrak train corridor arrival and departure data, station dwell time data, and the cause and duration of delays. A weekly report will be provided to the CFRC COO by close of business the following Monday (excluding holidays) with a monthly report sent within five (5) calendar days of the end of each month. The COO will provide this information to the Department for calculating and verifying the monthly compensations between Amtrak and the Department. Criteria for defining late trains are contained in Appendix V of the Amtrak Operating Agreement.

O&M Firm on behalf of the Department shall have sole control of the dispatching of Amtrak's Intercity Rail Passenger Train while on the corridor. Train dispatching and priority shall be conducted in accordance with Appendix VI of the Amtrak Operating Agreement.

### Amtrak Stations

Amtrak shall enter into lease agreements with the Department for the use and occupation of the station facilities adjacent to the Corridor owned by the Department at Orlando and Kissimmee, Florida. Sample lease agreements included in the Amtrak Operating Agreement define Amtrak's responsibility for maintenance and operation of these facilities, including:

\*\*Note for clarification: Amtrak has a lease with Winter Park for use of Winter Park Amtrak Station and has leases with other parties for use of DeLand Amtrak Station.

- Amtrak shall make all arrangements for the provision of and pay for all utilities necessary for its occupancy and use of the Premises.
- The O&M Firm on behalf of the Department and Amtrak shall be responsible for their respective pro rata share of the maintenance, repair and upkeep of the Property, including the maintenance, repair, replacement and alteration of the interior and exterior of the Station and all fixtures, equipment, components and systems that are a part of the Station or necessary to and for the operation of the Station and Amtrak's use and occupancy of its Premises, including structural and roof repairs and maintenance and exterior landscaping, paving and maintenance.
- The O&M Firm on behalf of the Department and Amtrak shall pay their respective pro rata share of all costs, expenses, fees, taxes and sums related to its ownership, operation and maintenance of the Station
- The O&M Firm on behalf of the Department and Amtrak shall provide their respective pro rata share of the following
  - Heating, ventilation and air conditioning
  - Janitorial services to the Property
  - Hot and cold water sufficient for drinking, lavatory, toilet and ordinary cleaning purposes

- Electricity to the Premises in quantities necessary for Amtrak's purposes and use permitted hereunder and lighting
  - Replacement of lighting tubes, lamp ballasts, starters and bulbs
  - Extermination and pest control as often as may be deemed necessary in the exercise of prudent management practices, in no event less than semi-annually
  - Maintenance, cleaning and upkeep of Common Areas and the Property in a first-class manner. Such maintenance shall include without limitation cleaning as specified in the Amtrak Operating Agreement, HVAC, illumination, repairs, replacements, lawn care and landscaping
  - A building manager or engineer capable of responding to Amtrak's requests for service within two (2) hours during all times when Amtrak's passenger train (and bus) operations are scheduled.
  - Security which shall include at a minimum: (1) a police or security guard patrol of the Property, including the interior and exterior of the Station, the parking lot and the platform(s) at least twice daily; and (2) panic button(s) under the Amtrak ticket counter at locations as specified by Amtrak. Any security guards must have obtained any and all applicable governmental licenses and permits. The O&M Firm shall ensure that all panic buttons are connected directly to and will contact directly the nearest local police station
- The O&M Firm on behalf of the Department shall cause utilities (pay telephones in Common Areas, electricity, water, sewer, etc.) to be supplied to the Property sufficiently for the operation of a first-class commercial facility, including provision of such utilities to the Premises at levels and in amounts sufficient for Amtrak's use and occupancy of the Premises

The O&M Firm and the Department have the right to enter upon the Premises, if accompanied by an Amtrak employee, to inspect the same to determine if Amtrak is performing the covenants of the Lease, and to perform service and maintenance pursuant to its obligations under the Lease.

### 6.3 OPERATIONS

The Department shall provide all trains, locomotive, rail cars and rail equipment as necessary to operate the SunRail Commuter Service and the O&M Firm shall provide all personnel for the operation of trains, locomotives, railcars and rail equipment over the Corridor. All Amtrak, CSXT, FCEN and O&M Firm personnel who operate trains over the Corridor shall be qualified by the O&M Firm for operations over the Corridor in accordance with the CFRC operating rules and practices. Amtrak, CSXT and FCEN employees previously qualified to operate over the Corridor will be considered qualified as of the commencement date.

## **SECTION 7. CORRIDOR MANAGEMENT**

### **7.1 GENERAL**

As the owner of the 61 mile CFRC corridor, the Department is responsible for the review and approval of all requests for facility encroachments and permits for right of entry. The Department is also responsible for the policies and procedures related to grade crossings, liability issues and claims management, revenue management, implementation of E-Rail Safe and SunRail service/operating policies. The Department has developed tools to manage these requirements. The O&M Firm will be expected to assume all co-management responsibilities of the DBM Firm related to Corridor Occupancy Services at Notice to Proceed. Corridor Management Services to include but not be limited to:

- Right of Entry (temporary) process and documentation in RMIS;
- Facility encroachments application process and documentation in RMIS;
- Tower Encroachment application process and documentation in RMIS;
- Outside party requests for scheduling activity within the corridor and documentation in RMIS.
- Assess need for providing flagging protection and/or inspection services and/or On Track Worker Safety Training;
- Provide services as required and documentation in RMIS.

## **SECTION 8. MANAGEMENT AND PERSONNEL**

The O&M Firm shall have responsibility for the day-to-day operations of commuter rail service and the maintenance of the railroad system on the CFRC corridor.

The responsibilities of the Department or its designee shall include, but not be limited to having daily oversight of SunRail commuter rail operations and service to ensure compliance with service standards and budgets, including oversight of all contracted services and compliance with all FRA regulations; reviewing and approving the plans listed within the sections of this Scope of Services and implementing the approved plans; and ensuring the maintenance of a high standard of customer relations with all users of SunRail.

The O&M Firm will be directly responsible for all reporting including but not limited to:

- a) Periodic Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- b) On-Demand Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- c) Emergency Reporting (as detailed in Section 11.1, Reporting and Recordkeeping Requirements)
- d) CFR Title 49 Testing and Inspection Compliance

### **8.1 PROVISION OF PERSONNEL**

Except as otherwise provided in this Scope of Services or the O&M Agreement, the O&M Firm shall provide and furnish the qualified personnel necessary to operate, maintain and manage the CFRC and SunRail commuter service in a safe and efficient manner. The O&M Firm will provide the organizational chart with names of management personnel to the Department and shall provide the updated chart to the Department on a monthly basis, or upon the request of the Department. The O&M Firm personnel must possess all necessary technical and legal qualifications required by the U.S. Code of Federal Regulations, the Department or other federal or state regulatory bodies, for all employees to perform their job functions. All such personnel will be employees of the O&M Firm - and all personnel requirements and provisions of the O&M Agreement will apply to sub-contractor personnel, as well as O&M Firm personnel.

The O&M Firm shall maintain personnel, including suitable extraboard contingencies where appropriate, at a level required to successfully and safely deliver all of the provisions of O&M Services. The level of staffing will be as defined by O&M Firm to meet the minimum operating and maintenance standards, and it may become necessary over time to add or delete positions. With respect to the O&M Firm's work force assigned to provide O&M Services, the COO shall have the right to approve the creation of any new positions prior to O&M Firm's implementation of any such decisions, provided, however, that such approval shall not be unreasonably withheld. The O&M Firm will give the COO written notice of any key positions that become vacant, or are anticipated to become vacant and the COO shall have the right to approve any candidate proposed for the vacant position. Unless otherwise mutually agreed, any and all vacant positions are to be filled within 60 days of vacancy.

The O&M Firm shall not, without the prior written approval of the Department, enter into any agreements with labor organizations containing provisions that increase the number of permanent

employees of the O&M Firm or that increase the overall costs attributable to employees engaged in Services provided on behalf of the Department pursuant to the O&M Agreement over the costs of other employees of the O&M Firm in the same crafts; provided, however, that the Department shall not unreasonably withhold its approval. The O&M Firm shall provide the Department with current versions of the collective bargaining agreements that the O&M Firm has with the crafts represented in providing O&M Services throughout the term of the O&M Agreement.

In order to ensure that adequate personnel are available to perform the functions described in this Scope of Services, the O&M Firm shall develop and submit to the COO for approval, an annual work force deployment plan which is due with the annual operating budget submittal. The plan shall indicate personnel assignments by time of day to assure that forces are deployed effectively and efficiently to complete scheduled tasks. The COO reserves the right to request changes and return the plan for revision. Personnel on duty shall, at all times, devote themselves exclusively to the provision of O&M Services. O&M Firm employees are expected to be on the Service Property, or en-route between locations during the work shift. Except in the case of emergency or previous written agreement between the O&M Firm and the Department, the O&M Firm is prohibited from performing work on behalf of others, including, without limitation, other operators on the Service Property without the express approval of the COO.

The O&M Firm shall not assign employees designated to provide O&M Services to perform any other services that the O&M Firm may operate or manage without prior approval of the Department. The COO reserves the right to direct the removal of any individual, including Key Personnel, assigned to perform work under this Scope of Services.

## 8.2 KEY MANAGEMENT FUNCTIONS

The O&M Firm shall be responsible for managing the following functional areas:

- Management and Administration
- Managing Corridor
- Operations
- Designated Supervisor of Locomotive Engineers (DSLE)
- Safety
- Training
- Security
- Equipment Maintenance
- Signal Maintenance
- Construction Administration
- Field Construction Support and Coordination
- Customer Services
- ADA Compliance
- Stations and Facilities
- Accounting
- Communications Maintenance

The O&M Firm shall provide an organizational structure to address these functional areas. Descriptions for all key positions shall be provided to the COO for review and approval days after Notice to Proceed for mobilization. Key Management Personnel may not be substituted without prior written approval of the COO.

The O&M Firm agrees that the Key Management Personnel are an essential element of the O&M Agreement. The O&M Firm will not reassign or reduce the commitment of any such Key Management Personnel during the term of the O&M Agreement without the prior approval of the COO. In the event that replacement of a Key Management Person is required, the O&M Firm will submit a qualified replacement for COO review and approval.

The COO reserves the right at any time to reasonably reject any Key Management Personnel, and the O&M Firm agrees to replace said person within 60 days of written notice of rejection. The Department shall have the right to approve the hiring of all individuals who report directly to the O&M Firm's General Manager provided that such approval shall not be unreasonably withheld. The O&M Firm shall consult with the Department concerning the hiring of all management employees who report directly to individuals who report directly to the General Manager. The O&M Firm will not remove or reassign a General Manager approved by the Department without the prior written consent of the Department, which approval shall not be unreasonably withheld. The General Manager will have the authority to discharge and replace the employees of the O&M Firm engaged in O&M Services. The O&M Firm shall bear the relocation and other costs associated with initial key personnel and replacement of personnel during the term of the O&M Agreement. The O&M Firm shall provide appropriate management coverage at all times.

There shall be no periods when managers are all assigned to perform work outside this Scope of Services (e.g., for corporate level meetings, responding to other problems not related to these O&M Services, etc.). Appropriate management representation shall be designated, with COO approval, for all Department-required meetings.

### **8.2.1 Availability of Personnel**

Starting times and workweek schedules for each position will be determined by the O&M Firm and approved by the COO according to operational needs and may be changed by appropriate notice to the COO. Workdays may include the weekend to meet operational needs. Specified personnel will be required for 24-hour, on-call service in accordance with Section 2.8, Incident Management and Notifications.

All employees engaged in the provision of O&M Services shall perform their duties in a safe, professional, efficient and courteous manner, and all employees who deal with the public shall be clean and properly attired while on duty. The O&M Firm shall submit a Code of Conduct and Discipline Policy for all O&M Firm personnel consistent with the State of Florida Employee Code of Conduct for the COO's approval 90 days after approval of Service Agreement. The Department considers any conduct not consistent with the O&M Firm's policy to be "conduct unbecoming an employee," and the O&M Firm shall discipline accordingly an employee whose conduct is not consistent with those objectives. The O&M Firm, at the request of the COO, shall remove from its employment and bar from the Service Property, insofar as this O&M Agreement is concerned, any employee who exhibits conduct unbecoming an employee. Examples of conduct unbecoming an employee include, but are not limited to, the following:

- a) Any instance of violation of applicable safety rules that causes a fatality/injury to a person or damage to property.



- b) Unauthorized use of all personal or company-issued electronic devices while on duty, including but not limited to cell phones, personal digital assistants, digital cameras and camera phones.
- c) Any instance of use of language that is obscene, risqué or religiously, ethnically or sexually demeaning, or making light of physical or mental disability, regardless of whether it is directed at a customer.
- d) Any instance of belligerent or malicious behavior.
- e) Any instance of willful failure to assist customers.
- f) Any instance of littering rolling stock, station areas or on the Service Property.
- g) Any instance of eating, smoking, reading non-railroad related materials, listening to radio or other audio devices or watching television while on duty and serving the general public.
- h) Conduct demeaning to the Department, including demeaning oral or written remarks made to the public or Department customers.

Any and all complaints of "conduct unbecoming an employee" shall be investigated by the O&M Firm management personnel and a report provided to the COO with the results of the investigation. Such reports shall include the identity of the employee and the facts and circumstances of the complaint and the results of the investigation by the O&M Firm. Additionally, if the COO is notified of a complaint about an employee by an entity other than the Contractor, the O&M Firm must investigate and similarly report the details and the results of the investigation to the COO.

As outlined in the Discipline Policy, any employee who continues to work in an unsafe or unprofessional manner after counseling and training shall be subject to removal from performance of O&M Services, at the discretion of the General Manager. Regardless of any other provisions in the O&M Agreement for removal of employees from performance of O&M Services, if any person employed by the O&M Firm appears to be under the influence of alcohol or drugs or acts in a disorderly or improper manner, the employee shall be removed from the performance of O&M Services.

The COO reserves the right to direct the O&M Firm to reassign any individual for cause. In the event a person holding such a position, including a manager, is reassigned or removed, the O&M Firm shall submit an alternate candidate for COO review and approval.

If requested by the COO, the O&M Firm will hold employees out of performance of O&M Services pending a disciplinary hearing into charges of conduct unbecoming an employee, per the Discipline Policy. If the hearing results in a finding of guilt, the employee shall be barred from performance of O&M Services upon written request from the Department. If the employee is returned to service as a result of the hearing, the Department will bear the cost of lost wages for an employee held out of performance of O&M Services when (1) the Department initiated the charge; and (2) an arbitrator rules the discipline assessed was excessive and awards back pay for time lost.

### 8.3 SUBSTANCE ABUSE PROGRAM

The O&M Firm shall develop a random testing program as required by 49CFR219 and will be responsible to submit to the FRA for approval no later than 30 days prior to any covered O&M Firm employees performing covered service under the terms of the O&M Agreement. Prior to submission to the FRA, the O&M Firm shall submit the program to the COO for review and approval.

The O&M Firm shall be responsible to administer and enforce their FRA approved random testing program. The O&M Firm shall generate a report on their random testing program and submit to the COO annually. The O&M Firm shall change the drug and alcohol testing procedures as and when required by any applicable law or regulation, but shall not make any other changes to these procedures without prior notice to, and approval of the COO. Names and test results will always be maintained in a confidential manner, to the extent allowed by law.

### 8.4 UNIFORM REQUIREMENT

All uniformed employees on or about the Service Property in public areas must be properly attired and groomed and shall treat the public with courtesy, whether on or off duty. Uniformed employees shall not be allowed to smoke on the Service Property in areas where any interaction with the general public is possible. The O&M Firm shall require employees to follow established uniform guidelines and to be attired in appropriate uniforms whenever on-duty.

The O&M Firm shall design uniforms and submit uniform guidelines 90 days before Commencement Date, for the Department's approval, and supply uniforms for all personnel who interact with the public, including, but not limited to, all onboard train crew personnel, and customer service agents. The uniform design shall include the SunRail logo. The O&M Firm, at its discretion, may opt to have a seasonal uniform. All uniforms shall be professional in appearance and make crew members easily identifiable to the public.

## **SECTION 9. LABOR OBLIGATIONS**

As between the O&M Firm and the Department, the O&M Firm shall be solely responsible for determination of and payment of their wages and benefits and other terms and conditions of employment; provided, however, that the O&M Firm shall comply with Fair Labor Standards Act, State of Florida's Department of Labor and if applicable, the Davis-Bacon Wage Act, or other safety or wage/hour laws. The O&M Firm will faithfully comply with the terms and conditions of all applicable agreements with any labor organization representing O&M Firm's employees concerning wages, benefits and terms and conditions (i.e., shifts, starting times, meals periods, etc.) of employment. The O&M Firm will comply with all applicable laws, regulations, rules and procedures respecting employer's liability, worker's compensation, unemployment insurance and other forms of social security or railroad retirement, if applicable, and also with respect to any other proper withholding from wages of employees.

The O&M Firm shall comply with the requirements of the Federal Railroad Administration (FRA) Hours of Service regulations (49CFR228) for employees covered by that Part. Employees covered include (1) employees who are actually engaged in or connected with the movement of any train; (2) employees who dispatch, report, transmit, receive, or deliver train orders by any electrical or mechanical device; and (3) employees who are engaged in installing, repairing, or maintaining signal systems.

The O&M Firm will provide to the Department a written contingency plan describing, in detail, measures to be taken, in the event of any strike or work stoppage engaged in by O&M Firm personnel, to assure continued and uninterrupted performance of the O&M Firm's Services.

## **SECTION 10. TRAINING OF O&M FIRM PERSONNEL**

### **10.1 GENERAL**

The O&M Firm, in accordance with CFRC, SunRail, Federal and State regulations and standards, shall develop and implement an ongoing, comprehensive training and certification program (Training Program) for employees who are providing O&M Services including, but not limited to, all craft and management employees. The Department's objective is to have the highest level of trained and skilled staff. The O&M's training programs will compliment this expectation and emphasize a customer-driven approach. All employees, which are required to be a qualified person or qualified maintenance person, shall be trained and certified as required for the task(s) performed or equipment operated consistent with the requirements in 49CFR238.109. The Training Program shall be developed for COO review and approval 90 days after Notice to Proceed. Training shall include those elements required for the performance of duties in addition to specific areas of training for handling hazardous materials, SunRail operations, and safety and security training for new hires consistent with current CFRC and SunRail programs. Training courses shall include provisions for refresher training. In addition, the O&M Firm will designate personnel to receive a Train-the-Trainer course from CSXT so that they shall have the ability to train and qualify the O&M personnel. In addition the designated personnel will be responsible for providing refresher or recertification training for O&M personnel.

All employees shall be trained to the extent necessary to be fully qualified and competent to perform their duties for the CFRC and SunRail. Those who are identified as being deficient in knowledge or skills shall be required to promptly attend and pass courses of instruction specific to their craft or service area. Employees who refuse or decline training and fail to successfully pass certification tests shall not be allowed to hold a position where such certification is required. The O&M Firm shall be required to remove from CFRC and SunRail service any O&M Firm personnel who fails to successfully complete training required in the approved Training Program. The O&M Firm may reinstate the removed O&M Firm personnel to CFRC and SunRail service once the employee successfully completes the required training. The Department reserves the right to review O&M training records and request evidence that the O&M Firm's employees and subcontractors who are providing O&M Services are appropriately trained and certified and have completed appropriate efficiency and competency tests. The FRA and SSO will also be provided access to audit the O&M Firm's training programs.

The O&M Firm shall meet quarterly with Department to review the effectiveness of the approved Training Program. The O&M Firm shall also provide the Department with a training report furnished to the Department at least two weeks prior to the training review, which will initially occur on a quarterly basis. The O&M Firm is responsible for formulating and coordinating all training activities. The O&M Firm shall provide training within the SunRail Service Property, unless prior written approval to hold training elsewhere is provided by the Department. The O&M Firm shall schedule training activities so as to not interfere with its provision of services under the O&M Agreement. The O&M Firm shall provide a schedule of all planned training and upon request shall make available to Department employees (up to 10) and to third-party personnel any training offered to or by its own personnel who are assigned to work under the O&M Agreement. The O&M Firm shall provide at

least fourteen days notice to the Department of all training offered to or by the O&M Firm for its own personnel prior to the beginning of such training.

All costs for any and all Training will be the responsibility of the O&M Firm. This includes all wages for instructors and students and any wages to back fill the positions for jobs needing to be filled while the students are in Training Class.

All training courses developed by the O&M Firm shall be specific to CFRC and SunRail and shall be submitted to the Department for review and approval. Position titles described in this section and its exhibit may not exactly match the union craft and categories and positions required under the O&M Agreement.

#### 10.2 HAZARDOUS MATERIALS TRAINING REQUIREMENTS

The O&M Firm shall provide training, consistent with the Hazardous Materials Site Specific Health and Safety Plan to O&M personnel who may impact hazardous material transportation safety. O&M Firm shall train O&M personnel on the Material Safety Data Sheets for the hazardous materials stored on the Service Property. Employees who inspect or transport hazardous material by rail must have a copy of and comply with the United States Hazardous Materials Instructions for Rail, as well as a copy of the current Emergency Response Guidebook (ERG) readily accessible while on duty.

#### 10.3 FRA COMPLIANT TRAINING COURSES TO BE DEVELOPED

The CFRC, owned by the Department, is the entity FRA will hold responsible for compliance by all O&M Firm personnel with FRA-required operations and maintenance rules, standards, training, and certifications, applicable to such personnel. The O&M Firm shall comply with all FRA regulatory requirements and shall develop for the Department's approval a training program that meets all the training requirements, as applicable, of 49 CFR Parts 200 to 299. CFRC Officers and FRA shall have access to these records. These include, at a minimum:

- The O&M Firm will be required to develop for the Department's approval, in accordance with Part 213.7, a comprehensive training program for the application of written Continuous Welded Rail procedures, with provisions for annual re-training, for those individuals designated under §213.7(c) as qualified to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track. The track owner shall make the training program available for review by FRA upon request.
- All roadway workers and third party contractors performing O&M Services shall be trained, qualified in, and work in compliance with the CFRC Roadway Worker Safety Protection Plan and all applicable regulations contained in 49CFR214. The O&M Firm shall ensure that all personnel affected by the CFRC Roadway Worker Training, in accordance with Part 214, maintain their qualifications as detailed within the CFRC RWP Safety Plan. Training and qualification records must be maintained by the O&M Firm and made available to the CFRC/Department upon request.
- The O&M Firm shall ensure that all third party contractors or any other persons to whom the plan may apply meet all applicable requirements of the program prior to performing any work on the CFRC.

- The Part 217.9, Program of Operational Tests and Inspections. The O&M Firm shall develop a training program and train and qualify managers and supervisors that are responsible for conducting Operational Tests and Inspections and Record keeping.

O&M Firm Testing Officers shall:

- 1) Be qualified on the railroad's operating rules;
  - 2) Be qualified on the operational testing program requirements and procedures relevant to the tests the officer will conduct;
  - 3) Receive appropriate field training, as necessary to achieve proficiency on each operational test the officer is authorized to conduct; and
  - 4) Conduct operational tests as required by this plan.
- The O&M Firm shall also develop, for the Department's approval, a training program that meets the requirements of 49CFR217.11. The O&M Firm will train and qualify all employees whose job and/or function requires operating rules qualification in the requirements of this Part.
  - The O&M Firm shall develop for the Department's approval a training program that meets the requirements of Part 218.95 subpart F – Handling Equipment, Switches, and Fixed Derails Training Program. The O&M Firm shall develop a schedule to train and qualify all new hire employees whose job and/or function requires initial operating rules qualification in the requirements of Part 218.95.
  - The O&M Firm will be required to provide a Reasonable Suspicion Training Program for all managers and supervisors as outlined in Part 219. Training will include classroom and field training. Subject material includes applicable parts of Parts 217 and 218.
  - The O&M Firm will be required to provide covered employees a minimum of two (2) hours of training covering Part 219 alcohol and substance abuse awareness. All non-covered O&M Firm employees will be provided with substance abuse awareness training in accordance with the CFRC/SunRail SSPP.
  - The O&M Firm will be required to develop for the Department's approval, in accordance with Part 220.25, radio communications instruction and testing.
  - The O&M Firm will be required to develop for the Department's approval, in accordance with Part 228, an Hours of Service training program. The O&M Firm shall develop a schedule to train employees whose job function requires that their work hours be reported.
  - The O&M Firm will be required to develop for the Department's approval and submittal to the FRA, in accordance with Part 240, a qualification and certification training program for SunRail locomotive engineers 30 days after Notice to Proceed. Train engineers shall be qualified, certified and trained in accordance with 49CFR240 by the O&M Firm's DSLE and shall have a valid driver's license issued by a state within the United States. All engineers must be able to qualify on SunRail equipment, which includes train handling, operating rules, and physical characteristics through written and oral testing and demonstrated and observed train handling. In addition to the

safe operation of the train, engineers must possess specific knowledge to be able to trouble shoot routine mechanical issues en route. The O&M Firm's training program must include provisions for such trouble shooting purposes. Engineers must also be trained on applicable components of PTEPP.

- The O&M Firm will be required to develop for the Department's approval, in accordance with Part 242, a qualification and certification training program for SunRail passenger train conductors. The O&M Firm shall provide conductors that are qualified on Operating Rules, Air Brake Instruction, Safety Rules, PTEPP and Emergency Evacuation procedures, Security Awareness, CPR/AED and First Aid Training, Timetable Special Instructions, basic mechanical troubleshooting, Fare Inspection and ADA and customer service requirements. Conductors shall be trained according to the O&M Firm's approved training plan and operate the train according to the Department-approved Train and Engine Crew SOPs that will be developed by the O&M Firm.
- The O&M Firm shall develop a Rolling Stock Training Program for the Department's approval, in accordance with Part 238, for the SunRail Commuter Rail system. The Plan shall, at a minimum, accomplish the following:
  - 1) Identify the tasks related to the inspection, testing, and maintenance required by this Part that must be performed on each type of equipment that the railroad operates
    - a) Develop written procedures for the performance of the tasks.
    - b) Identify the skills and knowledge necessary to perform each task.
    - c) Adopt a training curriculum that includes classroom and "hands-on" lessons designed to impart the skills and knowledge identified as necessary to perform each task. The training curriculum shall specifically address the Federal regulatory requirements contained in this Part that are related to the performance of the tasks identified
  - 2) Require all employees and contractors to pass either a written or an oral examination covering the equipment and tasks for which they are responsible that are required by this part as well as the specific Federal regulatory requirements related to equipment and tasks to achieve and maintain required passenger railcar maintenance qualification.
  - 3) Require all employees and contractors to individually demonstrate "hands-on" capability to successfully perform the tasks required by this part that must be performed as part of their duties.
  - 4) Require supervisors to complete the training program that covers the employees whom they supervise.
  - 5) Requires supervisors to exercise oversight to ensure that all identified tasks are performed in accordance with SunRail written procedures.
  - 6) Designate in writing that all applicable O&M Firm personnel and required sub-contractors have the knowledge and skills necessary to perform the safety-related tasks

- 7) Require periodic refresher training that includes classroom and “hands-on” training, as well as testing, at an interval not to exceed three years.
  - 8) Add new equipment to qualification and designation program prior to its introduction to service.
  - 9) Maintain records adequate to demonstrate that all O&M Firm personnel performing safety related tasks on SunRail passenger equipment are currently qualified to do so. These records shall be adequate to distinguish the qualification so the employee as a qualified person or as a qualified maintenance person.
  - 10) The O&M Firm shall coordinate with Amtrak to ensure that records adequate to demonstrate that each employee at Amtrak Sanford Yard Facility performing safety related tasks on SunRail passenger equipment is currently qualified to do so and that these records will be available for inspection by the Department and FRA. These records shall be adequate to distinguish the qualification so the employee as a qualified person or as a qualified maintenance person.
- The O&M Firm shall develop, for the Department’s approval, a training program for rail vehicle maintenance employees. The O&M Firm shall develop a schedule to train and qualify all new hire employees and shall provide for annual safety refresher courses. This safety training course shall, at a minimum, provide the following:
    - 1) Roadway Worker Protection;
    - 2) Safe work practices on and around railroad equipment;
    - 3) Blue Flag Protection;
    - 4) Materials Handling (HAZMAT);
    - 5) High Voltage Electricity on Applicable Railway Equipment;
    - 6) Drug and Alcohol awareness (Supervisors/Managers only)
  - The O&M Firm shall review the Contract Requirements as well as Training, Manuals and Parts Catalog deliverables from MotivePower, Inc. and Bombardier Transit Corporation (the O&M Firm will participate in the review and approval of the Training Plan, Training Documents, and O&M Manuals and Parts Catalogs being provided for cars and locomotives under Attachment 10, Cab Car and Locomotive Design Criteria.)
  - The O&M Firm will develop training as required pursuant to the Software Management Control Plan, for the Department’s approval, in accordance with Part 236.18. The O&M Firm shall develop a schedule to train all employees whose job function requires compliance with Part 236.18 and shall provide for annual safety training courses.
  - The O&M Firm shall develop for the Department’s approval a training program that meets the requirements of Subpart H - Standards for Processor-Based Signal and Train Control Systems,



Part 236.921 – Training and qualification program, general. The O&M Firm shall develop a schedule to train and qualify all new hire employees whose job and/or function requires training under Parts 236.925, 236.927 and 236.929.

- The O&M Firm shall develop for the Department’s approval a training program that meets the requirements of the FRA 49 CFR 238.109, Training, Qualification and Designation program. The O&M Firm shall develop a schedule to train all employees whose job function requires compliance with Part 238.109 and shall provide for annual training.
- OCC Training:
  - 1) CFRCC personnel with duties essential to Part 239, Passenger Train Emergency Preparedness Plan (PTEPP) shall be trained by the O&M Firm in the requirements of the PTEPP to ensure that they are properly prepared to respond to emergency situations. CFRCC personnel shall receive initial Roadway Worker Protection Training, Radio Rules, Security Awareness and CPR/First Aid, in addition to the specific requirements of the CFRC Emergency Preparedness Training Program for CFRCC personnel provided in Attachment 20, Passenger Train Emergency Preparedness Plan.
  - 2) Dispatcher qualifications and training shall be consistent with industry standards and subject to the approval of the COO. Training shall include, but not be limited to: Safety; Operating Rules; Physical Characteristics; Emergency Management, Incident Command System (ICS); general troubleshooting and equipment familiarization. The O&M Firm shall also provide on the job training (posting) of sufficient duration as approved by the COO. Dispatchers shall participate in familiarization training, as approved by the COO, regarding how to communicate and work effectively with the OCC and local and regional designated Emergency 911 Communications Centers.

#### 10.4 SAFETY AND SECURITY TRAINING REQUIREMENTS

##### **10.4.1 Safety**

The O&M Firm will develop and provide applicable safety training, testing and rules qualification for O&M Firm personnel, subcontractors and third-party contractors in accordance with the CFRC’s SSPP, SSP, SEPP, Operating and Safety Rule Books and PTEPP. The O&M Firm will develop and provide, in collaboration with the Department’s Representatives’ and in consultation with the emergency responder organizations and the operating railroads in the SunRail system service area, a training program for emergency responders who could reasonably be expected to respond to a corridor emergency. The O&M Firm will conduct tabletop and other emergency simulations, as specified in the PTEPP and SEPP in collaboration with these groups during the mobilization period to ensure preparedness for passenger train and railroad right-of-way emergencies.

National Incident Management System (NIMS) training from the Federal Emergency Management Agency (FEMA) will be required for all O&M Firm Managers as part of the emergency preparedness planning required within the SSPP to ensure an appropriate response to all incidents and emergencies that occur on the corridor.

All facilities maintenance tasks performed by O&M personnel or by third party contractors for the Local Government Partners, at the station sites and VSMF OCC facility will be "non-railroad" tasks maintaining facilities adjacent to the railroad and will not be "roadway workers" as defined in FRA Part 214.7 and may not need roadway worker training per FRA Part 214.343. The O&M Firm will ensure that they receive railroad safety awareness training and security awareness training in accordance with the Department's requirements.

#### **10.4.2 Security**

The O&M Firm will administer security-related training courses, drills and simulations with their personnel and applicable outside agencies, as specified in the CFRC SSP and SEPP and approved by the Department. This training shall enable O&M Firm personnel, SunRail passengers and third-party contractors to identify, record and report to the proper authorities, as appropriate, any criminal acts, suspicious activities and occurrences, or other security concerns identified within CFRC/SunRail operations.

## **SECTION 11. ADMINISTRATION**

### **11.1 REPORTING AND RECORDKEEPING REQUIREMENTS**

The O&M Firm shall keep, store, and maintain, during the term of the O&M Agreement, and for three (3) years after the termination or completion of this O&M Agreement a full and accurate records of all aspects of its provision of O&M Services and other activities carried out under this O&M Agreement.

The O&M Firm shall maintain and furnish to the COO, in written and in electronic format, the required reports set forth in this Scope of Services. The O&M Firm shall deliver to the COO, for review and approval, all Annual Program Plans including, without limitation, those designated in this Scope of Services 30 days prior to the anniversary date of its initial acceptance.

This section defines when daily, monthly, quarterly, and other reports are due to be submitted to the Department as follows:

- a) Daily Reports shall be submitted to the COO no later than 0700 the following day;
- b) Weekly Reports shall be submitted to the COO no later than close of business on Monday of the following week;
- c) Monthly Reports shall be submitted to the COO within 10 days of the end of the month;
- d) Quarterly Reports shall be submitted to the within 10 days of the end of the quarter;
- e) Annual Reports shall be submitted to the COO no later than the anniversary of the Commencement Date, unless otherwise specified;
- f) As Occurs Reports shall be received by the COO no later than 24 hours after the occurrence triggering a report; and
- g) On-Demand Reports shall be prepared by O&M Firm at COO's request, using the RMIS.

The O&M Firm shall submit the following reports and records to the Department or its designee at the intervals indicated in section 12.1.1 through 12.1.7 below.

#### **11.1.1 Annually**

- a) Annual Bridge Inspection Report, in accordance with FRA requirements;
- b) An annual report of O&M Firm's Drug and Alcohol 219 program;
- c) Summary report of system-wide ridership count including on-off passenger counts by station and by train for seven consecutive days in late January (annual survey dates to be determined by the COO). Summaries also shall be provided in required electronic format;
- d) Completion of the annual internal safety audit, summary report of findings with a remedial action plan;
- e) The O&M Firm shall submit to the COO the previous fiscal year's information required for the FTA's National Transit Database (NTD) reports by September 1;
- f) Within 90 days after the close of the O&M Firm's fiscal year, an audited annual financial report shall be submitted to the Department; and
- g) Thirty (30) days after the end of the fiscal year, the O&M Firm shall submit an Annual Report which shall include: performance record compared to standards; record of

accomplishments including training performed; issues requiring action; recommendations for improvement or changes to the Service; preliminary, unaudited financial report on the fiscal year; assessment of the condition of all capital property, both rolling stock (include vehicle maintenance and utilization report) and structures; attainment of M/WBE Goals; a listing of all assets held by or under the control of the O&M Firm the value of which exceeds \$5,000; and a list of all changes during that Fiscal Year (additions or deletions) to the inventory of equipment, materials and fixed assets provided to and paid for by the Department. Five (5) copies of this report shall be submitted.

#### **11.1.2 Quarterly**

- a) Training Report, including specific programs, person-hours, and employee performance issues addressed;
- b) Report demonstrating compliance with the Drug and Alcohol 219 program; and
- c) Summary Report of customer complaints, comments and correspondence. The report shall include train number, date of incident, type of comment (such as ADA, announcement, fare inspection, rude employees, etc.), location (if at a station), whether resolved or not, and length of time to resolve.

#### **11.1.3 Monthly**

- a) Statement of expenditures for the previous month and year-to-date vs. budget, including supporting documentation for expenditures. This report shall document expenditures vs. budget for each functional area/department(e.g., General and Administrative, Train Operations, Maintenance of Rail Lines, Maintenance of Equipment, etc.) and for each major category of expense (i.e., labor, materials, purchased services and other). The report shall include a variance analysis section which describes the reasons for any significant variances from budget (either positive or negative) and any corrective actions proposed by the O&M Firm to eliminate negative (unfavorable) variances. Underlying documentation furnished with this statement shall include all information necessary to substantiate O&M Firm's costs including, without limitation, total system and cost center charges, by account, General Ledger Journals, material issues, equipment rental schedules and charges, and monthly hours/earnings records;
- b) Material control information, by storehouse and stockpile location, together with supporting documentation as follows:
  - 1) Summary of transactions and beginning and ending perpetual inventory balances;
  - 2) List of Detail Issues;
  - 3) List of Detail Adjustments; and
  - 4) List of Detail Receipts.
- c) Material usage and scrap sales reports;
- d) Extra Work statement of expenditures for the previous month and project-to-date vs. budget, including supporting documentation for expenditures. This report shall document expenditures vs. project budget for each major category of expense (i.e., labor, materials, purchased services and other). Underlying documentation furnished with this statement shall include all information necessary to substantiate O&M Firm's costs including, without

- limitation, material issues, equipment rental schedules and charges, and monthly hours/earnings records;
- e) Extra Work - Cost Tracking Report, including the following information for each Supplemental Agreement:
    - 1) Description of every open Supplemental Agreement;
    - 2) Costs incurred during the most recent billing period;
    - 3) Total costs incurred to date;
    - 4) Not-to-exceed maximum (if any); and
    - 5) Estimated cost to complete. There shall be separate, though similar, reports for Construction Support and Operations Support;
  - f) Extra Work - Employee Utilization Report, including the following information for each Supplemental Agreement requested:
    - 1) Number of employee-days worked for each of the preceding three billing periods;
    - 2) Estimate of the number of employee-days that will be necessary over the next six billing periods to complete the existing and planned work; and
    - 3) List of all employees (including those from subcontractors) that are performing work, the number of employees that worked nine (9) hours or more during the most recent billing period, a list of Work Directives with the number of employee-work days where an employee worked nine or more hours during the most recent billing period, and the total number of employee-days worked to date.
  - g) Extra Work - Materials Usage Report including detail of all materials used in execution of the Supplemental Agreement, the source of the material, the date material was incorporated within the railroad system, the location where the materials were installed;
  - h) Extra Work - Equipment Report, including list of all equipment and vehicles and the hours worked and on standby for each project;
  - i) Completed maintenance by equipment number, showing:
    - 1) Wheels trued and changed during month
    - 2) Major components changed out during month
    - 3) Significant maintenance activity, including extraordinary material usage or component failure.
  - j) Anticipated maintenance for coming month by equipment number, showing:
    - 1) Wheels to be trued and changed; and
    - 2) Major components to be changed out.
  - k) Preventative maintenance for Periodic Brake and Equipment Maintenance Program (as defined in 49CFR237.309) by equipment number, showing:
    - 1) Wheels to be trued and changed; and
    - 2) Major components to be changed out.
  - l) Equipment history file by equipment number, compiling:
    - 1) Past repairs over last 12 months; and
    - 2) Anticipated and preventative repairs for next month, next 12 months and 4-year Cleaned, Oiled, Tested and Stenciled (COT&S) Program.
  - m) Report of replacement of damaged or missing onboard signage for priority seating, wheelchair accessibility, bicycle and luggage stowage or any other signage providing information to PNAs;

- n) A rail, ballast, tie and switch tie installation report detailing the quantity of rail and ballast installed, the number of wood or concrete cross-ties installed, the number of switch ties installed, size, milepost to the nearest tenth mile, and track designation;
- o) A statement describing the material usage by project control number, material ownership (O&M Firm, Department or third party), and material class;
- p) Engineering/maintenance work performed during the past month and planned for the next month, including comparisons of planned production vs. actual;
- q) Curve Lubricator Report;
- r) Updates to SOGR data base;
- s) In-service rail failures by location, failure type, rail size, and disposition/remediation;
- t) Vegetation removal report (upon request);
- u) Fencing repairs;
- v) On-track equipment maintenance records;
- w) Record of FRA signal tests performed;
- x) Report of replacement or repair of right-of-way signage;
- y) Summary of right-of-way cleanup activities, including special cleanup projects, identification of new problem areas, etc.;
- z) Surfacing report, which accurately records by milepost and lineal foot the track footage tamped, regulated, and stabilized from records compiled on a daily basis. The report also shall include equipment hour readings, any downtime due to equipment breakdowns, the rail temperature at time of surfacing, and amount of raise;
- aa) Report on the performance of the employee efficiency testing program including information on distribution and type of tests, as well as failures;
- bb) On-time performance and rolling stock availability;
- cc) Complaint Report (from consumer reports received during month);
- dd) Fare Collection and Inspection Activity Summary report of onboard fare instrument inspections, inspection rates, number of warnings and citations issued, inspection-related incidents, etc. in a format to be agreed upon between the parties;
- ee) Counts of PNA/PWD boardings and alightings, including summaries by origin/destination stations;
- ff) Injuries and fatalities (passenger, employee and third party, including copies of FRA-required reports);
- gg) Employee Injury Statistics Report, including Federal Employers' Liability Act (FELA) or worker's compensation claims filed/paid, the number of FRA reportable employee injuries per 200,000 person hours worked, organized by department (Operations, Maintenance of Equipment, Maintenance of Way, etc.), and trend analysis and recommendations for continuous improvement;
- hh) Report of damage, by accident, vandalism or whatever reason, to any property used in providing the Services where such damage exceeds \$500;
- ii) Monthly Miles and Hours Report, including separately identifying and summarizing statistics for scheduled vs. special service trains;
- jj) Statement of ridership for the month and for the fiscal year to date, with comparisons to the prior fiscal year ;
- kk) Late train report (greater than five minutes), including the cause of the delay;

- ll) Average passenger counts by train; and
- mm) Report of damage by accident, vandalism or whatever reason, to any property used in providing the Services.

**11.1.4 Weekly**

- a) Track Trouble Log; and
- b) Signal Trouble Log.

**11.1.5 Daily**

The O&M Firm shall provide, to the COO, the following reports each day 30 minutes prior to the first train departure:

- a) A Summary Report that details the prior day's:
  - 1) Train Operations (on-time performance);
  - 2) Conductors trip reports;
  - 3) Passenger counts (total and by train trip);
  - 4) Service delays (including estimated repair/opening times);
  - 5) Fleet status (including estimated repair/opening times, bad orders);
  - 6) Mainline track status (including estimated repair/opening times);
  - 7) Communications and signal trouble reports;
  - 8) Facility status (including estimated repair/opening times);
  - 9) Rush hour performance report;
  - 10) Station status;
  - 11) Slow orders;
  - 12) Special event activity;
  - 13) Incidents of any denied wheelchair boardings, including stations and reasons for denial;
  - 14) Employee or passenger injuries; and
  - 15) Details of any accidents, incidents, or unusual occurrences during the previous service day.
- b) A Staff Utilization Report that details all assignments of Train and Engine crews, transportation managers, customer service agents, station agents and dispatching center personnel indicating base assignment, assigned person, and vacancy/variance of person and hours. Extra board utilization shall be included.

**11.1.6 On Demand Reports**

- a) By next day at 1700:
  - 1) Copies of O&M Firm-maintained "Trouble Log" reports which document any and all known unusual occurrences on the Department system, including results of O&M Firm follow-up and closeout;
  - 2) Accident/Incident reports status;
  - 3) Post-incident employee statements;
  - 4) O&M Firm's standard maintenance of equipment conditions, inspection, and test reports; and
  - 5) Any report capable of being generated by RMIS.
- b) Within two weeks of receipt of request:

- 1) Report on internal service quality monitoring, including identifying trends and areas for improvement in onboard services and the customer experience.

#### **11.1.7 Emergency Reports**

After the conclusion of an emergency, in accordance with Sections 2.7.14 and 11.1.8, the O&M Firm shall prepare a written report for submittal to the COO.

##### *11.1.7.1 Personal Injuries, Death, Occupational Illness, Loss of Consciousness, Use of Drugs or Alcohol*

This category includes Department and O&M Firm employees; rail passengers; general public at grade crossings; and trespassers. Occupational illness includes inhalation, absorption, ingestion, direct contact, hearing loss, poisonous plants, sunstroke, bites from animals, insects or snakes, etc. Immediate Notification reports (followed by complete record of all reports and correspondence within 24 hours) required for:

- a) Death;
- b) Injuries to employees, the general public, passengers, trespassers, or any other person on Department property ;
- c) Assault with knives, firearms;
- d) Occupational illness;
- e) Loss of consciousness; and
- f) Alcohol and drug use.

##### *11.1.7.2 Property Damage/Theft*

This category includes damage to Department property or damage to property of others, whether it is on or off Service Property if the Department or O&M Firms are involved.

- a) Immediate Notification reports (followed by complete record of all reports and correspondence within 48 hours) required for FRA-reportable damage
- b) Reporting within 24 Hours (followed by complete record of all reports and correspondence within five days) for damage which is not FRA-reportable

##### *11.1.7.3 Other Incidents/Events*

- a) Force Majeure Events: Immediate Notification reports (followed by complete record of all reports and correspondence within 24 hours) required for:
  - 1) Fire;
  - 2) Explosion/detonation;
  - 3) Utility Line failure;
  - 4) Any incident with possible environmental impacts, such as diesel fuel spills, illegal disposal of hazardous material on Department property, and spills from rail cars
  - 5) Hurricane, wind flooding/washout, sinkholes, etc.;
  - 6) Any accidents or incidents in connection with the O&M Firm or Third Party Contractors, including incidents involving on-track equipment or off-track vehicles;
  - 7) Bomb threats or other incidents of crime;
  - 8) Violation of operating or safety rules; and



- 9) Any "false clear" signals.
- b) FRA, FPSC or OSHA: Immediate Notification reports (followed by complete record of all reports and correspondence within 48 hours) required for:
  - 1) FRA, FPSC or OSHA violations; and
  - 2) FRA, FPSC or OSHA visits.
- c) Minor Events: Reports required within 24 hours
  - 1) Expulsion of a trespasser from the CFRC right-of-way;
  - 2) Noise complaints by the public; and
  - 3) At a minimum, all incidents listed above shall be reported to the Department as part of the daily log, as soon as the O&M Firm becomes aware of them.

#### *11.1.7.4 Railroad Disruption*

The O&M Firm shall conduct a debrief/critique of all railroad incidents with the COO within 48 hours of a Railroad Disruption.

A Railroad Disruption is an incident involving first responders, the removal of any track from service, or annulment or termination of a train. Additionally, the Department reserves the right to, at its discretion, request a debrief of any other Department incident. The O&M Firm shall utilize Department-approved forms in such debriefs, with results being maintained in the FPSC.

#### *11.1.7.5 Rail Line Maintenance Events*

The O&M Firm must furnish the following reports to the COO as indicated below:

- a) Within 24 hours, report defects indicated in a FRA or FPSC inspection and all rail failures, defects, replacements, thermite welds, and weld failures;
- b) Within 48 hours, report defect remedial action;
- c) Upon completion of ultrasonic detector car rail tests, report results;
- d) Daily reports of Ultrasonic rail detectors;
- e) Upon correction or following business day, report remedial action as results from Ultrasonic tests;
- f) Within one business day of testing or receiving testing results, report thermite weld tests. Immediately report any failures;
- g) Prior to start of spray program, report on the use of chemicals for vegetation control;
- h) Within seven calendar days of test completion, report results of track geometry test by exception and in total and an estimated correction date of deviations from maintenance standards. Immediately upon correction, report corrections of track geometry deviations;
- i) Upon the completion of inspection of bridges or fencing, report results within 14 days of completion, detailing deficiencies noted and plans and schedule for repair, if appropriate; and
- j) Upon the completion of inspection of fencing, report results.

## 11.2 ANNUAL BUDGET PROCESS

### **11.2.1 Preparation of Annual Budget**

#### *11.2.1.1 Preparation of Preliminary Service Plan*

One hundred and eighty (180) days prior to the beginning of the Department's Fiscal Year for each year during the term of the O&M Agreement, the O&M Firm shall prepare and submit to the COO a preliminary service plan, which shall include a detailed description of the O&M Services to provide in the next Fiscal Year, and will form the basis for an approved budget. It is recognized that said service plan will represent the O&M Firm's staff recommendations which will be subject to subsequent review and approval by the COO before a definitive service plan for the next Fiscal Year can be relied upon by the O&M Firm.

#### *11.2.1.2 Preparation of Proposed Operating Budget*

For each year during the term of the O&M Agreement, the O&M Firm shall prepare and submit to the COO a proposed operating budget for provision of the O&M Services described in the preliminary service plan 90 days prior to the beginning of the Department's next Fiscal Year. The proposed budget shall reflect actual operations, expense levels, and levels of Services during the then current Fiscal Year, except as modified by the service plan for the coming Fiscal Year. The proposed budget submission shall:

- a) Be consistent with the preliminary service plan;
- b) Specify the number of personnel, both management and non-management, including a list of all positions whose time will be chargeable directly during the coming Fiscal Year;
- c) Specify all elements of compensation;
- d) Specify the assumptions used in developing the proposed budget; and
- e) Identify and explain variances in the O&M Firm's proposed budget from the schedule of financial proposal forms submitted by the O&M Firm in conjunction with the RFP process that resulted in the award of the O&M Agreement, and variances in the O&M Firm's proposed budget from the prior Fiscal Year, if applicable.

#### *11.2.1.3 Preparation of Capital Budget*

In addition to the O&M Firm's proposed operating budget, the O&M Firm shall also submit 90 days prior to the beginning of the Department's Fiscal Year a list of the O&M Firm's recommendations for procurements, renovations and other maintenance work for equipment and facilities utilized in the provision of the Services which is beyond the scope of the routine maintenance covered by the O&M Agreement and estimates of costs associated with such projects. All capital projects and budgets are subject to COO approval.

#### *11.2.1.4 Department Review of Proposed Operating Budget*

Sixty (60) days prior to the beginning of the Fiscal Year, the Department shall present to the O&M Firm comments on the proposed budget submission which shall specify the line items or supporting documentation, if any, to which the Department objects, and the basis for each objection.

*11.2.1.5 Operating Budget Approval*

The Department and O&M Firm shall promptly negotiate with respect to any line items to which the Department objects and shall complete the negotiation process by no later than April 30 of each year. The Department shall submit the proposed budget to its Board and receive approval by June 15. In some cases it may be necessary to continue negotiations beyond the April 30 deadline in order to consider service scenarios and balance a budget that can be funded by the Department.

*11.2.1.6 Operations without a Budget*

If the O&M Firm and Department are unable to agree on, or obtain approval of, a budget by the beginning of the next Fiscal Year under circumstances in which no change in the level of train service is directed and implemented, the Department shall make payments to the O&M Firm pending completion of the negotiations and approval process which are equal to the average monthly payments made during the Fiscal Year just completed. If the O&M Firm and Department are unable to agree on a budget by the beginning of the next Fiscal Year under circumstances in which the service plan contemplates a change in the level of service and the Department has directed the O&M Firm to implement same, the Department shall make payments to the O&M Firm based upon the Fiscal Year just completed, plus a reasonable adjustment amount for any service changes, as determined by the Department. However, if the parties cannot reach agreement on a budget within 90 days after the start of the Fiscal Year, the Department shall make a unilateral decision about the budget amount. Any appeal from the unilateral decision shall be resolved pursuant to the Claims and Disputes section of the O&M Agreement.

**11.2.2 Monitoring Adherence to the Approved Budget**

The O&M Firm shall include with its monthly invoice to the Department a statement, in a format subject to approval by the Department, showing its costs for O&M Services during that month in comparison with the Approved Budget amount for that month and for the Fiscal Year to date, along with an explanation of the reasons for the variance, if any, and of the actions the O&M Firm will take, subject to Department approval, to bring any continuing variance back into conformity with the Approved Budget. The O&M Firm shall include with its statement of monthly costs the O&M Firm's internal cost center or other functional accounting reports and a copy of its general ledger entries for the month.

**11.2.3 Budget Amendments for Unforeseen Circumstances**

By January 20 of each year, the O&M Firm shall provide to the Department a forecast of expected, actual expenses and variances from the Approved Budget for the remainder of that Fiscal Year. If forecast variances from the Approved Budget derive from the occurrence of events which were not reasonably foreseeable by and within the reasonable control of the O&M Firm (e.g., storm damage, utility cost "spikes," major vandalism, etc.), the parties shall negotiate amendments to the Approved Budget for that Fiscal Year to reflect those changes, if said variances will cause costs to exceed the Approved Budget.

#### **11.2.4 Costs in Excess of the Approved Budget**

If at any time during the Fiscal Year while monitoring progress and budget adherence the O&M Firm reasonably believes that the actual total Direct Costs plus corresponding General and Administrative Overhead costs charged by the O&M Firm in the Fiscal Year will exceed the corresponding total budgeted amounts in the Approved Budget, the O&M Firm shall notify the Department of the estimated amount of the potential overrun of costs. The O&M Firm also shall recommend to the Department corrective measures, including position freezes, cost savings/cuts, and Department approval of purchases, which will enable annual costs to stay within budget as required by the Department. Except in an emergency, unauthorized costs incurred over the Approved Budget shall not be reimbursed unless prior-approved in writing by the Department. In no event will the Award Fee be increased based on any overrun in Direct Costs and corresponding General and Administrative Overhead costs.

The O&M Firm shall have no liability for any overruns to the Approved Budget to the extent the O&M Firm follows the procedures for overrun notification and approval outlined in this section or the O&M Firm can reasonably demonstrate that such overruns were the result of budget assumptions as to utilization of personnel and equipment (including rolling stock, vehicles, or Maintenance of Way work equipment) on Department Construction Support services which were dictated by the Department. However, notwithstanding the indemnity obligations of the Department set forth in the O&M Agreement, the Department shall have no obligation for payment of such costs should the overrun be due to the unapproved actions or inactivity of the O&M Firm.

### **11.3 RESPONSIBILITIES UPON TERMINATION OR COMPLETION OF AGREEMENT**

In the event that the O&M Firm is terminated or is not selected or designated as the Department's O&M Firm beyond the term of this O&M Agreement, the O&M Firm shall be obligated to carry out such Agreement termination and transition activities as shall be required by the Department to preserve and protect the operational integrity of the SunRail service, maintain the obligations and requirements of the CFRC and to provide a smooth transition to the successor O&M Firm. Such activities shall include, without limitation:

#### **11.3.1 Conveyance of Records and Documents**

The O&M Firm shall transition the RMIS that had been developed for the provision of O&M Services to the Successor O&M Firm. The RMIS refers to the entire integrated network including software, hardware, network servers, and storage devices.

No later than 30 days prior to the termination or completion of the O&M Agreement, the O&M Firm shall furnish to the Department all records and documents as requested by the Department, to include, without limitation, the items listed below to the extent they exist in the O&M Firm's possession. Additionally all reports and notifications specified in the Required Reports and Notifications section of the Scope of Services shall be made current and complete at the time of the termination or completion of the O&M Agreement. Any such reports or notifications which normally may not be due at the time of the final day of O&M Firm responsibility, particularly in the case of early termination or completion, shall be completed on

a pro-rated basis to the final day of the O&M Agreement. Where practicable, all records and documents will be delivered in electronic format with hard copy. The data shall reflect conditions and status as of the final day of O&M Firm responsibility under the O&M Agreement.

The above notwithstanding, any and all reports or other documents which relate to National Transportation Safety Board (NTSB), FRA or FPSC findings or deficiencies shall be made available to the Department immediately upon termination or completion of the O&M Agreement. The O&M Firm also shall, upon termination or completion of the O&M Agreement, furnish all older records and documents covering information in the RMIS.

The records and documents to be furnished in their original format include, but are not limited to:

- a) Current Timetable, Slow Orders, General Orders and copies of all such Timetables, Slow Orders and General Orders since the Commencement Date;
- b) All Standard Operating Procedures and Plans developed for Department as identified in this Scope of Services;
- c) Maintenance, Repair, Inspection and Modification Project records for each Department locomotive, passenger car, maintenance of way rolling stock support equipment, and item of shop or work equipment for which warranty/repair records are kept;
- d) Inventory of all assets, materials, supplies, spare parts, etc. provided or paid for by the Department, including identification of all new, secondhand/reusable, and scrap materials where applicable, and a current pricing (valuation) of all such inventory;
- e) Rail vehicle maintenance information system and material management system databases, in Department-approved format;
- f) data, software, hardware and documentation, developed under this agreement shall remain the property of the Department;
- g) Records of all environmental spills, noise and hazardous material notices, warnings, violations, etc. since the Commencement Date;
- h) All accident, fatality or other injury and property damage records, reports, claims and correspondence (including current, unsettled claims) since the Commencement Date; including those related to:
  - 1) O&M Firm personnel (employees)
  - 2) Grade crossing accidents
  - 3) Motor vehicle accidents
  - 4) Trespassers
  - 5) Invitees (passengers, O&M Firms, etc)
  - 6) Lost time due to injury reports
- i) All interrogatories from regulatory or other agencies, including responses and documentation;
- j) All manuals, warranty documents and agreements for Department-provided equipment, machinery, components, vehicles, trailers, etc.;
- k) Copies of all utility, service or and contracts since the Commencement Date;
- l) All O&M Firm correspondence files (material related to the Department);
- m) Quarterly and Annual Training Reports since the Commencement Date;

- n) All proficiency, efficiency and drug testing records since the Commencement Date;
- o) All communication with Federal Communications Commission (FCC) authorities, location of radio transmitters, receivers, leased lines, rented communication services, etc.;
- p) All inspection reports, including track inspection, switch inspection and corrective actions;
- q) Names and telephone numbers of all business contacts with emergency cranes for derailments, police, ambulance, and Hazmat contacts;
- r) Current Purchase Orders issued but not fulfilled and reimbursable expenses for labor, material and other expenses not billed; and
- s) Assigned and assignable subcontractor agreements;

### **11.3.2 Audit of Service Property and Service Equipment Condition**

For the purpose of verifying that Service Property and Service Equipment transferred to the O&M Firm on the Commencement Date is returned to the Department on the termination or completion date in like or better condition, normal wear and tear expected an audit of the condition of Service Property and Service Equipment will be conducted. The audit must be completed prior to the last day of the O&M Agreement term.

For the purposes of this section, the audit of the condition of the Service Property shall consist of a joint O&M Firm-Department-successor O&M Firm hi-rail inspection and a physical inspection of other Department properties and facilities, to be conducted on or about the termination or completion date. The audit of the condition of the Service Equipment will consist of a video record of the interior and exterior of each unit of Department rolling stock (cars and locomotives).

A comparison of the results of these contract termination audits will be made with the initial list of Service Property, Service Equipment and other Department provided assets as of the Commencement Date. For any Service Property or Service Equipment determined by the Department to be in a lesser or poorer condition than that existing as a matter of record as evidenced by the initial and termination audits described above, normal wear and tear expected, and where such lesser or poorer condition the Department may, at its option require: (1) that the O&M Firm correct, at O&M Firm's expense, such condition; (2) that the O&M Firm pay the Department an amount in cash representing the then current cost of rectifying such condition; or (3) a combination of (1) and (2). The dollar value of any such required payments shall be subject to the mutual agreement of the parties.

### **11.3.3 Cooperation with Successor O&M Firm**

The O&M Firm shall be obligated to provide a "best effort" level of cooperation with the successor O&M Firm to help ensure a smooth transition to the successor O&M Firm. Such cooperative efforts will include, without limitation, the following:

- a) Provision of copies of all current O&M Firm labor agreements with crafts represented in providing O&M Services;
- b) Provision of access for successor O&M Firm personnel to the current O&M Firm's personnel for the purpose of providing relevant information regarding the Service Property, Service Equipment and operations;

- c) Attendance by the current O&M Firm personnel at such joint transition meetings as may reasonably be required by Department or the successor O&M Firm; and
- d) Provision of sufficient management and supervisory personnel by the current O&M Firm during the initial seven days of the successor O&M Firm's operations conducted by successor O&M Firm to assure a smooth and efficient service transition.

## **SECTION 12. QUALITY CONTROL**

The O&M Firm's shall develop a Quality Assurance Program Plan (QAPP) in accordance with the CFRC QAPP, Department, FTA, and FRA requirements. The QAPP shall be updated annually and submitted to the COO for review and approval.

The Department reserves the right to conduct unannounced and unscheduled audits to verify compliance with the standards set forth in the O&M Firm's QAPP. A report of the audits and findings shall be provided to the O&M Firm within five (5) days. Items requiring correction shall be completed within 30 days of notice to the O&M Firm.

### **Configuration Control and Protocol**

FDOT is responsible for oversight of the configuration control process. The O&M Firm shall develop and maintain a configuration management system for system equipment and facilities, to assure that decisions to change or modify designs, equipment and facilities:

- Result after deliberate evaluation by affected units of the organization, and findings of conformance with safety requirements; and
- Are implemented with proper and complete documentation to all affected design/specification records, and to all other affected documents such as operating procedures and training manuals.

During SunRail operations, the O&M Firm will assure, through procedures and training:

- That additions, modification, or deletion to the existing configuration of CFRC system fixed facilities, SunRail rolling stock, and equipment related to operation of rail rolling stock, are authorized by the Department after evaluation and findings of conformance with safety requirements;
- That additions, modification, or deletion to operating rules, SOPs, and operating or training manuals are reviewed and accepted by the Department's Representatives;
- That drawings, specifications, rulebooks, operating or training manuals, and related documents, are properly and completely updated to reflect authorized system changes; and
- That procurement or introduction into SunRail commuter rail operations of defective or deficient equipment or replacement parts, as well as unauthorized hazardous materials, is prevented.

Routine upgrade or maintenance activities, which do not change the function or configuration of a facility, equipment system, operating rules, SOPs, or operating or training manuals, are not subject to the configuration management process.



## **SECTION 13. AUDITS AND INSPECTIONS**

### **13.1 AUDITS**

- a) The O&M Firm will be responsible for the execution of inspections and audits in accordance with their QAPP, Department specifications, and the contract documents including:
  - 1) Inspections and audits of purchased materials, equipment and services;
  - 2) Assuring that measuring and test equipment is accurate and adequate for its intended use;
  - 3) Calibration and maintenance of test and measuring equipment, as well as keeping status records;
  - 4) The control of handling, storage, shipping, cleaning, and preservation of materials and equipment; and
  - 5) Assuring that fabricated, manufactured, and construction equipment, components, or systems have satisfactorily passed all required inspections and tests in accordance with approved procedures.
  - 6) Locomotives and cars are maintained in accordance with 49CFR229 and 238 and the OEM Maintenance Manuals.
- b) The O&M Firm shall submit an Inspection and Testing Plan 60 days after Notice to Proceed for review and acceptance by the COO that contains inspection procedures and schedules to confirm all tests are performed in accordance with the CFRC's Service Standards.
- c) The O&M Firm shall be required to report non-conformances and correct the non-conformance in accordance with the disposition approved and authorized by the COO.
- d) The O&M Firm shall be responsible for any non-conformance or audit findings, determine the cause of the problem and identify and implement corrective action to preclude recurrence.
- e) The O&M Firm shall be subject to audits and/or quality assurance reviews to be conducted by FDOT, FTA and FRA.

The O&M Firm shall provide oversight of all start-up, test criteria, test acceptance and turnover of the track, facilities and system ready for revenue operations.

The O&M Firm shall perform an annual internal audit at the end of each fiscal year as directed by the Department to determine compliance with the CFRC/SunRail SSPP and SSP and fully participate with audits performed by DHS, FTA, FRA, State Safety Oversight or any other regulatory agency, including making available personnel and records as may be required. The O&M Firm shall prepare a written summary of findings, with a remedial action plan, for COO review within 10 days of the completion of the internal audit. The O&M Firm shall implement corrective actions recommended by the internal audit or by auditors, after review with and approval by Department-designated personnel. The O&M Firm shall invite and allow Department representatives to participate in all security-related reviews, including, but not limited to, efficiency tests, internal safety audits, and other reviews of a related nature.

### **13.1.1 Safety Audits**

The O&M Firm will audit the O&M Firm's personnel for compliance. Failure of the O&M Firm's personnel to comply with any part of these safety requirements shall be considered a breach of the O&M Agreement.

Updates and modifications to the SSPP and SSP are made regularly, and the O&M Firm shall participate with the Department during annual review and update of these documents and comply with any and all changes to the plan, as well as participate in the review and update of other safety related documents that are derived from the SSPP and SSP, as required by the COO. The O&M Firm shall be a signatory participant in the CFRC/SunRail SSPP and SSP, and O&M Firm signatures shall indicate agreement and compliance with the SSP.

The O&M Firm will participate, where practicable, in all audits by outside parties or agencies such as APTA and FRA. Following receipt of an audit report, the O&M Firm will develop and submit to the COO for approval a Corrective Action Plan within 10 business days for all deficiencies or recommendations that result from the audit. The O&M Firm will be responsible for completion of the Corrective Action Plan.

The CFRC Railroad Worker Protection (RWP) Safety Plan includes procedures to be used for monitoring effectiveness of and compliance with the Department on-track safety program. All O&M personnel must comply with all parts of the program as it applies to them. The O&M Firm shall ensure that all affected persons comply with the program through an audit and inspection program.

### **13.2 INSPECTIONS**

Measurement of adherence to CFRC Service Standards shall be evaluated based on the results of inspections made by a joint inspection team composed of COO and O&M Firm representatives. Such inspection may be unannounced and consist of an examination of selected equipment, as well as the maintenance records. A report of the joint inspection team shall be provided to the Department.

The O&M Firm shall institute a materials quality assurance program designed to maintain inventory conformance with Original Equipment Manufacturer (OEM) specifications and assure that quality materials are applied to Department vehicles as part of the O&M Agreement.

### **13.3 INSPECTION OF THE O&M FIRM'S SUPPLEMENTAL AGREEMENT WORK**

The Department shall, at all times, have safe access to the entire work during O&M Firm's activities and shall be furnished with every reasonable facility for ascertaining that the O&M Firm's materials and workmanship are in accordance with the requirements and intentions of each Supplemental Agreement. All work done and all materials furnished by the O&M Firm shall be subject to inspection and approval by the Department. The Department inspections shall not relieve the O&M Firm of any of its obligations. Work and materials not meeting such requirements shall be made good and unsuitable work or materials may be rejected, notwithstanding that such work or materials had been previously inspected by the Department or the payment thereof has been made. Upon completion of the work, the Department will make a final inspection of the work. Before final inspection, the O&M Firm shall remove all refuse, excess materials, and equipment from the site, and

the O&M Firm shall clean all ground occupied by the O&M Firm in connection with the work. All parts of the work shall be left in a neat and presentable condition.

## **SECTION 14. ON-CALL EXTRA WORK ISSUED UNDER SUPPLEMENTAL AGREEMENTS**

On-Call Extra Work (Extra Work) may include but is not limited to the provision of labor, materials, equipment and other services to provide improvements or additions to the Service Property in addition to normal maintenance as described in this Scope of Services. Extra Work may be known and planned for in advance as part of the Department's long and short-term improvement plan or may arise from an urgent need that cannot be delayed.

Extra Work will be requested by the Department in the form of a Supplemental Agreement. Such services whether performed by the O&M Firm or a subcontractor(s) shall follow the Department's Supplemental Agreement process set forth below. The Department will regularly meet with the O&M Firm to discuss pending and anticipated Supplemental Agreements. The terms and conditions of the O&M Agreement apply to each Supplemental Agreement which will also contain specific requirements pursuant to requested Extra Work.

Any work performed by the O&M Firm prior to receipt of a Supplemental Agreement issued by the Department shall be considered as unauthorized work, and the O&M Firm shall not be entitled to compensation for said services. In an urgent situation, the Department may issue an Emergency Work Order to the O&M Firm prior to actual receipt of a Supplemental Agreement. In those cases, the Department shall, as soon as practicable, issue a Supplemental Agreement for the ordered work.

The Department reserves all rights to perform any and all of the work with its own forces or with other Firms retained by the Department. The O&M Firm shall fully cooperate with such other forces to the end that any delay or hindrance to their work will be avoided. The suspension of work or termination of a Supplemental Agreement shall be governed by the O&M Agreement.

### **14.1 SUPPLEMENTAL AGREEMENT PROCESS**

The Department shall issue a Supplemental Agreement Proposal Request (SAPR) to the O&M Firm which may include plans, specifications, and estimates of various quantities of work to be performed or materials to be furnished by either the Department or the O&M Firm, and a list of deliverables to be supplied by the O&M Firm. The SAPR will outline the desired timeline for the work to be completed, if known, or request a schedule and estimated milestones for the period of performance from the O&M Firm. The Department will require the O&M Firm to prepare submittals or a proposal, which shall indicate the O&M Firm's planned method for fulfilling the terms of the SAPR. Said submittals or work plans shall be subject to the COO's approval prior to the O&M Firm's commencement of work.

The SAPR will state the length of time the O&M Firm has to respond to the Department with a proposal for the work. This proposal will also contain details including, but not limited to, a cost estimate for the work, the amount of hours and a schedule to perform the services, the resources to be deployed, the O&M Firm's approach to performing the work, and a proposed Fee. Upon receipt of the proposal, the Department shall evaluate it and confer with the COO and the O&M Firm as necessary until the Department is satisfied that the work will be completed as requested. The Department may request the O&M Firm to submit a revised proposal.

In the event the parties are unable to agree upon the estimated costs of the Extra Work within 30 days after the proposal is received by the Department, the O&M Firm shall, at the direction and approval of the Department, promptly proceed to implement the Extra Work pursuant to the Department's final cost determination for the Extra Work, which determination may be submitted to a dispute resolution process. The O&M Firm shall not be required to perform any Extra Work which is outside the scope of the Supplemental Agreement or for which the O&M Firm is incapable of obtaining adequate resources to perform the work after demonstrating diligent and reasonable efforts to do so. An agreed upon resolution between the COO and General Manger shall apply retroactively to the date on which the change was implemented.

In the event the Department requests major permanent increases or reductions in the services provided (or a combination of increases and reductions), the parties shall jointly evaluate ways in which the O&M Firm's resources can be redeployed to assure an efficient change in the services provided.

The Department shall issue a Supplemental Agreement to the O&M Firm that contains details of the services or materials to be provided. The O&M Firm's execution of the Supplemental Agreement shall be conclusive evidence that the O&M Firm has investigated and is satisfied as to the site conditions to be encountered, the character, quality, and scope of work to be performed, the quantities of materials to be furnished, and the requirements of the Supplemental Agreement.

#### 14.2 COMPENSATION

The O&M Firm shall be compensated for each Supplemental Agreement pursuant to the terms of the Method of Compensation section of the O&M Agreement and the Supplemental Agreement. During the progress of each Supplemental Agreement, the O&M Firm shall carefully monitor its incurred costs in the performance of the work, shall keep full and complete records of such costs and shall submit those records along with a progress report to the Department Project Manager on a monthly basis.

The O&M Firm shall submit to the COO within the time specified in the Supplemental Agreement a practicable progress schedule for the O&M Firm's work. If the Supplemental Agreement does not specify, the O&M Firm shall still submit a progress schedule In accordance with the O&M Services Agreement. In the event of significant changes, from whatever cause, to the O&M Firm's work during the performance of the work, the COO may request the O&M Firm to revise the progress schedule to reflect the current plan for the work.

The O&M Firm's progress schedules shall be prepared by using critical path method software. Schedules shall show the order in which the O&M Firm proposes to carry out the work, the dates on which the significant features of the work will start (including procurement of materials and equipment), and the anticipated dates for completing those significant features.

The O&M Firm shall perform its work so as to not cause delays to work performed on Department construction and third-party projects. The O&M Firm shall take immediate and appropriate steps to remedy delay to the satisfaction of the COO.

Unauthorized expenses incurred over the authorized amount shall not be reimbursed without prior written approval from the COO. An approved, amended Supplemental Agreement with new cost estimate shall be required in order to increase the authorized project amount for any Extra Work project.

The O&M Firm will be granted an extension of time for any portion of the delay in completion of the work if the delay was not within the control of the O&M Firm (e.g., caused by acts of God or of the public enemy, fire, floods, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes, shortage of materials and freight embargoes, changes in scope, etc.) provided that the O&M Firm shall have first notified the COO in writing of the causes of delay within three (3) days from the beginning of that delay.

No extension of time will be granted for any delay caused by a shortage of materials unless the O&M Firm furnishes to the COO documentary proof that the cause of the delay was a direct result of the Department and the inability to obtain the materials when originally planned, did, in fact, cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the O&M Firm's operations.

#### 14.3 REJECTED OR UNAUTHORIZED WORK

The Department shall have the right, but not the obligation, to suspend the O&M Firm's work in the event that there is a reasonable basis to conclude that O&M Firm's work is being performed in a deficient or unsafe manner. In such event, the O&M Firm shall immediately suspend its work at no additional cost to the Department. The O&M Firm shall fully remedy, remove, or replace all work which has been rejected, and no additional compensation will be allowed for such removal, replacement or remedial work.

Any work performed beyond the scope of the Supplemental Agreement or without written authorization of the Department shall be considered as unauthorized work and will not be paid for by the Department. Upon order, any unauthorized work shall be remedied, removed, or replaced at the O&M Firm's expense. Upon failure of the O&M Firm to comply promptly with any order made pursuant to this Section, the Department Project Manager may cause the rejected or unauthorized work to be remedied, removed, or replaced, and the Department may deduct the costs from any monies due or to become due the O&M Firm.

#### 14.4 THIRD-PARTY WORK REQUIRED

##### **14.4.1 General**

In addition to the O&M Services and Extra Work, the O&M Firm shall perform work for Third Parties when directed to do so by the COO, such as third party training, wreck clearing, support, and flagging support for utility companies working in the right-of-way. All work performed for a third-party shall be completed in accordance with CFRC Service Standards. Performance of the O&M Services shall not be adversely affected by third-party work.

#### **14.4.2 Compensation**

The O&M Firm shall be compensated for such work according to the terms entered into by the O&M Firm and such Third Parties.

#### 14.5 EXCURSION/SPECIAL TRAINS

The O&M Firm shall provide Special Trains, including special event service, charters, excursions, and off-line trips (with host railroad pilot, where necessary, paid for by the Department), as described below. A Special Train will require onboard staffing as specified in Section 2.4.4. For every Special Train operated, the O&M Firm shall provide a passenger count as directed by the Department with the results provided to the COO within one business day.

The O&M Firm shall also handle private cars, and excursions on the Service Property as directed by the Department. These will generally be handled as Extra Work unless otherwise included in the BSP. The O&M Firm shall separately record the actual costs of all special trains operated and report such costs to the COO within 20 calendar days from the end of the month during which such special trains were operated.

1) Requirements for each Special Train shall include:

- O&M Firm shall provide an engineer and crewmembers as specified by the lessee requirements and agreement.
- O&M Firm shall provide one car cleaner for cleaning trainset after each use.
- For excursion trips, the O&M Firm shall provide a trainset as specified by the lessee requirements and agreement.
- Payment for Excursion Trains shall be received at least three days prior to the date of the event.
- A minimum of one (1) flag person is required for a film shoot or any commercial use of an Excursion Train as specified by the lessee requirements and agreement.

If an Excursion Train is to be utilized for a non-profit organization for a non-fundraising event, a special rate may be negotiated.

In the event of weather conditions, emergencies or any other problems not under the Department's control that would limit or prohibit use of an Excursion Train, the renting party will be required to pay for any and all actual costs associated with the scheduled Excursion Train.

## **SECTION 15. INCENTIVES AND PENALTIES**

### **15.1 INCENTIVES/PENALTIES**

#### **15.1.1 On-Time Performance**

##### *15.1.1.1 On-time Performance*

An on-time train is a scheduled revenue train that arrives at its final destination no more than one minute early or five minutes later than its scheduled arrival time or the lateness is a result of circumstances not under the O&M Firm's control and/or influence. Circumstances that are not under the O&M Firm's control and/or influence may include, but are not limited to the following: mutually agreed upon maintenance of way slow orders; acts of God; grade crossing accidents that are the result of motorist fault; emergency personnel activities; Force Majeure occurrences; recognized programmed track work; extreme weather conditions; strikes; vandalism; documented unscheduled dwell time for special needs passengers; dispatching delays caused by other railroads; delay caused by non-maintainable component failure (i.e., locomotive computer module; cascade delays from the above-listed earlier delay trains.

##### *15.1.1.2 Delay Reporting*

The O&M Firm must notify the COO within one (1) hour following any train delay in excess of ten (10) minutes with a preliminary cause of the delay. The O&M Firm will provide a rush hour performance report to the COO within one (1) hour following each weekday morning and evening rush hour. The O&M Firm shall provide documentation of the cause of the delay to the COO within forty-eight (48) hours of the delay. Failure to do so will result in forfeiture of the rights detailed in this provision.

The General Manager and COO shall meet at least monthly to determine whether the O&M Firm's assertions of delays caused by circumstances not under the O&M Firm's control and/or influence are valid. If agreement is not reached, the matter shall be resolved pursuant to the dispute clause set forth in the O&M Agreement.

##### *15.1.1.3 Contractual On-Time Performance Percentage*

An Acceptably Operated Train is one that is either on time or is late, but its lateness is a result of circumstances not under the O&M Firm's control and/or influence as set forth in Section 15.1.1.1 above. The Contractual On-Time Performance is the ratio of Acceptably Operated Trains for a particular month against all trains scheduled in revenue service for that month, expressed as a percentage which shall be calculated and rounded to the nearest one-half percent. Table 15-1 provides the incentives and penalties for on-time performance.



**Table 15-1 Penalties and Incentives for On-Time Performance**

On-Time Performance	Amount of Monthly Payment
99% - 100%	105% of Monthly Invoice
98% - 98.99%	105% of Monthly Invoice
97% - 97.99%	103.5% of Monthly Invoice
96% - 96.99%	102% of Monthly Invoice
95.01% - 95.99%	101% of Monthly Invoice
95%	100% of Monthly Invoice
94% - 94.99%	99% of Monthly Invoice
93% - 93.99%	98% of Monthly Invoice
92% - 92.99%	96.5% of Monthly Invoice
91% - 91.99%	95% of Monthly Invoice
90.01% - 90.99%	93% of Monthly Invoice
Below 90.00%	92% of Monthly Invoice

*15.1.1.4 Actual On-Time Performance Percentage*

Actual on-time performance measures actual on-time performance of the service without regard to cause of, or excuse for, the delay. This percentage is the ratio of all on-time trains (i.e., arrivals at its final destination no more than five (5) minutes after its scheduled arrival time) against all trains scheduled for that month, expressed as a percentage which shall be calculated and rounded to the nearest one-half percent.

*15.1.1.5 Penalty for Missed Trips*

O&M Firm shall be assessed a penalty, deducted from O&M Firm’s monthly invoice, of \$1000 for each missed trip.

**15.1.2 Additional Penalties**

*15.1.2.1 Penalties for Safety and Reliability Feature Defects*

O&M Firm shall be assessed a penalty, for each day in which a train is found with the defects listed in Table 15-2:

**Table 15-2: Penalties for Safety and Reliability Feature Defects**

<b>Defect</b>	<b>Penalty</b>
Defective hand brakes	\$500 per train per day
Defective power brakes – Undesired Emergency (UDE)	\$500 per train per day
Failed Class 1A and Class II tests	\$500 per train per day
Locked brakes & slid flats in excess of 1.5 inches	\$500 per train per day
Overheated wheels	\$500 per train per day
Inoperable ADA wheelchair device	\$500 per train per day
Inoperable bell, horn, windshield wiper, alerter	\$500 per train per day
Ineffective windshield wiper	\$500 per train per day
Inoperable sander	\$500 per train per day
Defective engineer’s and observer’s seats	\$500 per train per day
Cab signal failure	\$500 per train per day
Low water/oil trip	\$500 per train per day
Ground fault trip	\$500 per train per day
Ditch, crossing and headlight failures	\$500 per train per day
FRA defects	\$500 per train per day
Power door failure en-route – door locked out	\$500 per train per day
Defective event recorders	\$500 per train per day
Defective traps	\$500 per train per day
Any engine protection feature that causes a faulty engine shut down	\$500 per train per day
Defective radio	\$500 per train per day
Safety device not cut in and properly sealed	\$500 per train per day
Inspection paperwork not properly completed	\$500 per train per day
Daily Report not prepared/submitted	\$500 per train per day
Deficiency in staffing levels	\$500 per train per day

*15.1.2.2 Penalties for Amenity and Comfort Feature Defects*

O&M Firm shall be assessed a penalty, for each day in which a coach (or each train, as noted below) is found with the defects listed in Table 15-3:

**Table 15-3: Penalties for Amenity and Comfort Feature Defects**

<b>Defect</b>	<b>Penalty</b>
Excessive heat (>75 degrees Fahrenheit)	\$500 per coach per day
Inadequate heat (<60 degrees Fahrenheit)	\$500 per coach per day
Absence of ventilation	\$500 per coach per day
Inadequate air conditioning (>75 degrees Fahrenheit)	\$500 per coach per day
Dead batteries/no battery charger	\$500 per coach per day
Lack of general interior lighting (more than 5% of lighting defective)	\$500 per coach per day
PA/IC – improperly adjusted	\$500 per coach per day
PA/IC – inoperative	\$500 per coach per day
Passenger compartment door will not stay closed	\$500 per coach per day
Passenger compartment door jams on opening	\$500 per coach per day
Loss of HEP for more than one (1) minute	\$500 per train per day

Cars are considered defective should the automatic controls fail to modulate the temperature as intended, thereby requiring manual intervention. Problems with HEP which do not result in the loss of general lighting, HVAC, and other HEP-dependent functions will not be recorded as failures during service.

*15.1.2.3 Penalty for Dirty Cars*

O&M Firm shall be assessed a penalty, deducted from O&M Firm’s monthly invoice, of \$500 per day for each coach that the Department finds dirty. Cars will be considered either dirty or clean, based on the evaluation criteria to be agreed upon by the O&M Firm and the Department.

*15.1.2.4 Additional Penalties*

In the event that the O&M Firm is unable to perform the necessary Maintenance Services on the Service Property within the allocated maintenance schedule, the O&M Firm shall be held liable for the maintenance delay condition, including all applicable damages and penalties.

If the O&M Firm fails to comply with the Firm’s obligations under this contract, the Firm shall be liable to the Department for all damages associated with the O&M Firm’s breach of contract. Damages shall include, but not necessarily be limited to, all costs, all attorney’s fees, all penalties assessed against the Department, as well as all incidental and consequential damages.

## **SECTION 16. ENVIRONMENTAL SERVICES**

The O&M Firm shall operate, maintain, and service environmental systems located throughout the Service Property. The O&M Firm shall provide and maintain as an agent for the Department, the environmental plans, permits, certificates and licenses necessary to perform O&M Services.

The O&M Firm shall furnish all labor, materials, tools, and equipment to operate, test, service, maintain, and repair the Department environmental systems at facilities throughout the Service Property. The O&M Firm shall retain the services of properly certified and licensed Hazardous Materials Disposal personnel and other properly qualified Environmental staff as needed to perform the specialized services included in this Section.

The O&M Firm shall properly dispose of any waste or hazardous material generated while performing O&M Services throughout the Service Property. Disposal and storage of waste and hazardous material shall be in accordance with all applicable Federal, State, and local regulations. The O&M Firm shall keep storage of waste and hazardous waste material on the premises to a minimum.

The O&M Firm shall monitor and notify the designated Department personnel immediately by phone of any incident with possible environmental impacts, regardless of who the responsible party is, such as diesel fuel spills, illegal disposal of hazardous material on the Service Property, and spills from rail cars. This notification will not relieve the O&M Firm from its obligation to initiate and supervise cleanup and disposal of spilled material.

### **16.1 ENVIRONMENTAL PLANS, PERMITTING AND REPORTING**

The O&M Firm shall comply with and maintain current all appropriate plans, permits, certificates, and licenses relating to the Service Property and systems and facilities used in performing the O&M Services.

No later than 90 days prior to the Commencement Date of the O&M Agreement, the O&M Firm shall submit for Department review and approval an Environmental Compliance Program for Operations to manage the transfer, updating, implementing, and record keeping for all plans, permits, licenses, and certificates as part of the RMIS. The Environmental Compliance Program for Operations shall discuss any mitigation commitments and include a listing of all required permits and a schedule for transferring those permits into the O&M Firm's name as an agent for the Department. Applicable permits will be transferred to the O&M Firm prior to the Commencement Date. The Program shall be submitted in an electronic format and shall include, but not be limited to, compliance with all Federal, State and local environmental laws and regulations.

The Environmental Compliance Program for Operations shall also specify the procedures to be followed during fuel handling activities within the Service Property, both for locomotives and on-track equipment as the O&M Firm shall contract for the purchase of locomotive fuel. The O&M Firm shall monitor fuel deliveries at least once each month, document observations on a Department-approved checklist and maintain them for not less than 36 months.

No later than 90 days prior to the Commencement Date of the O&M Agreement, the O&M Firm shall submit for Department review a draft Emergency-Spill Response/SPCC plan, including a chain of command for spills throughout the Service Property, regardless of source. A final Emergency Spill Response/SPCC plan for each facility shall be adopted within 90 days of the Commencement Date. The plan shall be updated on an annual basis and provided to the Department by the start of each Fiscal Year.

The O&M Firm shall complete periodic inspections, sampling, and reporting requirements necessary to maintain all environmental permits, certificates, licenses.

Applications for permits, certificates, and licenses relating to the Service Property, Support Property and systems will be prepared and forwarded to the COO 90 days prior to expiration. The O&M Firm shall maintain the tracking of permits, certificates and licenses.

The O&M Firm shall coordinate with the COO in the procurement of any permits that must be obtained by either the Department or O&M Firm, including without limitation, preparation of permit applications and preparing responses to questions and comments on the permit applications. The O&M Firm will be responsibility for modifications or improvements to the physical infrastructure of the Service Property as related to permits, certificates and licenses. The O&M Firm shall provide any recommendations, as appropriate, to facilitate compliance with environmental regulations, or the requirements of the permits, certificates, or licenses.

In compliance with Occupational Safety and Health Administration (OSHA) requirements, the O&M Firm shall maintain a Material Safety Data Sheet (MSDS) center at the VSMF with MSDS information for all chemicals used in the operation. The MSDS center shall be at a mutually agreed upon location and available to all personnel.

#### 16.2 REGULATED AND HAZARDOUS WASTE AND MATERIAL

The Department shall be the generator for all waste related to routine maintenance or operations, and the O&M Firm shall be generator for waste related to spills or other occurrences related to the O&M Firm's errors or negligence. Any regulated waste or spent hazardous materials located on the Service Property shall be disposed of by the O&M Firm in accordance with all applicable environmental regulations.

The O&M Firm shall take immediate actions to comply with all applicable laws and regulations and permit conditions concerning the release of any contaminant on or along the Service Property without regard to source. The O&M Firm and subcontractors shall comply with all written policies maintained by the Department or applicable regulatory agencies pertaining to environmental compliance and response policies and procedures, including coordination with the COO.

Should the O&M Firm encounter previously unknown materials which the O&M Firm reasonably believes to be hazardous, the O&M Firm shall cease work the in the affected areas and report conditions to the designated Department personnel.

### **16.2.1 Hazardous Material Spills**

The O&M Firm shall immediately inform the designated Department personnel of any hazardous material spills. The O&M Firm shall develop and implement a plan to address such incidents safely and efficiently and be fully responsible for the containment and cleanup of any contaminants spilled onto the Service Property or others' property. Any and all hazardous material spills on the Service Property, including, without limitation, diesel fuel, effluent from the O&M Firm or the Service Property facilities, solvents or cleaning solutions, etc., must be reported immediately to the designated Department personnel. The O&M Firm shall return the work area to its original conditions after conducting work efforts included in this Section.

### **16.2.2 Hazardous Material Storage**

Storage of hazardous materials shall be limited to areas as indicated by the Spill Prevention Control and Countermeasures Plan (SPCC) and in compliance with codes and regulations. Where facilities for storage may not exist, the O&M Firm shall provide the needed facilities or store off site. The O&M Firm shall minimize storage of waste, regulated and hazardous materials on the Service Property.

### **16.2.3 Hazardous Material Disposal**

Disposal of any regulated materials such as petroleum based products, antifreeze, oils, lubricants, paint, fluorescent light bulbs, railroad ties, drip pans, and batteries shall be disposed of in accordance with federal, state and local requirements. Disposal of defective or obsolete batteries shall begin within one week of removal from service and completed within 60 days. Battery disposal and storage sites shall be in accordance with OSHA regulations. All O&M Firm designated/ utilized hazardous material disposal sites or disposal personnel shall have the appropriate State licenses. Oil and engine coolant and any other waste or hazardous material drainings shall be captured and disposed of in accordance with applicable Federal, State, and local environmental regulations. The O&M Firm shall also provide for recovery of HVAC refrigerant.

### **16.2.4 Hazardous Material Transportation**

The O&M Firm shall ensure that containers used for storage and transportations of waste materials meet applicable Federal, State, and local requirements for labeling, storage, disposal, and transportation of waste materials. The O&M Firm shall conduct any and all testing of waste materials to be transported and disposed off- site, if required, to determine proper and legal methods for transport and disposal.

The O&M Firm shall only utilize appropriately licensed personnel to transport regulated or hazardous waste. Waste must be appropriately containerized for shipment. The O&M Firm shall produce hazardous waste manifest forms as required for the transportation and disposal of hazardous wastes under these specifications. The O&M Firm shall provide the appropriate copies of the completed hazardous waste manifest to the facility supervisor and to the COO. Copies of all waste management documentation, including material handling, manifests, bills-of-lading, weight slips, and receiving facility receipts shall be kept on site and copy provided to the COO.

### 16.3 ENVIRONMENTAL SYSTEMS

The O&M Firm shall utilize qualified personnel to test, operate, maintain and service various environmental systems located throughout the Service Property. The environmental systems include but are not limited to the Oil/Water Separator System and stormwater systems.

Environmental services shall be directly performed and coordinated by qualified personnel. Any spills or overloading of oil/water separators or other storm water managements systems due to services performed under the O&M Agreement shall be rectified by the O&M Firm. Service of these systems shall be performed by the O&M Firm on an as-needed basis.

The O&M Firm shall provide copies of correspondence with Federal, State and local regulatory agencies regarding the environmental systems to the COO. The O&M Firm shall notify the COO immediately of any malfunctions observed and recommend immediate action, if required. The O&M Firm shall provide written documentation to the Department providing detailed information and recommend a course of action regarding the malfunction and a recommendation for remediation within 24 hours.

Malfunctions of environmental equipment or systems which can be rectified through minor repairs must be repaired by the O&M Firm in a timely manner, so as not to result non-compliance of any permit or permit conditions. The O&M Firm shall respond immediately upon becoming aware of a malfunction or to a request by the COO for emergency repairs.

### 16.4 SPARE PARTS

The O&M Firm must maintain spare parts in order to complete expedient repairs to environmental systems, and associated equipment and appurtenances whenever possible. The O&M Firm shall maintain an updated inventory of tools and parts recommended by the equipment manufacturers of the various environmental systems serviced. A copy of the inventory and spare parts and tools must be provided to the COO and maintained at each facility and at the O&M Firm's local office or service facility. The O&M Firm must use new parts to make repairs and replacements to the Service Property's environmental systems.

The O&M Firm shall be prepared to respond to spills and environmental emergencies at all times regardless of cause. The O&M Firm shall retain qualified personnel that shall respond immediately in the event of uncontained releases of hazardous materials or incidents involving biohazards, including fatal incidents or major injuries on Service Property. The O&M Firm also shall respond to emergency environmental services requests by the COO. Services provided by the O&M Firm shall include all labor, tools, equipment, materials, testing, and reporting associated with providing services.

### 16.5 EMERGENCY RESPONSE

The O&M Firm shall be prepared to respond to spills and environmental emergencies at all times regardless of cause. The O&M Firm shall retain qualified personnel that shall respond immediately in the event of uncontained releases of hazardous materials or incidents involving biohazards, including fatal incidents or major injuries on the Service Property. The O&M Firm shall also respond to emergency environmental services requests by the Department or COO. Services provided by the

O&M Firm shall include all labor, tools, equipment, materials, testing, and reporting associated with providing services.

#### 16.6 HEALTH AND SAFETY PLANNING AND WORK AREA SECURITY

The O&M Firm shall adhere to all applicable health and safety laws and comply with appropriate work practices when performing O&M Services and shall ensure that work areas are secured when work is not being performed and otherwise secured during the work to prevent inadvertent access to work areas by unauthorized or unqualified persons. The O&M Firm shall develop and implement a Hazardous Materials Site Specific Health and Safety Plan (HMSSHASP) for all the O&M personnel working with or exposed to hazardous materials or other contaminated materials as part of their work. The plan shall be submitted to the designated Department personnel for review no later than 30 days of the Commencement Date and shall include, but not be limited to, provisions related to the following:

- The Service Property is situated in an urban area proximate to many current and historic sources of hazardous material impacts to soil and groundwater. Metals (primarily lead and arsenic), petroleum hydrocarbons, and poly-nuclear aromatic hydrocarbons are known to be present in the ballast and sub-ballast within portions of the Service Property.
- Timber cross ties on the property contain creosote. New and used cross/switch ties may only be stored at locations approved by the COO, who also must approve all O&M Firm subcontracts for disposal of used ties.
- Some bridges and structures requiring maintenance by the O&M Firm under provisions of the O&M Agreement may have previously been painted with paint containing lead. The O&M Firm shall strictly adhere to all environmental, health and safety laws and regulations with regard to lead paint.

The HMSSHASP shall be prepared following the guidelines of the United States Department of Labor, OSHA 29 CFR 1910.



## **SECTION 17. OPTIONAL SERVICES**

Optional services are herein described solely for informational purposes and are not to be included in the bid for this scope of services. When and if such services are sought additional information will be provided.

### **17.1 POSITIVE TRAIN CONTROL (PTC)**

The Department will be required to follow the FRA-approved version of the CFRC Positive Train Control Implementation Plan (PTCIP). The Department will require a contractor, which may be the O&M Firm, to perform service in support of PTC implementation.

It is the Department's intent for the PTC Contractor to provide all equipment necessary for the implementation of PTC. Provisions are included in locomotive and cab car design criteria (Attachment 10) for the provision of PTC equipment.

#### **17.1.1 Operations and Equipment**

The O&M Firm shall also have responsibility for the vehicle segment of PTC, including, but not limited to, the installation of all of the PTC onboard equipment components and hardware, the interface to all existing onboard systems, the overall maintenance of the system.

The PTC Contractor shall coordinate with the O&M Firm all operational related aspects of PTC including, but not limited to, dispatcher training and supervision, creating operating rules and procedures and verification of compliance during train operations.

The vehicle segment of the Department's PTC System consists of a train management computer, data display, locomotive/cab car systems interface and communications interfaces.

#### **17.1.2 PTC Infrastructure Installation and Equipment**

##### **PTC Contractor Support**

A PTC Contractor shall be retained by FDOT to design, procure, install, perform system integration and testing of the PTC System. The PTC Contractor shall coordinate and determine the exact method of installation, commissioning and testing of the PTC Back Office Systems, wayside PTC systems and communications systems. The O&M Firm shall receive required training; coordinate and participate in integration testing, interoperability testing and commissioning of the entire PTC system and all SunRail vehicles with all parties affected by the PTC system.

The O&M Firm shall be responsible for version control, distribution and configuration management of the Vital PTC software as described in the Information Management Plan.

##### **O&M Firm Support for PTC Deployment**

The Department has established a goal of placing PTC into service with PTC System Certification from the Federal Railroad Administration (FRA) through the submission of an acceptable PTCSPP Prior to October of 2015. The PTC Contractor is anticipated to begin installation in the 4<sup>th</sup> Quarter

of 2013 and continue to the 4<sup>th</sup> Quarter of 2014. It is expected the PTC System for the entire 61.35 mile corridor will be installed by the PTC Contractor in the new Phase 1 (IOS) signal system and the existing signal system for Phase 2 South and the North Extension.

The PTC Contractor, the O&M Firm, the Phase 2 South Construction Contractor and the North Extension Construction Contractor shall coordinate system integration and commissioning the PTC system for revenue service for the entire corridor including all testing, documentation, submittals and interoperability coordination required to obtain FRA Certification.

The PTC Contractor shall create training curriculum and perform training on the PTC System to the O&M Firm personnel including system operation, troubleshooting, maintenance and all necessary documentation and manuals.

It is the Department's intent to achieve FRA PTC System Certification by September 30, 2015 and to deploy PTC on the entire mainline in the 4<sup>th</sup> quarter of 2015.

## 17.2 SUPPORT SERVICES FOR PHASE 2 SOUTH AND THE NORTH EXTENSION CONSTRUCTION

The Department will require a contractor, which may be the O&M Firm, to perform support services during construction of the Phase 2 South portion and the North Extension of the SunRail system, described below.

### **17.2.1 Phase 2 South and North Extension Overview**

- Phase 2 South - Sand Lake Road in Orange County to Poinciana in Osceola County
  - 17.2 miles; 4 stations; anticipated opening – 2016
- North Extension – DeBary Station north to DeLand Amtrak station in Volusia County
  - 12 miles; 1 stations; anticipated opening – 2016

### **17.2.2 Operations**

- Peak service every 30 minutes – 0530 to 0830 and 1530 to 1830 on weekdays;
- Off-peak service every two hours; and
- Exclusive operating windows designated for commuter rail service.

### **17.2.3 Infrastructure**

- Uses existing CSXT track infrastructure purchased by FDOT for Phase 1, Phase 2 South and the North Extension operations;
- Freight operating windows for Phase 2 South and the North Extension SunRail service established as part of Phase 1 negotiations;
- Interlocal Funding, Operating and Governance Agreements approved by local funding partners in Orange, Osceola and Volusia counties, where Phase 2 South and the North Extension stations are proposed;
- All required environmental clearances approved by FTA for Phase 2 South and the North Extension station locations;

- Transit-Oriented development plans are under way at Phase II stations – particularly Osceola Parkway, Kissimmee, and Meadow Woods stations;
- Capital upgrades include - adding 2<sup>nd</sup> mainline track and trestle bridges, grade crossings and wayside signals;
- Phase 2 South and the North Extension procurements secured for locomotives, coaches and cab cars; ticket vending machines, insurance, public involvement/marketing, operations and maintenance;
- Station design templates readily adapted to Phase II stations; and
- VSMF complete for Phase 1 and Phase 2 South and the North Extension operations (Need layover facility at Poinciana for Phase 2 South operations).

### 17.3 FARE COLLECTION EQUIPMENT

The Department will require a contractor, which may be the O&M Firm, to operate and maintain the fare collection equipment, which shall be a cashless system. The Fare Collection System shall consist of the following main components:

- Cashless TVM (CTVM) that will accept only credit/debit cards but not cash and a full-service TVM (FSTVM) that will accept both cash and credit/debit cards for payment and issue change. CTVMs will only be included in under the initial procurement with the option for FSTVMs. The quantities of CTVMs and FSTVMs to be supplied under this procurement are subject to change.
- Station platform ticket validators (SPTV) to validate smart cards
- Handheld ticket validators (HHTV) for fare payment inspection and validation
- Point-of-sale machines (POSM) for fare payment and reloading of smart cards at retail outlets
- Contactless Smart cards (standard and limited use disposable)
- A central data collection and information system (CDCIS) application that will handle credit/debit card processing, transaction and maintenance data processing and reporting, as well as TVM and SPTV configuration

Each station will include two (2) TVMs and two (2) SPTVs per station platform.

The Department will require the O&M Firm, to coordinate with the fare collection system contractor during implementation regarding testing and acceptance of all fare collection equipment.

#### **17.3.1 Fare Collection Equipment Operations**

- Monitor and operate fare collection equipment remotely to ensure optimal performance;
- Replenish paper for receipt printing in TVMs, HHTVs and POSMs;
- Replenish standard and limited use smart card stock in TVMs; and
- Replenish supplemental change storage units, recirculating units, coin vaults, and bill vault (FSTVMs only)

#### **17.3.2 Fare Collection Equipment Maintenance**

- Perform maintenance and inspections on all fare collection equipment consistent with the manufacturers' guidelines and manuals;

- Perform all periodic inspection and preventative maintenance tasks including all routine lubrication, inspection and replacement of consumable items based on recommended preventative maintenance schedules;
- Perform repairs including adjustments, repairs or replacements prescribed to restore the Fare Collection Equipment components and subassemblies to a normal operational condition in an efficient and timely manner; and
- Service, maintain, repair, replace, rebuild and overhaul the Fare Collection Equipment

**Exhibit “A”, Scope of Services  
Central Florida Rail Corridor (CFRC) Operations and Maintenance  
Florida Department of Transportation**

**STANDARD CONTRACT TERMS AND CONDITIONS**

The following form PUR 1000 is a standard contract terms form that the Department includes in all procurements, except that paragraphs 4, 5, 11, 19, 20, 25, 26, 27, 29, 31, 35, 40, 41, 43, and 45 do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph.

**State of Florida  
PUR 1000  
General Contract Conditions**

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**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes.

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.

(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.

(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion

of the Customer the price under the Contract shall be immediately reduced to the lower price.

(c) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.

(d) Trade-In. Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.

(e) Equitable Adjustment. The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.

~~**5. Additional Quantities.** For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.~~

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures, etc.

~~**11. Transportation and Delivery.** Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.~~

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

**14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057 (22), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with



specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor in default and recovering reprocurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three

years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dhis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

~~**19. Indemnification.** The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.~~

~~Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.~~

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.~~

~~**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.~~

~~Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to~~

satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due the Contractor under any contract with the State.

**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

~~**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.~~

~~**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.~~

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in

the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

~~**25. Changes.** The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.~~

~~**26. Renewal.** Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.~~

~~**27. Purchase Order Duration.** Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.~~

~~Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.~~

~~Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.~~

~~The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and~~

~~renewals.~~

~~Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.~~

~~Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.~~

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** ~~The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.~~

**30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**31. Dispute Resolution.** ~~Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.~~

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training

qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

~~**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.~~

**36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

**38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

~~**40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.~~

~~**41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.~~

~~**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.~~

~~**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.~~

~~**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.~~

~~**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.~~

~~**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.~~

**47. Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.