

INTERLOCAL AGREEMENT
Regarding
COST SHARING TO OBTAIN ATTORNEY SERVICES
FOR THE CENTRAL FLORIDA COMMUTER RAIL COMMISSION

This INTERLOCAL AGREEMENT (“Agreement”) is made and entered by and between ORANGE COUNTY, a charter county and political subdivision of the State of Florida (“Orange County”), OSCEOLA COUNTY, a charter county and political subdivision of the State of Florida (“Osceola County”), SEMINOLE COUNTY, a charter county and political subdivision of the State of Florida (“Seminole County”), COUNTY OF VOLUSIA, a charter county and political subdivision of the State of Florida (“County of Volusia”), and the CITY OF ORLANDO, a municipal corporation of the State of Florida (“Orlando”)(collectively, “Local Government Partners”).

W I T N E S S E T H:

WHEREAS, the Florida Department of Transportation (“FDOT”) has undertaken the development and implementation of the SunRail Commuter Rail System (“SunRail”) running from the County of Volusia through Seminole and Orange Counties, the City of Orlando, and to Poinciana in Osceola County; and

WHEREAS, FDOT is the agency responsible for the design, permitting and construction of SunRail, and is currently responsible for its funding, operation, management, and maintenance; and

WHEREAS, the Local Government Partners created the Central Florida Commuter Rail Commission (“Commission”), a legal entity and public body and unit of local government, comprised of a designated representative from each Local Government Partner, for the purpose of acquiring, constructing, operating, and maintaining SunRail; and

WHEREAS, the Commission will assume responsibility for the funding, operation, management, and maintenance of SunRail in the future pursuant to that Operations Phasing Agreement entered into by and among the Local Government Partners, FDOT, and the Commission on March 28, 2024 (“OPA”); and

WHEREAS, the Central Florida Regional Transportation Authority d/b/a Lynx, a body politic and corporate, created by Part III, Chapter 343, Florida Statutes (“Lynx”) has expressed interest in being the administrator of the operation, management, and maintenance of SunRail on behalf of the Commission; and

WHEREAS, in support of the Commission’s responsibilities under the OPA the Local Government Partners desire to retain on behalf of the Commission the services of an attorney to provide legal services to the Commission which includes, but is not limited to, overseeing an orderly transition of the operation, management, and maintenance of SunRail from FDOT to the

Commission through negotiation and preparation of an operating agreement with Lynx,¹ preparation of amendments to operator contracts, and providing counsel to the Commission; and

WHEREAS, the Local Government Partners desire to work together to procure the services of a qualified attorney for such purposes and to share equally in the cost of retaining such an attorney; and

WHEREAS, the Local Government Partners desire to memorialize their mutual understanding of the terms and conditions of their agreement as set forth herein.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other valuable consideration, receipt of which is hereby acknowledged, the Local Government Partners mutually undertake, promise, and agree for themselves, their successors and assigns as follows:

1. **Authority.** This Agreement is entered into pursuant to the powers and authority granted to the Local Government Partners hereto under the Constitution and laws of the State of Florida, including, but not limited to, Sections 1 and 2 of Article VIII of the Constitution of the State of Florida, Chapters 125 and 166, and Section 163.01, Florida Statutes.
2. **Purpose.** This Agreement is intended to provide for the Local Government Partners to share the cost of retaining a commuter rail system attorney to provide legal services to the Commission which includes, but is not limited to, overseeing an orderly transition of the operation, management, and maintenance of SunRail from FDOT to the Commission through negotiation and preparation of an operating agreement with Lynx, preparation of amendments to operator contracts, and providing counsel to the Commission. Such negotiation and preparation shall be performed consistent with the Scope of Work, attached to this Agreement as **Exhibit A** ("Scope").
3. **Procurement.** The Local Government Partners agree to procure attorney services through a consortium purchasing process with participation from each of the Local Government Partners and to use **Exhibit A** as the Scope for such procurement. Selection of the attorney shall be based on both qualifications and price. The lead procurement agency of the consortium will be Seminole County ("Lead Agency"). The Lead Agency's procurement policies and procedures shall apply to the procurement of the attorney, and the Lead Agency's staff shall facilitate and administer the procurement process. There shall be an

¹ The Parties are currently in early negotiations with the Central Florida Regional Transportation Authority, a body politic and corporate governed pursuant to Part II, Chapter 343, Florida Statutes ("LYNX") regarding future the operation of SunRail; no final agreement has been reached, as of the Effective Date of this Agreement. In the event the Parties ultimately do not agree to terms with LYNX and/or enter into a contract with LYNX, the references herein to LYNX should be understood to refer to any third party that Commission and Local Government Partners enter into negotiations and/or contract with for the operation of SunRail.

attorney selection committee established as part of the procurement process, which shall consist of one representative from each Local Government Partner. The attorney selection committee will be responsible for ranking and recommending attorneys responding in the procurement process to the Commission. The attorney selected will contract directly with Commission.

4. **Cooperation with Attorney.** There shall be a Steering Group (“SG”) established, which shall be comprised of one representative from each Local Government Partner. The SG shall collaborate with the attorney throughout the term of the attorney’s contract with the Commission to accomplish the terms of the Scope. Changes to the Scope may only be approved by the Commission. If the attorney makes or recommends any changes to existing contracts executed by the Commission or the Local Government Partners, the attorney must first provide a copy of all such changes to the SG.
5. **Project Manager.** The Lead Agency shall select a Project Manager from its staff who shall act as the primary staff contact for the attorney for contract administration and who shall process invoices for payment. The Project Manager will not direct the legal work of the selected attorney or make changes to the Scope. The Project Manager shall at all times communicate with the SG and provide seven (7) days’ notice to SG prior to making a disbursement to the Attorney. If an objection to the payment is made by any member of the SG, the SG shall convene within fifteen (15) days to resolve the objection.
6. **Funding.** The Local Government Partners agree to share equally in the initial cost to retain the attorney for the Commission. Within sixty (60) days of the Effective Date, as defined herein, each Local Government Partner shall deliver a sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) to the Escrow Agent appointed by Commission, and such sum shall be deposited into a separate, restricted, interest bearing escrow account. The Commission designated the Seminole County Clerk of the Circuit Court and Comptroller as Escrow Agent responsible for administering said account for the purpose of selecting and compensating the attorney. The initial sum deposited by each of the Local Government Partners is intended to be a “not-to-exceed” amount. Prior to any attorney services that may result in fees that exceed the initial sum available in the escrow account, the attorney for the Commission must obtain unanimous approval by the Local Government Partners in writing and in advance of the services being performed. The Local Government Partners shall share equally in the payment of those approved excess fees. In the event the actual sum required to fund the attorney is lower than the sum deposited in the escrow account by the Local Government Partners, any funds remaining in the escrow account after the attorney has been compensated shall be promptly refunded to the Local Government Partners in equal shares.
7. **Effective Date; Term.** This Agreement shall become effective upon full execution by all Local Government Partners (“Effective Date”) and shall continue in full force and effect

until the Commission accepts all deliverables required by this Agreement or funding in Section 6 (“Funding”) of this Agreement has been exhausted.

8. **Amendments.** This Agreement may be modified only by written instrument expressly approved by the Local Government Partners and only if properly executed by all Local Government Partners.
9. **Enforcement.** The Local Government Partners shall have all legal and equitable remedies provided by Florida law for enforcement hereof.
10. **Validity.** After consulting with their respective legal counsel, each Local Government Partner represents and warrants to the others its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The Local Government Partners each hereby represent, warrant, and covenant to and with the others (i) that this Agreement has been validly approved by its respective governing body at a duly held public meeting, and (ii) that this Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming due authorization, execution and delivery hereof by the other Local Government Partners hereto).
11. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Agreement shall be in the County in which SunRail’s administrative offices are located.
12. **Further Assurances.** The Local Government Partners agree to perform any further acts and to sign and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.
13. **Entire Agreement.** This Agreement contains the entire agreement of the Local Government Partners with respect to the matters addressed herein. Previous agreements and understandings of the Local Government Partners with respect to such matters are null and void and of no effect.
14. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.
15. **Sovereign Immunity.** Notwithstanding any other provision of this Agreement, nothing contained herein shall be construed as a waiver or attempt at a waiver of the Local Government Partners’ sovereign immunity pursuant to section 768.28, Florida Statutes, or other limitations imposed on the Local Government Partners’ potential liability under state or federal law.

IN WITNESS WHEREOF, the Local Government Partners have signed this Agreement, effective on the dates indicated below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Jerry Demings, Orange County Mayor

Date: _____

Attest: Phil Diamond, CPA, Orange County
Comptroller As Clerk of the Board of County
Commissioners

By: _____
Deputy Clerk

Print Name: _____



OSCEOLA COUNTY

By: _____
Chairman Board of County Commissioners

Date: _____

Attest:

Clerk to the Board of
County Commissioners



ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

GRANT MALOY
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
JAY ZEMBOWER, Chairman

Date: _____

For the use and reliance
of Seminole County only.

As authorized for execution by the Board
of County Commissioners at its _____,
20____, regular meeting.

Approved as to form and
legal sufficiency.

County Attorney



ATTEST:

COUNTY OF VOLUSIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____



CITY OF ORLANDO

By: _____
Mayor/Mayor Pro Tem

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only.

Assistant City Attorney

Date: _____



EXHIBIT A
SCOPE OF WORK

Background

SunRail is currently a 49.2-mile commuter rail system that extends from DeBary in Volusia County to Poinciana Boulevard in Osceola County. The system was opened up in two separate phases. The first 32-mile phase extended from DeBary in Volusia County to Sand Lake Road in Orange County and opened May 1, 2014, consisting of 12 stations. The second 17.2-mile phase extended from Sand Lake Road in Orange County to Poinciana in Osceola County and opened July 30, 2018, consisting of 4 stations. The planned last phase, which has not opened, extends the system approximately 12 miles north to DeLand in Volusia County.

At present, FDOT has sole responsibility for the development, design, engineering, construction, reconstruction, installation, procurement, operation, and maintenance of the SunRail system. Through a series of agreements, the Commission presently acts in an advisory capacity to the FDOT. The Commission was created by five local government entities – Orange County, Osceola County, Seminole County, Volusia County, and the City of Orlando (the “Local Government Partners”). The Governing Board of the Commission consists of representatives appointed by the Local Government Partners. FDOT, the Commission and the Local Government Partners have entered into an Operations Phasing Agreement to provide a framework for transitioning financial and operational control of the SunRail system from FDOT to the Commission. After the transition described in the Operations Phasing Agreement, the Commission will assume all responsibility for the SunRail system, except that the FDOT will retain ownership of the Corridor and will provide an easement to the Commission to ensure the ability to continue operations within the Corridor.

Minimum Requirements

The attorney awarded a contract pursuant to this Agreement must be licensed to practice law in the State of Florida and must be in good standing with The Florida Bar.

The attorney must have significant experience in and must be capable of, providing a wide range of legal services in connection with rail systems or the transition of rail systems, as described in this Scope.

The attorney must provide competent representation to the Commission in accordance with, but not limited to, local, state, and federal laws and regulations, Florida Attorney General Opinions, the Florida Public Records Act, the Florida Government in the Sunshine Law, the Florida Code of Ethics, and parliamentary procedures for public entities.

The attorney that will be providing services must be clearly identified at the initiation of this Agreement. If it is necessary to replace any specific attorney, the replacement attorney(s) must be approved by the SG.

Legal Services

The attorney will be engaged by the Commission and perform all general legal representation for the Commission, as needed and requested or as required. Funding provided by the Local Government Partners will not create an attorney-client relationship between legal counsel and any of the Local Government Partners. Such representation will be in cooperation with the SG, as described in Section 4 (“Cooperation with Attorney”) of this Agreement. Such general legal representation may include, but is not limited to:

- A. Oversee an orderly transition of the operation, management, and maintenance of SunRail from the FDOT to the Commission, as described in the Operations Phasing Agreement.
- B. Preparation of oral and written opinions on legal matters.
- C. Attend and participate in Commission and SG meetings in person and virtually and make presentations.
- D. Assist with development, and adoption, and proposal of bylaws, procedures, rules, roles, and responsibilities to govern how the Commission will operate once it is no longer advisory.
- E. Prepare a term sheet and an operating agreement and assist in the negotiation for a contract operator agreement between the Commission and the Central Florida Regional Transportation Authority, a body politic and corporate governed pursuant to Part II, Chapter 343, Florida Statutes (“Lynx”). Lynx will presumably operate SunRail on behalf of the Commission.² Such agreement could include, but is not limited to, operating, governance, and legal terms concerning all aspects of the SunRail system. Such agreement must be approved as referenced in the Operations Phasing Agreement, as may be amended.
- F. Review the existing agreement between FDOT and Gallagher (FDOT’s insurance broker), assist in the procurement, negotiation, and preparation of an agreement with an insurance broker, including implementation of a claims process in accordance with FDOT’s SunRail related claims processes.
- G. Review and advise on real property rights being conveyed to the Commission.
- H. Prepare necessary amendments to the Interlocal Operating Agreement, Interlocal Governance Agreement, the Interlocal Funding Agreement, and the Operations Phasing Agreement, as amended and as applicable. In addition, ensure compliance with obligations under these agreements.
- I. With an understanding of Federal regulations and requirements, assist in the coordination of the transition with the Federal Rail Administration and the Federal Transit Administration.
- J. Determine any issues, deficiencies, or actions with contracts that need to be implemented to facilitate a smooth transition of SunRail.
- K. Prepare and review assignment and novation of contract operator and other vendor

² The Local Government Partners are currently in early negotiations with the Central Florida Regional Transportation Authority, a body politic and corporate governed pursuant to Part II, Chapter 343, Florida Statutes (“LYNX”) regarding future the operation of SunRail; no final agreement has been reached, as of the Effective Date of this Agreement. In the event the Local Government Partners and the Commission ultimately do not agree to terms with LYNX and/or enter into a contract with LYNX, the references herein to LYNX should be understood to refer to any third party that Commission and Local Government Partners enter into negotiations and/or contract with for the operation of SunRail.

contracts from the FDOT to the Commission to ensure work under these contracts continue seamlessly throughout the transition.

- L. Prepare and review assignment and novation of the Central Florida Operating and Management Agreement (“CFOMA”), Joint Use Agreements (“JUA”), and State Cooperative Contracts from the FDOT to the Commission.
- M. Assist in the development of compliance programs to ensure the Commission’s satisfaction of obligations for rail agreements.
- N. Assist in the development of a risk management program.
- O. Assist in the establishment of a procurement and contract administration program in accordance with Federal, State, and Local procurement policies and procedures.
- P. Initiate procurement of contract operator contracts with FDOT’s assistance.
- Q. Assist in the licensure of intellectual property from FDOT to the Commission. Such license of intellectual property could include, but is not limited to, use of operating rules for SunRail, training materials and examinations for train and engine crews, software and other information systems such as SCADA, maintenance records, and access and management of the Positive Train Control (“PTC”) system implemented by vendors.
- R. Review consultant agreements and draft amendments, assignments, or new contracts for such consultants as necessary to ensure a thorough transition of responsibilities.
- S. Review and respond to public record requests made to the Commission in accordance with Florida law and this Scope.
- T. Assist with any other issues identified by the Commission and the SG.

Standards of Work



All tasks listed in this Scope must be undertaken by the attorney as directed by the Commission and legal counsel shall cooperate and communicate with the SG. The amount of work to be completed for each task will fluctuate. The attorney must provide the Commission and SG monthly invoices detailing work performed, the date legal services were provided, the hours involved in completion, and any other information requested by the SG or the Commission. The hourly rate quoted must include all salary and compensation and all overhead expenses, profits, clerical and word processing expenses. Any other costs or expenses which attorney intends to bill in addition to legal fees and the basis for the charges, must be specifically set forth in the Agreement between attorney and the Commission.

No travel costs will be allowed or included as part of the billing.

All costs and expenses for online research, word processing, secretarial support, photocopying, and telephone, will be considered general overhead and the Commission will not compensate attorney extra for such charges. If requested by the Commission or requested by attorney and approved by the Commission, attorney may retain subcontractors (e.g., other attorneys or experts in related fields) when necessary to assist in meeting the Commission’s needs. The Commission must be billed at the actual cost of these subcontractors, if any, with no additional fees or markups.

Public Records

In addition to responding to public record requests on behalf of the Commission as part of the legal

services rendered (see “Legal Services” section above), the attorney will also have certain requirements and obligations regarding public records because it is a contractor for the Commission. This section addresses those requirements and obligations.

The attorney acknowledges the Commission’s obligations under Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, to release public records to members of the public upon request. The attorney acknowledges that the Commission is required to comply with Article I, Section 24, Florida Constitution, and Chapter 119, Florida Statutes, in the handling of materials created under this Agreement and this statute controls over the terms of this Agreement. Upon the Commission or its representative’s request, the attorney must provide all requested public records in the attorney’s possession or must allow the Commission or its representative to inspect or copy the requested public records within a reasonable time and at a cost that does not exceed costs provided for under Chapter 119, Florida Statutes.

The attorney must ensure public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law.

Upon expiration or termination of this Agreement, the attorney must transfer, at no cost to the Commission or SG, all public records in possession of the attorney in a format compatible with the information technology systems of the Commission or its designee. If the attorney transfers all public records to the Commission or its designee upon expiration or termination of this Agreement, the attorney must destroy any duplicate public records in accordance with the rules set forth by the Florida Department of State Division of Library and Information Services and governing law.

Failure to comply with these public records law requirements will be deemed a material breach for which the Commission may terminate this Agreement immediately upon written notice to the attorney. The attorney may also be subject to statutory penalties set forth in Section 119.10, Florida Statutes.

IF ATTORNEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ATTORNEY’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, ATTORNEY MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS, THE SEMINOLE COUNTY PURCHASING AND CONTRACTS MANAGER, AT 407-665-7120, PURCH@SEMINOLECOUNTYFL.GOV, PURCHASING AND CONTRACTS DIVISION, 1301 E. SECOND STREET, SANFORD, FL 32771.

Subject to Chapter 119, Florida Statutes, the attorney must hold as confidential and privileged all information and records transmitted to it by or on behalf of the Commission, and all information and records developed by or provided to the attorney as part of this Agreement. The attorney is subject to statutes, regulations, and professional codes regulating the practice of law in the State of Florida.

Conflict of Interest

The attorney acknowledges that the nature of the legal services to be performed requires that attorney must not have or appear to have a conflict of interest with any potential adverse party. The attorney agrees that:

- A. The attorney will not accept any legal work, assignments, compensation, consideration or gratuities with an interest in any subject matter or any contract that is or could be conflicting or have the appearance of conflicting with the interests of the Commission or any Local Government Partner. The attorney (including any individual in attorney's firm) may not represent, be an adverse party to, or represent an adverse party to any Local Government Partner at any time while representing the Commission.
- B. In the event that a conflict or potential conflict of interest arises, the attorney shall promptly notify the SG in writing within three (3) days of becoming aware of the conflict or the potential conflict. Failure to provide such notice may be grounds for termination of this Agreement.
- C. In the event the SG receives timely notice of an actual or potential conflict, the attorney and the Commission shall attempt to reach agreement on a course of action in response to the actual or potential conflict. If such an agreement cannot be reached, the Commission has the right to contract with another attorney to represent the Commission for the specific matter in which the conflict arose or to terminate this Agreement and to award an Agreement to a different attorney entirely.

Special Conditions



The attorney must make affirmative efforts to achieve cost effectiveness. Multiple attorneys at meetings will not be compensated by the Commission unless approved in advance by the SG.

Additional Attorneys

The Commission reserves the right to retain other legal representatives or assistance as might be required for legal matters. The Commission reserves the right to award a contract to more than one firm and to award this Agreement in parts to multiple attorneys.

Approved Staff

All attorneys, paraprofessionals, or other staff who will perform services under this arrangement must be pre-approved by the Commission. All key personnel assigned by the attorney/firm to provide services to Commission shall be clearly identified at the initiation of the contract. Should it be necessary for the attorney/firm to replace a key person, the replacement is subject to the approval by the Commission. In addition, replacement personnel shall have credentials equivalent to or greater than the individuals who they replace.