

MEMORANDUM

Agenda Item No. 11(A)(16)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners


DATE: December 1, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving the Eighth Amendment to Joinder to Interlocal Agreement between Florida Development Finance Corporation and Orange County, Florida to permit Florida Development Finance Corporation to exercise its power and authority within jurisdictional limits of Miami-Dade County for purposes of financing capital projects in amount not to exceed \$28,000,000.00 on behalf of Brightline Trains Florida LLC and its affiliates

Resolution No. R-1186-21

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.



Geri Bonzon-Keenan
County Attorney

GBK/uw



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

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County Attorney

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(16)
12-1-21

RESOLUTION NO. _____ R-1186-21

RESOLUTION APPROVING THE EIGHTH AMENDMENT TO JOINDER TO INTERLOCAL AGREEMENT BETWEEN FLORIDA DEVELOPMENT FINANCE CORPORATION AND ORANGE COUNTY, FLORIDA TO PERMIT FLORIDA DEVELOPMENT FINANCE CORPORATION TO EXERCISE ITS POWER AND AUTHORITY WITHIN JURISDICTIONAL LIMITS OF MIAMI-DADE COUNTY FOR PURPOSES OF FINANCING CAPITAL PROJECTS IN AMOUNT NOT TO EXCEED \$28,000,000.00 ON BEHALF OF BRIGHTLINE TRAINS FLORIDA LLC AND ITS AFFILIATES

WHEREAS, pursuant to Chapter 93-187, Laws of Florida (1993), the Legislature of the State of Florida (“State”) adopted the Florida Development Finance Corporation Act of 1993, Chapter 288, Part IX, Florida Statutes (the “Act”); and

WHEREAS, pursuant to the provisions of the Act and, in particular section 288.9604 of the Act, the Florida Development Finance Corporation (“FDFC”) was created as a body corporate and politic of the State upon a finding of necessity by Orange County, Florida (“Orange County”), which county was selected to activate FDFC by a search committee of the Board of Directors of Enterprise Florida Capital Partnership, Inc., pursuant to Resolution 94-M-21 of the Board of County Commissioners of Orange County; and

WHEREAS, the Act further provides that, to efficiently and effectively achieve the purposes of the Act, it is necessary and in the public interest that the FDFC cooperate and act in conjunction with public agencies and local governments of the State through interlocal agreements pursuant to the Florida Interlocal Cooperation Act of 1969, as amended (“Interlocal Act”); and

WHEREAS, Orange County and the FDFC entered into that certain Interlocal Agreement, dated as of April 12, 1994 (the “Interlocal Agreement”), pursuant to which Orange County granted

the FDFC full right, power and authority to exercise any and all powers set forth in the Act and under the Interlocal Act (to the extent that the exercise of such powers is consistent with the purpose of the Act) within the jurisdictional limits of Orange County; and

WHEREAS, the Interlocal Agreement provides that any other public agency (as defined in the Act) may join in the Interlocal Agreement at any time for the purpose of granting FDFC the full right, power, and authority to exercise any and all powers set forth in the Act and under the Interlocal Act (to the extent that the exercise of such powers is consistent with the purposes of the Act) within the jurisdictional limits of such public agency by the execution of an addendum to the Interlocal Agreement; and

WHEREAS, in order to grant FDFC full right, power and authority to exercise any and all powers set forth in the Act and under the Interlocal Act (to the extent that the exercise of such powers is consistent with the purposes of the Act) within the jurisdictional limits of Miami-Dade County (the “County”) including without limitation the issuance of Bonds to finance projects, the County previously approved (i) a Joinder to Interlocal Agreement in 1998, as amended (“Joinder”), in which the County granted FDFC the authority to operate within the jurisdictional boundaries of the County for the purpose of financing projects in an amount not to exceed \$1,700,000.00 and with a termination date of three years from its date unless renewed by the County in writing; (ii) a First Amendment to Joinder to Interlocal Agreement in July of 2003 which increased the amount of bonds that FDFC is authorized to issue to \$2,000,000.00 and extended the termination date to any date on which the County delivered a written termination to FDFC; (iii) a Second Amendment to Joinder to Interlocal Agreement in October 2014 which increased the amount of indebtedness that FDFC is authorized to issue to \$325,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the All Aboard Florida Passenger Rail Project located in the County; (iv) a

Third Amendment to Joinder to Interlocal Agreement in December 2014 which increased the amount of indebtedness that FDFC is authorized to issue to \$30,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Miami Country Day School Project located in the County; (v) a Fourth Amendment to Joinder to Interlocal Agreement in June 2020 which increased the amount of indebtedness that FDFC is authorized to issue to \$210,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Mater Academy Miami-Dade Project located in the County; (vi) a Fifth Amendment to Joinder to Interlocal Agreement in August 2020 which increased the amount of indebtedness that FDFC is authorized to issue to \$23,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Archimedean Academy Project located in the County; (vii) a Sixth Amendment to Joinder to Interlocal Agreement in July 2021 which increased the amount of indebtedness that FDFC is authorized to issue to \$170,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Mater Academy Foundation, Inc. Project located in the County; and (viii) a Seventh Amendment to Joinder to Interlocal Agreement in July 2021 which increased the amount of indebtedness that FDFC is authorized to issue to \$325,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Miami-Dade Steel LLC Project located in the County; and

WHEREAS, Brightline Trains Florida LLC (F/K/A Virgin Trains USA Florida LLC, F/K/A Brightline Trains LLC And F/K/A All Aboard Florida – Operations LLC), through Brightline Holdings LLC (together and collectively with any parent, subsidiary or other affiliate, “Brightline”), is constructing, with the assistance of FDFC, a passenger rail line from Orlando’s International Airport to downtown Miami, a distance of 235 miles, with additional stops in Miami-Dade, Broward, and Palm Beach County, and developing a future expansion from Orlando

International Airport to Tampa, consisting of approximately 84 additional miles of rail line with speeds up to 150 miles per hour (collectively, the “Brightline Passenger Rail Project”); and

WHEREAS, the Brightline Passenger Rail Project will have a significant impact on the State’s economy, including approximately \$14,000,000,000.00 in economic impact, \$1,500,000,000.00 in tax revenues, over 1,000 currently employed contracted construction workers and 320 operations and management employees; and

WHEREAS, an estimated total of 750 permanent full-time equivalent jobs are expected to be created and employed by the project when operating the full system to Tampa; and

WHEREAS, the Brightline Passenger Rail Project will also have a significant impact on tourism, provide relief for the region’s roads and environment and act as a catalyst for the revitalization of South Florida’s downtown centers; and

WHEREAS, Brightline has applied to the First Florida Business Pool for tax exempt private activity bond allocation to partially fund the Brightline Passenger Rail Project in the amount of \$250,000,000.00 of private activity bond allocation, which is subject to volume cap and since volume cap is required for only 25 percent of the principal amount of the bonds, would allow the issuance of up to \$1,000,000,000.00 of bonds to finance the Brightline Passenger Rail Project; and

WHEREAS, the remaining cost of the improvements for the Brightline Passenger Rail Project to be located in Miami-Dade County is estimated not to exceed \$28,000,000.00 (net of grants) and FDFC has requested that the County enter into an Eighth Amendment to Joinder for the sole purpose of allowing FDFC to finance such costs through the Transportation Equity Act for the 21st Century, Pub.L. 105–178, or alternatively, through the issuance of taxable revenue bonds, or other forms of tax-exempt or taxable indebtedness; and

WHEREAS, the County shall have no obligation with respect to the repayment of any financing, including the issuance of the bonds, utilized by FDFC to fund the Project,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The foregoing recital clauses are incorporated in this resolution.

Section 2. The Board finds that it is in the best interest of the County and its citizens to assist FDFC in the financing of the Project, which will have a positive impact on the community where the Project is located, by entering into the Joinder as permitted under the Interlocal Act.

Section 3. The Eighth Amendment to Joinder in substantially the form attached to this resolution as Exhibit A is approved, and the County Mayor or County Mayor's designee is authorized, after consultation with the County Attorney's office, to execute and deliver such Eighth Amendment on behalf of the County.

Section 4. The execution of the Eighth Amendment to Joinder shall be solely for the purpose of satisfying the requirements of the Act in order to grant the FDFC the full right, power, and authority to exercise any and all powers set forth in the Act and under the Interlocal Act (to the extent that the exercise of such powers is consistent with the purposes of the Act) within the jurisdictional limits of the County solely for the purpose of financing the Project and shall not be construed as an approval of any zoning, building or other developmental or regulatory permit, and the County shall not be construed by virtue of its adoption of this resolution to have waived, or be estopped from asserting, any rights or responsibilities it may have in that regard.

Section 5. The County shall not be liable or responsible for any of the indebtedness, liabilities, costs, or expenses of FDFC. All debts, liabilities, costs and expenses incurred by FDFC shall be paid solely by the FDFC as permitted under the Act.

Section 6. Bonds, notes, or other indebtedness issued or insured by FDFC shall not constitute a debt, liability, or obligation of the County, or the State, or any political subdivision of each or a pledge of the faith and credit or any taxing power of the County or the State or any political subdivision thereof but shall be limited obligations of the FDFC.

The Prime Sponsor of the foregoing resolution is Chairman Jose “Pepe” Diaz. It was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

	Jose “Pepe” Diaz, Chairman	aye	
	Oliver G. Gilbert, III, Vice-Chairman	aye	
Sen. René García	absent	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Joe A. Martinez	aye
Kionne L. McGhee	aye	Jean Monestime	absent
Raquel A. Regalado	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

EXHIBIT A TO RESOLUTION

EIGHTH AMENDMENT TO JOINDER TO INTERLOCAL AGREEMENT

THIS EIGHTH AMENDMENT TO JOINDER TO INTERLOCAL AGREEMENT, is between Miami-Dade County (the “County”), a political subdivision of the State of Florida (the “State”), and the Florida Development Finance Corporation (the “FDFC”), a public body corporate and politic organized under the laws of the State.

WITNESSETH

WHEREAS, Orange County, Florida, and the FDFC have entered into that certain Interlocal Agreement, dated as of April 12, 1994 (the “Interlocal Agreement”), providing for the activation of the FDFC, pursuant to the provisions of the Florida Development Finance Corporation Act of 1993, as amended (the “Act”); and

WHEREAS, the Act and the Interlocal Agreement provide that any other public agency (as defined in the Act) may enter into an Interlocal Agreement in order to permit FDFC to function within the corporate limits of such public agency; and

WHEREAS, the County is a public agency as defined in the Act and has previously entered into (i) a Joinder to Interlocal Agreement in 1998, as amended (“Original Joinder”), in which the County granted FDFC the authority to operate within the jurisdictional boundaries of the County for the purpose of financing projects in an amount not to exceed \$1,700,000.00 and with a termination date of three years from its date unless renewed by the County in writing; (ii) a First Amendment to Joinder to Interlocal Agreement in July of 2003 which increased the amount of bonds that FDFC is authorized to issue to \$2,000,000.00 and extended the termination date to any date on which the County delivered a written termination to FDFC; (iii) a Second Amendment to Joinder to Interlocal Agreement in October 2014 which increased the amount of indebtedness that FDFC is authorized to issue to \$325,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the All Aboard Florida Passenger Rail Project located in the County; (iv) a Third Amendment to Joinder to Interlocal Agreement in December 2014 which increased the amount of indebtedness that FDFC is authorized to issue to \$30,000,000.00 for the sole purposes of permitting FDFC to fund that portion of the Miami Country Day School Project located in the County; (v) a Fourth Amendment to Joinder to Interlocal Agreement in June 2020 which increased the amount of indebtedness that FDFC is authorized to issue to \$210,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Mater Academy Miami-Dade Project located in the County; (vi) a Fifth Amendment to Joinder to Interlocal Agreement in August 2020 which increased the amount of indebtedness that FDFC is authorized to issue to \$23,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Archimedean Academy Project located in the County; (vii) a Sixth Amendment to Joinder to Interlocal Agreement in July 2021 which increased the amount of indebtedness that FDFC is authorized to issue to \$170,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Mater Academy Foundation, Inc. Project located in the County; and (viii) a Seventh Amendment to Joinder to Interlocal Agreement in July 2021 which increased the amount of indebtedness that FDFC is authorized to issue to \$325,000,000.00 for the sole purpose of permitting FDFC to fund that portion of the Miami-Dade Steel LLC Project located in the County; and

WHEREAS, FDFC has requested that the County enter into this Eighth Amendment to the original Joinder (the “Eighth Amendment”) for the sole purpose of increasing the cap from \$2,000,000.00 to \$28,000,000.00 specifically for the Brightline Passenger Rail Project being undertaken by Brightline Trains Florida LLC through Brightline Holdings LLC together and collectively with any parent, subsidiary or other affiliate (collectively, “Brightline”).

NOW, THEREFORE, the County and FDFC agree as follows:

1. FDFC may issue up to \$28,000,000.00 in bonds or other form of indebtedness specifically for the portion of the Brightline Passenger Rail Project located within the jurisdictional limits of the County.
2. The County shall file an executed copy of this Eighth Amendment with the Clerk of the Circuit Court of the County, provided, however, that the cost of such filing shall be the responsibility of FDFC.
3. Except as amended in Section 1 above, the terms of the Original Joinder (as amended in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Amendments), including specifically the \$2,000,000.00 cap for all other borrowers or projects, shall remain in full force and effect and shall be binding on the County and FDFC.

[Signature page to follow]

IN WITNESS WHEREOF, the County and FDFC have caused this Eighth Amendment to Joinder to Interlocal Agreement to be executed by its officers and shall become effective on the latest date set forth below.

MIAMI-DADE COUNTY, FLORIDA

Attest:

Deputy Clerk

By: _____
Name: _____
Title: _____
Date: _____

(Seal)

Approved for form
and legal sufficiency.

By: _____

FLORIDA DEVELOPMENT FINANCE
CORPORATION

By: _____
Name: _____
Title: _____
Date: _____

Attest:

Assistant Secretary

(Seal)