



Legislation Text

File #: 24-979, **Version:** 1

Interoffice Memorandum

DATE: June 20, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: NA

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

CONTACT: Brett W. Blackadar, P.E., Deputy Director

PHONE: (407) 836-7805

DIVISION: NA

ACTION REQUESTED:

Approval and execution of Interlocal Agreement Regarding Cost Sharing to Obtain Attorney Services for the Central Florida Commuter Rail Commission by and between Orange County, Osceola County, Seminole County, County of Volusia, and City of Orlando and approval of SunRail Attorney Services Escrow Agreement by and among Central Florida Commuter Rail Commission and Seminole County Clerk of the Circuit Court and Comptroller. All Districts.

PROJECT: NA

PURPOSE:

The SunRail Operations Phasing Agreement and the Third Amendment to the Interlocal Governance Agreement were approved at the March 26, 2024 Board meeting. In support of the Central Florida Commuter Rail Commission's responsibility under the Operations Phasing Agreement, the Local Government Funding Partners will be funding the Central Florida Commuter Rail Commission's pressing need for the services of an attorney. The attached "Interlocal Agreement Regarding Cost Sharing to Obtain Attorney Services for The Central Florida Commuter Rail Commission" and the "SunRail Attorney Services Escrow Agreement" are required to retain these services.

The Interlocal Agreement Regarding Cost Sharing to Obtain Attorney Services for The Central Florida Commuter Rail Commission is between the Local Government Partners (LGP) to fund the Central Florida Commuter Rail Commission's (CFCRC) initial retainment of its own legal counsel. The agreement appoints Seminole County as the LGP who will procure the CFCRC attorney on behalf of the CFCRC. Within 60 days of the Effective Date, each LGP will contribute \$50,000 towards the

CFCRC's legal counsel's attorney's fees of \$250,000. Such fees are deposited into an interest-bearing escrow account administered by the Seminole County Clerk of the Circuit Court and Comptroller. Any proposed attorney's fees that will be in excess of the \$250,000 must receive unanimous approval of the LGP. Each LGP will have a single attorney representative that will be part of the Seminole County procurement selection committee. Seminole County will provide a Project Manager (PM) to administer the legal counsel's contract with the CFCRC. Each LGP will also have a single representative that will be part of a Steering Group that collaborates with the CFCRC attorney and PM during the term of the contract. The Interlocal Agreement terminates upon the exhaustion of the legal counsel's escrowed fees, or after the CFCRC accepts all deliverables required by the contract.

The SunRail Attorney Services Escrow Agreement requires Seminole County Clerk of the Circuit Court and Comptroller to pay invoices presented by the PM, unless the Steering Group objects to such payment. The Escrow Agreement terminates three years after the effective date of the Escrow Agreement with any remaining funds refunded in equal shares to the LGP, or once all funds have been exhausted.

If you have any questions, please feel free to contact me at 407-836-7805.

BUDGET: NA

SUNRAIL ATTORNEY SERVICES ESCROW AGREEMENT

THIS SUNRAIL ATTORNEY SERVICES ESCROW AGREEMENT (“Agreement”) is made and entered into as of the date of latest execution (“Effective Date”), by and among the CENTRAL FLORIDA COMMUTER RAIL COMMISSION, a legal entity and public body and unit of local government (“CFCRC”) and the SEMINOLE COUNTY CLERK OF THE CIRCUIT COURT AND COMPTROLLER, in its capacity as Escrow Agent (“Escrow Agent”), with the parties’ mailing addresses noted in Section 11, herein.

RECITALS:

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, CFCRC, which is comprised of a designated representative from Orange County, Osceola County, Seminole County, Volusia County and the City of Orlando (collectively referred to herein as the “Local Government Partners”), was formed for the purpose of acquiring, constructing, operating, and maintaining SunRail; and

WHEREAS, CFCRC will assume responsibility for the funding, operation, management, and maintenance of SunRail in the future; 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 CFCRC; and

WHEREAS, the CFCRC desires to retain 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

¹ (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 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.

WHEREAS, the Local Government Partners (“Participating Local Government Partners”) have entered into an Interlocal Agreement Regarding Cost Sharing to Obtain Attorney Services (“Interlocal Agreement”), attached hereto as **Exhibit A**; and

WHEREAS, the Interlocal Agreement requires the Participating Local Government Partners to deposit funds (“Escrowed Funds”) into an escrow account to be administered by an escrow agent for the purpose of compensating the attorney; and

WHEREAS, Escrow Agent has agreed to serve as said escrow agent in accordance with the terms and conditions of this Agreement; and

WHEREAS, CFCRC desires that Escrow Agent shall hold and release the Escrowed Funds, as defined in this Agreement, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto represent, warrant, covenant, and agree as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by this reference.

2. **Establishment of Escrow Relationship; Acceptance by Escrow Agent**. CFCRC hereby retains Escrow Agent, at no cost to CFCRC, to serve solely in its capacity as escrow agent with respect to the Escrowed Funds, and Escrow Agent hereby accepts such retention.

3. **Escrowed Funds**. Pursuant to Section 6 of the Interlocal Agreement, the Participating Local Government Partners shall, collectively, deliver funds in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) (the “Escrowed Funds”) to Escrow Agent to retain a commuter rail system attorney (“Attorney”). Within five (5) business days of receipt, Escrow Agent shall place the Escrowed Funds into a separate, restricted, interest-bearing escrow account (the “Escrow Account”) to be held, administered, distributed, and released as provided for herein. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice, either in writing or by electronic mail, to each of the Participating Local Government Partners within five (5) business days after receipt of the Escrowed Funds.

4. **Disbursement of Escrowed Funds**. Upon receipt of an invoice from Attorney and approval of payment to Attorney by the Lead Agency’s Project Manager, and after seven (7) days’ notice to SG, as defined in the Interlocal Agreement, a written draw request to Escrow Agent to pay or reimburse the cost of selecting and compensating the Attorney engaged by CFCRC under the Interlocal Agreement will be submitted by the Project Manager. If any of the SG files an objection to a payment request, the SG shall convene within fifteen (15) days and resolve the objection. Within thirty (30) days of receipt of said draw request, Escrow Agent shall disburse funds to the Attorney so as requested by the Project Manager from the Escrow Account in an amount equal to the sum so approved by the Project Manager.

5. **Escrow Term and Release of Escrowed Funds.** Notwithstanding anything to the contrary, the Escrowed Funds shall be held by Escrow Agent for a period commencing on the Effective Date and expiring no later than three (3) years from that date (“Escrow Term”). The escrow established by this Agreement shall terminate and the balance of the Escrowed Funds, if any, shall be disbursed in equal shares to each of the Participating Local Government Partners (i) within a reasonable period, but in any case no later than 30 days after said Escrow Term, or (ii) within thirty (30) days of Lead Agency notifying Escrow Agent in writing that no further compensation is due to Attorney, whichever comes first. Notwithstanding the foregoing, the Escrow Term shall not apply to any portion of the Escrowed Funds that is subject to any active or pending draw request(s) pursuant to Section 4 above; rather, unused funds subject to any such active or pending draw request(s) shall continue to be held by Lead Agency pursuant to Section 3 of this Agreement and disbursed pursuant to Section 4.

6. **Termination.** This Agreement and the parties’ rights and obligations pursuant hereto shall automatically terminate upon the earlier of (i) the disbursement of all of the Escrowed Funds to Lead Agency pursuant to Section 4 herein, or (ii) the delivery of the balance of the Escrowed Funds to the Participating Local Government Partners pursuant to Section 5 hereof.

7. **Indemnification of Escrow Agent; Sovereign Immunity.** It is agreed that the duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the matters herein for which Escrow Agent is expressly obligated. CFCRC agrees to indemnify and hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Agreement, except in the case of gross negligence, willful misconduct, or breach of trust by Escrow Agent. In connection therewith, CFCRC agrees to indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained herein is intended as, nor shall constitute, a waiver by CFCRC or Escrow Agent of their sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

8. **No Constructive Knowledge.** Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then shall only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent shall not be charged with any constructive knowledge whatsoever.

9. **Capacity of Escrow Agent.** It is expressly understood and agreed by the parties that the Escrow Agent shall not act under this Agreement in any capacity as Clerk to the Seminole County Board of County Commissioners, but rather in Escrow Agent capacity as an independent constitutional officer.

10. **No Obligation to Overdraw.** Notwithstanding any provision of this Agreement seemingly to the contrary, Escrow Agent shall not be required to make payment of an amount in excess of the balance in the Escrow Account.

11. **Notices.** All notices, consents, approvals, waivers, and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given (i) when mailed by certified mail, postage prepaid, return receipt requested, (ii) by hand delivery to the named individuals representing the party to be notified, or (iii) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

As to CFCRC:	Central Florida Commuter Rail Commission c/o MetroPlan Orlando 250 S. Orange Avenue #200 Orlando, FL 32801 (407) 481-5672
With copy to:	Central Florida Commuter Rail Commission c/o Seminole County Commissioner Amy Lockhart 1101 East First Street Sanford, FL 32771 (407) 665-7251
As to Escrow Agent:	Grant Maloy Seminole County Clerk of the Circuit Court and Comptroller Post Office Box 8080 Sanford, FL 32772-8099 Tel.: (407) 665-4300

Notices, consents, approvals, waivers, and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery, or transmission thereof as aforesaid.

12. **Governing Law.** This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Florida, without regard to choice of law rules. Venue for any action arising out of or in connection with this Agreement shall lie in the Circuit Court of the Eighteenth Judicial Circuit in and for Seminole County, Florida. Notwithstanding anything contained herein seemingly to the contrary, the parties shall comply with all applicable federal, state, and local laws, rules, and regulations.

13. **Entire Agreement, Modification.** This Agreement contains the entire understanding and agreement among the parties relating to the subject matter hereof, and all prior or extrinsic agreements, understandings, representations and statements, oral or written, concerning the subject matter hereof are merged herein and/or superseded hereby. There are no other agreements, written or oral, between the parties with respect to the subject matter hereof except those contained in this Agreement. Neither Escrow Agent nor CFCRC shall be bound by

any modification, cancellation, or rescission of this Agreement unless in writing and signed by Escrow Agent and CFCRC.

14. Waiver. The failure of any party to insist in any one or more cases upon the strict performance of any term, covenant, condition, or provision of this Agreement shall not be construed as a waiver or a relinquishment of such party's right to insist on strict performance of any such term, covenant, condition, or provision in the future.

15. Telecopy Execution. A facsimile, telecopy, or other reproduction of this Agreement may be executed by the parties (in counterparts or otherwise) and, when so executed, shall be considered valid, binding, and effective for all purposes. At the request of any party, the parties hereto agree to execute an original of this Agreement, as well as any facsimile, telecopy, or other reproduction.

16. Counterparts. This Agreement may be executed in up to three identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

17. Time. Time is of the essence in connection with this Agreement and each provision hereof.

18. Construction. All parties to this Agreement having participated fully and equally in the negotiation and preparation hereof, the fact that one of the parties to this Agreement, or its attorney, may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

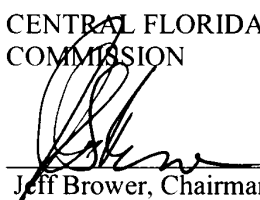
19. Settlement of Dispute. In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds into the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader, the cost of which shall be paid as per Paragraph 7, naming CFCRC and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. CFCRC agrees that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to CFCRC or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent.

IN WITNESS WHEREOF, the parties have executed this Agreement or caused this Agreement to be executed and delivered by their duly authorized officers on the date(s) noted below.

[SIGNATURE PAGES FOLLOW]

CFCRC:

CENTRAL FLORIDA COMMUTER RAIL
COMMISSION



Jeff Brower, Chairman

Date: July 25, 2024

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 25 day of JULY,
2024 by ~~Viviana Janer~~ ^{JEFF BROWER}, as Chairman of the CENTRAL FLORIDA COMMUTER RAIL
COMMISSION, a legal entity and public body and unit of local government, who is personally
known to me OR has produced B660-437-541-416-0 as identification and did/did
not (circle one) take an oath.

(NOTARY PUBLIC)



DYANA C. BLICKLE
Notary Public
State of Florida
Comm# HH154076
Expires 7/24/2025

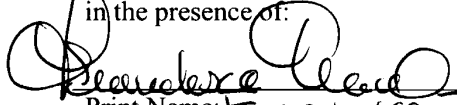
Notary Public, State of Florida


Name: DYANA C BLICKLE
Notary Commission No. 7/24/2025
My Commission Expires: HH154076



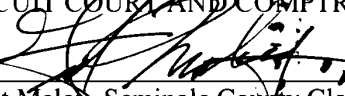
ESCROW AGENT:

Signed, sealed, and delivered
in the presence of:


Print Name: FRANCESCA TIRADA


Print Name: JOHN KAULTON

SEMINOLE COUNTY CLERK OF THE
CIRCUIT COURT AND COMPTROLLER


Grant Maloy, Seminole County Clerk of the
Circuit Court and Comptroller

Date: 7-22-20

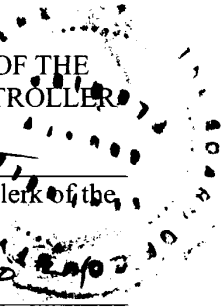


EXHIBIT A



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*
for Jerry Demings, Orange County Mayor

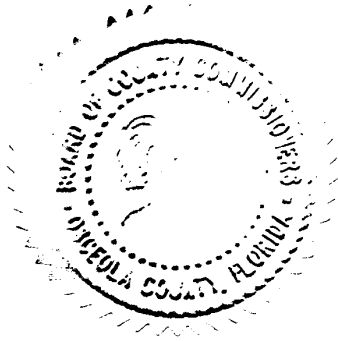
Date: July 9, 2024

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


By: *Jennifer Lara - Klimetz*
Deputy Clerk

Print Name: Jennifer Lara - Klimetz



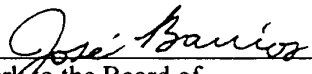


OSCEOLA COUNTY

By: 
Chairman Board of County Commissioners

Date: 07/01/2024

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.

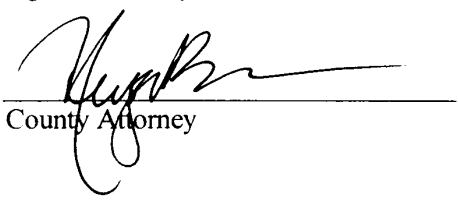
By: 
JAY ZEMBOWER, Chairman

Date: June 25, 2024

For the use and reliance
of Seminole County only.

As authorized for execution by the Board
of County Commissioners at its June 25,
2024, regular meeting.

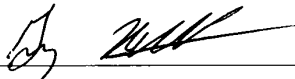
Approved as to form and
legal sufficiency.


County Attorney

BP
5/23/24
T:\Users\bpatel\SunRail\Legal Counsel\SunRail\ILA - Attorney Services May23(24).docx



ATTEST:

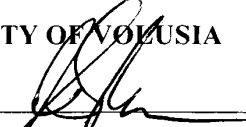
By: 

Name: George Recktenwald

Title: County Manager

Date: July 11, 2024

COUNTY OF VOLUSIA

By: 


Name: Jeffrey S. Brower

Title: County Chair

Date: July 11, 2024




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: 8/24/24

City Council Meeting: 06-24-2024
Item: 3-02 Documentory: 2406243



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.