

SIXTH AMENDMENT TO
EMBANKMENT FUNDING AGREEMENT

THIS SIXTH AMENDMENT TO EMBANKMENT FUNDING AGREEMENT (“Sixth Amendment”) 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 **BRIGHTLINE TRAINS FLORIDA LLC F/K/A VIRGIN TRAINS USA FLORIDA LLC F/K/A BRIGHTLINE TRAINS LLC F/K/A ALL ABOARD FLORIDA – OPERATIONS LLC**, a Delaware corporation, with a principal address 350 NW 1st Avenue, Suite 200, Miami, Florida, 33128 (the “Rail Company”).

WITNESSETH:

WHEREAS, the Parties hereto entered into that certain Amended and Restated Rail Line Easement Agreement with an effective date of July 19, 2021, 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 (the “Airport”) and which is fully incorporated herein by reference; and

WHEREAS, the Parties hereto entered into that certain Embankment Funding Agreement dated October 3, 2014, as amended by that certain First Amendment to the Embankment Funding Agreement dated December 23, 2015 (the “First Amendment”), that certain Second Amendment to the Embankment Funding Agreement dated January 30, 2017 (the “Second Amendment”), that certain Third Amendment to the Embankment Funding Agreement dated May 22, 2017 (the “Third Amendment”), that certain Fourth Amendment to the Embankment Funding Agreement dated October 14, 2019 (“Fourth Amendment”), and that certain Fifth Amendment to the Embankment Funding Agreement and Sixth Amendment to the Escrow Extension Agreement, dated September 8, 2020 (collectively, the “Funding Agreement”); and

WHEREAS, the Funding Agreement provided terms under which Rail Company provided funding to the Authority for the Authority to complete work on behalf of the Rail Company due to timing or proximity of the work, including the south embankment; and

WHEREAS, the Authority completed work on the South Abutment and embankment which included the design and construction of a culvert known as Cross Drain 70 (CD-70), over which the train tracks and embankment are now constructed, which is owned and to be maintained by the Authority; and

WHEREAS, Rail Company is required to complete and certify a Bridge Management Plan to the Federal Rail Administration, pursuant to 49 CFR Part 237 prior to operation of the Rail

Transportation Business (“FRA Certification”); and

WHEREAS, Rail Company provided notice to the Authority in the fall of 2022 of a deficiency of the design of CD-70 that it discovered during the determination of bridge load capacities for the FRA Certification, such that it was unable to certify CD-70, and the parties initiated a collaborative process to review the issue and determine a course of action; and

WHEREAS, the parties determined that a revised design and construction retrofit solution was required and after significant coordination and review agreed upon said solution to be funded by the Authority as set forth herein; and

WHEREAS, due to the schedule sensitivity for Rail Company, the Authority will provide funding pursuant to the terms of this Sixth Amendment and Rail Company will complete the design and construction of the retrofit to CD-70, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration 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 or as defined herein.
3. **CD-70 Plan**. The parties have determined that inserting three 108” corrugated metal pipes into the CD-70 and grouting them in place at each side is the preferred option as it is the shortest duration to completion and least expensive of options reviewed by the parties. Attached hereto as Exhibit “A” is a more complete description for the work to be completed by Rail Company (the “CD-70 Work”). The complete duration of the work is estimated at eight (8) weeks, comprised of four (4) weeks for procurement of materials and four (4) weeks of construction.
4. **Funding**. Rail Company has provided a quote for the CD-70 Work and the current estimate for the work is as follows:

Item	Cost
Middlesex Quote	\$557,222.00
Insurance Cost (1% of Cost of Work)	\$5,600.00
HNTB Design (Fixed Fee)	\$20,160
Contract Administration (Fixed Fee)	\$16,500
Contingency	\$83,500

Total	\$682,982.00
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The above is based on upon a quote from The Middlesex Corporation (“Middlesex”), utilizes galvanized corrugated metal pipe with a fifty-year design life, and assumes joint oversight by an Authority owners authorized representative and a Rail Company project manager. Moreover, as CD-70 was constructed by the Authority and is the Authority’s asset, in the event unforeseen conditions are encountered, additional funding may be required.

The Authority shall fund to the Rail Company the actual cost of the CD-70 Work up to a not to exceed amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) (the “NTE Funding”). The Authority shall make payment of fifty percent (50%) of the quote less contingency within fifteen (15) days of the Effective Date of this Sixth Amendment. At the completion of the CD-70 Work, Rail Company shall provide the final actual cost together with payment application, lien waivers, contractors final payment affidavit, support for any use of the contingency, and any other backup materials requested by the Authority as it specifically relates to the CD-70 Work (the “Final Payment Application”). The Authority shall have thirty (30) days to review the Final Payment Application and approve same, said approval shall not be unreasonably withheld, conditioned, or delayed.

In the event of an unforeseen condition which may result in additional funding above the NTE Funding, Rail Company shall provide notice of same in writing as soon as practicable along with details of the condition and a proposed change order which includes the requested funding. (“Change Order”). The Authority shall have fourteen (14) days to review the Change Order and approve, subject to funding, or deny with comments. If the Change Order is denied with comments, then Rail Company shall review and revise the Change Order and resubmit it to the Authority. The Authority shall have seven (7) days to review and approve or deny with comments any Change Order resubmittals. If the Change Order is approved, the Authority will proceed with its internal process to obtain funding, which will require approval by the Capital Finance Oversight Committee, the Authority Board, and, if unbudgeted, the City of Orlando.

5. CD-70 Contractor. Rail Company shall process a change order for the CD-70 Work with Middlesex, which was the contractor that was procured pursuant to Section 5(b)(ii) of the Easement Agreement for Zone 2 wherein this work is located. Pursuant to the Easement Agreement, the Rail Company and Contractor have already provided surety bonds, proof of insurance, and met all other contractual requirements to proceed with the CD-70 Work. It is expressly agreed and understood that the CD-70 Work is subject to the provisions of the Easement Agreement, including, but not limited to, Section 5(b)(ii) regarding procurement, Section 14 regarding indemnification, insurance and environmental, and Section 15 as to surety bonds.

6. Authority as Third Party Beneficiary. Rail Company’s contracts with its contractor Middlesex, specifically Change Order No. 23 to Contract C-202 GOAA Rail Infrastructure dated April 15, 2019, and its designer, HNTB Corp., specifically the Consulting Contract, dated

November, 2012 and Work Order 52 thereunder, shall include the Authority expressly as an intended third-party beneficiary (the "Contracts"). The Authority's third-party beneficiary status shall be limited to the portion of the Contracts relating to the CD-70 Work and shall provide the Authority all rights of Rail Company under said contracts, including, but not limited to, obtaining and enforcing all warranties for materials, workmanship, indemnity, insurance claims, and errors and omission as it may pertain to the Contracts. The Authority agrees that its remedies related to the CD-70 Work are limited to its third-party beneficiary rights as set forth herein and in the Contracts and releases Rail Company from said liability relating to the design and construction of the CD-70 Work, with the exception of any gross negligence or willful misconduct of Rail Company in oversight or directing the CD-70 Work.

7. Release. Upon execution of this Sixth Amendment and providing funding hereunder, Rail Company hereby releases the Authority from any and all liability or costs related to or arising out of any delays to the operation of the Rail Transportation Business caused directly or indirectly by the CD-70 Work.


8. Modification. Except as expressly amended and supplemented in this Sixth Amendment, all other terms of the Funding Agreement shall remain in full force and effect.

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[SIGNATURE LINES ON NEXT PAGE]

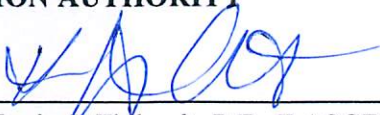
IN WITNESS WHEREOF, the parties hereto have each caused this Fourth Amendment to be executed by its authorized representative on the date so indicated below.

ATTEST:

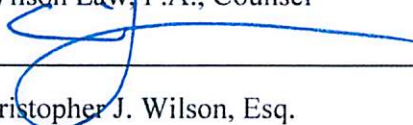
By: 
Anna Famer
Assistant Secretary

“AUTHORITY”

**GREATER ORLANDO
AVIATION AUTHORITY**

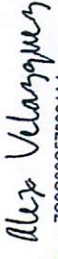
By: 
Kevin J. Thibault, P.E., F.ASCE
Chief Executive Officer
Date: 3/17/2023

APPROVED AS TO FORM AND LEGALITY this 16th day of March, 2023, for the use and reliance by the Greater Orlando Aviation Authority, only.

C.J. Wilson Law P.A., Counsel
By: 
Christopher J. Wilson, Esq.

**“RAIL COMPANY”
BRIGHTLINE TRAINS FLORIDA
LLC**

ATTEST:

DocuSigned by:

By: 769698657899444
Printed Name: Alex Velazquez
Title: VP, Controller


DocuSigned by:

By: 3780K3053557459
Printed Name: Patrick Goddard
Title: President
Date: 3/14/2023

Exhibit "A"
["CD-70 Work"]

The CD-70 Work includes all labor, equipment, and materials necessary to install approximately 60-linear feet of galvanized, 12-gauge, 108-inch inside diameter corrugated metal pipe ("CMP") in each of the three box culvert cells in accordance with the plans and specifications for the CD-70 Work. The CD-70 Work includes filling the entire void around the CMP with an approved cementitious grout. Without limitation, the CD-70 Work also includes all necessary incidental work such as: dewatering; silt removal; maintenance of traffic ("MOT"); and installation, maintenance, and removal of stormwater best management practices.

Middlesex, the contractor for the CD-70 Work, shall be solely responsible for furnishing all temporary works, temporary roadways, stabilized embankments, and MOT necessary to access the locations of the CD-70 Work in compliance with all applicable permits, laws, and regulations. Upon completion of the CD-70 Work, Middlesex shall restore all areas disturbed by the CD-70 Work to their condition prior to commencement.