

## **UTILITY WORK AGREEMENT**

**THIS UTILITY WORK AGREEMENT** (this "Agreement") is made by and among **THE GREATER ORLANDO AVIATION AUTHORITY**, a public and governmental body 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 "Aviation 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, 4<sup>th</sup> 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**, due to a change in the timing of construction of the Rail Project by Rail Company, and scheduling requirements, it will be necessary for Rail Company to complete certain utility-related components of the Infrastructure Improvements and Critical Rail Corridor Improvements (the "Utility Work") prior to the release of escrow; and

**WHEREAS**, to ensure that such components of the improvements are timely completed, Rail Company shall complete the Utility Work as specified herein below; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth the parties rights, duties and obligations relating to the Utility 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.
3. Scope of Utility Work. Generally, the scope of work is to relocate the partially full 10 way 4" power duct bank providing service to the Orlando International Airport in the vicinity of the midfield cross taxi-way. The detailed scope of work for the Utility Work is described in the attached Exhibit "A" which is incorporated herein by reference. Rail Company acknowledges that the Property (defined below) is a congested area of the Orlando International Airport and agrees to coordinate the Utility Work closely with the Aviation Authority. In order for the Aviation

Authority to complete the APM guideway pursuant to its schedule to complete the APM Station, it is crucial that the utility work be completed on or prior to January 1, 2016. The Utility Work is being completed outside of the Rail Line Easement Property as the utility is and will continue to be owned and operated by the Aviation Authority. Rail Company, at its sole cost and expense, hereby agrees to complete the design and construction of the Utility Work, pursuant to the terms set forth herein.

4. Funding Obligation. Rail Company is responsible for funding of the design, permitting, engineering and construction the Utility Work pursuant to the Easement Agreement ("Utility Cost").

Rail Company and the Aviation Authority have executed this Agreement to establish a mechanism whereby (i) the Rail Company may proceed with the design, engineering and permitting for the Utility Work; and (ii) Rail Company may begin construction of such Utility Work prior to and not contingent upon the satisfaction of the Escrow Conditions as set forth in the Easement Agreement. A portion of the Utility Work is a Critical Rail Corridor Improvement and the actual cost of said Utility Work is to be applied to Rail Company's credit pursuant to the Easement Agreement.

5. Utility Work Approvals. Rail Company's design and engineering work for the Utility Work shall be subject to the review and approval of the Aviation Authority in accordance with the requirements contained in the Easement Agreement. The cost of the design, engineering, permitting, installation and construction of the Utility Work shall be borne exclusively by Rail Company. All plans and specifications therefor, must be in accordance with the Utility Work as described on Exhibit "A," hereto, and as required by the Easement Agreement. Utility work plans and construction are also subject to review and approval of Orlando Utilities Commission.

By July 1, 2015, Rail Company shall submit a working set of its designs, plans and specifications to the Executive Director. Rail Company shall again submit such plans and specifications at 90% completion of design or upon any alterations of the Utility Work. Following all approvals by the Executive Director, such Utility Work shall be made, altered, constructed or installed in strict accordance with such plans and specifications, and in accordance with all applicable statutes, ordinances, building and health codes, rules and regulations and the Aviation Authority's development standards, as the same may be amended from time to time. The Aviation Authority, in its sole and reasonable discretion, may accept or reject all, or any portion of, the plans and specifications for the Utility Work. In the event the Aviation Authority rejects all or a portion of the Utility Work, Rail Company shall be solely responsible for any costs related to any subsequent designing, engineering or submitting the plans and specifications.

6. Timeline. Construction for the Utility Work shall commence no later than September 1, 2015. The Utility Work shall be completed by no later than January 1, 2016. Rail Company and the Aviation Authority acknowledge that time is of the essence under this Agreement and Rail Company agrees to pay any and all such damages resulting from any delays or failure to abide by any deadline herein specified.



7. Maintenance. In addition to all maintenance and repair obligations contained in the Easement Agreement, Rail Company shall be responsible for all maintenance and repair necessary to the Utility Work, until accepted by the Authority.

8. No Disruption. The utility being relocated provides an essential service to the Aviation Authority and its operation of the Orlando International Airport, therefore Rail Company agrees that there will be no disruption of service to Orlando International Airport as a result of the Utility Work.

9. Construction License. Aviation Authority, subject to the terms and conditions set forth herein, hereby grants the right and license to Rail Company and its employees, contractors, subcontractors and agents (herein collectively also known as "Rail Company") to enter upon that certain property more particularly described in Exhibit "B" (hereinafter the "Property") in connection with a proposed development project currently under consideration by the Aviation Authority and the Rail Company (the "Proposed Project") for the purposes of performing the Utility Work which requires limited entry upon the Airport Operations Area (the "AOA") all in accordance with all laws, codes, ordinances and all rules and regulations and requirements of authorities having jurisdiction over the Property (the "License"). All access to the AOA shall be coordinated with the Aviation Authority.

10. No Lien. Rail Company shall not unreasonably disturb any Aviation Authority operations on the Property or property adjoining the Property or damage any improvements which may be located on the Property or property adjoining the Property. Rail Company shall not permit the filing of any liens against the Property in connection with its activities contemplated herein. In the event a claim of lien is filed against the Property as a result of the work by or on behalf of Rail Company, or as a result of other actions or omissions of Rail Company, then Rail Company shall cause such lien to be satisfied or transferred to bond so as no longer to be a lien against the Property within ten (10) days after the claim lien is filed.

11. Insurance. Rail Company shall maintain worker's compensation and liability insurance in accordance with Aviation Authority's Risk Management/Safety policies and procedures contained in the Aviation Authority's Policy and Procedure Manual, such required insurance coverage to be maintained with insurance companies that are insurers of internationally recognized reputation in the aviation market. Rail Company shall cause its contractors, subcontractors, agents, licensees and permittees accessing the Property to maintain insurance coverage in accordance with Aviation Authority's Risk Management/Safety policies and procedures contained in the Aviation Authority's Policy and Procedure Manual. Access to the AOA requires additional insurance as follows: Professional Liability with minimum of \$1,000,000 per claim and annual aggregate with maximum deductible or self-insured retention in an amount not exceeding \$10,000 (\$100,000 deductible/self-insured retention if contract is over \$1,000,000.), Commercial General Liability (CGL) with minimum of \$5,000,000 per occurrence and annual aggregate, with maximum deductible or self-insured retention in an amount not exceeding \$10,000 (\$100,000 deductible/self-insured retention if contract is over \$1,000,000.), Automobile Liability with minimum of \$5,000,000 per occurrence and annual aggregate, with

maximum deductible or self-insured retention in an amount not exceeding \$10,000, worker's compensation with statutory limits and Employer's Liability \$500,000 each accident, \$500,000 disease - policy limit, \$500,000 disease - each employee. Rail Company shall furnish evidence of such insurance coverage prior to any contractor, subcontractor, agent, Rail Company or permittee of Rail Company entering upon the Property.

12. Representations and Indemnification. Aviation Authority makes no warranty or representation whatsoever as to the condition of the Property or any improvements which may be located thereon. Rail Company's entry upon the Property shall be at Rail Company's sole risk and expense, and the Aviation Authority shall assume no liability for such entry. Rail Company hereby agrees that Aviation Authority assumes no responsibility whatsoever for injury to persons entering the Property, or damage to property brought in, or upon, the Property. Rail Company specifically indemnifies and holds harmless Aviation Authority, the City of Orlando, and their respective members, directors, officers, employees and representatives from and against any and all claims, damages, actions, judgments, losses, liabilities, liens, costs or expenses of any nature (including without limitations costs, expenses, attorneys' and paralegals' fees) arising out of or in any way connected with Rail Company's entry upon the Property and performance of any work on the Property by or on behalf of Rail Company, except to the extent caused by the willful misconduct or gross negligence of Aviation Authority or the City of Orlando.

13. Term. The License granted hereby shall expire upon the earlier of (1) completion of the work as evidenced by acceptance of the Utility Work by the Aviation authority and Orlando Utilities Commission or, (2) March 1, 2016. This License and the attendant privileges granted herein may be revoked at any time by the Aviation Authority upon written notice to Rail Company; provided, however, that Rail Company's obligations to indemnify Aviation Authority as set forth herein shall survive such revocation. Upon termination or expiration this License agreement, Rail Company, at its sole cost and expense, shall vacate the Property and promptly remove any and all property placed thereon by or on behalf of Rail Company and restore any damage or disturbance to the Property caused by Rail Company, provided however, that Rail Company shall have no obligation to remove any improvements placed or installed on the Property by Rail Company with approval of the Aviation Authority.

14. General Provisions.

(a) Nonwaiver. No waiver of default by either party of any of the terms, covenants, or conditions of this 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 Agreement as provided herein.

(b) Performance. The parties expressly agree that time is of the essence in this 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 Aviation 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 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 Agreement have full authority to execute this 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 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 Agreement is the result of extensive negotiations between the parties and shall not be construed more strictly against the Aviation Authority or Rail Company by reason of the preparation of this Agreement by one of the parties.

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

(j) Severability. In the event that any covenant, condition, or provision of this 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 Aviation Authority or Rail Company in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

(k) Other Agreements; Amendments. Nothing contained in this Agreement shall be deemed or construed to nullify, restrict, or modify in any manner the provisions of any other lease or contract between the Aviation Authority and Rail Company authorizing the use of the Airport, its facilities, and appurtenances. This 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 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 Aviation Authority and Rail Company and joined by the City. No waiver of any of the provisions in this 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 Agreement calls for approval by the Aviation 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:

To the Aviation Authority:

Executive Director  
Greater Orlando Aviation Authority  
Orlando International Airport  
One Jeff Fuqua Boulevard  
Orlando, FL 32827-4399

With a copy to:

Marchena and Graham, P.A.  
Attn: Marcos R. Marchena, Esq.  
976 Lake Baldwin Lane, Suite 101  
Orlando, FL 32814



City of Orlando  
Attn: Chief Administrative Officer  
400 South Orange Avenue  
Orlando, FL 32801

City of Orlando  
Attn: City Attorney's Office  
400 South Orange Avenue, Third Floor  
Orlando, FL 32801

To Rail Company:

All Aboard Florida – Operations LLC  
Attn: P. Michael Reininger  
2855 LeJeune Road, 4<sup>th</sup> Floor  
Coral Gables, FL 33134

With a copy to:

All Aboard Florida – Operations LLC  
Attn: Kolleen O. P. Cobb  
2855 LeJeune Road, 4<sup>th</sup> Floor  
Coral Gables, FL 33134

Akerman Senterfitt  
Attn: Eric D. Rapkin  
350 East Las Olas Boulevard, Suite 1600  
Fort Lauderdale, FL 33301

Either Party may change its address for purposes of this Paragraph by written notice.

(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 Aviation Authority arising out of or based upon this Agreement. Rail Company shall, upon request, notify the Aviation 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 Agreement is to be read and construed in accordance with the laws of the State of Florida. Exclusive venue for any proceeding, including litigation or dispute resolution, concerning or arising out of this 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 Aviation 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) Public Entity Crimes Act. Company represents that it is familiar with the terms and conditions of Section 287.133, Florida Statutes, and Company further represents and warrants unto Authority that, to the best of its knowledge and good faith belief, neither Company nor any affiliate of Company has ever been convicted of a public entity crime. Company acknowledges receipt of the following notice:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of \$35,000 for a period of 36 months from the date of being placed on the convicted vendor list.

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

(s) Recording. This Agreement shall not be recorded.

(t) 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 Agreement is in full force and effect, whether this Agreement has been modified, and containing such other certifications as may be reasonably requested.

(u) Reasonableness. Unless this 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 Agreement shall not (whether or not so indicated elsewhere in this 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.



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: \_\_\_\_\_, 201\_\_

By: \_\_\_\_\_  
Phillip N. Brown, A.A.E.,  
Executive Director

APPROVED AS TO FORM AND LEGALITY this  
\_\_\_\_ day of \_\_\_\_\_, 201\_\_, 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 \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**ALL ABOARD FLORIDA –**

**OPERATIONS LLC**

ATTEST: \_\_\_\_\_

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

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

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

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

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

Date: \_\_\_\_\_, 201\_\_

TWO WITNESSES:

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

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

STATE OF FLORIDA                    )  
COUNTY OF \_\_\_\_\_        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, 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:



**Joined by:**

**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  
\_\_\_\_\_, 201\_\_.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

Exhibit "A"

[Scope of Work]





Exhibit "B"  
[the "Property"]



