

SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

FINGER LAKES RAILWAY CORP.

**FIRST AMENDMENT TO
PAYMENT IN-LIEU-OF-TAX AGREEMENT**

**Railway Properties
Towns of Dix and Reading and the Village of Watkins Glen**

**Tax Map Numbers:
43.00-1-44, 65.09-1-80 and 65.14-2-33**

Dated as of May 1, 2025

Affected Tax Jurisdictions:

Schuyler County
Town of Dix
Town of Reading
Village of Watkins Glen
Watkins Glen Central School District

FIRST AMENDMENT TO PAYMENT IN-LIEU-OF-TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN-LIEU-OF TAX AGREEMENT, dated as of May 1, 2025 (this “Agreement”), is by and between the **SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at 910 South Decatur Street, Watkins Glen, New York 14891 (the “Agency”) and **FINGER LAKES RAILWAY CORP.**, a foreign business corporation of the State of Delaware and registered to conduct business within the State of New York with an address of P.O. Box 1099, Geneva, New York 14456 (the “Company”).

WITNESSETH:

WHEREAS, the Agency was created by Chapter 21 of the Laws of 1971 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”), as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Agency and Company previously undertook a certain project (herein, the “Project”) consisting of the acquisition, operation and maintenance of the “Geneva Cluster” of rail lines located within Yates County, Schuyler County, Seneca County, Cayuga County, Onondaga County and Ontario County, such Project having been primarily undertaken by the Agency and the Company pursuant to a certain Lease Agreement, dated as of July 21, 1995 (the “1995 Lease”), and as a “Railroad Facility” authorized and approved in 1995 by the New York State Department of Transportation (“NYSDOT”) pursuant to and in accordance with Section 854(11) of the Act; and

WHEREAS, pursuant to the renewal terms of the 1995 Lease, the Agency previously approved an additional ten (10) year term for the 1995 Lease, which was contemplated within the Lease as the second renewal term subject to discretion of the Agency, the Agency and Company entered into a certain Amended and Restated Lease Agreement, dated as of February 12, 2016 (the “2016 Lease”), a Memorandum of which was recorded in the Office of the Schuyler County Clerk on August 5, 2016 at Book 58 at Page 337 and as Instrument Number 1308 (the “2016 Lease Memorandum”), along with a related Lease Agreement from Company to Agency (the “Underlying Lease”), a Memorandum of which was recorded in the Office of the Schuyler County Clerk on August 5, 2016 at Book 58 at Page 330 and as Instrument Number 1307 (the “Underlying Lease Memorandum”, and, together with the 2016 Lease, the 2016 Lease Memorandum and the Underlying Lease, the “Leases”), an Environmental Compliance and Indemnification Agreement given by the Company to the Agency, dated as of February 12, 2016 (the “2016 ECA”), a certain Payment in Lieu of Tax Agreement, dated as of February 12, 2016 (the “2016 PILOT Agreement”), and a certain Facility Occupations Agreement, dated as of March 31, 2016, and entered into by the Agency and the Company (collectively, the “2016

Agency Documents”), wherein the 2016 Agency Documents are set to expire as of June 30, 2025; and

WHEREAS, the Company submitted an application to the Agency (the “Application”) requesting the Agency’s continued and additional assistance for the Project, which would consist of (i) the omnibus amendment to the 2016 Agency Documents to provide a defined extension period of time to continue the undertaking of the Project; (ii) the provision of additional financial assistance to the Company (as detailed herein), and (iii) the continuation of the existing straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, by Resolution dated April 9, 2025 (the “Resolution”), the Agency authorized the undertaking of the Project and appointed the Company to act as its agents for the purpose of acquiring, constructing and/or equipping the Facility, all subject to the Company entering into this Agreement, wherein the Agency and the Company agree to the extension and modification of the 2016 Agency Documents, including certain business terms and the provision of an additional ten (10) year term for the 2016 Agency Documents and Straight Lease Transaction (collectively, the “Modification”); and

WHEREAS, concurrently herewith, the Agency and Company have executed and delivered a certain Omnibus Amendment Agreement, dated as of the date hereof (the “Omnibus Amendment”), such Omnibus Amendment extending and amending certain terms of the Underlying Lease Agreement, 2016 Lease Agreement, 2016 ECA and Facilities Occupations Agreement; and

WHEREAS, the parties hereto desire to memorialize the First Amendment to the 2016 PILOT Agreement, as approved by the Agency pursuant to the Resolution.

WHEREAS, pursuant to the Section 874(1) of the Act, the Resolution, the Omnibus Amendment and this Agreement, the Agency’s continued interests in the Facility (as defined within the 2016 Agent Documents) shall continue to be exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; and

WHEREAS, pursuant to this Agreement, the Agency and the Company shall memorialize and deem it necessary and proper to enter into an agreement making continued provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Schuyler County (the “County”), the Towns of Reading and Dix (the “Towns”), the Village of Watkins Glen (the “Village”) and the Watkins Glen Central School District (hereinafter

the “School District” or “School” and, collectively with the County, Towns and Village, the “Affected Tax Jurisdictions”); and

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

ARTICLE I

AMENDMENTS TO 2016 PILOT AGREEMENT

Section 1. A new Section 1.1(A)(i) is hereby added to the 2016 PILOT Agreement, to read as follows:

Section 1.1(A)(i) – Prior Exemption Continued; Payment in lieu of Ad Valorem Taxes:

A(i). The parties acknowledge and agree that the Facility has been exempt from Real Property taxes (as defined below) due to the Agency’s fee ownership of the Facility since July 21, 1995. Pursuant to the Resolution, the Omnibus Amendment and this First Amendment to PILOT Agreement, the Facility shall remain exempt from Real Property Taxes for the term of the Agency Lease Agreement, as amended. For information purposes, and prior to the taxable status date of **March 1, 2026** (the “Taxable Status Date”), the Agency shall file New York State Form RP-412-a Application For Real Property Tax Exemption (the “Exemption Application”) under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act to the appropriate assessors to advise regarding the Agency Lease Agreement and this Agreement. The Facility shall continue to be prospectively exempt from Real Estate Taxes. For purposes of the foregoing “Real Estate Taxes” means all general levy real estate taxes levied against the Facility by and County, City, Town, Village and School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Agency Lease Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied or revoked for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a “project” under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes

except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

Section 2. Section 1.2 of the 2016 PILOT Agreement is amended to read as follows:

1.2 Allocation. Subject to the provisions the Omnibus Amendment Agreement and Section 854(17) of the Act, the Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

Section 3. Section 1.5 of the 2016 PILOT Agreement is amended to read as follows:

1.5 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2016 County and Town tax year through the 2034 County and Town tax year; (ii) the 2016-2017 School tax year through the 2033-2034 School tax year; and (iii) the 2016-2017 Village tax year through the 2033-2034 Village tax year. This PILOT Agreement shall expire on December 31, 2034; provided, however, the Company shall pay the 2035 County and Town tax bills and the 2034-2035 School and Village tax bills on the dates and in the amounts as if the Agency were not in title on the tax status date with respect to said tax years. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed), supersede and are in substitution of the exemptions provided by RPTL and any other applicable exemption program. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

Section 4. Section 4.2 of the 2016 PILOT Agreement is amended to read as follows:

4.2 On or before December 31, 2032, the Company shall request the NYS Office of Real Property Services, Tax and Finance, Rail Ceiling Division, along with appropriate real estate tax assessment office and tax levy officers to provide all applicable rail ceiling assessment figures to prospectively assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company. All such requests shall be copied to the Agency on or before **December 31, 2032**, and failure to timely

request same with the Agency copied shall constitute an Event of Default hereunder and pursuant to the 2016 Lease Agreement, as amended. The Company shall further file any and all Facility cost documentation, Facility reports, accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

Section 5. **Schedule A** to the 2016 PILOT Agreement is amended to read as **Schedule A**, attached hereto.

Section 6. A new Section 4.3 is hereby added to the 2016 PILOT Agreement, to read as follows:

Section 4.3 **Valuation of Future Additions to the Facility:** If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, including any Facility Expansion, as defined within the Resolution, Agent Agreement, and/or the 2016 Lease Agreement, as amended, the Company shall notify the Agency of such future addition (“Future Addition”). The notice to the Agency shall contain a copy of any application for a building permit, plans and specifications, and any other relevant information that the Agency may thereafter reasonably request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Total PILOT Payment until a different Total PILOT Payment shall be established. If a lesser Total PILOT Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency’s sole discretion, such excess payment shall be applied as a credit against the next succeeding Total PILOT Payment(s).

Section 7. A new Section 4.4 is hereby added to the 2016 PILOT Agreement, to read as follows:

Section 4.4. The Company acknowledges receipt of the Agency’s Uniform Tax Exemption Policy and Project Recapture and Termination Policy, the terms of which are incorporated by reference. The Company acknowledges and agrees that, in addition to any other remedies that may be available to the Agency, all or part of the benefits conferred on the Company hereunder may be subject to recapture pursuant to the provisions of such Uniform Tax Exemption Policy and Project Recapture and Termination Policy.

ARTICLE II

MISCELLANEOUS

Section 1. This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

Section 2. All notices, invoices, claims and other communications hereunder shall be in writing and shall be deemed to be duly given if personally delivered or mailed first class, postage prepaid, or by nationally-recognized overnight courier, as follows:

To the Agency: Schuyler County Industrial Development Agency
216 North Franklin Street
Watkins Glen, New York 14891
Attn: Executive Director
Email: judy@flxgateway.com

And to: Harris Beach Murtha Cullina PLLC
677 Broadway, Suite 101
Albany, New York 12207
Attn: Justin S. Miller, Esq.
Email: jmiller@harrisbeach.com

To the Company: Finger Lakes Railway Corp.
P.O. Box 1099
Geneva, New York 14456
Attn: R. Eric Betke, President

With a Copy to: Whiteman Osterman & Hanna LLP
One Commerce Plaza, 19th Floor
Albany, New York 12260
Attn: Robert M. Gach, Esq.
Email: rgach@woh.com

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.
given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

Section 8.2 of the 2016 PILOT Agreement is amended and restated in its entirety by the contents of this Section 2.

Section 3. This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New

York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Schuyler County, New York.

Section 4. Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents, servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

(Remainder of page intentionally left blank)

[Signature Page to First Amendment to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT Agreement as of the day and year first above written.

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

FINGER LAKES RAILWAY CORP.

By: _____
Name: R. Eric Betke
Title: President

[Signature Page to First Amendment to PILOT Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to PILOT Agreement as of the day and year first above written.

**SCHUYLER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name: Judy McKinney-Cherry
Title: Chief Executive Officer

FINGER LAKES RAILWAY CORP.

By: *R. Eric Betke*
Name: R. Eric Betke
Title: President

[Acknowledgment Page to First Amendment to PILOT Agreement]

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

On the 14th day of May in the year 2025, before me, the undersigned, personally appeared R. ERIC BETKE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public
SALVADOR JOSEPH CAPECELATRO IV
Notary Public-State of New York
No. 02CA6426839
Qualified in Albany County
Commission Expires December 20, 2025

STATE OF NEW YORK)
) ss.:
COUNTY OF SCHUYLER)

On the ___ day of May in the year 2025, before me, the undersigned, personally appeared JUDY MCKINNEY-CHERRY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Acknowledgment Page to First Amendment to PILOT Agreement]

STATE OF)
) ss.:
COUNTY OF)

On the ___ day of May in the year 2025, before me, the undersigned, personally appeared R. ERIC BETKE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF SCHUYLER)

On the 9th day of May in the year 2025, before me, the undersigned, personally appeared JUDY MCKINNEY-CHERRY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MICHELL A. KROSSBER
Notary Public, State of New York
Reg. No. 01KR0009211
Qualified in Steuben County
Commission Expires June 07, 2027

SCHEDULE A

**TO PILOT AGREEMENT DATED AS OF FEBRUARY 12, 2016,
AND AMENDED AS OF MAY 1, 2025**

**SCHUYLER COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AND
FINGER LAKES RAILWAY CORP.**

“Total PILOT Payment” shall be calculated as follows:

The Company shall timely report Annual Freight Revenue, as defined below, to the Agency pursuant to Section 5.5(b) of the Agency Lease Agreement, as amended, and that certain Agent and Financial Assistance and Project Agreement, each dated as of May 1, 2025, for the Company’s fiscal year immediately preceding the Payment Date in the table below.

The Company’s report shall include a calculation of 3.5% of Annual Freight Revenue, along with a calculation of 5/6 of such Annual Freight Revenue (the “Annual PILOT Revenue”).

The Company’s report shall also include a calculation of 1/5 of the Annual PILOT Revenue payable to the Agency as the Total PILOT Payment. Payable to the Agency in accordance with the table below.

PILOT Year	Town and County Tax Year	School Tax Year	Village Tax Year	Payment Date
1	2025	2024-25	2024-25	May 15, 2025
2	2026	2025-26	2025-26	May 15, 2026
3	2027	2026-27	2026-27	May 15, 2027
4	2028	2027-28	2027-28	May 15, 2028
5	2029	2028-29	2028-29	May 15, 2029
6	2030	2029-30	2029-30	May 15, 2030
7	2031	2030-31	2030-31	May 15, 2031
8	2032	2031-32	2031-32	May 15, 2032
9	2033	2032-33	2032-33	May 15, 2033
10	2034	2033-34	2033-34	May 15, 2034

“Annual Freight Revenue” shall include line haul revenue, including the Company’s share of interline freight revenue, and the Company’s intraline freight revenue, assessed fuel charges, haulage charges for the benefit of Ontario Central traffic, minus any freight

adjustments, inclusive of all of the foregoing Annual Freight Revenue generated in the Counties of Onondaga, Cayuga, Ontario, Seneca, Yates and Schuyler.

$(\text{Annual Freight Revenue} \times 3.5\%) \times 1/5 = \text{Total PILOT Payment.}$