



Office of  
**INDIAN RIVER COUNTY  
ATTORNEY**

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Dylan Reingold, County Attorney  
William K. DeBral, Deputy County Attorney  
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**MEMORANDUM**

**TO:** Board of County Commissioners  
**FROM:** Dylan Reingold, County Attorney  
**DATE:** June 2, 2021  
**SUBJECT:** Brightline Settlement Agreement

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**BACKGROUND.**

On January 16, 2019, Indian River County filed a complaint for declaratory relief against Brightline Trains, LLC and Florida East Coast Railway, LLC concerning the costs for the installation and maintenance of Brightline's highway-railroad crossing safety improvements.

Senator Mayfield has worked with the Florida Department of Transportation and her colleagues in the Florida Legislature and Brightline to have the safety improvements requested by Indian River County be installed at no cost to Indian River County. In exchange, Indian River County was requested to drop its last remaining lawsuit. County staff believes that the installation of the necessary safety improvements is the highest priority for the citizens of Indian River County. Thus, the County Attorney's Office presents to this Indian River County Board of County Commissioners a settlement agreement with Brightline that memorializes this compromise.

As part of the settlement agreement, the parties agree to fully cooperate in the pursuit of various grants for the funding of the additional improvements, which are estimated to cost \$31,604,565. Additionally, although the County will pay for the improvements at 41st Street, 45th Street, and 49th Street, and the sidewalk to be installed on one side of 65th Street from the west right-of-way line of Old Dixie Highway, to the FECR right-of-way line on the west side of the tracks, the parties have agreed to cooperate on the installation of such improvements and the costs will be capped at \$905,000. These costs would always have been borne by the County, but coordinating the timing of these improvements with Brightline's crossing improvements will minimize the traffic impacts.

Under the settlement agreement, Brightline will submit to FDOT and Indian River County the plans and specifications for the crossing improvements and a maintenance of traffic plan. FDOT and Indian River County will then have the opportunity to review the plans for compliance with the settlement agreement, and applicable federal, state, and local requirements and regulations. Indian River County will be included in all aspects of the review process and will have ten business days to provide comments to FDOT for inclusion in the comments provided to Brightline. If, after considering Indian River County's input, FDOT determines that plans are approvable or that a design exception or waiver of requirements or

regulations is warranted, FDOT shall discuss the design exceptions or waivers with Indian River County. The settlement agreement states that in the event of such dispute between Indian River County and FDOT, FDOT's written approval determination to the County and Brightline on the issue will control. FDOT's written determination on the issue will control. Brightline will be required to apply for and obtain Indian River right-of-way permits for work in the County right-of-way. Under the settlement agreement, Brightline will not be required to post security; however, Brightline is required to cause its general contractor to add Indian River County as an additional obligee of any performance bond obtained by the general contractor(s) performing the crossing-related work, with such additional obligee rights being limited to the value and scope of the crossing-related work to be performed at the crossings within Indian River County's right-of-way. If Indian River County fails to approve Brightline's maintenance of traffic plans or issue a specific right-of-way permit within five business days of receiving the applications, and such failure is not cured within three business days of receipt of written notice thereof, Brightline will have no obligation to install or pay for the additional crossing improvements associated with the particular application. Indian River County will also cooperate with Brightline in its efforts to obtain any approval and/or permit needed from third-parties for any crossing-related work.

The parties will release all claims they have against each other, except that Indian River County will not be releasing the claims for the construction related damage identified in the settlement agreement. Indian River County also shall not take any other action challenging Brightline's ability to operate within the FECR right-of-way; provided, however, this shall not limit Indian River County's ability to support or lobby for laws or regulations affecting Brightline's operation within the FECR right-of-way.

Exhibit B are the plans that FDOT had previously approved and Exhibit E will be attached as soon as the list of claims for construction damage is finalized.

The County Attorney's Office recommends that the Indian River County Board of County Commissioners vote to approve the settlement agreement and authorize the chair to execute any and all documents necessary to effectuate the settlement agreement. The County Attorney's Office also recommends the Board waive the Purchasing Manual requirements consistent with the settlement agreement.

### **FUNDING.**

Funding for these expenses are not currently budgeted, but will be added to the 21/22 Capital Improvement Element.

### **RECOMMENDATION.**

The County Attorney's Office recommends that the Indian River County Board of County Commissioners vote to approve the settlement agreement and authorize the chair to execute any and all documents necessary to effectuate the settlement agreement. The County Attorney's Office also recommends the Board waive the Purchasing Manual requirements consistent with the settlement agreement.

### **ATTACHMENT(S).**

Settlement Agreement