




Office of
**INDIAN RIVER COUNTY
ATTORNEY**

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MEMORANDUM

TO: Board of County Commissioners

FROM: Dylan Reingold, County Attorney 

DATE: November 19, 2018

SUBJECT: Martin County, Indian River County, Indian River County Emergency Services District, CARE-FL and Brightline Trains LLC Litigation

BACKGROUND.

On March 17, 2015, the Indian River County Board of County Commissioners (the "Board") authorized the County Attorney's Office to file a complaint in federal court challenging the U.S. Department of Transportation's (USDOT's) approval of the issuance of the \$1.75 billion of tax exempt private activity bonds for the All Aboard Florida project. On March 24, 2015, the Board authorized the County Attorney's Office to include the Emergency Services District as a plaintiff in the case. As the Board is aware, as a result of the decision in that case, the USDOT withdrew its private activity bond allocation for Phase II of the All Aboard Florida project.

On December 19, 2017, the Board authorized the County Attorney's Office to file a lawsuit against the USDOT in conjunction with issuance of the Record of Decision for Phase II of the All Aboard Florida project. On February 13, 2018, Martin County, Indian River County and CARE-FL filed a lawsuit in federal court challenging the validity of the private activity bonds and the National Environmental Policy Act ("NEPA") process for Phase II of the All Aboard Florida project. The parties have filed all of the papers with the court, and the court has scheduled oral argument for November 27, 2018.

This fall, Brightline expressed a willingness to engage Martin County, Indian River County and CARE-FL in settlement discussions. As a result of these discussions, the parties have negotiated a settlement that would address many of the concerns raised by the Counties and CARE-FL. Although the terms have not been finalized, the County Attorney's Office wishes to present the general framework for a final settlement agreement between the parties. The Martin County Board of County Commissioners will be considering this matter at its meeting on November 20, 2018.

As part of a settlement agreement, Brightline is agreeing to install additional safety measures in both Martin County and Indian River County above that required by the Federal Railroad Administration. The additional improvements in Indian River County include exit gates and vehicle presence detection at Roseland Road, 1st Street and 4th Street. This will mean all of the crossings in the unincorporated areas of Indian River County will have exit gates and vehicle presence detection. The improvements will also include improving the vertical transition pedestrian and bicycle facilities at a number of highway railroad crossings in the unincorporated areas of Indian River County. Brightline will pay for the installation of these improvements.

Brightline is also agreeing to install fencing in both Indian River County and Martin County. Brightline will install fencing—at Brightline’s expense—where required or recommended by the Federal Railroad Administration at its own cost. Additionally, Brightline will pay for the installation of up to \$1,000,000 of fencing in Martin County and \$1,000,000 of fencing in Indian River County. For this fencing, the counties will be responsible for the maintenance of the fencing and Florida East Coast Railway (“FECR”) license fees.

Brightline will also work with the counties with respect to accidents at the crossings. Brightline will promptly notify first responders in the impacted county or municipality of any such accidents with cars or pedestrians. Brightline will meet with Martin and Indian River first responders and engineering employees no less than annually to review all accidents in the counties from the preceding year and jointly evaluate if additional actions are necessary to prevent similar accidents.

Additionally, with respect to the cost of maintenance at the intersections, there will be a 14-year cap on the total amount invoiced by FECR for road surface, signal, and other crossing maintenance and rehabilitation costs each calendar year, with Brightline paying the balance of such costs. The annual cap will start when Brightline begins passenger revenue operations from West Palm Beach to Orlando. The annual maintenance costs during the 14 years will actually be lower than that having been paid by Indian River County over the past several years. This benefit will be available to municipalities within Indian River as well. Additionally, the maintenance costs in years 15, 16 and 17 will also have a cap, which will prevent Brightline and FECR from pushing off major improvements until after the cap is removed. Indian River County’s annual maintenance costs will be slightly lower than that of Martin County.

Also, within five (5) years of commencement of Brightline's passenger revenue train service from West Palm Beach to Orlando, Brightline will build at least one train station in Martin, St. Lucie, or Indian River County. Brightline will have at least two northbound and two southbound trains stop at the station each day. The applicable local government and Brightline will be splitting the cost of the construction of the station(s).

Brightline will also be addressing safety and navigability issues pertaining to the Loxahatchee and St. Lucie River Bridges and partnering with Martin County on a pedestrian flyover.

As part of the agreement, Indian River County and Martin County will dismiss the current lawsuits on November 26th. Additionally, Martin County and Indian River County will not oppose or challenge, or encourage others to oppose or challenge, any pending or future federal, state, or local approval, permit, or authorization relating to the Brightline Project, or the financing of the Brightline Project. There will also be a limitation on seeking additional review relating to the improvements Brightline will make as part of the agreement during the period of construction and the first five (5) years of Brightline passenger revenue operations between West Palm Beach and Orlando.

Additionally, during the period of construction and the first three (3) years of Brightline passenger revenue operations between West Palm Beach and Orlando, Martin County and Indian River County will not pass any resolution or adopt any other official act that publicly supports or actively encourages third parties to support any federal or state legislation, or new County laws or regulations that would directly and adversely impact the Brightline Project. And Martin County and Indian River County also agree not to pass any resolution or adopt any other official act that publicly supports or actively encourages others to support any federal, state, county, or local laws or regulations that would directly and adversely impact Brightline's ability to comply with any term of the settlement agreement or vary any commitment made under the settlement agreement.

The parties will also agree to a mutual release of all claims against the other parties.

The County Attorney's Office believes that this settlement framework is the best proposal that could be obtained for Indian River County, Martin County and the community and that this proposal will no longer be available once the oral argument is conducted on November 27th. The County Attorney's Office believes that this settlement would provide significant safety and financial benefits to the County and its citizens.

RECOMMENDATION.

The County Attorney's Office recommends that Indian River County Board of County Commissioners consider the framework of a settlement agreement. If the Board wishes to enter into a settlement agreement, the County Attorney's Office recommends that the Board adopt a resolution approving the settlement agreement and authorize the chair to execute the settlement agreement and any and all documents necessary to effectuate the settlement agreement, after review and approval by the County Attorney.