

Hunton Draft: May 31, 2026

**PROJECT AGREEMENT  
(MIAMI-DADE)**

**[•], 2026**

**Among**

**Brightline Trains Florida LLC,**

**MDC Commuter LLC,**

**Miami-Dade County,**

**and, for the limited purposes set forth herein,**

**Brightline Management LLC**

**County Contract No.: [•]**

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### **Project Agreement (Miami-Dade)**

This Project Agreement (Miami-Dade) (this “**Agreement**”) is entered into as of the Effective Date (as defined herein) and subject to Section 1.01, among Brightline Trains Florida LLC, a Delaware limited liability company (“**Brightline Florida**”), MDC Commuter LLC, a Delaware limited liability company (“**MDC Commuter**,” and together with Brightline Florida, the “**Brightline Parties**”), Brightline Management LLC, a Delaware limited liability company (“**Project Management**”), and Miami-Dade County, a political subdivision of the State of Florida (the “**County**”). Collectively, Brightline Florida, MDC Commuter, and the County (and, solely for purposes specified herein, Project Management) are referred to herein as the “**Parties**” and each, a “**Party**.”

WHEREAS, Brightline Florida and Florida East Coast Railway, L.L.C., a Florida limited liability company (“**FECR**”), entered into the Corrective Second Amended and Restated Grant of Passenger Service Easement (Miami to West Palm Beach), dated October 5, 2017, and recorded in Official Records Book 30712, Page 3065 of the Public Records of Miami-Dade County, Florida (the “**Passenger Easement**”), the Second Amended and Restated Joint Use Agreement (Shared Infrastructure), dated December 27, 2016, as amended by the First Amendment to Second Amended and Restated Joint Use Agreement (Shared Infrastructure) dated June 30, 2017 (as amended, the “**JUA**”), as evidenced by the Memorandum of Joint Use Agreement (Shared Infrastructure), dated June 30, 2017, and recorded in Official Records Book 32506, Page 2659 of the Public Records of Miami-Dade County, Florida (the “**Memorandum of JUA**”), with respect to the shared use of the Florida East Coast (FEC) rail corridor (the “**Corridor**”).

WHEREAS, as of the Effective Date, Brightline Florida has constructed and is operating a privately-owned intercity passenger railway service with passenger train stations in Miami, around Aventura, Fort Lauderdale, Boca Raton, West Palm Beach, and Orlando (as the same may change from time to time).

WHEREAS, Brightline Florida, FECR and SFRTA (as defined herein) entered into the Access, Operating and Funding Agreement, dated July 1, 2016 (the “**Downtown Agreement**”), with respect to the shared use of the MiamiCentral Station (as defined herein) and the implementation of SFRTA’s commuter rail service on the Corridor.

WHEREAS, the County desires to develop a commuter rail service transporting passengers and making frequent stops within urban areas and their immediate suburbs on the Segment (as defined herein) along the Northeast Corridor of the Strategic Miami Area Rapid Transit Program (the “**Commuter Rail**”).

Service”), so as to facilitate easier and more efficient commuting for residents of the County, and has determined that such commuter rail service is of regional importance.

WHEREAS, on February 10, 2022, Brightline Florida and MDC Commuter (as assignee of BL Expansion LLC) entered into (a) the Intercompany Access Agreement (Miami-Dade) (as amended, the “**Intercompany Access Agreement**”), pursuant to which, among other things, Brightline Florida sold to MDC Commuter, as its designee under the JUA and the Passenger Easement, the right to access the Segment for purposes of providing Commuter Rail Service and (b) the Intercompany Development Agreement (Miami-Dade) (as amended, the “**Intercompany Development Agreement**”), pursuant to which Brightline Florida and MDC Commuter agree to the parameters for the development of Additional Infrastructure necessary in connection with such Commuter Rail Service and pursuant to which Brightline Florida named MDC Commuter as its designee for purposes of the JUA and the Passenger Easement in connection with the Commuter Rail Service.

WHEREAS, the Parties wish to memorialize the rights and obligations of the Parties with respect to (i) the design and construction of the stations, improvements to existing stations and the rail infrastructure necessary, which may include, at the County’s option, the procurement of Rolling Stock (as defined herein) and the design and expansion of the Maintenance Facility (as defined herein), for the operation of Commuter Rail Service between the MiamiCentral Station and the Aventura Station (each as defined herein), (ii) the financing and/or funding of such design and construction by MDC Commuter and the County, as applicable, and (iii) the operation of Commuter Rail Service (as defined herein) between the MiamiCentral Station and the Aventura Station (as defined herein) and (collectively, as described in more detail in this Agreement, the “**Project**”).

NOW, THEREFORE, for and in consideration of the mutual covenants, terms and conditions and restrictions contained herein, together with other good and valuable consideration, the receipt and sufficiency of which are acknowledged by each Party, the Parties hereby agree as follows:

**Article I. Conditions Precedent; Definitions; Rules of Interpretation; Existing Project Documents; Future Easement**

**Section 1.01 Conditions Precedent.** The Parties acknowledge that Brightline Florida and FECR have entered into dispute resolution procedures under the JUA and are actively engaged in arbitration on several matters with impact to the Project. Notwithstanding anything to the contrary contained within the Agreement, the Parties acknowledge and agree that, except with respect to the Immediately Effective Provisions (which are effective as of the Effective Date), the effectiveness of this Agreement, including but

not limited to any payment provisions hereof, shall be subject to satisfaction of the following conditions precedent (collectively, the “**Conditions Precedent**”) as determined by the County in its reasonable discretion: (i) Brightline Florida shall obtain an arbitral award pursuant to the dispute resolution procedures under the JUA which permits Brightline Florida, either itself or through one or more designees, to develop the Project and operate the Commuter Rail Service contemplated in this Agreement, it being understood that Brightline Florida shall provide such arbitral award to the County for its review prior to making its determination as to whether or not this condition has been satisfied; (ii) Brightline Florida shall have achieved a Final Services Determination that does not give rise to any right of the County to terminate this Agreement pursuant to Section 1.01(d) (*Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) or Section 1.01(e) (*Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of Annex A (*Design and Construction Provisions*), (iii) resolution of issues in the Pending Litigation such that the Pending Litigation would not reasonably be expected to have a materially adverse effect on the ability of the Brightline Parties to perform this Agreement, (iv) the delivery of a customary non-disturbance agreement from the Lenders’ Representative of Brightline Florida to the County; (v) the execution of the SFRTA Sharing Agreement on terms reasonably satisfactory to the Brightline Parties and the County, which will include the provision of any necessary consents by SFRTA (including a process to align train schedules) in order to allow the Parties to perform this Agreement as well as cost sharing provisions that are specific to SFRTA’s exclusive infrastructure; and (vi) the Florida Department of Transportation or another agency of the State of Florida has provided a written commitment of funds in an amount equal to at least \$200,000,000.00 with respect to the Project Costs hereunder, *provided that* the County, in its reasonable discretion, may deem this Condition Precedent to be satisfied through the identification and commitment of funds through an alternative source. The County shall have no obligation to complete any Milestone Payments until all Conditions Precedent have been satisfied. To the extent that all Conditions Precedent have not been satisfied by the expiration of Precedent Period, this Agreement shall be null and void and of no legal effect, and no Party shall have any liability to any other Party under this Agreement. Upon satisfaction of the Conditions Precedent, the Brightline Parties and the County will promptly memorialize the same in writing.

**Section 1.02 Definitions.** Defined terms used herein shall have the meanings set forth in Schedule 1.

**Section 1.03 Rules of Interpretation.**

(a) The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any Party. The Parties

hereto acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it, and instead the other applicable rules of interpretation and construction set forth herein shall be utilized.

(b) Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing in this Agreement and any Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement. The words "herein," "hereof" and "hereunder" and any other words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision of this Agreement. All terms defined in this Agreement shall be deemed to have the same meanings in all Exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this Agreement, unless the context thereof clearly requires the contrary. All references to this Agreement or any other agreement shall include all Exhibits, addenda, attachments or other documents affixed to or expressly incorporated herein or therein by reference. Unless expressly provided otherwise, all references to Articles, Sections, Exhibits, subsections and clauses refer to the Articles, Sections, Exhibits, subsections and clauses set forth in or attached to this Agreement, as applicable. Unless otherwise defined in this Agreement, words which have well-known technical, or construction industry meanings are used in this Agreement in accordance with such recognized meanings. All references to a subsection or clause "above" or "below" refer to the denoted subsection or clause within the Section in which the reference appears. Wherever the word "including," "includes" or "include" is used in this Agreement, it shall be deemed to be followed by the words "without limitation." In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" the starting date at 12:00 AM (midnight) Eastern Time and the words "to" and "until" mean "to and including" the ending date up to 11:59 PM Eastern Time.

(c) As used in this Agreement and as the context may require: (i) the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa; (ii) any definition of or reference to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or

therein); and (iii) any reference to a Person shall be construed to include such Person's permitted successors and assigns.

(d) Where reference is made to any Station, such reference shall not include any rail infrastructure.

**Section 1.04 Obligations; Conflicts.**

(a) This Agreement does not modify any rights or obligations of Brightline Florida or FECR under the Existing Project Documents.

(b) Notwithstanding any other provision to the contrary, (i) to the extent there is any conflict between this Agreement and the JUA and/or the Passenger Easement, the JUA and the Passenger Easement shall govern and (ii) the Parties agree that any rights granted to the County hereunder are subordinate to any conflicting provisions of the JUA and the Passenger Easement. Without limiting the County's right to receive the services provided by the Brightline Parties hereunder, to the extent a Party reasonably believes a conflict exists and the same may impact rights and/or obligations hereunder, then such Party may notify the other Parties of such potential conflict. As soon as practicable, but no later than thirty (30) days, after receipt of any notice from any Party under this Section 1.04(b), the Parties shall discuss and agree on the issues referred to in Section 1.04(b) and any ways in which the Parties can mitigate the effect of the potential conflict. The Parties shall reasonably cooperate to negotiate any amendment to this Agreement, as applicable, that is required to address any such conflict.

(c) Except to the extent required by Applicable Law, Brightline Florida shall not, without the prior written consent of the County (such consent not to be unreasonably withheld, delayed, or conditioned), amend the terms of the Existing Project Documents in a manner that would (i) materially and adversely prohibit or interfere with the development and operation of the Commuter Rail Service as contemplated in this Agreement or (ii) materially increase the liability of the County under this Agreement (other than for increases in liability contemplated herein in connection with the development, operation, and maintenance of the Commuter Railroad Service). To the extent the County is entitled to consent to an amendment to the Existing Project Documents, Brightline Florida shall provide the County with a copy of any proposed amendment for its review and approval. The County shall either respond to Brightline Florida's request within thirty (30) days of receiving the proposed amendment or may request an additional thirty (30) days to complete its review. However, if the County reasonably determines, and in its sole discretion, that Board approval is necessary in order for the County to consent to an amendment to the Existing Project Documents, the Parties acknowledge that County will have to take certain steps to have a

legislative item placed on the agenda for such approval and as such the thirty (30) day timeframe contemplated in this Section does not apply. In such cases, the County will respond as promptly as practicable, but in any event no later than one hundred eighty (180) days after receipt of the proposed amendment. Notwithstanding the foregoing, this Section 1.04(c) shall not apply to the extent the County has ceased, or caused the Brightline Operator to cease, the operation of the Commuter Rail Service for a period of five (5) consecutive years.

**Section 1.05 Party Representatives.** For purposes of this Agreement, Brightline Florida, MDC Commuter, and the County shall each designate an individual or individuals (the “**Brightline Florida Representative**”, “**MDC Commuter Representative**,” and “**County Representative**,” respectively) who will be authorized to make decisions under this Agreement on behalf of Brightline Florida, MDC Commuter, and the County, respectively. The initial Brightline Florida Representative is Brian Kronberg. The initial MDC Commuter Representative is Patrick Goddard. The initial County Representative is Lidia Regalado. Any Party may change the designation of its representative by a subsequent notice in writing delivered to the other Parties.

**Section 1.06 No Designation of Third Parties.** The County shall not designate any third parties for the exercise of the County’s rights under this Agreement without the prior written consent of the Brightline Parties.

**Section 1.07 Future Easement.** To the extent that the Parties become aware that FECR is willing to negotiate a consent with respect to the grant by Brightline Florida of an easement for the benefit of the County with respect to the Commuter Rail Service, the Brightline Parties and the County will act reasonably in negotiating the terms of such easement. The Parties acknowledge that there is no assurance that FECR will be willing to negotiate such easement or that the terms of such easement will be agreed to. The Parties also acknowledge that the structuring of an easement may require an amendment or a restatement of this Agreement, which easement and amendment or restatement will be subject to Board approval. The Parties agree that decision by the Board not to approve such easement and amendment or restatement of this Agreement shall not impact the validity or enforceability of this Agreement (without limiting the Board’s right to instruct the County to take any actions permitted under this Agreement).

**Article II. Design and Construction.**

**Section 2.01 Design and Construction.** The Parties agree and acknowledge that design and construction of the Project shall be governed by the terms set forth on Annex A (Design and Construction Provisions).

**Article III. Operations and Maintenance.**

**Section 3.01 Operations and Maintenance.** The Parties agree and acknowledge that operations of the Commuter Rail Service and maintenance of the Project shall be governed by the terms set forth on Annex B (Operations and Maintenance Provisions).

**Article IV. Mutual Obligation to Indemnify; Limitations of Liability.**

**Section 4.01 Brightline Parties and Project Management Indemnity.** As between the Brightline Parties, Project Management and the County, each Brightline Party and Project Management shall severally and not jointly defend, indemnify, and keep the County, its agents, consultants, advisors, and subcontractors, and each of their respective officers, managers, directors, and employees (each, a “**County Indemnitee**”) indemnified at all times from and against all losses, costs, and expenses that a County Indemnitee may sustain in connection with (i) third-party claims arising from breaches of this Agreement by such Brightline Party or Project Management, as applicable, (ii) the gross negligence, willful misconduct, or bad faith of such Brightline Party or Project Management, as applicable, (iii) any action or failure to act of such Brightline Party or Project Management that causes a breach by the County of its obligations under this Agreement, or (iv) any Release of Hazardous Materials by such Brightline Party; in each case, except to the extent the same is caused by the gross negligence, willful misconduct, or bad faith of any County Indemnitee, or any breach by the County of this Agreement. Such indemnity obligations under this Agreement shall not be limited by any coverage limits, exclusions, or other provisions in any policy of insurance maintained by such Brightline Party or Project Management, as applicable, which is intended to respond to such events. This Section 4.01 may be relied upon by County Indemnitees and may be enforced directly by any of them against a Brightline Party or Project Management, as applicable, in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and such Brightline Party or Project Management, as applicable. For the avoidance of doubt, no Brightline Party shall have any obligation to indemnify the County for any act or omission of any other Brightline Party or of Project Management, and Project Management shall have no obligation to indemnify the County for any act or omission of any Brightline Party. In the event of a conflict between the terms of this Section 4.01 and Article V of Annex B (Operations and Maintenance Provisions), the terms of Article V of Annex B (Operations and Maintenance Provisions) shall prevail. To the extent there is a train movement that gives rise to liability under Article V of Annex B (Operations and Maintenance Provisions), the terms of Section Article V of Annex B (Operations and Maintenance Provisions) shall prevail over the terms of this Section 4.01.

**Section 4.02 County Indemnity.** As between the Brightline Parties, Project Management, and the County, the County shall defend, indemnify, and keep each Brightline Party and Project Management and their respective agents, consultants, advisors and subcontractors, and each of their respective officers, managers, directors, and employees (each, a “**Brightline Indemnitee**”) indemnified at all times from and against all losses, costs, and expenses that a Brightline Indemnitee may sustain in connection with (i) third-party claims arising from breaches of this Agreement by the County, (ii) the gross negligence, willful misconduct or bad faith of the County, (iii) any action or failure to act of the County that causes a breach by any Brightline Indemnitee of its obligations under the Project Documents, and (iv) any Release of Hazardous Materials by the County; in each case, except to the extent the same is caused by the gross negligence, willful misconduct or bad faith of any Brightline Indemnitee. The County’s indemnity obligations under this Agreement shall not be limited by any coverage exclusions or other provisions in any policy of insurance maintained by the County which is intended to respond to such events. This Section 4.02 may be relied upon by Brightline Indemnitees and may be enforced directly by any of them against the County in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the County. The indemnity provided by the County under this Section 4.02 is in addition to the indemnities provided by the County under Section 5.02(a) of Annex B (Operations and Maintenance Provisions). In the event of a conflict between the terms of this Section 4.02 and Article V of Annex B (Operations and Maintenance Provisions), the terms of Section 5.02(a) of Annex B (Operations and Maintenance Provisions) shall prevail. To the extent there is a train movement that gives rise to liability under Article V of Annex B (Operations and Maintenance Provisions), the terms of Article V of Annex B (Operations and Maintenance Provisions) shall prevail over the terms of this Section 4.02.

**Section 4.03 Indemnification Procedures.**

(a) As between Brightline Parties, Project Management, and the County, if a County Indemnitee or Brightline Indemnitee under this Article IV, respectively (each, an “**Indemnitee**”), receives any notice, demand, letter or other document concerning any claim for which it appears that the Indemnitee is, or may become entitled to, indemnification or compensation under this Agreement in respect of the claim, the Indemnitee shall give notice in writing to Brightline Parties, Project Management, or the County, as applicable (the “**Indemnitor**”) as soon as reasonably practicable and in any event within sixty (60) days of receipt thereof; *provided, however, that failure to give notice within such sixty (60)-day period shall not relieve the Indemnitor of its indemnity and defense obligations unless it has been materially prejudiced by said belated notice.*

(b) If notice is given as provided in Section 4.03(a), the Indemnitor shall be entitled to dispute the claim in the name of the Indemnitee at the Indemnitor's own expense and take over conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Indemnitee will give the Indemnitor all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(c) In defending any claim as described in this Section 4.03 in which there is a conflict of interest between the Indemnitor and the Indemnitee, the Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the Indemnitee is entitled to indemnification by or compensation from the Indemnitor, all reasonable costs and expenses incurred by the Indemnitee in so doing (including but not limited to the cost and expense of in-house legal counsel) will be included in the indemnity or compensation from the Indemnitor.

(d) With respect to any claim conducted by the Indemnitor pursuant to this Section 4.03:

(i) the Indemnitor shall keep the Indemnitee reasonably informed and consult with it about material elements of the conduct of the claim;

(ii) the Indemnitor shall demonstrate to the Indemnitee, at the reasonable request of the Indemnitee, that the Indemnitor has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(iii) the Indemnitor shall not pay or settle such claims without the consent of the Indemnitee, such consent not to be unreasonably withheld or delayed.

(e) The Indemnitee may take over conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(i) the Indemnitor is not entitled to take over conduct of the claim in accordance with Section 4.03(b);

(ii) the Indemnitor fails to notify the Indemnitee of its intention to take over conduct of the relevant claim within sixty (60) days of the notice from the Indemnitee under Section 4.03(c) or notifies the Indemnitee that it does not intend to take over conduct of the claim; or

(iii) the Indemnitor fails to comply in any material respect with Section 4.03(d).

**Article V. Delay Events; Changes in Law.**

**Section 5.01 Notification.** If, as a result of the occurrence of a Delay Event, a Party becomes aware that the Delay Event has caused it to fail to comply with any of its obligations under this Agreement (the "Affected Party"), then such Affected Party is entitled to relief from any other rights of the other Parties under this Agreement (the "Other Parties"), in each case, in accordance with this Article V; *provided* that no Party shall be entitled to relief from any of its accrued payment obligations hereunder due to any Delay Event (it being acknowledged that certain payment obligations may cease to accrue or may not accrue in the ordinary course, during the existence of a Delay Event).

**Section 5.02 Procedure for Relief.** Subject to Section 5.04:

(a) any request for relief made by an Affected Party pursuant to Section 5.01 must be submitted to the Other Parties as soon as reasonably practicable (and in any event within twenty (20) days) of the Affected Party first becoming aware of the relevant Delay Event; *provided* that if the Delay Event materially disrupts operations on the Segment, such request for relief must be submitted to the Other Parties within twenty-four (24) hours of the Affected Party first becoming aware of the relevant Delay Event by telephone to the impacted Other Parties; and

(b) as soon as is reasonably practicable following delivery to the Other Parties of the request referred to in Section 5.02(a), an Affected Party must give full details of the relevant Delay Event to the Other Parties (to the extent such details are available to such Affected Party, after having made due enquiry); *provided* that, in any event, an Affected Party shall provide initial notice to the Other Parties setting forth all available information within ten (10) Business Days, with updates to be periodically provided as more information becomes available to the Affected Party.

**Section 5.03 Giving of Relief.** In the event that the Affected Party has complied with its obligations under Section 5.02, then the Affected Party's deadlines for performance or other performance obligations under this Agreement, as applicable, shall be extended by such time as shall be reasonable for such Delay Event (but, subject to Section 5.04, such extension shall not exceed a period of time equal to the duration of the Delay Event). For the avoidance of doubt, a Party that complies with the terms of this Article V with respect to a Delay Event that is reasonably expected to occur but that does not occur, shall still be entitled to relief as set forth in this Section 5.03 (such as, for example, delays that occur due to preparation for a hurricane event that is expected to, but does not, impact the Segment).

**Section 5.04 Late Provision of Notice or Information.** In the event that information is provided after the dates referred to in Section 5.02, then the Affected Party shall not be entitled to any extension of time or relief from termination with respect to the period between the date on which the relevant information is required to have been provided pursuant to the terms hereof and the date on which the relevant information is provided.

**Section 5.05 Changes in Law.**

(a) If a Change in Law occurs and a Party reasonably believes the same may impact rights and/or obligations hereunder, then such Party may notify the other Parties of such Change in Law.

(b) As soon as practicable, but no later than thirty (30) days, after receipt of any notice from any Party under Section 5.05(a), the Parties shall discuss and agree on the issues referred to in Section 5.05(a) and any ways in which the Parties can mitigate the effect of the relevant Change in Law.

(c) The Parties shall reasonably cooperate to negotiate any amendment to this Agreement, as applicable, that is required to address the Change in Law.

(d) Notwithstanding the foregoing, if any additional capital improvements to the Segment (including without limitation additional main line tracks, passing sidings, signals or communications facilities, switches and crossovers, and other facilities) shall be required by any Change in Law (collectively, "**Mandated Capital Improvements**"), then the cost and expense of such Mandated Capital Improvements shall be apportioned between the Parties in the following manner: (i) the cost and expense of Mandated Capital Improvements that are required, or are used or useful, solely in connection with Intercity Passenger Rail Service shall be borne entirely by Brightline Florida; and (ii) the cost and expense of Mandated Capital Improvements that are required, or are used or useful solely in connection with the Commuter Rail Service shall be borne entirely by the County. The cost and expense of Mandated Capital Improvements that are required, or are used or useful solely in connection with, Freight Rail Service, shall be borne by FECR in accordance with the Existing Project Documents. The cost and expense of Mandated Capital Improvements that are required, or are used or useful solely in connection with, SFRTA Commuter Rail Service, shall be borne by SFRTA in accordance with the Existing Project Documents. The cost and expense of Mandated Capital Improvements that are required, or are used and useful solely in connection with, at least two forms of the foregoing services shall be allocated equally between or among the operators providing such services. Upon being placed into service, such Mandated Capital Improvements shall become a part of the Shared Infrastructure, AAF Infrastructure, the Viaduct/Station

Segment, the MiamiCentral Station, the Aventura Station or the applicable Commuter Station, as applicable.

**Article VI. Term.**

**Section 6.01 Term.** The term of this Agreement shall commence on the Effective Date and end on February 10, 2114 unless otherwise extended by the Parties or unless terminated earlier in accordance with Article VIII, in which case the term will end on the Termination Date (the “Term”).

**Section 6.02 End of Term.** Upon the Termination Date, the County shall relinquish and surrender control of, and access to, the Segment to Brightline Florida, and shall cause all Persons claiming under or through the County to do likewise. Within thirty (30) days after the Termination Date, the County shall remove all of its personal property, including any Rolling Stock, from the Segment, without damaging any property of the Other Users.

**Article VII. Representations and Warranties**

**Section 7.01 Brightline Entity Representations and Warranties.** As of the Effective Date, each of the Brightline Parties, and, with respect to clauses (a) through (e) below, Project Management hereby represents and warrants to the County that:

(a) it is a legal entity organized and existing under the laws of the State of Delaware, and has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right, and authority to execute and deliver this Agreement, and to perform each and all of its obligations provided for herein. It is duly qualified to do business, and is in good standing, in the State.

(b) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary actions; each Person executing this Agreement on its behalf has been duly authorized to execute and deliver this Agreement on its behalf; and this Agreement has been duly executed and delivered by it.

(c) Neither the execution and delivery by it of this Agreement nor the consummation of the transactions contemplated hereby is in conflict with or has resulted or will result in (i) a default under or a violation of its organizational documents or any other material agreements or instruments to which it is a party or which are binding on it or any of its property or assets or (ii) a material default or violation of any Applicable Law.

(d) This Agreement constitutes the legal, valid, and binding obligation of it, enforceable against it in accordance with its terms.

(e) Except as with respect to the Pending Litigation and the arbitration described in Section 1.01, as of the date set forth on such Party's signature page hereto, there is no action, suit, proceeding, investigation, or litigation pending or served on it or, to its knowledge, threatened that (i) would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement, or (ii) challenges its corporate authority to execute, deliver, or perform, or the validity or enforceability of this Agreement, or the authority of its representative executing this Agreement.

(f) The copies of the Existing Project Documents provided to the County as of the Effective Date are true, complete and correct.

(g) The Existing Project Documents to which such Party is a party are in full force and effect and are enforceable against such Party in accordance with their respective terms.

(h) To the best of such Party's knowledge, no event has occurred that would give rise to termination or suspension rights under any of the Existing Project Documents to which such Party is a party.

(i) As of the date set forth on such Party's signature page hereto, there are no notices or penalties issued by the FRA with respect to the rail infrastructure on the Segment.

**Section 7.02 County's Representations and Warranties.** As of the Effective Date, the County hereby represents and warrants to the Brightline Parties and Project Management that:

(a) the County is a political subdivision of the State and has the right and authority to execute, deliver, and perform each and all of the obligations of the County set forth in this Agreement.

(b) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary actions of the County; each person executing this Agreement on the County's behalf has been duly authorized to execute and deliver this Agreement on the County's behalf; and this Agreement has been duly executed and delivered by the County.

(c) Neither the execution and delivery by the County of this Agreement nor the consummation of the transactions contemplated hereby is in conflict with or has resulted or will result in (i) a default under or a violation of the County Code or any other material agreements or instruments to

which it is a party or which are binding on the County or any of its property or assets or (ii) a material default or violation of any Applicable Law.

(d) This Agreement constitutes the legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms.

(e) There is no action, suit, proceeding, investigation, or litigation pending or served on the County or, to the County's knowledge, threatened which (i) would reasonably be expected to have a material adverse effect on the ability of the County to perform its obligations under this Agreement or (ii) challenges the County's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the County's representative executing this Agreement.

#### **Article VIII. Payments.**

**Section 8.01 Payments.** The Parties agree and acknowledge that payments in respect of the Commuter Rail Service and the Project shall be governed by the terms set forth on Annex C (*Payment Provisions*).

#### **Article IX. Default and Termination.**

**Section 9.01 Default and Termination.** The Parties agree and acknowledge that the Parties' respective rights of termination of this Agreement, including rights to compensation upon termination, shall be governed by the terms set forth on Annex D (*Default and Termination Provisions*).

#### **Article X. Governing Law; Commuter Rail Task Force; Dispute Resolution Procedures.**

**Section 10.01 Choice of Law and Venue.** This Agreement and all matters relating to this Agreement (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State. The venue for any legal or administrative proceedings regarding this Agreement shall be exclusively in the federal or county courts in Miami-Dade County.

#### **Section 10.02 Commuter Rail Task Force.**

(a) The Parties shall establish a committee consisting of appropriate personnel of the Parties (the "**Commuter Rail Task Force**"). The Brightline Parties and, prior to the Operations Commencement Date, Project Management shall collectively appoint three members to the Commuter Rail Task Force and the County shall appoint three members to the Commuter Rail Task Force. The Parties may agree to change the size of the Commuter Rail Task Force from time to time, including to include

representation from Broward County and Palm Beach County to the extent the same are developing what is excepted to be a unified service with the County. The Brightline Parties and, prior to the Operations Commencement Date, Project Management shall collectively designate one of its Commuter Rail Task Force members to serve as chair. Meetings of the Commuter Rail Task Force shall occur monthly, except that the Commuter Rail Task Force shall meet within five (5) Business Days to the extent requested by the County in connection with the event described in sub-clause (iv) below. The Commuter Rail Task Force may meet virtually or at such location as the Parties may agree. The Parties may invite subject matter experts to attend meetings of the Commuter Rail Task Force; *provided* that any such additional attendees shall act in an advisory capacity only. Nothing herein shall be interpreted to authorize the Commuter Rail Task Force to alter any provision of this Agreement or any Existing Project Document. The duties of the Commuter Rail Task Force shall include the following:

(i) monitoring, and periodically reviewing, the performance of the parties under this Agreement;

(ii) reviewing and resolving any Disputes between or among the Parties as contemplated in Section 10.03(c)(1);

(iii) addressing any other construction or operating issues that may arise from time to time in connection with the development or operation of Commuter Rail Service on, along and over the Segment;

(iv) discussing and resolving the issues underlying any Dispute involving a Brightline Suspension of County Operations, payments, or Delay Events; and

(v) carrying out such other duties as may be assigned to it by the Parties.

(b) On a quarterly basis, the Commuter Rail Task Force shall request a meeting with representatives of FECR as part of the relevant monthly Service Standards Committee (as defined in the JUA) with respect to matters impacting Commuter Rail Service.

#### **Section 10.03 Dispute Resolution Procedures.**

(a) To the extent a Dispute under the Existing Project Documents corresponds or is otherwise related to a Dispute between or among the Parties hereunder, the County will be joined to such Dispute under the Existing Project Documents, and the final outcome of such Dispute shall be binding for purposes of this Agreement. To the extent the Parties are not able to join the County to such Dispute under

the Existing Project Documents, Brightline Florida agrees, subject to Section 10.03(b), to prosecute or defend, as applicable, such Dispute on the County's behalf in accordance with the dispute resolution procedures set forth in the Existing Project Documents, with costs incurred by Brightline Florida being payable by MDC Commuter. However, Brightline Florida agrees not to settle any such dispute in a manner that would cause the County to incur additional liability, cost or lose any rights under this Agreement. Brightline Florida shall, to the extent permitted under the Existing Project Documents, invite the County to participate in discussions with FECR, SFRTA or DispatchCo, as applicable, and to directly engage in the dispute resolution process. Brightline Florida shall not settle a dispute raised by the County without the County's prior consent. The County will be bound by the resolution or final determination of such dispute under the relevant Existing Project Document. MDC Commuter shall be required to satisfy any cash collateral or bonding requirements in connection with a Dispute under this Section 10.03(a).

(b) To the extent that Brightline Florida disagrees with the County's basis for a Dispute under the Existing Project Documents or to the extent Brightline Florida and the County have conflicting positions with respect to any Dispute under the Existing Project Documents, such Dispute will be resolved in accordance with Section 10.03(c). If the County prevails in such Dispute, Brightline Florida will be required to prosecute such Dispute under the Existing Project Documents in accordance with Section 10.03(a).

(c) If there is a Dispute between or among the Parties that does not correspond to, or is not otherwise related to, a Dispute under the Existing Project Documents, or if Section 10.03(b) applies, then Parties shall apply the following procedures:

(i) In the event of a Dispute, all matters at issue shall first be presented to the Commuter Rail Task Force and if not agreed to by a majority of the Commuter Rail Task Force within thirty (30) days of presentation thereto, shall be referred to the senior executive officers of the relevant Parties for resolution within thirty (30) days of such referral date.

(ii) In the event that the Dispute is not resolved under Section 10.03(c)(i), then any party to the Dispute may elect to submit the Dispute for binding arbitration by delivering to the other party or parties to the Dispute written notice of such election (the "**Arbitration Notice**"). Upon delivery of an Arbitration Notice, the parties to the Dispute shall promptly submit the Dispute to an arbitrator with railroad industry experience mutually chosen by and agreeable to such parties. If such parties are unable to agree upon a single arbitrator within ten (10) Business Days after delivery of the Arbitration Notice, then each such party shall appoint an arbitrator of its choice with railroad industry experience within fifteen (15) Business Days after delivery of the Arbitration

Notice. The arbitrators appointed by such parties within the prescribed time period shall mutually agree upon a sole arbitrator with railroad industry experience within ten (10) Business Days from the date of their appointment. The Dispute shall then be arbitrated and determined by such sole, third arbitrator so appointed. The written decision of the arbitrator shall be final, binding and conclusive upon the Parties. The arbitration shall be conducted pursuant to the Commercial Arbitration Rules published by the American Arbitration Association. The seat of the arbitration shall be Miami, Florida. In the event that a party to the Dispute believes that discovery is required prior to the submission of evidence in the arbitration proceeding, each party to the Dispute shall be limited to: two (2) depositions and ten (10) interrogatories (including subparts, and ten (10) requests for admission). Each party to the Dispute shall pay the compensation, costs, fees and expenses of its own witnesses, experts, and counsel. Each party to the Dispute shall pay the compensation, costs, and expenses of the arbitrator it chooses or, to the extent that such parties mutually agree upon an arbitrator or a third arbitrator is appointed in accordance with the terms hereof, each such party shall pay an equal share of the compensation, costs, and expenses of such arbitrator. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws. Pending the written decision of the arbitrator, except as expressly permitted under this Agreement or in connection with a Brightline Suspension of County Operations, there shall be no suspension of any Party's rights or obligations until the matter in dispute shall have been fully determined by arbitration.

(d) Notwithstanding the foregoing agreement to arbitrate, any Party may seek temporary, preliminary, or permanent injunctive relief, specific performance, or other equitable relief in any court of competent jurisdiction, if such relief is necessary to prevent immediate and irreparable harm or to preserve the status quo pending resolution of the Dispute through arbitration. The Parties agree that seeking such relief shall not be deemed incompatible with or a waiver of the agreement to arbitrate, and any determination of the merits of the underlying Dispute shall remain subject to arbitration in accordance with this Agreement.

#### **Article XI. Liabilities.**

**Section 11.01 Specific Performance.** Each of the Parties acknowledges that money damages may be both incalculable and an insufficient remedy for any breach of such Party's performance obligations under this Agreement and that any such breach may cause the other Party irreparable harm. Accordingly, each of the Parties also agrees that in the event of any breach or threatened breach of such Party's performance obligations under this Agreement by such Party, the other Party shall be entitled to equitable

relief without the requirement of posting a bond or other security, including in the form of injunctions and orders for specific performance. Any and all remedies herein expressly conferred upon any Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, including any monetary damages provided for under Section 11.02, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. Each of the Parties hereby agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of such Party's performance obligations under this Agreement, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the performance obligations of such Party under this Agreement.

**Section 11.02 Consequential Losses.** Except to the extent expressly stated to the contrary, no Party shall have the right to claim damages, including consequential, punitive and incidental damages, against any other Party for breach of this Agreement, in tort or on any other basis whatsoever, to the extent that any loss claimed by any Party is for Indirect Losses. The Parties agree that, notwithstanding the foregoing limitation on each Party's liability, such limitation shall not apply to or limit any Party's right to recover from any other Party:

(a) any Losses (excluding defense costs) to the extent that they are either covered by the proceeds of insurance carried by the relevant Party or are required to be insured against pursuant to this Agreement;

(b) Losses arising out of fraud, criminal conduct, intentional misconduct, recklessness or bad faith on the part of the relevant Party; or

(c) Losses under Article IV with respect to claims of third parties.

**Section 11.03 No Double Recovery.** Notwithstanding any other provisions of this Agreement to the contrary, no Party shall be entitled to recover compensation or make a claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of such Loss pursuant to this Agreement or otherwise.

## **Article XII. Lender Rights.**

### **Section 12.01 Notice of Collateral Assignment; Estoppel.**

(a) Each of the Brightline Parties shall be entitled from time to time to collaterally assign its rights hereunder for the benefit of its lenders (including, in the case of MDC Commuter, direct or indirect lenders under loans to Holdings that it has guaranteed). To the extent a Brightline Party notifies the County of such a collateral assignment (a “**Notice of Collateral Assignment**”), the rights of the applicable lender(s) (or its or their designated representative, including an indenture trustee, collateral agent, or other agent) (each, a “**Lenders’ Representative**”) shall be as set forth in this Article XII, *provided* that any such assignment shall be subject to the applicable lender(s) or Lenders’ Representative obtaining the necessary rights under the Existing Project Documents to perform the Brightline Parties’ obligations hereunder. Each Notice of Collateral Assignment must contain the full legal name of the Lenders’ Representative and its notice information. To the extent requested by a Brightline Party, the County shall promptly, and in any event, within thirty (30) days of such request, provide such Brightline Party an estoppel certificate making, to the extent the following statements are true and correct, the following representations and warranties, together with any additional representations reasonably requested by the relevant lender; *provided* that the foregoing period shall be extended as reasonably necessary including with respect to any such additional request:

(i) this Agreement is valid and in full force and effect and has not been modified or amended, and this Agreement constitutes the entire agreement among the Parties regarding the transactions contemplated herein, and there are no other written or oral agreements of any kind between or among the Parties with respect thereto;

(ii) no Brightline Construction Default, Brightline Operator Operations Default, County Termination Trigger or No-Fault Termination Event exists and, to the best of the County’s knowledge, there is no existing circumstance which, with the delivery of notice or the passage of time or both, would give rise to or ripen into such a Brightline Construction Default, Brightline Operator Operations Default, County Termination Trigger or a No-Fault Termination Event; and

(iii) to the best of the County’s knowledge, the County has no defenses, off-sets, bases for withholding of payments hereunder, claims, or counterclaims against the applicable Brightline Party for any failure of such Brightline Party to perform its obligations under this Agreement.

(b) Each Brightline Party agrees to promptly notify the County to the extent a collateral assignment made by such Brightline Party has terminated, at which point the County shall not be

bound by the provisions of this Article XII until another Notice of Collateral Assignment is delivered by such Brightline Party.

**Section 12.02 Default Notices.**

(a) For so long as any collateral assignment in respect of which a Notice of Collateral Assignment has been delivered is in effect, the County shall promptly provide the Lenders' Representative with a copy of any notice it sends to any Brightline Party (a "**Default Notice**") concerning an actual or potential default by a Brightline Party under this Agreement. The County shall from time to time update any Default Notice as and when it becomes aware of any unperformed obligations of the applicable Brightline Party under this Agreement that were not specified in the relevant Default Notice.

(b) The Lenders' Representative shall notify the County of any decision to accelerate amounts outstanding from a Brightline Party under the relevant financing documents or to exercise any enforcement remedies from a Brightline Party thereunder promptly upon the taking of such decision. For the avoidance of doubt, no such enforcement shall serve to impair or limit the County's rights hereunder.

**Section 12.03 Rights of the Lenders' Representative.** At any time during an event of default under the financing documents to which the Lenders' Representative is a party or otherwise has rights under (the "**Financing Documents**"), the Lenders' Representative may (but shall have no obligation) perform or arrange for the performance of any act, duty, or obligation required of the applicable Brightline Party under this Agreement, which performance or remedy by or on behalf of the Lenders' Representative shall be accepted by the County in lieu of performance by such Brightline Party and in satisfaction of such Brightline Party's corresponding obligations under this Agreement as provided herein. Notwithstanding the forgoing, the rights of the Lenders' Representative of Brightline Florida under this Section 12.03 shall be subject to such Lenders' Representative obtaining the necessary rights under the Existing Project Documents to perform Brightline Florida's obligations hereunder.

**Section 12.04 Substitution of Brightline Party.** To the extent the Lenders' Representative at any time proposes or requires the applicable Brightline Party to assign its rights and obligations under this Agreement to a substitute entity (the "**Substitute**") designated by the Lenders' Representative (whether by mutual agreement or enforcement of rights under the Financing Documents), the effectiveness of such assignment shall be conditional upon:

- (a) the Substitute being a Qualified Substitute;
- (b) the Lenders' Representative issuing a notice of the substitution to the County;

(c) the proposed Substitute delivering a joinder to this Agreement in accordance with Section 12.05; and

(d) in the case of a Substitute for Brightline Florida, such Substitute obtaining the necessary rights under the Existing Project Documents to perform Brightline Florida's obligations hereunder.

**Section 12.05 Substitution Effective Date.** The Substitute shall execute and submit to the County a joinder to this Agreement that (a) confirms it is the Substitute under this Article XII, (b) confirms that it will become a party to this Agreement (to the extent the same has not expired) as a successor of the applicable Brightline Party, and (c) confirms its notice information for purposes of this Agreement (the date of such joinder, the "**Substitution Effective Date**"). On and from the Substitution Effective Date, such Substitute shall become a party to this Agreement in place of the applicable Brightline Party who shall be immediately released from its obligations arising hereunder, and cease to be a party to, this Agreement. On the Substitution Effective Date, the Substitute shall pay to the County any amount due from the applicable Brightline Party to the County as of the Substitution Effective Date.

**Section 12.06 Special Bankruptcy Provisions.** In the event that this Agreement is rejected as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting a Brightline Party, the County shall, at the option of the Lenders' Representative exercised within sixty (60) days after the Lenders' Representative's actual knowledge of such rejection, enter into a new agreement with the Lenders' Representative (or an approved Substitute) having identical terms as this Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree).

#### **Article XIII. Miscellaneous.**

##### **Section 13.01 Payments Generally.**

(a) The County shall make payments in accordance with Section 2-8.1.4 of the County Code. To the extent the County fails to pay to any other Party any amount when due under this Agreement (so long as such amount has not been Disputed in good faith), the provisions of Section 2-8.1.4 of the County Code shall apply.

(b) The payment obligations of the County under this Agreement will survive any expiration or termination of this Agreement as accrued as of the date of any expiration and termination hereof, and any failure to appropriate sufficient amounts to pay the amounts Due, or scheduled to become

Due, from the County to any other Party under this Agreement, and such obligations shall not be impaired, reduced or otherwise affected by any such failure except as expressly contemplated in Annex C (Payment Provisions).

(c) All invoices to the County must: (i) identify that the document is an invoice, (ii) include the name(s) of County-registered vendor(s) and remit to address(es), (iii) contain a unique invoice number and set forth the invoice date, (iv) describe the agreement under which the invoice is provided and set forth the County identifier number set forth on the cover page thereof, (v) include a description of the goods/services billed and an associate itemized list of charges associated with such goods/services, (vi) include the name and address of the County department the transaction pertains to, which, for purposes of this Agreement, is the Department of Transportation and Public Works, and (vii) the total amount due.

**Section 13.02 Cooperation.** The Parties agree to cooperate with each other to the full extent practicable pursuant to the terms and conditions of this Agreement.

**Section 13.03 Miami-Dade County's Rights as Sovereign.** Except as set forth in Section 13.04, the County retains all of its sovereign prerogatives and rights as a county under State and local law with respect to the planning, design, construction, development and operation of the Commuter Rail Service. It is expressly understood that, notwithstanding any provisions of this Agreement and the County's status hereunder:

(a) Other than the waiver of sovereign immunity resulting from contractual obligations as more fully described below, the County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State and local law, and shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Commuter Rail Service;

(b) The County shall not, by virtue of this Agreement, be obligated to grant any other Party any approvals of application for building, zoning, planning, development or otherwise under present or future Applicable Laws of whatever nature applicable to the planning, design, construction, or development of the Commuter Rail Service;

(c) Notwithstanding any provision hereof to the contrary, any County covenant or obligation that may be contained in this Agreement shall not bind the Board, the County's Regulatory and Economic Resources Department, the Department of Environmental Resources Management, or any other

county, city, federal or state department or authority, committee or agency (i.e., any Governmental Authority) to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withhold, or revoked in the discretion of the County or other applicable Governmental Authority in the exercise of its/their police power(s); and

(d) The County shall not take or expropriate, or commence any other similar proceedings with the effect of taking or expropriating, any portion of the Segment or the Corridor or propose to do the same.

**Section 13.04 Limited Waiver of Sovereign Immunity.** Neither the County nor any other entity acting on its behalf will assert a sovereign immunity defense in any action or proceeding with respect to terms of this Agreement, including the terms of Article IV, Section 13.04, Section 13.12, and Section 5.02(b) of Annex B (*Operations and Maintenance Provisions*).

**Section 13.05 Public Records Law.**

(a) As it relates to this Agreement, each Brightline Party and Project Management, and each of their respective affiliates, pursuant to Section 119.0701, Florida Statutes, shall:

(i) keep and maintain public records that ordinarily and necessarily would be required by the Parties in order to perform any provision of this Agreement;

(ii) upon request from the County's custodian of public records identified herein, provide the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in the Florida Public Records Act, Miami-Dade County Administrative Order No. 4-48, or as otherwise provided by law;

(iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Term, upon termination of this Agreement, such Party must transfer the records to the County; and

(iv) meet all requirements for retaining public records and transfer to the County, at no cost to the County, all public records created, received, maintained and/or directly related to the performance of this Agreement that are in possession of such Party or affiliated party upon termination of this Agreement, and, upon termination of this

Agreement, such Party shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County.

(b) For purposes of this section, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County.

**(c) IF ANY BRIGHTLINE PARTY, PROJECT MANAGEMENT OR ANY OF THEIR RESPECTIVE AFFILIATES HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ANY DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE DEPARTMENT OF TRANSPORTATION AND PUBLIC WORK'S CUSTODIAN OF PUBLIC RECORDS AT:**

Miami-Dade County  
Miami-Dade Department of Transportation and Public Works  
701 N.W. 1<sup>st</sup> Court, 13<sup>th</sup> Floor  
Miami, Florida 33136  
Attention: Antoinette Jean-Baptiste  
Email: antoinette.jean-baptiste@miamidade.gov

(d) Each of the Brightline Parties and Project Management, and their respective affiliates shall indemnify the County from and against, any and all third party claims, actions, lawsuits, demands, damages, obligations, liabilities, losses, and judgments, including an obligation to pay a third party's attorney's fees incurred in litigation, settlement negotiations, trial, appeal or otherwise, arising out of or related to a claim, action, or lawsuit, against the County for its failure to produce documents, information or details regarding such Brightline Party's, Project Management's, or affiliates' assertion that any of its records are exempt or confidential in response to a public records request. For the purposes of this Agreement, "third party" shall mean any person or entity not a party to this Agreement.

**Section 13.06 Notices.** All notices, demands, or other writing required to be given, made, or sent, or which may be given, made, or sent, by any Party to any other Party, shall be deemed to have been fully



**Section 13.07 Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the Parties, and this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision, provided, however, that in the event the insurance requirements of this Agreement become unenforceable in the reasonable opinion of Brightline Florida, the Commuter Rail Service shall cease until such time as all Parties agree to reinstitute the Commuter Rail Service.

**Section 13.08 Relationship of Parties.** This Agreement does not create the relationship of principal and agent or of mortgagee and mortgagor or of partnership or of joint venture or of any association between or among the Parties, the sole relationship among the Parties being that of parties to this Agreement.

**Section 13.09 Consents.** Whenever in this Agreement the consent or approval of a Party is required, such consent or approval:

(a) shall not be unreasonably or arbitrarily withheld, conditioned, or delayed unless specifically provided to the contrary in this Agreement; *provided* that this Section 13.09(a) shall in no way restrict the County's exercise of its sovereign prerogatives and rights set forth in Section 13.03 or a Party's right to exercise its sole discretion;

(b) shall not require the expenditure of funds by the Party from whom a consent or approval is sought, unless specifically provided to the contrary in this Agreement;

(c) shall not be effective unless it is in writing; and

(d) shall apply only to the specific act or transaction so approved or consented to and shall not relieve any Party, as applicable, of the obligation of obtaining the relevant Party's prior written consent or approval to any future similar act or transaction.

**Section 13.10 Amendments.** All amendments to this Agreement shall require the prior approval of the Board (unless otherwise specifically delegated) and each Party and shall not be effective until the consent of each of those entities is obtained, and any amendments shall only be effective thereafter if reduced to writing and executed with the same formality as this Agreement.

**Section 13.11 Entire Agreement.** This Agreement and the Existing Project Documents contain the entire agreement among the Parties with respect to the transactions contemplated herein and supersedes all prior agreements, whether written or oral.

**Section 13.12 Assignment; Successors and Assigns.**

(a) Except as set forth in Article XII and Section 13.12(b), no Party shall be entitled to assign any of its rights or obligations under this Agreement without the prior, written consent of the other Parties; *provided* that each Brightline Party shall be permitted to assign its respective rights or obligations under this Agreement to any affiliate of such Brightline Party that is a Qualified Substitute without the prior written consent of the other Parties (it being understood that, to the extent Miami-Dade County is party to this Agreement, any counterparty shall be required to comply with any vendor registration or other legal requirements in order to assume this Agreement); and *provided further* that Brightline Florida shall be entitled to assign this Agreement to any permitted assignee of Brightline Florida under the JUA and the Passenger Easement, and such assignment shall not require the prior written consent of the other Parties or as allowed under the JUA. The terms herein contained shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns, except as may be otherwise provided herein. If an assignment or purported assignment is made in violation of the provisions of this Section 13.12(a), such assignment or purported assignment shall be void *ab initio*.

(b) Notwithstanding Section 13.12(a), the County may assign all rights under this Agreement to a government entity or authority in the State provided that such government entity (i) has the power and authority to perform this Agreement, (ii) has sources of funding to perform the payment and performance obligations of the County under this Agreement that are at least as adequate and secure as the County's and has a credit rating that is at least as high as the County's, at the time of assignment, (iii) has the technical capabilities and experience necessary to perform this Agreement (which requirement may be satisfied through subcontract), and (iv) assumes all of the County's obligations under this Agreement.

(c) The County shall not allow any mortgages, liens, or other encumbrances, except those expressly required by the FTA, the FRA, FDOT or similar federal, state or local governments or agencies, to attach to its rights under this Agreement or to the Commuter Stations as a result of any financing or use of the Segment by the County, and the County indemnifies and agrees to hold Brightline Parties harmless of and from any such encumbrances. In no event shall any such mortgages, liens, or other encumbrances attach to any fee or easement interest of Brightline Parties or FECR.

**Section 13.13 Survival.** Each of the representations and warranties of each of the Parties, the Dispute Resolution Procedures set forth in Article X, the indemnifications and releases set forth in Article IV of this Agreement and in Article V and Article VI of Annex B (*Operations and Maintenance Provisions*), any other obligations to pay amounts hereunder, and all other provisions, which by their inherent character should survive the termination of this Agreement shall survive the termination of this Agreement.

**Section 13.14 Limitation on Third Party Beneficiaries.** The terms and provisions of this Agreement are for the benefit of the Parties and, as set forth in Article XII, any Lenders' Representative. Except as herein specifically provided herein, no other Person shall have any right or cause of action on account thereof. Except as otherwise provided in this Section, the duties, obligations and responsibilities of the Parties with respect to third parties shall be determined and governed by Applicable Law.

**Section 13.15 No Personal Liability.** Notwithstanding anything to the contrary contained in this Agreement, no direct or indirect shareholder, partner, member, principal, affiliate, employee, officer, trustee or director of any Party, or other representative of any Party (each, a "**Related Party**"), shall have any personal liability for, nor be joined as a party to any action with respect to, the payment, performance or discharge of any covenants, obligations or undertakings of such Party under this Agreement. Each Party, for itself and its respective successors and assigns, irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against any Related Party under or by reason of or in connection with this Agreement and agrees to look solely to the assets of a Party for the enforcement of such liability and obligation of such Party.

**Section 13.16 No Waiver.** No delay or omission in the exercise of any right accruing to any Party under this Agreement shall impair any such right or be construed to be a waiver thereof, and every such right may be exercised at any time. A waiver by any Party of a nonconforming condition or noncompliance with the terms and conditions set forth in this Agreement shall not be construed to be a waiver of any subsequent nonconforming condition or noncompliance.

**Section 13.17 Counterparts.** This Agreement may be executed in two or more counterparts and duplicate originals which have been signed and delivered by each of the Parties (a Party may execute a copy of this Agreement and deliver it by e-mail transmission; *provided*, however, that any such Party shall promptly deliver an original signed copy of this Agreement).

**Section 13.18 Inspector General; County Audit Rights.** The Brightline Parties and Project Management shall comply with the provisions set forth on Schedule 2 (*Inspector General Requirements; County Audit Rights*) to this Agreement.

*Signature page follows.*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**Brightline Trains Florida LLC**

**Miami-Dade County**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Daniella L. Cava  
Title: Mayor  
Date: \_\_\_\_\_

**Written Declaration:** Pursuant to Florida Statutes Section 92.525, under penalties of perjury, I declare that I have read the foregoing Project Agreement (Miami-Dade), and that the facts stated in it are true.

Attest: \_\_\_\_\_  
Clerk of the Board

Approved as to form and legal sufficiency: \_\_\_\_\_

**MDC Commuter LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Written Declaration:** Pursuant to Florida Statutes Section 92.525, under penalties of perjury, I declare that I have read the foregoing Project Agreement (Miami-Dade), and that the facts stated in it are true.

**Brightline Management LLC**

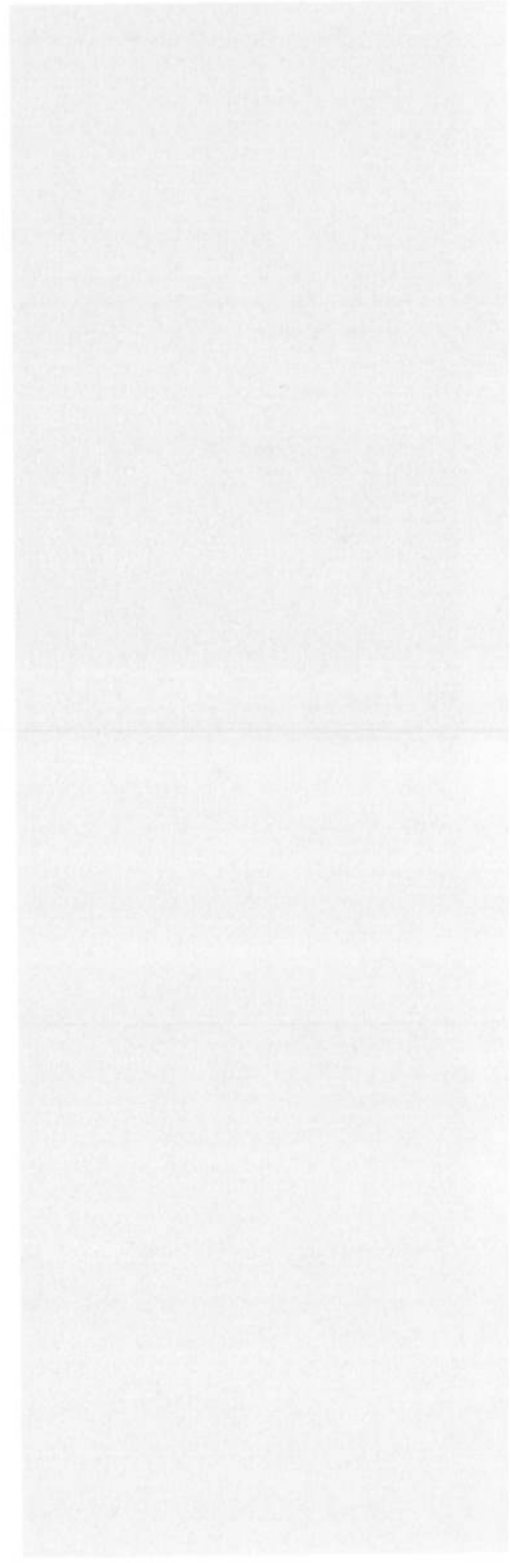
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Written Declaration:** Pursuant to Florida Statutes Section 92.525, under penalties of perjury, I declare that I have read the foregoing Project Agreement (Miami-Dade), and that the facts stated in it are true.



Article I. Schedule 1

Definitions

"30% Infrastructure Drawings" has the meaning set forth in Section 1.01(b) of Annex A (Design and Construction Provisions).

"AAF Infrastructure" has the meaning set forth in the JUA.

"Access Milestone" has the meaning set forth in Section 1 of Exhibit 1 to Annex C (Payment Provisions).

"Access Milestone Payments" means each Milestone Payment in respect of an Access Milestone Payment.

"Accrued Access Payment Amount" means, as of any date of determination, the portion of the Aggregate Access Payment Amount deemed earned on a straight-line basis over the period commencing on the CP Achievement Date and ending on the Termination Date, determined as:

Accrued Access Payment Amount = Aggregate Access Payment Amount x (Elapsed Days/Total Days)

where:

"Elapsed Days" means the number of days from and including the CP Achievement Date through and including such date of determination, except for any days during which services is not available as contemplated in Section 2.03(a) of Annex D (Default and Termination Provisions); and

"Total Days" means the number of days from and including the CP Achievement Date through and including the Termination Date.

"Actual Operations Expenses" has the meaning set forth in Section 3.01(d) of Annex C (Payment Provisions).

"Additional Infrastructure" has the meaning set forth in Section 1.01(b) of Annex A (Design and Construction Provisions).

"Affected Party" has the meaning set forth in Section 5.01.

Commented [A1]: Subject to confirmation by Brightline.

“**Aggregate Access Payment Amount**” means an amount equal to the aggregate Access Payments set forth on Table 1 to Exhibit 1 of Annex C (*Payment Provisions*), as the same may be adjusted in accordance with the terms of this Agreement.

“**Agreement**” has the meaning set forth in the preamble.

“**Annual Operating Budget**” has the meaning set forth in Section 3.01(e) of Annex C (*Payment Provisions*).

“**Applicable Law**” means any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, which is applicable to the Project or the Commuter Rail Service, performance of this Agreement or any relevant Person, whether taking effect before or after the Effective Date.

“**Approved Preliminary Project Plans**” has the meaning set forth in Section 1.01(c) of Annex A (*Design and Construction Provisions*).

“**Arbitration Notice**” has the meaning set forth in Section 10.03(c)(ii).

“**ATC**” means automatic train control, a system that uses an underlying automatic train control system in conjunction with other features or systems to achieve the core required functionalities of PTC.

“**Availability Conditions**” has the meaning set forth in Section 1.01(a) of Annex B (*Operations and Maintenance Provisions*).

“**Aventura Development Agreement**” means the Land Acquisition and Development Agreement, dated October 31, 2019, between the County and Brightline Florida (by assignment from Holdings), as amended.

“**Aventura Development Agreement Amendment**” means the amendment to the Aventura Development Agreement, dated as of the Effective Date of this Agreement.

“**Aventura Station**” means Brightline Florida’s train station in or around Aventura, Florida, located at 19796 West Dixie Highway, Miami, Florida 33180.

“**Baseline Core Costs**” has the meaning set forth in Section 1.12(a) of Annex A (*Design and Construction Provisions*).

“**Baseline Schedule**” has the meaning set forth in Section 2.10 of Annex B (*Operations and Maintenance Provisions*).

“**Benchmark Interest Rate**” means, as of the date of determination, the yield on the United States Treasury security having a maturity of ten (10) years, as published by the U.S. Department of the Treasury (or successor source) for such date.

“**Board**” means the Miami-Dade County Board of County Commissioners, or any successor governing body.

“**Brightline Construction Default**” has the meaning set forth in Section 2.01 of Annex D (*Default and Termination Provisions*).

“**Brightline Florida**” has the meaning set forth in the preamble.

“**Brightline Florida-Caused Delays**” means any delay in the design and construction of the Project and the satisfaction of any Milestone caused by:

- (a) a failure by Brightline Florida to meet any of its comment deadlines with respect to the development of design set forth in the Annex A (*Design and Construction Provisions*);
- (b) any breach by Brightline Florida of its obligations under Annex A (*Design and Construction Provisions*) or any Construction Contract;
- (c) any changes to Project design required by Brightline Florida that are inconsistent with the Approved Preliminary Project Plans;
- (d) any additional permit reviews from Governmental Authorities that are as a result of changes in design required by Brightline Florida; or
- (e) the gross negligence, willful misconduct or bad faith of Brightline Florida; except, in each case, to the extent caused by a Delay Event, County-Caused Delay or other cause for which Brightline Florida is expressly entitled to relief under this Agreement.

“**Brightline Florida Representative**” has the meaning set forth in Section 1.05.

“**Brightline Indemnitee**” has the meaning set forth in Section 4.02.

“**Brightline Operator**” shall mean MDC Commuter or Brightline Florida, as determined in accordance with Section 1.01(d) (*Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of Annex A (*Design and Construction*).

“**Brightline Operator Operations Default**” has the meaning set forth in Section 2.02 of Annex D (*Default and Termination Provisions*).

“**Brightline Operator Operations Default Notice**” has the meaning set forth in Section 2.02(b) of Annex D (*Default and Termination Provisions*).

“**Brightline Parties**” has the meaning set forth in the preamble.

“**Brightline Suspension of County Operations**” has the meaning set forth in Section 3.02(a) of Annex D (*Default Termination Provisions*).

“**Budgeted Monthly Payments**” has the meaning set forth in Section 3.01(f) of Annex C (*Payment Provisions*).

“**Business Day**” means any day other than Saturday, Sunday, or a day on which commercial banks in Miami, Florida, or New York, New York, are authorized or required by Applicable Law to be closed or during which the County’s administrative offices are not otherwise open for business.

“**Capacity Limitations**” means the following limitations on the operation of the Commuter Rail Service:

- (a) during Operating Hours that are not Peak Hours, the Commuter Rail Service shall be permitted to run hourly trains in each direction between the MiamiCentral Station and the Aventura Station;
- (b) during Peak Hours, to the extent that an amendment to the Aventura Development Agreement Amendment is effective in its form as of the Effective Date, the Commuter Rail Service shall be permitted to run half-hourly trains in each direction between MiamiCentral Station and the Aventura Station; and
- (c) the Commuter Rail Service may only run during Operating Hours and no trains may be on the Segment outside of the Operating Hours; *provided* that the Responsible Railroad may operate

one (1) non-revenue on the East/West Segment in the thirty (30) minutes before and after Operating Hours (it being understood that such period of time may be expanded as agreed by the Parties, and subject to the requirements of the Existing Project Documents, **in connection with future extensions of the Commuter Rail Service north of Aventura Station**).

“CEI” has the meaning set forth in Section 1.07(h) of Annex A (*Design and Construction Provisions*).

“CF Milestone” has the meaning set forth in Section 2 of Exhibit 1 to Annex C (*Payment Provisions*).

“CF Milestone Payments” means each Milestone Payment in respect of a CF Milestone.

“Change in Law” means the enactment, promulgation, adoption or repeal (in whole or in part) of or amendment, alteration or modification to or change in interpretation by an enforcing Governmental Authority that has binding effect in law of (in each case including, to the extent applicable, by retroactive effect), any Applicable Law that occur at any time after the Effective Date and that are binding on at least one of the Parties.

“Commencement of Construction” means Mobilization of any Construction Contractor, following a written Notice to Proceed by Brightline Florida.

“Commuter Financing” means any indebtedness of or guaranteed by a Brightline Party or its affiliates with respect to the development of a commuter Passenger Railroad Service in South Florida, including with respect to the existing bonds issued by the Florida Development Financing Corporation, as the same may be refinanced or remarketed from time to time.

“Commuter Plans” has the meaning set forth in Section 1.03(a) of Annex B (*Operations and Maintenance Provisions*).

“Commuter Rail Service” has the meaning set forth in the recitals.

“Commuter Rail Task Force” has the meaning set forth in Section 10.02(a).

“Commuter Stations” has the meaning set forth in Section 1.01(a) of Annex A (*Design and Construction Provisions*).

**Commented [A2]:** This language is broader than discussed as there may need to be multiple changes for each extension.

“**Compliance Representative**” means any person appointed by the County, with written notice to the Brightline Operator, for purposes of administrating the KPI Compliance Program and O&M LDs in accordance with the terms hereof.

“**Compliant Rolling Stock Standards**” has the meaning set forth in Section 4.03(a) of Annex B (Operations and Maintenance Provisions).

“**Conditions Precedent**” has the meaning set forth in Section 1.01.

“**Connecting Operator**” has the meaning set forth in Section 5.02(d) of Annex B (Operations and Maintenance Provisions).

“**Construction Contract**” has the meaning set forth in Section 1.06(a) of Annex A (Design and Construction Provisions).

“**Construction Contractor**” has the meaning set forth in Section 1.06(a) of Annex A (Design and Construction Provisions).

“**Construction Financing**” has the meaning set forth in Section 1.02(d) of Annex A (Design and Construction Provisions).

“**Contractor Breakage Costs**” means the Losses that have been or will be reasonably and properly incurred by any Brightline Party or any of their respective affiliates as of the Termination Date under a contract or a subcontract as a direct result of the termination of this Agreement; *provided* that such Losses shall be limited to those that are negotiated on a commercial arm’s length basis at the time such contract or subcontract, or any amendment thereto, is entered into (it being understood that, to the extent that the County reviews and approves any such contract or subcontract prior to its execution, the Losses resulting under such contract or subcontract, or any amendment thereto, shall be deemed to have been negotiated on a commercial arm’s length basis).

“**Corridor**” has the meaning set forth in the recitals.

“**County**” has the meaning set forth in the preamble.

“**County Code**” means the Miami-Dade County Code of Ordinances.

“**County-Caused Delay**” means any delay in the design and construction of the Project and the satisfaction of any Milestone caused by:

(a) a failure by the County to meet any of its deadlines with respect to the development of design set forth in Annex A (Design and Construction Provisions);

(b) a failure by the County to timely pay amounts Due and payable by the County under Annex A (Design and Construction Provisions);

(c) the Grantee's election to assume the obligation to procure any Construction Contract under Section 1.06(f) of Annex A (Design and Construction Provisions) to the extent that Brightline Florida received firm bids that did not give rise to a No-Fault Termination Event under Section 1.12(a) of Annex A (Design and Construction Provisions);

(d) any changes to Project design required by the County and/or FDOT that are inconsistent with the Approved Preliminary Project Plans;

(e) any additional permit reviews from Governmental Authorities that are as a result of changes in design required by the County and/or FDOT;

(f) any change orders (or similar instruments) entered into under any Construction Contract at the direction of the County; or

(g) the gross negligence, willful misconduct or bad faith of the County; except, in each case, to the extent caused by a Delay Event or other cause for which the County is expressly entitled to relief under this Agreement.

"**County Default**" has the meaning set forth in Section 3.01(a) of Annex D (Default and Termination Provisions).

"**County Indemnitee**", as between Brightline and the County, has the meaning set forth in Section 4.01.

"**County Representative**" has the meaning set forth in Section 1.05.

"**County Termination Trigger**" means any event that, with the passage of time, would entitle the County to terminate this Agreement in accordance with Section 2.03 of Annex D (Default and Termination Provisions).

"**CP Achievement Date**" means the date on which the Conditions Precedent are satisfied or otherwise waived by the County in accordance with Section 1.01 (Conditions Precedent).

“**D&C Liability Cap**” means the liability cap set forth in Section 1.14 of this Annex A (*Design and Construction Provisions*).

“**D&C Management Fee**” has the meaning set forth in Section 2.01 of Annex C (*Payment Provisions*).

“**Default Notice**” has the meaning set forth in Section 12.02(a).

“**Delay Event**” means any event that is outside the reasonable control of an Affected Party, to the extent that the Affected Party demonstrates that such event caused it to fail to comply with any of its obligations under this Agreement as contemplated in Section 5.01, including:

- (a) acts of God, fire or other casualty, act of nature, earthquake, flood, hurricane, lightning, tornado, sink hole or landslide;
- (b) epidemic or pandemic (other than the impacts of the coronavirus pandemic that exist as of the Effective Date);
- (c) enemy acts, acts of war, acts of terrorism or bioterrorism, riot or civil commotion, intervention by civil or military authorities of government, or insurrection;
- (d) general area-wide unavailability of materials, strike, boycott, lockout, labor dispute, or work stoppage;
- (e) incidents, track outages, or events that cause unavailability of a portion or all of the Segment;
- (f) delays caused by an Other Party;
- (g) any action taken, or inaction, by any Governmental Authority restricting access, use, operation or performance of any construction in accordance with the terms hereof (other than delays associated with the failure of the Affected Party to obtain permits in accordance with Applicable Laws and/or to diligently prosecute such applications); and
- (h) any Change in Law.

“**Design and Construction Working Group**” has the meaning set forth in Section 1.03(a) of Annex A (*Design and Construction Provisions*).

“**Design Firm**” has the meaning set forth in Section 1.05(b) of Annex A (*Design and Construction Provisions*).

“**DispatchCo**” means Florida DispatchCo LLC, or any successor entity thereto.

“**Dispatching Services Agreement**” means the Dispatching Services Agreement, dated as of December 27, 2016, among DispatchCo, Brightline Florida and FECR, or any replacement agreement relating to dispatching on the Segment.

“**Direct O&M Services**” means the ramp-up, initial maintenance of Rolling Stock following delivery thereof, testing and commissioning, operation, and maintenance of the Commuter Rail Service in accordance with the requirements of Annex B, excluding the Third-Party O&M Services.

“**Dispute**” means any dispute or disagreement between or among any of the Parties concerning their respective rights and obligations under this Agreement or as otherwise set forth in Article X, including in respect of any claim, alleged breach or failure to perform and any remedy.

“**Dispute Resolution Procedures**” means the process set forth in Article X.

“**Downtown Agreement**” has the meaning set forth in the recitals.

“**Due**” means the expiration of the County’s payment period under Section 13.01(a) following the submission by the relevant Party of a proper invoice in accordance with Section 13.01(c).

“**East/West Segment**” means the east/west segment across the FECR main right of way from the Existing Iris Crossing and the New Iris Improvements (each as defined in the Downtown Agreement) to and across the Little River Wye.

“**Effective Date**” means the effective date of the Resolution.

“**Estimated Baseline Operations Expenses**” has the meaning set forth in Section 3.01(a) of Annex C (*Payment Provisions*).

“**Excess Costs**” has the meaning set forth in Section 1.12(a) of Annex A (*Design and Construction Provisions*).

“**Existing Project Documents**” means, in each case, as provided to the County as of the Effective Date, together with any amendments entered into in accordance with Section 1.04(c), (i) the JUA, (ii) the

Passenger Easement, (iii) the Memorandum of JUA, (iv) the Downtown Agreement, (v) the Dispatching Services Agreement, (vi) the Non-Rail Easement, (vii) the Non-Rail JUA, (viii) the FECR Construction Agreement, and (ix) the SFRTA Easement and the SFRTA Lease.

**“Existing Station Improvements”** means the improvements to the MiamiCentral Station and Aventura Station reflected in the Preliminary Project Plans, as the same may be developed in accordance with this Agreement, including (i) with respect to the MiamiCentral Station, the installation of wayfinding and a fare collection system and (ii) with respect to the Aventura Station, an extension of the existing covered station platform and installation of elevators and a fare collection system.

**“Expected FTA Share”** has the meaning set forth in Section 1.02(b) of Annex A (Design and Construction Provisions).

**“Expected Timeline”** has the meaning set forth in Section 1.03(b) of Annex A (Design and Construction Provisions).

**“FC Suspension Period”** has the meaning set forth in Section 4.01(b) of Annex D (Default and Termination Provisions).

**“FDG”** means FDG Flagler Station II LLC, a Delaware limited liability company.

**“FDOT”** means the Florida Department of Transportation, or any successor entity thereto.

**“FECR”** has the meaning set forth in the recitals.

**“FECR Construction Agreement”** means the Construction Agreement (Shared Infrastructure) dated as of June 30, 2017, by and between Brightline Florida and FECR.

**“FELA”** has the meaning set forth under Section 2.01(b)(i) of Annex A (Design and Construction Provisions).

**“FFGA”** has the meaning set forth in Section 1.02(b) of Annex A (Design and Construction Provisions).

**“FFGA Termination Period”** means the period (a) starting on the date that is the later of (i) fifteen (15) days prior to the “Outside Payment Date” set forth on Table 1 of Exhibit 1 to Annex C (*Payment Provisions*) with respect to the second Milestone and (ii) the date that is three hundred and sixty five (365) days following the Reduced FTA Share Notice Date and (b) ending on the date that is two (2) years

following such Outside Payment Date or Reduced FTA Share Notice Date, as applicable (as such period may be extended by mutual agreement of Brightline Florida and the County).

Commented [A3]: Hold, pending discussion re milestone payments

“**Final Core Costs**” has the meaning set forth in Section 1.12(a) of Annex A (*Design and Construction Provisions*).

“**Final Service Determination**” has the meaning set forth in Section 1.01(c) of Annex A (*Design and Construction Provisions*).

“**Financing Documents**” has the meaning set forth in Section 12.03.

“**Fiscal Quarter**” means each period of three consecutive calendar months ending on December 31, March 31, June 30, and September 30 of each Fiscal Year.

“**Fiscal Year**” means the period beginning on October 1 of each calendar year and ending on September 30 of the following calendar year, or such other period as may hereafter be established as the fiscal year of the County.

“**Fleet Defects**” means cumulative failures with respect to ten percent (10%) or more of any part, system or component in the same or similar applications with respect to the Rolling Stock.

“**Florida Commission on Hurricane Loss**” means the body established under Section 627.0628, Florida Statutes (or any successor thereto), responsible for adopting actuarial methods, principles, standards, and models for hurricane loss projections in the State of Florida.

“**FRA**” means the Federal Railroad Administration, or any successor entity thereto.

“**FRA Acceptance**” means the occurrence or satisfaction (or waiver by Brightline Parties and the County) of the Availability Condition set forth in Section 1.01 of Annex B (*Operations and Maintenance Provisions*).

“**Freight Rail Service**” has the meaning set forth in the JUA.

“**FTA**” means the Federal Transit Authority, or any successor entity thereto.

“**Fundamental Change**” has the meaning set forth in Section 4.01(a) of Annex D (*Default and Termination Provisions*).

**“Good Industry Practice”** means the exercise of the standard of care, skill and diligence which would reasonably and ordinarily be expected from a developer or an operator of rail service, as applicable, and any Person retained for the performance of the design or construction work in respect of the Project or the operation of the Commuter Rail Service, as applicable, using accepted design and construction or operating and safety, as applicable, standards and criteria normally used on similar projects, and engaged in the same type of undertaking.

**“Governmental Approval”** means any permit, license, consent, approval, authorization, certification, exemption, filing, notice, variance, or other authorization of any kind issued, granted, or required by any Governmental Authority pursuant to Applicable Law, including any amendment, modification, renewal, or extension thereof necessary or required for the development, commissioning, operation, maintenance, repair, or use of the Project.

**“Governmental Authority”** means the government of the United States of America, the State, the cities and counties within the State and any other agency or subdivision of any of the foregoing, including any federal, state or municipal government.

**“Hazardous Materials”** means any material that is regulated under Hazardous Materials Laws, because of its quantity, concentration, or physical or chemical characteristics, is defined or included within the definition of a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic chemical,” “toxic substance,” “hazardous chemical,” “extremely hazardous substance,” “pollutant,” “contaminant,” “solid waste,” or any other words of similar meaning or significance within the context used under any applicable Hazardous Materials Laws. “Hazardous Material” includes, without limitation, any material or substance defined as a “hazardous substance” or a “pollutant or contaminant” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C § 9601 et seq., including asbestos-containing materials and lead-based paint, as well as petroleum, including crude oil or any fraction thereof, element, chemical, compound, mixture, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Applicable Law, or any other such substances or conditions (including mold and other mycotoxins, fungi or fecal material) which may create any unsafe or hazardous condition or pose any threat or harm to the environment or human health and safety.

**“Hazardous Materials Law”** means all present and future federal, state, or local Applicable Law relating to pollution, protection of the environment or natural resources or to human health and safety as it is affected by environmental conditions in, on, under, or about the Segment or any other land that is subject

to construction hereunder, including, without limitation, soil, air quality, water, water quality, and groundwater conditions.

“**Holdings**” means Brightline Florida Holdings LLC.

“**Immediately Effective Provisions**” means the terms and conditions set forth in Section 1.01 (*Conditions Precedent*), Section 1.03 (*Rules of Interpretation*), Section 1.05 (*Party Representatives*), Article VII (*Representations and Warranties*), Article X (*Governing Law; Commuter Rail Task Force; Dispute Resolution Procedures*), Article XI (*Liabilities*), Article XIII (*Miscellaneous*), Schedule 2 (*Inspector General Requirements; County Audit Rights*) and Sections 1.01 through 1.05 of Annex A (*Design and Construction Provisions*), and any defined terms referenced therein.

“**Indemnitee**” has the meaning set forth in Section 4.03(a).

“**Indemnitor**” has the meaning set forth in Section 4.03(a).

“**Indicative Schedule**” has the meaning set forth in Section 1.01(b) of Annex A (*Design and Construction Provisions*).

“**Indirect Losses**” means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity or any claim for consequential loss or for indirect loss of any nature; *provided that* (a) liquidated damages assessable in accordance with the terms of this Agreement and (b) third-party claims that are indemnifiable hereunder shall not constitute Indirect Losses.

“**Insuring Party**” has the meaning set forth in Section 2.01(a) of Annex A (*Design and Construction Provisions*).

“**Intercity Passenger Rail Service**” means all Passenger Railroad Service on the Segment and the Viaduct/Station Segment other than Commuter Rail Service and the SFRTA Commuter Rail Service and is characterized by making less frequent stops along the Segment and the Viaduct/Station Segment than the Commuter Rail Service.

“**Intercompany Access Agreement**” has the meaning set forth in the preamble.

“**Intercompany Development Agreement**” has the meaning set forth in the preamble.

“**IPSIG**” has the meaning set forth in Schedule 2 (*Inspector General Requirements; County Audit Rights*) to this Agreement.

“**Joint Infrastructure**” has the meaning set forth in the Downtown Agreement.

“**JUA**” has the meaning set forth in the recitals.

“**KPI Compliance Program**” has the meaning set forth in Section 2.06(a) of Annex B (Operations and Maintenance Provisions).

“**KPI Remedy Time**” has the meaning set forth in Section 1.03(c) of Annex B (Operations and Maintenance Provisions).

“**Lenders’ Liabilities**” means, at the relevant time, the aggregate of (without double counting), all principal, interest (including capitalized, accrued and default interest under the Financing Documents, but with respect to default interest, only to the extent that it arises as a result of a termination for convenience or the County making any payment later than the date that is due under this Agreement or any other default by the County under this Agreement), banking fees, original issue discount, premiums, expenses, indemnities or reimbursement obligations with respect to financial insurance policies, agent and trustee fees, costs, and expenses properly incurred owing or outstanding under or pursuant to the Financing Documents on the Termination Date (or will be owing or outstanding as a result of the prepayment, redemption or mandatory tender for purchase of such debt), including any prepayment, redemption or mandatory purchase premiums or penalties, make-whole payments or other prepayment, redemption or mandatory purchase amounts, including costs of early termination of interest rate and inflation rate hedging, swap, collar or cap arrangements.

“**Lenders’ Representative**” has the meaning set forth in Section 12.01(a).

“**Loss**” or “**Losses**” means any loss, damage, injury, liability, obligation, cost, expense, fee, charge, judgment, penalty, or fine. Losses include injury to or death of persons, damage or loss of property, and harm or damage to natural resources.

“**Maintenance Facility**” means a facility for regular maintenance, cleaning and storage of Rolling Stock at a location outside of the Corridor to be determined by the County.

“**Mandated Capital Improvements**” has the meaning set forth in Section 5.05(d).

“**MDC Commuter**” has the meaning set forth in the preamble.

“**MDC Commuter Representative**” has the meaning set forth in Section 1.05.

“**Memorandum of JUA**” has the meaning set forth in the recitals.

“**MiamiCentral Station**” means the existing train station in the City of Miami located at 600 NW 1st Avenue, Miami, Florida.

“**Milestones**” means, together, the Access Milestones and the CF Milestones.

“**Milestone Payments**” has the meaning set forth in Section 1.01 of Annex C (*Payment Provisions*).

“**MOA**” has the meaning set forth in Section 1.10 of Annex A (*Design and Construction Provisions*).

“**Mobilization**” means the commencement of the placement, assembly or installation of structures, facilities or equipment for the construction of any portion of the Additional Infrastructure, the Commuter Stations, and the Existing Station Improvements including the significant site preparatory work (such as grading), the clearing, excavation or removal of existing structures or facilities or the ordering of substantial construction materials.

“**NEPA**” has the meaning set forth in Section 1.05(c) of Annex A (*Design and Construction Provisions*).

“**No-Fault Termination Event**” has the meaning set forth in Section 1.01(a) of Annex D (*Default and Termination Provisions*).

“**No-Fault Termination Reimbursement Amount**” means, in the aggregate, all Milestone Payments actually paid by the County to MDC Commuter prior to the Termination Date, together with interest accrued on each such Milestone Payment from (and including) the date such Milestone Payment was made to (but excluding) the Termination Date, at a rate per annum equal to the Benchmark Interest Rate, determined as of the close of business in New York City on the date such Milestone Payment was made (or, if such yield is not available for such date, the most recently published yield prior thereto), calculated on a simple, non-compounding basis and on the basis of a three hundred sixty-five (365)-day year for the actual number of days elapsed.

“**Non-Rail Easement**” means the First Amended and Restated Grant of Easements dated June 13, 2014, by and between FECR and FDG, and recorded in Official Records Book 29200, Page 952, of the Public Records of Miami-Dade County, Florida.

**“Non-Rail JUA”** means the Amended and Restated Joint Use and Operating Agreement, dated June 13, 2014, by and among FECR, FDG and Brightline Florida, as partially assigned to FECI Easement Merger Sub LLC, a Delaware limited liability company, pursuant to that certain Partial Assignment and Assumption of Easement and Joint Use Agreement dated June 30, 2017 and recorded in Official Records Book 29200, Page 952, of the Public Records of Miami-Dade County, Florida, it being understood that FECI Easement Merger Sub LLC merged into FECR Property I LLC and then FECR Property I LLC merged into FECR thereby providing FECR with the non-rail easement rights.

**“Notice of Collateral Assignment”** has the meaning set forth in Section 12.01(a).

**“Notice of Termination for Convenience”** means the written notice by the County stating (i) that it is exercising its option to terminate this Agreement for convenience pursuant to Section 1.02(a) of Annex D (Default and Termination Provisions), and (ii) whether the County is expressly electing to seek financing for payment of the Termination Amount.

**“Notice to Proceed”** means the written authorization issued by the applicable Brightline Party to the Construction Contractor, which is subject to written approval by the County Representative prior to issuance by applicable Brightline Party in accordance with Section 1.08(e) of Annex A (Design and Construction Provisions).

**“O&M Contract KPIs”** has the meaning set forth in Section 1.03(a)(iv) of Annex B (Operations and Maintenance Provisions).

**“O&M Services”** means the Direct O&M Services and the Third-Party O&M Services.

**“Operating Hours”** means the period between (and including) the hours of 5:00 a.m. and 12:00 a.m. (midnight).

**“Operating Rules”** has the meaning set forth in Section 1.02(a) of Annex B (Operations and Maintenance Provisions), as the same may be amended by the Parties in accordance with the provisions of this Agreement and subject to the terms of the Existing Project Documents.

**“Operations Commencement Date”** has the meaning set forth in Section 2.01(a) of Annex B (Operations and Maintenance Provisions).

**“Operations Fee”** has the meaning set forth in Section 3.01(c) of Annex C (Payment Provisions).

“**Operations Remedial Plan**” has the meaning set forth in Section 2.02(b) of Annex D (*Default and Termination Provisions*).

“**Operator**” has the meaning set forth in Section 2.02(a)(i) of Annex B (*Operations and Maintenance Provisions*).

“**Operator Replacement Notice**” has the meaning set forth in Section 1.03(k) of Annex B (*Operations and Maintenance Provisions*).

“**Original Operator**” has the meaning set forth in Section 5.02(d) of Annex B (*Operations and Maintenance Provisions*).

“**Other Parties**” has the meaning set forth in Section 5.01.

“**Other Passenger Service Operator**” means any Other User that operates Passenger Railroad Service (as defined in the JUA).

“**Other Users**” means Brightline Florida, FECR, SFRTA and any respective permitted successor, permitted assignee or permitted designee of the foregoing that from time to time operates rail service on the Corridor, it being understood that any trains of a permitted designee of Brightline Florida or FECR shall be deemed to be trains of Brightline Florida or FECR, as applicable, for purposes of this Agreement, it being understood that trains of SFRTA or trains used in the Commuter Rail Service shall not be considered to be trains of either Brightline Florida or FECR.

“**Outside Payment Date**” means the dates set forth on Table 1 of Exhibit 1 to Annex C (*Payment Provisions*).

“**Park and Ride Facilities**” means, collectively, one park and ride facility for each Commuter Station at locations outside of the Corridor to be determined by the County.

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

“**Passenger**” means any person, ticketed or unticketed, using the Intercity Passenger Rail Service or Commuter Rail Service on the Corridor, the Viaduct/Station Segment or in any Station:

(a) on board trains, locomotives, rail cars, or rail equipment employed in Intercity Passenger Rail Service, Commuter Rail Service, or boarding or alighting therefrom;

(b) on or about the Corridor, the Viaduct/Station Segment or in any Station for any purpose related to the Intercity Passenger Rail Service or Commuter Rail Service, including parking or purchasing tickets therefor, and coming to, waiting for, and leaving from locomotives, rail cars, or rail equipment; or

(c) meeting, assisting, or in the company of any person described in clause (i) or (ii) above.

“**Passenger Easement**” has the meaning set forth in the recitals.

“**Passenger Railroad Service**” has the meaning set forth in the JUA.

“**Peak Hours**” means, during each weekday, (a) a three (3)-hour period from approximately 6:00 a.m. to 9:00 a.m. and (b) a three (3)-hour period from approximately 4:00 p.m. to 7:00 p.m., as the same may be adjusted in accordance with this Agreement.

“**Pending Litigation**” means the civil action styled *Florida East Coast Railway, LLC v. Brightline Trains Florida LLC, et al.*, Local Case No. 2025-013297-CA-01, State Case No. 132025CA01329701GE01, filed on July 11, 2025, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

“**Persistent Breach**” has the meaning set forth in Section 3.02(b) of Annex D (*Default and Termination Provisions*).

“**Person**” means any natural person, corporation, joint venture, limited liability company, company, voluntary association, partnership, trust, unincorporated organization or Governmental Authority or other type of entity.

“**Pre-Revenue Service Safety Validation Plan**” has the meaning set forth in Section 2.03(a)(i) of Annex B (*Operations and Maintenance Provisions*).

“**Precedent Period**” means the period (a) starting on the Effective Date and (b) ending on September 30, 2027, as the same may be extended by agreement of the Parties.

“**Preliminary KPIs**” means the key performance indicators set forth in **Table 1** of Section 2.06 of Annex B (*Operations and Maintenance Provisions*).

**“Preliminary Project Plans”** has the meaning set forth in Section 1.01(b) of Annex A (Design and Construction Provisions).

**“Project”** has the meaning set forth in the recitals.

**“Project Costs”** means all costs associated with the development, design, engineering, third-party review, construction, procurement, environmental, permitting, lease modification or termination costs on the Corridor as a result of the Project, testing and commissioning of the Project hereunder (whether incurred before or after the Effective Date), but excluding work that is performed in consideration for the D&C Management Fee.

**“Project Documents”** this Agreement and the Existing Project Documents, collectively.

**“Project Management”** has the meaning set forth in the preamble.

**“Project Schedule”** has the meaning set forth in Section 1.08(d) of Annex A (Design and Construction Provisions).

**“Property Insurance”** has the meaning set forth in Section 5.02(a) of Annex B (Operations and Maintenance Provisions).

**“PTC”** means positive train control, a system designed to, among other things, prevent collisions between trains, over-speed derailments, incursions into established work zone limits, and the movement of a train through an improperly positioned switch.

**“Qualified Substitute”** means a person or entity that (a) has the legal capacity, power and authority to become a party to, and perform the obligations under, this Agreement, (b) has the resources available to it (including committed financial resources) to perform its obligations under this Agreement, (c) is not a Restricted Person, and (d) employs or subcontracts with persons having the appropriate qualifications, experience and technical competence that are sufficient to enable it to perform its obligations under this Agreement. Any Qualified Substitute shall be required to comply with any vendor registration or other legal requirements in order to assume this Agreement.

**“Rail Corridor Invitee”** as between Brightline Florida and the County, means any person who is on or about the Corridor, the Viaduct/Station Segment or any Station in which Brightline Florida, the County, FECR or SFRTA has an easement interest, a lease, a right to operate or a right of access.

**“Railroad of Record”** has the meaning set forth in Section 2.02(b) of Annex B (*Operations and Maintenance Provisions*).

**“Readjustment Period”** has the meaning set forth in Section 1.01(e) of Annex A (*Design and Construction Provisions*).

**“Reduced FTA Share”** has the meaning set forth in Section 1.02(c) of Annex A (*Design and Construction Provisions*).

**“Reduced FTA Share Notice”** has the meaning set forth in Section 1.02(c) of Annex A (*Design and Construction Provisions*).

**“Reduced FTA Share Notice Date”** means the date that the Brightline Parties receive a Reduced FTA Share Notice from the County.

**“Reduced MP”** has the meaning set forth in Section 2.11(e) of Annex B (*Operations and Maintenance Provisions*).

**“Related Party”** has the meaning set forth in Section 13.15.

**“Release”** means any actual releasing, depositing, discharging, emitting, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials (including, without limitation, the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Material).

**“Released for Construction Drawings”** has the meaning set forth in Section 1.05(a) of Annex A (*Design and Construction Provisions*).

**“Repetitive Service Failure Event”** has the meaning set forth in Section 2.07(b) of Annex B (*Operations and Maintenance Provisions*).

**“Resolution”** means the duly approved resolution adopted by the Board that approves this Agreement.

**“Restricted Person”** means any Person who (or any member of a group of Persons acting together, any one of which):

**Commented [A4]:** Conformed to Beach Corridor

(a) is debarred, suspended, or otherwise disqualified from federal, State, or County contracting for any services similar in nature to the Commuter Rail Service or any portion thereof;

(b) was or is subject to any material claim of the United States, State, or County in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the Person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the County's view, in either case, be reasonably likely to materially affect the ability of the relevant Brightline Party to perform its obligations under hereunder;

(c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors, officers, or its senior executives) has been convicted of a felony less than ten (10) years prior to the date at which the determination of whether the Person falls within this definition is being made;

(d) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(e) has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

**"RFP"** has the meaning set forth in Section 1.06(a) of Annex A (*Design and Construction Provisions*).

**"Rolling Stock"** means the locomotives and rail cars operated by or on behalf of the Responsible Railroad for the Commuter Rail Service.

**"RRIF"** has the meaning set forth in Section 1.02(d) of Annex A (*Design and Construction Provisions*).

**"RTC Simulation"** has the meaning set forth in Section 1.01(b) of Annex A (*Design and Construction Provisions*).

**"Segment"** means portions of Shared Infrastructure and the AAF Infrastructure, the Viaduct/Station Segment, and the Additional Infrastructure, in each case between the MiamiCentral Station and the Aventura Station on which the Commuter Rail Service will operate in accordance with the terms of

this Agreement and, solely for purposes of non-revenue service to the Maintenance Facility, the East/West Segment .

“**Service Failure Event**” has the meaning set forth in Section 2.07 of Annex B (*Operations and Maintenance Provisions*).

“**Service Failure Remedial Plan**” has the meaning set forth in Section 2.03(a)(iv) of Annex B (*Operations and Maintenance Provisions*).

“**Service Standards Committee**” has the meaning set forth in the JUA.

“**SFRTA**” means the South Florida Regional Transportation Authority, a regional transportation authority created pursuant to Fla. Stat. §§ 343.51—343.58, or any successor Governmental Authority thereto.

“**SFRTA Commuter Rail Service**” means the commuter rail service developed and operated by SFRTA in accordance with the Downtown Agreement.

“**SFRTA Easement**” means the Easement Agreement dated October 31, 2023, and recorded in Official Records Book 33963, Page 3638 of the Public Records of Miami-Dade County, Florida.

“**SFRTA Lease**” means the Lease dated as of October 31, 2023, by and between Brightline Florida, as landlord, and SFRTA, as tenant.

“**SFRTA Sharing Agreement**” means the consent and sharing agreement contemplated in Section 1.01, with respect to the Leased Premises defined under the SFRTA Lease, to be entered into among SFRTA and Brightline Florida, and with the Brightline Operator (which may be MDC Commuter) and the County either as a direct counterparties or third-party beneficiaries to the extent necessary.

“**Shared Infrastructure**” has the meaning set forth in the JUA.

“**SIRA**” has the meaning set forth in Section 2.01(e) of Annex A (*Design and Construction Provisions*) and in Section 2.01(a) of Annex A (*Operations and Maintenance Provisions*), as applicable.

“**State**” means the State of Florida.

“**Stations**” means, collectively, the MiamiCentral Station, the Aventura Station and the Commuter Stations; *provided* that the term “Stations” shall not include the portions of the MiamiCentral Station and

the Aventura Station that are exclusive to Brightline Florida; *provided further* that the County acknowledges that access to the SFRTA Exclusive Tracks (as defined in the Downtown Agreement) and SFRTA platforms are provided by SFRTA under the SFRTA Sharing Agreement.

“**Substantial Completion**” means (a) with respect to the Commuter Stations, the Maintenance Facility and the Existing Station Improvements, the issuance of a temporary certificate of occupancy (or its equivalent) by the relevant Governmental Authority for the Commuter Stations and the Existing Station Improvements, if applicable, that allows the operation of the Stations for the Commuter Rail Service, and (b) with respect to the Additional Infrastructure, the stage in the progress of the work when Brightline Florida and the County Representative have determined that the Additional Infrastructure is sufficiently complete in accordance with this Agreement, the Existing Project Documents and the Construction Contract that Brightline Florida, FECR and the Additional Infrastructure can be utilized for the operation of Freight Rail Service, Passenger Railroad Service and Commuter Rail Service as contemplated herein, subject only to the completion of punch list items that will not materially affect the ability of Brightline Florida, FECR and the Responsible Railroad to use the Additional Infrastructure for such Freight Rail Service, Passenger Railroad Service and Commuter Rail Service.

“**Substitute**” has the meaning set forth in Section 12.04.

“**Substitution Effective Date**” has the meaning set forth in Section 12.05.

“**Term**” has the meaning set forth in Section 6.01.

“**Termination Amount**” means, as of the Termination Date, an amount (without duplication) equal to: (a) the Lenders’ Liabilities, *minus* (b) any proceeds of the Construction Financing that remain in an account of MDC Commuter that is under the control of the collateral agent (or other similar agent) for the benefit of the lenders under the Construction Financing, *plus* (c) all amounts Due and owing by the County to any Brightline Party or Project Management under this Agreement; *plus* (d) Contractor Breakage Costs; *provided* that prior to the issuance of NTP, the Termination Amount shall be an amount no less than Two Hundred and Fifty Million Dollars (\$250,000,000) *minus* the aggregate Access Milestone Payments received by MDC Commuter as of the Termination Date.

“**Termination Date**” means either the date of any expiration of this Agreement or the earlier termination of this Agreement, in each case pursuant to its terms.

“**Testing and Commissioning Plan**” has the meaning set forth in Section 1.03(b) of Annex B (*Operations and Maintenance Provisions*).

“Third-Party Manager” has the meaning set forth in Section 2.02(a)(i) of Annex B (Operations and Maintenance Provisions).

“Third-Party O&M Services” means the maintenance, dispatching, and other services provided by FECR and DispatchCo under the Existing Project Documents.

“TIFIA” has the meaning set forth in Section 1.02(d) of Annex A (Design and Construction Provisions).

“Unused Access Reimbursement Amount” means, as of the date of determination, an amount equal to (a) the aggregate Access Milestone Payments actually paid by the County to MDC Commuter minus (b) the Accrued Access Payment Amount.

Commented [A5]: Subject to confirmation by Brightline.

“Viaduct/Station Segment” means the segment that commences at Station [19262+30.00] and terminate at Station [19296+10.86] for a total of [3,380.86 feet] and shall include the track and ancillary rail facilities at the MiamiCentral Station.

“Warning Notice” has the meaning set forth in Section 3.02(b) of Annex D (Default and Termination Provisions).

## Schedule 2

### **Inspector General Requirements; County Audit Rights**

**Section 1.01 Independent Private Sector Inspector General Reviews.** Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (the "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, each Brightline Party and Project Management shall make available to the IPSIG retained by the County all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of the IPSIG services. The terms of this provision herein apply to each Brightline Party and Project Management and their respective successors and assigns, and any architects, engineers, contractors and subcontractors doing work pursuant to this Agreement. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of each Brightline Party and Project Management in connection with, and as and when provided under, this Agreement. The terms of this paragraph shall not impose any additional liability on the County by Brightline Parties or Project Management or any third party beyond those liabilities or obligations of the County otherwise set forth in this Agreement.

**Section 1.02 Other Powers of the IPSIG.** Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all the County contracts including, but not limited to, those contracts specifically exempted by the County Code. The Miami-Dade County Inspector General is authorized and empowered to review past, present, and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to any Brightline Party or Project Management. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and Applicable Law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders, if any, to a contract. The Inspector General is empowered to retain, at no expense or cost to any Brightline Party or Project Management, the services of IPSIGs to audit, investigate, monitor, oversee, inspect, and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of any Brightline Party or Project Management or their respective officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

**Section 1.03 Records.** Upon written notice to any Brightline Party or Project Management from the Inspector General or IPSIG retained by the Inspector General, such Brightline Party or Project Management, as applicable, shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to the County. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to any Brightline Party or Project Management, copy all documents and records in such Party's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

**Section 1.04 Recordkeeping Requirements.** Each Brightline Party and Project Management shall prepare and maintain proper, accurate, current and complete financial books and records regarding this Agreement, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, construction schedules, work orders, service orders, rate sheets, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of this Agreement or any transactions in which a Brightline Party or Project Management knows the County has or may have a financial or other material interest hereunder, and to the extent required to determine the costs of an agreed change in or addition to the payments for which the County is or may be responsible under this Agreement. Each Brightline Party and Project Management shall produce such financial books and records for examination and copying promptly upon request by the County. All such information upon delivery to the County shall be presented in: (a) a format that will enable an independent auditor to perform a review of the information in accordance with GAAP; and (b) in the native format that each such records were created and/or maintained. None of the Brightline Parties or Project Management shall be required to provide the County any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the County upon the delivery of financial records for the purposes hereof. Each Brightline Party and Project Management shall keep and maintain all such financial books and records with respect to each calendar year during the Term until at least the seventh anniversary of the last day of each such calendar year, or such longer period during which any legal proceeding with respect to this Agreement may be pending. In the event any Brightline Party or Project Management fails to prepare or maintain any financial books, records or accounts as required under this Section, such Party shall not be entitled to any

requested payments or adjustments to the extent such failure prevented verification as may be required by this Agreement; *provided* that such Party shall be entitled to any portion of such requested payments or adjustments that can be reasonably discerned from the financial books, records or accounts as maintained by such Party.

**Section 1.05 Inspection, Audit and Adjustment.** The County shall have the right to perform or commission an inspection or independent audit of the financial information and all other information and records required to be kept under this Agreement. The County shall give the applicable Brightline Party or Project Management reasonable advance notice (at least three (3) Business Days) prior to any such audit, and such audit shall be performed during business hours. The County shall, or shall cause the party conducting the inspection or audit, provide a complete copy of the inspection or audit report to such Brightline Party or Project Management following receipt of such report. If an inspection or audit reveals that a Brightline Party or Project Management has overstated any component of a County payment obligation arising out of this Agreement, then such Brightline Party or Project Management, at the election of the County, either immediately reimburse to the County or offset against payments, as a payment adjustment, the overstated amount plus interest at a rate of 1% per month on such overstated amount from the time such amount was initially overpaid until reimbursed or credited to the County; *provided* that this provision shall not apply to any reconciliation contemplated in Annex C (Operations and Maintenance Provisions). If the overpayment exceeds 1% of the total amount that should have been properly paid by the County during the period audited, then such Brightline Party or Project Management shall, in addition, reimburse the County for any and all fees and costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the County may have.

**Section 1.06 Commission Auditor.** Pursuant to Section 9.10 of the Miami-Dade County Home Rule Amendment and Charter, the Office of the Commission Auditor was created and established, and the Office of the Commission Auditor has the powers and duties set forth in Sections 2-471 through 2-481 of the County Code. The Commission Auditor shall have the right to inspect and audit the books, records, financial statements and operations of any Brightline Party or Project Management and its contractors, all in accordance with Section 2-481 of the County Code, and each Brightline Party and Project Management agrees to comply with same.

**Annex A**  
**Design and Construction Provisions**

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## Annex A

### Design and Construction Provisions

#### Article I. Design and Construction of the Commuter Rail System

##### Section 1.01 Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements.

(a) Brightline Florida and the County acknowledge that, as of the Effective Date, the approved, aggregate operating capacity of the Shared Infrastructure under Section 4.2(c) of the JUA is limited to twenty-four (24) freight trains a day by FECR, thirty-six (36) passenger trains per day by Brightline Florida and twenty-eight (28) trains per day by SFRTA. As a result, Brightline Florida and the County acknowledge that the implementation of the Commuter Rail Service will require the development of additional AAF Infrastructure and/or upgrades to the Shared Infrastructure (collectively, the “**Additional Infrastructure**”), which Additional Infrastructure, together with the five (5) covered station platforms along the Segment set forth on Exhibit 1 to this Annex A (*Design Construction Provisions*) (the “**Commuter Stations**”), and the Existing Station Improvements will be designed and constructed in accordance with the terms of this Agreement and the Existing Project Documents.

(b) As of the Effective Date, the Brightline Parties and the County have prepared the following deliverables with respect to the Commuter Rail Service: (i) the indicative schedule of Commuter Rail Service between the MiamiCentral Station and the Aventura Station (the “**Indicative Schedule**”) and (iii) the thirty percent (30%) design and construction drawings with respect to the Additional Infrastructure, the Commuter Stations and the Existing Station Improvements (the “**30% Infrastructure Drawings**”), each in the form set forth on Exhibit 2 to this Annex A (*Design and Construction Provisions*) (the “**Preliminary Project Plans**”).

(c) Prior to the Effective Date, Brightline Florida submitted a required information package to FECR and the Service Standards Committee with respect to the Commuter Rail Service. Brightline Florida shall act reasonably, and in cooperation with the County, to obtain concurrence from FECR and the Service Standards Committee with respect to such deliverables (or, in the event that Brightline Florida is unable to obtain such concurrence despite acting reasonably and in cooperation with the County, to obtain approval of such deliverables from an arbiter pursuant to the dispute resolution procedures under the JUA), including by reasonably considering comments received by FECR or the Service Standards Committee. The Preliminary Project Plans as concurred to or modified by FECR and the Service Standards Committee (or as approved or modified by an arbiter pursuant to dispute resolution

under the JUA) shall be referred to herein as the “**Approved Preliminary Project Plans**” and any such final decision for purposes of the JUA shall be referred to herein as the “**Final Service Determination.**”

(d) Brightline Florida shall provide the County with verbal updates every two (2) weeks (or such other period as is agreed among the Parties) with respect to any dispute resolution proceedings relating to the Commuter Rail Service under the JUA, it being understood that Brightline Florida shall not be required to share any attorney-client work product or other privileged information with the County. To the extent permitted pursuant to such arbitration process, and taking into account the limitations on evidence that may be presented and set forth in the JUA, the County may provide Brightline Florida evidence for Brightline Florida’s consideration in connection with such dispute resolution proceeding. If Brightline Florida is unable to obtain Approved Preliminary Project Plans, whether through concurrency by FECR and the Service Standards Committee or through dispute resolution procedures under the JUA, within three hundred sixty-five (365) days of the Effective Date (as such period may be extended by mutual agreement of Brightline Florida and the County acting reasonably), then the County may terminate this Agreement upon ninety (90) days’ prior written notice to the Brightline Parties; *provided* that if a Final Service Determination obtained prior to the expiration of such ninety (90) day notice period, such termination notice shall have no effect and this Agreement shall not be terminated. The Parties agree that MDC Commuter shall act as the Brightline Operator, it being understood that, if the terms of a Final Service Determination do not permit MDC Commuter to act as the Brightline Operator as provided in this Agreement, the Parties agree that (i) Brightline Florida will act as the Brightline Operator until such time as MDC Commuter is permitted to act as the Brightline Operator, and (ii) notwithstanding such change in the Brightline Operator, MDC Commuter shall continue to be entitled to receipt of the Milestone Payments hereunder. To the extent that a Final Service Determination does not permit MDC Commuter to act as the Brightline Operator, but allows the Brightline Parties to perform this Agreement, such determination will not serve as the basis of a No-Fault termination Event hereunder.

(e) To the extent the Final Service Determination requires (i) a decrease in the Capacity Limitations (based on average daily frequency) in excess of twenty percent (20%), (ii) removal of more than one Commuter Station, (iii) a change in the location of a Commuter Station, to the extent such changed location is located more than one (1) mile from the original location of such Commuter Station and such change is not the result of the removal of a Commuter Station, or (iv) a material increase in Additional Infrastructure, capacity improvements, or operational requirements that materially impact the Final Core Costs contemplated under Section 1.12 (*Core Project Costs*) of this Annex A (*Design and Construction Provisions*), then the Parties will promptly meet to determine whether the Final Service Determination is reasonably acceptable to the Parties or which amendments to this Agreement would

reasonably be necessary in order for this Agreement to be reasonably acceptable to the Parties. The Parties will work in good faith to consider alternative service and funding arrangements in order to accept the Final Service Determination for purposes of this Agreement. Notwithstanding the foregoing, to the extent the Parties are unable to reach an agreement with respect to acceptance of the Final Service Determination and any related amendments to this Agreement within one hundred eighty (180) days (as the same may be reasonably extended by the Parties, the “**Readjustment Period**”, which may include a concurrent extension of the Precedent Period), then the County may, by written notice to the Brightline Parties no later than thirty (30) days after the end of the Readjustment Period, provide a notice to the Brightline Parties of its intention to terminate this Agreement; *provided* that, to the extent that Parties have reached an agreement in principal during the Readjustment Period, the Readjustment Period shall be automatically extended a further period, not to exceed one hundred twenty (120) days, to obtain formal approval of such agreement in principal.

(f) To the extent the Final Service Determination requires (i) a decrease in the Capacity Limitations (based on average daily frequency) of twenty percent (20%) or less or (ii) the removal of one Commuter Station, the County and MDC Commuter shall, at the option of the County to be exercised by notice to the Brightline Parties within thirty (30) days of the Final Service Determination, amend the remaining Milestone Payments, on a pro rata basis, in accordance with Exhibit 3 to this Annex A (*Design and Construction Provisions*).

(g) The Parties agree and acknowledge that a Final Service Determination that materially differs from the Preliminary Project Plans (as determined by the FTA) may require FTA approval in order for the County to obtain an FFGA. The County will diligently pursue such approval, it being acknowledged that such approval is in the FTA’s discretion and may impact the County’s ability to enter into an FFGA.

#### **Section 1.02 Funding of the Project**

(a) The Parties acknowledge that the Milestone Payments are expected to be funded through a combination of funds from each of the FTA, the State, and the County.

(b) The County shall diligently pursue, and use its best faith efforts to secure, a full funding grant agreement (“**FFGA**”) with the FTA (or to identify other committed funding sources), and, as of the Effective Date, expects to receive funds from the FTA in an amount equal to at least \$[•] with respect to the Project Costs hereunder and the County payment obligations set forth on Annex C (*Payment Provisions*) (as the same may be reduced in accordance with Section 1.02(c) of this Annex A (*Design and*

*Construction Provisions*), the “**Expected FTA Share**”) by the commencement of the FFGA Termination Period.

(c) If at any time the County becomes aware that the County will, despite its diligent pursuit and use of its best faith efforts in accordance with Section 1.02(b) of this Annex A (*Design and Construction Provisions*), only reasonably be able to secure an FFGA with the FTA (or other committed funding source) in an amount less than the Expected FTA Share (such lower amount, the “**Reduced FTA Share**”), then the County shall promptly (but in no event later than ten (10) Business Days after the County becomes aware) notify the Brightline Parties of the same (the “**Reduced FTA Share Notice**”) (which Reduced FTA Share Notice shall include the amount of the Reduced FTA Share), and the County shall thereafter cooperate with the Brightline Parties to pursue alternative or additional funding. The County shall provide the Brightline Parties updates as reasonably requested by the Brightline Parties in connection with its efforts to secure such alternative or additional funding. To the extent the County is unable to achieve the Expected FTA Share by the commencement of the FFGA Termination Period, the County may, by written notice to the Brightline Parties to be delivered no later than the expiration of the FFGA Termination Period, terminate this Agreement. To the extent that the County does not deliver a termination notice prior to the expiration of the FFGA Termination Period or otherwise deliver a notice of its intent not to terminate this Agreement, MDC Commuter shall promptly notify the County of such failure. To the extent the County does not provide such termination or non-termination notice within thirty (30) days of receipt of such notice from the Brightline Parties, this Agreement shall automatically terminate.

(d) Promptly after the CP Achievement Date, MDC Commuter shall diligently pursue, and use its commercially reasonable efforts to secure financing from third-party lenders of the Project Costs, as the same may be adjusted to reflect the Final Core Costs in accordance with Section 1.12 (*Core Project Costs*) of this Annex A (*Design and Construction Provisions*) and partial repayment, redemption, purchase or other retirement of the Commuter Financing so as to release the existing liens on the assets of, and guarantee by, MDC Commuter, for the benefit of such lenders, as well as all other costs associated with the issuance or incurrence of such debt or required reserves (such financing, the “**Construction Financing**”). The County shall cooperate, as reasonably requested by MDC Commuter, in connection with the closing of any Construction Financing, including by providing customary legal opinions, instruments, and other documents reasonably required by lenders or required to comply with any disclosure requirements under Applicable Law in connection with any capital markets issuance. The County and MDC Commuter will reasonably cooperate with each other to apply for, and, if successful, obtain a Railroad Rehabilitation and Improvement Financing (“**RRIF**”) loan or Transportation Infrastructure Finance and Innovation Act (“**TIFIA**”) loan from the Build America Bureau. MDC Commuter shall use all reasonable efforts to achieve

financial close of the Construction Financing prior to or within sixty (60) days of the execution of the Construction Contract that obligates MDC Commuter to make payment of the Final Core Costs. Payment by MDC Commuter of Project Costs shall be in accordance with Section 1.07(d) (*Mandatory Construction Contract Terms*) of this Annex A (*Design and Construction Provisions*).

(e) To the extent MDC Commuter fails to close a Construction Financing in accordance with Section 1.02(d) of this Annex A (*Design and Construction Provisions*), the County may, by written notice to the Brightline Parties to be delivered no later than thirty (30) days after the expiration of MDC Commuter's deadline to close the Construction Financing under Section 1.02(d) of this Annex A (*Design and Construction Provisions*), terminate this Agreement.

### **Section 1.03 Working Groups; Expected Timeline**

(a) The Parties hereby agree to create a working group (the "**Design and Construction Working Group**"), with three (3) members appointed by each of the County and MDC Commuter and one (1) member appointed by Brightline Florida, to address specific issues relating to each Party's respective obligations set forth in this Annex A (*Design and Construction Provisions*) which require further expertise. Each relevant Party may replace an individual designated as its member in the Design and Construction Working Group upon prior written notice to the other Parties. The Design and Construction Working Group shall endeavor to meet virtually on a weekly basis, or as otherwise agreed by MDC Commuter and the County, and its members shall develop a protocol for meetings promptly following the CP Achievement Date; *provided* that less than all members of the Design and Construction Working Group shall be permitted to meet, and such meeting shall constitute a meeting of the Design and Construction Working Group as long as each of the County, MDC Commuter, and Brightline Florida is represented in such meeting; and *provided further* that any failure of the Design and Construction Working Group to meet shall not constitute a default hereunder. The Design and Construction Working Group may cease to meet at the option of the County or MDC Commuter once each No-Fault Termination Event has expired.

(b) The initial workflows for the Design and Construction Working Group shall be the advancement of Project design (including the coordination of Project design with other work streams and third-party reviews (including SFRTA and FDOT), with the goal of completing design work in accordance with the Expected Timeline), communications with the FTA, the satisfaction of any conditions or deliverables necessary in order for the County to secure the FFGA, the advancement of the procurement of the Construction Contractor, and the advancement of the Construction Financing. Concurrently with the

finalization of the FFGA and any Construction Contract, the Design and Construction Working Group will establish the expected timeline for construction of the Project (the “**Expected Timeline**”).

(c) The County and the Brightline Parties may mutually agree to create additional working groups (or subgroups) or change the scope of any working group created pursuant to this Section 1.03.

**Section 1.04 Meetings with Design Firm and FTA.** The Parties agree that (a) throughout the pre-development process, the County shall provide the Brightline Parties with reasonable opportunity to attend all County meetings with the Design Firm regarding the Project, and (b) the County shall act in good faith to provide the Brightline Parties a reasonable opportunity to attend meetings with the FTA regarding the Project, it being understood that FTA may prohibit or restrict the Brightline Parties’ attendance. The Parties will act reasonably in sharing relevant information with each other with respect to the FTA process, including by providing the Brightline Parties a reasonable opportunity to review and comment on all deliverables proposed to be submitted by the County to the FTA that would reasonably be expected to have a material impact on a Brightline Party prior to their submission to the FTA.

**Section 1.05 Completion of Design of Additional Infrastructure, Commuter Stations, and Existing Station Improvements**

(a) The County shall be responsible for the completion of design and construction drawings with respect to the Additional Infrastructure, the Commuter Stations and Existing Station Improvements, which shall include a final set of drawings to construct the Additional Infrastructure, Commuter Stations and Existing Station Improvements that have been signed and sealed by an engineer of record (the “**Released for Construction Drawings**”).

(b) The County shall or shall cause its design firm (the “**Design Firm**”) to undertake the design of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements in accordance with Good Industry Practice, Applicable Law, and the terms of this Agreement in all material respects. The Additional Infrastructure shall be designed so that the same can be maintained to at least FRA Class 4 standards, or as otherwise required under the Existing Project Documents. Each Station platform shall be designed and constructed to include fare gates or other reasonable ticketing mechanisms in order for ticketed Passengers to access the platform at such Station.

(c) On November 28, 2023, the County has received written notice from the FTA that the Project qualifies for a categorical exclusion pursuant to 23 C.F.R. 771.118(d) under the National

Environmental Policy Act (“NEPA”), thereby ending federal review of the Project under NEPA. To the extent that changes to the design of the Additional Infrastructure, Commuter Stations or Existing Station Improvements require a re-evaluation of the same under NEPA, the County shall conduct and complete any such re-evaluation. Notwithstanding the foregoing, Brightline Florida shall reasonably cooperate with the County in the pursuit of a NEPA approval in respect of the Project.

(d) The Parties will reasonably cooperate to the extent that any additional right-of-way is necessary for the Additional Infrastructure, the Commuter Stations and the Existing Station Improvements, it being understood that, as of the Effective Date, the Parties expect that the Segment contains all such right-of-way; *provided* that the Parties agree and acknowledge that the County may (but shall not have any obligation to) prosecute eminent domain or other legal proceedings in connection with such reasonable cooperation. The Parties agrees to act reasonably and in cooperation with each other to secure any utility easements on the Corridor (or within public property) required in connection with the Project, it being understood that the Construction Contractor shall be responsible for utility installation work under the Construction Contract. Brightline Florida shall be responsible for arranging for the cancellation of any leases required to be cancelled under the Non-Rail JUA to the extent the same is required for the performance of each Party’s obligations under this Annex A (Design and Construction Provisions); *provided* that the Parties agree and acknowledge that the costs for such cancellation under the Non-Rail JUA shall be considered Project Costs. To the extent practicable, Brightline Florida will seek a final determination of the cost of cancelling leases under the Non-Rail JUA as part of the Final Service Determination.

(e) The County shall progress the design and construction drawings with respect to the Additional Infrastructure, the Commuter Stations, and the Existing Station Improvements in accordance with the Expected Timeline and provide Brightline Florida with reasonable opportunity to review and comment, and to seek comments from any applicable third party to the extent required to do so under any Existing Project Documents. Brightline Florida’s right to provide comments pursuant to this Section 1.05(e) shall include the right to provide comments to ensure that the proposed Commuter Rail Service, Additional Infrastructure, Commuter Stations, and Existing Station Improvements do not unreasonably interfere with the operations or allocated capacity of each of Brightline Florida, FECR, and SFRTA (taking into account the amendment to the Aventura Development Agreement). All comments to be provided by Brightline Florida shall be in writing and in the format reasonably required, and notified to Brightline Florida in advance, by the County.

(f) The County and Brightline Florida will reasonably cooperate to obtain comments from applicable third parties, including FDOT, the FTA, SFRTA and any other applicable Governmental Authority. Brightline Florida acknowledges that FDOT is entitled to approve all aspects of design related to crossings on FDOT right-of-way and the Maintenance Facility and will make all efforts to accommodate FDOT's comments except to the extent the same could reasonably be expected to have an adverse impact (i) on the Brightline Parties' ability to perform under this Agreement; *provided* that, to the extent the Brightline Parties are not able to reach agreement with FDOT with respect to such comments, the Brightline Parties and the County will reasonably cooperate to adjust the performance requirements or other provisions of this Agreement so that the Brightline Parties' ability to perform is not adversely impacted or (ii) on the operation of the Intercity Passenger Rail Service or the Freight Rail Service. The County shall not be entitled, without the prior consent of Brightline Florida and SFRTA, to remove any Additional Infrastructure scope set forth in the Preliminary Project Plans or, if final, the Approved Preliminary Project Plans. In addition, the County shall be required to incorporate any comments to the extent incorporation of the same is necessary not to unreasonably interfere with the operations of Other Users based on rail traffic controller model taking into account then-contractually allocated capacities and schedules. To the extent the Design Firm notes a constructability issue relating to any comments to the design and construction drawings, the County and Brightline Florida will reasonably cooperate to resolve such issue. Finally, Brightline Florida and the County shall act reasonably in mitigating the cost impacts of any design changes introduced by the County to the extent there is a lower cost solution that is consistent with the requirements of, and the County's operations as contemplated in, this Agreement.

(g) The Parties acknowledge that the design process will advance in parallel with the Final Service Determination under the JUA. To the extent the Approved Project Plans differ from the Preliminary Project Plans and, as a result, require changes to design drawings prepared by the Design Firm, the County and the Brightline Parties shall use reasonable efforts to update the then-current design drawings to conform to the Approved Project Plans and to request and received comments from third parties as otherwise contemplated in this Section 1.05, it being understood that no updates shall be required to be made during any Readjustment Period. To the greatest extent possible, the Parties will follow the process and timing set forth in this Section 1.05 in order to incorporate such required changes into the then-current design drawings.

**Section 1.06 Procurement of a Construction Contractor for Additional Infrastructure, Commuter Stations, and Existing Station Improvements; Construction Financing**

(a) Promptly following the later of the Final Service Determination or the expiration of any termination rights under Section 1.01(e) (*Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of this Annex A (*Design and Construction Provisions*), the Brightline Parties will commence preparation of procurement documents to contract a construction contractor (or multiple procurement processes to contract multiple construction contractors) for the construction of the Additional Infrastructure, the Commuter Stations, and the Existing Station Improvements and associated utility connection work; *provided* that to the extent the Brightline Parties commence multiple procurement processes for multiple construction contractors, the Brightline Parties shall use commercially reasonable efforts to run such procurement processes concurrently. Any such procurement process will comply with all applicable federal (including FTA), State, and County requirements. The Brightline Parties shall provide the County with a draft copy of a request for proposals (an “RFP”) that will be issued to select one or more contractors (individually or collectively, as applicable, the “Construction Contractor”) in order to enter into a firm, fixed price, date certain, lump sum contract or contracts for completion of the construction of the Additional Infrastructure, Commuter Stations, and the Existing Station Improvements, as applicable (individually or collectively, as applicable, the “Construction Contract”). The RFP will contain a copy of the Construction Contract and the County will have thirty (30) days to review and comment on, or request changes to, the RFP. The County and the Brightline Parties will act reasonably in resolving any County comments or requests, it being understood that the County will have the right to approve the final RFP prior to advertisement of the same. Following finalization of the RFP, the Brightline Parties will issue the RFP. Brightline Florida shall endeavor to set a bid due date under the RFP for the Construction Contract that is promptly following the execution date of the FFGA.

(b) The terms of the Construction Contract are expected to reflect the responsibility matrix set forth on Exhibit 4 to this Annex A (*Design and Construction Provisions*). Under each Construction Contract, Brightline Florida will provide construction management services in accordance with Section 1.08 (*Brightline Florida’s Obligations in Construction of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of this Annex A (*Design and Construction Provisions*) in consideration for payment of the D&C Management Fee as further set forth under Article III (*Operations Payments*) of Annex C (*Payment Provisions*). MDC Commuter shall, subject to Section 1.07(d) and Section 1.07(e) (*Mandatory Construction Contract Terms*) of this Annex A (*Design and Construction Provisions*), be responsible for payments to the Construction Contractor.

(c) The RFP will provide a process for potential bidders to submit exceptions or qualifications to the terms of the Construction Contract prior to the bid due date. The Brightline Parties will promptly provide a copy of any proposed exceptions or qualifications received to the County, and the

Brightline Parties and the County will promptly meet to determine whether to accept or reject any proposed exceptions or qualifications, each such Party acting reasonably. To the extent the County and the Brightline Parties are unable to agree on an exception or qualification, or to the extent an exception or qualification does not comply with any Applicable Law, such exception or qualification shall be rejected. The RFP will provide that no exceptions or qualifications will be permitted unless approved prior to the bid due date.

(d) Brightline Florida will evaluate responses to the RFP and will select one or more Construction Contractors in accordance with the criteria set forth in the RFP.

(e) Brightline Florida may, from time to time, reasonably request changes to the procurement process outlined above, subject to the approval of the County, acting reasonably (it being understood that the County may require approval from the FTA).

(f) Notwithstanding anything to the contrary in this Section 1.06, the County shall have the right, upon written notice to Brightline Florida delivered no later than thirty (30) calendar days (*provided* that the Parties shall reasonably cooperate to ensure that a decision is made prior to the expiration of any bid validity period) after the County's receipt of the Final Core Costs in accordance with Section 1.12 (Core Project Costs) of this Annex A (Design and Construction Provisions), to conduct a re-procurement to contract a Construction Contractor for the construction of the Additional Infrastructure, the Commuter Stations, and the Existing Station Improvements using a process substantially similar to the process set forth in this Section 1.06, which re-procurement shall be conducted and completed by the County as promptly as reasonably practicable; *provided* that, to the extent Brightline Florida's original procurement resulted in firm bids that did not result in Excess Costs under Section 1.12 (Core Project Costs) of this Annex A (Design and Construction Provisions) or to the extent Brightline Florida committed to fund Excess Costs in accordance with Section 1.12(a) (Core Project Costs) of this Annex A (Design and Construction Provisions), the County shall have no right to terminate this Agreement pursuant to Section 1.12(a) (Core Project Costs) of this Annex A (Design and Construction Provisions).

#### **Section 1.07 Mandatory Construction Contract Terms**

(a) Except as set forth in Section 1.07(e) of this Annex A (Design and Construction Provisions), each Construction Contract shall provide for direct payment by the MDC Commuter to the relevant Construction Contractor for any amounts due to such Construction Contractor thereunder.

(b) At least ten (10) calendar days prior to commencing any construction under the Construction Contract, the Construction Contractor shall furnish the Brightline Parties and the County with,

and record in the public records of Miami-Dade County, a payment bond and a performance bond in accordance with the provisions of Section 255.05, Florida Statutes, and Applicable Law. Each payment and performance bond shall cover all relevant construction activities, materials, and supplies. Each of the Brightline Parties and the County shall be named, upon issuance of such payment bond and performance bond, as an additional obligee thereunder, and the Construction Contractor shall deliver a true and correct copy thereof, with the multiple obligee rider or other comparable documentation, to the Brightline Parties and the County within ten (10) days after issuance of the payment and performance bond.

(c) The Construction Contractor shall be required to comply with the insurance requirements set forth in Article II (Insurance Requirements for Design and Construction) of this Annex A (Design and Construction Provisions).

(d) Except as set forth in Section 1.07(e) of this Annex A (Design and Construction Provisions), payment applications under the Construction Contract will be provided by the Construction Contractor to MDC Commuter. The Parties recognize that payments by MDC Commuter will be made from an account that is under the control of the collateral agent (or other similar agent) for the benefit of the lenders under the Construction Financing. As a result, draws from such account in order to make payments to the Construction Contractor shall be subject to the review and approval of either such agent or a technical advisor appointed on behalf of such lenders, it being understood that the Parties shall have no liability due to delays caused by the collateral agent (or other similar agent) in its review and approval of any payment. MDC Commuter will provide Brightline Florida a copy of each approved invoice and supporting documentation, and Brightline Florida will provide the same to the County concurrently with its provision of progress reports in accordance with Section 1.08(b) (Brightline Florida's Obligations in Construction of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements) of this Annex A (Design and Construction Provisions).

(e) The Construction Contract will set forth a limited set of circumstances in which the Construction Contractor will be entitled to make a claim for additional time or compensation pursuant to a written notice to Brightline Florida. To the extent that the Construction Contractor makes a claim for additional time or compensation under the Construction Contract, Brightline Florida shall conduct an initial review of such claim (acting reasonably and taking into account the input of the lenders under the Construction Financing and any technical advisor thereto). To the extent that Brightline Florida reasonably determines that such claim should be rejected, Brightline Florida shall provide the Construction Contractor with a written rejection of such claim. To the extent that Brightline Florida reasonably determines that such claim should not be rejected (or if the Construction Contractor challenges a rejection by Brightline Florida),

Brightline Florida shall notify the County of the same, and thereafter Brightline Florida and the County shall reasonably cooperate to resolve such claim, including by participating in meetings with the Construction Contractor; *provided* that the resolution of any such claim will be finally determined by the County and the Construction Contractor. To the extent that any additional compensation is due under the Construction Contract, or to the extent that amounts are due to the Construction Contractor in excess of the proceeds of the Construction Financing that are available for payment of Project Costs in accordance with Section 1.07(d) of this Annex A (*Design and Construction Provisions*), the same shall be the responsibility of the County, and the Construction Contractor will submit separate payment applications to MDC Commuter in respect thereof, and MDC Commuter shall have five (5) Business Days after receipt of any such payment application to approve or reject the same; *provided* that if such additional compensation is due under the Construction Contract due to the gross negligence or willful misconduct of a Brightline Party or Project Management, then Project Management shall be responsible for such additional compensation, subject to the D&C Liability Cap. Subject to Section 1.07(f) of this Annex A (*Design and Construction Provisions*), if MDC Commuter has approved a payment application, MDC Commuter shall promptly provide such approved payment application to the County, and the County shall review such payment application and, in accordance with the County Code, directly pay any amounts Due in respect thereof to the Construction Contractor in accordance with the prompt payment requirements in the County Code.

(f) Notwithstanding anything to the contrary in Section 1.07(e) of this Annex A (*Design and Construction Provisions*), upon request by the County, MDC Commuter shall request from its lenders or other third party funders or financial institutions (i) the provision of funds to finance any compensation due to the Construction Contractor pursuant to a claim for additional compensation under the Construction Contract and (ii) estimated pricing for such financing (it being understood that such lenders or other parties may refuse the provision of any such funding in their sole discretion and that the MDC Commuter shall be under no additional obligation (and shall not be in breach of any undertaking) in connection with the provision of any funding for such additional compensation due under the Construction Contract or that MDC Commuter may not be able to achieve financial close in connection with any such proposed financing). MDC Commuter shall provide the County estimated pricing for such financing upon MDC Commuter's receipt thereof, and, to the extent that the County approves such estimated pricing, MDC Commuter shall use commercially reasonable efforts to proceed with such financing. To the extent that the MDC Commuter successfully finances any such additional compensation due to the Construction Contractor in accordance with the foregoing, MDC Commuter shall directly pay any amounts due to the Construction Contractor, and the Milestone Payments shall be automatically adjusted to cover all costs of MDC Commuter actually and reasonably incurred in connection with such financing.

(g) The Construction Contract shall contain provisions that obligate the Construction Contractor to, in the event that the County has exercised its rights under Section 2.01(b) (*County Right to Take Over Construction Management*) of Annex D (*Default and Termination Provisions*), accept the County's assumption of Brightline Florida's role under the Construction Contract at no cost, in which case Brightline Florida shall have no further obligations thereunder from and after the date of such assumption.

(h) At the County's option, the County may procure, at its cost, a construction engineering and inspection firm (a "CEI") to perform construction engineering and inspection obligations in connection with the Construction Contract. To the extent the County procures a CEI, Brightline Florida shall reasonably cooperate with the CEI to provide access to information reasonably requested in connection with the CEI's oversight, inspection, monitoring, documentation, and compliance review responsibilities; provided that the CEI shall not direct construction means and methods or otherwise unreasonably interfere with Brightline Florida's performance of its obligations under this Agreement.

(i) The Parties acknowledge that construction work for the Project will, from time to time, require road closures. Brightline Florida shall provide notice of each road closure to the County Representative no later than three (3) Business Days prior to such closure, and the County Representative will promptly advise Brightline Florida to the extent it wishes to designate another person to perform its duties under this Section 1.07(i) together with contact information (both phone and electronic mail) for such other person. If an unforeseen condition arises during any road closure that would either (i) require acceleration of the construction work in order to complete the relevant construction work prior to the expiration of the road closure or (ii) result in the completion of the construction work not being reasonably feasible prior to the expiration of the road closure, Brightline Florida will promptly notify the County Representative (or its designee) with its recommended course of action. The County Representative (or its designee) will provide instructions on how to proceed to Brightline Florida as soon as possible and, in any event, within one (1) hour. Brightline Florida shall assume no liability hereunder for following the County Representative's instructions or, to the extent the County Representative fails to timely provide instructions, for following its own recommendation. Notwithstanding anything to the contrary herein, Brightline Florida shall be entitled to make directions without incurring responsibility for increased costs without prior notice to the County Representative in the event of an emergency or in response to safety issues.

**Section 1.08 Brightline Florida's Obligations in Construction of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements**

(a) Brightline Florida will schedule and conduct meetings with the Construction Contractor and the County (and, if applicable, the Design Firm) to discuss procedures, progress, coordination, scheduling, status of the construction work, and other related matters.

(b) Brightline Florida will regularly observe on-site work and record the progress of the Project. On a monthly basis, Brightline Florida will review and comment on written progress reports prepared by the Construction Contractor showing percentages of completion and accrued Project Costs and will provide a copy of such reports, together with Brightline Florida's comments and the information required under Section 1.07(d) (*Mandatory Construction Contract Terms*) of this Annex A (*Design and Construction Provisions*), to the County. Based on input from the Construction Contractor and its observation of the work, Brightline Florida will prepare and update a master Project schedule, including a report regarding the remaining available proceeds to fund Project Costs from the Construction Financing, and provide a copy of the same to the County on a monthly basis.

(c) Brightline Florida will exercise its rights under the JUA, the Passenger Easement, and the FECR Construction Agreement in order to provide the Construction Contractor with access to the Segment and to permit the Construction Contractor to perform the work. The County acknowledges that such access will be subject to the limitations on access set forth in such documents. Brightline Florida and the County agree to comply with such documents for purposes of construction of the Additional Infrastructure, Commuter Stations and Existing Station Improvements.

(d) The Parties acknowledge that the Expected Timeline is subject to change but agree to reasonably cooperate to establish sufficient Segment access windows to allow for the prosecution of the construction work for the Project within the Expected Timeline. Such cooperation shall include using reasonable efforts to agree, prior to the execution of any Construction Contract, on a month-by-month schedule for the work to be undertaken under such Construction Contract (with respect to each Construction Contract, a "**Project Schedule**"). In addition, on a weekly basis following execution of each Construction Contract with respect to the construction work for the Project, Brightline Florida, the County and the relevant Construction Contractor shall meet to agree to one (1) week and three (3) week look-forward schedules for the construction work for the Project and shall use all reasonable efforts to align those to the Project Schedule.

(e) Following financial close of the Construction Financing, Brightline Florida will promptly issue a Notice to Proceed to the Construction Contractor so long as (i) the Construction Contractor has delivered the payment and performance bond required under Section 1.07(b) (*Mandatory Construction*

*Contract Terms*) of this Annex A (*Design and Construction Provisions*), and (ii) the Construction Contractor has procured all insurance required to be procured as a condition to Notice to Proceed.

(f) To the extent Brightline Florida believes it has achieved Substantial Completion with respect to the Additional Infrastructure, it shall provide written notice of the same to the County Representative. The County Representative shall, within fifteen (15) days of such notice, inspect the Additional Infrastructure and determine whether the Additional Infrastructure is sufficiently complete in accordance with this Agreement, the Existing Project Documents and the Construction Contract that the Additional Infrastructure can be utilized for the operation of the Commuter Rail Service as contemplated in this Agreement, subject only to the completion of punch list items that will not affect the use of the Additional Infrastructure for such Commuter Rail Service. Prior to the expiration of such fifteen (15)-day period, the County Representative shall provide a notice to Brightline Florida stating that either (i) Substantial Completion of the Additional Infrastructure has been achieved or (ii) Substantial Completion of the Additional Infrastructure has not been achieved and setting forth the specific reasons it believes that Substantial Completion has not been achieved. Brightline Florida may dispute a determination of the County Representative in accordance with the Dispute Resolution Procedures.

**Section 1.09 Procurement, Provision, and Commissioning of Rolling Stock.** Unless the County notifies Brightline Florida prior to the CP Achievement Date that it intends to supply Rolling Stock directly for the Project (in which case the County will ensure that the Rolling Stock complies with all of the technical requirements of this Section 1.09), Brightline Florida shall be responsible for the procurement process for all Rolling Stock for operations meeting the requirements specified in, and in accordance with, the Project Documents, and as required by Applicable Law, at least the EPA's Tier 4 emission standards (or such other standards as are required by Brightline Florida at the time of procurement), and meeting the clearance dimensions of American Association of Railroads plate F with the ability to load and unload Passengers at each platform height on the Segment; *provided* that Brightline Florida shall be entitled to make reasonable modifications to such technical train specifications as required due to a Change in Law or as required to ensure compatibility of the Rolling Stock to the Corridor. Promptly following the Final Service Determination, Brightline Florida will commence the procurement process for the Rolling Stock. Any such procurement process will comply with all applicable federal (including FTA), State, and County requirements, and Brightline Florida shall coordinate such procurement process with SFRTA as necessary. Brightline Florida shall also provide the County a reasonable opportunity to participate in, and comment on, any procurement process for Rolling Stock (and any resulting supply agreement for such Rolling Stock), and the County shall enter into any supply agreements for Rolling Stock resulting from such procurement process; *provided* that the County acts reasonably and the Parties use reasonable efforts to jointly review

and resolve any comments from the County. Brightline Florida shall not object to the participation of Broward County in such meetings and may, subject to the approval of the County (which has the responsibility of payment as between Brightline Florida and the County for all Rolling Stock) procure additional Rolling Stock in connection with a proposed commuter rail service project in Broward County. The County shall pay the cost of all Rolling Stock in accordance with the terms of the relevant purchase order. To the extent that the supplier of Rolling Stock makes a claim for additional time or compensation under the relevant supply agreement, Brightline Florida shall conduct an initial review of such claim (acting reasonably). To the extent that Brightline Florida reasonably determines that such claim should be rejected, Brightline Florida shall provide the supplier with a written rejection of such claim. To the extent that Brightline Florida reasonably determines that such claim should not be rejected (or if the supplier challenges a rejection by Brightline Florida), Brightline Florida shall notify the County of the same, and thereafter Brightline Florida and the County shall reasonably cooperate to resolve such claim, including by participating in meetings with the supplier; *provided* that the resolution of any such claim will be finally determined by the County and the Construction Contractor, and any costs shall be the responsibility of the County. Brightline Florida shall, at the County's cost, equip the Rolling Stock with both ATC and PTC equipment which is compatible with the ATC and PTC facilities on the Corridor, and maintain and upgrade, from time to time, the same in order to meet the requirements of the Corridor. The Parties acknowledge that ATC and PTC software versions may be updated during the course of the procurement of the Rolling Stock and/or ATC and PTC equipment, and that the Parties will reasonably cooperate to ensure that Brightline Florida installs the latest version of the software authorized for use on the Corridor. After procurement of the Rolling Stock in accordance with this Section 1.09, the Parties shall, at the County's cost, cooperate in commissioning and testing such Rolling Stock and obtaining any necessary Governmental Approvals with respect to the Rolling Stock that are necessary for operation of the Rolling Stock under this Agreement (including the FRA). Brightline Florida will submit payment applications to the County for all costs to be incurred under this Section 1.09 (including the D&C Management Fee in respect thereof, in accordance with Article II (D&C Management Fee) of Annex C (Payment Provisions)). With respect to Rolling Stock costs, the County shall review such payment application and, in accordance with the County Code, directly pay any amounts due in respect thereof to the relevant vendor.

**Section 1.10 Design and Construction of Maintenance Facility.** The County shall be responsible for securing all access, design approvals, use and/or land rights necessary for the construction of the Maintenance Facility, including the acquisition or lease of any necessary real estate rights in respect of the same. As of the Effective Date, the County has not entered into a Memorandum of Agreement with the Florida Department of Transportation in respect of the same (the "MOA"). The County will provide

the Brightline Parties with periodic updates regarding negotiation of the MOA and with a copy of each draft of the MOA prepared by the Florida Department of Transportation. The County will consult with the Brightline Parties regarding the terms of the MOA and use reasonable efforts to incorporate the comments of the Brightline Parties to the extent the same would reasonably be expected to materially reduce Project Costs without degrading the Commuter Rail Service. Brightline Florida and the County will cooperate in establishing a protocol for the procurement and construction of the Maintenance Facility similar to the procedure set forth in Section 1.05 (*Completion of Design of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of this Annex A (*Design and Construction Provisions*) and Section 1.06 (*Procurement of a Construction Contractor for Additional Infrastructure, Commuter Stations, and Existing Station Improvements; Construction Financing*) of this Annex A (*Design and Construction Provisions*), subject to all Applicable Laws and the terms of the MOA. The County shall promptly notify Brightline Florida of any proposed amendments to the MOA, and will, at Brightline Florida's request, meet with Brightline Florida to discuss any amendments thereto. Payments of Project Costs in respect to the Maintenance Facility will be in accordance with Section 1.07 (*Mandatory Construction Contract Terms*) of this Annex A (*Design and Construction Provisions*), with the County also assuming responsibility for any incremental Project Costs arising out of an amendment to the MOA. Subject to the terms of the MOA and the agreed-to protocol described above, the County will design the Maintenance Facility and Brightline Florida will be responsible for the procurement of construction contracts in respect of the same.

**Section 1.11 Design and Construction of Park and Ride Facilities and Additional Commuter Stations.**

(a) At the County's option, Brightline Florida and the County will cooperate in establishing a protocol for the procurement, design, and construction of the Park and Ride Facilities similar to the procedure set forth in Section 1.05 (*Completion of Design of Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of this Annex A and Section 1.06 (*Procurement of a Construction Contractor for Additional Infrastructure, Commuter Stations, and Existing Station Improvements; Construction Financing*) of this Annex A (*Design and Construction Provisions*), subject to all Applicable Laws and any additional D&C Management Fee. To the extent that the County opts to move forward with Brightline Florida for the provision of these services, prior to any procurement activities, the County shall be responsible for securing access to all access, use and/or land rights necessary for the construction of the Park and Ride Facilities, including the acquisition or lease of any necessary real estate rights in respect of the same. Generally, to the extent an agreement is reached, the County will design the Park and Ride Facilities and Brightline Florida will be responsible for the procurement of construction contracts in respect of the same, at the County's sole cost.

(b) The County may request, no more frequently than once every five (5) years that Brightline Florida consider the construction of, and operation of Commuter Rail Service to, one or more additional stations on the Segment, which request will be subject to the approval of Brightline Florida in its sole discretion. To the extent Brightline Florida approves any such request, the same shall be in all aspects such to all applicable review requirements under the Existing Project Documents, and subject to achievement of an agreement between the County and the Brightline Parties in respect of the same.

**Section 1.12 Core Project Costs.**

(a) Exhibit 5 of this Annex A (*Design and Construction Provisions*) sets forth, in U.S. dollars based on the expected year of expenditure, the expected construction costs under the Construction Contract for Additional Infrastructure, Commuter Stations, Existing Station Improvements, and the Maintenance Facility (the “**Baseline Core Costs**”). Upon receipt of firm bids for the Construction Contract(s), Brightline Florida shall prepare an update to the budget (such updated budget, the “**Final Core Costs**”) with respect to the Baseline Core Costs and provide the same to the County. The County agrees to reasonably cooperate with Brightline Florida in connection with Brightline Florida’s preparation of the Final Core Costs. To the extent the aggregate Final Core Costs exceed an amount equal to the aggregate Baseline Core Costs, as escalated annually on January 1<sup>st</sup> of each calendar year after the Effective Date at a rate of three and a half percent (3.5%) per annum, by more than ten percent (10%) (such excess over ten percent (10%), the “**Excess Costs**”), the County shall either:

(i) by written notice to Brightline Florida within sixty (60) days of receipt of such Final Core Costs, be entitled to provide a notice to Brightline Florida of its intention to terminate this Agreement or to reprocur in accordance with Section 1.06(f) (*Procurement of a Construction Contractor for Additional Infrastructure, Commuter Stations, and Existing Station Improvements; Construction Financing*) of this Annex A (*Design and Construction Provisions*); *provided* that Brightline Florida (or an affiliate thereof) shall have a period of thirty (30) days from receipt of such notice to commit to fund the Excess Costs, in which case this Agreement shall not be terminated; or

(ii) to the extent the County does not deliver a termination notice in accordance with Section 1.12(a) of this Annex A (*Design and Construction Provisions*), be deemed to have accepted such Final Core Costs and shall no longer be entitled to terminate this Agreement in accordance with Section 1.12(a) of this Annex A (*Design and Construction Costs*).

(b) To the extent that the County is not entitled to, or has agreed not to, terminate this Agreement in accordance with Section 1.12(a) of this Annex A (*Design and Construction Costs*), the Parties shall reasonably cooperate to adjust the amounts of the CF Milestone Payments to give effect to (i) the difference, if any, between the Final Core Costs and the final guaranteed maximum price under the Construction Contract and (ii) the difference, if any, between the Benchmark Interest Rate as of the Effective Date and the Benchmark Interest Rate as of the pricing date under the Construction Contract. Brightline Florida will provide the County with a notice setting forth the proposed adjustments to the CF Milestone Payments and explaining the rationale for any proposed adjustments, including proposed adjustments to the timing of payments of the CF Milestone Payments in order to reduce the overall financing costs. To the extent that such proposed adjustments would, if effected and in the aggregate, result in an increase in excess of ten percent (10%) of the aggregate CF Milestone Payments, the Parties acknowledge that such adjustments will be subject to Board approval. The County shall promptly seek any such required Board approval. The Parties further acknowledge that the delay caused due to the County's need to seek Board approval may result in the expiration of the bid validity period under any RFP or may result in the need for further adjustments to the CF Milestone Payments. The County and Brightline Florida will reasonably cooperate to seek an extension of any expired bid validity period, and the County shall seek approval from its Board of additional contingency as needed in order to further adjust the CF Milestone Payments in connection with such delay. To the extent the Board does not approve an adjustment to the CF Milestone Payment, Brightline Florida shall be entitled, by written notice to the County within ten (10) days of such failure to approve, to commit to funding (whether directly or through an affiliate) such shortfall.

**Section 1.13 Qualification of Employees.** All employees of any entity that operates trains, locomotives, rail cars, and rail equipment on, along and over the Segment shall be qualified for such operation by Brightline Florida (or, to the extent required under the Existing Project Documents, FECR).

**Section 1.14 Limit of Liability.** Notwithstanding anything to the contrary in this Agreement:

(a) the total aggregate liabilities of the Brightline Parties and Project Management arising under this Annex A (*Design and Construction Provisions*) from any and all causes shall not exceed the amount of the D&C Management Fee paid to Project Management; and

(b) Project Management hereby assumes all liabilities of each of the Brightline Parties arising under this Annex A (*Design and Construction Provisions*), and neither Brightline Party shall be responsible for any such liabilities.

**Article II. Insurance Requirements for Design and Construction.**

**Section 2.01 Construction Contractor Insurance.**

(a) At a minimum, the Construction Contractor (and any construction contractor contracted under Section 1.10 (*Design and Construction of Maintenance Facility*) of this Annex A (*Design and Construction Provisions*) or Section 1.11 (*Design and Construction of Park and Ride Facilities*) of this Annex A (*Design and Construction Provisions*), each, an “**Insuring Party**”) shall procure or cause to be procured and keep in effect insurance policies in accordance with the requirements of this Section 2.01. Each Party each reserves the right to request full copies of any of the insurance policies required in this Section 2.01 from the Construction Contractor.

(b) Each Insuring Party shall procure and maintain, or cause to be procured and maintained, the insurance coverages required in clauses (i) through (iii) below until final completion is achieved under the relevant construction contract. The Insuring Party shall furnish to the County’s Transportation and Public Works Department, at 701 NW 1<sup>st</sup> Court, 15<sup>th</sup> Floor, Miami, FL 33136 (or such other location as notified by the County to Brightline Florida), along with a copy to the Brightline Parties, certificate(s) of insurance evidencing insurance coverage that meets the requirements outlined below:

(i) Workers’ Compensation Insurance as required by Chapter 440, Florida Statutes including but not limited to Other States coverage, coverage, or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Federal Employers’ Liability Act (“**FELA**”), (where applicable). Coverage shall be in accordance with statutory limits for the State. Coverage shall also include Employer’s Liability Insurance. This insurance shall have limits of at least One Million Dollars (\$1,000,000) per accident, per employee, and per bodily injury/disease and annual aggregate.

(ii) Commercial General Liability Insurance in an amount not less than Three Hundred and Twenty-Three Million Dollars (\$323,000,000) per occurrence, and Three Hundred and Twenty-Three Million Dollars (\$323,000,000) in the aggregate (limit may be provided by a combination of primary and excess/umbrella coverage), which amount shall be adjusted in accordance with Applicable Law or the Existing Project Documents. **The County and the Brightline Parties must be shown as an additional insured with respect to this coverage.**

(iii) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this Annex A (*Design and Construction Provisions*) in an amount not less than Five Million Dollars (\$5,000,000) combined single limit.

(iv) From Commencement of Construction and until Substantial Completion, builders' risk special perils cause of loss including windstorm and hail and flood if applicable, with coverage in the amount of one hundred percent (100%) of insurable value of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements, with the exception of coverage for named windstorm, flood, and earthquake which shall be determined, in part, by a probable maximum loss evaluation and subject to commercially reasonable limits available in the insurance market. The probable maximum loss estimate shall be determined utilizing either a modeling system approved by the Florida Commission on Hurricane Loss projection methodology or a mutually agreed upon professional engineering firm contracted to provide a bespoke hurricane and/or flood loss projection. The modeled return period that will be utilized to determine the appropriate limits of insurance to be required will be the one (1) in two hundred and fifty (250) year return period modeled loss. The determination of the above described "commercially reasonable limits" shall be determined by mutual agreement between the County and Brightline Florida. If the County and Brightline Florida cannot come to an agreement as to the "commercially reasonable limits", the Parties will utilize the Dispute Resolution Procedures as described in Section 10.03 (*Dispute Resolution Procedures*) of this Agreement.

(c) In addition, the County shall procure and maintain, or shall cause the Design Firm to procure and maintain, for the design of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements from Commencement of Construction and until Substantial Completion, Professional Liability or Errors & Omissions insurance maintained by prime contractor(s) in privity with County covering architectural and/or civil engineering project design, supervision, administration, surveying, engineering, and any related professional qualifications or functions required by the Project. For structural engineers and civil engineers, coverage shall be not less than Five Million Dollars (\$5,000,000) per occurrence, Five Million Dollars (\$5,000,000) in the aggregate. For any other prime contractors performing supervision, administration, surveying, or any related professional qualifications or functions required by the project, coverage shall be not less than Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. **[Note to Draft: County is confirming this requirement.]**

**Commented [A6]:** Pending confirmation.

(d) The insurance requirements in Section 2.01(b) of this Annex A (Design and Construction Provisions) and Section 2.01(c) of this Annex A (Design and Construction Provisions) may be satisfied through a combination of primary and excess insurance.

(e) In addition, to the extent any rail movements are performed under this Annex A (Design and Construction Provisions), (and as a condition thereto), the relevant Insuring Party shall procure and maintain Railroad Liability Insurance in a minimum of Three Hundred Twenty-Three Million Dollars (\$323,000,000) per occurrence, which amount shall be adjusted in accordance with Applicable Law or the Existing Project Documents. The County, the Brightline Parties, FECR, and their respective officers, agents, employees, successors, and assigns shall be named as additional insureds and Insuring Party shall bear the cost of any deductible or self-insured retention that the operator may elect to carry as part of its insurance program and shall ensure that all policies shall have a waiver of exclusion for punitive damages and FELA coverage; *provided that* the Railroad Liability Insurance policy shall not include deductibles, but shall provide for a Five Million Dollar (\$5,000,000.00) self-insurance retention account, which will always be funded by the Insuring Party (the "SIRA"). Such policies shall also include terrorism coverage. The Rail Liability Insurance policy shall include the following elements:

(i) coverage for pollution, including without limitation, coverage applicable in the event of a railroad accident, derailment or overturn; evacuation expense coverage;

(ii) an Occurrence form; no rail exclusions; no other endorsements limiting coverage with respect to obligations under agreement; insurers waive right of subrogation against the County, Brightline Florida, Holdings, and the Lenders' Representative; a statement that the policy is primary and non-contributory with respect to insurance carried by the County, Brightline Florida, Holdings, and the Lenders' Representative; a severability of interest endorsement; and

(iii) the insurance companies shall be required to provide thirty (30) days' notice to the County, Brightline Florida, Holdings, and the Lenders' Representative prior to cancellation, substitution or material alteration.

(f) All insurance policies required above shall be issued by companies authorized to do business under the laws of the State, and each issuer must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY  
111 NW 1ST STREET  
SUITE 2340  
MIAMI, FL 33128**

(g) The Insuring Party (or, with respect to insurance under Section 2.01(c) of this Annex A (Design and Construction Provisions), the County) shall provide a certificate of insurance annually reflecting requirements/endorsements identified herein, and shall provide the County and the Brightline Parties with evidence of insurance with the premium and any costs paid in advance.

(h) Notwithstanding anything to the contrary in this Article II of this Annex A (Design and Construction Provisions), the Parties shall use reasonable efforts to agree to set insurance limits that are lower than the limits specified in this Section 2.01 with respect to any contract with a value lower than Ten Million Dollars (\$10,000,000) or as otherwise agreed by the County Representative acting reasonably and taking into account contract scope and market conditions.

**Exhibit 1**  
**Commuter Stations (General Location)**

1. 26<sup>th</sup> Street
2. 39<sup>th</sup> Street
3. 62<sup>nd</sup> Street
4. 125<sup>th</sup> Street
5. 151st Street

**Exhibit 2**  
**Preliminary Project Plans**

[To be provided.]

**Exhibit 3**

**Adjustments to Access Milestone Payments**

To the extent the terms of Section 1.01(f) of Annex A (*Design and Construction Provisions*) applies, then the aggregate of the Access Milestone Payments will be multiplied by the applicable percentage set forth in the tables below, and the difference between such aggregate original Access Milestone Payment amount and such aggregate adjusted Access Milestone Payment amount will be applied in equal installments as an adjustment to such unpaid Access Milestone Payments.

**All Stations and Simply Reduction in Trains Per Day**

# of Weekday Trains	% of Access Fee	% Reduction
50	100%	
49	98%	-1.73%
48	98%	-2.49%
47	97%	-3.27%
46	96%	-4.06%
45	95%	-4.86%
44	94%	-5.68%
43	93%	-6.51%
42	93%	-7.36%
41	92%	-8.23%
40	91%	-9.11%

**Removal of One Station and Reduction in Trains Per Day**

# of Weekday Trains	% of Access Fee	% Reduction
50	90%	-10.00%
49	88%	-11.73%
48	88%	-12.49%
47	87%	-13.27%
46	86%	-14.06%
45	85%	-14.86%
44	84%	-15.68%
43	83%	-16.51%
42	83%	-17.36%
41	82%	-18.23%
40	81%	-19.11%

**Exhibit 4  
Responsibility Matrix**

#	Responsibility	County	Brightline Parties	Construction Contractor
1.	Provide Access to Project Site/ROW Acquisition	X (access to all sites outside of the Corridor—e.g. maintenance facility, park-and-ride, etc.)	X (access to Corridor, subject to the JUA)	
2.	Design/Constructability Issues and Liability	X		
3.	Unforeseen site conditions/Utilities (risk allocation may vary depending on form of contract)	X (in excess of the allowance)		X (up to an allowance)
4.	Governmental Approvals	X (NEPA)		X (all other permits)
5.	NEPA Re-evaluation	X (if due to change in law or an error in assumptions used by the County in preparing environmental studies/reports)		X (if due to non-compliance with means and methods)
6.	Hazardous Materials	X (releases by the County or a third party; unknown hazardous materials)	X (releases by Brightline Parties)	X (releases by the Construction Contractor; known hazardous materials)

#	Responsibility	County	Brightline Parties	Construction Contractor
7.	Scheduling on Corridor		X (subject to the JUA)	X (subject to the JUA)
8.	Bonding Requirements			X
9.	Insurance Requirements			X
10.	Casualty Risk			X
11.	Compliance with Federal Requirements	X (for design)	X (for procurement)	X (for construction)
12.	Defects/Latent Defects	X (for design)		X (defect correction for a to-be-agreed period under the construction contract; latent defect correction for statute of limitations period)
13.	Closing of Permits			X
14.	Cost Overruns	X (with respect to required change orders)		X
15.	Procurement of Rolling Stock	X		
16.	FRA Testing	X	X	X
17.	Substantial and Final Completion		X	X

**Exhibit 5**  
**Core Project Costs**

[To be provided.]

**Annex B**  
**Operations and Maintenance Provisions**

Annex B - 1

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**Annex B**

**Operations and Maintenance Provisions**

**Article I. General Provisions and Pre-Operational Matters**

**Section 1.01 Responsible Railroad.**

(a) This Annex B (*Operations and Maintenance Provisions*) sets forth the requirements related to the operation of the Commuter Rail Service as well as certain maintenance obligations with respect to the Commuter Rail Service. As between the County and the Brightline Operator, the “**Responsible Railroad**” shall be, (a) so long as the County has not exercised its remedy to undertake the obligations of the Responsible Railroad in accordance with Section 2.02 (*MDC Operations Default*) of Annex D (*Default and Termination Provisions*), the Brightline Operator and (b) from and after the date the County exercises its remedy to undertake the obligations of the Responsible Railroad in accordance with Section 2.02 (*Brightline Operator Operations Default*) of Annex D (*Default and Termination Provisions*), the County. For the avoidance of doubt, provisions that reference an obligation of the Brightline Operator for the benefit of the County shall not apply to the County in its capacity as the Responsible Railroad.

(b) As of the commencement of train movements in connection with the Commuter Rail Service, the Brightline Operator is the Responsible Railroad. The allocation of responsibility in Section 1.01(a) shall in no way limit the right of the Responsible Railroad to contract with a Third-Party Manager and/or an Operator to undertake all or a portion of the Scope of O&M Work; *provided that*, except as set forth in Section 2.02 (*Operations Generally*) and Article VI (*Insurance Requirements*) of this Annex B (*Operations and Maintenance Provisions*), the same shall in no way limit the obligations of the Responsible Railroad to the other Parties hereunder.

**Section 1.02 Payment of O&M Expenses.**

(a) The County will pay the Brightline Operator for its performance of the Scope of O&M Work in accordance with the terms of Annex C (*Payment Provisions*).

(b) This Section 1.02 shall not apply to the extent the County is the Responsible Railroad.

**Section 1.03 Procurement of Operator.**

(a) At least twelve (12) months prior to the expected delivery of the first Rolling Stock in accordance with the then-current Project Schedule, the Brightline Operator shall, or shall cause the Third-

Party Manager to, provide the County with a draft copy of a request for proposals (an “**Operator RFP**”) in order to select an Operator to enter into an operations and maintenance contract for the Commuter Rail Service (the “**O&M Contract**”). The Operator RFP will contain a copy of the O&M Contract, and the County will have thirty (30) days to review and comment on, or request changes to, the Operator RFP. The O&M Contract will set forth the following terms, without limitation, as the same may be amended, supplemented or otherwise modified by the Brightline Operator and the County:

- (i) the term of the O&M Contract, which the Parties expect to be a period ending no less than three (3) years following the Operations Commencement Date, it being acknowledged that the County and the Brightline Operator will determine the term of any O&M Contract under procurement based on the requirements of Applicable Law and federal guidance;
- (ii) a requirement that the Operator perform substantially all of the Scope of O&M Work, except for such portions as may be reasonably retained by the Brightline Operator or the Third-Party Manager;
- (iii) to the extent applicable, a requirement of the Operator to take receipt of Rolling Stock, implementation of the Testing and Commissioning Plan, and to maintain the Rolling Stock in accordance with prudent industry practice until such Rolling Stock is put into service in accordance with the terms of this Agreement;
- (iv) the applicable key performance indicators for the Commuter Rail Service (the “**O&M Contract KPIs**”), including (A) the required standards for Rolling Stock to commence Commuter Rail Service on any day and (B) the required standards for the operations and maintenance of the Stations and Rolling Stock, in each case, based on the Preliminary KPIs;
- (v) the liquidated damages that are assessable against the Operator to the extent it fails to meet an O&M Contract KPI (the “**O&M LDs**”) and any associated cure periods;
- (vi) the limit on O&M LDs assessable during each payment period under the O&M Contract;
- (vii) any overall limits of liability of the Operator and a structured calculation of termination damages to the extent the O&M Contract is terminated due to Operator

default, including an allocation of any such payment as between the Brightline Operator, MDC Commuter (to the extent it is not the Brightline Operator but is entitled to some payment with respect to its financing costs) and the County;

(viii) requirements with respect to the provision of security (armed and unarmed, stationary and roving) on the Rolling Stock and at Stations, in each case consistent with the County's then current practices on its MetroRail system, as well as provisions for the security and collection of fare box revenues;

(ix) customary Operator events of default, including events of default relating to the accumulation of O&M LDs over time and the occurrence of excess Service Failure Events;

(x) the Operator's overall limit of liability, exclusive of O&M LDs, amounts that are required to be insured against (including any required self-insurance retentions), and the Operator's fraud; and

(xi) the right of the County to take assignment of the O&M Contract, at no additional cost, to the extent the County becomes the Responsible Railroad.

(b) The County and the Brightline Operator will act reasonably in resolving any County comments or requests, it being understood that the Brightline Operator shall not be required to accept any County comment or requests that could reasonably be expected to (i) result in a breach of the terms of this Agreement, the Existing Project Documents or Applicable Law, or otherwise be inconsistent with the Pre-Revenue Service Safety Validation Plan, (ii) result in a risk to the health or safety of Persons on the Corridor, or (iii) be inconsistent with Good Industry Practice. Following finalization of the Operator RFP, the Brightline Operator will issue, or will cause the Third-Party Manager to issue, the Operator RFP. The Brightline Operator shall endeavor to set a bid due date under the Operator RFP that is at least thirty (30) days prior to the expected receipt of the first Rolling Stock in accordance with the then-current Project Schedule. Prior to the commencement of testing and commissioning of the Rolling Stock, the Brightline Operator will submit a testing and commissioning plan (the "**Testing and Commissioning Plan**") to the County setting forth the process pursuant to which the Rolling Stock will be verified as safe, compliant, and otherwise ready for operation of the Commute Rail Service in accordance with the requirements of Applicable Law, as well as the process for qualifying the Operator's personnel for Commuter Rail Service on the Corridor in accordance with the Existing Project Documents. The Brightline Operator will diligently pursue testing and commissioning of the Rolling Stock in accordance with the Testing and Commissioning

Plan and all Parties shall reasonably cooperate with such efforts, including in obtaining any necessary Governmental Approvals.

(c) The Operator RFP will provide a process for potential bidders to submit exceptions or qualifications to the terms of the O&M Contract prior to the bid due date. The Brightline Operator will promptly provide a copy of any proposed exceptions or qualifications received to the County, and the Brightline Operator and the County will promptly meet to determine whether to accept or reject any proposed exceptions or qualifications, each such Party acting reasonably. To the extent the County and the Brightline Operator are unable to agree on an exception or qualification, or to the extent an exception or qualification does not comply with any Applicable Law, such exception or qualification shall be rejected. The Operator RFP will provide that no exceptions or qualifications will be permitted unless approved prior to the bid due date.

(d) The Brightline Operator will evaluate responses to the Operator RFP and will select the Operator in accordance with the criteria set forth in the Operator RFP.

(e) The Brightline Operator may, from time to time, reasonably request changes to the procurement process outlined in this Section 1.03, subject to the approval of the County, acting reasonably.

(f) On or prior to the date that is six (6) months prior to the expiration of any O&M Contract, or promptly following the delivery of a termination notice under any O&M Contract, the Brightline Operator and the County shall repeat the procurement process set forth in this Section 1.03.

(g) Solely with respect to the first procurement of an Operator in accordance with this Section 1.03, to the extent the Brightline Operator is unable to procure an Operator, the Brightline Operator will act as the Operator for a term that expires on the date that is three (3) years following the Operations Commencement Date, it being understood that any operation of the Commuter Rail Service by the Brightline Operator shall be subject to the achievement of an agreement on the O&M Contract KPIs, related O&M LDs and other terms related to such operation, which shall be evidenced through an addendum on this Agreement. To the extent the Brightline Operator is unable to procure an Operator, MDC Commuter will promptly notify the County and propose any changes to the terms of the O&M Contract that it believes are in the best interest of the Parties in order to allow for a successful procurement of an Operator. The Brightline Operator and the County will promptly meet to determine how to timely procure an Operator.

(h) To the extent that the Brightline Operator as the Operator pursuant to Section 1.03(g) of this Annex B (Operations and Maintenance Provisions), the Brightline Operator will reasonably cooperate with the County to allow for the appointment of a Compliance Representative to manage the KPI Compliance Program and the assessment of O&M LDs in accordance with the terms of the O&M Contract.

(i) Award of an O&M Contract shall be subject to the approval of County funding of any additional Actual Operations Expenses in accordance with Annex C (Payment Provisions).

(j) This Section 1.03 shall not apply to the extent the County is the Responsible Railroad.

(k) The Brightline Operator will have the right to terminate any Third-Party Manager or Operator, by notice to the County (an "**Operator Replacement Notice**"). The Brightline Operator will provide the County with a plan for the transition of services from such Third-Party Manager or Operator to a proposed replacement including repeating the procurement process set forth in this Section 1.03 of this Annex B (Operations and Maintenance Provisions), together with a summary of the technical and financial qualifications of such replacement. The County will act reasonably in approving such replacement and will, in any event, provide its approval or rejection (or conditions to) such replacement within thirty (30) days of receipt of an Operator Replacement Notice.

**Section 1.04 County Retained Rights.** The County expressly retains the following rights related to the operation and maintenance of the Commuter Rail Service:

- (a) the right to set fare policy;
  - (b) the right to update the fare collection technology installed in accordance with Annex A (Design and Construction Requirements);
  - (c) the right to receive fare revenues;
  - (d) the right to gather, use, sell, and derive revenues from any user data obtained from the fare collection technology;
  - (e) the right to incorporate operational data received from the Brightline Operator in accordance with this Agreement into the County's transit rider information applications and web services;
- and

(f) without limiting the County's rights or obligations under this Agreement, the right to appoint another Governmental Authority as a representative of the County for purposes of acting as the County's representative under this Agreement.

## **Article II. Operating Requirements**

### **Section 2.01 Commencement of Operations.**

(a) The Responsible Railroad shall commence operation of the Commuter Rail Service on a date designated by the County (the "**Operations Commencement Date**"), which date shall occur within sixty (60) days (or such other period as reasonably agreed by the County and the Brightline Operator) of satisfaction of the following conditions (collectively, the "**Availability Conditions**"):

(i) achievement of Substantial Completion with respect to the Existing Station Improvements, the Additional Infrastructure, at least three (3) Commuter Stations and the Maintenance Facility;

(ii) completion of testing and commissioning of Rolling Stock that meets the requirements of the JUA and the Testing and Commissioning Plan, including compliance with the ATC and PTC requirements of the Corridor;

(iii) payment by the County of all proper invoices (as defined in the County Code) approved in accordance with Annex C (Payment Provisions) with respect to the Milestone Payment or other Project Costs that are the responsibility of the County under Annex C (Payment Provisions);

(iv) resolution of any issues presented by the FRA and/or the FTA with respect to the operation of the Commuter Rail Service at applicable Commuter Stations or on the Segment, and confirmation by the FRA and/or the FTA that the Additional Infrastructure and Rolling Stock are ready for Commuter Rail Service in accordance with Applicable Law, including FRA's approval of the Pre-Revenue Service Safety Validation Plan;

(v) procurement and maintenance by the Responsible Railroad (or its Third-Party Manager or Operator, as applicable) of the insurance required under Article VI (Insurance Requirements); and

(vi) the Coastal Link Commuter Rail Service Act remains effective in the form in which it originally came into effect on July 1, 2025.

(b) To the extent that not all Commuter Stations have achieved Substantial Completion on the Operations Commencement Date, the Responsible Railroad shall commence operation of the Commuter Rail Service to each such remaining Commuter Station on a date designated by the County, which date shall occur within sixty (60) days (or such other period as reasonably agreed by the County and the Brightline Operator) of achievement of Substantial Completion of such Commuter Station.

**Section 2.02 Operations Generally.**

(a) The Responsible Railroad shall operate the Commuter Rail Service in accordance with the then-current Baseline Schedule and shall perform the scope of work allocated to the Responsible Railroad under this Annex B (*Operations and Maintenance Provisions*) (the “**Scope of O&M Work**”). The following terms shall apply to operation of the Commuter Rail Service on the Segment:

(i) Subject to the terms of this Agreement, the Responsible Railroad will have the right to operate the Rolling Stock with contractors on the Segment and at the Stations. Any third-party operations manager (a “**Third-Party Manager**”) shall possess at least ten (10) years’ of organizational experience managing the operation of Passenger Railroad Services in urban setting and shall not be a Restricted Person or shall be otherwise acceptable to the County or, if the County is the Responsible Railroad, Brightline Florida. SFRTA shall be deemed to be an acceptable Third-Party Manager as of the Effective Date and for so long as its management agreement with the Brightline Operator has not expired or otherwise been terminated. In addition, whether directly or through a Third-Party Manager, the actual operation of the Commuter Rail Service may be operated by a railroad operator (an “**Operator**”) that possesses at least ten (10) years’ of organizational experience operating passenger rail services in urban settings and shall not be a Restricted Person or shall be otherwise acceptable to the County or, if the County is the Responsible Railroad, Brightline Florida.

(ii) The County acknowledges that, in accordance with the terms of the Existing Project Documents, Brightline Florida has the right to operate Intercity Passenger Rail Service on the Corridor, SFRTA has the right to operate SFRTA Commuter Rail Service on a portion of the Corridor, and FECR has the exclusive right to provide Freight Rail Service on the Corridor. The County agrees that the Commuter Rail Service shall in no event unreasonably interfere with such services.

(iii) The JUA and the Passenger Easement provide for the issuance and enforcement of operating rules, timetables, practices, regulations, special instructions, bulletins, and orders issued from time to time (collectively, “**Operating Rules**”) on the Shared Infrastructure, which provisions apply to the Brightline Operator and the operation of the Commuter Rail Service. If the County believes that any Operating Rules issued by FECR or Brightline Florida discriminate against, or would unreasonably interfere with its use of the Shared Infrastructure for Commuter Rail Service, the County shall inform the Brightline Parties of the same and Brightline Florida shall submit the Dispute for resolution in accordance with the Dispute Resolution Procedures.

(iv) Dispatching of all trains (including trains operating the Commuter Rail Service) on the Segment shall be performed by DispatchCo in accordance with the protocol established under the Existing Project Documents. Notwithstanding the foregoing, the County acknowledges that DispatchCo may deviate from the protocol established under the Existing Project Documents in order to maintain the flow of traffic on the Corridor and to achieve the on-time performance metrics set forth in the Dispatching Services Agreement, and the County shall not be entitled to require the Brightline Operator to assess any O&M LDs as a result of such deviation.

(b) The Responsible Railroad (or such other entity as designated by the Responsible Railroad) shall be the operating railroad of record for purpose of compliance with any regulations promulgated by the FRA (such railroad, the “**Railroad of Record**”).

(c) The Commuter Rail Service will operate between MiamiCentral Station and Aventura Station with stops at each intermediate Commuter Station. The Responsible Railroad shall schedule Commuter Rail Service stops at every Station and shall operate the Commuter Rail Service to every Station capable of safely accepting Passengers.

(d) The Commuter Rail Service may run only during Operating Hours and no trains shall be permitted on the Segment outside of the Operating Hours, except as otherwise agreed by FECR and Brightline Florida in writing; *provided* that the Responsible Railroad may operate one (1) non-revenue train on the East/West Segment in the thirty (30) minutes before and after Operating Hours; and *provided further* that train movements due to mechanical failures or other circumstances contemplated in this Agreement are permitted outside of Operating Hours.

(e) The County acknowledges that the rights of the Responsible Railroad to operate on the Segment are not exclusive and that Other Users of the Segment under the Existing Project Documents shall be entitled to designate further users or implement further rail services in accordance with the terms thereof; *provided* that Brightline Florida shall not designate any other additional commuter Passenger Railroad Service provider on the Segment under the Existing Project Documents without the County's prior written consent, except for those rights of BRWD Commuter LLC as set forth in the Intercompany Access Agreement.

(f) All employees of the Responsible Railroad, or employees of entities under contract with the Responsible Railroad, who operate trains, locomotives, rail cars, and rail equipment on, along, and over the Segment shall be qualified for such operation. For purposes of this Section 2.02(f), qualification pertains only to the employee's operation of trains, locomotives, rail cars, and rail equipment on, along, and over the Segment in accordance with FRA rules and the Operating Rules. The Responsible Railroad shall make such arrangements as may be necessary to have its employees so qualified in accordance with the Existing Project Documents.

(g) Access to each Station platform shall be limited to ticketed Passengers and employees of the Responsible Railroad and its contractors, in each case subject to compliance with the requirements of Applicable Law or the Existing Project Documents. The County may, from time to time, request access, and Brightline Florida shall act reasonably in granting access to other invitees of the County, subject to compliance with the requirements of Applicable Law or the Existing Project Documents; *provided* that, in no event shall access be granted to the rail infrastructure.

### **Section 2.03 Overview of Plans and Requirements.**

(a) Prior to satisfaction of the Operations Commencement Date, the Responsible Railroad shall prepare the following plans (collectively, the "**Commuter Plans**"):

(i) a pre-revenue service safety validation plan meeting all FRA requirements (the "**Pre-Revenue Service Safety Validation Plan**");

(ii) special instructions setting forth any rules (in addition to the Combined Operating Rules) necessary to govern the activities of personnel involved in any aspect of the operation of the Commuter Rail Service, which special instructions shall be consistent with the Operating Rules and Applicable Law;

(iii) customer service standards addressing professional conduct; dress code; nametag and identification requirements; on-board and station announcements; positioning of crewmembers; car availability during revenue service hours; lost and found policy; distribution of approved materials, schedules, and surveys; and assistance for individuals with disabilities; and

(iv) a remedial plan to the extent a Repetitive Service Failure Event occurs (the “**Service Failure Remedial Plan**”).

(b) The Responsible Railroad shall revise the Commuter Plans and develop new rules and procedures as necessary to comply with the requirements of Applicable Law. Updates and changes to the Commuter Plans shall be submitted to the County, or, to the extent the County is the Responsible Railroad, to Brightline Florida, not less than one month before their proposed effective date.

(c) The Responsible Railroad shall strictly control, to the fullest extent permitted by Applicable Law, the distribution of the Commuter Plans and shall implement a process to ensure that the relevant authorized personnel are in possession of the current versions of the Commuter Plans. The Responsible Railroad shall determine the method of distribution and maintenance of the Commuter Plans.

**Section 2.04 Operations Coordination.** The Responsible Railroad shall provide coordination with DispatchCo and Federal, regional or municipal public emergency centers. To the extent an instruction from DispatchCo or any Governmental Authority causes revenue service delays or impacts revenue service availability, the same shall be treated as a Delay Event.

**Section 2.05 Alternative and Replacement Services.**

(a) To the extent that a Station is not available for Commuter Rail Service due to an emergency, maintenance activities, or otherwise, the Responsible Railroad will continue to provide Commuter Rail Service to all other available Stations; *provided* that the County will not be entitled to cause the Responsible Railroad to fail to stop at each Station except to the extent such Station is not capable of safely accepting Passengers due to a Delay Event or due to reasonable and schedule maintenance activities.

(b) When either (i) any Station is not available for Commuter Rail Service or (ii) no Commuter Rail Service can be operated, in each case, for more than thirty (30) minutes and there is no reasonable expectation that revenue service can be restored within the next sixty (60) minutes, the Brightline Operator shall contact the County to request alternative bus service. The Brightline Operator shall advise the County of the cause, expected time of restoration, locations impacted, and approximate

number of Passengers impacted. This Section 2.05(b) shall not apply to the extent the County is the Responsible Railroad.

**Section 2.06 Performance Standards and O&M LDs.**

(a) **Table 1** below sets forth the Preliminary KPIs associated with the operation and maintenance of the Commuter Rail Service. The Parties agree that, in any instance where the initial response time listed under KPI Remedy Time exceeds the remaining service hours on the day an element or item requiring remedy is discovered, the unused portion of the initial response time will be carried over and applied to the service hours on the following day. Such table will be further developed, and cure periods will be further adjusted, in connection with the procurement of an O&M Contract in accordance with Section 1.03 (Procurement of Operator). Once finalized for each O&M Contract, the Brightline Operator shall establish and manage a comprehensive program for compiling and tracking O&M Contract KPIs (the “**KPI Compliance Program**”).

(b) Failures to meet O&M Contract KPIs shall be entered and tracked by the KPI Compliance Program. The County reserves the right to periodically audit actual performance and O&M Contract KPI response and cure times against the Brightline Operator’s records and field checks; *provided* that the County shall not unreasonably interfere with the Brightline Operator’s operations.

(c) To the extent the County becomes aware of the occurrence of an event that constitutes a failure to meet an O&M Contract KPI, it will report the same to the Brightline Operator for investigation, confirmation, and resolution by the Brightline Operator within the prescribed cure period (the “**KPI Remedy Time**”). The Brightline Operator shall notify the County promptly of failures to meet O&M Contract KPIs of which it becomes aware (either through its own discovery or through reports from other parties). Upon the Operator remedying any failure to meet an O&M Contract KPI, the Brightline Operator shall review the time of completion and compare such time against the relevant KPI Remedy Time. If the Operator is not able to remedy failure to meet an O&M Contract KPI within the relevant KPI Remedy Time, the County may require the Brightline Operator to assess O&M LDs in accordance with the terms of the O&M Contract.

(d) Upon request from the Brightline Operator, the County may, in its sole discretion, excuse, suspend, or reduce O&M LDs.

**Table 1 – Preliminary KPIs and Preliminary KPI Remedy Times**

Preliminary KPI		Preliminary KPI Remedy Time
Element/Item	Standard	
<b>a) Elevators and Escalators</b>		
(i) Availability	At a minimum either one elevator or one escalator functional per required location and in good repair during service hours	4 hours initial response during service hours; 24 hours thereafter completed repair
(ii) Cleanliness and Odor	No overpowering foul odor, fluids, or significant litter during service hours	4 hours initial response time during service hours and to the extent the source is reasonably identifiable
<b>b) Rolling Stock</b>		
(i) Preventative maintenance	All preventative inspections must be completed within approved intervals specified in the Commuter Plans	None
(ii) Interior Cleanliness	No significant litter or fluids	1 one-way trip
(iii) Seats	All seats available and in good condition or, if unavailable, covered	Unavailable seat blocked within 1 one-way trip, covered within 24 hours and repaired within 2 days
(iv) CCTV cameras and equipment	Installed cameras, recorders, and equipment function as designed	Repairs required to comply with Applicable Law, 24 hours; otherwise, 5 days
(v) Major or Offensive Graffiti	Major "tags" greater than 12" diameter and all Offensive Graffiti content regardless of size.	Area isolated, covered, or cleaned within 8 hours during service hours; thereafter removed within 5 days
(vi) Minor Graffiti	Minor "tags" 12" diameter or less and visible to customers.	Removed within 5 days
(vii) Bathrooms	Empty trash and recycling receptacles Clean toilet and restock supplies Clean/mop floors	1 one-way trip
<b>c) Life safety systems</b>		
(i) Fire extinguishers and firefighting equipment	Installed equipment available with current inspections	8 hours
(ii) Pull boxes	Functional; no obstructions at or near fire hydrants	4 hours
(iii) Emergency doors or gates and pathways (not including fare gates)	Functional; no obstructions at or near fire hydrants	4 hours
(iv) Fire hydrants	Functional; no obstructions at or near fire hydrants	4 hours
<b>d) Stations</b>		
(i) Waiting area/shelter	Seating and vertical structures in good repair	12 hours for minor damage during service hours; 5 Business Days for major damage

(ii) Litter	No significant litter or fluids	4 hours during service hours and to the extent the source is reasonably identifiable
(iii) Preventative maintenance	All preventative inspections for major system components must be completed within the intervals specified in the Commuter Plans	None
(iv) Major or Offensive Graffiti	Major "tags" greater than 12" diameter and all Offensive Graffiti content regardless of size.	Area isolated, covered, or cleaned within 8 hours during service hours; thereafter removed within 5 days
(v) Minor Graffiti	Minor "tags" 12" diameter or less and visible to customers.	Removed within 5 days
(vi) Employee relief facility and/or bathroom	No overpowering foul odor, fluid, or significant litter	2 hours during service hours and to the extent the source is reasonably identifiable
(vii) CCTV cameras and equipment	Installed cameras, recorders, and equipment function as designed	Repairs required to comply with Applicable Law, 24 hours; otherwise, 5 days
(viii) Non-digital signage	Regulatory or directional signage available	24 hours
(ix) Platform lighting	No lighting fixtures out	24 hours
(x) Schedule/maps kiosk	Posted schedule and maps current and in good repair	24 hours
(xi) Real-time displays (if installed)	Accurate real time display systems operational	4 hours initial response during service hours; thereafter 2 Business Days completed repair or manual replacement pending repair
(xii) ADA ramps and sidewalks	Ramps, sidewalks and railings in good repair and maintained in accordance with Applicable Law	12 hours for minor damage during service hours; 2 Business Days for major damage; or, in each case, the provision of reasonable replacement access pending such repair
(xiii) Weekly Station cleaning	Clean by washing, wiping dry and polishing glass, furniture, signs, lights, miscellaneous apparatus, and surfaces. Remove fallen leaves (seasonal)	Once per week
(xiv) Monthly Station cleaning	Clean shelter roofs. Perform vegetation control	Once per month
(xv) Pressure washing	Pressure wash Station platforms and underside and tops of canopies	Once per 6 months
(xvi) Weekly employee relief facility and/or bathroom cleaning	Wash floor	Once per week

(xvii) Monthly employee relief facility and/or bathroom cleaning	Power wash floor and wall tiles	Once per month
<b>e) Waste management</b>		
(i) Trash bins	No more than 75% full	4 hours during service hours
(ii) Recycling bins	No more than 75% full	4 hours during service hours
(iii) Dumpsters	No more than 100% full	8 hours during service hours
(iv) Rodent and insect control	No visible infestations	24 hours

(e) While the tracking and assessment of O&M Contract KPIs and O&M LDs set forth in this Section 2.06 shall not apply to the extent the County is the Responsible Railroad, the County shall maintain the Rolling Stock and the Stations in a manner consistent with the Preliminary KPIs or, if finalized, the then-current O&M Contract KPIs.

**Section 2.07 Failure to Operate.**

(a) To the extent that Rolling Stock constitutes Compliant Rolling Stock that is able to be put into service and the Brightline Operator is not excused from operating such Compliant Rolling Stock in accordance with the terms hereof, the failure to run such service shall constitute a service failure event hereunder (each such event, a “Service Failure Event”).

(b) To the extent more than [●] Service Failure Events occur on any day or more than [●] Service Failure Events occur in any period of [●] consecutive days (each, a “Repetitive Service Failure Event”), the County shall require the Brightline Operator to submit a proposed Service Failure Remedial Plan to the County for review. As part of its review, the County shall determine whether replacing the Operator would be consistent with Good Industry Practice and shall advise the County whether the Service Failure Remedial Plan should be revised to include replacement of the Operator. If the County elects to replace the Operator, the County will notify the Brightline Operator in writing and request a revised Service Failure Remedial Plan be submitted to the County for further review. The County may hire an independent engineer to oversee the Operator replacement process and shall act independently and impartially in carrying out its duties and responsibilities as specified in this Agreement. The Brightline Operator shall promptly implement the Service Failure Remedial Plan and continue its implementation until the County is reasonably satisfied that a further Service Failure Event is unlikely to occur within the next twenty-four (24) hours.

**Section 2.08 Passenger Complaints and Communications.**

(a) The Responsible Railroad shall be responsible for the coordination and distribution of service complaints and communications, travel planning services, and printed material (other than any

advertising contemplated in Section 2.14 (Sidings) of this Annex B (Operations and Maintenance Provisions) related to the Commuter Rail Service).

(b) The Responsible Railroad shall maintain a dedicated point of contact for the County or, if the County is the Responsible Railroad, Brightline Florida, for issues that require immediate or escalated priority resolution.

(c) Credible complaints, concerns, suggestions, or commendations received by the County or, if the County is the Responsible Railroad, Brightline Florida, with respect to the Commuter Rail Service shall be forwarded to the Responsible Railroad. The Responsible Railroad must investigate all credible complaints and concerns and report its findings, if any, to the County or Brightline Florida, as applicable, within a reasonable period of time of the Responsible Railroad's receipt of the same.

(d) The Responsible Railroad shall post its hotline information for Passenger complaints prominently throughout the Stations and Rolling Stock and, to the extent the Responsible Railroad is the Brightline Operator, shall report credible complaints, concerns, suggestions, and commendations relating to the Commuter Rail Service that are received directly from Passengers to the County within twenty four (24) hours.

#### **Section 2.09 Marketing and Public Relations.**

(a) Unless the County is the Responsible Railroad or otherwise advises the Brightline Operator in writing that it no longer wishes to engage the Brightline Operator to provide the services set forth in this Section 2.09(a), the Brightline Operator shall have primary responsibility for public outreach, marketing, and promotion with respect to the Commuter Rail Service. All such public outreach, marketing, and promotion shall be performed in accordance with the requirements of Applicable Law. Prior to the Operations Commencement Date, the County and the Brightline Operator will act reasonably to agree to structure, terms and conditions of a co-branding protocol, which will include a grant by the County of any necessary intellectual property licenses to the Brightline Operator.

(b) To the extent the County advises the Brightline Operator that the County no longer wishes to engage under Section 2.09(a) of this Section 1.01(a)(i)(A)Annex B (Operations and Maintenance Provisions), the Brightline Operator shall cooperate with the County on such activities and shall support the County's public relations efforts related to the Commuter Rail Services, as further described below. In such case, any credible news media inquiries received by the Brightline Operator regarding the Commuter Rail Service shall promptly be forwarded to the County by the Brightline Operator.

**Section 2.10 Scheduling.** The schedule for Commuter Rail Service that is subject to a Final Service Determination in accordance with Annex A (*Design and Construction Requirements*) shall constitute the baseline schedule for the Commuter Rail Service (the “**Baseline Schedule**”). In no event shall the Baseline Schedule, or any change thereto under Section 2.12 (*Fares*) of this Annex B (*Operations and Maintenance Provisions*), unreasonably interfere with the operations or allocated capacity of any Other User.

**Section 2.11 Schedule Changes.**

(a) The County acknowledges that, from time to time, the Other Users may, subject to thirty (30) days’ prior notice, make changes, additions, or deletions to their respective timetable schedules without the County’s consent, so long as the same does not unreasonably interfere with the Commuter Rail Service as reflected in a rail traffic controller model (taking into account contractually allocated capacities and then-current schedules). The County acknowledges that temporary schedule changes and special trains by Other Users are allowed as permitted under the Existing Project Documents. For so long as the Brightline Operator is the Responsible Railroad, to the extent that a change in schedule requires the adjustment of any performance requirement under this Annex B (*Operations and Maintenance Provisions*), the Brightline Operator will promptly notify the County, and the Brightline Operator and the County will promptly meet to agree to any necessary adjustment, each Party acting reasonably.

(b) In connection with any proposed permanent change in the schedule or frequency of trains in connection with the Commuter Rail Service, for so long as the Brightline Operator is the Responsible Railroad, the County shall first consult with the Brightline Operator with respect to any such proposed permanent change and shall attempt to agree to any necessary adjustments to the performance requirements under this Annex B (*Operations and Maintenance Provisions*), each Party acting reasonably. The County shall submit an updated RTC Simulation for approval in accordance with the Existing Project Documents to Brightline Florida, FECR, and the Service Standards Committee, which updated RTC Simulation shall incorporate such permanent change in the schedule or frequency and such other deliverables as required under the Existing Project Documents, in order to facilitate Brightline Florida’s, FECR’s, and the Service Standards Committee’s evaluation of the effect of the proposed permanent change under the JUA. To the extent that the County wishes to propose a permanent change to the frequency of revenue passenger trains in excess of the capacity and frequency limitations set forth in the Final Service Determination or to cease operation to any Station, the County shall provide an updated RTC Simulation to Brightline Florida and such permanent change shall be subject to Brightline Florida’s approval (and the satisfaction of any conditions required by Brightline Florida) in its sole discretion prior to submission to

FECR and the Service Standards Committee for approval by FECR and the Service Standards Committee under the Existing Project Documents; *provided* that if Brightline Florida provides such approval, the County shall be permitted to present to FECR and the Service Standards Committee such updated RTC Simulation for their approval that incorporates such permanent change in the frequency and such other deliverables as required under the Existing Project Documents in order to facilitate FECR's and the Service Standards Committee's evaluation of the effect of the proposed permanent change under the JUA.

(c) To the extent that County wishes to make a temporary adjustment in the schedule or frequency of its trains that does not include any incremental service in excess of the Capacity Limitations, for so long as the Brightline Operator is the Responsible Railroad, the County shall first consult with the Brightline Operator with respect to any such proposed temporary adjustment and shall attempt to agree to any necessary adjustments to the performance requirements under this Annex B (Operations and Maintenance Provisions), each Party acting reasonably. The County shall provide Brightline Florida, FECR, and the Service Standards Committee at least ten (10) days prior written notice of any such proposed temporary adjustment, and Brightline Florida shall not unreasonably withhold or delay (which response shall be provided during such notice period) its approval of the same so long as the proposed temporary adjustment in the schedule or frequency does not unreasonably interfere with Brightline Florida's use of the Segment for Intercity Passenger Rail Service nor otherwise adversely impact Brightline Florida's business or operations.

(d) Notwithstanding anything to the contrary herein, in connection with any proposed permanent change in schedule that does not include any increase in capacity and is proposed in order for the County to provide unified Commuter Rail Service to Broward County and/or Palm Beach County, Brightline Florida shall reasonably cooperate with the County to effectuate such permanent schedule change, notwithstanding Brightline Florida's discretionary right to approve permanent schedule changes set forth in this Section 2.11.

(e) To the extent a Final Service Determination required the removal of one or more Commuter Stations and, notwithstanding, the Parties achieve the Operations Commencement Date, then, at the reasonable request of the County, Brightline Florida shall submit to FECR, SFRTA and the Service Standards Committee a new rail traffic controller model and related plans for additional Commuter Stations as may be agreed between the County and Brightline Florida, it being understood that (i) the County shall be responsible for reimbursing all costs reasonably incurred by Brightline Florida to the extent the County requests Brightline Florida to prepare plans or other design documents, (ii) there shall not be more than five (5) Commuter Stations in the aggregate, and (iii) to the extent that the aggregate Milestone Payments were

reduced due to the removal of such Commuter Station in accordance with Section 1.01(f) of Annex A (with respect to each relevant Milestone Payment, the amount of such reduction, the “**Reduced MP**”), the County shall pay to MDC Commuter at Substantial Completion of such Commuter Station an amount equal to the Reduced MP together with interest accrued on each such Reduced MP from (and including) the date each such Milestone Payment was made to the payment date under this Section 2.11(e), at a rate per annum equal to the yield on the United States Treasury security having a maturity of ten (10) years, as published by the U.S. Department of the Treasury (or successor source) for such date, determined as of the close of business in New York City on the date such Milestone Payment was made (or, if such yield is not available for such date, the most recently published yield prior thereto), calculated on a simple, non-compounding basis and on the basis of a 365-day year for the actual number of days elapsed.

**Section 2.12 Fares.** The County shall be entitled to set fares in connection with the Commuter Rail Service. The terms of the O&M Contract will establish the requirements, if any, for the collection of fare box revenues. The Brightline Operator will be responsible for the servicing of fare collection equipment; *provided* that the Parties will reasonably cooperate to ensure that the fare collection equipment is interoperable with the County’s overall transit system.

**Section 2.13 Advertising.** The County acknowledges that Brightline Florida is entitled to retain all advertising revenues on the County’s Rolling Stock and the Commuter Stations; provided that the County shall retain the naming rights for all Commuter Stations, subject to Brightline Florida’s reasonable consent. The County will reserve space on the Rolling Stock and the Commuter Stations for advertising to be placed by Brightline Florida as reasonably requested by Brightline Florida (including with respect to wrapping of the Rolling Stock). The County will reasonably cooperate with Brightline Florida in order to allow Brightline Florida to place advertisements on the Rolling Stock when the Rolling Stock is out of service; provided that Brightline Florida shall be responsible for the cost of placing advertisement and shall not interfere with the County’s operations. Prior to the placement of any advertisement, Brightline Florida shall present the same to the County and the County shall have the sole discretion to approve or disapprove such advertising. Brightline Florida and the County will reasonably cooperate in connection with the County public service announcements or the promotion of the County events. Brightline Florida and the County agree that their respective marketing, promotional, and communication materials and activities related to the Commuter Rail Service shall acknowledge the role of the County, CITT, and half-penny surtax in helping to fund the Commuter Rail Service. Promptly following the auditing of Brightline Florida’s financial statements with respect to any fiscal year during which Brightline Florida places advertisements under this Section 2.13, Brightline Florida shall pay to the County an amount equal to

seventy-five percent (75%) of the net proceeds of advertising revenue generated from advertisements on the Rolling Stock and the Commuter Stations.

**Section 2.14 Sidings.** Brightline Florida acknowledges that any sidings leading to the Commuter Stations are primarily intended for use by the Rolling Stock operating Commuter Rail Service. Notwithstanding the foregoing, such sidings shall be included in any RTC Simulation and Brightline Florida, SFRTA, and FECR shall be permitted to operate their respective trains on such siding as directed by DispatchCo.

**Section 2.15 Operation and Maintenance of Commuter Stations and Maintenance Facility.** Upon Substantial Completion, the Responsible Railroad shall thereafter be responsible for the performance and cost of the operation and maintenance (including major maintenance, but excluding any vehicle overhaul) of the Commuter Stations and the Rolling Stock; provided that if the Existing Project Documents require any maintenance of the Commuter Stations or Rolling Stock to be performed by Brightline Florida or FECR, then the County will reimburse Brightline Florida or FECR, as applicable, for the actual and direct costs incurred by Brightline Florida or FECR (as applicable) in connection with the performance of such maintenance and will pay Brightline Florida or FECR (as applicable) a reasonable project management and administrative fee for Brightline Florida's or FECR's (as applicable) performance of such maintenance. All such operations and maintenance work performed by the Responsible Railroad shall be performed in accordance with Good Industry Practice and Applicable Laws.

### **Article III. FECR Activities on the Corridor**

**Section 3.01 Maintenance of the Segment.** Maintenance of the Segment shall be performed in accordance with the Existing Project Documents; *provided* that the County shall be responsible for payment of its share of maintenance and capital expenses allocable to the Commuter Rail Service in accordance with Annex C (Payment Provisions) and the SFRTA Sharing Agreement.

**Section 3.02 Clearing of Tracks.** Pursuant to the Existing Project Documents, FECR is required to clear tracks and assist with mechanical failures of Commuter Rail Service trains, which expenses, if any, are the obligation of Brightline Florida. However, in accordance with Annex C (Payment Provisions), the County agrees to promptly reimburse FECR (or Brightline Florida) for actual expenses incurred in connection therewith.

**Section 3.03 Day-to-day Maintenance and Security.** Pursuant to the Existing Project Documents, FECR (or Brightline Florida, if such responsibility is delegated or transferred to Brightline Florida by FECR) has control of the day-to-day maintenance and security of the Corridor and is required

to provide officers to patrol the Corridor (it being understood that the Responsible Railroad will be responsible for the security and maintenance of its Rolling Stock, the Commuter Stations, and the Maintenance Facility). The County may request additional security personnel from FECR (or Brightline Florida) if responsibility for such security personnel is delegated or transferred to Brightline Florida by FECR. The County will promptly reimburse FECR or Brightline Florida (if applicable) for the incremental cost in security personnel requested by the County that are needed to monitor the Corridor in accordance with Annex C (Payment Provisions). The County shall be responsible for its own security costs, the security costs set forth in this Section 3.03, and any security costs set forth in Annex C (Payment Provisions). In the event that the County provides security personnel related to the operation of its trains on the Segment, such personnel will be granted access in accordance with the terms of the Existing Project Documents.

**Article IV. Additional or Replacement Rolling Stock; Maintenance of Rolling Stock**

**Section 4.01 Rolling Stock.**

(a) Subject to Section 3.5 (Equipment/PTC) of the JUA:

(i) with respect to future Rolling Stock that is not procured in accordance with the terms of Annex A (Design and Construction Requirements), the County shall request train specifications from Brightline Florida, and Brightline Florida shall act reasonably in providing such train specification to conform with Applicable Law and ensure compatibility of the Rolling Stock to the Corridor (it being understood that any future Rolling Stock shall satisfy at least the EPA's Tier 4 emission standards or such other standards as are required by Brightline Florida at the time of procurement);

(ii) the procurement of any Rolling Stock shall be at the County's cost and, the extent the County procures Rolling Stock other than the Rolling Stock in accordance with the terms of Annex A (Design and Construction Requirements), test and commission such Rolling Stock to ensure it is properly integrated with the Segment (with Brightline Florida's reasonable assistance and at a reasonable cost to be pre-agreed between the County and Brightline Florida); and

(iii) the County shall equip the Rolling Stock with both ATC and PTC equipment which is compatible with the ATC and PTC facilities on the Corridor, and maintain and upgrade, from time to time, the same in order to meet the requirements of the Corridor.

(b) The County shall be responsible for the testing and commissioning of such additional Rolling Stock in accordance with Applicable Law and the Existing Project Documents, and shall obtain FRA Acceptance with respect to such Rolling Stock; *provided* that train movements with respect to such Rolling Stock shall be operated by the Responsible Railroad.

**Section 4.02 Fleet Defects.** The Responsible Railroad shall take appropriate measures to identify Fleet Defects and, if any Fleet Defects are identified, to (i) require the supplier of Rolling Stock to correct all Fleet Defects and all associated equipment, and (ii) afford the County the right to review and approve any corrective actions taken.

**Section 4.03 Compliant Rolling Stock.**

(a) **Table 2** below sets forth the Preliminary KPIs required to be met in order to dispatch Rolling Stock into service, and, once dispatched en route defect remedy periods and required en route actions. Such table will be further developed, and cure periods will be further adjusted, in connection with the procurement of an O&M Contract in accordance with Section 1.03 (*Procurement of Operator*) of this Annex B (*Operations and Maintenance Provisions*) (such finalized indicators, the “**Compliant Rolling Stock Standards**”).

(b) Failures to meet Rolling Stock to meet the Compliant Rolling Stock Standards shall be entered and tracked by the KPI Compliance Program. The County reserves the right to periodically audit compliance with the Compliant Rolling Stock Standards against the Brightline Operator’s records and field checks; *provided* that the County shall not unreasonably interfere with the Brightline Operator operations.

(c) To the extent the County becomes aware of the occurrence of an event that constitutes a failure of Rolling Stock to meet the Compliant Rolling Stock Standards, it will report the same to the Brightline Operator for investigation, confirmation, and resolution by the Brightline Operator. The Brightline Operator shall notify the County promptly of failures to meet Compliant Rolling Stock Standards of which it becomes aware (either through its own discovery or through reports from other parties). Upon the Operator remedying any failure to meet failure to meet a Compliant Rolling Stock Standard, the Operator will, subject to receiving authorization from DispatchCo, commence or resume Commuter Rail Service with such impacted Rolling Stock. The County may require the Brightline Operator to assess O&M LDs in accordance with the terms of the O&M Contract to the extent Rolling Stock fails to meet the Compliant Rolling Stock Standards.

(d) Upon request from the Brightline Operator, the County may, in its sole discretion, excuse, suspend, or reduce O&M LDs.

**Table 2 – Compliant Rolling Stock Standards**

Mechanical standards:			
Area:	Dispatch standard:	En route defect remedy period	En route action required
a) Cab and FRA systems	All controls, monitors, and FRA-required systems (brakes, lights, interlocks, etc.) available	None	Remove from service within FRA timeframes
b) Passenger Doors	At least 50% of platform doors available	1 round-trip	Isolate door(s); swap or fix equipment
c) Life safety systems	All available and functional, including emergency lighting	None	Remove from service
d) HVAC	Ambient temperature and humidity operating within car design standard in at least 50% of cars	1 round-trip	Swap or fix equipment
e) Interior lighting	All primary lights on with none flickering	Next peak period	Swap or fix equipment
f) Windows	No etchings, cracks, or clouded glass (Major is crack greater than 4")	Minor: 24 hours Major: None	Minor: Swap or fix equipment Major: Remove from service
g) Panels and lockers	All service cabinet, panels, and compartment access doors secured	1 round-trip	Secure and isolate car; swap or fix equipment
h) ADA systems	Tie-down area	1 round-trip	Swap or fix equipment
	Communication/assist request button	1 round-trip	Swap or fix equipment
i) Passenger information systems	Speakers – interior and exterior	Next Peak Hours	Swap or fix equipment
j) Interior Cleanliness	No heavy litter or significant fluids		
k) Exterior Cleanliness	No heavy dirt or dust (except if exterior washing is not permitted by local water resource regulations or not viable due to weather conditions)		
l) Floors	No gum; floors reasonably clean		
m) Seats	All seats available and in good condition		

**Article V. Allocation of Liability.**

**Section 5.01 Brightline Operator as Responsible Railroad.** For so long as the Brightline Operator is the Responsible Railroad, (a) the Brightline Operator shall procure and maintain, or require the Operator to procure and maintain railroad liability insurance in accordance with the requirements of Section 6.01(a)(iii) (*General Insurance*) and (b) the County shall not be required to provide any indemnity under Section 5.02 (*County as Responsible Railroad*).

**Section 5.02 County as Responsible Railroad.** For so long as the County is the Responsible Railroad, the County shall be required to procure and maintain railroad liability insurance in accordance with the requirements of Section 6.01(a)(iii) (*General Insurance*) and hereby provides the following indemnity:

(a) The County, in conjunction with the development or operation of the Commuter Rail Service on the Segment, shall defend, indemnify, and hold harmless, subject to the limitations set forth in Section 5.02(b) of this Annex B (*Operations and Maintenance*):

(i) FECR and its officers, agents, employees, and successors and assigns from and against: (A) any liability, cost, and expense, regardless of whether the loss, damage, destruction, injury, or death giving rise to such liability, cost, or expense is caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of FECR, its successors and assigns, or its officers, agents, and employees, or any other person; and (B) any loss, injury, or damage incurred by FECR, or allocated to FECR under Section 5.02(b) of this Annex B (*Operations and Maintenance*), up to an amount of Five Million Dollars (\$5,000,000) with respect to Coastal Link Corridor Limited Covered Accidents caused by the County; and

(ii) Brightline Florida and its officers, agents, employees, and successors and assigns from and against: (A) any liability, cost, and expense, regardless of whether the loss, damage, destruction, injury, or death giving rise to such liability, cost, or expense is caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of Brightline Florida, its successors and assigns, or its officers, agents, and employees, or any other person; and (B) any loss, injury, or damage incurred by Brightline Florida, or allocated to Brightline Florida under Section 5.02(b) of this Annex B (*Operations and Maintenance*), up to an amount of Five Million Dollars (\$5,000,000) with respect to Coastal Link Corridor Limited Covered Accidents caused by the County.

(b) The assumption of liability of the County pursuant to Section 5.02(a) of this Annex B (Operations and Maintenance) shall not exceed the following parameters of allocation of risk:

(i) The County shall assume sole responsibility for any liability, loss, or expense to the County's Passenger, or Rail Corridor Invitees, third parties, or trespassers, regardless of circumstance or cause, subject to this paragraph.

(ii) If a Coastal Link Corridor Limited Covered Accident is caused by FECR or its officers, agents, employees, or successors and assigns, the County shall not protect, defend, and indemnify FECR for any liability, cost, or expense, including punitive or exemplary damages, in excess of the SIRA unless FECR, or Brightline Florida on FECR's behalf, agrees, with respect to the Coastal Link Corridor Limited Covered Accident, to protect, defend, and indemnify the County for the amount of the SIRA.

(iii) If a Coastal Link Corridor Limited Covered Accident is caused by Brightline Florida or its officers, agents, employees, and successors and assigns, the County shall not protect, defend, and indemnify Brightline Florida for any liability, cost, or expense, including punitive or exemplary damages, in excess of the SIRA unless Brightline Florida agrees, with respect to the Coastal Link Corridor Limited Covered Accident, to protect, defend, and indemnify the County for the amount of the SIRA.

(iv) When an incident occurs with only a Commuter Rail Service train involved, including an incident with a trespasser or an at-grade crossing, the County shall be solely responsible for any loss, injury, or damage.

(v) When an incident occurs with only an SFRTA train involved, including an incident with a trespasser or an at-grade crossing, (A) the County shall be solely responsible for any loss of, or injury or damage to, the County's property, Passengers, and Rail Corridor Invitees and (B) SFRTA shall be solely responsible for any loss of, or injury or damage to, SFRTA's property, Passengers and Rail Corridor Invitees.

(vi) When an incident occurs with only an FECR train involved, including an incident with a trespasser or an at-grade crossing, FECR shall be solely responsible for any loss, injury, or damage, except that (A) the County shall be solely responsible for any loss of, or injury or damage to, the County's property, Passengers, and Rail Corridor Invitees;

and (B) FECR shall be solely responsible for any loss of, or injury or damage to, FECR's property, Passengers, and Rail Corridor Invitees.

(vii) When an incident occurs with only a Brightline Florida train involved, including an incident with a trespasser or an at-grade crossing, Brightline Florida shall be solely responsible for any loss, injury, or damage, except that: (A) the County shall be responsible for any loss of, or injury or damage to, the County's Property, Passengers and Rail Corridor Invitees; and (B) Brightline Florida shall be responsible for any loss of, or injury or damage to, FECR's Brightline Florida's property, Passengers, and Rail Corridor Invitees.

(viii) When an incident occurs involving two or more Operators, each Operator shall be responsible for all of the following, subject to the limits provided in Section 5.02(a) (County as Responsible Railroad): (A) its own property; (B) its own Passengers; employees, excluding employees who are, at the time of the incident, Rail Corridor Invitees of another Operator; and other Rail Corridor Invitees; (C) its Proportionate Share of any loss or damage to the Joint Infrastructure; (D) its Proportionate Share of any loss of, or injury or damage to, Rail Corridor Invitees who are not Rail Corridor Invitees of such Operator and trespassers or third parties outside the Corridor as a result of the incident, provided that the County shall be responsible for its property, the Commuter Rail Service's Passengers, and its Rail Corridor Invitees regardless of whether the Commuter Rail Service was involved in the incident.

(c) The County's contractual duty, individually or jointly with another Agency to the extent such Agencies are jointly operating the Commuter Rail Service, to protect, defend, indemnify, and hold harmless Brightline Florida or FECR with respect to claims by rail Passengers shall not exceed Three Hundred Twenty-Three Million Dollars (\$323,000,000) per occurrence. Such amount shall be adjusted so that the per occurrence insurance requirement is equal to the aggregate allowable awards to all rail Passengers, against all defendants, for all claims, including claims for punitive damages, arising from a single accident or incident in accordance with 49 U.S.C. s. 28103, or any successor provision thereto, without prior approval on the part of the County.

(d) An employee of an Operator is not a Coastal Link Corridor Invitee of such Operator at any time the employee is a Passenger or is otherwise present on the Coastal Link Corridor at the request of, or pursuant to a contract with, or otherwise for the purpose of doing business with or at the

behest of, another Operator. A Passenger transferring from the service of one Operator (an “**Original Operator**”), to another operator (a “**Connecting Operator**”), is a Coastal Link Corridor Invitee of the Original Operator until the Passenger has left the Original Operator’s platform. Once the Passenger leaves the Original Operator’s platform, the Passenger is a Coastal Link Corridor Invitee of the Connecting Operator.

**Article VI. Insurance Requirements.**

**Section 6.01 General Insurance.**

(a) In accordance with Section 8.5 of the JUA, as a condition to the satisfaction of the Availability Conditions and, once satisfied, to the continued operation of the Commuter Rail Service, the Responsible Railroad shall procure or cause a Third-Party Manager or an Operator to procure, at a minimum, the insurance coverages required in clauses (i) through (iii) below and maintain or cause to be maintained the same throughout the Term. The Responsible Railroad shall furnish to the County or, if the County is the Responsible Railroad, to Brightline Florida certificate(s) of insurance evidencing insurance coverage that meets the requirements outlined below. Brightline Florida and the County reserve the right to request full copies of any of the insurance policies required in this Section 6.01, which will be promptly provided.

(i) Workers’ Compensation Insurance as required by Chapter 440, Florida Statutes, including but not limited to Other States coverage, coverage, or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, FELA (where applicable). Coverage shall be in accordance with statutory limits for the State. Self-insurance is not acceptable, except with respect to County employees. Coverage shall also include Employer’s Liability Insurance. This insurance shall have limits of at least One Million Dollars (\$1,000,000) per accident, per employee and per bodily injury/disease and annual aggregate.

(ii) Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with this Annex B (Operations and Maintenance Provisions) in an amount not less than Five Million Dollars (\$5,000,000) combined single limit.

(iii) Railroad Liability Insurance in a minimum of Three Hundred Twenty-Three Million Dollars (\$323,000,000) per occurrence, which amount shall be adjusted so that the per occurrence insurance requirement is equal to the aggregate allowable awards to all rail Passengers, against all defendants, for all claims, including claims for punitive

damages, arising from a single accident or incident in accordance with 49 U.S.C § 28103 (or any successor provision thereto). Brightline Florida, MDC Commuter, Holdings, any Lenders' Representative, the County, SFRTA, and FECR and their respective officers, agents, employees, successors, and assigns (except to the extent such entity is the entity procuring such insurance) shall be named as additional insureds. The Responsible Railroad shall ensure that all policies shall have a waiver of exclusion for punitive damages and FELA coverage and the Railroad Liability Insurance policy shall not include deductibles, but shall provide for a Five Million Dollars (\$5,000,000) self-insurance retention account, which will always be funded in cash by the Responsible Railroad (or its Third-Party Manager or Operator to the extent such entity procures the Rail Liability Insurance policy). Such policies shall also include terrorism coverage. The Rail Liability Insurance policy shall include the following elements:

(A) coverage for pollution, including without limitation, coverage applicable in the event of a railroad accident, derailment or overturn; evacuation expense coverage;

(B) an occurrence form; no rail exclusions; no other endorsements limiting coverage with respect to obligations under agreement; insurers waive right of subrogation against Brightline Florida, MDC Commuter, Holdings, any Lenders' Representative, the County, SFRTA, and FECR (except to the extent such entity is the entity procuring such insurance); a statement that the policy is primary and non-contributory with respect to insurance carried by Brightline Florida, MDC Commuter, Holdings, any Lenders' Representative, the County, SFRTA, and FECR (except to the extent such entity is the entity procuring such insurance); a severability of interest endorsement; and

(C) the insurance companies shall be required to provide thirty (30) days' notice to Brightline Florida, MDC Commuter, Holdings, any Lenders' Representative, the County, SFRTA, and FECR (except to the extent such entity is the entity procuring such insurance) prior to cancellation, substitution, or material alteration.

(iv) In addition, the Responsible Railroad shall require any of its contractors (or subcontractors) that are providing services related to the Commuter Rail Service on the Segment to maintain a Commercial General Liability (or Railroad Protective Liability) insurance policy with a minimum of Five Million Dollars (\$5,000,000) per occurrence and aggregate limits. Such contractor (or subcontractor) shall include Brightline Florida, MDC Commuter, Holdings, any Lenders' Representative, the County, SFRTA, and FECR (except to the extent such entity is the entity procuring such insurance), and their respective officers, agents, employees, successors, and assigns as additional insureds on each of their policies.

(b) All insurance policies required above shall be issued by companies authorized to do business under the laws of the State, and each issuer must be rated no less than "A-" as to management, and no less than "Class VII" as to strength, by A.M. Best Company, Oldwick, New Jersey.

**NOTE: CERTIFICATE HOLDER MUST READ: BRIGHTLINE HOLDINGS LLC  
350 NW 1<sup>st</sup> Ave  
SUITE 200  
MIAMI, FL 33128**

(c) The Responsible Railroad shall provide Brightline Florida and the County a certificate of insurance annually reflecting requirements/endorsements identified herein, and shall provide Brightline Florida and the County with evidence of insurance with the premium and any costs paid in advance.

**Section 6.02 Property Insurance.**

(a) The Responsible Railroad shall obtain and maintain or cause to be obtained and maintained, current broad form property insurance ("**Property Insurance**") for the Commuter Stations. Brightline Florida shall obtain and maintain or cause to be obtained or maintained, Property Insurance for the Aventura Station. The County shall pay for its apportioned costs for the Property Insurance and for the insurance maintained by FECR in accordance with the County's use of the Shared Infrastructure as compared to Other Passenger Service Operators' use of the Shared Infrastructure using the same metrics as set forth on Schedule 5.2 (*Allocation of Shared Infrastructure Maintenance and Security Costs*) of the JUA in accordance with Annex C (*Payment Provisions*). The County shall also pay its Proportionate Share of any broad form property insurance obtained and maintained, or caused to be obtained and maintained, by Brightline Florida for any rail, station or other property utilized by the County (including its employees, guests, or Passengers) in connection with its Commuter Rail Service. Any amounts payable to Brightline

Florida shall be set forth in invoices provided to, and payable by, the County under Annex C (Payment Provisions).

(b) Brightline Florida shall also obtain and maintain, or cause to be obtained and maintained, property insurance over the AAF Infrastructure on the Viaduct/Station Segment and the common areas of the MiamiCentral Station as agreed between it and the County, and the County shall pay its Proportionate Share of any such property insurance in accordance with Annex C (Payment Provisions).

(c) The Responsible Railroad shall also obtain and maintain, or cause to be obtained and maintained, inland marine and/or specialized rolling stock insurance over the Rolling Stock, regardless of which party is acting as the Responsible Railroad. To the extent the Brightline Operator is the Responsible Railroad, the County shall pay the costs of any such property insurance in accordance with Annex C (Payment Provisions) and shall be responsible for any deductibles or self-insured retentions thereunder.

**Section 6.03 Periodic Review of Insurance Requirements.** Brightline Florida shall be entitled to review the insurance requirements set forth in this Article VI (Insurance Requirements) of this Annex B (Operations and Maintenance Provisions) from time to time to take into account Changes in Law that require the procurement of additional insurance or modification of insurances required under this Annex B (Operations and Maintenance Provisions), the impacts of inflation on limits and sub-limits, and the commercial unavailability of required insurance policies or insurance terms. To the extent that Brightline Florida determines that a modification of the insurance requirements set forth in this Article VI (Insurance Requirements) of this Annex B (Operations and Maintenance Provisions) is necessary, it shall notify the Responsible Railroad (and the County to the extent the County is not the Responsible Railroad) and the Parties shall act reasonably in revising the relevant insurance requirements and entering into an amendment to this Agreement. To the extent the Parties are unable to reach an agreement as to whether a change in insurance requirements is required or the appropriate amendment to this Agreement, such Dispute shall be resolved in accordance with the Dispute Resolution Procedures.

**Annex C**  
**Payment Provisions**

**Annex C - 1**

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Exhibit 1 – Milestone Payments

## Annex C

### Payment Provisions

#### Article I. Milestone Payments

**Section 1.01 Milestone Payments.** In consideration for the reserved capacity on the Segment and the access rights provided by MDC Commuter to the County under this Agreement, the County agrees to timely pay MDC Commuter the Access Milestone Payments set forth on **Table 1** of Exhibit 1 to this Annex C (*Payment Provisions*). In order to permit MDC Commuter to raise the Construction Financing in accordance with the terms of this Agreement (subject to any adjustments to the foregoing that the Parties may agree to in accordance with Section 1.12(b) of Annex A (*Design and Construction Provisions*), the County agrees to timely pay MDC Commuter the CF Milestone Payments set forth on **Table 2** of Exhibit 1 to this Annex C (*Payment Provisions*) (the “**Milestone Payments**”). All Milestone Payments shall be paid by the County in accordance with the terms of Exhibit 1 to this Annex C (*Payment Provisions*).

#### Article II. D&C Management Fee

##### Section 2.01 D&C Management Fee.

(a) Subject to Section 1.01 of this Agreement, Project Management will accrue the following monthly management fees (the “**D&C Management Fee**”) in order for Project Management to provide the employees necessary to perform the development and management of project budget and schedules, and oversight of design and construction: (a) from the period from the Effective Date until the issuance of the Notice to Proceed, One Hundred Twenty Five Thousand Dollars (\$125,000) per month (and prorated for any partial month) and (b) for the period from the issuance of the Notice to Proceed and until the Operations Commencement Date, Two Hundred Seventy Five Thousand Dollars (\$275,000) per month (and prorated for any partial month); *provided* that except to the extent the Operations Commencement Date is delayed by any County-Caused Delay (and as the same may be off-set to the extent the Operations Commencement Date is delayed by any Brightline Florida-Caused Delay), the D&C Management Fees payable by the County hereunder shall not exceed Ten Million Dollars (\$10,000,000) in the aggregate.

(b) Notwithstanding the foregoing, Project Management will not be entitled to submit an invoice to the County for payment of the D&C Management Fee until the first Business Day of the first month following the CP Achievement Date. The County acknowledges that the first invoice submitted hereunder shall cover the period from the Effective Date through the CP Achievement Date. Thereafter, Project Management will invoice the County the D&C Management Fee on a monthly basis in arrears.

(c) The County acknowledges and agrees that if the Operations Commencement Date occurs before Project Management accrues Ten Million Dollars (\$10,000,000) in D&C Management Fees, Project Management will be entitled to receive fifty percent (50%) of the difference between the actual D&C Management Fees accrued and Ten Million Dollars (\$10,000,000).

(d) The Parties acknowledge that D&C Management Fee will cover costs relating to (i) construction management services rendered in accordance with Section 1.08 (*Brightline Florida's Obligations in Construction of the Additional Infrastructure, Commuter Stations, and Existing Station Improvements*) of Annex A (*Design and Construction Provisions*) and (ii) to the extent applicable, the procurement process for Rolling Stock performed in accordance with Section 1.09 (*Procurement, Provision, and Commissioning of Rolling Stock*) of Annex A (*Design and Construction Provisions*).

### **Article III. Operations Payments**

#### **Section 3.01 Operations Fee and Operations Expenses.**

(a) As of the Effective Date, the Brightline Operator estimates that, in 2026 U.S. dollars, the cost of O&M Services for a one-year period is equal to \$33,900,000 (the "**Estimated Baseline Operations Expenses**"). The Brightline Operator represents, and the County acknowledges, that the Estimated Baseline Operations Expenses were prepared by the Brightline Operator in good faith based upon assumptions believed to be reasonable at the time (it being recognized that actual, future operating costs may be subject to uncertainties and contingencies, many of which are beyond the Brightline Operator's control, and that actual operating expenses may differ from Estimated Baseline Operations Expenses).

(b) Prior to the Operations Commencement Date, but no more frequently than once in any 12-month period, the County may request an update of the Estimated Baseline Operations Expenses from the Brightline Operator, and the Brightline Operator will work diligently to provide the same. To the extent that the first Rolling Stock is expected to be delivered in the next two (2) calendar years based on the then-current Project Schedule, the Brightline Operator will work diligently to provide the Estimated Baseline Operational Expenses for the period from receipt of the first Rolling Stock through the Operations Commencement Date.

(c) The Brightline Operator shall develop and submit to the County an Annual Operating Budget (as defined below) for the O&M Services for each Fiscal Year no later than April 1 of each calendar year in which O&M Services are expected to be performed. The Parties acknowledge that the Annual Operating Budget, as initially submitted, is intended to assist the County in estimating its yearly cost for O&M Services. However, the County understands that the actual aggregate Operations Expenses

(as defined below) for each Fiscal Year may differ from the Estimated Annual Operations Expenses included in the Annual Operating Budget.

(d) The Parties acknowledge that the Brightline Operator will procure an Operator in accordance with Section 1.03 of Annex B (*Operations and Maintenance Provisions*), but that it may not have procured all aspects of the O&M Services by the deadline for submission of the Annual Operations Budget. As the Brightline Operator procures different aspects of the O&M Services, it may provide updates to the County that reflect savings or cost overruns as compared to the Annual Operations Budget, and the Brightline Operator may provide supplemental budget requests with respect to any net cost increase; *provided* that the Brightline Operator shall provide the County a reasonably detailed description for the reasons of such increase together with supporting information.

(e) The Parties acknowledge that in consideration for the Brightline Operator's operation and maintenance of the Commuter Rail Service in accordance with this Agreement (including the O&M Services provided in connection with ramp up, testing and commissioning), the Operating Budget for each Fiscal Year will include: (A) an amount equal to 10% of the Estimated Baseline Operations Expenses as an operations fee (or such other percentage as may be agreed between the Brightline Operator and the County, the "**Estimated Annual Operations Fee**"), which, for the avoidance of doubt, includes any operations fee payable by the Brightline Operator to a Third-Party Manager; and (B) a good faith estimate of the costs and expenses of the O&M Services for a Fiscal Year (the "**Estimated Annual Operations Expenses**," and collectively with the Estimated Annual Operations Fee, the "**Annual Operating Budget**").

(f) The Annual Operating Budget may include segregated totals for the Direct O&M Services and the Third-Party O&M Services. The Brightline Operator will provide a monthly breakdown of the manner in which O&M Services will come due and payable in any Fiscal Year, it being understood that the Brightline Operator shall endeavor to evenly distribute regular, recurring charges in equal installments across the Fiscal Year while reserving the right to profile monthly payments in order to give effect to extraordinary or prepaid charges (such as taxes and insurance premia) at such times as the Brightline Operator reasonably believes such amounts will come due. Each monthly payment budgeted in the Annual Operating Budget is herein refer to as a "**Budgeted Monthly Payment**."

(g) The Brightline Operator shall submit a monthly invoice to the County approximately five (5) days prior to the start of each month in an amount equal to the Budgeted Monthly Payment for the following month, and the County will pay the Brightline Operator directly for such invoiced

costs in accordance with the County Code, in accordance with the prompt payment requirements in the County Code. The County acknowledges that one of the Brightline Parties may be required to put in place a liquidity facility to cover any gaps in payments due from the County hereunder as compared to payments due from Brightline Florida under the Existing Project Documents. The amount of such liquidity facility shall be reasonably sized, and the Brightline Parties do not expect the principal amount thereunder to exceed three (3) months of Budgeted Monthly Payments. The relevant Brightline Party shall be entitled to include its reasonable and documented financing costs associated with such liquidity facility as a line item in the Actual O&M Expenses and/or as part of the Budgeted Monthly Payments.

(h) The Parties acknowledge that any O&M Contract will specify a limited set of circumstances under which the Operator may submit a claim for additional compensation, in excess of its agreed to fees, by providing written notice to the Brightline Operator. Upon receiving such a claim, the Brightline Operator shall conduct an initial review. If the Brightline Operator reasonably determines that the claim should be rejected, it will provide the Operator with a written notice of rejection. If the Brightline Operator reasonably determines that the claim should not be rejected, or if the Operator challenges a rejection, the Brightline Operator will notify the County. Thereafter, the Brightline Operator and the County shall cooperate in good faith to resolve the claim, including by participating in meetings with the Operator; *provided*, however, that the final resolution of any such claim will be determined by the County and the Operator. If any additional compensation becomes Due under the O&M Contract, or amounts are owed to the Operator following the resolution of a claim, which are not already included in the Annual Operating Budget, the County shall assume responsibility for paying such additional compensation to the Operator. The County shall make any necessary amendments to the Annual Operating Budget to reflect such additional compensation in the Annual Operating Budget for the applicable Fiscal Year and promptly request the necessary amount from the Board.

(i) Solely in the event that the Brightline Operator causes Brightline Florida to act as the Operator pursuant to Section 1.03(g) of Annex B (*Operations and Maintenance Provisions*), the Parties acknowledge that any O&M Contract will specify a limited set of circumstances under which the Operator may submit a claim for additional compensation, in excess of its agreed to fees, by providing written notice to the County. Upon receiving such a claim, the County shall conduct an initial review (acting reasonably and considering input from the lenders under the Construction Financing and any technical advisors). If the County reasonably determines that the claim should be rejected, it will provide Brightline Florida with a written notice of rejection. Brightline Florida will be entitled to challenge any rejection by providing the County with written notice. Thereafter, Brightline Florida and the County shall cooperate in good faith to resolve the claim, including by participating in meetings and discussions as needed. If any additional

compensation becomes due under the O&M Contract, or amounts are owed to Brightline Florida following the resolution of a claim, which are not already included in the Annual Operating Budget, the County shall assume responsibility for paying such additional compensation to Brightline Florida.

(j) Brightline Florida shall maintain records of the actual costs and expenses for the performance of O&M Services (the “**Actual O&M Expenses**”) (it being understood that Brightline Florida’s ability to obtain any such records from FECR and/or DispatchCo shall be subject to FECR and/or DispatchCo actually providing such records to Brightline Florida under the Existing Project Documents), and shall make such records available to the County for inspection at Brightline Florida’s offices upon reasonable request.

(k) At the County’s request, and no more frequently than once every six (6) months, Brightline Florida shall provide the County with the amount of Actual O&M Expenses for such Fiscal Year, along with a description of any variance in such amount of Actual O&M Expenses from the amount paid by the County to Brightline Florida for such Fiscal Year pursuant to Section 3.01(g); *provided* that, with respect to Third Party O&M Services, the same shall only be provided by Brightline Florida concurrently with any corresponding reconciliation exercises under the Existing Project Documents. To the extent that a variance exists, the amount of such variance shall (i) if positive, be invoiced to the County for payment in accordance with Section 13.01 (Payments Generally) of this Agreement or (ii) if negative, be applied as a credit to any future fees and expenses payable by County under this Article III of this Annex C (Payment Provisions). The County acknowledges that FECR has an independent right to perform a reconciliation under the JUA. Brightline Florida and the County will reasonably cooperate with any reconciliation required by FECR, subject to their respective rights to dispute such reconciliation. The payment provisions set forth in this Section 3.01(k) of this Annex C (Payment Provisions) shall apply with respect to any reconciliation by FECR under the JUA.

(l) With respect to the Third Party O&M Services:

(i) The County acknowledges that cost sharing among the Other Users with respect to capital improvements, maintenance of, and security on, the Segment is set forth in the Existing Project Documents. The County agrees that it shall be responsible for all costs with respect to the Additional Infrastructure (including costs of any capital expenditures, maintenance, and security). In addition to the County’s share of costs calculated in accordance with the terms hereof, incremental costs to the Other Users caused by the implementation of the Commuter Rail Service will be borne by the County.

(ii) To the extent that any amounts are allocated to Brightline Florida under the Existing Project Documents with respect to the Commuter Rail Service that are not subject to payment by the County in accordance with Section 3.01(j) of this Annex C (Payment Provisions), and subject to the County's right to Dispute such allocation in accordance with the terms hereof, the County shall be responsible for such costs as would be apportioned to the County based on the County's use of the Segment as compared to the use of the Segment by Brightline Florida and SFRTA, using the same metrics as set forth in the Existing Project Documents.

(iii) To the extent that a Change in Law results in increased costs to any Other Users as the result of the development, operation and maintenance of the Commuter Rail Service, the County shall pay all such increased costs. To the extent that a Change in Law results in increased costs to the County and all Other Users and such increased costs for such Other Users are not the result of the development, operation, and maintenance of the Commuter Rail Service, the County shall pay its proportionate share of all such increased costs in accordance with the cost sharing mechanism set forth in Section 3.01(j) of this Annex C (Payment Provisions) and Section 3.01(l)(i) of this Annex C (Payment Provisions).

(iv) The County acknowledges that the terms of the Existing Project Documents, as they relate to the development and maintenance of the Additional Infrastructure, may require reasonable changes from time to time to the cost sharing methodology set forth above. The County agrees to reasonably accept such changes in cost sharing methodology. In addition, Brightline Florida and the County agree that (i) additional maintenance and capital costs may arise from time to time over the Term, and (ii) they will cooperate to fairly allocate such costs between themselves, using the methodologies and principles described above to the extent applicable.

(m) The Parties acknowledge that the County's payment obligations under this Article III of this Annex C (Payment Provisions) are subject to Board approval and, if applicable, an authorization by the Board of additional contractual capacity, in each case, in accordance with the County Code. To the extent the Board fails to approve all payments requested by the Brightline Operator with respect to O&M Expenses, Article V of this Annex C (Payment Provisions) will apply.

**Article IV. Assessment of O&M LDs**

**Section 4.01 Deductions.** To the extent the County requires the Brightline Operator to assess O&M LDs pursuant to Annex B (Operations and Maintenance Provisions) in accordance with the terms of any O&M Contract, the Brightline Operator will deduct such O&M LDs from the next payment due to the Operator. If to the Brightline Operator acts as the Operator pursuant to Section 1.03(g) of Annex B (Operations and Maintenance Provisions), the County will require the Compliance Representative to assess any O&M LDs pursuant to Annex B (Operations and Maintenance Provisions) and the terms of any O&M Contract, and the Compliance Representative will deduct such O&M LDs from the next payment due to the Brightline Operator.

**Article V. Funding Failure.**

**Section 5.01 Notice to the Brightline Parties.** To the extent the Board fails to approve any payment requested under Article III of this Annex C (Payment Provisions), the County will promptly notify the Brightline Parties. The County and the Brightline Parties, and, if applicable, the Operator and SFRTA will promptly meet following receipt of such notice to discuss what portion of the Commuter Rail Service, if any, can continue to be operated and maintained in light of the Board's failure to approve funding hereunder. The County and the Brightline Parties shall act reasonably in mitigating the Board's failure to fully fund payments required hereunder, including by adjusting the applicable performance standards under this Agreement.

**Section 5.02 Suspension of Commuter Rail Service.** To the extent the Brightline Parties reasonably determine that approved funding is insufficient to operate and maintain the Commuter Rail Service, either Brightline Party may submit a notice to the County indicating the date on which the Commuter Rail Service will be suspended. To the extent the Board subsequently approves any funding shortfall, the Brightline Parties will work diligently to restore the operation and maintenance of the Commuter Rail Service.

**Exhibit 1**  
**Milestone Payments**

1. Upon the satisfaction of each of the milestones set forth under the column captioned "Access Milestone" in **Table 1** (the "Access Milestones"), the County will pay MDC Commuter the corresponding Access Milestone Payment.
2. Upon the satisfaction of each of the milestones set forth under the column captioned "CF Milestone" in **Table 1** (the "CF Milestones"), the County will pay MDC Commuter the corresponding CF Milestone Payment.
3. MDC Commuter will invoice the County, and payment shall be made in accordance with Section 13.01 (*Payments Generally*) of this Agreement. For purposes hereof, except with respect to the first Milestone (which shall become payable on the CP Achievement Date), the County agrees that a proper invoice setting forth an attestation by the MDC Commuter Representative and the County Representative that the Milestone has occurred will be sufficient for purposes of the County Code.
4. To the extent MDC Commuter requests the County Representative to attest to an invoice with respect to a Milestone and the County Representative fails to do so within ten (10) Business Days, MDC Commuter may submit an invoice in respect to such Milestone to the County together with such supporting information as is reasonably necessary to evidence the occurrence of such Milestone.
5. With respect to Milestones that are subject to an outside payment date in accordance with the column captioned "Outside Payment Date" in **Table 1** below, the County shall be required to pay the full Milestone Payment on the Outside Payment Date regardless of whether such Milestone has been achieved. Notwithstanding anything in this Agreement to the contrary, in no event shall the "Outside Payment Date" be subject to extension due to the occurrence of a Delay Event, except as set forth in Section 5 of this Exhibit 1.
6. With respect to each Milestone that is subject to an Outside Payment Date, the Outside Payment Date shall be extended by the number of days, if positive, equal to (a) the aggregate length of all Brightline Florida-Caused Delays *minus* (b) the aggregate length of all County-Caused Delays. Upon a final determination of the occurrence and length of a Brightline Florida-Caused Delay or County-Caused Delay in accordance with Article V (*Delay Events; Change in Law*) of this Agreement, the MDC Commuter Representative and the County Representative shall execute a

document evidencing such Brightline Florida-Caused Delay or County-Caused Delay and the impact, if any, on the Outside Payment Dates.

**Table 1: Access Milestone Payments**

#	Access Milestone	Milestone Payment Amount	Estimated Payment Date	Outside Payment Date
1.	CP Achievement Date	\$50,000,000	[•], 2027	N/A
2.	Notice to Proceed	\$25,000,000	[•], 2029	[•]
3.	Payment of Project Costs constituting 50% of the Project Costs that correspond to Milestone #4 below	\$25,000,000	[•], 2030	N/A
4.	Substantial Completion	\$25,000,000 <sup>1</sup>	[•], 2032	[•]
5.	Operations Commencement Date	\$25,000,000	[•], 2033	Notice to Proceed + [•] [months]
6.	One (1) year following the Operations Commencement Date	\$15,000,000	[•], 2034	N/A
7.	Two (2) years following the Operations Commencement Date	\$15,000,000	[•], 2035	N/A
8.	Three (3) years following the Operations Commencement Date	\$15,000,000	[•], 2036	N/A
9.	Four (4) years following the Operations Commencement Date	\$15,000,000	[•], 2037	N/A
10.	Five (5) years following the Operations Commencement Date	\$15,000,000	[•], 2038	N/A
11.	Six (6) years following the Operations Commencement Date	\$15,000,000	[•], 2039	N/A
12.	Seven (7) years following the Operations Commencement Date	\$15,000,000	[•], 2040	N/A
13.	Eight (8) years following the Operations Commencement Date	\$15,000,000	[•], 2041	N/A
14.	Nine (9) years following the Operations Commencement Date	\$15,000,000	[•], 2042	N/A
15.	Ten (10) years following the Operations Commencement Date	\$15,000,000	[•], 2043	N/A
16.	Eleven (11) years following the Operations Commencement Date	\$15,000,000	[•], 2044	N/A
17.	Twelve (12) years following the Operations Commencement Date	\$15,000,000	[•], 2045	N/A
18.	Thirteen (13) years following the Operations Commencement Date	\$15,000,000	[•], 2046	N/A

<sup>1</sup> To the extent the portions of the Commuter Rail Service project achieve Substantial Completion, the Parties may agree to early payment of portions of this Access Milestone; it being understood that, to the extent that the Operations Commencement Date has occurred, the County will agree to payment of at least a percentage of this Access Milestone Payment determined by dividing the number of Commuter Stations that have achieved Substantial Completion by the total number of Commuter Stations.

#	Access Milestone	Milestone Payment Amount	Estimated Payment Date	Outside Payment Date
19.	Fourteen (14) years following the Operations Commencement Date	\$15,000,000	[•], 2047	N/A
20.	Fifteen (15) years following the Operations Commencement Date	\$15,000,000	[•], 2048	N/A
21.	Sixteen (16) years following the Operations Commencement Date	\$15,000,000	[•], 2049	N/A
22.	Seventeen (17) years following the Operations Commencement Date	\$15,000,000	[•], 2050	N/A
23.	Eighteen (18) years following the Operations Commencement Date	\$15,000,000	[•], 2051	N/A
24.	Nineteen (19) years following the Operations Commencement Date	\$15,000,000	[•], 2052	N/A
25.	Twenty (20) years following the Operations Commencement Date	\$15,000,000	[•], 2053	N/A
26.	Twenty-One (21) years following the Operations Commencement Date	\$15,000,000	[•], 2054	N/A
27.	Twenty-Two (22) years following the Operations Commencement Date	\$15,000,000	[•], 2055	N/A
28.	Twenty-Three (23) years following the Operations Commencement Date	\$15,000,000	[•], 2056	N/A
29.	Twenty-Four (24) years following the Operations Commencement Date	\$15,000,000	[•], 2057	N/A
30.	Twenty-Five (25) years following the Operations Commencement Date	\$15,000,000	[•], 2058	N/A
31.	Twenty-Six (26) years following the Operations Commencement Date	\$15,000,000	[•], 2059	N/A
32.	Twenty-Seven (27) years following the Operations Commencement Date	\$15,000,000	[•], 2060	N/A
33.	Twenty-Eight (28) years following the Operations Commencement Date	\$15,000,000	[•], 2061	N/A
34.	Twenty-Nine (29) years following the Operations Commencement Date	\$15,000,000	[•], 2062	N/A
35.	Thirty (30) years following the Operations Commencement Date	\$15,000,000	[•], 2063	N/A
36.	Thirty-One (31) years following the Operations Commencement Date	\$15,000,000	[•], 2034	N/A
37.	Thirty-Two (32) years following the Operations Commencement Date	\$15,000,000	[•], 2035	N/A
38.	Thirty-Three (33) years following the Operations Commencement Date	\$15,000,000	[•], 2036	N/A
39.	Thirty-Four (34) years following the Operations Commencement Date	\$15,000,000	[•], 2037	N/A
40.	Thirty-Five (35) years following the Operations Commencement Date	\$15,000,000	[•], 2038	N/A
41.	Thirty-Six (36) years following the Operations Commencement Date	\$15,000,000	[•], 2039	N/A

#	Access Milestone	Milestone Payment Amount	Estimated Payment Date	Outside Payment Date
42.	Thirty-Seven (37) years following the Operations Commencement Date	\$15,000,000	[•], 2040	N/A

**Table 2: CF Milestone Payments**

#	CF Milestone	Milestone Payment Amount	Estimated Payment Date	Outside Payment Date
1.	Issuance of initial 100% design drawings	\$40,000,000	[•]	N/A
2.	Notice to Proceed	\$35,000,000	[•], 2029	[•]
3.	Payment of Project Costs constituting 25% of the Project Costs that correspond to Milestone #7 below	\$90,000,000	[•]	N/A
4.	Payment of Project Costs constituting 50% of the Project Costs that correspond to Milestone #7 below	\$15,000,000	[•], 2030	N/A
5.	Payment of Project Costs constituting 75% of the Project Costs that correspond to Milestone #7 below	\$90,000,000	[•]	N/A
6.	Substantial Completion	\$55,000,000 <sup>2</sup>	[•], 2032	N/A
7.	Commencement of Operations	\$65,000,000	[•], 2033	Notice to Proceed + [•] [months]
8.	One (1) year following Commencement of Operations	\$60,000,000	[•], 2034	N/A
9.	Two (2) years following Commencement of Operations	\$62,000,000	[•], 2035	N/A
10.	Three (3) years following Commencement of Operations	\$64,000,000	[•], 2036	N/A

**Commented [A7]:** These numbers and milestones were taken from a June 2025 version of the payment annex and should be reviewed carefully by the parties.

<sup>2</sup> To the extent the portions of the Commuter Rail Service project achieve Substantial Completion, the Parties may agree to early payment of portions of this CF Milestone; it being understood that, to the extent that the Operations Commencement Date has occurred, the County will agree to payment of at least a percentage of this CF Milestone Payment determined by dividing the number of Commuter Stations that have achieved Substantial Completion by the total number of Commuter Stations.

**Annex D**  
**Default and Termination Provisions**

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## Annex D

### Default and Termination Provisions

#### Article I. Termination

##### Section 1.01 No-Fault Termination by County

(a) The County shall be entitled to terminate this Agreement in accordance with the terms of the following Sections of Annex A (Design and Construction): (i) Section 1.01(d) (Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements), (ii) Section 1.01(e) (Scope of Additional Infrastructure, Commuter Stations, and Existing Station Improvements), (iii) Section 1.02(c) (Funding the Project), (iv) Section 1.02(e) (Funding the Project), and (v) Section 1.12(a) (Core Project Costs) (each, a “No-Fault Termination Event”).

(b) If this Agreement is terminated by the County under Section 1.01(a) of this Annex D (Default and Termination Provisions), then MDC Commuter shall, no later than one (1) year following the Termination Date, pay the County an amount equal to the No-Fault Termination Reimbursement Amount.

##### Section 1.02 Termination by County for Convenience

(a) To the extent the County intends to terminate this Agreement for convenience, the County may send a notice to the Brightline Parties requesting their calculation of the estimated Termination Amount. The Brightline Parties shall respond to the County with their good faith estimates within sixty (60) days. The County’s issuance of a notice requesting such calculation shall in no way require the County to issue a Notice of Termination for Convenience. The County may terminate this Agreement at any time by providing the Brightline Parties with at least ninety (90) days’ notice through a Notice of Termination for Convenience. The Brightline Parties shall reasonably cooperate with the County in mitigating Contractor Breakage Costs, and will reasonably cooperate to provide the County an allocation of the Termination Amount as between the Brightline Parties.

(b) To the extent the County terminates this Agreement under Section 1.02(a) of this Annex D (Default and Termination Provisions):

(i) The County shall pay to the Brightline Parties (without duplication) the Termination Amount on the Termination Date unless the County has, in its termination notice to the Brightline Parties, indicated that it intends to finance the payment of the

Termination Amount. The Termination Amount shall be deemed Due as of the Termination Date.

(ii) If the County elects to finance the payment of the Termination Amount in its Notice of Termination for Convenience, the Termination Amount shall still be deemed Due as of the Termination Date and shall accrue interest in accordance with Section 13.01(a) (Payments Generally) of this Agreement; provided, however, that the County shall have an additional period of up to one (1) year from the Termination Date to pay the Termination Amount to the Brightline Parties.

## **Article II. County Remedial Rights**

### **Section 2.01 County Right to Take Over Construction Management**

(a) The occurrence of any one or more of the following shall constitute a “**Brightline Construction Default**”:

(i) a material breach by a Brightline Party or Project Management of any obligation under Annex A (Design and Construction Provisions), to the extent the same is not cured within thirty (30) Business Days of notice of such breach from the County; provided that, to the extent such breach is not reasonably capable of being cured within thirty (30) Business Days, such longer period (as reasonably agreed by the Brightline Parties and the County) as is reasonably necessary to cure such breach; and

(ii) accrual by the Brightline Parties of ninety percent (90%) of their D&C Liability Cap, to the extent the Brightline Parties do not opt to cure, by notice to the County, by promptly satisfying such accrued liability and, for purposes of the accrual of liability that is subject to the D&C Liability Cap, resetting the Brightline Parties' accrued liability to zero (0) Dollars.

(b) To the extent a Brightline Construction Default has occurred and is continuing, the County may, by notice to the Brightline Parties and Construction Contractor, assume Brightline Florida's role as construction manager under Annex A (Design and Construction Provisions) and shall be entitled to assume Brightline Florida's rights and obligations under any Construction Contract. Such assumptions will be at no cost to the County. Following an assumption of such contracts by the County, notwithstanding Section 1.13 (Qualification of Employees) of Annex A (Design and Construction Provisions), without limiting the obligations of Project Management under Section 2.01(c) of this Annex D (Default and

*Termination Provisions*), the Brightline Parties shall not be entitled to payment of the D&C Management Fee (other than any D&C Management Fees that accrued prior to such assumption), and Brightline Parties and Project Management shall fully cooperate with the County during the transition period. To the extent the County wishes to replace any Construction Contractor following the exercise of its remedial rights under this Section 2.01(b) of this Annex D (*Default and Termination Provisions*), the County will include pass/fail technical and financial requirements in its solicitation for such replacement Construction Contractor and such requirements shall be subject to Brightline Florida's reasonable concurrence; *provided* that Brightline Florida shall be deemed to have concurred with such requirements to the extent it has not provided comments or its concurrence within ten (10) Business Days of its receipt of such requirements.

(c) In the event the County exercises its rights under Section 2.01(b) of this Annex D (*Default and Termination Provisions*) as a result of a Brightline Construction Default in Section 2.01(a)(ii) of this Annex D (*Default and Termination Provisions*), Project Management shall pay the County an amount equal to (i) its increased and documented costs incurred under the Construction Contract directly as a result of such Brightline Construction Default and (ii) the County's reasonable and documented costs to procure a new construction manager for the Project; *provided* that such compensation under this Section 2.01(c) of this Annex D (*Default and Termination Provisions*) shall be subject to the Section 1.14 (*Limit of Liability*) of Annex A (*Design and Construction Provisions*). Such payment shall constitute the County's sole remedy in connection with its exercise of its rights under this Section 2.01 of this Annex D (*Default and Termination Provisions*). In the alternative to the County's exercise of its rights under Section 2.01(b) of this Annex D (*Default and Termination Provisions*), the County may require Brightline Florida to procure the services of a construction management subcontractor, which construction management subcontractor shall be reasonably acceptable to the County. In such case, Brightline Florida shall continue to receive the D&C Management Fee, *provided* that Brightline Florida shall be responsible for payment of any management fee payable to such subcontractor, including any amounts that exceed the D&C Management Fee.

(d) In the event the County exercises its rights under Section 2.01(b) of this Annex D (*Default and Termination Provisions*) as a result of a Brightline Construction Default, for so long as there are proceeds of the Construction Financing available to pay Project Costs, the County shall be entitled to make application for payment of such Project Costs to MDC Commuter, which payment will be subject to the terms set forth in Section 1.07(d) (*Mandatory Construction Contract Terms*) of Annex A (*Design and Construction Provisions*).

(e) The remedies set forth in this Section 2.01 shall not preclude the County from pursuing any other remedies permitted by Applicable Law with respect to any Brightline Construction Default (other than termination of this Agreement), and the County's election not to enforce one or more of the remedies upon a Brightline Construction Default shall not constitute a waiver thereof.

**Section 2.02 Brightline Operator Operations Default**

(a) the occurrence of any one or more of the following shall constitute an "**Brightline Operator Operations Default**":

(i) any failure to procure or maintain insurance required to be procured or maintained by a Brightline Party under Annex B (*Operations and Maintenance Provisions*);

(ii) any material breach of Section 2.07(b) of Annex B (*Operations and Maintenance Provisions*);

(iii) the accumulation of O&M LDs in excess of one hundred thirty percent (130%) of the Operator's event of default threshold under relevant O&M Contract; and

(iv) any other material breach by a Brightline Party of its obligations under Annex B (*Operations and Maintenance Provisions*) (including any obligation to comply with an Operations Remedial Plan) to the extent the same is not cured within thirty (30) Business Days of notice of such breach from the County; provided that, to the extent such breach is not reasonably capable of being cured within thirty (30) Business Days, such longer period (as reasonably agreed by the Brightline Parties and the County) as is reasonably necessary to cure such breach; *provided* that any material breach of an Applicable Law must be cured in accordance with the requirements of Applicable Law.

(b) To the extent an Brightline Operator Operations Default has occurred and is continuing, the County may require the suspension of the Brightline Operator's operation of the Commuter Rail Service under this Agreement by notice to MDC Commuter (an "**MDC Operations Default Notice**"). In the event of a Brightline Operator Operations Default occurs under Section 2.02(a)(ii) of this Annex D (*Default and Termination Provisions*), the Brightline Operator shall not be required to suspend service, and the County shall have no remedial rights, so long as the Brightline Operator is diligently implementing the Service Failure Remedial Plan. To the extent that, prior to the occurrence of a Brightline Operator Operations Default under Section 2.02(a)(iii) of this Annex D (*Default and Termination Provisions*) or

prior to the expiration of the cure period under Section 2.02(a)(iv) of this Annex D (Default and Termination Provisions), the County has accepted a remedial plan from the Brightline Operator with respect to such Brightline Operator Operations Default (it being understood that the County agrees to act reasonably in reviewing such plan upon receipt, even if the relevant Brightline Operator Operations Default has not yet occurred): (i) the rights of the Brightline Operator to operate the Commuter Rail Service under this Agreement shall not be suspended, (ii) the beach that was the subject of the Brightline Operator Operations Default Notice shall be deemed cured (including by resetting any accumulated O&M LDs to zero (0) Dollars), and (iii) the Brightline Operator shall thereafter comply with such Operations Remedial Plan. During any suspension of the rights of the Brightline Operator to operate the Commuter Rail Service under this Section 2.02(b) of this Annex D (Default and Termination Provisions), the due date for any Milestone Payments that have not become due and payable prior to the date of such suspension will be extended, on a day-for-day basis, for the length of time from the commencement of such suspension until operation of the Commuter Rail Service resumes by the Brightline Operator or the County becomes entitled to exercise its remedial rights in accordance with Section 2.02(c) of this Annex D (Default and Termination Provisions).

(c) To the extent a Brightline Operator Operations Default has occurred and is continuing under Section 2.02(a) of this Annex D (Default and Termination Provisions) and the County has rejected, or the Brightline Parties are not entitled to submit, an Operations Remedial Plan in accordance with Section 2.02(b) of this Annex D (Default and Termination Provisions), or the Brightline Operator fails to diligently implement the Service Failure Remedial Plan in any material respect, the County may, by notice to the Brightline Parties, assume operation of the Commuter Rail Service. To the extent the County has exercised its rights to operate the Commuter Rail Service in accordance with this Section 2.02(c), (i) the County shall not be obligated to pay any amounts under Section 3.01 (Operations Fee and Operations Expenses) of Annex C (Payment Provisions) that relate to the period following the County's exercise of such right, (ii) Brightline Florida shall (A) if still in effect as contemplated in this Agreement, promptly revoke the designee status of MDC Commuter under the JUA and the Passenger Easement and (B) allocate such designee status to the County (or another entity identified by the County) pursuant to Section 2.3 of the JUA and Sections 1.1 and 2.5 of the Passenger Easement, and (iii) the County shall comply with all requirements of this Agreement that apply to a Responsible Railroad.

(d) The remedies set forth in this Section 2.02 shall not preclude the County from pursuing any other remedies permitted by Applicable Law with respect to any Brightline Operator Operations Default (other than termination of this Agreement), and the County's election not to enforce

one or more of the remedies upon a Brightline Operator Operations Default shall not constitute a waiver thereof.

**Section 2.03 Termination by County for Permanent Prohibition of Commuter Rail Service**

(a) To the extent that an Other User is awarded a permanent injunction or other order preventing operation, or otherwise substantially prevents the operation of the Commuter Rail Service (other than due to a breach by the County of its obligations hereunder) and the same is not stayed, dismissed or otherwise overturned within three hundred sixty five (365) days, the County shall be entitled to terminate this Agreement during such period of prevention of Commuter Rail Service operations, subject to ninety (90) days' notice to the Brightline Parties; *provided*, however, that if the Commuter Rail Service is permitted to commence prior to the expiration of such notice period, the County shall no longer be entitled to terminate this Agreement under this Section 2.03(a); *provided further* that from the issuance of such a permanent injunction or order and for so long as it remains in effect (i.e., until it is stayed or dismissed), except for the County's obligation to pay costs under Annex C (Payment Provisions) that relate to the period prior to such injunction or order, the County shall have no obligation to pay any **additional costs until such injunction or order is stayed, dismissed, or overturned, and the due date for any Milestone Payments that have not become due and payable prior to the date of such injunction or order will be extended, on a day-for-day basis, for the length of time that such injunction or order remains in effect.**

**Commented [A8]:** Discussion topic pending outcome of payment structure negotiation.

(b) If this Agreement is terminated by the County under Section 2.03(a) of this Annex D (Default and Termination Provisions), then MDC Commuter shall, no later than one (1) year following the Termination Date, pay the County an amount equal to Unused Access Reimbursement Amount.

**Article III. Brightline Remedial Rights**

**Section 3.01 County Defaults**

(a) The occurrence of any one or more of the following shall constitute a "County Default":

(i) except as set forth in clause (ii) below, the failure by the County to make any payment Due under this Agreement (so long as such amount has not been Disputed in good faith) to the extent that the same is not cured by the date that is thirty (30) days from the due date;

(ii) subject to any applicable cure period, any failure to procure or maintain insurance required to be procured or maintained by the County under this Agreement when the County has exercised its right to directly operate the Commuter Rail Service under Section 2.03 of this Annex D (*Default and Termination Provisions*); and

(iii) any other material breach by the County of its obligations under this Agreement, to the extent such breach is not cured within thirty (30) Business Days of notice of such breach from a Brightline Party; provided that, to the extent such breach is not reasonably capable of being cured within thirty (30) Business Days, such longer period (as reasonably agreed by the Brightline Parties and the County) as is reasonably necessary to cure such breach.

(b) For so long as a County Default has occurred and is continuing, the Brightline Parties shall be entitled to suspend all of their respective performance obligations under this Agreement, including operation of the Commuter Rail Service; *provided* that, during any such suspension, the Brightline Parties shall, except to the extent impact by the County Default, be required only to perform such limited actions as they reasonably determine are necessary to protect the safety of persons and property, preserve the Corridor, Commuter Stations, Rolling Stock and related infrastructure in substantially their then-current condition (ordinary wear and tear excepted), comply with Applicable Law, and permit the orderly resumption of Commuter Rail Service following the end of such suspension. However, in the case of a County Default under clause (a)(iv) above that is not reasonably capable of cure within the cure period, the Brightline Parties' right to suspend their obligations shall commence at the time of the material breach and shall continue for as long as the County Default persists or until the County submits a remedial plan that is reasonably satisfactory to the Brightline Parties. The Brightline Parties' resumption of their obligations under this Agreement shall be subject to the County's compliance with such remedial plan. This suspension right does not preclude the Brightline Parties from pursuing any other remedies permitted by Applicable Law (other than termination) with respect to any County Default. The election by Brightline Florida not to enforce one or more remedies in response to a County Default shall not constitute a waiver of any such remedies.

### **Section 3.02 Suspension of County Operation of Commuter Rail Service**

(a) To the extent the County has assumed operation of the Commuter Rail Service pursuant to Section 2.02(c) of this Annex D (*Default and Termination Provisions*), Brightline Florida shall

be entitled to suspend such Commuter Rail Service by written notice to the County upon the occurrence of any of the following (each, a “**Brightline Suspension of County Operations**”):

(i) except as set forth in clause (ii) below, the failure by the County to pay any amount when Due under this Agreement (so long as such amount has not been disputed in good faith), to the extent the same is not cured by the date that is thirty (30) days from the due date;

(ii) the occurrence of a Persistent Breach (as defined below);

(iii) any failure by the County to comply with the safety provisions of the Project Documents, including the rules and regulations imposed by the FRA, FECR, or Brightline Florida;

(iv) any failure to procure or maintain insurance required under this Agreement; and

(v) any other material breach by the County under this Agreement to the extent the same is not cured within thirty (30) days of notice of such breach from Brightline Florida; provided that, to the extent such breach is not reasonably capable of being cured within thirty (30) days, such longer period (as reasonably agreed by the County and Brightline Florida) as is reasonably necessary to cure such breach.

(b) If the County commits the same, or substantially the same, breach of this Agreement by violating any Applicable Law or term of this Agreement relating to safety on the Corridor or by failing to follow the dispatching instructions issued by DispatchCo, in each case, on two (2) or more occurrences in any six (6) month period, Brightline Florida may serve a notice (a “**Warning Notice**”) on the County, giving reasonable details of the relevant breach. If, after the delivery of a Warning Notice, the same or a substantially similar breach recurs on two (2) or more occurrence within the twelve (12) month period following the Warning Notice, a persistent breach (a “**Persistent Breach**”) shall have occurred for purposes of this Agreement. For purposes hereof, where multiple breaches are caused by the same root cause, no more than one (1) occurrence shall have occurred in any twenty-four (24) hour period.

(c) Brightline Florida’s right to suspend the County’s operation of Commuter Rail Service for a Brightline Suspension of County Operations occurring under clause (a)(i) above shall exist for so long as such Brightline Suspension of County Operations has occurred and is continuing. Brightline Florida’s right to suspend the County’s operation of Commuter Rail Service for a Brightline Suspension of

County Operations occurring under clauses (a)(ii) through (a)(vi) above shall exist for so long as any such Brightline Suspension of County Operations has occurred and is continuing and until the County has submitted a remedial plan to Brightline Florida that is reasonably satisfactory to Brightline Florida, with continued operations being subject to compliance with such remedial plan.

(d) The remedies set forth in this Section 3.02 shall not preclude Brightline Florida from pursuing any other remedies permitted by Applicable Law (other than termination) with respect to any Brightline Suspension of County Operations, and Brightline Florida's election not to enforce one or more of the remedies upon a Brightline Suspension of County Operations shall not constitute a waiver thereof.

**Article IV. Fundamental Changes**

**Section 4.01 Fundamental Changes; Suspension and Termination Rights**

(a) The occurrence of any one or more of the following shall constitute a "Fundamental Change":

(i) to the extent the waiver of sovereign immunity with respect to contractual claims set forth in this Agreement is invalidated or limited, whether due to Change in Law or otherwise;

(ii) if the County is the Responsible Railroad, to the extent any indemnity to be provided by the County pursuant to this Agreement is invalid, invalidated or limited, whether due to Change in Law or otherwise; and

(iii) Miami-Dade County controls or changes or enacts (or, through a resolution of the Board or other County-controlled authority), directly or indirectly, any Other User's train schedules, train frequency, maintenance practices, policies, procedures, safety requirements or other operating practices without the consent of the Brightline Parties and the same has a demonstrable and adverse impact on the same.

(b) For so long as a Fundamental Change has occurred and is continuing, the Brightline Parties shall be entitled to suspend their respective performance obligations under this Agreement, including operation of the Commuter Rail Service; *provided* that, during any such suspension, the Brightline Parties shall, except to the extent impact by the County Default, be required only to perform such limited actions as they reasonably determine are necessary to protect the safety of persons and

property, preserve the Corridor, Commuter Stations, Rolling Stock and related infrastructure in substantially their then-current condition (ordinary wear and tear excepted), comply with Applicable Law, and permit the orderly resumption of Commuter Rail Service following the end of such suspension. During any FC Suspension Period, the relevant Brightline Party shall be entitled to allocate to the County all costs, if any, based on and related to train movements and maintenance of the infrastructure and Rolling Stock related to the Commuter Rail Service and other costs contemplated in the foregoing sentence: *provided* that such Brightline Party shall provide the County with notice detailing the costs and the reasons the costs are being allocated to the County. Following the occurrence of a Fundamental Change, the Brightline Parties and the County will promptly (and, in any case, within thirty (30) days of the delivery of a notice from a Brightline Party to the County) meet to determine how to address the Fundamental Change. The County may, at its discretion exercisable by delivery of a written notice to the Brightline Parties within thirty (30) days of such meeting: (i) subject to its ongoing payment of any amounts that become Due under this Agreement together with any Contractor Breakage Costs arising due to such suspension, proceed to diligently pursue the termination (or reversal) of a Fundamental Change, (ii) solely to the extent the occurrence of such Fundamental Change is entirely outside the control of the County, request to enter into negotiations to amend this Agreement to comply with such Fundamental Change, or (iii) terminate this Agreement. To the extent the County requests to amend this Agreement pursuant to clause (ii) above, the Parties will act reasonably and cooperate in good faith to negotiate an amendment to this Agreement. To the extent the County elects to pursue the termination of a Fundamental Change, this Agreement will remain in effect until the date that is five (5) years after the effectiveness of the relevant Fundamental Change (the "FC Suspension Period"); *provided* that any Brightline Party may terminate this Agreement if the County fails to pay any amount when Due under this Agreement (so long as such amount has not been disputed in good faith), to the extent the same is not cured by the date that is sixty (60) days from the due date. This Agreement will terminate if the relevant Fundamental Change is still continuing at the expiration of the FC Suspension Period or if the County or the Brightline Parties otherwise terminate this Agreement in accordance with this Section 4.01(b). The County will pay the Brightline Parties (without duplication) the Termination Amount on the Termination Date.