

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into as of May ___, 2021 (the “Effective Date”), by Indian River County, Florida, a political subdivision of the State of Florida (“Indian River”), and Brightline Trains Florida LLC, f/k/a Brightline Trains LLC (“Brightline”) (collectively, the “Parties”).

RECITALS

WHEREAS, Indian River is a political subdivision of the State of Florida which is governed by a Board of County Commissioners (the “IRCBCC”);

WHEREAS, Brightline is a corporate entity tasked with developing and operating express passenger rail service between Miami and Orlando, Florida (the “Brightline Project”);

WHEREAS, the bulk of Brightline’s planned passenger service route, including the portion which will pass through Indian River, will use Florida East Coast Railway LLC’s (“FECR”) existing railroad right-of-way (the “FECR ROW”);

WHEREAS, within Indian River, there are 32 locations where the FECR ROW intersects with an existing roadway, as set forth in Exhibit A (the “Indian River Crossings”);

WHEREAS, each of the Indian River Crossings is subject to an independent crossing agreement with FECR (the “Existing Indian River Crossing Agreements”);

WHEREAS, 21 of the Indian River Crossings involve roadways within Indian River’s permitting jurisdiction (the “County Roadways”);

WHEREAS, to accommodate Brightline’s express passenger service, Brightline is upgrading the portion of the FECR ROW within Indian River by, among other things, improving the Indian River Crossings;

WHEREAS, Indian River has filed a Complaint for Declaratory Judgment against Brightline and FECR in Florida Circuit Court, Case No. 16-2019-CA-003051-XXXX-MA (the “Indian River Crossing Litigation”); and

WHEREAS, the Parties desire to settle their differences in order to avoid the time, expense, and uncertainty of further litigation.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, and other good and valuable consideration the receipt and the sufficiency of which are acknowledged, the Parties hereby agree as follows:

1. Incorporation of Definitions and Recitals. The definitions and recitals above are incorporated herein by reference and made a substantive part of this Settlement Agreement.

2. Indian River Crossing Designs and Maintenance.

(a) Brightline shall be responsible for installing and paying for the cost of the improvements to the Indian River Crossings set forth in Exhibit B (the “Planned Crossing Improvements”). Indian River accepts the portions of the Planned Crossing Improvements which are located within the FECR ROW.

(b) Brightline shall also install the additional improvements listed in Exhibit C (the “Additional Crossing Improvements”). Brightline shall be responsible for the cost of the Additional Crossing Improvements, except for (A) the railroad crossing panels to be installed at a width sufficient to accommodate future Indian River road widening projects planned at 41st Street, 45th Street, and 49th Street, and (B) the sidewalk to be installed on one side of 65th Street from the west side of County Road 5A to the FECR ROW line on the west side of the tracks (together, the “Indian River Funded Improvements”). It is contemplated that Brightline will fund the cost of the Additional Crossing Improvements for which it is responsible through a combination of sources, including: (i) a Federal grant or grants including, but not limited to a grant through the Rebuilding American Infrastructure with Sustainability and Equity (“RAISE”) program, the Consolidated Rail Infrastructure and Safety Improvements (“CRISI”) program, and/or the Better Utilization Investments to Leverage Development (“BUILD”) program (collectively, the “Federal Grant”), which Federal Grant is to be applied for by Indian River with support from the Florida Department of Transportation (“FDOT”), Brightline, and municipalities within Indian River County’s borders; (ii) a grant or grants or other contribution from the State of Florida and/or FDOT (collectively, the “State Grant”); and (iii) a contribution from Brightline. Indian River shall be responsible for the cost of the Indian River Funded Improvements. The contribution from Indian River shall be limited to \$905,000. The parties shall fully cooperate in the pursuit of the Federal Grant and State Grant, and they shall also designate the Additional Crossing Improvements as their highest priority request under the Federal Grant and State Grant programs. Indian River agrees to disburse its contribution for the Indian River Funded Improvements in accordance with the Local Government Prompt Payment Act, Fla. Stat. §§ 218.70, et seq. For purposes of the Local Government Prompt Payment Act, the Indian River Public Works Director shall be the agent or employee to which Brightline may submit its payment request or invoice. And for purposes of the Local Prompt Payment Act, not meeting the contract requirements means not performing work in accordance with approved plans and specifications. In the event that Brightline or Indian River seeks any additional federal, state, or other grant money to defray the cost of any Additional Crossing Improvement, the other party shall coordinate in good faith with such efforts. The parties acknowledge and agree that the Additional Crossing Improvements are being made as an accommodation in furtherance of settlement and shall not be deemed an admission that the improvements are necessary or advisable at any particular location. Nor shall they be deemed precedent that similar improvements are necessary or advisable at any other location.

(c) Before Brightline commences construction at any Indian River Crossing, it shall submit to FDOT and Indian River the plans and specifications for the Planned and Additional Crossing Improvements at such crossing, and a maintenance of traffic plan for such work (the “Submissions”). FDOT and Indian River shall review said Submissions for compliance with Exhibits B and C, and applicable Federal, State, and Local requirements and regulations. Indian River shall be included in all aspects of the review process and shall have ten (10) business days to provide comments on the Submissions to FDOT for inclusion in the comments provided to

Brightline. Indian River's comments may address Federal, State, and Local requirements or regulations, but Indian River agrees that it shall not demand, request, or suggest any additional crossing-related improvements beyond those reflected in Exhibits B and C during this process. If, after considering Indian River's input, FDOT determines that the Submissions are approvable or that a design exception or waiver of existing requirements or regulations is warranted, FDOT shall discuss the design exceptions or waivers with Indian River and after discussions Indian River agrees to accept that determination. For avoidance of doubt, in the event of a dispute between Indian River and FDOT as to whether particular revisions are needed to render the Submissions approvable or whether design exceptions or waivers are appropriate, FDOT's written approval determination to the County and Brightline on the issue shall control. Once FDOT has approved the Submissions, Indian River shall separately approve the maintenance of traffic plan, as necessary to comply with Local requirements and regulations. In addition, before Brightline commences construction at any Indian River Crossing which will require work within Indian River's right-of-way, Brightline shall also apply for and obtain an Indian River right-of-way permit for each such crossing. Indian River agrees that, upon submission of each completed application, the application(s) shall be reviewed for conformance with the approved Submissions and the right-of-way permit shall be issued. No security requirement shall be required; however, Brightline shall cause its general contractor to add Indian River 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 Indian River Crossings within Indian River's right-of-way. If Indian River fails to approve Brightline's maintenance of traffic plans or issue a specific right-of-way permit as required herein within five (5) business days of receiving the applications, and said failure is not cured within three (3) business days of receipt of written notice thereof, Brightline shall have no obligation under this Agreement to install or pay for any of the Additional Crossing Improvements associated with the particular application for the specific crossing and may immediately proceed with construction work at Indian River Crossings within the FECR ROW without providing any additional notice or opportunity to cure under Section 6 below.

(d) For the Indian River Crossings which do not involve County Roadways, Indian River shall cooperate with Brightline in its efforts to obtain any approval and/or permit needed from third-parties for any crossing-related work. If Brightline, after making reasonable efforts for a period of not less than thirty (30) calendar days, is unable to obtain any necessary approval or permit for such work, it shall have no obligation under this Agreement to install or pay for any Additional Crossing Improvements at such locations.

(e) FECR shall not be required to apply for or obtain approval of any maintenance of traffic plan or permit for any of the Planned or Additional Crossing Improvements

3. Indian River Fencing.

(a) In accordance with FRA requirements and the FEIS, Brightline shall perform a Hazard Analysis within the timeframe provided by 49 C.F.R. § 270. That Hazard Analysis shall include an evaluation designed to determine the locations within Indian River where fencing of the FECR ROW is required or recommended for safety. Indian River shall not have any role in performing the Hazard Analysis. Brightline shall not be obligated to provide Indian River a copy of the Hazard Analysis in view of 49 C.F.R. § 270 which provides that the Analysis

is confidential and exempt from disclosure. Brightline shall instead provide Indian River with a list of the locations within Indian River where fencing of the FECR ROW was determined to be required or recommended for safety. Brightline shall install and maintain such fencing, at its own expense, within twelve (12) months of the start of passenger revenue service along that portion of the FECR ROW within Indian River County. Indian River shall have no responsibility, including but not limited to financial or liability, pertaining to the installation or maintenance of such fencing.

4. Dismissal of Indian River Crossing Litigation. On or before May ____, 2021, Indian River shall file a Joint Stipulation of Dismissal With Prejudice in the Indian River Crossing Litigation, in the form attached hereto as Exhibit D.

5. Commitments of Indian River Regarding the Brightline Project. Indian River acknowledges and agrees that it has evaluated the work currently proposed to be done within Indian River as part of the Brightline Project and has determined that the work to be done inside the FECR ROW is not subject to any Indian River approval or permitting requirements, other than maintenance of traffic to the extent that the work requires crossings to be closed. Indian River shall not seek to impose any county or local approval or permitting requirements with respect to the work to be done within the FECR ROW, other than maintenance of traffic if the work requires crossings to be closed. Indian River also shall not take any other action challenging Brightline's ability to operate within the FECR ROW; provided, however, that this shall not operate to limit Indian River's ability to support or lobby for laws or regulations affecting Brightline's operation within the FECR ROW.

6. Notice and Opportunity to Cure. Except as specifically provided herein, in the event that a Party alleges another Party to be in material breach of this Agreement, the Party alleging the material breach shall provide the other Party with written notice identifying with specificity the date and location of the perceived material breach and the provision of the Agreement breached ("Cure Notice"). The Party receiving such Cure Notice shall have thirty business (30) days from the time it receives the Cure Notice (the "Cure Period") to either (a) cure the alleged material breach and respond in writing, describing what remedial action has been taken, or (b) respond in writing, explaining why no breach has occurred. During the Cure Period, and afterward, the Parties shall cooperate in good faith to resolve the alleged material breach. If the Party alleged to have materially breached this Agreement cures or otherwise satisfactorily responds to the alleged material breach within the Cure Period, the Party alleging the material breach shall not file a lawsuit or take other action predicated upon the alleged material breach. If the Party alleged to have materially breached the Agreement does not cure or satisfactorily respond to the alleged material breach within the Cure Period, the other Party shall be entitled to file suit to cure the alleged material breach and seek to terminate this Agreement and/or the contemplated amendments to the Existing Indian River Crossing Agreements.

7. Releases.

(a) Indian River, on behalf of itself and the special districts it administers, hereby releases, acquits, and forever discharges Brightline, and its present and former parent entities, subsidiaries, affiliates, successors, assigns, directors, officers, employees, agents, representatives, and insurers, from all claims, causes of action, demands, debts, liabilities, and obligations, of every name and nature, known or unknown, asserted or unasserted, accrued or

unaccrued, both at law or in equity, from the beginning of time to the Effective Date; provided, however, that Indian River shall not be deemed to have released any claims arising out of construction-related damage to County property at the locations specified in Exhibit E.

(b) Brightline, on behalf of itself and its present and former parent entities, subsidiaries, affiliates, successors, and assigns, hereby releases, acquits, and forever discharges Indian River, the special districts it administers, and their respective present and former elected officials, employees, agents, representatives, and insurers, from all claims, causes of action, demands, debts, liabilities, and obligations, of every name and nature, known or unknown, asserted or unasserted, accrued or unaccrued, both at law or in equity, from the beginning of time to the Effective Date.

(c) The foregoing releases are intended to be given the broadest possible interpretation but shall not eliminate any obligations arising under this Settlement Agreement.

8. Binding Effect. This Settlement Agreement is final and binding on the Parties, including their heirs, successors, and future assigns.

9. No Assignment. Each Party acknowledges and agrees that it has not assigned, transferred, conveyed, or encumbered any claim, debt, liability, or obligations released herein.

10. Compromise. This Settlement Agreement is made in compromise of a dispute. Nothing herein shall be construed or deemed an admission of liability or wrongdoing.

11. Entire Agreement. This Settlement Agreement contains the entire agreement of the Parties, and supersedes any and all prior negotiations, representations, understandings, and agreements, whether oral or in writing, with respect to the subject matter hereof.

12. Severability. In the event that any provision of this Agreement shall at any time contravene, in whole or part, any applicable law, ruling or regulation, then such provision shall remain in effect only to the extent permitted, and the remaining provisions hereof shall remain in full force and effect.

13. Modification. This Settlement Agreement may not be amended, modified, released, discharged, or otherwise terminated, in whole or part, except by an instrument in writing signed by authorized representatives of the parties hereto.

14. Construction. This Settlement Agreement was drafted by counsel for the Parties and shall not be construed more strictly against any Party on the ground that it was the drafter. If there is a conflict between the terms of this Agreement and the terms of any Exhibit hereto, the terms of this Agreement shall control and prevail over the terms of the Exhibit.

15. Governing Law; Venue; Remedies; Attorneys' Fees. This Settlement Agreement shall be construed and the legal relations between the Parties shall be determined in accordance with Florida law. The exclusive forum for all disputes relating to this Agreement shall be the Circuit Court in and for St. Lucie County, Florida, or the Ft. Pierce Division of the U.S. District Court for the Southern District of Florida. In any litigation or other legal proceeding arising out of or related to this Agreement, the remedies available to the Parties shall include but not be limited

to specific performance, and the Parties agree to waive any claim for recovery of attorneys' fees and costs.

16. Waiver. Each Party acknowledges and agrees that it has had the opportunity to consult with counsel of its choice in deciding whether to enter this Settlement Agreement. Each Party further acknowledges that it was not fraudulently induced, coerced, or intimidated to sign this Settlement Agreement, and agrees not to seek to upset this Settlement Agreement by reason of any fact or matter, including but not limited to the discovery of any claim or defense not presently known to it. Each Party affirmatively waives and releases any claim that it has been misled or fraudulently induced to enter this Settlement Agreement.

17. Authority. Each Party represents and warrants that it is authorized to enter this Settlement Agreement, and that the individual executing this Agreement on its behalf has the legal authority to do so.

18. Counterparts. This Settlement Agreement may be executed in counterparts, by email or facsimile, each of which shall be deemed an original but all of which shall constitute one instrument.

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IN WITNESS WHEREOF, the and intending to be legally bound hereby, the Parties have set their hands and seals to this instrument as of the Effective Date above.

ACCEPTANCE BY INDIAN RIVER

INDIAN RIVER COUNTY,
a Political Subdivision of the State of Florida

ATTEST:

By: _____
Joseph E. Flescher, Chairman
Board of County Commissioners

By: _____
Jeffrey R. Smith,
Clerk of Circuit Courts
and Comptroller

APPROVED AS TO FORM
AND CORRECTNESS:

Approved by BCC: _____

Dylan Reingold
County Attorney

ACCEPTANCE BY BRIGHTLINE

BRIGHTLINE TRAINS FLORIDA LLC,
a Delaware limited liability company

ATTESTED:

By: _____
Patrick Goddard
President

By: _____
Cynthia Bergmann, Esq.
General Counsel

SETTLEMENT AGREEMENT EXHIBITS

Ex. A	List of Existing Indian River Crossing Agreements
Ex. B	Planned Crossing Improvements
Ex. C	Schedule of Additional Crossing Improvements
Ex. D	Joint Stipulation of Dismissal – Indian River Crossing Litigation
Ex. E	Indian River County Release Carve-Out Locations