

45 procurement activities, invoicing, review and approval of eligible costs, compliance
46 with Grant provisions including conformance with scope, schedule, and budget and
47 related timely reporting.

48 F. This Agreement is intended to define those roles and responsibilities of the Parties
49 with respect to the development, engineering, construction and costs of the Project
50 including, but not limited to, procurement activities, invoicing, review and approval of
51 eligible costs, compliance with Grant provisions including conformance with scope,
52 schedule, and budget and related timely reporting, as well as all FRA requirements.

53 G. The BMPO shall utilize the Grant Funds to fund the Project which will be administered
54 by the BMPO and implemented by Brightline. The BMPO will utilize the Grant Funds
55 as the mechanism to reimburse Brightline, as Brightline completes specified work
56 documented in progress reports submitted with invoices for this Project. The BMPO
57 is responsible for ensuring that the Grant Funds are properly utilized to implement the
58 Project and that the Parties comply with the Grant requirements.

59

60

AGREEMENT

61

62 Now, therefore, the parties agree as follows:

63

SECTION 1. RECITALS

64

65 The recitals set forth above are hereby incorporated into the terms of this
66 Agreement.

67

SECTION 2. SCOPE OF PROJECT

68

69 Brightline will design and construct the Project in accordance with all applicable
70 laws and the terms and conditions of the Grant Agreement, including, for reference, the
71 scope of work set forth in Article 4 of Attachment 2 of the Grant Agreement. Brightline
72 will notify BMPO in writing of all material changes in the Project scope or schedule and
73 will cooperate with BMPO in seeking any required modifications to the Grant Agreement
74 with FRA.

75

SECTION 3. REPRESENTATIONS AND WARRANTIES

76

77 3.1 BMPO Representations and Warranties. BMPO represent and warrants to
78 Brightline that:

79

80 (a) The BMPO was created pursuant to Section 339.175, Florida Statutes,
81 and is validly existing and has the full power and authority to carry on its
82 present activities and to execute, deliver, and perform its obligations under
83 this Agreement and the Grant Agreement.
84
85
86

87 (b) The execution, delivery, and performance of this Agreement, the
88 Funding Partners Agreement, and the Grant Agreement by BMPO, and the
89 performance of its obligations contemplated by such agreements, have
90 been (or, with respect to the Grant Agreement, as of the Effective Date will
91 have been) duly authorized by all necessary action of BMPO.

92 (c) Each Person executing this Agreement, the Funding Partners
93 Agreement and the Grant Agreement on behalf of BMPO has been (or, with
94 respect to the Grant Agreement, as of the Effective Date will have been)
95 duly authorized to execute and deliver each such documents on behalf of
96 BMPO.

97 (d) This Agreement has been, and as of the Effective Date the Grant
98 Agreement will have been, duly executed and delivered by BMPO.

99 (e) This Agreement, the Funding Partners Agreement, and the Grant
100 Agreement are the legal, valid, and binding obligations of BMPO,
101 enforceable against it in accordance with their respective terms, subject to
102 applicable bankruptcy, insolvency and similar laws affecting the
103 enforceability of the rights of creditors generally and the general principles
104 of equity.

105 (f) The execution, delivery, and performance by BMPO of this Agreement,
106 the Funding Partners Agreement and the Grant Agreement do not (and at
107 the time of execution will not) conflict with or result in a default under or a
108 material violation of any Applicable Law.

109 (g) Pass-Through Entity

110 (i) With respect to the Grant, BMPO is a “Pass-Through Entity” as
111 defined in 2 C.F.R. § 200.1 (*Definitions*).

112 (ii) With respect to the Grant and Brightline, BMPO has satisfied each
113 of the requirements set forth in 2 C.F.R. parts 200 and 1201,
114 including 2 C.F.R. §§ 200.331–200.333.

115 3.2 Brightline Representations and Warranties. Brightline represents and warrants to
116 BMPO that:

117 (a) Brightline is a limited liability company, validly existing in the State of
118 Florida and has the full power and authority to carry on its present
119 activities and to execute, deliver, and perform its obligations under this
120 Agreement.

121 (b) The execution, delivery, and performance of this Agreement by
122 Brightline and the performance of its obligations contemplated by such
123 agreement, have been duly authorized by all necessary action of
124 Brightline.

- 125 (c) Each Person executing this Agreement on behalf of Brightline has been
126 duly authorized to execute and deliver each such document on behalf of
127 Brightline.
- 128 (d) This Agreement has been duly executed and delivered by Brightline.
- 129 (e) This Agreement and the Funding Partners Agreement collectively
130 constitute legal, valid, and binding obligations of Brightline, enforceable
131 against it in accordance with its terms, subject to applicable bankruptcy,
132 insolvency and similar laws affecting the enforceability of the rights of
133 creditors generally and the general principles of equity.
- 134 (f) The execution, delivery, and performance by Brightline of this
135 Agreement does not (and at the time of execution will not) conflict with
136 or result in a default under or a material violation of any Applicable Law.

137

138 **SECTION 4. PROJECT FUNDING**

139

140 4.1 Estimated Project Cost. The estimated total cost of the Project is \$19,299,998, as
141 further described in Article 6 of Attachment 2 of the Grant Agreement (the “**Project**
142 **Budget**”). The parties acknowledge that this is an estimate only and that actual Project
143 costs may be higher or lower than the Project Budget.

144

145 4.2 BMPO Subaward. Under this Agreement, Brightline is the subrecipient of FRA
146 grant funds awarded to BMPO under the Railroad Crossing Elimination Program. The
147 Project Budget includes \$600,000 of Grant Funds for BMPO’s administration and
148 oversight. Upon execution of the Grant Agreement, the terms and conditions of the Grant
149 Agreement will be deemed incorporated into this Agreement by reference and will control
150 over any inconsistent provisions in the body of this Agreement. Upon request by
151 Brightline, BMPO will apply for pre-award authority from FRA.

152

153 4.3 Matching Funds; Cost Overruns. The required Matching Funds as described in
154 the Grant Agreement in Exhibit B and further described in the Funding Partners
155 Agreement in Exhibit D shall be used to reimburse Brightline’s final design and
156 construction of the Project improvements shown in Exhibit A.

157

158 In the event that the costs of completion of the Project exceed the available Project Funds,
159 or in the event that the FRA, for any reason, reduces the amount of the Federal funds
160 available for the Grant subaward, then BMPO will work with Brightline to reduce the scope
161 of the Project, subject to FRA’s approval, to fit within the budget for the available Project
162 Funds and/or work with Brightline to obtain additional funding from the Funding Partners
163 to make up any budget shortfall. Subject to providing the BMPO with (days?) written
164 notice, Brightline reserves the right to stop work on the Project in the event that the

165 remaining available Project Funds are determined by Brightline, in its reasonable
166 discretion, to be insufficient to complete the Project. If for any reason a cost overrun
167 occurs, the BMPO shall not be obligated to provide any financial assistance in excess of
168 the Grant Funds. Notwithstanding, Brightline shall have the right to receive any amounts
169 then due and payable to Brightline pursuant to this Agreement for work performed prior
170 to the date of notice of any particular cost overrun in any specific Project segment, and
171 Brightline shall continue to work on the remainder of the Project until completion.
172

173 **4.4 Repayment of Grant Funds; Equivalent Project Relief.**

174 (a) Brightline’s failure to reasonably perform its obligations related to the receipt
175 of the Grant Funds shall constitute a material breach of this Agreement. Brightline, agrees
176 to indemnify and hold the BMPO harmless from any liability, demand, claim, penalty or
177 any other adverse action resulting from a breach by Brightline, or its contractor or
178 subcontractor, of its obligations related to the receipt of the Grant Funds, including any
179 demand for return of all or a portion of the Grant Funds (including interest and
180 penalties). Upon receipt of any notice from FRA to BMPO with respect to the Grant
181 Agreement, including without limitation, any notice of non-compliance thereunder, BMPO
182 shall provide notice of the same to Brightline in accordance with the “Notice” section of
183 this Agreement..

184 (b) BMPO shall enforce all rights, entitlements, remedies and/or defenses
185 under the Grant Agreement (the “BMPO Rights”) for the benefit of Brightline, and
186 Brightline shall be entitled to receive the benefit of such BMPO Rights, including without
187 limiting the generality of the foregoing, the right to any relief from the performance of its
188 obligations, or from termination, or the right to seek any approval or consent required
189 under the Grant Agreement (“Equivalent Project Relief”). The BMPO agrees to
190 reasonably cooperate with Brightline to manage any such claim for Equivalent Project
191 Relief that Brightline may reasonably claim.

192 (c) In the event that FRA issues a proposed finding that BMPO has made an
193 unauthorized or undocumented use of grant funds, or that any Project costs are ineligible
194 for federal reimbursement, BMPO will provide notice in accordance with the “Notice”
195 section of this Agreement to Brightline and the Funding Partners of the proposed
196 determination of noncompliance by FRA and cooperate with Brightline to allow Brightline
197 to respond to FRA with respect to the notice of noncompliance and exercise all avenues
198 to cure said noncompliance or object to such determination. BMPO will notify Brightline
199 and the Funding Partners of any final determination of noncompliance by FRA and the
200 imposition of any remedies by FRA pursuant to the Grant Agreement. If FRA determines
201 that BMPO has failed to comply with applicable law or Grant Agreement requirements,
202 and such noncompliance is attributable to the failure of Brightline to comply with the terms
203 of this Agreement, Brightline will be responsible for such remedy as FRA imposes. If FRA
204 determines that BMPO has failed to comply with applicable law or Grant Agreement

205 requirements, and such noncompliance is attributable to the failure of BMPO to comply
206 with the terms of this Agreement, BMPO will be responsible for such remedy as FRA
207 imposes. The terms of this paragraph will survive the expiration or earlier termination of
208 this Agreement.

209

210 4.5 Federal Government Not a Party. The parties acknowledge that the United States
211 government is not a party to this Agreement and no reference in this Agreement to the
212 USDOT, FRA, or any representatives of the federal government makes the United States
213 a party to this Agreement.

214

215 **SECTION 5. INVOICES AND PAYMENTS**

216

217 5.1 Requests for Reimbursement. In order to obtain any of the funds available from
218 BMPO under this Agreement, Brightline agrees to provide to BMPO within fifteen (15)
219 calendar days of signing this Agreement an estimate of Project expenditures by quarter.
220 Each quarter, Brightline will provide a graph showing the initial estimated expenditure per
221 quarter, actual expenditures, and an explanation of the variance between the two values.
222 This will assist BMPO in monitoring the status of Federal grant funds. Brightline shall
223 submit to BMPO its request for reimbursement and any other information regarding to
224 the Project required by FRA to justify and support the payment request.

225

226 Brightline will engage the services of a Design consultant and Construction Engineering
227 and Inspection (“CEI”) consultant that shall not be from the same consulting firm or sub-
228 consultants to one another to review the progress of the Project and invoices submitted
229 by Brightline for reimbursement by BMPO; the costs of the services of the CEI shall be
230 reimbursable expenses under this Agreement.

231

232 Reimbursement requests must include a certification, signed by an official who is
233 authorized to legally bind Brightline, which reads as follows:

234

235 “By signing this report, I certify that to the best of my knowledge and belief
236 the data on the reverse are correct and that all outlays were made in
237 accordance with the grant conditions or other agreement and that payment
238 is due and has not been previously requested.”

239

240 Upon Project commencement, Brightline will submit invoices monthly to BMPO
241 throughout design and construction of the Project.

242

243 5.2 Deliverables and Supporting Documentation. Brightline will submit invoices to
244 BMPO for the actual costs incurred for the Project including design, contract labor,
245 equipment, materials, and project management used in relation to the Project, containing

246 all items consistent with FRA requirements. Requests for reimbursement by Brightline
247 will include supporting documentation for costs incurred in a format acceptable to and
248 FRA.

249

250 5.3 Final Invoice. To allow for BMPO to close-out the Grant Agreement within the
251 required one hundred and twenty (120) calendar days, Brightline must submit its final
252 invoice and request for reimbursement for the Project to BMPO within sixty (60) calendar
253 days after the Completion Date, or completion of the Project if earlier. As part of the
254 closeout of this Agreement, Brightline will liquidate all obligations of federal funds in
255 accordance with Article 23 of Attachment 1 of the Terms and Conditions of the Grant
256 Agreement.

257

258 5.4 Payments. Subject to the other provisions of this Agreement, the Parties will follow
259 the process described in this paragraph for the submission and payment of invoices.
260 Upon receipt of Brightline’s properly documented invoice, BMPO shall pay Brightline
261 within thirty (30) calendar days. BMPO agrees to reimburse Brightline upon submission
262 of satisfactory, substantiated monthly progress and financial reports for costs associated
263 with the preceding month. Each invoice must list total expenses by FRA budget category
264 and include supporting receipts, progress reports, and any reasonable and necessary
265 documentation determined by FRA to comply with FRA requirements. Invoices will detail
266 total Project expenditures requested to be reimbursed. If BMPO disputes an invoice or
267 cost within a reimbursement application, BMPO will proceed with the reimbursement
268 process described above for any undisputed amount and will, within ten (10) calendar
269 days after receipt of the reimbursement application, notify Brightline of the disputed
270 amount and request supporting documentation to verify the accuracy and sufficiency of
271 the disputed invoice. Within twenty (20) calendar days after receipt of documentation to
272 justify the disputed expenditure, BMPO will proceed with the reimbursement process
273 described above for the resolved expenditure. For avoidance of doubt, and
274 notwithstanding any other provision of this Agreement, BMPO may decline to make a
275 payment if FRA declines to make a payment pursuant to the Grant Agreement following
276 a determination of noncompliance after a reasonable opportunity to cure by Brightline.

277

278 5.5 All references to OMB regulations contained in the Subrecipient Agreement are
279 updated to reflect the OMB Super Circular (2 CFR Part 200) and associated FRA
280 Regulations and requirements.

281

282 **SECTION 6. RECORDS**

283

284 6.1 Project Records. Brightline will maintain for a period not less than three (3) years
285 from the date of payment of the final invoice all documents required under the Grant
286 Agreement.

287

288 6.2 Record Management.

289

290 6.2.1 Brightline will keep accounts and records described in Section 6.1 in
291 accordance with a financial management system that meets the requirements of 2 C.F.R.
292 200.301-200.303 and 2 C.F.R 200 subpart F and will facilitate an effective audit in
293 accordance with 31 U.S.C. §§ 7501-7506. Brightline will make the records available to
294 BMPO and the FRA upon reasonable notice during normal business hours.

295

296 6.2.2 Brightline will maintain the records described in Section 6.1 for a period of
297 three (3) years after the date of payment of the final invoice under this Agreement. If any
298 litigation involving this Agreement has been filed or any audit has been commenced prior
299 to the expiration of the three-year retention period, Brightline will maintain the records
300 required by Section 6.1: (i) in the case of litigation, until completion of the litigation or until
301 the end of such three-year period, whichever is later; and, (ii) in the case of any audit,
302 until completion of the audit or until the end of such three-year period, whichever is later.
303 For avoidance of doubt, nothing in this Agreement is meant to be or will be interpreted to
304 be a waiver of any protection against disclosure of records or communication otherwise
305 protected by law, including protection provided by attorney-client privilege and the
306 attorney work-product doctrine.

307

308 6.3 Reports. Brightline will timely submit to BMPO such data, reports, records,
309 contracts and other documents relating to the Project as BMPO or FRA require, including
310 the quarterly progress reports, performance measures reports, and project outcomes
311 reports as required in the Grant Agreement. All records and reports will be submitted to
312 BMPO a reasonable time in advance of the date by which BMPO is required to submit
313 such records and reports to FRA. Brightline must submit to BMPO, no later than ninety
314 (90) calendar days after the end date of the period of performance specified in the Grant
315 Agreement, all financial, performance, and other reports required by the terms and
316 conditions of the Grant Agreement, including the information required for BMPO to timely
317 submit the Final Performance Report (FRA Form 33).

318

319 **SECTION 7. AUDITS**

320

321 7.1 Audits. The administration of resources awarded through BMPO to Brightline by
322 this Agreement may be subject to audits and monitoring by BMPO or the FRA. Brightline
323 will comply with all audit and audit reporting requirements as specified below:

324

325 7.1.1 In addition to reviews of audits conducted in accordance with 2 CFR Part
326 200, Subpart F – Audit Requirements, monitoring procedures may include planned on-
327 site visits by BMPO and FRA staff, limited scope audits and other procedures including

328 reviewing any required performance and financial reports, following up, ensuring
329 corrective action, and issuing management decisions on weaknesses found through
330 audits when those findings pertain to Federal awards provided through BMPO by this
331 Agreement.
332

333 7.1.2 Brightline is a for-profit subrecipient of Federal funds awarded to BMPO and
334 is not a “Non-Federal entity” as defined in 2 CFR §200.1. Accordingly, and as set forth in
335 Article 20 of Attachment 1 of the Grant Agreement, Brightline is not required to comply
336 with the Federal single audit requirements.
337

338 7.1.3 As a condition of receiving the federal financial assistance provided under
339 this Agreement, Brightline will permit BMPO, or its designee, and the FRA access to
340 Brightline’s records specifically pertaining to construction of the Project, including financial
341 statements, the independent auditor’s working papers, and project records as necessary.
342 Records related to unresolved audit findings, appeals or litigation will be retained until the
343 action is complete or the dispute is resolved.
344

345 7.1.4 Brightline will retain sufficient records demonstrating its compliance with the
346 terms of the award and this Agreement for a period of three (3) years from the date the
347 audit report is issued and will allow BMPO, or its designee, and the FRA access to such
348 records upon request. Brightline will ensure that the audit working papers are made
349 available to BMPO, or its designee, or the FRA upon request for a period of five (5) years
350 from the date the audit report is issued unless extended in writing by BMPO. Brightline
351 will further permit access to all Project records by the Secretary and Inspector General of
352 the United States Department of Transportation and the Comptroller General of the
353 United States, or their designees.
354

355 **SECTION 8. COMPLIANCE**

356

357 8.1 Compliance with Grant Conditions. Brightline will procure goods and services for
358 the Project in a manner that complies with FRA’s procurement requirements and
359 procedures and in accordance with the terms of the Grant Agreement.
360

361 8.2 Compliance with Federal Requirements. Brightline will comply with and will require
362 its consultants and contractors to comply with applicable Federal law and regulations
363 pertaining to the use of federal-aid funds.
364

365 8.3 Changes in Law. Brightline acknowledges that: (i) Federal laws, regulations,
366 policies, and related administrative practices in place on the date this Agreement was
367 executed may be modified from time to time, and (ii) any such changed requirements will
368 apply to the Project, to the extent required by applicable law.

369

370 8.4 Compliance with 49 U.S.C. § 22905. Brightline shall comply with the requirements
371 of 49 U.S.C. § 22905(c)(1) requirements, as applicable:

372

373 (A) This Project does not involve the use of the rail rights-of-way by BMPO. Brightline
374 has the right to use the rail right-of-way pursuant to an easement and a written agreement
375 between Brightline and FECR regarding the use and ownership or the right-of-way,
376 including any compensation for such use.

377

378 (B): Brightline represents that the infrastructure capacity of the right-of-way is adequate
379 to accommodate both existing and future freight and passenger operations.

380

381 (C): Brightline has no collective bargaining agreements with its employees.

382

383 (D): Brightline represents that it complies with the liability requirements consistent with 49
384 U.S.C. § 28013.

385

386 **SECTION 9. SMALL AND DISADVANTAGED BUSINESSES**

387

388 Brightline will expend Grant funds in compliance with the requirements at 2 C.F.R.
389 § 200.321 (“Contracting with small and minority businesses, women’s business
390 enterprises, and labor surplus area firms”), and to the extent applicable, 49 C.F.R. Part
391 26 (“Participation by disadvantaged business enterprises in Department of Transportation
392 financial assistance programs”).

393

394 **SECTION 10. DESIGN AND CONSTRUCTION**

395

396 10.1 Permits. Brightline is responsible for obtaining all permits or other authorizations
397 necessary for construction, installation, or maintenance of the Project. BMPO shall
398 require each of the Funding Partners to cooperate with Brightline in connection with the
399 necessary permits for the Project.

400

401 10.2 Crossing Agreements. Prior to the commencement of construction, BMPO will
402 require that each of the Funding Partners (roadway owners) shall enter into crossing
403 agreements or amendments to the existing crossing agreements with Florida East Coast
404 Railway L.L.C. (“FECR”) in substantially the form attached hereto as Exhibit D (the
405 “Crossing Agreement Amendments”). The Crossing Agreement Amendments will require
406 the respective Funding Partners (roadway owners) for each crossing improved as part of
407 the Project to bear the cost of maintaining the improvements to be constructed as part of
408 the Project and to add Brightline as an intended third-party beneficiary of the respective
409 Crossing Agreements.

410
411 10.3 Design. Brightline is responsible for the preparation of all design plans for the
412 Project. All design work on the Project will be performed in accordance with applicable
413 industry standards and legal requirements. Design plans will be prepared in accordance
414 with the requirements of the Grant Agreement, and, where required, will be submitted to
415 BMPO, Funding Partners (roadway owners), in accordance with Task 2(e) and (f) of the
416 Grant Agreement Attachment 2, and FRA for review and approval. BMPO agrees that, in
417 the event that any of the Funding Partners requests changes to the design plans beyond
418 the scope of the work included in the Project, Brightline shall not be required to perform
419 such additional work. If Brightline agrees to perform such additional work, the Funding
420 Partner shall be required to pay for the costs of such additional scope.

421
422 10.4 Final Plans. Brightline will provide copies of the approved final design plans and
423 specifications and final bid documents to BMPO for its records prior to commencing
424 construction of the Project.

425
426 10.5 Qualified Contractors. Brightline will hire qualified contractors in accordance with
427 the terms of the Grant Agreement to perform the construction work for the Project.

428
429

430 **SECTION 11. RESTRICTIONS AND LABOR PROVISIONS**

431
432 During the performance of this Agreement, Brightline agrees as follows, and will
433 require the following provisions to be included in each contract and subcontract entered
434 into pursuant to this Agreement:

435

436 11.1 Certification regarding Debarment, Suspension, and other Responsibility (Exhibit
437 B.2 of the Grant Agreement). Brightline must comply with the provisions in 2 CFR Part
438 180 OMB Guidelines to Agencies on Government Debarment and Suspension (Non-
439 procurement) and 2 CFR Part 1200 DOT Non-procurement Suspension and Debarment.
440 These provisions restrict federal awards, subaward and contracts with certain parties that
441 are debarred, suspended or otherwise excluded from or ineligible for participation in
442 federal programs or activities. Brightline will not enter into any arrangement to participate
443 in the development or implementation of the Project with any person or entity that is
444 debarred or suspended except as authorized by applicable Federal law and regulations.
445 If required by applicable federal law and regulations, Brightline will review the U.S. GSA
446 System of Award Management at <https://www.sam.gov>. Brightline will include the
447 requirements of this paragraph in each of its contracts related to the Project and will
448 require its contractors and consultants to include similar requirements in each of their
449 contracts related to the Project. Execution of this Agreement constitutes a certification
450 that Brightline is in compliance with and will require its contractors and subcontractors to

451 comply with, all requirements imposed by applicable federal, state, and local laws and
452 regulations, including the “Certification Regarding Debarment, Suspension, Ineligibility
453 and Voluntary Exclusion – Lower Tier Covered Transactions,” in 49 CFR Part 29, and 2
454 CFR Part 200 when applicable.

455

456 11.2 Human Trafficking. Brightline will not, during the term of this Agreement, engage
457 in trafficking in persons, procure a commercial sex act, or use forced labor in the
458 performance of work on the Project and will include a provision in each contract it enters
459 into with a private entity in connection with the Project by which Brightline’s contractor
460 agrees that it and its employees that perform any work on the Project will abide by this
461 same requirement.

462

463 11.3 Minimum Wage Rates. Brightline shall include, in all contracts in excess of \$2,000
464 for work on the Project that involves labor, provisions establishing minimum rates of
465 wages, to be predetermined by the United States Secretary of Labor, in accordance with
466 the Davis-Bacon Act, 40 U.S.C. 3141–3148, or 23 U.S.C. 113, as applicable, that
467 contractors shall pay to skilled and unskilled labor, and such minimum rates shall be
468 stated in the invitation for bids and shall be included in proposals or bids for the work.

469

470 11.4 Contract Work Hours and Safety Standards. Where applicable, all contracts
471 funded under this Agreement in excess of \$100,000 that involve the employment of
472 mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and
473 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40
474 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every
475 mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess
476 of the standard work week is permissible provided that the worker is compensated at a
477 rate of not less than one and a half times the basic rate of pay for all hours worked in
478 excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable
479 to construction work and provide that no laborer or mechanic must be required to work in
480 surroundings or under working conditions which are unsanitary, hazardous or dangerous.
481 These requirements do not apply to the purchases of supplies or materials or articles
482 ordinarily available on the open market, or contracts for transportation or transmission of
483 intelligence.

484

485 11.5 E-Verify. Brightline will:

486

487 ii. Utilize the U.S. Department of Homeland Security’s E-Verify system
488 to verify the employment eligibility of all new employees hired by
489 Brightline during the term of the Agreement; and

490

491 ii. Expressly require any contractors and subcontractors performing
492 work or providing services pursuant to the Agreement to likewise
493 utilize the U.S. Department of Homeland Security’s E-Verify system
494 to verify the employment eligibility of all new employees hired by the
495 contractor or subcontractor during the Agreement term.
496

497 **SECTION 12. INDEMNIFICATION**

498
499 12.1 The BMPO is a state agency or political subdivision as defined in Chapter
500 768., Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign
501 immunity by the BMPO nor shall anything included herein be construed as consent to be
502 sued by third parties in any matter arising out of this Agreement or any other contract.

503 12.2 Brightline will indemnify, defend (with counsel reasonably acceptable to
504 BMPO), and hold harmless BMPO and its officers, directors, employees, agents,
505 consultants, contractors, permittees, successors, and assigns (individually and
506 collectively the "**Indemnified Parties**") from any and all claims, actions, suits, demands,
507 losses, liabilities, damages, costs, expenses (including reasonable attorneys’ fees and
508 expenses) (collectively "**Claims**") asserted by a third party against an Indemnified Party
509 to the extent the Claim was caused by Brightline’s acts or omissions under this
510 Agreement, including activities related to the design, construction, or operation of the
511 Project. The provisions of this section will survive the termination or expiration of this
512 Agreement.
513

514 **SECTION 13. INSURANCE**

515
516 13.1 Workers’ Compensation. Brightline shall provide Workers’ Compensation
517 Insurance in accordance with the applicable State law for all employees to be engaged
518 at the site of the Project. If contracting for any of the work, Brightline shall ensure that its
519 contractors have Workers’ Compensation Insurance for their employees in accordance
520 with the applicable State law for all employees to be engaged at the site of the Project. If
521 using “leased employees” or employees obtained through professional employer
522 organizations (“PEOs”), Brightline shall ensure that such employees are covered by
523 Workers’ Compensation insurance through the PEOs or other leasing entities. Brightline
524 will ensure that any equipment rental agreements that include operators or other
525 personnel who are employees of independent contractors, sole proprietorships, or
526 partners are covered by insurance required under the applicable State law.
527

528 13.2 General Liability. If Brightline elects to self-perform the Project, Brightline may self-
529 insure, and proof of self-insurance shall be provided to BMPO. If Brightline elects to hire
530 a contractor or consultant to perform the Project, then Brightline shall, or cause its
531 contractor or consultant to carry Commercial General Liability insurance providing

532 continuous coverage for all work or operations performed under the Agreement. Such
533 insurance shall be no more restrictive than that provided by the latest occurrence form
534 edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00
535 01) as filed for use in the State where the work will be performed. Brightline shall or cause
536 its contractor to cause BMPO to be made an Additional Insured as to such insurance.
537 Such coverage shall be on an “occurrence” basis and shall include Products/Completed
538 Operations coverage. The coverage afforded to BMPO as an Additional Insured shall be
539 primary as to any other available insurance and shall not be more restrictive than the
540 coverage afforded to the Named Insured. The limits of coverage shall not be less than
541 \$1,000,000 for each occurrence and not less than a \$5,000,000 annual general
542 aggregate, inclusive of amounts provided by an umbrella or excess policy. The limits of
543 coverage described herein shall apply fully to the work or operations performed under the
544 Agreement and may not be shared with or diminished by claims unrelated to the
545 Agreement. The policies and coverage described herein may be subject to a deductible
546 and such deductibles shall be paid by the Named Insured. Prior to the execution of the
547 Agreement, and at all renewal periods which occur prior to final acceptance of the work,
548 BMPO shall be provided with an ACORD Certificate of Liability Insurance reflecting the
549 coverage described herein. BMPO shall be notified in writing within ten days of any
550 cancellation, notice of cancellation, lapse, renewal, or proposed change to any policy or
551 coverage described herein. BMPO’s approval or failure to disapprove any policies,
552 coverage, or ACORD Certificates shall not relieve or excuse any obligation to procure
553 and maintain the insurance required herein, nor serve as a waiver of any rights or
554 defenses BMPO may have.

555

556 13.3 Railroad Protective Liability.

557

558 13.3.1 When the Agreement includes the construction of a railroad grade crossing,
559 railroad overpass or underpass structure, or any other work or operations within the limits
560 of the railroad right-of-way, including any encroachments thereon from work or operations
561 in the vicinity of the railroad right-of-way, Brightline shall, or cause its contractor to, in
562 addition to the insurance coverage required above, procure and maintain Railroad
563 Protective Liability Coverage (ISO Form CG 00 35) where the railroad is the Named
564 Insured and where the limits are not less than \$2,000,000 combined single limit for bodily
565 injury and/or property damage per occurrence, and with an annual aggregate limit of not
566 less than \$6,000,000.

567

568 13.3.2 The railroad shall also be added along with BMPO as an Additional Insured
569 on the policies procured pursuant to the paragraph above. Prior to the execution of the
570 Agreement, and at all renewal periods which occur prior to final acceptance of the work,
571 both BMPO and the railroad shall be provided with an ACORD Certificate of Liability
572 Insurance reflecting the coverage described herein. The insurance described herein shall

573 be maintained through final acceptance of the work. Both BMPO and the railroad shall be
574 notified in writing within ten days of any cancellation, notice of cancellation, renewal, or
575 proposed change to any policy or coverage described herein. BMPO's approval or failure
576 to disapprove any policies, coverage, or ACORD Certificates shall not relieve or excuse
577 any obligation to procure and maintain the insurance required herein, nor serve as a
578 waiver of any rights BMPO may have.

579

580 **SECTION 14. GENERAL FEDERAL REQUIREMENTS**

581

582 During the performance of this Agreement, Brightline agrees as follows, and will
583 require the following provisions to be included in each contract and subcontract entered
584 into pursuant to this Agreement:

585

586 14.1 Equal Employment Opportunity.

587

588 14.1.1 No person will, on the grounds of race, color, religion, sex, handicap, or
589 national origin, be excluded from participation in, be refused the benefits of, or be
590 otherwise subjected to discrimination under this Agreement, or any project, program, or
591 activity that receives or benefits from this Agreement. Brightline agrees to comply with
592 Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41
593 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause
594 contained in 41 CFR §60-1.4 is included in this Agreement by reference.

595

596 14.1.2 In connection with the carrying out of the Project, Brightline will not
597 discriminate against any employee or applicant for employment because of race, age,
598 creed, color, sex, or national origin and will comply with all Federal statutes and
599 implementing regulations relating to nondiscrimination. Brightline will take affirmative
600 action to ensure that applicants are employed, and that employees are treated during
601 employment, without regard to their race, age, creed, color, sex, or national origin. Such
602 action will include, but not be limited to, the following: Employment upgrading, demotion,
603 or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or
604 other forms of compensation; and selection for training, including apprenticeship. Brightline
605 will insert the foregoing provision modified only to show the particular contractual
606 relationship in all its contracts in connection with the development or operation of the
607 Project, except contracts for standard commercial supplies or raw materials, and will
608 require all such contractors to insert a similar provision in all subcontracts, except
609 subcontracts for standard commercial supplies or raw materials. When the Project
610 involves installation, construction, demolition, removal, site improvement, or similar work,
611 Brightline will post, in conspicuous places available to employees and applicants for
612 employment for Project work, notices to be provided by BMPO setting forth the provisions
613 of the nondiscrimination clause.

614

615 14.2 Title VI - Civil Rights Act of 1964. Execution of this Agreement constitutes a
616 certification that Brightline will comply with all the requirements imposed by Title VI of
617 the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), and the regulations of the Federal
618 Department of Transportation issued thereunder. Brightline also agrees to comply and
619 requires all its consultants and contractors to comply with all applicable provisions of
620 federal law and regulation governing FRA's access to records, accounts, documents,
621 information, facilities, and staff. Brightline must comply with any program or compliance
622 reviews, and/or complaint investigations conducted by FRA. Brightline must keep
623 records, reports, and submit the material for review upon request to FRA, or its designee
624 in a timely, complete, and accurate way. Brightline will include the Title VI Assurances
625 attached hereto as Exhibit C, in all property documents and contracts with consultants
626 and contractors performing work on the Project, to the extent required by Exhibit C.

627

628 14.3 Title VIII - Civil Rights Act of 1968. Execution of this Agreement constitutes a
629 certification that Brightline will comply with all the requirements imposed by Title VIII of
630 the Civil Rights Act of 1968 (42 U.S.C. 3601, et seq.), which among other things, prohibits
631 discrimination in employment on the basis of race, color, national origin, creed, sex, and
632 age.

633

634 14.4 Americans with Disabilities Act of 1990 (ADA). Execution of this Agreement
635 constitutes a certification that Brightline will comply with all the requirements imposed by
636 the ADA (42 U.S.C. 12102, et seq.), the regulations of the federal government issued
637 thereunder, including, but not limited to, the implementing regulations of the USDOT and
638 the United States Department of Justice at 49 CFR §37.9 and 36 CFR §1191.1.

639

640 14.5 Federal Financial Assistance Policy to Ban Text Messaging While Driving. As
641 used in this section:

642

643 "Driving" - Means operating a motor vehicle on an active roadway with the motor
644 running, including while temporarily stationary because of traffic, a traffic light, stop sign,
645 or otherwise. Does not include operating a motor vehicle with or without the motor running
646 when one has pulled over to the side of, or off, an active roadway and has halted in a
647 location where one can safely remain stationary.

648

649 "Text messaging" - means reading from or entering data into any handheld or other
650 electronic device, including for the purpose of short message service texting, e-mailing,
651 instant messaging, obtaining navigational information, or engaging in any other form of
652 electronic data retrieval or electronic data communication. The term does not include
653 glancing at or listening to a navigational device that is secured in a commercially designed

654 holder affixed to the vehicle, provided that the destination and route are programmed into
655 the device either before driving or while stopped in a location off the roadway where it is
656 safe and legal to park.

657

658 This section implements Executive Order 13513, Federal Leadership on Reducing
659 Text Messaging while Driving, dated October 1, 2009.

660

661 Brightline should-

662

663 (i) Adopt and enforce policies that ban text messaging while driving (a)
664 Recipient-owned or rented vehicles or government-owned vehicles; or (b)
665 Privately-owned vehicles when on official government business or when
666 performing any work for or on behalf of the government.

667

668 (ii) Conduct initiatives in a manner commensurate with Brightline's size, such
669 as (a) Establishment of new rules and programs or re-evaluation of existing
670 programs to prohibit text messaging while driving; and (b) Education,
671 awareness, and other outreach to employees about the safety risks
672 associated with texting while driving.

673

674 Sub-agreements/sub-contracts. Brightline will insert the substance of this section
675 and will require its contractors to include the substance of this section, in all sub-
676 agreement/subcontracts funded with the subaward provided under this Agreement that
677 exceed the applicable federal micro-purchase threshold of \$10,000.

678

679 14.6 Integrity Certification. By signing this Agreement, Brightline certifies that neither it
680 nor its principals are presently debarred, suspended, proposed for debarment, declared
681 ineligible, or voluntarily excluded from participating in this Agreement by any federal
682 department or agency. This certification is a material representation of fact upon which
683 BMPO is relying in entering this Agreement. If it is later determined that Brightline
684 knowingly rendered an erroneous certification, in addition to other remedies available to
685 the federal government, BMPO or agency with which this transaction originated may
686 pursue available remedies, including suspension and/or debarment. Brightline will
687 provide to BMPO immediate written notice if at any time Brightline learns that its
688 certification was erroneous when submitted or has become erroneous by reason of
689 changed circumstances.

690

691 14.7 Certification of Restrictions on Lobbying Disclosure.

692

693 14.7.1 Brightline certifies to the best of its knowledge and belief that no federally-

694 appropriated funds have been paid, or will be paid by or on behalf of Brightline, to any
695 person for influencing or attempting to influence any officer or employee of any federal
696 agency, a Member of Congress, an officer or employee of Congress, or an employee of a
697 Member of Congress in connection with the awarding of any federal contract, the making
698 of any federal grant, the making of any federal loan, the entering into of any cooperative
699 agreement, and the extension, continuation, renewal, amendment or modification of any
700 federal contract, grant, loan or cooperative agreement.

701

702 14.7.2 If any funds other than federally-appropriated funds have been paid by
703 Brightline to any person for influencing or attempting to influence an officer or employee
704 of any federal agency, a Member of Congress, an officer or employee of Congress, or an
705 employee of a Member of Congress in connection with this Agreement, the undersigned
706 will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in
707 accordance with its instructions.

708

709 14.7.3 Brightline acknowledges that the certifications made in this section are
710 material representations of fact upon which BMPO is relying in entering into this
711 Agreement.

712 14.7.4 Brightline will require that the language of this section be included in the
713 award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and
714 contracts under grants, loans and cooperative agreements) and that all subrecipients will
715 certify and disclose accordingly.

716

717 14.8 Buy America. Brightline agrees to comply and require its contractors to comply
718 with all applicable standards and preferences for steel, iron, manufactured goods, and
719 construction materials identified in the Grant Agreement, including the requirements of 49
720 United States Code §22905(c), as implemented by the FRA and the domestic preference
721 requirement at §70914 of the Build America, Buy America Act, Pub. L. No. 117-58, as
722 implemented by the federal Office of Management and Budget, USDOT, and FRA. Under
723 2 CFR §200.322, as appropriate and to the extent consistent with law, Brightline should,
724 to the greatest extent practicable under the subaward of the Grant, provide a preference
725 for the purchase, acquisition, or use of goods, products, or materials produced in the
726 United States. Brightline will include the requirements of 2 CFR §200.322 in all subawards
727 including all contracts and purchase orders for work or products under this Agreement.

728

729 14.9 Federal Certification and Assurances. Brightline agrees to comply with and to
730 certify compliance with all current federally required certifications and assurances for the
731 grant program under which the federally funded subaward provided by this Agreement is
732 made. During the terms of this agreement, Brightline will certify compliance with the

733 applicable provisions through annual renewal of Unique Entity Identifier (UEI) in SAM.gov.
734 Brightline’s UEI number is GA8RE9XXWKJ6.

735

736 14.10 Environmental Regulations. Brightline must comply with the governing laws and
737 regulations referenced in the Grant Agreement and may also be required to assist with
738 FRA’s compliance with applicable Federal laws, regulations, executive orders, and
739 policies related to environmental review under the National Environmental Policy Act
740 (NEPA), 42 U.S.C. § 4321 et seq., and its implementing regulations (40 C.F.R. Part 1500
741 et seq.); FRA’s "Procedures for Considering Environmental Impacts" (45 Fed. Reg.
742 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545, and as updated in
743 78 FR 2713, January 14, 2013) or 23 C.F.R. Part 771, as applicable; Section 106 of the
744 National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 et seq.) and its
745 implementing regulations (36 C.F.R. Part 800); Executive Order No. 12898, Federal
746 Actions to Address Environmental Justice in Minority Populations and Low-Income
747 Populations; Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. §
748 303(c)), and its implementing regulations (23 C.F.R. Part 774). In addition, if applicable,
749 Brightline will ensure that all work conducted under this Agreement complies with all
750 applicable laws, regulations, executive orders, and policies related to environmental
751 protection and historic preservation, including, but not limited to: Section 114 of the Clean
752 Air Act (42 U.S.C. § 7414); and Section 308 of the Federal Water Pollution Control Act
753 (33 U.S.C. § 1318).

754

755 14.11 Delinquent Tax Liabilities and Felony Convictions.

756

757 14.11.1 By entering into this Agreement, Brightline certifies that Brightline:

758

759 (i) Has no unpaid Federal tax liability that has been assessed, for
760 which all judicial and administrative remedies have been
761 exhausted, or have lapsed, and that is not being paid in a timely
762 manner pursuant to an agreement with the authority responsible
763 for collecting the tax liability (a “**Tax Delinquency**”); and

764

765 (ii) Has not been convicted within the preceding 24 months of a
766 felony criminal violation under any Federal law and includes
767 conviction of an offense defined in a section of the United States
768 Code that specifically classifies the offense as a felony and
769 conviction of an offense that is classified as a felony under 18
770 U.S.C. 3559 (a “**Felony Conviction**”).

771

772 14.11.2 Brightline will comply with the requirements of the Grant Agreement

773 by checking the System for Award Management (“**SAM**”) at <http://www.sam.gov/> for an
774 entry describing that entity before entering into an agreement or contract with such entity
775 that will be funded with Grant funds (a “**Covered Transaction**”) and requiring the above
776 certification by such entity. If (1) the SAM entry for an entity indicates that the entity has
777 a Tax Delinquency or a Federal Conviction; (2) an entity’s certification indicates that it has
778 a Tax Delinquency or Felony Conviction; or (3) an entity’s certification was inaccurate
779 when made or became inaccurate after being made Brightline will not enter or continue a
780 Covered Transaction with that entity unless the FRA has determined in writing that
781 suspension or debarment of that entity are not necessary to protect the interests of the
782 Government. Brightline will promptly notify BMPO, in writing, of the occurrence of any of
783 the three events described in the immediately preceding sentence. Brightline will include
784 the requirements of this paragraph, including the notice requirement of the preceding
785 sentence, in each contract or agreement it enters into that will be funded with the
786 subaward of federal funds provided under this Agreement and will require inclusion of this
787 paragraph, including this sentence, in each lower tier agreement or contract entered into
788 that will be funded with the subaward of federal funds.

789

790 14.12 Prohibition on Certain Telecommunications and Video Surveillance Services or
791 Equipment. Brightline will not utilize any Grant funds provided under this Agreement to
792 procure or obtain equipment, services, or systems prohibited under 2 CFR §200.216.

793

794 14.13 Whistleblower Protection.

795 14.13.1 Brightline acknowledges that it is a “subgrantee” within the scope of 41
796 U.S.C. 4712, which prohibits Brightline from taking certain actions against an employee
797 for certain disclosures of information that the employee reasonably believes are evidence
798 of gross mismanagement of this award, gross waste of Federal funds, or a violation of
799 Federal law related the Grant.

800

801 14.13.2 Brightline will inform its employees in writing of the rights and remedies
802 provided under 41 U.S.C. 4712, in the predominant native language of the workforce.

803

804 **SECTION 15. EFFECTIVE DATE AND TERM**

805

806 15.1 This Agreement shall take effect on the date executed by the last of the
807 Parties (the “Effective Date”). Agreements between the Funding Partners and BMPO
808 shall be executed and attached hereto as Exhibit D before this Agreement is executed.
809 The term of this Agreement and the period for design, installation, and construction of
810 the Project under this Agreement extends from the Effective Date through the expiration
811 of the Budget Period identified in the Grant Agreement (the “**Completion Date**”).

812 15.2 If Brightline does not complete design, installation, and construction of the
813 Project on or before the Completion Date, this Agreement will expire, unless the
814 Completion Date is extended by FRA. BMPO agrees to cooperate with Brightline in
815 requesting any extension of the Completion Date from FRA.

816 15.3 The Parties may extend this Agreement by mutual consent in writing prior
817 to the expiration of the “Term”. This provision in no way limits either party’s right to
818 terminate the Agreement at any time during the Term.

819

820 **SECTION 16. TERMINATION**

821

822 (a) 16.1 Termination by FRA. This Agreement may not be terminated by the Parties
823 until all requirements of the FRA Gant have been met. The BMPO shall have no
824 right to terminate this Agreement, provided, however, that in the event that FRA
825 terminates the Grant Agreement, BMPO may, by written notice to Brightline,
826 terminate this Agreement. Upon termination, Brightline shall have the right to
827 receive any amounts then due and payable to Brightline pursuant to this
828 Agreement for work performed prior to the date of termination, and Brightline shall
829 have no further obligation to complete the Project.

830

831 16.2 Stop Work by Brightline. In the event that BMPO fails to make a payment to
832 Brightline in accordance with the terms and provisions of this Agreement, or any Funding
833 Partner fails to make a payment to Brightline pursuant to the Funding Partners
834 Agreement, which failure is not cured within twenty (20) days after delivery of written
835 notice of such notice by Brightline, then Brightline shall have the right to temporarily stop
836 work on the portion of the Project for which payment has not been made. Brightline shall
837 have the right to receive any amounts then due and payable to Brightline pursuant to this
838 Agreement for work performed prior to the date of notice, and Brightline shall continue to
839 work on the remainder of the Project until completion. Notice of failure to pay shall be
840 provided in accordance with the “Notice” section of this Agreement.

841

842 16.3 Resolution of Disputes. In the event that either Party fails to perform their respective
843 obligations in accordance with this Agreement, and such failure is not cured within thirty
844 (30) days of receipt of a written notice of such failure, then such dispute will be resolved
845 in the following manner:

- 846 a. First, the BMPO Executive Director and the Brightline Contract Administrator, or
847 their respective designee shall meet and confer, in good faith, to seek to resolve
848 the dispute; and
- 849 b. If such dispute is not then resolved within thirty (30) days after the initial meeting
850 of the senior leaders described in paragraph 16.3 a above, then in recognition of
851 the negative consequences associated with disputes, both in terms of lost time
852 and expense to all parties, the BMPO and Brightline agree to resolve these issues
853 by mediation in accordance with the Construction Industry Mediation Rules of the
854 American Arbitration Association currently in effect. Request for mediation shall
855 be filed in writing with the other party to this Agreement and with the American
856 Arbitration Association.
- 857
- 858 c. The parties shall share the mediator’s fee and any filing fees equally. The
859 mediation shall be held in Broward County, Florida, unless another location is
860 mutually agreed upon. Agreements reached in mediation shall be enforceable as
861 settlement agreements in any court having jurisdiction thereof. Each Party shall
862 bear its own attorney’s fees and costs.
- 863 d.

864 **SECTION 17. GENERAL CONDITIONS**

865

866 17.1. Governing Law. Except with respect to subjects preempted by federal law, this
867 Agreement is governed by and will be construed in accordance with the laws of the State
868 of Florida. Nothing herein is meant to be or will be interpreted to be a waiver of principles
869 of legal preemption or preclusion that may apply to Brightline because of its status as a
870 common carrier regulated by the federal government.

871

872 17.2. Venue, Waiver of Jury Trial. Venue for legal proceedings under this Agreement
873 shall be in Broward County, Florida. All parties agree and accept that jurisdiction of any
874 controversies or legal problems arising out of this Agreement, and any action involving
875 the enforcement or interpretation of any rights hereunder, shall be exclusively in the state
876 courts of the Seventeenth Judicial Circuit in Broward County, Florida and venue for
877 litigation arising out of this Agreement shall be exclusively in such state courts, forsaking
878 any other jurisdiction which either party may claim by virtue of its residency or other
879 jurisdictional device. BY ENTERING INTO THIS AGREEMENT, THE BMPO AND
880 BRIGHTLINE HEREBY EXPRESSLY WAIVE ANY RIGHTS ANY PARTY MAY HAVE
881 TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

882

883 17.3. Entire Agreement. This Agreement (including exhibits, attachments, and other
884 documents, manuals, etc. incorporated herein) is the full and complete agreement

885 between the parties with respect to the transaction and matters set forth or contemplated
886 herein and hereby.

887

888 17.4. Exhibits. All exhibits attached to this Agreement are made a part of this
889 Agreement by this reference.

890

891 17.5. Reasonableness. Unless this Agreement specifically provides for the granting of
892 consent or approval at a party's sole discretion, then consents and approvals
893 contemplated by this Agreement which may be given by a party under or pursuant to this
894 Agreement will not be unreasonably withheld, delayed or conditioned by such party and
895 will be given or denied within the time period provided, and if no such time period has
896 been provided, within a reasonable time. Upon disapproval of any request for a consent
897 or approval, the disapproving party will, with notice of such disapproval, submit to the
898 requesting party a written statement setting forth with reasonable specificity its reasons
899 for such disapproval.

900

901 17.6. Severability. If any provision of this Agreement, or the application of a provision
902 to any person, entity, place, or circumstance, is held by a court of competent jurisdiction
903 to be invalid, void, or otherwise unenforceable, such provision will nonetheless be
904 enforced to the maximum extent possible so as to effect the intent of the parties; or, if
905 incapable of such enforcement or unable to achieve the intent of the parties, will be
906 deemed to be deleted, and the remainder of this Agreement and such provisions as
907 applied to other persons, entities, places, and circumstances will remain in full force and
908 effect. In such an event, the parties agree to reasonably and in good faith negotiate an
909 amendment which, if agreed upon, will replace or modify any invalid or illegal or
910 unenforceable provision and related provisions with valid, legal, and enforceable
911 provisions that most closely and reasonably approximate the intent and economic effect
912 of the invalid, illegal, or unenforceable provision.

913

914 17.7. Interpretation. The section headings in this Agreement are for convenience only
915 and will not be used for any purpose in the interpretation of this Agreement. When the
916 context requires, the plural includes the singular, and the singular includes the plural.
917 References to agreements or contracts are to such agreement or contract as may be
918 amended, restated, or otherwise modified from time to time. The words "include,"
919 "includes," and "including" are used without limitation and are deemed to be followed by
920 the phrase "without limitation." Notwithstanding specific references to "good faith," the
921 duty of good faith and fair dealing applies generally with respect to this Agreement. For
922 the purposes of this Agreement, words of any gender are deemed to include correlative
923 words of the other (whether masculine, feminine, or neuter) genders.

924

925 17.8 Joint Preparation. Each party and its counsel have participated fully in the review
926 and revision of this agreement and acknowledge that the preparation of this agreement
927 has been their joint effort. The language agreed to expresses their mutual intent and the
928 resulting document shall not, solely as a matter of judicial construction, be construed
929 more severely against one of the parties than the other. the language in this agreement
930 shall be interpreted as to its fair meaning and not strictly for or against any party.

931 17.9 Amendments. This Agreement may only be modified or changed by written
932 amendment signed by authorized representatives of the parties.

933
934 17.10 Relationship of the Parties. Each party is and will at all times be and remain
935 independent from the other party and will not be deemed an agent, fiduciary, partner,
936 joint-venturer, employee, or employer of the other party. Nothing contained herein has
937 the effect of creating a trust, joint venture, partnership, or employment relationship
938 between the parties. Neither of the parties has any right or power to obligate or bind the
939 other party in any manner whatsoever.

940
941 17.11 Waivers. Any waiver, modification, consent, or acquiescence with respect to any
942 provision of this Agreement must be set forth in writing and duly executed by or on behalf
943 of the party to be bound by it. No waiver by any party of any breach will be deemed to
944 be a waiver of any other or subsequent breach.

945
946 17.12 Notices. Any communication, notice, or demand of any kind whatsoever that a
947 party may be required or may desire to give to or serve upon the other party must be in
948 writing and delivered by personal service (including express or courier service with
949 receipt of acknowledgement of delivery) or by registered or certified mail, postage
950 prepaid, return receipt requested, or by a nationally recognized overnight delivery
951 service, in each case addressed as follows:

Brightline: Brightline Trains Florida LLC
Attn: Patrick Goddard, President
350 NW 1st Ave., Suite 200
Miami, Florida 33128

With a copy to:

Cynthia Bergmann
Chief Legal Officer
Brightline Trains Florida LLC
350 NW 1st Ave., Suite 200
Miami, Florida 33128

BMPO: Broward Metropolitan Planning Organization
Attn: Executive Director
100 West Cypress Creek Road, Suite 650
Fort Lauderdale, Florida 33309

With a Copy to:

Alan L. Gabriel, Esq.
BMPO General Counsel
200 East Broward Blvd., Suite 1900
Fort Lauderdale, Florida 33301

952 Without requiring an amendment to this Agreement, either party may change its
953 address for notice by written notice given to the other party in the manner provided in this
954 Section. Any such communication, notice, or demand will be deemed to have been duly
955 given or served on the date personally served, if by personal service with a written receipt
956 of acknowledgment of delivery; three (3) days after being placed in the U.S. Mail
957 (certified), if mailed; or one (1) day after being delivered to an overnight delivery service,
958 if sent by overnight delivery with acknowledgement of delivery.

959 17.13 No Third-Party Beneficiaries. This Agreement is for the exclusive benefit of the
960 parties to it and not for the benefit of any third party, except to the extent expressly
961 contemplated in this Agreement.

962
963 17.14 Authority and Binding Effect. Each individual executing this Agreement affirms that
964 he or she has the capacity set forth on the signature pages and has full power and
965 authority to execute this Agreement and, through his or her execution, bind the party on
966 whose behalf he or she is executing the Agreement.

967
968 17.15 Counterparts. The parties may sign this Agreement in counterparts, each of which
969 is deemed an original but all of which together constitute one and the same instrument.

970
971 *[Signature Page Follows]*
972

973 IN WITNESS WHEREOF, the parties hereto have made and executed this
974 Subrecipient Agreement.

975

Brightline Trains Florida LLC

By: _____
Patrick Goddard
President

____ day of _____, 2024

976

977 SUBRECIPIENT AGREEMENT BETWEEN BRIGHTLINE TRAINS FLORIDA, LLC,
978 AND THE BROWARD METROPOLITAN PLANNING ORGANIZATION FOR THE
979 BROWARD COUNTY SEALED CORRIDOR PROJECT.

980

981

“BMPO”

982

983

BROWARD METROPOLITAN
PLANNING ORGANIZATION

984

985

986

By _____
YVETTE COLBOURNE, Chair

987

By: _____
GREGORY STUART, Executive Director

988

989

____ day of _____, 2024

____ day of _____, 2024

991

992

APPROVED AS TO FORM AND LEGAL
993 SUFFICIENCY FOR THE USE OF AND
994 RELIANCE BY THE BMPO ONLY:

995

996

997

By: _____
Alan L. Gabriel, BMPO General Counsel
Weiss Serota Helfman Cole & Bierman PL

998

999

1000

- 1001
- 1002 List of Exhibits:
- 1003
- 1004 Exhibit A: Project
- 1005

Crossing ID	RailRoad	Street	Milepost	City	Crossing Infrastructure Maintenance Agreement Holder	Centerline Raised Median	Exit Gate
272519P	FEC	COPANS RD	331.1	POMPANO BEACH	BROWARD COUNTY	Existing (East Side)	Proposed RCEP (West Side)
272528N	FEC	NE 6TH ST	332.77	POMPANO BEACH	CITY OF POMPANO BEACH		Proposed RCEP (Both Sides)
272531W	FEC	NE 3RD ST	332.97	POMPANO BEACH	CITY OF POMPANO BEACH		Proposed RCEP (Both Sides)
272534S	FEC	SW 2ND ST	333.31	POMPANO BEACH	CITY OF POMPANO BEACH	Proposed RCEP (East Side)	Proposed RCEP (West Side)
272535Y	FEC	SW 6TH ST	333.79	POMPANO BEACH	BROWARD COUNTY		Proposed RCEP (Both Sides)
272870B	FEC	NE 56TH ST	335.63	OAKLAND PARK	BROWARD COUNTY	Proposed RCEP (East Side)	Proposed RCEP (West Side)
272546L	FEC	NE 24TH ST	338.3	WILTON MANORS	CITY OF WILTON MANORS		Proposed RCEP (Both Sides)
272547T	FEC	NE 17TH CT	338.8	FORT LAUDERDALE	CITY OF FT. LAUDERDALE	Proposed RCEP (Both Sides)	
272558F	FEC	SW 5TH ST	341.45	FORT LAUDERDALE	CITY OF FT. LAUDERDALE		Proposed RCEP (Both Sides)
272559M	FEC	SW 6TH ST	341.56	FORT LAUDERDALE	CITY OF FT. LAUDERDALE		Proposed RCEP (Both Sides)
272560G	FEC	SW 7TH ST	341.67	FORT LAUDERDALE	CITY OF FT. LAUDERDALE		Proposed RCEP (Both Sides)
272564J	FEC	SW 17TH ST	342.55	FORT LAUDERDALE	CITY OF FT. LAUDERDALE	Existing (Both Sides)	Proposed RCEP (East Side)
272566X	FEC	SW 22ND ST	342.96	FORT LAUDERDALE	CITY OF FT. LAUDERDALE	Proposed RCEP (East Side)	Proposed RCEP (West Side)
272572B	FEC	OLD GRIFFIN RD	345.44	DANIA BEACH	BROWARD COUNTY	Proposed RCEP (East Side)	Proposed RCEP (West Side)
272573H	FEC	NW 1ST ST	345.81	DANIA BEACH	CITY OF DANIA BEACH	Proposed RCEP (East Side)	Proposed RCEP (West Side)
272576D	FEC	DIXIE HWY	347.08	DANIA BEACH	BROWARD COUNTY		Proposed RCEP (Both Sides)
272582G	FEC	GARFIELD ST	348.07	HOLLYWOOD	CITY OF HOLLYWOOD	Proposed RCEP	Crossing Closure
272584V	FEC	JOHNSON ST	348.27	HOLLYWOOD	CITY OF HOLLYWOOD		Proposed RCEP (Both Sides)
272589E	FEC	WASHINGTON ST	349.29	HOLLYWOOD	CITY OF HOLLYWOOD		Proposed RCEP (Both Sides)
272591F	FEC	NE 3RD ST	350.3	HALLANDALE BEACH	CITY OF HALLANDALE BEACH		Proposed RCEP (Both Sides)
272593U	FEC	SE 3RD ST	350.81	HALLANDALE BEACH	CITY OF HALLANDALE BEACH		Proposed RCEP (Both Sides)

- 1006 Exhibit B: Grant Agreement (To be attached)
- 1007 Exhibit C: Title VI Assurances (To be attached)
- 1008 Exhibit D: Funding Partners Agreement (To be attached)
- 1009