



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - County Manager

J.2.

12/7/2021

Subject:

Approval of a Resolution authorizing Florida Development Finance Corporation (FDFC) to issue revenue bonds in amounts in excess of \$7,500,000 for Brightline Trains Florida LLC (Brightline), and an Agreement between the County and Brightline.

Fiscal Impact:

The County has no liability relating to the Bonds issued by FDFC, however under the Resolution and Agreement with Brightline, Brightline will provide the County and cities, within their service area, with railroad grade crossing surface maintenance for an additional ___ years (___-to ___ years) or ___ full cycles, whichever is greater. Additionally, the County will receive payment for a bond cap waiver. These funds will be deposited into the County's Public Works Department for future maintenance of the railroad crossings.

Dept/Office:
County Manager

Requested Action:

Request approval of a Resolution authorizing the Florida Development Finance Corporation ("FDFC") to issue revenue bonds in amounts in excess of \$7,500,000 for Brightline Trains Florida LLC, to finance that portion of the costs of an intercity rail project located within the County and approval of an Agreement between the Board of County Commissioners and Brightline Trains Florida LLC.

Summary Explanation and Background:

Florida Development Finance Corporation ("FDFC") is a public body corporate and politic created pursuant to Chapter 288, Park X, Florida Statutes. FDFC has broad authority to issue revenue bonds to finance capital projects that promote economic development within the State.

The Board entered into a Joinder to Interlocal Agreement on October 26, 1999 that allows Florida FDFC to operate in Brevard County to issue bonds for capital projects in Brevard County. The Board entered into a Second Amendment to Joinder to Interlocal Agreement on October 21, 2014 that require bonds in a principal amount greater than \$7,500,000 to be subject to prior approval of the Board. On October 21, 2014, the Board of County Commissioners adopted Resolution No. 14-201 approving a Second Amendment to the Existing Joinder to Interlocal Agreement between FDFC and the County which permitted FDFC to exceed the \$7,500,000 limitation for the rail line construction of the portion of the All Aboard Florida Intercity Passenger

Rail project in Brevard County.

Pursuant to the Second Amendment to the Joinder to Interlocal Agreement, FDFC is requesting that the Board of County Commissioners authorize the issuance of revenue bonds in the amount that exceed a principal amount of \$7,500,000 to finance the portion of the costs of the intercity rail project for Brightline Trains Florida LLC in the County.

As set forth in a Report dated May 20, 2014, the project will promote economic development throughout the State and the County, including an estimated 1,444 jobs related to rail construction within the County.

Bond issuance will be subject to Brightline Trains Florida LLC agreeing to a ____ year moratorium or __ full cycles, whichever is greater, on charges assessed to the County for grade crossing surface maintenance and grade crossing signalization maintenance costs (excluding the railroad's charges for standard inspections of the crossing as set forth in Florida Department of Transportation's schedule of annual costs), which agreement will require that the County execute crossing agreement amendments adding Brightline Trains Florida LLC as an additional party to those license agreements currently in place between Florida East Coast Railway and the County. Any municipality within the County which currently has grade crossing license agreements with Florida East Coast Railway will similarly be accorded a ____ year moratorium on the aforementioned maintenance costs, so long as it similarly executes the crossing agreement amendment to the license agreement which adds Brightline LLC as an additional party.

The County will also receive payment for a bond cap waiver. These funds will be deposited into the County's Public Works Department for future maintenance of the railroad crossings.

The County has no obligations with respect to the repayment of the Bonds issued by FDFC. The Board's approval is solely for the purposes of the Interlocal Agreement. The principal and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the County. The proposed Bonds issued by FDFC are only payable from the revenues pledged pursuant to the financing agreements entered into by and among FDFC and Brightline Trains Florida LLC.

The County's Bond Counsel, Nabors, Giblin & Nickerson, has reviewed the project documentation. The Resolution proposed to be adopted by the Board meets legal requirements and provides neither the County nor any of the elected officials or staff of the County will have any obligation or liability, financial or otherwise with respect to the Brightline Trains Florida LLC project or the Bonds. The County's Financial Advisor, PFM, has also reviewed the project and the Board will be solely secured by revenues of Brightline Trains Florida LLC and will not have a negative financial impact on the County, impair the County's credit rating or impact the County's ability to issue debt in the future.

Clerk to the Board Instructions:

TAMPA
2502 Rocky Point Drive
Suite 1060
Tampa, Florida 33607
(813) 281-2222 Tel
(813) 281-0129 Fax

**Nabors
Giblin &
Nickerson** P.A.
ATTORNEYS AT LAW

TALLAHASSEE
1500 Mahan Drive
Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Tel
(850) 224-4073 Fax

PLANTATION
8201 Peters Road
Suite 1000
Plantation, Florida 33324
(954) 315-0268 Tel

MEMORANDUM

TO: Abigail Jorandby, Brevard County Attorney
Frank Abbate, Brevard County Manager

FROM: Steven E. Miller, Esq.

DATE: December 2, 2021

RE: Review of Resolution for the Florida Development Finance Corporation
Transportation Facilities Revenue Bonds (Brightline Trains Project)

The Florida Development Finance Corporation ("FDFC") is proposing to issue private activity bonds (the "Bonds"), a portion of the proceeds of which will be applied to finance or refinance, including through reimbursement, the design, development, acquisition, construction, renovation, improvement and equipping (including without limitation, train sets) of a privately owned and operated intercity passenger rail system within the County (the "Project"), as more particularly described in the materials provided by FDFC and included in the agenda package for the December 7, 2021 meeting of the Board of County Commissioners (the "BOCC"). Proceeds of the Bonds are proposed to be loaned to Brightline Holdings LLC or one of its affiliated, subsidiaries or related entities (collectively, the "Borrower"). The Borrower will own the Project and will be responsible for payment of debt service on the Bonds.

In order to comply with certain federal and state law requirements and an existing interlocal agreement between the County and FDFC, the BOCC is required to adopt a resolution providing limited approval of the issuance of the Bonds. The BOCC will consider a resolution at its December 7, 2021 meeting. You have asked Nabors, Giblin & Nickerson, PA, as Bond Counsel to the County, to review the resolution to ensure that it satisfies the applicable legal requirements and to confirm that the County has no obligation, financial or otherwise, with respect to the Project or the Bonds.

We reviewed the resolution and provided various comments to the County Attorney's office. Our comments have been addressed and, from the County's standpoint, the resolution is legally sufficient. The resolution proposed to be adopted by the BOCC satisfies the pertinent federal and state law requirements and provides that neither the County nor any of the elected officials or staff of the County will have any obligation or liability, financial or otherwise, with respect to the Project or the Bonds.

cc: Christine Schverak
Kathy Wall



December 1, 2021

Memorandum

To: Frank Abbate, County Manager
Christine M. Schverak, Assistant County Attorney

From: Jay Glover, Managing Director – PFM Financial Advisors LLC

Re: Review of Financing Structure for the Transportation Facilities Revenue Bonds
(Brightline Florida Passenger Rail Expansion Project), Series 2021

It is our understanding that Brightline Holdings LLC or one or more affiliates (the "Borrower") has requested the Florida Development Finance Corporation (the "Issuer") issue Transportation Facilities Revenue Bonds (Brightline Florida Passenger Rail Expansion Project), Series 2021 (the "Bonds") in the par amount not to exceed \$308,000,000 to (i) pay or reimburse a portion of the costs of the development, design, acquisition, financing, construction, installation, equipping, ownership, maintenance and administration of a privately owned and operated intercity passenger rail system extending from Miami to Tampa, Florida (the "Project"); (ii) pay the interest to accrue on the Bonds; and (iii) fund certain reserve accounts related to the financing of the Project. Due to the par amount being greater than \$7,500,000, Brevard County, Florida (the "County") has been asked to authorize the issuance of the Bonds for that portion of the Project located in the County in compliance with the provisions of the Brevard County Interlocal Agreement with the Issuer. As financial advisor to the County, PFM Financial Advisors LLC (PFM) has been asked to certify that approving the issuance of the Bonds will not have a negative financial impact on the County, impair the County's credit ratings or impact the County's ability to issue debt in the future.

The Borrower and its' representatives have indicated that the plan of finance is still being finalized. It is our understanding that a portion of the Bonds are expected to receive an investment grade rating and a portion will be non-investment grade. The non-investment grade portion will be limited to minimum denominations of \$250,000. Investors of the non-investment grade debt will also be limited to Qualified Institutional Buyers within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended. We have reviewed the relevant documentation and based on that review can confirm that the proposed issuance of the Bonds will not have a negative financial impact on the County.

PFM did not prepare or review any type of feasibility report related to the Borrower's ability to pay debt service on the Bonds and has no responsibility to do so. PFM also bears no liability for potential errors in the information provided by the Borrower or its' representatives.

cc: Kathy Wall, Assistant to the County Manager



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

December 8, 2021

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item J.2., Approval of a Resolution Authorizing Florida Development Finance Corporation (FDFC) to Issue Revenue Bonds in Amounts in Excess of \$7,500,000 for Brightline Trains Florida LLC (Brightline), and an Agreement Between the County and Brightline

The Board of County Commissioners, in regular session on December 7, 2021, adopted Resolution No. 21-170, approving the issuance by the FDFC of its Transportation Facilities Revenue Bonds in an aggregate principal amount not to exceed \$308,000,000 for Brightline Trains Florida LLC to finance that portion of costs of an intercity rail project located within the County; approved the Agreement between Brevard County and Brightline Trains Florida LLC; and directed you to deposit the bond cap waiver fees into a separate fund for railway purposes to be brought back to the Board for consideration if further action is requested. Enclosed is the fully-executed Resolution and executed Agreement.

Upon execution by Brightline, please return the fully-executed Agreement to this office for inclusion of the official record.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Deputy Clerk

/cld

Encls. (2)

cc: Finance
Budget

RESOLUTION NO. 21-170

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA APPROVING THE ISSUANCE BY THE
FLORIDA DEVELOPMENT FINANCE CORPORATION OF ITS
TRANSPORTATION FACILITIES REVENUE BONDS IN AN
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$308,000,000;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Florida Development Finance Corporation (the "Issuer") was created by the Florida Development Finance Corporation Act, Chapter 288, Part X, Florida Statutes (the "Act"), which provides, in part, that the Issuer may issue revenue bonds to finance projects for the benefit of approved Florida businesses to enhance the economic development of the State of Florida (the "State"), provided that the Issuer has entered into an interlocal agreement with the local governmental agency in which the project will be located; and

WHEREAS, the Issuer and the Board of County Commissioners of Brevard County, Florida (the "Board") have previously entered into a joinder to interlocal agreement, as amended (the "Interlocal Agreement") pursuant to the Act and the Florida Interlocal Cooperation Act of 1969, as amended, which agreement remains in full force and effect, to permit the Issuer to issue revenue bonds to finance, and refinance, projects located within the jurisdictional limits of Brevard County, Florida (the "County"), subject to the Board's consent; and

WHEREAS, the Issuer and the Board have previously agreed pursuant to the 2nd Amendment to Joinder to Interlocal Agreement, dated October 21, 2014, that the Board may authorize bonds over \$7,500,000 on an individual basis by resolution; and

WHEREAS, previously, the County approved the issuance of a Transportation Facilities

Revenue Bond for the benefit of AAF Holdings LLC, now known as Brightline Holdings LLC, a Florida limited liability company ("Brightline Holdings") and said Issuer did so issue a Florida Development Finance Corporation Surface Transportation Facility Revenue Bond for the Virgin Trains USA Passenger Rail Project, Series 2019A in the amount of \$1.75B in April 2019, which included funds for facilities in Brevard County, Florida; and

WHEREAS, previously, on October 21, 2014, the All Aboard Florida-Operations LLC, now known as Brightline Trains Florida LLC ("Brightline Trains"), and the County entered into the following agreements: (a) a Maintenance and Moratorium Agreement for eight years maintenance for both the County and affected cities, (b) a \$375,000 bond cap waiver fee from the Issuer, (c) a \$375,000 bond cap waiver from Brightline Trains, (d) a Brightline Trains contribution of \$500,000 toward matching funds for quiet zone railroad related improvements initiated by the County, (e) Brightline Trains to install sealed corridor grade crossing improvements; and (f) an executed crossing agreement with Florida East Coast Railway, LLC and Brightline Trains; and

WHEREAS, Brightline Holdings, or one or more of its affiliates, subsidiaries or related entities (collectively, the "Borrower") has requested an additional issuance of the Issuer's Transportation Facilities Revenue Bonds (the "Bonds"), in an aggregate principal amount not to exceed \$308,000,000, in order to directly or indirectly (i) finance or refinance the cost of (or reimburse itself for prior expenditures for) the design, development, acquisition, construction, renovation, improvement and equipping (including without limitation, train sets) of its privately owned and operated intercity passenger rail system extending approximately 320 miles from Miami to Tampa, Florida, with passenger trains capable of operating thereon at top speeds in excess of 150 miles per hour, and with stations located or potentially located in Miami,

Aventura, Fort Lauderdale, Boca Raton, West Palm Beach, Orange County, and Tampa, Florida, and elsewhere along the hereinafter described rail corridor, (ii) fund debt service reserves, if any; (iii) fund capitalized interest on the Bonds, if any; and (iv) pay costs associated with the issuance of the Bonds (collectively, the "Project"); and

WHEREAS, the infrastructure or design thereof to be financed with the proceeds of the Bonds will be located in Miami-Dade, Broward, Palm Beach, Brevard, Orange, Osceola, and Hillsborough Counties; and

WHEREAS, the Project will utilize the existing Florida East Coast Railway corridor in Miami-Dade, Broward and Palm Beach counties and a portion in Brevard County, and in Brevard County, the Borrower will utilize the existing Florida East Coast Railway corridor between the southern Brevard County line and the existing Florida East Coast Railway spur in Cocoa; from there, the proposed Project route will utilize the existing spur that veers west from the Florida East Coast Railway mainline and new rail construction along the State Road 528 right of way; and

WHEREAS, the Borrower anticipates that Bond proceeds in an amount not to exceed \$308,000,000 will be utilized to finance or refinance capital improvements to the portions of the Project to be located in Brevard County (the "Brevard County Facilities"); and

WHEREAS, the Issuer has requested that the Board authorize the Issuer to issue the Bonds to finance costs of the Brevard County Facilities in compliance with the provisions of the Interlocal Agreement; and

WHEREAS, as a result of the Borrower's request, and in light of the economic and public health benefits that the Brevard County Facilities will provide to the County, it is deemed to be

in the best interest of the County that the proposed Bonds be issued in order to finance costs of the Brevard County Facilities.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Brevard County, Florida:

Section 1. Recitals. The foregoing recitals are true and correct and incorporated to this Resolution by this reference.

Section 2. Findings. It is hereby found, ascertained, determined and declared:

A. Due to the nature and the scope of the Project, the Project costs within the County are estimated to exceed \$7,500,000; and

B. As a result of the anticipated costs associated with the Project, and in line of the job creation opportunities the Project will provide to the County and its residents and pursuant to the 2nd Amendment to Joinder to Interlocal Agreement, dated October 21, 2014, the Board has determined it to be in its best interests of its citizens and residents that the Issuer be permitted to issue Bonds in excess of \$7,500,000 for that portion of the Project to be located in the County; and

C. The Issuer has requested that the Board authorize the Issuer to issue the Bonds for that portion of the Project located in the County in compliance with the provisions of the Brevard County Interlocal Agreement; and

D. By this Resolution, the County has determined to authorize the Issuer to issue the Bonds. However, the commitment in this Resolution shall only take effect upon Brightline Trains, or any Issuer of bonds, as applicable, and the County entering into agreements that require:

1. Brightline Trains shall assume all costs and amounts that, by previous or future agreement, would otherwise be charged to the County for grade crossing surface maintenance including crossing structure capital maintenance and grade crossing signalization maintenance costs (excluding the railroad's charges for standard inspections of the crossing as set forth in Florida Department of Transportation's schedule of annual costs) ("maintenance moratorium") relating to all railroad crossings in Brevard County that are (a) used by both Brightline Trains/Florida East Coast Railway (FEC) or their assigns, successors or lessees and (b) covered by existing or future FEC/County crossing agreements including any amendments thereto or consolidations thereof. That agreement shall provide that the aforesaid maintenance moratorium obligation for each individual railroad crossing regular service shall be for a period of sixteen (16) years or two full cycles of grade crossing surface maintenance as defined above, whichever is greater, commencing upon the date that an existing crossing structure at that individual railroad crossing is first used by Brightline Trains their assigns, successors or lessees for high speed rail service from Orlando to Miami. That agreement shall further provide that replacement, construction or reconstruction of crossing structures or equipment shall be completed in accordance with reasonable and customary standards for the construction, reconstruction, replacement or installation of such improvements. With respect to municipalities in Brevard County, this condition shall only be applicable to those municipalities which currently has grade crossing license agreements with FEC.

2. Brightline Trains will affirm that it has assumed all the rights and responsibilities of All Aboard Florida – Operations LLC in all agreements between Brevard County and All Aboard Florida – Operations LLC. Brightline Trains will indemnify and hold harmless the County against any and all claims, losses, liabilities or damages to property or any injury or death of any

person or persons occurring in connection with or resulting from the Project, including, without limitation, all costs and expenses of the County, including reasonable attorneys' fees, incurred in connection therewith

3. That the County shall be paid \$616,000 by Brightline Trains as a negotiated fee for its bond cap waiver in connection with any bond issue approved and issued under the approval granted by this resolution.

4. The commitments, obligations, and agreements set forth in items D. 1-3 shall be null and void if the Bonds are not issued and closed.

Section 3. Approval of Bonds. Solely for the purposes of the Interlocal Agreement, the Board approves the Issuer to issue the proposed Bonds in an amount not to exceed \$308,000,000 to directly or indirectly finance that portion of the proposed Project to be located in Brevard County, Florida.

Section 4. Limitation. The County shall have no responsibility with respect to the repayment of the Bonds. The Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the County but shall be payable solely from the revenues pledged therefor pursuant to financing agreements entered into by and among the Issuer and the Borrower and/or parties other than the County prior to or contemporaneously with the issuance of the Bonds.

The approval given herein shall not be construed as (a) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project or the Brevard County Project, (b) a recommendation to any prospective purchaser of the Bonds, (c) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (d) an approval of any

necessary rezoning applications nor for any other regulatory permits relating to the Brevard County Facilities or the Brevard County Project and the County shall not be construed by reason of its adoption of this resolution to have made any such endorsement, finding or recommendation or to have waived any of the County's rights or estopping the County from asserting any rights or responsibilities it may have in that regard, nor to create any vested right with respect to any land use regulations.

Section 5. Approval of Greater Principal Amount. In accordance with Section (a) of the Second Amendment to Joinder to Interlocal Agreement, dated October 21, 2014, the Board hereby approves the issuance of the Bonds in an aggregate principal amount of not exceeding \$308,000,000, recognizing that such amount is greater than the current \$7,500,000 principal amount limitation set forth in said Section (a) of the Interlocal Agreement.

Section 6. Indemnification. The receipt of the Indemnification Certificate attached hereto as Exhibit A and incorporated hereby by reference is a material inducement to the Board in granting the approvals set forth herein.

Section 7. Required Disclosure. The proposed Bonds and any offering document used in connection with the issuance and sale of such Bonds shall include a statement to the effect of the following:

THE BONDS APPROVED HEREUNDER AND THE INTEREST THEREON SHALL NOT CONSTITUTE AN INDEBTEDNESS OR PLEDGE OF THE GENERAL CREDIT OR TAXING POWER OF BREVARD COUNTY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF BUT SHALL BE PAYABLE SOLELY FROM THE REVENUE PLEDGED THEREFOR PURSUANT TO A LOAN AGREEMENT AND/OR OTHER FINANCING AGREEMENT ENTERED INTO BY THE ISSUER CONTEMPORANEOUSLY WITH THE ISSUANCE OF THE BONDS.

NONE OF THE OFFERING DOCUMENTS, THE TERMS OF AND SECURITY FOR THE PROPOSED BONDS, THE FINANCIAL FEASIBILITY OF THE PROJECT AND ANY FINANCIAL MATTERS WITH RESPECT TO THE PROJECT, THE BORROWER OR THE BONDS HAE BEEN REVIEWED OR APPROVED BY BREVARD COUNTY, ITS BOARD OR ITS STAFF. THE COUNTY, ITS BOARD AND ITS STAFF MAKE NO REPRESENTATIONS AS TO THE BONDS OR THE SECURITY THEREFORE, THE FINANCIAL FEASIBILITY OF THE PROJECT, OR FINANCIAL MATTERS WITH RESPECT TO THE PROJECT, THE BORROWER OR THE BONDS.

Section 8. Repealing Clause. All restrictions or resolutions or portions thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.

Section 9. Effective Date. This Resolution shall take effect immediately upon its adoption.


[Remainder of Page Intentionally Left Blank]

DONE, ORDERED, AND ADOPTED in Regular Session this 7 day of Dec., 2021.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

(Seal)



Jason Arthur, Chief Deputy

By: _____
Kristine Zonka, Chair

EXHIBIT A
INDEMNIFICATION CERTIFICATE

The undersigned hereby certifies that he or she is authorized to execute and deliver this Indemnification Certificate and further represents, in the name of and on behalf of Brightline Holdings LLC(the "Indemnitor"), the following:

(1) At the request of the Indemnitor, the Florida Development Finance Corporation (the "Issuer") proposes to issue its tax-exempt transportation facilities revenue bonds in an aggregate principal amount not to exceed \$1,000,000,000, in one or more series issued at one or more times (collectively, the "Bonds"), a maximum of \$308,000,000 of the proceeds of which are to be used to finance or refinance all or a portion of the cost of various capital improvements to the Indemnitor's affiliate's transportation facilities located within Brevard County, Florida (the "Brevard County Facilities");

(2) The issuance of the Bonds to finance the Brevard County Facilities: (a) is appropriate to the needs and circumstances of, and will make a significant contribution to the economic growth of the community in which it is located, (b) will provide or preserve gainful employment, and (c) will promote commerce and economic development within the State of Florida;

(3) Brevard County, Florida (the "County") will continue to be able to cope satisfactorily with the impact of the Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public services, that will be necessary for the operation, repair, and maintenance of the Project and on account of any increases in population or other circumstances resulting therefrom;

(4) The Indemnitor has requested the Board of County Commissioners (the "Board") of the County approve the issuance of the Bonds for purposes of complying with federal tax law and Section 163.01, Florida Statutes; and

(6) The County desires indemnification from the Indemnitor as a material inducement to the Board granting the foregoing approval.

NOW THEREFORE, THE UNDERSIGNED, ON BEHALF OF THE INDEMNITOR, DOES HEREBY: Agree to defend the County and its officials, employees, attorneys and agents and the members of the Board, and hold the County and its officials, employees, attorneys and agents and the members of the Board, harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds or direct or indirect financing or refinancing of the acquisition, development, construction, rehabilitation, ownership or operation of the Project, or from the issuance, sale or delivery of the Bonds, including, but not limited to, liabilities or costs arising under the Internal Revenue Code of 1986, as amended, the Securities Act of 1933, the Securities Exchange Act of 1934 or any applicable securities law of the State of Florida,

including, without limitation, all costs and expenses of the County, including reasonable attorneys' fees, incurred in connection therewith.

IN WITNESS WHEREOF, the Indemnitors have executed this Indemnification Certificate this ____ day of _____, 2021.

BRIGHTLINE HOLDINGS LLC

By: _____

Name: _____

Title: _____

Agreement between Brevard County and Brightline Trains Florida LLC

A. In connection with the issuance by the Florida Development Finance Corporation ("Issuer") of its \$1,750,000,000 aggregate principal amount of Florida Development Finance Corporation Surface Transportation Facility Revenue Bonds (Virgin Trains USA Passenger Rail Project), Series 2019A (the "Series 2019A Bonds"), Brevard County, Florida ("County"), Florida East Coast Railway, L.L.C. ("FECR") and All Aboard Florida-Operations LLC, now known as Brightline Trains Florida LLC ("Brightline") entered into an Agreement dated October 21, 2014 (the "Original Agreement") whereby the County agreed to permit the Issuer to issue bonds for that portion of the "Project", hereinafter defined, to be located in the County in an amount not to exceed \$375,000,000, and County, FECR and Brightline agreed to certain amendments to crossing agreements and a "Maintenance Moratorium" (as such term is defined in the Original Agreement).

B. The Issuer has now received an application from Brightline Holdings LLC to issue an additional \$1,000,000,000 of its Transportation Facilities Revenue Bonds the proceeds of which will be used to directly or indirectly (i) finance or refinance the cost of (or reimburse itself for prior expenditures for) the design, development, acquisition, construction, renovation, improvement and equipping (including without limitation, train sets) of its privately owned and operated intercity passenger rail system extending approximately 320 miles from Miami to Tampa, Florida, with passenger trains capable of operating thereon at top speeds in excess of 150 miles per hour, and with stations located or potentially located in Miami, Aventura, Fort Lauderdale, Boca Raton, West Palm Beach, Orange County and Tampa, Florida, and elsewhere along the rail corridor; (ii) fund debt service reserves, if any; (iii) fund capitalized interest on the bonds, if any; and (iv) pay costs associated with the issuance of the bonds (collectively, the "Project").

C. As a result of the anticipated costs associated with the Project, and in light of the job creation opportunities the Project will provide to County and its residents, the Brevard County Board of County Commissioners of Brevard County ("Board") has determined it to be in its best interests and the best interests of its citizens and residents that the \$7,500,000 limitation in the Brevard County Interlocal Agreement be waived, and that the Issuer be permitted to issue bonds for that portion of the Project to be located in the County in an allocation not to exceed \$308,000,000 (the "Bonds").

D. The Board has passed the Resolution attached hereto as Exhibit A.

E. As a part of the Project, Brightline will incur the necessary and reasonable capital investments to complete the initial installation of crossing improvements at grade crossings within the County identified on Exhibit B attached hereto ("Crossings") to the extent required for the Project to comply with currently applicable state and federal laws regarding safety at public crossings and commence passenger rail service (the "Initial Development Cost").

F. Brightline shall assume all costs and amounts that, by previous or future agreement, would otherwise be charged to the County for grade crossing surface maintenance including crossing structure capital maintenance and grade crossing signalization maintenance costs (excluding the railroad's charges for standard inspections of the crossing as set forth in Florida Department of Transportation's schedule of annual costs attached as Exhibit C) ("Maintenance Costs") relating to all railroad crossings in Brevard County that are (a) used by both Brightline Trains Florida LLC /Florida East Coast Railway (FEC) or their assigns, successors or lessees and (b) covered by existing or future FEC/County crossing agreements including any amendments thereto or consolidations thereof for a period of sixteen (16) years or two full cycles of grade crossing surface maintenance as defined above, whichever is greater, commencing upon the date that an existing crossing structure at that individual railroad crossing regular service is first used by Brightline their assigns, successors or lessees for high speed rail service from Orlando to Miami (the "Maintenance Moratorium"). Brightline agrees to further provide that replacement, construction or reconstruction of crossing structures or equipment shall be completed in accordance with reasonable and customary standards for the construction, reconstruction, replacement or installation of such improvements.

G. Any municipality within the County which currently has grade crossing license agreements with FECR will similarly be accorded a sixteen (16) year or two full cycles of grade crossing surface maintenance Maintenance Moratorium on the aforementioned Maintenance Costs, so long as it executes a Crossing Agreement Amendment to its license agreement, in form and substance reasonably satisfactory to Brightline, FECR and such municipality, which adds Brightline as an additional party.

H. Brightline shall pay the County \$616,000.00 as a negotiated fee for the County's bond cap waiver in connection with any bond issue approved and issued under the approval granted by the resolution attached hereto as Exhibit A.

I. Brightline does hereby agree to defend the County and its officials, employees, attorneys and agents and the members of the Board, and hold the County and its officials, employees, attorneys and agents and the members of the Board, harmless against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with or resulting from the Project, including, without limitation, all costs and expenses of the County, including reasonable attorneys' fees, incurred in connection therewith. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity. The Parties acknowledge specific consideration has been exchanged for this provision.

J. The Parties agree that Brightline has assumed all the rights and responsibilities of All Aboard Florida – Operations LLC in all agreements between Brevard County and All Aboard Florida – Operations LLC.

K. This Agreement shall be null and void if the Bonds are not issued and closed.

L. This Agreement shall be effective on the Effective Date and delivery of executed signature pages by facsimile or other electronic transmission shall be as effective as a manually transmitted counterpart thereof.

Effective Date. This Agreement shall take effect immediately upon its execution.

Executed this ____ day of December, 2021.

BRIGHTLINE TRAINS FLORIDA LLC

By: _____

Name: _____

Title: _____

**BOARD OF COUNTY COMMISSIONERS OF
BREVARD COUNTY, FLORIDA**

By: 

Kristine Zonka, Chair



Jason Arthur, Chief Deputy

APPROVED AS TO FORM AND CORRECTNESS:

By: 

County Attorney

EXHIBIT A
RESOLUTION

EXHIBIT B
CROSSING AGREEMENT LISTING

Location	Mile Post	Street Name	AAR/D OT#	Agreement Holder	License Agreement Date
Cocoa	170+29 81	Michigan Avenue	272092 P	Brevard County	11/25/70
Cocoa	171+27 28	Dixon Boulevard	272095 K	Brevard County	3/5/91
Rockledge	177+49 24	Barnes Boulevard	2721081	Brevard County	10/5/09
Bonaventure	179+74 2	Carver Street	272109 R	Brevard County	3/15/88
Bonaventure	179+20 96	Ansin Road	272110 K	Brevard County	1/25/66
Bonaventure	180+14 65	Viera Boulevard	272976 W	Brevard County	9/10/91
Pineda	182+34 22	Suntree Boulevard	272115 U	Brevard County	1/16/90
Pineda	184+26 87	Pineda Causeway	272863 R	Brevard County	12/16/08
Melbourne	189+35 84	Aurora Road	272122 E	Brevard County	8/20/91
Melbourne	190+30 40	Sarno Road	272125 A	Brevard County	12/14/82
Grant Valkaria	208+68 1	Senne Road	272154 K	Brevard County	2/6/90
Micco	208+52	Barefoot	272155 S	Brevard	2/19/59

	29	Boulevard		County	
Micco	209+12 39	Micco Road	27215 6 y	Brevard County	5/11/67
Micco	211+32 10	Holly Street	272157 F	Brevard County	3/4/65

EXHIBIT C

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
RAILROAD GRADE CROSSING TRAFFIC CONTROL DEVICES
ANNUAL MAINTENANCE COSTS

725-090-41
 RAIL
 06/21

FINANCIAL PROJECT NO.	ROAD NAME OR NUMBER	COUNTY NAME	PARCEL & R/W NUMBER	FAP NUMBER

COMPANY NAME: _____

A. FDOT/AAR XING NO.: _____ RR MILE POST TIE: _____

B. TYPE SIGNALS PROPOSED: _____ CLASS: _____ DOT INDEX: _____

**SCHEDULE OF ANNUAL COST OF AUTOMATIC
 HIGHWAY GRADE CROSSING TRAFFIC CONTROL DEVICES**

Annual Maintenance Cost Exclusive of Installation

<u>CLASS</u>	<u>DESCRIPTION</u>	<u>COST*</u>
I	2-Quadrant Flashing Lights with One Track	\$2,608.00
II	2-Quadrant Flashing Lights with Multiple Tracks	\$3,451.00
III	2-Quadrant Flashing Lights and Gates with One Track	\$3,934.00
IV	2-Quadrant Flashing Lights and Gates with Multiple Tracks	\$4,940.00
V	3 or 4-Quadrant Flashing Lights and Gates with One Track	\$7,777.00
VI	3 or 4-Quadrant Flashing Lights and Gates with Multiple Tracks	\$9,759.00

AUTHORITY: FLORIDA ADMINISTRATIVE RULE 14-57.011
 Public Railroad-Highway Grade Crossing Costs

EFFECTIVE DATE: July 22, 1982

GENERAL AUTHORITY: 334.044, F.S.

SPECIFIC LAW IMPLEMENTED: 335.141, F.S.

*This schedule will become effective July 1, 2021 and will be reviewed every 5 years and revised as appropriate based on the Consumer Price Index for all Urban Consumers published by the U.S. Department of Labor.