

GRADE CROSSING MAINTENANCE AGREEMENT

THIS GRADE CROSSING MAINTENANCE AGREEMENT (this “Agreement”), effective as of _____ (the “Effective Date”), is between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business located at 500 Water St., Jacksonville, FL 32202, hereinafter called “CSXT,” and the CITY OF CARTERSVILLE, a municipal of the State of Georgia, hereinafter called “AGENCY”.

WITNESSETH:

WHEREAS, AGENCY desires the continued use and maintenance of a certain existing road crossing which includes an at-grade public road roadway known as East Main Street across and over the tracks, right-of-way and property of CSXT, at CSXT’s Milepost OWA 47.55, DOT No. 340441K, hereinafter referred to as the “CROSSING” and the warning devices at the CROSSING, including the fixed signs, flashing lights, bells and gates (collectively the “WARNING DEVICES”); and

WHEREAS, by that certain Construction Agreement entered into between the AGENCY and CSXT, dated _____, hereinafter referred to as the “Construction Agreement”, AGENCY will construct or cause to be constructed the Project (as defined in the Construction Agreement) which includes improvements at the CROSSING; and

WHEREAS, upon completion of the Project, the AGENCY will use, maintain, repair, renew, replace and ultimately remove the CROSSING and WARNING DEVICES under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1) The CROSSING includes but is not limited to, the track structure, grade crossing surface, any railroad crossing warning signs, and automatic grade crossing warning devices which are, or might be, located within or adjacent to the above-described location. Upon completion of the Project, the CROSSING shall be thereafter maintained as provided herein at the sole cost and expense of the AGENCY.

- a) Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.
- b) CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the CROSSING, at Agency's sole cost and expense.
- c) Agency shall not undertake any alteration, modification or expansion of the CROSSING, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations and/or maintenance of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration and/or maintenance.

2) Notwithstanding any rights granted to the AGENCY herein, CSXT reserves the right to perform all work required on CSXT's property and right-of-way at the

CROSSING including construction, drainage, lighting and vegetation management, in which event AGENCY shall pay CSXT the entire cost and expense of labor, materials and equipment furnished by CSXT in performing such work.

3) The CROSSING shall be used for public at-grade road crossing purposes only and no utility (including telecommunications facilities, pipes, wires, cables) or other line or structure, materials, vegetation or other improvements shall be placed in, on or over the CROSSING without the previous consent in writing of CSXT and the execution of such additional agreements as CSXT deems necessary.

4) RESERVED.

5) The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING, and in the event the AGENCY shall fail to comply with any of the covenants and conditions, then, at the option of CSXT, this Agreement shall be terminated with full legal rights and remedies retained by CSXT, including but not limited to the right to reenter, repossess, and remove the CROSSING at the expense of the AGENCY if CSXT shall elect to do so.

6) Unless otherwise specified in this Agreement or the Construction Agreement, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING, including but not limited to the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices, whether performed by the AGENCY or CSXT, shall be the sole responsibility of the AGENCY.

7) Pursuant to the Construction Agreement, CSXT will install WARNING DEVICES at the CROSSING. On each anniversary of the in-service date until termination

of this Agreement, AGENCY shall pay an annual fee in arrears to CSXT in the amount of SIX THOUSAND EIGHT HUNDRED FIFTY-SEVEN DOLLARS (\$6,857.00), towards the ongoing maintenance of the WARNING DEVICES (the “Annual Warning Device Fee”). The Annual Warning Device Fee shall be increased each year in accordance with Section 9. The WARNING DEVICES shall remain at the CROSSING SITE until the Georgia Department of Transportation (“DOT”) decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

8) The existing crossing surface at the CROSSING is sixty feet (60’) wide (the “SURFACE”). On each anniversary of the Effective Date until termination of this Agreement, AGENCY shall pay an annual fee to CSXT in the amount of FOUR THOUSAND ONE HUNDRED SIXTY DOLLARS (\$4,160.00), towards the ongoing maintenance of the SURFACE (the “Annual Surface Fee”). The Annual Surface Fee shall be increased each year in accordance with Section 9.

9) The Annual Warning Device Fee and Annual Surface Fee (“Annual Fees”) shall be adjusted as follows:

a) The Annual Fees shall be subject to periodic review and adjustment by CSXT. CSXT will provide notice of any increase as a result of such review and adjustment in advance of the due date.

b) In addition to the periodic review and adjustment referred to in the Section above, the Fees shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor

Statistics Department of Labor" ("CPI"). In no event, however, shall the adjusted Fee be less than the previous year's Fee.

The Fee shall be increased in accordance with the following:

Current Price Index*

----- X Fees = Adjusted Fees

Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

10) When CSXT determines that the replacement of the SURFACE is more economical than its continued maintenance, CSXT shall have the exclusive option to replace the SURFACE with its standard timber and asphalt surface. In the event AGENCY requests that CSXT install a different type of grade crossing surface and CSXT agrees to do so, the difference in cost between the then current estimated replacement cost of CSXT's standard timber and asphalt surface and the AGENCY's requested surface type shall be the sole responsibility of the AGENCY.

11) The AGENCY shall, at its sole expense, maintain and replace the remainder of the road on either side of the SURFACE within CSXT's right-of-way at the CROSSING,

plus any paving which may be located between the ends of the ties. AGENCY shall perform such work in accordance with the time and operational requirements of CSXT. The AGENCY will give prior notice to CSXT of all work to be performed by it at or near the CROSSING and no such work shall be performed by AGENCY without the prior approval of CSXT and the execution of such additional agreements as CSXT deems necessary. All work performed by the AGENCY shall be conducted at such times and in such manner as to not interfere or impede the operations of CSXT. CSXT shall provide a construction watchman or other protective services at the CROSSING while work is being performed by the AGENCY under the provisions of this Agreement, at the sole expense of the AGENCY.

12) The AGENCY agrees, acknowledges and understands that CSXT reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING. CSXT shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such changes or alterations. The AGENCY agrees to promptly relocate any AGENCY facilities to accommodate any CSXT changes within thirty (30) days of a request by CSXT to do so, at AGENCY's sole cost and expense.

13) The AGENCY agrees that it will install, maintain and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING. Such facilities must first be approved by the CSXT and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the CSXT, depending

upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities.

14) Lighting facilities adequate to comply with the requirements of the laws of the State of Georgia covering illumination of the road crossing shall be installed, maintained and replaced at or near this CROSSING by and at the sole cost of AGENCY.

15) Facilities at or near the CROSSING that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by AGENCY at or near the CROSSING without the prior written approval of CSXT, which approval is in CSXT's sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of AGENCY.

16) If at any time CSXT, at AGENCY's request, performs work required to be performed by AGENCY hereunder, the cost for such work shall be the sole responsibility of AGENCY.

17) The AGENCY further covenants to pay CSXT, within thirty (30) days after presentation of the same, all invoices submitted by CSXT under this Agreement. Failure to promptly pay to CSXT amounts billed as due under this Agreement shall constitute default by the AGENCY. In the event AGENCY fails to comply with any of the other terms and conditions of this Agreement, then, at the option of CSXT, CSXT may elect, by delivery of notice to AGENCY, not to perform CSXT's obligations under this Agreement, up to and including closing the crossing, until the AGENCY cures any such default to CSXT's satisfaction.

18) At the termination of this Agreement as provided above, all rights of the

AGENCY shall terminate and the AGENCY shall remove, under CSXT's supervision and direction, at AGENCY's entire cost and expense, said road and all non-CSXT-owned improvements placed upon the CSXT's right-of-way and restore the ground to its original condition.

19) To the fullest extent permitted by state law, the AGENCY shall indemnify, defend and hold harmless CSXT for assessments or other charges of any kind whatsoever against the CSXT at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING arising out of the existence of the CROSSING.

20) The AGENCY shall not in any way, or at any time, interfere with or obstruct CSXT's right-of-way, the movement of CSXT's trains and other railroad operations, or interfere with the CSXT's use thereof, or the use thereof by CSXT's assigns, invitees, lessees or licensees.

21) To the fullest extent permitted by state law, the AGENCY shall, and shall require its contractor to, indemnify, defend and hold harmless CSXT, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against CSXT whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of any future maintenance or replacement of the CROSSING and/or WARNING DEVICES by CSXT, the performance of work by CSXT required to be performed by AGENCY hereunder, or the use of the CROSSING or AGENCY facilities, including but not limited to pedestrian walkways, at or near the CROSSING and **regardless of whether such injury or damage is caused or alleged to be caused, in whole or in part, by the negligence of CSXT.** Notwithstanding

the foregoing, the AGENCY shall have no indemnification obligation for the intentional, wrongful acts of CSXT.

22) At least thirty (30) days prior to AGENCY's performance of any work in connection with the CROSSING, AGENCY or its contractor shall notify CSXT of its authorized representative. CSXT shall review AGENCY's request for approval and/or authorization to proceed. Such approval and/or authorization to proceed shall include (if applicable) the execution of such additional agreement(s) as CSXT deems necessary and CSXT's requirement to furnish protective services including but not limited to flagmen, construction watchmen, field construction inspectors, etc. ("Protective Services") for the protection of CSXT's employees, property and train operations with respect to AGENCY's work activity. Any such Protective Services shall be furnished at AGENCY's sole cost and expense. AGENCY shall abide by all instructions of CSXT's Regional Engineer, or his or her authorized representative, in the performance of any work at the CROSSING.

In addition to, but not in limitation of any of the foregoing provisions, if at any time CSXT should deem it necessary to place Protective Services for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING, CSXT shall have the right to place such Protective Services, or other persons at the sole cost and expense of the AGENCY. The furnishing or failure to furnish Protective Services, or other persons by the CSXT under this paragraph, however, shall not release AGENCY from any and all other liabilities assumed by AGENCY under the terms of this Agreement, including its obligations under Paragraph 20 hereof.

23) Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING shall be

the sole responsibility and cost of the AGENCY, and at its sole expense.

24) The AGENCY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

25) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26) This Agreement will be governed by the laws of the State of Georgia, with the parties agreeing to venue and jurisdiction for all issues arising from this Agreement being in the Bartow County Superior Court. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

27) This Agreement supersedes any existing agreement(s) between CSXT, or its predecessor in title, and AGENCY, or its predecessor in title, covering the CROSSING and WARNING DEVICES described herein, which agreement(s) is/are terminated and superseded by the execution hereof.

28) Upon completion of the Project and except as otherwise provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the Construction Agreement, the provision contained in this Agreement shall govern and control.

IN WITNESS WHEREOF, the CSXT and the AGENCY have caused this instrument to be executed in their corporate names in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

CITY OF CARTERSVILLE

CSX TRANSPORTATION, INC.

By: _____

By: _____

Name: Matthew J. Santini

Name: _____

Title: Mayor

Title: _____

Attested to by:

Julia Drake, City Clerk

[AFFIX SEAL]

GRADE CROSSING MAINTENANCE AGREEMENT

THIS GRADE CROSSING MAINTENANCE AGREEMENT (this “Agreement”), effective as of _____ (the “Effective Date”), is between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business located at 500 Water St., Jacksonville, FL 32202, hereinafter called “CSXT,” and the CITY OF CARTERSVILLE, a municipal of the State of Georgia, hereinafter called “AGENCY”.

WITNESSETH:

WHEREAS, AGENCY desires the continued use and maintenance of a certain existing road crossing which includes an at-grade public road roadway known as West Avenue across and over the tracks, right-of-way and property of CSXT, at CSXT’s Milepost 0WA 47.32, DOT No. 340439J, hereinafter referred to as the “CROSSING” and the warning devices at the CROSSING, including the fixed signs, flashing lights, bells and gates (collectively the “WARNING DEVICES”); and

WHEREAS, by that certain Construction Agreement entered into between the AGENCY and CSXT, dated _____, hereinafter referred to as the “Construction Agreement”, AGENCY will construct or cause to be constructed the Project (as defined in the Construction Agreement) which includes improvements at the CROSSING; and

WHEREAS, upon completion of the Project, the AGENCY will use, maintain, repair, renew, replace and ultimately remove the CROSSING and WARNING DEVICES under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1) The CROSSING includes but is not limited to, the track structure, grade crossing surface, any railroad crossing warning signs, and automatic grade crossing warning devices which are, or might be, located within or adjacent to the above-described location. Upon completion of the Project, the CROSSING shall be thereafter maintained as provided herein at the sole cost and expense of the AGENCY.

- a) Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.
- b) CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the CROSSING, at Agency's sole cost and expense.
- c) Agency shall not undertake any alteration, modification or expansion of the CROSSING, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations and/or maintenance of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration and/or maintenance.

2) Notwithstanding any rights granted to the AGENCY herein, CSXT reserves the right to perform all work required on CSXT's property and right-of-way at the

CROSSING including construction, drainage, lighting and vegetation management, in which event AGENCY shall pay CSXT the entire cost and expense of labor, materials and equipment furnished by CSXT in performing such work.

3) The CROSSING shall be used for public at-grade road crossing purposes only and no utility (including telecommunications facilities, pipes, wires, cables) or other line or structure, materials, vegetation or other improvements shall be placed in, on or over the CROSSING without the previous consent in writing of CSXT and the execution of such additional agreements as CSXT deems necessary.

4) RESERVED.

5) The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING, and in the event the AGENCY shall fail to comply with any of the covenants and conditions, then, at the option of CSXT, this Agreement shall be terminated with full legal rights and remedies retained by CSXT, including but not limited to the right to reenter, repossess, and remove the CROSSING at the expense of the AGENCY if CSXT shall elect to do so.

6) Unless otherwise specified in this Agreement or the Construction Agreement, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING, including but not limited to the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices, whether performed by the AGENCY or CSXT, shall be the sole responsibility of the AGENCY.

7) Pursuant to the Construction Agreement, CSXT will install WARNING DEVICES at the CROSSING. On each anniversary of the in-service date until termination

of this Agreement, AGENCY shall pay an annual fee in arrears to CSXT in the amount of SIX THOUSAND THREE HUNDRED THIRTY DOLLARS (\$6,330.00), towards the ongoing maintenance of the WARNING DEVICES (the "Annual Warning Device Fee"). The Annual Warning Device Fee shall be increased each year in accordance with Section 9. The WARNING DEVICES shall remain at the CROSSING SITE until the Georgia Department of Transportation ("DOT") decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

8) The existing crossing surface at the CROSSING is thirty-four feet (34') wide (the "SURFACE"). On each anniversary of the Effective Date until termination of this Agreement, AGENCY shall pay an annual fee to CSXT in the amount of THREE THOUSAND THREE HUNDRED TWENTY-THREE DOLLARS (\$3,323.00), towards the ongoing maintenance of the SURFACE (the "Annual Surface Fee"). The Annual Surface Fee shall be increased each year in accordance with Section 9.

9) The Annual Warning Device Fee and Annual Surface Fee ("Annual Fees") shall be adjusted as follows:

a) The Annual Fees shall be subject to periodic review and adjustment by CSXT. CSXT will provide notice of any increase as a result of such review and adjustment in advance of the due date.

b) In addition to the periodic review and adjustment referred to in the Section above, the Fees shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor

Statistics Department of Labor" ("CPI"). In no event, however, shall the adjusted Fee be less than the previous year's Fee.

The Fee shall be increased in accordance with the following:

Current Price Index*

----- X Fees = Adjusted Fees

Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

10) When CSXT determines that the replacement of the SURFACE is more economical than its continued maintenance, CSXT shall have the exclusive option to replace the SURFACE with its standard timber and asphalt surface. In the event AGENCY requests that CSXT install a different type of grade crossing surface and CSXT agrees to do so, the difference in cost between the then current estimated replacement cost of CSXT's standard timber and asphalt surface and the AGENCY's requested surface type shall be the sole responsibility of the AGENCY.

11) The AGENCY shall, at its sole expense, maintain and replace the remainder of the road on either side of the SURFACE within CSXT's right-of-way at the CROSSING,

plus any paving which may be located between the ends of the ties. AGENCY shall perform such work in accordance with the time and operational requirements of CSXT. The AGENCY will give prior notice to CSXT of all work to be performed by it at or near the CROSSING and no such work shall be performed by AGENCY without the prior approval of CSXT and the execution of such additional agreements as CSXT deems necessary. All work performed by the AGENCY shall be conducted at such times and in such manner as to not interfere or impede the operations of CSXT. CSXT shall provide a construction watchman or other protective services at the CROSSING while work is being performed by the AGENCY under the provisions of this Agreement, at the sole expense of the AGENCY.

12) The AGENCY agrees, acknowledges and understands that CSXT reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING. CSXT shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such changes or alterations. The AGENCY agrees to promptly relocate any AGENCY facilities to accommodate any CSXT changes within thirty (30) days of a request by CSXT to do so, at AGENCY's sole cost and expense.

13) The AGENCY agrees that it will install, maintain and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING. Such facilities must first be approved by the CSXT and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the CSXT, depending

upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities.

14) Lighting facilities adequate to comply with the requirements of the laws of the State of Georgia covering illumination of the road crossing shall be installed, maintained and replaced at or near this CROSSING by and at the sole cost of AGENCY.

15) Facilities at or near the CROSSING that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by AGENCY at or near the CROSSING without the prior written approval of CSXT, which approval is in CSXT's sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of AGENCY.

16) If at any time CSXT, at AGENCY's request, performs work required to be performed by AGENCY hereunder, the cost for such work shall be the sole responsibility of AGENCY.

17) The AGENCY further covenants to pay CSXT, within thirty (30) days after presentation of the same, all invoices submitted by CSXT under this Agreement. Failure to promptly pay to CSXT amounts billed as due under this Agreement shall constitute default by the AGENCY. In the event AGENCY fails to comply with any of the other terms and conditions of this Agreement, then, at the option of CSXT, CSXT may elect, by delivery of notice to AGENCY, not to perform CSXT's obligations under this Agreement, up to and including closing the crossing, until the AGENCY cures any such default to CSXT's satisfaction.

18) At the termination of this Agreement as provided above, all rights of the

AGENCY shall terminate and the AGENCY shall remove, under CSXT's supervision and direction, at AGENCY's entire cost and expense, said road and all non-CSXT-owned improvements placed upon the CSXT's right-of-way and restore the ground to its original condition.

19) To the fullest extent permitted by state law, the AGENCY shall indemnify, defend and hold harmless CSXT for assessments or other charges of any kind whatsoever against the CSXT at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING arising out of the existence of the CROSSING.

20) The AGENCY shall not in any way, or at any time, interfere with or obstruct CSXT's right-of-way, the movement of CSXT's trains and other railroad operations, or interfere with the CSXT's use thereof, or the use thereof by CSXT's assigns, invitees, lessees or licensees.

21) To the fullest extent permitted by state law, the AGENCY shall, and shall require its contractor to, indemnify, defend and hold harmless CSXT, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against CSXT whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of any future maintenance or replacement of the CROSSING and/or WARNING DEVICES by CSXT, the performance of work by CSXT required to be performed by AGENCY hereunder, or the use of the CROSSING or AGENCY facilities, including but not limited to pedestrian walkways, at or near the CROSSING and **regardless of whether such injury or damage is caused or alleged to be caused, in whole or in part, by the negligence of CSXT.** Notwithstanding

the foregoing, the AGENCY shall have no indemnification obligation for the intentional, wrongful acts of CSXT.

22) At least thirty (30) days prior to AGENCY's performance of any work in connection with the CROSSING, AGENCY or its contractor shall notify CSXT of its authorized representative. CSXT shall review AGENCY's request for approval and/or authorization to proceed. Such approval and/or authorization to proceed shall include (if applicable) the execution of such additional agreement(s) as CSXT deems necessary and CSXT's requirement to furnish protective services including but not limited to flagmen, construction watchmen, field construction inspectors, etc. ("Protective Services") for the protection of CSXT's employees, property and train operations with respect to AGENCY's work activity. Any such Protective Services shall be furnished at AGENCY's sole cost and expense. AGENCY shall abide by all instructions of CSXT's Regional Engineer, or his or her authorized representative, in the performance of any work at the CROSSING.

In addition to, but not in limitation of any of the foregoing provisions, if at any time CSXT should deem it necessary to place Protective Services for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING, CSXT shall have the right to place such Protective Services, or other persons at the sole cost and expense of the AGENCY. The furnishing or failure to furnish Protective Services, or other persons by the CSXT under this paragraph, however, shall not release AGENCY from any and all other liabilities assumed by AGENCY under the terms of this Agreement, including its obligations under Paragraph 20 hereof.

23) Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING shall be

the sole responsibility and cost of the AGENCY, and at its sole expense.

24) The AGENCY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

25) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26) This Agreement will be governed by the laws of the State of Georgia, with the parties agreeing to venue and jurisdiction for all issues arising from this Agreement being in the Bartow County Superior Court. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

27) This Agreement supersedes any existing agreement(s) between CSXT, or its predecessor in title, and AGENCY, or its predecessor in title, covering the CROSSING and WARNING DEVICES described herein, which agreement(s) is/are terminated and superseded by the execution hereof.

28) Upon completion of the Project and except as otherwise provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the Construction Agreement, the provision contained in this Agreement shall govern and control.

IN WITNESS WHEREOF, the CSXT and the AGENCY have caused this instrument to be executed in their corporate names in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

CITY OF CARTERSVILLE

CSX TRANSPORTATION, INC.

By: _____

By: _____

Name: Matthew J. Santini

Name: _____

Title: Mayor

Title: _____

Attested to by:

Julia Drake, City Clerk

[AFFIX SEAL]

GRADE CROSSING MAINTENANCE AGREEMENT

THIS GRADE CROSSING MAINTENANCE AGREEMENT (this “Agreement”), effective as of _____ (the “Effective Date”), is between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business located at 500 Water St., Jacksonville, FL 32202, hereinafter called “CSXT,” and the CITY OF CARTERSVILLE, a municipal of the State of Georgia, hereinafter called “AGENCY”.

WITNESSETH:

WHEREAS, AGENCY desires the continued use and maintenance of a certain existing road crossing which includes an at-grade public road roadway known as Leake Street across and over the tracks, right-of-way and property of CSXT, at CSXT’s Milepost 0WA 47.45, DOT No. 340440D, hereinafter referred to as the “CROSSING” and the warning devices at the CROSSING, including the fixed signs, flashing lights, bells and gates (collectively the “WARNING DEVICES”); and

WHEREAS, by that certain Construction Agreement entered into between the AGENCY and CSXT, dated _____, hereinafter referred to as the “Construction Agreement”, AGENCY will construct or cause to be constructed the Project (as defined in the Construction Agreement) which includes improvements at the CROSSING; and

WHEREAS, upon completion of the Project, the AGENCY will use, maintain, repair, renew, replace and ultimately remove the CROSSING and WARNING DEVICES under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1) The CROSSING includes but is not limited to, the track structure, grade crossing surface, any railroad crossing warning signs, and automatic grade crossing warning devices which are, or might be, located within or adjacent to the above-described location. Upon completion of the Project, the CROSSING shall be thereafter maintained as provided herein at the sole cost and expense of the AGENCY.

- a) Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.
- b) CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the CROSSING, at Agency's sole cost and expense.
- c) Agency shall not undertake any alteration, modification or expansion of the CROSSING, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations and/or maintenance of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration and/or maintenance.

2) Notwithstanding any rights granted to the AGENCY herein, CSXT reserves the right to perform all work required on CSXT's property and right-of-way at the

CROSSING including construction, drainage, lighting and vegetation management, in which event AGENCY shall pay CSXT the entire cost and expense of labor, materials and equipment furnished by CSXT in performing such work.

3) The CROSSING shall be used for public at-grade road crossing purposes only and no utility (including telecommunications facilities, pipes, wires, cables) or other line or structure, materials, vegetation or other improvements shall be placed in, on or over the CROSSING without the previous consent in writing of CSXT and the execution of such additional agreements as CSXT deems necessary.

4) RESERVED.

5) The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING, and in the event the AGENCY shall fail to comply with any of the covenants and conditions, then, at the option of CSXT, this Agreement shall be terminated with full legal rights and remedies retained by CSXT, including but not limited to the right to reenter, repossess, and remove the CROSSING at the expense of the AGENCY if CSXT shall elect to do so.

6) Unless otherwise specified in this Agreement or the Construction Agreement, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING, including but not limited to the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices, whether performed by the AGENCY or CSXT, shall be the sole responsibility of the AGENCY.

7) Pursuant to the Construction Agreement, CSXT will install WARNING DEVICES at the CROSSING. On each anniversary of the in-service date until termination

of this Agreement, AGENCY shall pay an annual fee in arrears to CSXT in the amount of SIX THOUSAND THREE HUNDRED THIRTY DOLLARS (\$6,330.00), towards the ongoing maintenance of the WARNING DEVICES (the "Annual Warning Device Fee"). The Annual Warning Device Fee shall be increased each year in accordance with Section 9. The WARNING DEVICES shall remain at the CROSSING SITE until the Georgia Department of Transportation ("DOT") decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

8) The existing crossing surface at the CROSSING is thirty-five feet (35') wide (the "SURFACE"). On each anniversary of the Effective Date until termination of this Agreement, AGENCY shall pay an annual fee to CSXT in the amount of THREE THOUSAND THREE HUNDRED TWENTY-THREE DOLLARS (\$3,323.00), towards the ongoing maintenance of the SURFACE (the "Annual Surface Fee"). The Annual Surface Fee shall be increased each year in accordance with Section 9.

9) The Annual Warning Device Fee and Annual Surface Fee ("Annual Fees") shall be adjusted as follows:

a) The Annual Fees shall be subject to periodic review and adjustment by CSXT. CSXT will provide notice of any increase as a result of such review and adjustment in advance of the due date.

b) In addition to the periodic review and adjustment referred to in the Section above, the Fees shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor

Statistics Department of Labor" ("CPI"). In no event, however, shall the adjusted Fee be less than the previous year's Fee.

The Fee shall be increased in accordance with the following:

Current Price Index*

----- X Fees = Adjusted Fees

Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

10) When CSXT determines that the replacement of the SURFACE is more economical than its continued maintenance, CSXT shall have the exclusive option to replace the SURFACE with its standard timber and asphalt surface. In the event AGENCY requests that CSXT install a different type of grade crossing surface and CSXT agrees to do so, the difference in cost between the then current estimated replacement cost of CSXT's standard timber and asphalt surface and the AGENCY's requested surface type shall be the sole responsibility of the AGENCY.

11) The AGENCY shall, at its sole expense, maintain and replace the remainder of the road on either side of the SURFACE within CSXT's right-of-way at the CROSSING,

plus any paving which may be located between the ends of the ties. AGENCY shall perform such work in accordance with the time and operational requirements of CSXT. The AGENCY will give prior notice to CSXT of all work to be performed by it at or near the CROSSING and no such work shall be performed by AGENCY without the prior approval of CSXT and the execution of such additional agreements as CSXT deems necessary. All work performed by the AGENCY shall be conducted at such times and in such manner as to not interfere or impede the operations of CSXT. CSXT shall provide a construction watchman or other protective services at the CROSSING while work is being performed by the AGENCY under the provisions of this Agreement, at the sole expense of the AGENCY.

12) The AGENCY agrees, acknowledges and understands that CSXT reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING. CSXT shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such changes or alterations. The AGENCY agrees to promptly relocate any AGENCY facilities to accommodate any CSXT changes within thirty (30) days of a request by CSXT to do so, at AGENCY's sole cost and expense.

13) The AGENCY agrees that it will install, maintain and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING. Such facilities must first be approved by the CSXT and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the CSXT, depending

upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities.

14) Lighting facilities adequate to comply with the requirements of the laws of the State of Georgia covering illumination of the road crossing shall be installed, maintained and replaced at or near this CROSSING by and at the sole cost of AGENCY.

15) Facilities at or near the CROSSING that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by AGENCY at or near the CROSSING without the prior written approval of CSXT, which approval is in CSXT's sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of AGENCY.

16) If at any time CSXT, at AGENCY's request, performs work required to be performed by AGENCY hereunder, the cost for such work shall be the sole responsibility of AGENCY.

17) The AGENCY further covenants to pay CSXT, within thirty (30) days after presentation of the same, all invoices submitted by CSXT under this Agreement. Failure to promptly pay to CSXT amounts billed as due under this Agreement shall constitute default by the AGENCY. In the event AGENCY fails to comply with any of the other terms and conditions of this Agreement, then, at the option of CSXT, CSXT may elect, by delivery of notice to AGENCY, not to perform CSXT's obligations under this Agreement, up to and including closing the crossing, until the AGENCY cures any such default to CSXT's satisfaction.

18) At the termination of this Agreement as provided above, all rights of the

AGENCY shall terminate and the AGENCY shall remove, under CSXT's supervision and direction, at AGENCY's entire cost and expense, said road and all non-CSXT-owned improvements placed upon the CSXT's right-of-way and restore the ground to its original condition.

19) To the fullest extent permitted by state law, the AGENCY shall indemnify, defend and hold harmless CSXT for assessments or other charges of any kind whatsoever against the CSXT at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING arising out of the existence of the CROSSING.

20) The AGENCY shall not in any way, or at any time, interfere with or obstruct CSXT's right-of-way, the movement of CSXT's trains and other railroad operations, or interfere with the CSXT's use thereof, or the use thereof by CSXT's assigns, invitees, lessees or licensees.

21) To the fullest extent permitted by state law, the AGENCY shall, and shall require its contractor to, indemnify, defend and hold harmless CSXT, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against CSXT whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of any future maintenance or replacement of the CROSSING and/or WARNING DEVICES by CSXT, the performance of work by CSXT required to be performed by AGENCY hereunder, or the use of the CROSSING or AGENCY facilities, including but not limited to pedestrian walkways, at or near the CROSSING and **regardless of whether such injury or damage is caused or alleged to be caused, in whole or in part, by the negligence of CSXT.** Notwithstanding

the foregoing, the AGENCY shall have no indemnification obligation for the intentional, wrongful acts of CSXT.

22) At least thirty (30) days prior to AGENCY's performance of any work in connection with the CROSSING, AGENCY or its contractor shall notify CSXT of its authorized representative. CSXT shall review AGENCY's request for approval and/or authorization to proceed. Such approval and/or authorization to proceed shall include (if applicable) the execution of such additional agreement(s) as CSXT deems necessary and CSXT's requirement to furnish protective services including but not limited to flagmen, construction watchmen, field construction inspectors, etc. ("Protective Services") for the protection of CSXT's employees, property and train operations with respect to AGENCY's work activity. Any such Protective Services shall be furnished at AGENCY's sole cost and expense. AGENCY shall abide by all instructions of CSXT's Regional Engineer, or his or her authorized representative, in the performance of any work at the CROSSING.

In addition to, but not in limitation of any of the foregoing provisions, if at any time CSXT should deem it necessary to place Protective Services for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING, CSXT shall have the right to place such Protective Services, or other persons at the sole cost and expense of the AGENCY. The furnishing or failure to furnish Protective Services, or other persons by the CSXT under this paragraph, however, shall not release AGENCY from any and all other liabilities assumed by AGENCY under the terms of this Agreement, including its obligations under Paragraph 20 hereof.

23) Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING shall be

the sole responsibility and cost of the AGENCY, and at its sole expense.

24) The AGENCY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

25) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26) This Agreement will be governed by the laws of the State of Georgia, with the parties agreeing to venue and jurisdiction for all issues arising from this Agreement being in the Bartow County Superior Court. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

27) This Agreement supersedes any existing agreement(s) between CSXT, or its predecessor in title, and AGENCY, or its predecessor in title, covering the CROSSING and WARNING DEVICES described herein, which agreement(s) is/are terminated and superseded by the execution hereof.

28) Upon completion of the Project and except as otherwise provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the Construction Agreement, the provision contained in this Agreement shall govern and control.

IN WITNESS WHEREOF, the CSXT and the AGENCY have caused this instrument to be executed in their corporate names in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

CITY OF CARTERSVILLE

CSX TRANSPORTATION, INC.

By: _____

By: _____

Name: Matthew J. Santini

Name: _____

Title: Mayor

Title: _____

Attested to by:

Julia Drake, City Clerk

[AFFIX SEAL]

GRADE CROSSING MAINTENANCE AGREEMENT

THIS GRADE CROSSING MAINTENANCE AGREEMENT (this “Agreement”), effective as of _____ (the “Effective Date”), is between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business located at 500 Water St., Jacksonville, FL 32202, hereinafter called “CSXT,” and the CITY OF CARTERSVILLE, a municipal of the State of Georgia, hereinafter called “AGENCY”.

WITNESSETH:

WHEREAS, AGENCY desires the continued use and maintenance of a certain existing road crossing which includes an at-grade public road roadway known as Cherokee Avenue across and over the tracks, right-of-way and property of CSXT, at CSXT’s Milepost OWA 47.62, DOT No. 340442S, hereinafter referred to as the “CROSSING” and the warning devices at the CROSSING, including the fixed signs, flashing lights, bells and gates (collectively the “WARNING DEVICES”); and

WHEREAS, by that certain Construction Agreement entered into between the AGENCY and CSXT, dated _____, hereinafter referred to as the “Construction Agreement”, AGENCY will construct or cause to be constructed the Project (as defined in the Construction Agreement) which includes improvements at the CROSSING; and

WHEREAS, upon completion of the Project, the AGENCY will use, maintain, repair, renew, replace and ultimately remove the CROSSING and WARNING DEVICES under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1) The CROSSING includes but is not limited to, the track structure, grade crossing surface, any railroad crossing warning signs, and automatic grade crossing warning devices which are, or might be, located within or adjacent to the above-described location. Upon completion of the Project, the CROSSING shall be thereafter maintained as provided herein at the sole cost and expense of the AGENCY.

- a) Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.
- b) CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the CROSSING, at Agency's sole cost and expense.
- c) Agency shall not undertake any alteration, modification or expansion of the CROSSING, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations and/or maintenance of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration and/or maintenance.

2) Notwithstanding any rights granted to the AGENCY herein, CSXT reserves the right to perform all work required on CSXT's property and right-of-way at the

CROSSING including construction, drainage, lighting and vegetation management, in which event AGENCY shall pay CSXT the entire cost and expense of labor, materials and equipment furnished by CSXT in performing such work.

3) The CROSSING shall be used for public at-grade road crossing purposes only and no utility (including telecommunications facilities, pipes, wires, cables) or other line or structure, materials, vegetation or other improvements shall be placed in, on or over the CROSSING without the previous consent in writing of CSXT and the execution of such additional agreements as CSXT deems necessary.

4) RESERVED.

5) The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING, and in the event the AGENCY shall fail to comply with any of the covenants and conditions, then, at the option of CSXT, this Agreement shall be terminated with full legal rights and remedies retained by CSXT, including but not limited to the right to reenter, repossess, and remove the CROSSING at the expense of the AGENCY if CSXT shall elect to do so.

6) Unless otherwise specified in this Agreement or the Construction Agreement, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING, including but not limited to the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices, whether performed by the AGENCY or CSXT, shall be the sole responsibility of the AGENCY.

7) Pursuant to the Construction Agreement, CSXT will install WARNING DEVICES at the CROSSING. On each anniversary of the in-service date until termination

of this Agreement, AGENCY shall pay an annual fee in arrears to CSXT in the amount of SIX THOUSAND THREE HUNDRED THIRTY DOLLARS (\$6,330.00), towards the ongoing maintenance of the WARNING DEVICES (the "Annual Warning Device Fee"). The Annual Warning Device Fee shall be increased each year in accordance with Section 9. The WARNING DEVICES shall remain at the CROSSING SITE until the Georgia Department of Transportation ("DOT") decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

8) The existing crossing surface at the CROSSING is forty-five feet (45') wide (the "SURFACE"). On each anniversary of the Effective Date until termination of this Agreement, AGENCY shall pay an annual fee to CSXT in the amount of THREE THOUSAND SIX HUNDRED TWELVE DOLLARS (\$3,612.00), towards the ongoing maintenance of the SURFACE (the "Annual Surface Fee"). The Annual Surface Fee shall be increased each year in accordance with Section 9.

9) The Annual Warning Device Fee and Annual Surface Fee ("Annual Fees") shall be adjusted as follows:

a) The Annual Fees shall be subject to periodic review and adjustment by CSXT. CSXT will provide notice of any increase as a result of such review and adjustment in advance of the due date.

b) In addition to the periodic review and adjustment referred to in the Section above, the Fees shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor

Statistics Department of Labor" ("CPI"). In no event, however, shall the adjusted Fee be less than the previous year's Fee.

The Fee shall be increased in accordance with the following:

Current Price Index*

----- X Fees = Adjusted Fees

Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

10) When CSXT determines that the replacement of the SURFACE is more economical than its continued maintenance, CSXT shall have the exclusive option to replace the SURFACE with its standard timber and asphalt surface. In the event AGENCY requests that CSXT install a different type of grade crossing surface and CSXT agrees to do so, the difference in cost between the then current estimated replacement cost of CSXT's standard timber and asphalt surface and the AGENCY's requested surface type shall be the sole responsibility of the AGENCY.

11) The AGENCY shall, at its sole expense, maintain and replace the remainder of the road on either side of the SURFACE within CSXT's right-of-way at the CROSSING,

plus any paving which may be located between the ends of the ties. AGENCY shall perform such work in accordance with the time and operational requirements of CSXT. The AGENCY will give prior notice to CSXT of all work to be performed by it at or near the CROSSING and no such work shall be performed by AGENCY without the prior approval of CSXT and the execution of such additional agreements as CSXT deems necessary. All work performed by the AGENCY shall be conducted at such times and in such manner as to not interfere or impede the operations of CSXT. CSXT shall provide a construction watchman or other protective services at the CROSSING while work is being performed by the AGENCY under the provisions of this Agreement, at the sole expense of the AGENCY.

12) The AGENCY agrees, acknowledges and understands that CSXT reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING. CSXT shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such changes or alterations. The AGENCY agrees to promptly relocate any AGENCY facilities to accommodate any CSXT changes within thirty (30) days of a request by CSXT to do so, at AGENCY's sole cost and expense.

13) The AGENCY agrees that it will install, maintain and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING. Such facilities must first be approved by the CSXT and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the CSXT, depending

upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities.

14) Lighting facilities adequate to comply with the requirements of the laws of the State of Georgia covering illumination of the road crossing shall be installed, maintained and replaced at or near this CROSSING by and at the sole cost of AGENCY.

15) Facilities at or near the CROSSING that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by AGENCY at or near the CROSSING without the prior written approval of CSXT, which approval is in CSXT's sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of AGENCY.

16) If at any time CSXT, at AGENCY's request, performs work required to be performed by AGENCY hereunder, the cost for such work shall be the sole responsibility of AGENCY.

17) The AGENCY further covenants to pay CSXT, within thirty (30) days after presentation of the same, all invoices submitted by CSXT under this Agreement. Failure to promptly pay to CSXT amounts billed as due under this Agreement shall constitute default by the AGENCY. In the event AGENCY fails to comply with any of the other terms and conditions of this Agreement, then, at the option of CSXT, CSXT may elect, by delivery of notice to AGENCY, not to perform CSXT's obligations under this Agreement, up to and including closing the crossing, until the AGENCY cures any such default to CSXT's satisfaction.

18) At the termination of this Agreement as provided above, all rights of the

AGENCY shall terminate and the AGENCY shall remove, under CSXT's supervision and direction, at AGENCY's entire cost and expense, said road and all non-CSXT-owned improvements placed upon the CSXT's right-of-way and restore the ground to its original condition.

19) To the fullest extent permitted by state law, the AGENCY shall indemnify, defend and hold harmless CSXT for assessments or other charges of any kind whatsoever against the CSXT at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING arising out of the existence of the CROSSING.

20) The AGENCY shall not in any way, or at any time, interfere with or obstruct CSXT's right-of-way, the movement of CSXT's trains and other railroad operations, or interfere with the CSXT's use thereof, or the use thereof by CSXT's assigns, invitees, lessees or licensees.

21) To the fullest extent permitted by state law, the AGENCY shall, and shall require its contractor to, indemnify, defend and hold harmless CSXT, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against CSXT whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of any future maintenance or replacement of the CROSSING and/or WARNING DEVICES by CSXT, the performance of work by CSXT required to be performed by AGENCY hereunder, or the use of the CROSSING or AGENCY facilities, including but not limited to pedestrian walkways, at or near the CROSSING and **regardless of whether such injury or damage is caused or alleged to be caused, in whole or in part, by the negligence of CSXT.** Notwithstanding

the foregoing, the AGENCY shall have no indemnification obligation for the intentional, wrongful acts of CSXT.

22) At least thirty (30) days prior to AGENCY's performance of any work in connection with the CROSSING, AGENCY or its contractor shall notify CSXT of its authorized representative. CSXT shall review AGENCY's request for approval and/or authorization to proceed. Such approval and/or authorization to proceed shall include (if applicable) the execution of such additional agreement(s) as CSXT deems necessary and CSXT's requirement to furnish protective services including but not limited to flagmen, construction watchmen, field construction inspectors, etc. ("Protective Services") for the protection of CSXT's employees, property and train operations with respect to AGENCY's work activity. Any such Protective Services shall be furnished at AGENCY's sole cost and expense. AGENCY shall abide by all instructions of CSXT's Regional Engineer, or his or her authorized representative, in the performance of any work at the CROSSING.

In addition to, but not in limitation of any of the foregoing provisions, if at any time CSXT should deem it necessary to place Protective Services for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING, CSXT shall have the right to place such Protective Services, or other persons at the sole cost and expense of the AGENCY. The furnishing or failure to furnish Protective Services, or other persons by the CSXT under this paragraph, however, shall not release AGENCY from any and all other liabilities assumed by AGENCY under the terms of this Agreement, including its obligations under Paragraph 20 hereof.

23) Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING shall be

the sole responsibility and cost of the AGENCY, and at its sole expense.

24) The AGENCY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

25) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26) This Agreement will be governed by the laws of the State of Georgia, with the parties agreeing to venue and jurisdiction for all issues arising from this Agreement being in the Bartow County Superior Court. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

27) This Agreement supersedes any existing agreement(s) between CSXT, or its predecessor in title, and AGENCY, or its predecessor in title, covering the CROSSING and WARNING DEVICES described herein, which agreement(s) is/are terminated and superseded by the execution hereof.

28) Upon completion of the Project and except as otherwise provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the Construction Agreement, the provision contained in this Agreement shall govern and control.

IN WITNESS WHEREOF, the CSXT and the AGENCY have caused this instrument to be executed in their corporate names in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

CITY OF CARTERSVILLE

CSX TRANSPORTATION, INC.

By: _____

By: _____

Name: Matthew J. Santini

Name: _____

Title: Mayor

Title: _____

Attested to by:

Julia Drake, City Clerk

[AFFIX SEAL]

GRADE CROSSING MAINTENANCE AGREEMENT

THIS GRADE CROSSING MAINTENANCE AGREEMENT (this “Agreement”), effective as of _____ (the “Effective Date”), is between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business located at 500 Water St., Jacksonville, FL 32202, hereinafter called “CSXT,” and the CITY OF CARTERSVILLE, a municipal of the State of Georgia, hereinafter called “AGENCY”.

WITNESSETH:

WHEREAS, AGENCY desires the continued use and maintenance of a certain existing road crossing which includes an at-grade public road roadway known as Carter Street across and over the tracks, right-of-way and property of CSXT, at CSXT’s Milepost 0WA 47.94, DOT No. 340445M, hereinafter referred to as the “CROSSING” and the warning devices at the CROSSING, including the fixed signs, flashing lights, bells and gates (collectively the “WARNING DEVICES”); and

WHEREAS, by that certain Construction Agreement entered into between the AGENCY and CSXT, dated _____, hereinafter referred to as the “Construction Agreement”, AGENCY will construct or cause to be constructed the Project (as defined in the Construction Agreement) which includes improvements at the CROSSING; and

WHEREAS, upon completion of the Project, the AGENCY will use, maintain, repair, renew, replace and ultimately remove the CROSSING and WARNING DEVICES under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties agree as follows:

1) The CROSSING includes but is not limited to, the track structure, grade crossing surface, any railroad crossing warning signs, and automatic grade crossing warning devices which are, or might be, located within or adjacent to the above-described location. Upon completion of the Project, the CROSSING shall be thereafter maintained as provided herein at the sole cost and expense of the AGENCY.

- a) Agency shall maintain and repair, at its sole cost and expense, all parts comprising the permanent aspects of the Project, as shown by the Plans, consisting of roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs, in good and safe condition to CSXT's satisfaction. In the event Agency fails to do so after reasonable notice from CSXT (unless an emergency condition exists or is imminent in the opinion of CSXT that requires immediate action), CSXT may perform such maintenance and repair, at Agency's sole cost and expense.
- b) CSXT shall maintain and repair the crossing surface between the ends of its cross ties and its signal facilities at the CROSSING, at Agency's sole cost and expense.
- c) Agency shall not undertake any alteration, modification or expansion of the CROSSING, without the prior written approval of CSXT, which may be withheld for any reason, and the execution of such agreements as CSXT may require. CSXT may undertake alterations and/or maintenance of its property, track or facilities and shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such alteration and/or maintenance.

2) Notwithstanding any rights granted to the AGENCY herein, CSXT reserves the right to perform all work required on CSXT's property and right-of-way at the

CROSSING including construction, drainage, lighting and vegetation management, in which event AGENCY shall pay CSXT the entire cost and expense of labor, materials and equipment furnished by CSXT in performing such work.

3) The CROSSING shall be used for public at-grade road crossing purposes only and no utility (including telecommunications facilities, pipes, wires, cables) or other line or structure, materials, vegetation or other improvements shall be placed in, on or over the CROSSING without the previous consent in writing of CSXT and the execution of such additional agreements as CSXT deems necessary.

4) RESERVED.

5) The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING, and in the event the AGENCY shall fail to comply with any of the covenants and conditions, then, at the option of CSXT, this Agreement shall be terminated with full legal rights and remedies retained by CSXT, including but not limited to the right to reenter, repossess, and remove the CROSSING at the expense of the AGENCY if CSXT shall elect to do so.

6) Unless otherwise specified in this Agreement or the Construction Agreement, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING, including but not limited to the track structure, any railroad crossing warning signs, crossing surfaces and automatic crossing warning devices, whether performed by the AGENCY or CSXT, shall be the sole responsibility of the AGENCY.

7) Pursuant to the Construction Agreement, CSXT will install WARNING DEVICES at the CROSSING. On each anniversary of the in-service date until termination

of this Agreement, AGENCY shall pay an annual fee in arrears to CSXT in the amount of EIGHT THOUSAND EIGHTY-EIGHT DOLLARS (\$8,088.00), towards the ongoing maintenance of the WARNING DEVICES (the "Annual Warning Device Fee"). The Annual Warning Device Fee shall be increased each year in accordance with Section 9. The WARNING DEVICES shall remain at the CROSSING SITE until the Georgia Department of Transportation ("DOT") decides that they are no longer needed or should be replaced, or until other legal requirements are imposed which shall eliminate or substantially change their operations.

8) The existing crossing surface extends across two tracks at the CROSSING each surface being forty feet (40') wide (separately or collectively the "SURFACE"). On each anniversary of the Effective Date until termination of this Agreement, AGENCY shall pay an annual fee to CSXT in the amount of SIX THOUSAND SIX HUNDRED FORTY-SIX DOLLARS (\$6,646.00), towards the ongoing maintenance of the SURFACE (the "Annual Surface Fee"). The Annual Surface Fee shall be increased each year in accordance with Section 9.

9) The Annual Warning Device Fee and Annual Surface Fee ("Annual Fees") shall be adjusted as follows:

a) The Annual Fees shall be subject to periodic review and adjustment by CSXT. CSXT will provide notice of any increase as a result of such review and adjustment in advance of the due date.

b) In addition to the periodic review and adjustment referred to in the Section above, the Fees shall be adjusted on an annual basis by the same percentage of increase as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-

W) (1982-84=100) specified for All Items - United States compiled by the Bureau of Labor Statistics Department of Labor" ("CPI"). In no event, however, shall the adjusted Fee be less than the previous year's Fee.

The Fee shall be increased in accordance with the following:

Current Price Index*

----- X Fees = Adjusted Fees

Base Price Index**

* Effective CPI in the fourth month prior to the anniversary date of the Agreement.

** Effective CPI at the time of the effective date of the Agreement.

In the event the CPI is converted to a different standard reference base or otherwise revised or changed, the calculation of the percentage increase or decrease shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as reasonably determined by Licensor.

10) When CSXT determines that the replacement of the SURFACE is more economical than its continued maintenance, CSXT shall have the exclusive option to replace the SURFACE with its standard timber and asphalt surface. In the event AGENCY requests that CSXT install a different type of grade crossing surface and CSXT agrees to do so, the difference in cost between the then current estimated replacement cost of CSXT's standard timber and asphalt surface and the AGENCY's requested surface type shall be the sole responsibility of the AGENCY.

11) The AGENCY shall, at its sole expense, maintain and replace the remainder of the road on either side of the SURFACE within CSXT's right-of-way at the CROSSING, plus any paving which may be located between the ends of the ties. AGENCY shall perform such work in accordance with the time and operational requirements of CSXT. The AGENCY will give prior notice to CSXT of all work to be performed by it at or near the CROSSING and no such work shall be performed by AGENCY without the prior approval of CSXT and the execution of such additional agreements as CSXT deems necessary. All work performed by the AGENCY shall be conducted at such times and in such manner as to not interfere or impede the operations of CSXT. CSXT shall provide a construction watchman or other protective services at the CROSSING while work is being performed by the AGENCY under the provisions of this Agreement, at the sole expense of the AGENCY.

12) The AGENCY agrees, acknowledges and understands that CSXT reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING. CSXT shall be reimbursed by Agency for the expenses incurred by CSXT with respect to the removal and restoration of the crossing in connections with such changes or alterations. The AGENCY agrees to promptly relocate any AGENCY facilities to accommodate any CSXT changes within thirty (30) days of a request by CSXT to do so, at AGENCY's sole cost and expense.

13) The AGENCY agrees that it will install, maintain and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING. Such facilities must first be approved by the CSXT and any governing bodies

having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the CSXT, depending upon the location of such drainage facilities and type, size, depth and other specifications of the proposed facilities.

14) Lighting facilities adequate to comply with the requirements of the laws of the State of Georgia covering illumination of the road crossing shall be installed, maintained and replaced at or near this CROSSING by and at the sole cost of AGENCY.

15) Facilities at or near the CROSSING that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by AGENCY at or near the CROSSING without the prior written approval of CSXT, which approval is in CSXT's sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of AGENCY.

16) If at any time CSXT, at AGENCY's request, performs work required to be performed by AGENCY hereunder, the cost for such work shall be the sole responsibility of AGENCY.

17) The AGENCY further covenants to pay CSXT, within thirty (30) days after presentation of the same, all invoices submitted by CSXT under this Agreement. Failure to promptly pay to CSXT amounts billed as due under this Agreement shall constitute default by the AGENCY. In the event AGENCY fails to comply with any of the other terms and conditions of this Agreement, then, at the option of CSXT, CSXT may elect, by delivery of notice to AGENCY, not to perform CSXT's obligations under this Agreement, up to and including closing the crossing, until the AGENCY cures any such default to

CSXT's satisfaction.

18) At the termination of this Agreement as provided above, all rights of the AGENCY shall terminate and the AGENCY shall remove, under CSXT's supervision and direction, at AGENCY's entire cost and expense, said road and all non-CSXT-owned improvements placed upon the CSXT's right-of-way and restore the ground to its original condition.

19) To the fullest extent permitted by state law, the AGENCY shall indemnify, defend and hold harmless CSXT for assessments or other charges of any kind whatsoever against the CSXT at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING arising out of the existence of the CROSSING.

20) The AGENCY shall not in any way, or at any time, interfere with or obstruct CSXT's right-of-way, the movement of CSXT's trains and other railroad operations, or interfere with the CSXT's use thereof, or the use thereof by CSXT's assigns, invitees, lessees or licensees.

21) To the fullest extent permitted by state law, the AGENCY shall, and shall require its contractor to, indemnify, defend and hold harmless CSXT, its affiliates, officers, directors and employees from any and all suits, claims, liability, losses, damages, expenses and costs (including reasonable attorney's fees) incurred by or asserted against CSXT whether for personal injury or death or damage to property of any person or persons whomsoever, relating to, resulting from or arising out of any future maintenance or replacement of the CROSSING and/or WARNING DEVICES by CSXT, the performance of work by CSXT required to be performed by AGENCY hereunder, or the use of the CROSSING or AGENCY facilities, including but not limited to pedestrian walkways, at

or near the CROSSING and **regardless of whether such injury or damage is caused or alleged to be caused, in whole or in part, by the negligence of CSXT.** Notwithstanding the foregoing, the AGENCY shall have no indemnification obligation for the intentional, wrongful acts of CSXT.

22) At least thirty (30) days prior to AGENCY's performance of any work in connection with the CROSSING, AGENCY or its contractor shall notify CSXT of its authorized representative. CSXT shall review AGENCY's request for approval and/or authorization to proceed. Such approval and/or authorization to proceed shall include (if applicable) the execution of such additional agreement(s) as CSXT deems necessary and CSXT's requirement to furnish protective services including but not limited to flagmen, construction watchmen, field construction inspectors, etc. ("Protective Services") for the protection of CSXT's employees, property and train operations with respect to AGENCY's work activity. Any such Protective Services shall be furnished at AGENCY's sole cost and expense. AGENCY shall abide by all instructions of CSXT's Regional Engineer, or his or her authorized representative, in the performance of any work at the CROSSING.

In addition to, but not in limitation of any of the foregoing provisions, if at any time CSXT should deem it necessary to place Protective Services for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING, CSXT shall have the right to place such Protective Services, or other persons at the sole cost and expense of the AGENCY. The furnishing or failure to furnish Protective Services, or other persons by the CSXT under this paragraph, however, shall not release AGENCY from any and all other liabilities assumed by AGENCY under the terms of this Agreement, including its obligations under Paragraph 20 hereof.

23) Installation, maintenance and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING shall be the sole responsibility and cost of the AGENCY, and at its sole expense.

24) The AGENCY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

25) If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

26) This Agreement will be governed by the laws of the State of Georgia, with the parties agreeing to venue and jurisdiction for all issues arising from this Agreement being in the Bartow County Superior Court. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

27) This Agreement supersedes any existing agreement(s) between CSXT, or its predecessor in title, and AGENCY, or its predecessor in title, covering the CROSSING and WARNING DEVICES described herein, which agreement(s) is/are terminated and superseded by the execution hereof.

28) Upon completion of the Project and except as otherwise provided in this Agreement, if any provision contained in this Agreement is in conflict with, or inconsistent with, any provision in any of the Construction Agreement, the provision contained in this

Agreement shall govern and control.

IN WITNESS WHEREOF, the CSXT and the AGENCY have caused this instrument to be executed in their corporate names in duplicate the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

CITY OF CARTERSVILLE

CSX TRANSPORTATION, INC.

By: _____

By: _____

Name: Matthew J. Santini

Name: _____

Title: Mayor

Title: _____

Attested to by:

Julia Drake, City Clerk

[AFFIX SEAL]