

**MEMORANDUM**

**TO:** MAYOR AND CITY COMMISSION

**FROM:** CITY ATTORNEY'S OFFICE

**DATE:** April 2, 2018

**RE:** **Fourth Amendment to the Solid Fuel Transportation Agreement for the Shipment of Coal with CSX Transportation, Inc.**

Attached hereto for your consideration is a proposed Fourth Amendment to the City's Solid Fuel Rail Transportation Agreement with CSX Transportation, Inc. (CSX) for the shipment of coal requirements. The City's existing Agreement with CSX was approved by the City Commission in October 2014. This Fourth Amendment to the Agreement seeks to amend Appendix A of the Agreement to add a Sullivan, Indiana Bear Run rail transportation route.

Upon City Commission approval, City staff was able to negotiate a rate of \$25.75 per ton for the Sullivan, Indiana Bear Run route, effective September 1, 2018 to December 31, 2019. This new rate reflects a reduction from the existing rate of \$27.27 since CSX is adding a point to point rate for the Bear Run/Indiana Railroad interchange. Funding for the transportation of the coal was previously approved by the City Commission on February 5, 2018, pursuant to an agreement with Peabody Coal Sales, LLC to purchase 85,000 tons (+/-20%). Except as modified by this Fourth Amendment, all other terms of the existing Agreement with CSX will remain in full force and effect.

It is recommended that the appropriate City officials be authorized to execute this Fourth Amendment to the Solid Fuel Transportation Agreement for the Shipment of Coal with CSX.

attachment

**AMENDMENT NUMBER 4  
TO SOLID FUEL TRANSPORTATION CONTRACT  
CSXT-C-85933**

This Amendment Number 4 (this "Fourth Amendment") to the Solid Fuel Transportation Contract CSXT-C-85933, dated as of October 1, 2014 (the "Contract"), is entered into pursuant to 49 U.S.C. Section 10709, as of the 2nd day of April 2018, by and between the CITY OF LAKELAND, FLORIDA, a municipal corporation, whose address is 501 East Lemon St. Lakeland, Florida 33801 (hereinafter referred to as "Receiver"), and CSX TRANSPORTATION, INC. ("CSXT"), a Virginia corporation whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter, together with participating carriers, referred to individually or collectively, as "Carrier"). Capitalized terms used herein but not defined herein shall have the meaning ascribed to them in the Contract.

RECITALS

The parties to this Fourth Amendment desire to amend the Contract to provide for Shipments of Solid Fuel on a Rule 11 Basis from Sullivan, IN with an ultimate origin of Bear Run, IN (the "Sullivan Origin"), at the rate and subject to the other terms and conditions set forth below.

AGREEMENT

For and in consideration of mutual covenants, provisions, benefits and agreements hereinafter made and contained and other good and valuable considerations flowing between the parties hereto, Carrier and Receiver do hereby covenant and agree as follows:

ARTICLE I  
DEFINITIONS

1.1. Certain Definitions. The following terms when used in this Fourth Amendment shall have the following meaning:

“Fourth Amendment” shall mean this Fourth Amendment, together with Appendix A attached hereto.

“Sullivan Origin” shall have the meaning set forth in the Recitals.

ARTICLE II  
AMENDMENT TO APPENDIX A

2.1. Effective on, and subject to the occurrence of, the Fourth Amendment Effective Date, Appendix A to the Contract will be amended and restated in its entirety as set forth in the revised Appendix A, attached hereto and incorporated herein by reference to this Fourth Amendment. Appendix A will incorporate the following terms:

- Origin: Sullivan, IN (Rule 11 at Origin, for application from Bear Run, IN)
- Route: CSXT Direct
- Variable Rate: \$25.75 per Ton
- Rate Effective Date: 9/1/2018
- Rate Escalation: The Variable Rate will be subject to a quarterly adjustment, All-LF, on October 1, 2018 and each quarter thereafter in accordance with Article IX of the Contract. In no event with the Sullivan Variable Rate be adjusted below \$25.75 per Ton (i.e. the rate that would be in effect immediately prior to the adjustment on October 1, 2018).

## ARTICLE III

### CONDITIONS TO EFFECTIVENESS

3.1. Fourth Amendment Effective Date. This Fourth Amendment (and the amendments and modifications contained herein) shall become effective as of September 1, 2018 (hereinafter “Fourth Amendment Effective Date”), when each of the conditions set forth in this Article III shall have been fulfilled to the reasonable satisfaction of Carrier and Receiver.

3.2. Execution of Counterparts. Each party shall have received an executed (manual or electronic) counterpart of this Fourth Amendment, duly executed and delivered on behalf of an Authorized Officer of the other party.

3.3. Nominations. Receiver shall have provided Carrier with a non-binding forecast of any Tons it intends to tender from the Origins during the sixty (60) day period following the Fourth Amendment Effective Date.

3.4. Satisfactory Legal Form. All documents executed or submitted pursuant hereto shall be satisfactory in form and substance to each of the parties.

## ARTICLE IV

### NOMINATIONS

Receiver will provide Carrier with updates to the applicable Monthly Schedule(s) and Quarterly Nomination(s), as necessary to reflect the Tons described in Article 3.3 of this Amendment, no later than contemporaneous with Receiver’s submission of the Monthly Statement or Quarterly Nomination, as the case may be, immediately following the Amendment Effective Date.

## ARTICLE V

### CONFLICTING TERMS; NO OTHER CHANGES

In the event of any conflict between the terms of Article 2.1 and Appendix A, the applicable terms of Appendix A shall control. Nothing in this Fourth Amendment shall be interpreted to alter, modify or amend any of the terms, conditions and agreements contained in the Contract and Amendment Numbers 1, 2 and 3, except as expressly set forth in this Fourth Amendment.

## ARTICLE VI

### COUNTERPARTS

This Contract shall be executed in two (2) counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

## ARTICLE VII

### ENTIRE UNDERSTANDING

The Contract, as amended by this Fourth Amendment, represents the entire understanding of the Parties and may not be modified without their written consent. This Fourth Amendment shall be construed (except to matters referring to federal laws or regulations) according to the laws of the State of Florida and has been executed by the duly authorized representatives of the Parties.

## ARTICLE VIII

### APPLICABLE LAW

To the extent not governed by applicable federal statute or regulation, the laws of the State of Florida shall govern the validity, construction and performance of this Fourth Amendment and all controversies and claims arising thereunder without regard to its conflicts of law provisions.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the day and year first written above.

**CITY OF LAKELAND, FLORIDA**

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
H. William Mutz  
Its: Mayor

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

**WITNESS:**

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

**Attest:**

By: \_\_\_\_\_  
Kelly S. Koos, City Clerk

**Approved as to form and correctness:**

By: \_\_\_\_\_  
Timothy J. McCausland, City Attorney

**APPENDIX A**

**TO SOLID FUEL TRANSPORTATION CONTRACT  
CSXT 85933**

**Origins:** Carrier-served Solid Fuel Origins, Joint Line Origins, and EVWR and INRD Rule 11 Interchanges, as detailed below.

**Destination:** Solid Fuel unloading facility at Receiver's generating plant in Park, FL

**Routes:** CSXT-Direct;  
  
Galatia/CN-Effingham, IL-CSXT (Joint Line);  
White Oak/EVWR-Evansville, IN-CSXT (Joint Line);  
Armstrong/PAL-Madisonville, KY-CSXT (Joint Line);  
  
Sugar Camp/EVWR Rule 11 Interchange-CSXT  
Bear Run/INRD Rule 11 Interchange-CSXT

**Term:** January 1, 2017 through December 31, 2019

| <b>Maximum Annual Volume (MM Tons)</b> | <b>2017</b>  | <b>2018</b>  | <b>2019</b>  |
|--|--------------|--------------|--------------|
|  | <b>0.800</b> | <b>0.800</b> | <b>0.800</b> |

**Capacity Agreement/Volume:** CSXT will provide sufficient capacity for up to 800,000 Tons in each Contract Year

**Capacity Charge\*:** \$600,000/month\* (Due on the 15<sup>th</sup> of each month beginning January 2017)

**Variable Rates/NT\*:**

| <b>Origins</b>                      | <b>PVT Car Variable Rate</b> | <b>Minimum Train Size - Cars</b> |
|-------------------------------------|------------------------------|----------------------------------|
| Bailey Mine, PA                     | \$29.40                      | 110                              |
| CO – West Kentucky                  | \$26.89                      | 110                              |
| CO – Princeton                      | \$26.63                      | 110                              |
| CO – Sullivan                       | \$27.27                      | 110                              |
| Ace in the Hole** (through Oaktown) | \$26.99                      | 110                              |
| Evansville, IN                      | \$25.99                      | 110                              |
| Sullivan, IN                        | \$25.75                      | 110                              |
| Jasonville, IN (ERC Mine)           | \$31.58                      | 100                              |
| McHenry, KY                         | \$29.30                      | 110                              |
| White Oak, IL                       | \$30.86                      | 110                              |
| Galatia, IL                         | \$33.06                      | 110                              |
| Dial (Pond Creek), IL               | \$33.06                      | 110                              |
| Corbin <sup>#</sup>                 | \$23.90                      | 110                              |
| Hinton <sup>#</sup>                 | \$26.00                      | 110                              |
| Russell <sup>#</sup>                | \$25.70                      | 110                              |

**\*Subject to Quarterly Escalation beginning January 1, 2017. Rate and Capacity Charge amounts set forth on this Appendix A are the amounts that would be in effect prior to adjustment on January 1, 2017.**

**Rate Conditions:**

- 1) The rate from Evansville, IN is a Rule 11 rate for CSXT direct movement from Evansville, IN to Park, FL. The ultimate origin is Sugar Camp, IL on the EVWR.
- 2) \*\* Rate is valid only for shipments from **Ace in the Hole** mine via Oaktown rail station; not valid for Oaktown No.1, Oaktown No. 2 or any other mine.
- 3)<sup>+</sup>Rate from Sullivan, IN is a Rule 11 rate for CSXT direct movement from Sullivan, IN to Park, FL. The ultimate origin is Bear Run, IN on the INRD. Rate is added to the contract effective 9/1/2018.
- 4) <sup>#</sup>Gateway rates: differential from Gateway to mine is published in CSXT 8200 and is not included in above rates.

Example, for demonstrative purposes only:  
The rate from Lancer, KY to Park, FL would be calculated as follows:

**\$25.70 per ton (Russell Gateway Rate) + \$1.10 per ton (Gateway Differential from Russell to Lancer, per CSXT 8200) = \$26.80 per ton + fuel surcharge**

**Equipment:**

Receiver owned or leased aluminum coal cars, 286 GWR