



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

May 24, 2017

M E M O R A N D U M

TO: Andrew Holmes, Interim Public Works Director

RE: Item V.A., Resolution, Amendment to Aerial Railroad Bridge, Bridge Support, and Drainage Easement Agreement, and Temporary Construction, In and Over Pine Street for All Aboard Florida

The Board of County Commissioners, in regular session on May 23, 2017, adopted Resolution No. 17-103, authorizing the amendment to Aerial Railroad Bridge, Bridge Support, Drainage Easement Agreement, and temporary construction, in and over Pine Street for All Aboard Florida, contingent upon Florida East Coast Railway, LLC (FEC) signing the Purchasing Agreement for the acquisition of the Permanent Aerial Easement for the Pineda Causeway Grade Separation Project in the amount of \$245,000. Enclosed is a certified copy of the Resolution.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

RESOLUTION NO. 2017- 103

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

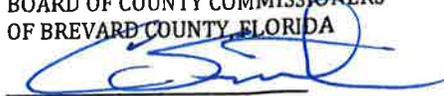
Section 2. This Resolution shall become effective immediately upon its adoption.

This Resolution is PASSED AND ADOPTED in Regular Session, this 23 day of May, 2017

ATTEST:


Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


By: Curt Smith, Chairman

Approved by Board 5/23/17

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

Kimberly J. Powell
Print Name: Kimberly J. Powell

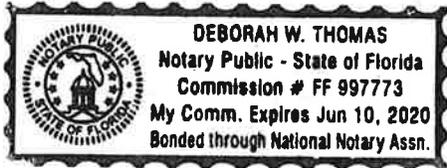
By: Curt Smith
Name: CURT SMITH
Title: CHAIRMAN

Tammy Rowe
Print Name: Tammy Rowe

ATTEST:
Scott Ellis
SCOTT ELLIS, CLERK

STATE OF FLORIDA
COUNTY OF BREVARD

The foregoing instrument was acknowledged before me this 25 day of July, 2017, by Curt Smith, as Chairman, 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: _____.



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

My Commission Expires: June 10, 2020

Attested to by:

Scott Ellis, Clerk

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

Ambarina Perez
Print Name: Ambarina Perez

Yvonne Bonilla
Print Name: YVONNE BONILLA

By: *Kolleen O.P. Cobb*
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: _____