

EMBANKMENT FUNDING AGREEMENT

THIS EMBANKMENT FUNDING AGREEMENT (the "Funding Agreement") is made by and among **THE GREATER ORLANDO AVIATION AUTHORITY**, a public and governmental body created as an agency of the City, existing under and by virtue of the laws of the State of Florida, whose mailing address is One Jeff Fuqua Boulevard, Orlando, Florida 32827-4399 (the "Authority"), and **ALL ABOARD FLORIDA – OPERATIONS LLC**, a Delaware limited liability company authorized to conduct business in Florida, whose mailing address is 2855 LeJeune Road, 4th Floor, Coral Gables, Florida, 33134 ("Rail Company"), joined by the **CITY OF ORLANDO**, a municipal corporation created by and existing under the laws of the State of Florida, whose address is P.O. Box 4990, 400 S. Orange Avenue, Orlando, Florida 32802-4990 (the "City").

W I T N E S S E T H:

WHEREAS, the Parties entered into that certain Rail Line Easement Agreement with an effective date of January 22, 2014, as amended from time to time (the "Easement Agreement"), which governs the parties rights and obligations related to the development of an inter-city rail project at the Orlando International Airport and that certain Premises Lease and Use Agreement with an effective date of January 22, 2014, as amended from time to time (the "Lease Agreement"), which governs the parties right and obligations related to the development of the Rail Station Building and the Rail Company Premises; and

WHEREAS, simultaneous with the Funding Agreement, the Parties are entering into the First Amendment to the Rail Line Easement Agreement (the "Easement Amendment") to address changes required due Rail Company refinement of its schedule for construction and clarifications resulting from additional design and engineering work and the First Amendment to the Premises Lease and Use Agreement (the "Lease Amendment") to address changes required to address refinement of construction responsibilities due to additional design and engineering work; and

WHEREAS, due to a change in the timing of construction of the Rail Project by Rail Company, and the schedule requirements of the Authority's Automatic People Mover ("APM") project, certain components of the improvements that Rail Company planned to complete may be designed and constructed by the Authority; and

WHEREAS, the Lease Amendment does not alter the funding responsibilities between the parties, only the design permitting and construction responsibilities; and

WHEREAS, due to restrictions on the use of funds, the work to be completed by the Authority on behalf of Rail Company must be funded by Rail Company prior to the Authority initiating any design or construction work, as applicable; and

WHEREAS, the Embankment Work and the South Abutment Walls, both as defined herein, are shown on the attached Exhibit "A"; and

WHEREAS, the parties desire to enter this Funding Agreement to set forth the parties rights, duties and obligations relating to the specific work and funding thereof as further described herein.

NOW, THEREFORE, for and inconsideration of the premises and of the mutual covenants hereinafter contained, the parties hereto do hereby agree as follows:

1. Recitals. The above recitals are true and correct and are hereby incorporated herein by this reference.

2. Definitions. Capitalized terms shall have the same meaning as set forth in the Easement Agreement and the Lease Agreement or as defined herein. Further, for purposes of this Funding Agreement, the term “abutment walls” shall be defined as the reinforced earth walls at the beginning and end of a bridge and shall include the pile supported structural system associated with such bridge.

3. Scope of Work.

- a. Easement Agreement; North Embankment. Pursuant to the Easement Agreement, Rail Company is responsible for the design, engineering, permitting and construction of the embankment and its share of the two reinforced earth walls and the abutment walls (the “Embankment Work”) leading up to the viaduct structure being constructed by the Authority for use by Rail Company, future rail use and the APM. Due to schedule changes in the Rail Company Rail Project and the schedule requirements of the Authority’s APM project, the Authority agrees to complete the design and/or construction of the Embankment Work, provided that Rail Company pays therefor as further detailed herein, in which event, the Authority shall complete the Embankment Work on or before the Rail Project requires its use for installation of the infrastructure Improvements.
- b. Easement Agreement; South Abutment Walls. Pursuant to the Easement Agreement, Rail Company is obligated to design, engineer, permit and construct the south abutment walls (the “South Abutment Walls”). However, due to Rail Company schedule changes and the Authority’s schedule to complete the viaduct, the Authority agrees to complete the design and/or construction of the South Abutment Walls, inclusive of the earth fill to support the walls, provided that Rail Company pays therefor as further detailed herein, in which event, the Authority shall complete the South Abutment Walls on or before the Rail Project requires its use for installation of the infrastructure Improvements.
- c. Lease Agreement; HVAC Air Handler and Chilled Water Pipes. The Authority, at the sole cost and expense of the Rail Company and upon receipt of funds for same pursuant to the terms of this Agreement, shall design the Rail Station Building to include the air handlers and associated equipment that will serve the Premises, which handlers and equipment shall be located in the Authority’s common equipment room at level 4. Further, upon receipt of funds for same from the Rail Company pursuant to Section 6.02(1) of the

Lease Agreement and pursuant to the terms of this Agreement, the Authority shall complete the installation of such air handlers and associated equipment into its common equipment room as part of the Rail Station Building (all of the above shall be referred to as the “Air Handler Work”).

- d. Lease Agreement; Primary Infrastructure. The Authority, at the Rail Company’s sole cost and expense, shall design the Rail Station Building to include the Primary Infrastructure Work as defined in the Lease Agreement.

4. Funding Obligation.

- a. North Embankment. Rail Company is responsible for funding of the design, permitting, engineering and construction the Embankment Work to the extent required under the Easement Agreement (“Embankment Cost”). Rail Company is entitled to a credit pursuant to the Easement Agreement, for the portion of the Embankment Cost required for future rail and the future rail Abutment Wall (the “Future Rail Embankment Credit”). The Authority is responsible for the amount of fill material needed for the APM and the APM Abutment Wall, which the Authority planned to reimburse to Rail Company. However, since the Authority is completing the work, no reimbursement is necessary for the APM fill or Abutment Wall.
- b. South Abutment Walls. Rail Company is solely responsible for the costs associated with the Rail Company South Abutment Wall.
- c. Air Handler. Rail Company is solely responsible for the costs associated with the Air Handler Work.
- d. Primary Infrastructure. Rail Company is solely responsible for the design, construction and procurement costs association with the Primary Infrastructure Work.
- e. Funding Mechanism Prior to Release of Escrow. Rail Company and the Authority have executed this Funding Agreement to establish a mechanism whereby (i) the Authority may proceed with the design, engineering and permitting costs for the Embankment Work and the South Abutment Walls (collectively the “Easement Agreement Work”) and the Air Handler Work and the Primary Infrastructure Work (collectively the “Lease Work”) and (ii) Rail Company may pay for its share of such costs therefor prior to and not contingent upon the satisfaction of the Escrow Conditions as set forth in the Easement Agreement. Further, this Funding Agreement also enables Rail Company and the Authority, at Rail Company’s option, to work to facilitate payment by Rail Company of its share of the costs for the construction of the Embankment Work and the South Abutment Wall prior to and not contingent upon the satisfaction of the Escrow Conditions as set forth in the Easement

Agreement, with it being understood that Rail Company cannot commit to make such payment as of the date of this Funding Agreement. Rail Company will be entitled to the Future Rail Embankment Credit upon the Escrow Conditions being satisfied, but if the Escrow Conditions are not satisfied, Rail Company is not entitled to a refund of the funds provided under this Funding Agreement approved by Rail Company.

5. Funding Timeline; Easement Agreement Work. The Authority will provide Rail Company with the amount representing Rail Company's share of the design and engineering work for the Easement Agreement Work. Upon approval of said costs, Rail Company agrees to fund its share of the design and engineering costs for the Embankment Work and the South Abutment Wall, which Rail Company shall fund to the Authority by wire transfer, which payment is estimated to be on or before October 1, 2014. The Authority shall fund the cost of the design and engineering work for APM Embankment Work, as defined below. Rail Company's share of the design and engineering work for the Easement Agreement Work shall be the cost in revising the design and engineering work for APM Embankment Work to include the additional work involved in the Easement Agreement Work. If Rail Company does not approve the design and engineering costs for its share of the Embankment Work and the South Abutment Wall, the Authority may move forward with the APM Embankment Work. Upon approval of Rail Company of the design and the cost of construction of the Embankment Work and the South Abutment Wall, Rail Company shall pay its share of the permitting costs of the Embankment Work and the South Abutment Wall, at the time of the payment of the permitting fees by the Authority. Further, Rail Company shall fund its share of the construction costs approved as required by the Federal Aviation Authority, which funding may be made by a wire transfer to the Authority or providing an irrevocable letter of credit on a form provided by the Authority and reasonably acceptable to Rail Company guarantying payment of the approved construction costs, which is expected to be on or before March 1, 2015 or immediately prior to the awarding of the bid for such work. Rail Company shall be entitled to review the actual costs expended for the Easement Agreement Work approved and shall be entitled to a refund of any excess funds provided to the Authority for such work. Rail Company shall have the right to review and approve change orders in its reasonable discretion, upon approval, Rail Company shall be responsible for payment of the increased costs all approved change order. It being understood that Rail Company cannot commit to make such payment as of the date of this Funding Agreement. The parties agree to work together with respect to the budgets for the design, engineering, permitting and construction costs.

6. Funding Timeline; Lease. The Authority will provide Rail Company with the amount representing Rail Company's share of the design and engineering work related to the Lease Work. Upon approval of such cost, Rail Company agrees to fund the share or increase in the design and engineering costs for the Lease Work, which Rail Company shall fund by wire transfer to the Authority, which payment is estimated to be on or before October 1, 2014. Upon approval of Rail Company of the design and construction costs related to the Lease Work, Rail Company shall fund the increase in permitting costs for the Lease Work at the time of the

payment of the permitting fees by the Authority. Further, Rail Company shall fund its share of the construction costs which funding may be made by a wire transfer to the Authority or providing an irrevocable letter of credit on a form provided by the Authority and reasonably acceptable to Rail Company guarantying payment of the approved construction costs, which is expected to be due on or before March 1, 2015 or immediately prior to the awarding of the bid for such work. Rail Company shall be entitled to review the actual costs expended for the Lease Work approved and shall be entitled to a refund of any excess funds provided to the Authority for such work. It being understood that Rail Company cannot commit to make such payment as of the date of this Funding Agreement. Rail Company shall have the right to review and approve change orders in its reasonable discretion, upon approval, Rail Company shall be responsible for payment of the increased costs for all approved change orders. The parties agree to work together with respect to the budgets for the design, engineering, permitting and construction costs.

7. Inability to Fund the Easement Agreement Work. In the event Rail Company is unable to provide the construction funds as required herein, the Authority may, but is not obligated to, construct the western reinforced earth wall, the APM abutment and provide sufficient fill material for the APM (the "APM Embankment Work"). The APM Embankment Work is described in further detail on Exhibit "B," attached hereto and incorporated herein by reference. In such event, upon satisfaction of the Escrow Conditions, Rail Company shall be required to build the balance of the Embankment Work, including the eastern reinforced earth wall, the Rail Company and future rail abutment, the provision of fill material for Rail Company and future rail and the South Abutment Walls, subject to the Future Rail Embankment Credit. In this circumstance, the Rail Company Embankment Credit shall be reduced by the cost of the design, engineer, permit and construction of the western reinforced earth wall and excess fill required for APM completed by the Authority in order to complete the APM Embankment Work rather than the Embankment Work and the South Abutment Wall.

8. Inability to Fund Lease Work. If the Rail Company (i) approves the construction of the Air Handler Work by the Authority, but fails to fund the Air Handler Work or (ii) Authority and Rail Company have been unable to agree on a budget for the Air Handler Work, the Rail Station Building Substantial Completion will be delayed on a day for day basis until said funding is agreed to and provided. In the event the Rail Company fails to approve or approves but fails to fund the Primary Infrastructure Work, the Authority will have no obligation to construct any portion of the Primary Infrastructure Work.

9. General Provisions.

(a) Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this Funding Agreement to be performed, kept, and observed by the other party shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions to be performed, kept, and observed by the other party and shall not be deemed a waiver of any right on the part of the other party to cancel this Funding Agreement as provided herein.

(b) Performance. The parties expressly agree that time is of the essence in this Funding Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance (subject to Force Majeure Events).

(c) Waiver of Jury Trial. **RAIL COMPANY, CITY AND THE AUTHORITY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATED TO, ARISING OUT OF OR IN CONNECTION WITH THE TERMS, CONDITIONS, AND COVENANTS OF THIS FUNDING AGREEMENT.**
Initials_____ Initials_____ Initials_____

(d) No Individual Liability. No member, officer, agent, director, or employee of the Authority or Rail Company shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Funding Agreement or because of any breach thereof or because of its or their execution or attempted execution.

(e) Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees, and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of landlord and tenant.

(f) Capacity to Execute. The individuals executing this Funding Agreement have full authority to execute this Funding Agreement on behalf of the entity for whom they are acting herein.

(g) No Construction Against the Drafter. The parties hereto acknowledge that they have thoroughly read this Funding Agreement, including any exhibits or attachments hereto and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein. The parties further acknowledge that this Funding Agreement is the result of extensive negotiations between the parties and shall not be construed more strictly against the Authority or Rail Company by reason of the preparation of this Funding Agreement by one of the parties.

(h) Incorporation of Exhibits. All exhibits and attachments referred to in this Funding Agreement are intended to be and are hereby specifically made a part of this Funding Agreement.

(i) Titles. Paragraph titles are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or extent of any provision of this Funding Agreement.

(j) Severability. In the event that any covenant, condition, or provision of this Funding Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not materially prejudice either the Authority or Rail

Company in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Funding Agreement.

(k) Other Agreements; Amendments. Nothing contained in this Funding Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between the Authority and Rail Company authorizing the use of the Airport, its facilities, and appurtenances. This Funding Agreement together with the Easement Agreement, Lease Agreement, and Vehicle Maintenance Facility Ground Lease Agreement constitute the entire agreement between the parties hereto with respect to the Rail Project and it is understood and agreed that all undertakings, negotiations, representations, promises, inducements and agreements heretofore had between the parties with respect to the funding of portions of the Rail Project prior to the satisfaction of the Escrow Conditions are merged herein. This Funding Agreement may not be modified or amended verbally. Any modification or amendment shall be binding on the parties hereto only if such modification or amendment is in writing and signed by both the Authority and Rail Company and joined by the City. No waiver of any of the provisions in this Funding Agreement shall be valid unless in writing and signed by the party against whom such waiver is sought to be enforced.

(l) Approvals. Unless otherwise stated, whenever this Funding Agreement calls for approval by the Authority, such approval shall be evidenced by the written approval of the Executive Director.

(m) Notice. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of (i) the date and time the same are personally delivered at the address set forth below, (ii) on the same day if sent between 8:00 A.M. and 5:00 P.M. on Monday through Friday via facsimile transmission to the respective facsimile numbers set forth below, with receipt acknowledged upon transmission as evidenced by a contemporaneous writing, or (iii) within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, (iv) within one (1) business day after depositing with Federal Express or other overnight delivery service from which a receipt or written confirmation may be obtained, and addressed as follows:

- i. If intended for the Authority, notices shall be delivered to:

Executive Director
Greater Orlando Aviation Authority
Orlando International Airport
One Jeff Fuqua Boulevard
Orlando, FL 32827-4399
Telephone: (407) _____
Telecopy: (407) _____

With a copy to:

Marchena and Graham, P.A.
976 Lake Baldwin Lane, Suite 101
Orlando, FL 32814
Attn: Marcos R. Marchena, Esq.
Telephone: (407) 658-8566
Telecopy: (407) 281-8564

City of Orlando, Florida
400 South Orange Avenue
Orlando, FL 32801
Attn: Chief Administrative Officer
Telephone: (407) 246-2221
Telecopy: (407) 246-2842

City of Orlando, Florida
400 South Orange Avenue, Third Floor
Orlando, FL 32801
Attn: City Attorney's Office
Telephone: (407) 246-2295
Telecopy: (407) _____

or to such other address as may be designated by the Authority by written notice to Rail Company.

ii. Notices to Rail Company shall be delivered to:

All Aboard Florida – Operations LLC
2855 LeJeune Road, 4th Floor
Coral Gables, FL 33134
Attention: P. Michael Reininger
Telephone: (305) 520-2300
Telecopy: (305) _____

With a copy to:

All Aboard Florida – Operations LLC
2855 LeJeune Road, 4th Floor
Coral Gables, FL 33134
Attention: Kolleen O. P. Cobb
Telephone: (305) 520-2300
Telecopy: (305) 520-2400

Akerman Senterfitt
350 East Las Olas Boulevard, Suite 1600
Fort Lauderdale, FL 33301
Attention: Eric D. Rapkin
Telephone: (954) 759-8962
Telecopy: (954) 847-5350

or to such other address as may be designated by Rail Company by written notice to the Authority.

(n) Agent For Service. It is expressly understood and agreed that if Rail Company is not a resident of the State of Florida, or is an association or partnership without a member or partner resident of said state, Rail Company shall appoint an agent for the purpose of service of process in any court action between it and the Authority arising out of or based upon this Funding Agreement. Rail Company shall, upon request, notify the Authority, in writing, of the name and address of said agent. Such service shall be made as provided by the laws of the State of Florida for service upon a non-resident engaging in business in the State.

(o) Governing Law and Legal Forum. This Funding Agreement is to be read and construed in accordance with the laws of the State of Florida. Exclusive venue for all dispute resolution, including litigation, concerning or arising out of this Funding Agreement shall be in Orange County, Florida. The parties submit to the personal jurisdiction of the state and federal courts in and for Orange County, Florida.

(p) Force Majeure. Should any fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, epidemic, landslide, war, terrorism, riot, civil commotion, general area-wide unavailability of materials, strike, labor dispute, governmental laws or regulations, delays caused by the other party to this Agreement, or other occurrence beyond Rail Company's or the Authority's reasonable control, prevent performance of this Agreement in accordance with its provisions (each, a "Force Majeure Event"), provided that such Force Majeure Event does not arise by reason of the negligence or misconduct of the performing party, performance of this Agreement by either party shall be suspended or excused to the extent commensurate with such occurrence.

(q) Radon Gas. As required by Florida law, the Authority hereby includes the following notification:

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(r) Public Entity Crimes Act.

Section 287.133(2)(a), Florida Statutes, provides that:

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

(s) Third-Party Beneficiary. The parties hereto agree that the City is a third party beneficiary to this Funding Agreement with full rights of enforcement herein. Otherwise, except for the City, there are no third-party beneficiaries to this Funding Agreement.

(t) Recording. This Funding Agreement shall not be recorded.

(u) Estoppel Certificates. Each of the parties shall, from time to time, upon thirty (30) days' written request, provide to the requesting party or any other person identified by the requesting party with an estoppel certificate stating whether the other party is in default hereunder, whether this Funding Agreement is in full force and effect, whether this Funding Agreement has been modified, and containing such other certifications as may be reasonably requested.

(v) Reasonableness. Unless this Funding Agreement specifically provides for the granting of consent or approval at a party's sole discretion, then consents and approvals which may be given or requested by a party under this Funding Agreement shall not (whether or not so indicated elsewhere in this Funding Agreement) be unreasonably withheld or conditioned by such party and shall be given or denied within the time period provided, and if no such time period has been provided, within a reasonable time. Upon disapproval of any request for a consent or approval, the disapproving party shall, together with notice of such disapproval, submit to the requesting party a written statement setting forth with specificity its reasons for such disapproval.

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[SIGNATURES PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have each caused this First Amendment to be executed by its authorized representative on the date so indicated below.

**“GOAA”
GREATER ORLANDO AVIATION
AUTHORITY**

ATTEST:

Dayci S. Burnette-Snyder,
Assistant Secretary
Date: _____, 2014

By: _____
Phillip N. Brown, A.A.E.,
Executive Director

APPROVED AS TO FORM AND LEGALITY this
___ day of _____, 2014, for the use and
reliance by the GREATER ORLANDO
AVIATION AUTHORITY, only.

Marchena and Graham, P.A., Counsel.

By: _____
Marchena and Graham, P.A.

STATE OF FLORIDA
COUNTY OF ORANGE

Before me, the undersigned authority, duly authorized under the laws of the State of Florida to take acknowledgments, this day personally appeared Phillip Brown and Dayci S. Burnette-Snyder respectively Executive Director and Deputy Director of the Greater Orlando Aviation Authority, who are personally known to me to be the individuals and officers described in and who executed the foregoing instrument on behalf of said Greater Orlando Aviation Authority, and severally acknowledged the execution thereof to be their free act and deed as such officers and that they were duly authorized so to do.

In witness whereof, I have hereunto set my hand and official seal at Orlando, in the County of Orange, State of Florida, this ___ day of _____, 2014.

Notary Public

My commission expires:

**ALL ABOARD FLORIDA –
OPERATIONS LLC**

ATTEST: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date: _____, 2014

TWO WITNESSES:

Printed Name: _____

Printed Name: _____

STATE OF FLORIDA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, as _____ of All Aboard Florida – Operations LLC, a Delaware limited liability company, on behalf of the limited liability company. He/She is personally known to me or produced a valid driver's license as identification.

Notary Public
Print name:
My commission expires:

The **City of Orlando** hereby joins in the Embankment Funding Agreement dated _____, 2014 between the **Greater Orlando Aviation Authority** and **All Aboard Florida - Operations LLC**, solely to acknowledge the City's consent to the extent that the terms herein relate to the Orlando International Airport Premises Lease and Use Agreement to which the City joined in and the Rail Line Easement Agreement to which the City is a party.

CITY OF ORLANDO, FLORIDA, a Florida municipal corporation

ATTEST:

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

[Official Seal]

Date: _____

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE CITY OF ORLANDO, ONLY, THIS ___ DAY OF _____, 2014.

By: _____
Title: _____
Printed Name: _____

Exhibit "A"
[Embankment Work]

Exhibit "B"

[Alternate Embankment Work]