

Meeting Date
April 11, 2017



AGENDA	
Section	New Business
Item No.	V.I.A. 1

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Approval Re: All Aboard Florida Requested Resolution and Amendment to the Aerial, Support, Temporary Construction, and Drainage Easement in and over Pine Street - District 1 (Fiscal Impact: None)
DEPT/OFFICE:	Public Works Department / Land Acquisition Section

Requested Action:
 It is requested that the Board of County Commissioners approve and authorize the Chairman to execute the Resolution and Amendment To Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement as presented.

Summary Explanation & Background:
 At the regular meeting of January 24, 2017 the Board of County Commissioners approved the grant of an Aerial, Support, Temporary Construction and Drainage easement to All Aboard Florida. All Aboard Florida has filed an application and requested an Amendment to the Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement. The amendment is to clarify that "although the easements granted therein are non-exclusive in nature, the county's use of the Easement Property will not interfere with or adversely affect the Applicant's operation, use and/or safety of the Easement property".

To address this issue, the Easement language is modified by the Amendment to create a procedure for the joint use of the easement area. The County retains its right to utilize and maintain the Easement area in a manner that will be consistent with the intended use by AAF. However an additional step is created by the amendment. Any use of the Easement area in a manner that may impact the improvements operated by the Grantee (AAF) would require a written request and the County's notification of All Aboard Florida to include detailed plans and specifications. As with the original Easement, the Amendment will need to be approved by the Board by supermajority. Once approved, the Amendment will be recorded.

A notice on the county's website is required 5 days prior to the public hearing.

The Board may choose from following options:

1. Approve the requested amendment as presented.
2. Reject the requested amendment with recommendations for modification.
3. Reject the requested amendment with instructions to maintain the Easement as approved on January 24, 2017.

Fiscal Impact: FY 2016-2017: No impact
FY 2017-2018-No impact

Clerk to the Board Instructions: Forward the Board approval memo to Department, return executed documents to department

Exhibits Attached: Resolution with Exhibit 1, Application for Amendment and Amendment to Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager	Department Director / Extension		 John Denninghoff / 57202			
Stockton Whitten	Assistant County Manager						



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 12, 2017

M E M O R A N D U M

TO: John Denninghoff, Public Works Director

RE: Item VI.A.1., Resolution, Amendment to Aerial Railroad Bridge Support and Drainage Easement Agreement in/over Pine Street, and Application for Amendment for All Aboard Florida

The Board of County Commissioners, in regular session on April 11, 2017, tabled the resolution authorizing the amendment to the aerial railroad bridge support and drainage easement agreement in/over Pine Street, and Application for Amendment for All Aboard Florida to the April 25, 2017, Board of County Commissioners Meeting.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/kp

cc: County Manager

BOARD OF COUNTY COMMISSIONERS

AGENDA: ALL ABOARD FLORIDA REQUESTED MODIFICATION TO THE AERIAL, SUPPORT, TEMPORARY CONSTRUCTION AND DRAINAGE EASEMENT AS APPROVED ON JANUARY 24, 2017 RELATED TO PINE STREET - DISTRICT 1

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION

AGENCY CONTACT: DAN JONES LAND ACQUISITION SUPERVISOR

CONTACT PHONE: 321-690-6847 (5-2726)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	_____	_____	_____
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	<u>EB</u>	_____	<u>3/14/17</u>
PUBLIC WORKS John Denninghoff, Director	_____	_____	_____

AGENDA DUE DATE: March 7, 2017 for the March 21, 2017 Board meeting

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.

BOARD OF COUNTY COMMISSIONERS

AGENDA: ALL ABOARD FLORIDA REQUESTED MODIFICATION TO THE AERIAL, SUPPORT, TEMPORARY CONSTRUCTION AND DRAINAGE EASEMENT AS APPROVED ON JANUARY 24, 2017 RELATED TO PINE STREET - DISTRICT 1

AGENCY: PUBLIC WORKS DEPARTMENT / LAND ACQUISITION SECTION

AGENCY CONTACT: DAN JONES LAND ACQUISITION SUPERVISOR

CONTACT PHONE: 321-690-6847 (5-2726)

REVIEW

	APPROVE	DISAPPROVE	DATE
LAND ACQUISITION Dan Jones, Supervisor	<u>DPJ</u>	_____	<u>3/14/17</u>
COUNTY ATTORNEY Eden Bentley Deputy County Attorney	_____	_____	_____
PUBLIC WORKS John Denninghoff, Director	<u>JDX</u>	_____	<u>3/14/17</u>

AGENDA DUE DATE: March 7, 2017 for the **March 21, 2017 Board meeting**

IF ANY REVIEWING OFFICE HAS QUESTIONS OR CONCERNS REGARDING THIS PACKAGE, PLEASE ADVISE AGENCY CONTACT IMMEDIATELY.

PLEASE CALL DEBBIE CRUZ AT 690-6847 (5-6847) WHEN READY TO BE PICKED UP.

THANK YOU.

RESOLUTION NO. 2017- _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA AUTHORIZING THE AMENDMENT OF THE EASEMENT GRANTED TO ALL ABOARD FLORIDA-OPERATIONS, LLC (AAF) ON JANUARY 31, 2017 PURSUANT TO SECTION 125.38, FLORIDA STATUTES (2016), AND SECTION 2-247, BREVARD COUNTY CODE OF ORDINANCES; PROVIDING CONDITIONS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, ALL ABOARD FLORIDA-OPERATIONS, LLC (AAF) applied to Brevard County (County) to obtain easements to allow an aerial railroad bridge over Pine Street in the Canaveral Groves area, and

WHEREAS, AAF was granted the necessary easements on January 31, 2017; and

WHEREAS the easements are non-exclusive and limited to passenger rail service only, and the easement can only be used for purposes promoting public benefit; and

WHEREAS, the parties recognize the need to cooperate and coordinate regarding the use of the non-exclusive easement area to prevent conflicts, and

WHEREAS, AAF has applied to amend the easement to provide clarification and procedure to be followed to avoid conflicts; and

WHEREAS, the County desires to cooperate with and assist AAF in the amendment of the easements as requested;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, that:

Section 1. The foregoing recitals are adopted and included as if reiterated herein.

1. The COUNTY hereby agrees to grant to All Aboard Florida – Operations, LLC an amendment to the specific purpose easements in real property described in Exhibit "A" and based on the conditions in Exhibit "A" of the application for amendment attached hereto as Exhibit "1".
2. The COUNTY previously determined that the specific and limited real property interest needed by All Aboard Florida – Operations, LLC is not needed for COUNTY purposes as limited.
3. As previously provided, AAF shall use and maintain the easements for the providing the passenger rail service described herein.
4. No additional consideration for the amendment is required.
5. All other terms of the easement shall remain in full force and effect

Section 2. This Resolution shall become effective immediately upon its adoption.

This Resolution is PASSED AND ADOPTED in Regular Session, this _____ day of ____, 2017

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA

Scott Ellis, Clerk

By: Curt Smith, Chairman

Exhibit "1" Resolution

This Instrument Prepared By
And To Be Returned To:
R. Mason Blake, Esquire
DEAN MEAD
7380 Murrell Road, Suite 200
Viera, Florida 32940
(321) 259-8900

AMENDMENT TO AERIAL RAILROAD BRIDGE, BRIDGE SUPPORT
AND DRAINAGE EASEMENT AGREEMENT

THIS AMENDMENT TO AERIAL RAILROAD BRIDGE, BRIDGE SUPPORT AND DRAINAGE EASEMENT AGREEMENT (hereinafter referred to as this "Amendment") is made and entered as of this _____ day of _____, 2017 (the "Effective Date") by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Bldg. C, Viera Florida 32940 (hereinafter referred to as the "Grantor"), and ALL ABOARD FLORIDA – OPERATIONS, LLC, a Delaware limited liability company, whose address is 2855 LeJeune Road, 4th Floor, Coral Gables, Florida 33134 (hereinafter referred to as the "Grantee").

RECITALS

WHEREAS, the Grantor and Grantee entered into that certain Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement dated January 31, 2017 and recorded in Official Records Book 7809, Page 2494, of the Public Records of Brevard County, Florida (the "Easement Agreement").

WHEREAS, the Grantor and Grantee desire to make certain amendments to the Easement Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar, and other valuable consideration paid and received, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee agree as follows:

1. Recitals. The above recitals are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. Use. Section 7 is amended as follows:

(a) Add an "(a)" before the first paragraph of Section 7.

(b) Add the following paragraph after the first paragraph:

"(b) Notwithstanding the easement rights granted hereunder, Grantor and Grantee agree that Grantor and its successors in interest and/or assigns shall, and are hereby authorized to, continue

to operate, repair, widen and maintain Pine Street and other public infrastructure, such as drainage improvements, utilities and sidewalks and shall be entitled to make any reasonable use of the Easement Property in the future that is not inconsistent with Grantee's use of such Easement Area and provided such use does not (a) interfere with Grantee's ability to operate the rail service or maintain the Improvements, or (b) affect the structural integrity of the Improvements. In the event Grantor, its successors and/ or assigns intends to use any portion of the Easement Property in a manner that may impact the improvements operated by Grantee, Grantor shall submit to Grantee a written request describing such use in writing, together with detailed plans and specifications for any work to be performed in and around any portion of the Easement Property in connection therewith, for Grantee's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. In the event Grantee has neither approved nor denied, in writing, such request from Grantor within fifteen (15) business days after Grantee's receipt of Grantor's written request for such use of the Easement Property, then such use and associated work shall be deemed approved by Grantee."

3. Conflict. Except as herein specifically modified, revised, or amended, the Agreement shall remain unchanged and in full force and effect. In the event of a conflict between the Agreement and this Amendment, the terms of this Amendment shall control.

4. Counterparts. This Amendment may be executed by the parties hereto individually or in combination or in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

[REMAINDER INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Grantor has caused this Amendment to be executed in its name by the Chairperson of the Board of County Commissioners, as authorized by the Brevard County Board of County Commissioners, and the Grantee has caused this Amendment to be executed by its duly authorized representative, all as of the Effective Date.

GRANTOR:

Signed, sealed and delivered
in the presence of:

BREVARD COUNTY, FLORIDA, a political
subdivision of the State of Florida

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____, of BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, on behalf of Brevard County. Said person is (check one) personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____.

Print Name:
Notary Public, State of Florida
Commission No.:

My Commission Expires: _____

Attested to by:

Scott Ellis, Clerk

ALL ABOARD FLORIDA - OPERATIONS, LLC,
a Delaware limited liability company

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ___ day of _____, 2017, by _____, as _____, of ALL ABOARD FLORIDA – OPERATIONS, LLC, a Delaware limited liability company, on behalf of the company. Said person is (check one) personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____.

Print Name:
Notary Public, State of Florida
Commission No.:

My Commission Expires: _____

APPLICATION FOR AMENDMENT TO
AERIAL RAILROAD BRIDGE, BRIDGE SUPPORT
AND DRAINAGE EASEMENT AGREEMENT

GRANTED PURSUANT TO SECTION 2-247, BREVARD COUNTY CODE

ALL ABOARD FLORIDA-OPERATIONS, LLC, a Delaware limited liability company (hereinafter referred to as "Applicant"), hereby applies to Brevard County, Florida, to amend that certain Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement dated January 31, 2017 and recorded in Official Records Book 7809, Page 2494, of the Public Records of Brevard County, Florida (the "Easement Agreement"). The form of the proposed Amendment is attached hereto as Exhibit "A". The Applicant requests that the Easement Agreement be amended to clarify that although the easements granted therein are "non-exclusive" in nature, the County's use of the Easement Property will not interfere with or adversely affect the Applicant's operation, use and/or safety of the Easement Property.

IN WITNESS WHEREOF, Applicant has executed this application effective as of the 10th day of March, 2017.

ALL ABOARD FLORIDA-OPERATIONS,
LLC, a Delaware limited liability company

By: _____

Kolleen Cobb, Vice President



This Instrument Prepared By
And To Be Returned To:
R. Mason Blake, Esquire
DEAN MEAD
7380 Murrell Road, Suite 200
Viera, Florida 32940
(321) 259-8900

AMENDMENT TO AERIAL RAILROAD BRIDGE, BRIDGE SUPPORT
AND DRAINAGE EASEMENT AGREEMENT

THIS AMENDMENT TO AERIAL RAILROAD BRIDGE, BRIDGE SUPPORT AND DRAINAGE EASEMENT AGREEMENT (hereinafter referred to as this "Amendment") is made and entered as of this _____ day of _____, 2017 (the "Effective Date") by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is 2725 Judge Fran Jamieson Way, Bldg. C, Viera Florida 32940 (hereinafter referred to as the "Grantor"), and ALL ABOARD FLORIDA – OPERATIONS, LLC, a Delaware limited liability company, whose address is 2855 LeJeune Road, 4th Floor, Coral Gables, Florida 33134 (hereinafter referred to as the "Grantee").

RECITALS

WHEREAS, the Grantor and Grantee entered into that certain Aerial Railroad Bridge, Bridge Support and Drainage Easement Agreement dated January 31, 2017 and recorded in Official Records Book 7809, Page 2494, of the Public Records of Brevard County, Florida (the "Easement Agreement").

WHEREAS, the Grantor and Grantee desire to make certain amendments to the Easement Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar, and other valuable consideration paid and received, the receipt and sufficiency of which are hereby acknowledged, the Grantor and the Grantee agree as follows:

1. Recitals. The above recitals are true and correct in all respects and are incorporated herein by reference as if set forth herein verbatim.

2. Use. Section 7 is amended as follows:

(a) Add an "(a)" before the first paragraph of Section 7.

(b) Add the following paragraph after the first paragraph:

"(b) Notwithstanding the easement rights granted hereunder, Grantor and Grantee agree that Grantor and its successors in interest and/or assigns shall, and are hereby authorized to, continue

to operate, repair, widen and maintain Pine Street and other public infrastructure, such as drainage improvements, utilities and sidewalks and shall be entitled to make any reasonable use of the Easement Property in the future that is not inconsistent with Grantee's use of such Easement Area and provided such use does not (a) interfere with Grantee's ability to operate the rail service or maintain the Improvements, or (b) affect the structural integrity of the Improvements. In the event Grantor, its successors and/ or assigns intends to use any portion of the Easement Property in a manner that may impact the improvements operated by Grantee, Grantor shall submit to Grantee a written request describing such use in writing, together with detailed plans and specifications for any work to be performed in and around any portion of the Easement Property in connection therewith, for Grantee's review and approval, which approval shall not be unreasonable withheld, conditioned or delayed. In the event Grantee has neither approved nor denied, in writing, such request from Grantor within fifteen (15) business days after Grantee's receipt of Grantor's written request for such use of the Easement Property, then such use and associated work shall be deemed approved by Grantee."

3. Conflict. Except as herein specifically modified, revised, or amended, the Agreement shall remain unchanged and in full force and effect. In the event of a conflict between the Agreement and this Amendment, the terms of this Amendment shall control.

4. Counterparts. This Amendment may be executed by the parties hereto individually or in combination or in one or more counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

[REMAINDER INTENTIONALLY LEFT BLANK]

W.A. 1.
2/2
Exhibit A

IN WITNESS WHEREOF, the Grantor has caused this Amendment to be executed in its name by the Chairperson of the Board of County Commissioners, as authorized by the Brevard County Board of County Commissioners, and the Grantee has caused this Amendment to be executed by its duly authorized representative, all as of the Effective Date.

GRANTOR:

Signed, sealed and delivered
in the presence of:

BREVARD COUNTY, FLORIDA, a political
subdivision of the State of Florida

Print Name: _____

By: _____
Name: _____
Title: _____

Print Name: _____

STATE OF FLORIDA

COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____, as _____, of BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, on behalf of Brevard County. Said person is (check one) personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____.

Print Name:
Notary Public, State of Florida
Commission No.:

My Commission Expires: _____

Attested to by:

Scott Ellis, Clerk

ALL ABOARD FLORIDA - OPERATIONS, LLC,
a Delaware limited liability company

Ambarina Perez
Print Name: Ambarina Perez

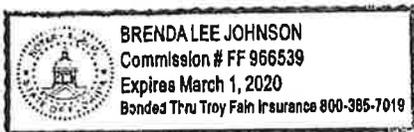
Yvelisse Bonilla
Print Name: YVELISSE BONILLA

By: [Signature]
Name: Kolleen O.P. Cobb
Title: Vice President

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 2 day of March, 2017, by Kolleen O.P. Cobb, as Vice President, of ALL ABOARD FLORIDA – OPERATIONS, LLC, a Delaware limited liability company, on behalf of the company. Said person is (check one) personally known to me, produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or produced other identification, to wit: _____.



Brenda Lee Johnson
Print Name:
Notary Public, State of Florida
Commission No.:

My Commission Expires: _____