



COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. The first meeting of every month is at 9:30AM while the second meeting of every month takes place at 5:30PM. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 1/26/2024 Meeting Date: 2/1/2024

Department: Economic Development

1. Nature and purpose of agenda item:

Upon completion of the rail spur from the Gulf & Atlantic mainline into the North Florida Mega Industrial Park, G&A is requesting the County to execute an agreement regarding the use and maintenance of the spur. The county's rail consultant worked directly with G&A while advising both county attorney and economic development staff to create the draft which is standard operating procedure within the railroad industry.

2. Recommended Motion/Action:

Approve the SOP side track agreement between Columbia County and Gulf & Atlantic Railroad.

3. Fiscal impact on current budget.

This item has no effect on the current budget.

PRIVATE SIDETRACK AGREEMENT

THIS PRIVATE SIDETRACK AGREEMENT (“**Agreement**”), made as of the 1st day of February 2024 (“**Effective Date**”), is by and between Florida Gulf & Atlantic Railroad, LLC (“**Railroad**”) a Delaware limited liability company, and Columbia County, Florida (“**Industry**”).

WHEREAS, Industry has a private sidetrack(s) and may in the future construct additional track facilities for the economical and convenient conduct of Industry’s business, between Railroad Mileposts SP 687.8 & SP 688; and

WHEREAS, Industry desires to have Railroad operate trains and rail equipment on the Sidetrack and to provide such other rail related services as are customary in the rail transportation business.

NOW, THEREFORE, in consideration of the agreement herein contained and the mutual benefits resulting to the parties hereto, the parties agree as follows:

1. **PURPOSE**

1.1 The purpose of this Agreement is to detail the provisions of the construction, maintenance and use of the Sidetrack located between Mileposts SP 687.7 & SP 688.1 for the tender and receipt of rail freight traffic for the account of Industry. The private sidetrack(s) set forth on Exhibit A, attached hereto and incorporated herein, which consist of the track structure (rails, ties and fastenings), ballast, grading, drainage structure, turnout, bumping post and other appurtenances (collectively, the “**Sidetrack**”), are located at or near Lake City Florida.

1.2 All references in this Agreement to Sidetrack apply to the Sidetrack as constructed, even if it differs from its depiction on Exhibit A. References in this Agreement to the Sidetrack also apply to rearrangements, reconstructions, extensions or additions to the Sidetrack. However, Industry must in all events obtain Railroad’s prior written approval (not to be unreasonably withheld, delayed, conditioned, or denied) of the plans for any proposed Sidetrack changes.

2. **OWNERSHIP AND CONSTRUCTION**

2.1 Railroad owns or controls that portion of both connections to Railroad’s main line from Point of Switch (“P.S.”) in Railroad’s connecting mainline track between Mileposts SP 687.8 & SP 688, Valuation Station 0+00’ to Valuation Station 5+37’ (“**Railroad Segment**”).

2.2 Industry owns all track south of both P.S. locations as illustrated in Exhibit A (“**Industry Segment**”).

3. **GOVERNMENTAL REQUIREMENT(S)**

3.1 Each party agrees, at its sole expense, to comply with all applicable laws and regulations and to obtain all necessary governmental permits, authorizations, orders and approvals (hereinafter collectively “**Governmental Requirement(s)**”) necessary for the maintenance and use of its segment of the Sidetrack.

3.2 Industry agrees to assume the cost of Railroad's defense and to otherwise indemnify and hold Railroad harmless from Industry's failure to comply with or to obtain the Governmental Requirement(s).

4. **MAINTENANCE BY INDUSTRY**

4.1 Industry, at Industry's expense, shall inspect and maintain the Industry Segment (including without limitation rail, ties, ballast, and other track material and all track appurtenances) in a reasonably safe condition, consistent with the operating circumstances and amount of use, but without any warranty or assurance of the Sidetrack's condition. This obligation shall include, without limitation, maintenance required as a result of normal wear and tear, repairs and track reconstruction as necessary.

4.2 Industry shall maintain in a reasonably safe condition Industry's property under and adjacent to the Sidetrack and/or upon which Railroad's employees or contractors may enter pursuant to this Agreement, including, without limitation, removal of snow, ice, vegetation, and other substances and/or materials that might create a hazardous or unsafe condition, elimination of any tripping or slipping hazards, and maintenance of proper drainage and grading to permit safe operation over the Industry Segment.

4.3 Maintenance, repairs and any track reconstruction performed by Industry must conform to Railroad's standards.

4.4 At its sole cost and expense, Railroad shall have the right, but not the duty, to inspect the Industry Segment, but only after providing Industry with at least forty-eight (48) hours advance written notice, except in the event of emergencies, in which event notice shall be provided to Industry as soon as reasonably practicable.

4.5 Without relieving Industry from any of its obligations under this Agreement, Railroad may refuse to operate over the Industry Segment whenever Railroad, in its sole reasonable discretion, determines that the same is unsatisfactory for Railroad's operation. If and when Industry has remedied such condition to Railroad's sole reasonable satisfaction, Railroad may resume operation over the Industry Segment. Railroad's operation over the Industry Segment with knowledge of an unsatisfactory condition is not a waiver of Industry's obligations contained in this Agreement or of Railroad's right to recover for or be indemnified and defended against such damages to property or injury to or death of persons that may result therefrom.

5. **MAINTENANCE BY RAILROAD**

5.1 Railroad, at Railroad's expense, shall inspect and maintain the rail, ties, ballast and other track material and appurtenances on the Railroad Segment in accordance with the Federal Railroad Administration Track Safety Standards and in a reasonably safe condition, consistent with the operating circumstances and amount of use. This obligation shall include, without limitation, maintenance required as a result of normal wear and tear, repairs and track reconstruction as necessary.

5.2 Notwithstanding the foregoing Railroad shall maintain the Railroad-owned switch(es) leading to the Industry Segment for an annual fee of FIVE THOUSAND FIVE HUNDRED US DOLLARS (\$5,000.00), the "Maintenance Fee". The Maintenance Fee is to be paid by the Industry in on the first anniversary of the Effective Date and each anniversary thereafter and is subject to additional review and adjustments consistent with changes in economic conditions and/or system wide company rates

6. **CLEARANCES**

Commented [JP1]: FG&A – given the brevity of time that this agreement will practically matter (until Development Agreement is finalized) the County would prefer to avoid this maintenance fee to the brand new switches.

Commented [RR2R1]: Would prefer to keep language in, but payment not due until first anniversary. Anticipate that New Co will be responsible for the fee by that time.

6.1 Industry agrees to provide and maintain: (A) the lateral clearance requirements (at least eight feet [8'0"] from either side of the centerline of the Sidetrack, as increased for flat curves, super-elevated curves and approaches thereto); and (B) the vertical clearance requirements (at least twenty-two feet [22'0"] above the top of the rail), for the entire length of the Sidetrack as detailed in the Railroad's document entitled "Design and Construction of Industrial Sidetracks", as amended, supplemented or superseded (hereinafter the "**Specifications**"). A current copy of the Specifications shall be furnished upon written request. Each party further agrees to provide and maintain increased lateral and/or vertical clearances, to the extent required by applicable statutes or regulations. Any clearance not in compliance with the foregoing is a "Close" clearance. Lateral and vertical clearances for power poles and lines must also comply with the National Electric Safety Code (NESC).

6.2 Notwithstanding the foregoing, Industry may maintain Close clearances if: (A) Industry obtains a waiver from any conflicting Governmental Requirement(s); and (B) plans for such Close clearances have been provided to Railroad and are not rejected within sixty (60) days after the date of receipt. Industry agrees to install, maintain and replace (at its sole expense) any warning signs or lighting or make other adjustments regarding such Close clearances as may be required by Railroad or any Governmental Requirement(s).

6.3 Any gate installed by Industry across the Sidetrack must provide an appropriate clearance, as provided in the Specifications, and must be equipped with a double-end bar hasp so that Railroad may install its own lock. If Railroad is unable to open the gate to deliver or retrieve railcars, any such railcars shall be deemed constructively placed.

7. **RIGHT-OF-WAY**

7.1 Industry is responsible for obtaining all necessary right-of-way (through ownership, easement, permit or otherwise), for the Sidetrack that is not located on Railroad's right-of-way. The width of such right-of-way must be, at a minimum, sufficient to provide for the Sidetrack and clearances, cuts, fills, drainage ditches, walkways or roads, as determined by Railroad.

7.2 Industry may use Railroad's right-of-way for a portion of the Sidetrack, if shown on Exhibit A. Such use, not to exceed six and one-half feet (6 1/2') from either side of the centerline of the Sidetrack, is granted only for the Term of this Agreement. Industry acknowledges that such use is not adverse to Railroad's title, and does not constitute the granting of any right, title, easement or license to Railroad's right-of-way.

7.3 Industry shall not construct or allow the construction of any road (public or private), gate, tunnel, bridge, culvert, pit, gas line, pipe or similar items on, over, under or along the entire Sidetrack or right-of-way without the written permission of Railroad, not to be unreasonably withheld, delayed, conditioned, or denied. If Railroad's permission is granted, Industry understands that a separate agreement might be necessary and that Industry shall be responsible for the construction, maintenance, repair and removal costs of the foregoing items and ancillary structures, unless otherwise stated therein.

7.4 Industry shall not block or permit the blockage of the sight view area of any road crossing over the Sidetrack.

8. **RAIL SERVICE**

8.1 Railroad agrees, pursuant to the provisions of this Agreement, its tariffs, circulars, rules and rail transportation contracts, to operate over the Sidetrack in the delivery, placement and removal of railcars consigned to or ordered by Industry, at such times established by Railroad. Railroad may also use

the Sidetrack for its own general or emergency operating purposes, so long as such purposes do not materially affect the use of the Sidetrack for rail service to Industry.

8.2 Industry may use the Sidetrack to store railcars delivered and placed by the Railroad, to maintain the Sidetrack and to perform other obligations assumed by Industry pursuant to this Agreement. Industry shall not permit the use of the Sidetrack by or for the account of third parties without the written consent of Railroad.

8.3 Railroad shall be deemed to have delivered any railcar when such railcar has been placed on the Sidetrack, so as to allow access by Industry, and Railroad's locomotive has uncoupled from the railcar. At that time, Railroad shall be relieved of all liability as a common or contract carrier or as a bailee, and possession of the railcar and its contents shall be transferred to Industry's tenant. Similarly, any obligation of Railroad as a common or contract carrier or as a bailee shall not begin until it has coupled its locomotive to the loaded railcar and begun to depart the Sidetrack.

Commented [RR3]: Wouldn't customer already have this?

8.4 Industry is responsible for all railcars and their contents while in Industry's possession and assumes all responsibility for payment of all damage to any railcar and its contents that may occur during that time, even if caused by third parties.

8.5 If Railroad is unable to deliver a railcar on the Sidetrack for loading or unloading due to the acts of Industry or any third party, then such railcar will be considered as constructively placed for demurrage purposes at the time of attempted delivery.

9. **HAZARDOUS MATERIALS**

9.1 The following provisions apply when the Sidetrack is used for the delivery or tender of any dangerous, flammable, explosive or hazardous commodity (hereinafter "Hazardous Materials"), as determined by the U.S. Department of Transportation under 49 U.S.C. §§ 5101, et seq. and the Hazardous Materials Regulations (49 C.F.R. Parts 170-180) issued thereunder, as amended from time to time.

9.2 No Hazardous Materials shall be placed: (A) on the Sidetrack (except railcar shipments); (B) within the clearance requirements established herein; or (C) within one hundred feet (100') of Railroad's connecting mainline track.

9.3 Industry shall comply with all recommended practices of the Association of American Railroads and all Governmental Requirement(s) regarding the loading, unloading, possession, transfer and/or storage of Hazardous Materials, including but not limited to the installation and use of pollution abatement and control structures and other equipment that is prudent or required under such practices and/or Governmental Requirement(s).

9.4 In the event of a Hazardous Materials leak, spill, or release, Industry shall immediately notify the appropriate Governmental Response Center and Railroad's Operations Center and, at its sole expense, take all appropriate steps to clean, neutralize and remove the spill.

10. **ALTERATIONS**

10.1 Industry shall supply Railroad with construction plans of any addition, deletion or modification (hereinafter jointly the "**Alterations**") to the Sidetrack and obtain Railroad's written consent prior to making any Alterations, said consent not to be unreasonably withheld, delayed, conditioned, or denied.

10.2 The Alterations are also subject to Railroad Specifications.

11. **SUSPENSION AND TERMINATION**

11.1 Railroad may temporarily suspend its operations over the Sidetrack if, in its sole opinion, the condition of Industry's Segment of the Sidetrack is unsafe. Railroad may impose the suspension orally, but shall also provide a written notice to Industry regarding such temporary suspension and all reasons therefore as soon as reasonably practicable.

11.2 Either party may terminate this Agreement upon the default of the other party. The party claiming a default must provide the other party with written notice. If the default is not corrected within thirty (30) days of the date of receipt of such notice, the party claiming default may terminate this Agreement upon written notice. Use of the Sidetrack by Railroad during any notice period shall not be considered as a waiver of any default claimed by it.

11.3 Intentionally omitted.

11.4 This Agreement will terminate, without the necessity of further notice, upon the abandonment of Railroad's connecting mainline track.

11.5 Either party may terminate this Agreement at any time by extending one hundred eighty (180) days' notice to the other party.

11.6 Upon the termination of this Agreement, each party may remove any portion of its Segment that rests upon the right-of-way of the other party. If not removed within sixty (60) days after such termination, title to that remaining Segment will pass to the other party, who may then remove it and restore the underlying right-of-way.

12. **LIABILITY AND INSURANCE**

12.1 Except as otherwise provided herein, any and all damages (excluding consequential damages and lost profits), claims, demands, causes of action suits, expenses (including attorney's fees and costs), judgments and interest whatsoever (hereinafter collectively "Losses") in connection with injury to or death of any person or persons whomsoever (including employees, invitees and agents of the parties hereto) or loss of or damage to any property whatsoever arising out of or resulting directly or indirectly from the construction, maintenance, repair, use, alteration, operation or removal of the Sidetrack shall be divided between the parties as follows:

(A) Each party shall indemnify and hold the other party harmless from all Losses arising from the indemnifying party's willful or gross negligence, its sole negligence and/or its joint or concurring negligence with a third party.

(B) The parties agree to jointly defend and bear equally between them all Losses arising from their joint or concurring negligence.

(C) Notwithstanding the foregoing, and (except as noted below) irrespective of the sole, joint or concurring negligence of Railroad, Industry acknowledges that it is solely responsible for and agrees to indemnify and save Railroad harmless from all Losses arising from: (i) the failure of Industry to properly maintain the Industry Segment; (ii) the alteration or removal of the Industry Segment by Industry without prior written notice to Railroad; (iii) the presence of a Close clearance on the Industry Segment that is not allowed in compliance with Section 6.2 herein; or (iv) the

explosion, spillage and/or presence of Hazardous Materials on its properties, facility or on Industry's Segment, but only when such Losses would not have occurred but for the dangerous nature of the Hazardous Materials, except to the extent of Railroad's negligence, willful or wanton conduct, gross negligence, breach of this Agreement, or violation of any Governmental Regulation(s). Any obligation to a party to indemnify the other hereunder is contingent on the party who seeks the indemnification ("Indemnitee") giving the other party ("Indemnitor") notice of any and all Losses, within sixty (60) days of the date that the Indemnitee is made aware of any claim for such Losses, permitting the Indemnitor to defend and to control the defense using counsel of the Indemnitor's choice and the Indemnitee fully cooperating with the Indemnitor in the defense.

(D) Railroad may be the lessee/operator of the mainline track that connects with the Sidetrack. In that event, the indemnities from Industry to Railroad under this section shall also include the lessor/owner of such track.

(E) This section 12 shall not be construed as a waiver or modification of any defense of sovereign immunity available to the Industry as a political subdivision of the State of Florida pursuant to Fla. Stat. Chapter 768 or s. 13, Art. X of the Florida State Constitution.

12.2 Industry at its sole cost and expense, must procure and maintain in effect during the continuance of this Agreement, a policy of Commercial General Liability Insurance (CGL) written by a reputable insurance company acceptable to Railroad, naming Railroad as additional insured and providing for a coverage limit of not less than FIVE MILLION (\$5,000,000) for each occurrence and an aggregate limit of at least TEN MILLION (\$10,000,000) for bodily injury liability and property damage liability and include coverage for, but not limited to the following, bodily injury and property damage, personal injury and advertising injury, fire legal liability, products and completed operations and contractual liability. The policy shall contain the following endorsements (or appropriate alternative language) on the Certificate of Insurance furnished to Railroad:

- Employee or workers' compensation related exclusions in the policy shall not apply with respect to claims related to Railroad employees
- The definition of "insured contract" shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad track
- Policy shall require a waiver of subrogation
- Policy contains an Additional Insured endorsement in favor of Railroad
- Policy allows for a separation of Insureds
- Policy is primary and non-contributing with respect to any insurance carried by the Railroad

12.3 Evidence of insurance coverage, including Certificate of Insurance, shall be provided to Railroad on or before the Effective Date and each successive year thereafter.

12.4 The fact that insurance (including without limitation, self insurance) is obtained by Industry shall not be deemed to release or diminish Industry's liability under this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage. Industry warrants that the Agreement has been reviewed by its insurance agent(s) or broker(s) who have been instructed by the Industry to procure the coverage required hereunder.

12.5 Industry shall notify Railroad, in writing, as soon as practical prior to any cancellation, non-renewal, substitution or alteration of Industry's insurance policy or coverage, including self-insured retentions.

12.6 Prior to commencing construction, Industry or its contractor, shall procure, at Industry's expense, and maintain throughout construction, Railroad Protective Liability ("RPL") insurance on a form approved by the Railroad. RPL insurance shall cover the work to be performed at the designated job site and afford protection for damages arising out of bodily injuries or death, injury to or destruction of property, including damages to the insured's own property. The limit of liability shall be at least \$3,000,000 for each occurrence and \$6,000,000 annual aggregate. The policy shall name Railroad and their officers, directors and employees as the Named Insured and shall amend the definition of "physical damage of property" to mean direct and accidental loss or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control."

13. **ASSIGNMENT**

13.1 This Agreement may not be assigned without the written consent of either party, but shall be assumed by their successors through merger or acquisition. Industry may sell or assign the Industry Segment and right-of-way upon notice to Railroad, but such transactions shall not affect this Agreement or carry any rights regarding any rail service described in this Agreement.

13.2 Notwithstanding the provisions of Sections 13.1, Railroad may assign this Agreement to any new owner or operator of its connecting mainline track.

14. **NOTICES**

14.1 Any notice or other communication required or permitted to be given under the Agreement must be in writing and (a) personally delivered; (b) delivered by a reputable overnight counter, or (c) delivered by certified mail return receipt requested and deposited in the U.S. Mail, postage prepaid.

14.2 Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may from time to time, specify in writing to the other:

If to Railroad: Florida Gulf & Atlantic Railroad, LLC
Attn: President
245 Riverside Ave., Suite 250
Jacksonville, FL 32202

With copy to: Florida Gulf & Atlantic Railroad
Attn: General Counsel
245 Riverside Ave., Suite 250
Jacksonville, FL 32202

If to Industry: Columbia County, Florida
Attn: County Manager
135 N.E. Hernando Avenue
Lake City, Florida 32055

15. **MISCELLANEOUS**

15.1 Each provision of this Agreement is severable from the other provisions. If any such provision is ruled to be void or unenforceable, the remaining provisions will continue in full force and effect.

15.2 Other documents may also describe and cover a portion of the rail service and other provisions of this Agreement. Should any conflict arise between such other documents and this Agreement, the terms of this Agreement will control.

15.3 The section captions in this Agreement are for the convenience of the parties and are not substantive in nature. All words contained in this Agreement shall be construed in accordance with their customary usage in the railroad industry.

15.4 The failure of either party to enforce any provision of this Agreement or to prosecute any default will not be considered as a waiver of that provision or a bar to prosecution of that default unless so indicated in writing.

16. **ENTIRE UNDERSTANDING:**

16.1 This Agreement constitutes the entire understanding of the parties, is to be construed under the laws of the state in which the Sidetrack is located without regard to choice of law principles, may not be modified without the written consent of both parties, and has been executed by their duly authorized officials.

[Remainder of page intentionally left blank.]

FLORIDA GULF & ATLANTIC RAILROAD, LLC

By: _____

Print/Type Name: _____

Print/Type Title: _____

COLUMBIA COUNTY, FLORIDA

By: _____

Who, by the execution hereof, affirms that he/she has the authority to do so and to bind the Industry to the terms and conditions of this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax Identification Number: _____

Exhibit A

FLORIDA GULF & ATLANTICE RAILROAD, LLC

AND

COLUMBIA COUNTY FLORIDA

PRIVATE SIDETRACK AGREEMENT

