

**PUBLIC PURPOSE PARTICIPATION AGREEMENT
BETWEEN THE CITY OF FORT LAUDERDALE
AND BRIGHTLINE TRAINS FLORIDA LLC**

THIS PUBLIC PURPOSE PARTICIPATION AGREEMENT, made and entered into this 5th day of January, 2021, is by and between the City of Fort Lauderdale, a Florida municipality, ("City" or "CITY"), whose principal place of business is 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301, and Brightline Trains Florida LLC, f/k/a Virgin Trains USA Florida LLC, f/k/a Brightline Trains LLC, f/k/a All Aboard Florida - Operations LLC, f/k/a FDG Passenger Row Holdings LLC, a Delaware limited liability company authorized to transact business in the State of Florida, whose principal place of business is 161 NW 6th Street, Suite 900, Miami, Florida, 33136, ("Participant").

WHEREAS, the City, the Participant, and Florida East Coast Railway, L.L.C., ("FECR"), entered into a Real Estate Purchase and Exchange Agreement dated April 1st, 2015, ("Real Estate Agreement"), pursuant to Section 3 of which, the Participant paid the City \$500,000 "which the City may use for improvements near or in the vicinity of the City Property," as described in the Real Estate Agreement, ("City Property"); and

WHEREAS, it is the parties' intent to use the \$500,000 that the City received pursuant to the Real Estate Agreement to improve railroad safety through grade crossing enhancements along the Brightline corridor serving the City of Fort Lauderdale, as outlined in Exhibit 1, which use will serve a legitimate public and municipal purpose,

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Participant hereby agree as follows:

I. SCOPE OF SERVICES

A. The Participant shall use the funds provided by the City pursuant to this Agreement solely as a local match in Participant's program to improve railroad safety through grade crossing enhancements on real property owned by the FECR or by the Participant at six railroad crossings along the Brightline corridor serving the City Fort Lauderdale as set forth in Exhibit 1.

B. The funds will be distributed on a percent completion reimbursement basis per railroad crossing following the City's receipt of an invoice and supporting receipts and expenditure documentation. Within ninety days after construction activities at a grade crossing occur, the Participant will provide the City with an invoice detailing the grade crossing enhancement completed by grade crossing and the amount expended. Reimbursement for eligible expenses incurred prior to the completion of a crossing is not conditioned on completion of the crossing. The City agrees to reimburse the Participant for eligible expenses not reimbursed by any other grant or source of funds in a cumulative amount not to exceed \$500,000. The Participant shall certify in each invoice submitted to the City for reimbursement that the Participant did not receive advance funds for, and will not receive reimbursement from any other source for, the expense or expenses invoiced.

C. The City may audit the books, records, and accounts of the Participant that are related to this Agreement. The Participant shall keep such books, records, and accounts as may be

necessary in order to record complete and correct entries related to this Agreement. The Participant shall preserve and make available, at reasonable times for examination and audit by the City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law (Chapter 119, Florida Statutes) and corresponding retention schedules, or for a minimum of three (3) years after expiration or termination of this Agreement, whichever is longer. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by the City to be applicable to the Participant's records, the Participant shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by the Participant. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for the City's disallowance of funding and recovery of any payment upon such incomplete or incorrect entry.

II. TERM AND TIME OF PERFORMANCE

The term of this Agreement is from January 5, 2021, through December 31, 2023.

III. FINANCIAL REPORTING

Within ninety (90) days after the close of the Organization's fiscal year, the Organization shall submit to the City a financial statement and summary report, prepared in accordance with generally accepted accounting principles, accounting for the funds expended pursuant to this Agreement and reporting upon the manner in which they were expended. The financial statement and summary report shall be certified by a Certified Public Accountant. The financial statement and summary report shall be, directed to the City as follows:

City of Fort Lauderdale
City Manager's Office
Budget/CIP and Grants Division
101 NE 3rd Avenue, Suite 1400
Fort Lauderdale, FL 33301

IV. PAYMENT

The total amount that the City will pay the Participant pursuant to this Agreement is not to exceed \$500,000.

V. NOTICES

Notices required by or otherwise related to this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, or personal delivery, or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Communication and details concerning this Agreement shall be directed as follows:

City

Chris Lagerbloom, City Manager

City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

Participant

Patrick Goddard, President

Brightline Trains Florida LLC
161 NW 6th Street, Suite 900
Miami, FL 33136

With a copy to:

Brightline Trains Florida LLC
Attn: Legal Department
161 NW 6th Street, Suite 900
Miami, FL 33136

VI. GENERAL CONDITIONS

A. Participant shall protect and defend, counsel being subject to the City's approval, which shall not be unreasonably withheld, and indemnify and hold harmless the City, and the City's officers, employees, and agents from and against any and all lawsuits, penalties, claims, damages, settlements, judgments, decrees, settlements, costs, charges, and other expenses or liabilities of every kind, sort or description including, but not limited to, any award of attorney fees and any award or costs at both the trial and appellate levels, in connection with or arising, directly or indirectly, out of or resulting from the Participant's acts or omissions in Participant's performance or nonperformance of its obligations or services under this Agreement. Without limiting the foregoing, any and all such claims, relating to personal injury, death, damage to property, defects in material or workmanship, actual or alleged infringement or any patent, trademark, copyright or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation or decree of any court, are included in the indemnity.

B. This Agreement may be amended only by a written instrument executed by both parties, except that the City may, in the City's discretion, amend this Agreement to conform with federal, state, or local governmental guidelines, policies, availability of funds, or for other reasons.

C. IF THE PARTICIPANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE PARTICIPANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 954-828-5002, CITY CLERK'S OFFICE, 100 ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301, PRRCONTRACT@FORTLAUDERDALE.GOV.

Participant shall comply with public records law, and Participant shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2020), as may be amended or revised, or as otherwise provided by law.
3. 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 contract term and following completion of the contract if the Participant does not transfer the records to the City.
4. Upon completion of the Contract, transfer, at no cost, to the City all public records in possession of the Participant or keep and maintain public records required by the City to perform the service. If the Participant transfers all public records to the City upon completion of the Contract, the Participant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Participant keeps and maintains public records upon completion of the Contract, the Participant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

D. Any of the following events shall constitute an "event of default" pursuant to this Agreement:

1. The Participant fails to perform any covenant or term or condition of this Agreement; or any representation or warranty of the Participant herein or in any other grant documents executed concurrently herewith or made subsequent hereto, shall be found to be inaccurate, untrue or breached.
2. If the Participant files a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, wage earner's plan, assignment for the benefit of creditors, receivership, dissolution or similar relief under any present or future federal Bankruptcy Act or any other present or future applicable federal, state or other local law, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Participant for all or any part of the properties of Participant; or if within ten (10) days after commencement of any proceeding against the Participant, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, debtor relief or similar relief under any present or future federal Bankruptcy Act or any other present or future federal, state or other local law, such proceeding shall not have been dismissed or stayed on appeal; or if, within ten (10) days after the appointment, without the consent or acquiescence of the Participant, of any trustee, receiver, or liquidator of the Participant, such appointment shall not have been vacated or stayed on appeal or otherwise; or if within ten days after the expiration of any such stay, such appointment shall not have been vacated.

3. Participant's breach, violation, or failure to perform any of the obligations or any of the covenants or conditions set forth in this Agreement.

Upon the occurrence of any event of default, the City shall issue written notice in accordance with Article V and the Participant shall have thirty (30) days within which to cure such default. If Participant fails to cure the default within the thirty (30) days, the City may terminate this Agreement immediately.

E. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby, and all other parts of this Agreement not having been held invalid by a court of competent jurisdiction shall remain in full force and effect.

F. The Participant shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Participant certifies and represents that the Participant offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Participant will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2020), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.

2. The failure of the Participant to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.

3. The City may terminate this Agreement if the Participant fails to comply with Section 2-187.

4. The City may retain all monies due or to become due until the Participant complies with Section 2-187.

5. The Participant may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

G. Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Participant certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, and that it is not engaged in a boycott of Israel,

and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2020), as may be amended or revised. The City may terminate this Agreement at the City's option if the Participant is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2020), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2020), as may be amended or revised, or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2020), as may be amended or revised.

H. The Participant shall at all times conduct its affairs in accordance with and be in compliance with all applicable laws, ordinances, and regulations.

I. No modification, amendment or alteration of the terms or conditions contained in this Agreement shall be effective unless contained in a written document executed by the parties hereto with the same formality and of equal dignity herewith. In no event will the Participant be compensated for any work which has not been described in this Agreement or in a separate amendment to this Agreement executed by the parties hereto.

J. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Participant, at the Participant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Participant. The Participant shall provide the CITY a certificate of insurance evidencing such coverage. The Participant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Participant shall not be interpreted as limiting the Participant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the CITY's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the CITY, and these coverages, limits, and endorsements may not be relied upon by the Participant for assessing the extent or determining appropriate types and limits of coverage to protect the Participant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the CITY's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Participant under this Agreement.

The following insurance is required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The CITY and the CITY's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Participant. The coverage shall contain no special limitation on the scope of protection afforded to the CITY or the CITY's officers, employees, and volunteers.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Participant does not own vehicles, the Participant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Railroad Protective Liability

Coverage must be afforded in an amount not less than \$1,000,000 per occurrence for any construction work performed on, over or within 50 feet of the railroad right-of-way and naming Participant as a named insured and FECR as an additional insured on the policy.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Participant waives, and the Participant shall ensure that the Participant's insurance carrier waives, all subrogation rights against the City, its officials, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Participant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Participant shall provide the CITY with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Participant shall provide to the CITY a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.

- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Participant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Participant shall provide the CITY with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The CITY reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Participant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Participant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the CITY as an Additional Insured shall be at the Participant's expense.

If the Participant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Participant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Participant's insurance coverage shall be primary insurance as applied to the CITY and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the CITY covering the CITY, the CITY's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Participant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the CITY, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, the Participant must provide to the CITY confirmation of

coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The CITY reserves the right to review, at any time, coverage forms and limits of the Participant's insurance policies.

The Participant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Participant's insurance company or companies and the CITY's Risk Management office as soon as practical.

It is the Participant's responsibility to ensure that any and all of the Participant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Participant.

VII. SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

VIII. WAIVER

The parties agree that each requirement, duty and obligation set forth in this Agreement is substantial and important to the formation of this Agreement and, therefore, is a material term. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

IX. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between City and Participant for the use of funds received pursuant to this Agreement, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the City and the Participant with respect to this Agreement. No prior written or contemporaneous oral promises or representations shall be binding. Neither this Agreement nor any interest in this Agreement may be assigned, transferred or encumbered by the Participant without the prior written consent of the City. All representations and warranties made herein regarding the Participant's indemnification obligations and obligations to maintain and allow inspection of records shall survive the termination of this Agreement. This Agreement shall not be amended except by written instrument signed by both parties.

X. GOVERNING LAW: VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement shall be in the courts in and for Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

XI. TERMINATION FOR CONVENIENCE

CITY has the unqualified and absolute right to terminate this Agreement at any time upon written notice by the CITY to the Participant, in which event, the Participant shall be paid its compensation for services performed up to the termination date. In the event that the Participant abandons this Agreement or causes it to be terminated, the Participant shall indemnify the CITY against any losses pertaining to this termination.

XII. ATTORNEY FEES

In the event that either party brings suit for enforcement of this Agreement, the Participant shall pay the CITY's attorney fees.

XIII. LEGAL REPRESENTATION

It is acknowledged that each party to this agreement had the opportunity to be represented by counsel in the preparation of this Agreement, and accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

IN WITNESS WHEREOF, the City and the Participant execute this Public Purpose Participation Agreement as follows:

ATTEST:

City of Fort Lauderdale

Jeffrey A. Modarelli, City Clerk

By: _____
Dean J. Trantalis, Mayor

By: _____
Christopher J. Lagerbloom, ICMA-CM
City Manager

Approved as to form:

Assistant City Attorney

WITNESSES:

Brightline Trains Florida LLC

Print Name:

By: _____
Patrick Goddard, President

Print Name:

ATTEST:

(Seal)

Kolleen O.P. Cobb, Secretary

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Patrick Goddard as President for Brightline Trains Florida LLC, a Delaware limited liability company authorized to transact business in the State of Florida.

(SEAL)

Notary Public, State of
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned
Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced: _____

Crossing	Edge Markings and Striping	Centerline Delineators	Active Warning Signs
[272536F] MP 335.13; Cypress Creek Rd. Fort Lauderdale	X		X
[272870B] MP 335.63; NE 56th St.; Fort Lauderdale	X	X	
[272547T] MP 338.8; NE 17th Ct.; Fort Lauderdale	X		
[272548A] MP 339.38; NE 13th St.; Fort Lauderdale	X	X	
[272559M] MP 341.56; SW 6th St.; Fort Lauderdale	X	X	
[272560G] MP 341.67; SW 7th St.; Fort Lauderdale	X		X