



Orange County Government

Orange County
Administration Center
201 S Rosalind Ave.
Orlando, FL 32802-1393

Legislation Text

File #: 24-1688, **Version:** 1

Interoffice Memorandum

DATE: October 30, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

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

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

PHONE: (407) 836-7805

DIVISION: N/A

ACTION REQUESTED:

Consent and approval of Locally Funded Agreement between the State of Florida Department of Transportation and the Central Florida Commuter Rail Commission and Three Party Escrow Agreement as approved and executed by the Central Florida Commuter Rail Commission at its November 14, 2024 meeting; and ratifying the Mayor's prior action regarding the Locally Funded Agreement at the CFCRC's November 14, 2024 meeting, in his capacity as a board member of the Central Florida Commuter Rail Commission. All Districts.

PROJECT: N/A

PURPOSE: SunRail revenue operations began on May 1, 2014, and in accordance with the conditions in the original agreement, the Florida Department of Transportation (FDOT) was responsible for operating and funding SunRail for seven years. Responsibility for SunRail operations was scheduled to shift to the Local Government Funding Partners (LGFP) that comprise the Central Florida Commuter Rail Commission (Orange, Osceola, Seminole, and Volusia Counties, as well as the City of Orlando) seven years after commencement of revenue operations, essentially in 2021. However, since the full 61-mile SunRail system was not yet complete in 2021, FDOT and the LGFP negotiated an extension of the funding period with FDOT ultimately agreeing to continuing funding operations through 2024. We have reached that point where FDOT has fulfilled its initial commitment and the transfer to the LGFP must occur pursuant to the original agreements and obligations.

During this pivotal year in the overall SunRail transition process, Orange County staff has been working with FDOT staff and other LGFP regarding the details of the transition of SunRail operations-

-now set to occur on January 1, 2025. At the March 26, 2024 Board of County Commissioners (Board) Meeting, the Board approved a new Operations Phasing Agreement, as well as a Third Amendment to the Interlocal Governance Agreement; both agreements are necessary to effectuate the SunRail transition from FDOT to the Central Florida Commuter Rail Commission (CFCRC).

The Operations Phasing Agreement, which was approved at the March 26, 2024 Board meeting, is between all five LGFP, FDOT, and the CFCRC. This agreement provides for a phased transfer of the SunRail funding and operating obligations from FDOT to the CFCRC/LGFP and includes a summary of the needed action steps with target completion dates. FDOT also agreed to continue to operate the system for a three-year period after the financial transition occurs on January 1, 2025. The management of SunRail will also be turned over to a contract operator by no later than December 31, 2027. The agreement also includes a summary of FDOT's continued commitments including corridor permitting and financial contributions towards positive train control and vehicle overhauls.

The Third Amendment to the Interlocal Governance Agreement, which was also approved at the March 26, 2024 Board meeting, is between all five LGFP. The amendment updates the maximum Annual System Deficit amounts, which are the maximum annual funding amounts required by Orange County for the operations of the system, and includes an annual index for cost escalation. The amendment also requires a unanimous vote of the CFCRC Governing Board in order for the annual budget to exceed the Annual System Deficit. The amendment also includes language regarding the process to approve expanded and extended service and allows this to occur for only a portion of the LGFP if desired.

The newest SunRail transition agreement is the Locally Funded Agreement (LFA). The LFA is to be entered into between FDOT and the CFCRC, and Orange County is not a direct party to this agreement. The LFA is required by FDOT, as primarily a FDOT Comptroller and State of Florida Department of Financial Services form, to accept funds from the CFCRC under the obligations set forth in the Operation Phasing Agreement and related Interlocal Agreements (Governance, Funding, and Operating). The LFA does not change the maximum funding amounts, and related stipulations specified in the Interlocal Governance Agreement approved at the March 26, 2024 Board meeting. (start new paragraph)The LFA includes an attachment that is the required companion FDOT Three Escrow Agreement. According to these SunRail agreements, the CFCRC's current fiscal year funding obligation of \$65.3 million will begin January 1, 2025. The LFA is also amending the Interlocal Operating Agreement (between FDOT and CFCRC) as it relates to updated LFA nomenclature, and to update the Interlocal Agreements and Operations Phasing Agreement insofar as scheduling the required CFCRC quarterly payments. The Interlocal Governance Agreement (which created the CFCRC) requires consent of the LGFPs when it comes to any amendment of the Interlocal Operating Agreement. Therefore, the LGFPs will each need to consent to and approve the LFA as approved and executed during the CFCRC's November 14, 2024 meeting.

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

BUDGET: No additional budgetary impact, i.e., does not change the terms or funding amounts previously approved by the Board of County Commissioners on March 26, 2024.



OFFICE OF COMPTROLLER

**ORANGE
COUNTY
FLORIDA**

Phil Diamond, CPA
County Comptroller as
Clerk of the Board of County Commissioners
201 South Rosalind Avenue
Post Office Box 38
Orlando, FL 32802
Telephone: (407) 836-7300
Fax: (407) 836-5359

DATE: November 26, 2024

TO: Brett W. Blackadar, Deputy Director
Public Works Department, BCC

FROM: David Rooney, Manager *TR for DR*
Comptroller Clerk of BCC

SUBJECT: Request for Execution of Documents, Public Works Department Consent
Item 9, Legislative File #24-1688, November 19, 2024

Enclosed is the Locally Funded Agreement between the State of Florida Department of Transportation and the Central Florida Commuter Rail Commission (1 original) and Three Party Escrow Agreement (1 original) which was approved by the Board of County Commissioners (BCC) at its regular meeting held on November 19, 2024.

Please forward the documents to all required parties for signature.

Email copies of the fully-executed documents to ClerkofBCC@occompt.com and copy jennifer.mcgill@ocfl.net. Note: ClerkofBCC@occompt.com is **used only for County staff submission of pending documents.**

Please include in cover memo or subject line identification of the documents by name, agenda item number, and date of BCC approval. Emailed copies must be in full-size PDF format. The documents will be processed and filed for the record upon receipt.

If you are unable to return a copy of the fully-executed documents before December 19, 2024, notify Jennifer Lara-Klimetz by email of the reason for the delay prior to that date.

If you have any questions, please do not hesitate to call.

dr:th

Enclosure (2)

dl: Joe Kunkel, Director, Public Works Department , BCC [email]

Jon Weiss, Deputy County Administrator, BCC [email]

Avanti Minns-Griffith, Executive Assistant, Public Works Department, BCC [email]

Pending File

BCC Mtg. Date: November 19, 2024

Agency: COMMISSION Vendor No.: 61-2212001	Fund: LF Contract Amount: \$65,344,339	Financial Project No.: Various Project Specific listed on Exhibit "D"
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CENTRAL FLORIDA COMMUTER RAIL COMMISSION**

This **AGREEMENT**, made and entered into by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT" or FDOT) and the Central Florida Commuter Rail Commission, a legal entity and public body created pursuant to Section 163.01, Florida Statutes (hereinafter referred to as the "COMMISSION") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this **LOCALLY FUNDED AGREEMENT** (hereinafter "Agreement") pursuant to Section 339.12, Florida Statutes; and

WHEREAS, on August 29, 2007, 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"), the 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 (the "City of Orlando") (hereinafter referred to as the "Local Government Partners") entered into an Interlocal Governance Agreement creating the **COMMISSION** and providing terms for its management and the provision of operating funds for the Central Florida Commuter Rail Transit System (a.k.a. "SunRail"), which Interlocal Governance Agreement was amended in December 2008, by a First Amendment to Interlocal Governance Agreement, and on July 28, 2010, by a Second Amendment to Interlocal Governance Agreement, and on March 26, 2024, by a Third Amendment to Interlocal Governance Agreement (collectively, the "Interlocal Governance Agreement"); and

WHEREAS, on August 28, 2007, FDOT and the Local Government Partners entered into an Interlocal Funding Agreement to provide for the development of transit stations, the

execution of joint use agreements for the transit stations and the initial capital funding for SunRail, which was amended on July 28, 2010, by an Amendment to Interlocal Funding Agreement (collectively, the "Interlocal Funding Agreement"); and

WHEREAS, on August 29, 2007, FDOT and the COMMISSION entered into an Interlocal Operating Agreement for the operation of SunRail, which was amended on December 19, 2008 by a First Amendment to Interlocal Operating Agreement, and on December 18, 2009 by a Second Amendment to Interlocal Operating Agreement, and subsequently on August 13, 2010 by a Third Amendment to Interlocal Operating Agreement (collectively, the "Interlocal Operating Agreement" and, together with the Interlocal Governance Agreement and Interlocal Funding Agreement, the "Interlocal Agreements"); and

WHEREAS, the Interlocal Operating Agreement provided for transition of the financial and operating obligations for SunRail to the COMMISSION at the end of the "FDOT Funding Period" (as defined in the Interlocal Operating Agreement); and

WHEREAS, FDOT, the COMMISSION, and the Local Government Partners entered into an Operations Phasing Agreement with an effective date of March 28, 2024, which provides for a phased transfer of the SunRail funding and operating obligations from FDOT to the COMMISSION and Local Government Partners in accordance with the schedule set forth therein and delineates certain obligations of the parties following such transfers; and

WHEREAS, certain Actions Steps, as defined and outlined in the Operations Phasing Agreement, have been or will be revised or delayed to account for matters encountered during the transfer and transition process; and

WHEREAS, the Operations Phasing Agreement provides for and requires FDOT to transition financial responsibility for SunRail to the COMMISSION on or about December 31, 2024 ("Financial Transition Date") and to transfer responsibility for SunRail operations and maintenance to the COMMISSION following the Interim Operation Period as further outlined in the Operations Phasing Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to provide for an orderly continued transition, to provide a mechanism for funding SunRail following the Financial Transition Date and to meet certain other deadlines within the Operations Phasing Agreement; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five-Year Work Program, to undertake the project described as: Continued SunRail Operations and Maintenance in compliance with Interlocal Agreements and Operations Phasing Agreement, hereinafter referred to as the "Project"; and

WHEREAS, the Project is revenue producing but is not a highway project nor is there a requirement in this Agreement for reimbursement by the DEPARTMENT to the COMMISSION and is contained in the Adopted Work Program; and

WHEREAS, the DEPARTMENT will endeavor to maximize revenue and seek cost-saving measures as it pertains to SunRail; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the COMMISSION and it would be most practical, expeditious, and economical for the COMMISSION to provide for and fund all costs associated with and required by the Interlocal Agreements and the Operations Phasing Agreement for the Project, initially within the DEPARTMENT Fiscal Years 2024/2025 and 2025/2026, and subsequent DEPARTMENT fiscal years if extended pursuant to the terms of this Agreement; and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Continued SunRail Operations and Maintenance in compliance with Interlocal Agreements and the Operations Phasing Agreement in a cost-effective manner, the COMMISSION desires to provide funding to the DEPARTMENT for the Project and as further described in "Exhibit A"; and

WHEREAS, the Local Government Partners have all consented to the execution of this Agreement, as required by the Interlocal Governance Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the Parties agree as follows:

1. The Parties agree that the recitals are true and correct and by this reference incorporated and made a part of this Agreement.

2. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Operations Phasing Agreement and in the Master Glossary of Terms for the Central Florida Commuter Rail System Agreements attached to the Interlocal Agreements.

3. The Parties agree that this Agreement will serve as an addendum or supplement to the Interlocal Operating Agreement. In the event of any conflicts or inconsistencies between this Agreement and the Interlocal Operating Agreement, the terms of this Agreement shall control.

4. In order to provide sufficient time for seamless transition and procurement of various contracts associated with the Project, the Parties agree that the following sections of the Interlocal Operating Agreement are revised as follows:

Section 4.14 CONTRACT OPERATOR. (B) Any contract entered into by FDOT with a Contract Operator shall provide that it expires upon the expiration of the ~~FDOT Funding Period~~ Locally Funded Agreement unless the contract is assigned to the Commission pursuant to an assignment that effects a novation and releases the FDOT from being a party to the contract, in which case, the contract

will continue for a period of three years following the expiration of the ~~FDOT Funding Period~~ Locally Funded Agreement. Such contract shall provide that it can be assigned to the Commission.

SECTION 4.15. ADMINISTRATIVE FUNCTIONS. (C) During the FDOT Funding Period, as well as during the term of this Locally Funded Agreement, procurements and contracts for the Commuter Rail System shall be processed and administered in accordance with the procurement policies and procedures of FDOT and contracts shall be awarded under the name and authority of FDOT. Each contract entered into by FDOT for the Commuter Rail System shall provide for assignment to the COMMISSION upon expiration of the ~~FDOT Funding Period~~ Locally Funded Agreement to the extent that it has not expired as of that time; provided, however, that no assignment will be made unless a novation is effected and FDOT is released from being a party to the contract. FDOT shall consider the advice of the Governing Board for major procurement actions.

5. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the COMMISSION and the DEPARTMENT. This completion of services date is currently set for December 31, 2025, unless terminated in accordance with the terms of this Agreement, the Interlocal Agreements, the Operations Phasing Agreement, or agreed to in writing by the Parties. Notwithstanding the foregoing, in order to ensure sufficient time for budgeting and funds availability, the COMMISSION shall be entitled to automatically extend the December 31, 2025 date for an additional year, so long as the COMMISSION notifies the DEPARTMENT no later than One Hundred Twenty (120) days prior to the current expiration and completion of services date.

6. The DEPARTMENT agrees to continue providing management services in connection with the operation, management, and maintenance of the Project in compliance with its statutory obligations under Chapter 341 of the Florida Statutes, the Interlocal Agreements and Operations Phasing Agreement, as well as the Scope of Services described in Exhibit "A".

7. The DEPARTMENT shall perform all necessary work, as may be applicable for the Project as previously defined and as required by the Interlocal Agreements and the Operations Phasing Agreement. The Project as previously defined may include some or all of the foregoing activities. Nothing in this Agreement may be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined either herein or within the Interlocal Agreements and the Operations Phasing Agreement. Except as

specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in discretion, deems appropriate and in accordance with and as required by the Interlocal Agreements and the Operations Phasing Agreement. The COMMISSION shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement, the Interlocal Agreements or the Operations Phasing Agreement. The COMMISSION shall be entitled to be advised of the progress of the Project at reasonable intervals upon request and at a minimum at regularly scheduled COMMISSION Board Meetings.

8. Participation by the COMMISSION in the funds for the Project shall be made as follows:

(A) The DEPARTMENT'S and COMMISSION's budget and current estimate of cost for the Project for calendar year 2025 (January 1, 2025 through December 31, 2025)¹ is **\$65,344,339.00 (Sixty Five Million Three Hundred Forty Four Thousand Three Hundred Thirty Nine Dollars and 00/100)**. The aforementioned budget was approved by the COMMISSION at its regularly scheduled Commission Meeting held on September 30, 2024. Breakdown of the approved budget is attached as Exhibit "B". The DEPARTMENT'S performance and obligation to manage the Project is contingent upon an annual appropriation by the Florida Legislature as well as payment of the afore and below mentioned funds. The Parties agree that in the event funds are not appropriated to the DEPARTMENT for the Project, this Agreement may be terminated, which shall be effective 120 (One Hundred Twenty) days following the DEPARTMENT giving written notice to the COMMISSION to that effect. Furthermore, the COMMISSION's performance and obligation to pay under this Agreement is contingent upon an appropriation by the Local Government Partners during the Local Government Partner's respective budgetary process and fiscal year.

(B) The Project is being funded by the COMMISSION in the amount of **\$65,344,339.00 (Sixty Five Million Three Hundred Forty Four Thousand Three Hundred Thirty Nine Dollars and 00/100)**. Said funds are programmed under various Financial Project Numbers (FPN(s)) which are listed on Exhibit "D" which may be amended from time to time and would not require an amendment to this Agreement for the purposes of adding additional FPN(s). As described in paragraph 8(C) below, the COMMISSION agrees that it will provide the balance of the funding necessary for the Project.

¹ Calendar year 2025 occurs during FDOT Fiscal Years 2024/2025/2026 (FDOT Fiscal Year begins on July 1 and ends on June 30).

(C) The COMMISSION agrees that it will furnish the DEPARTMENT a deposit or quarterly payment, no later than **January 1, 2025** in the amount of **\$23,836,084.75 (Twenty Three Million Eight Hundred Thirty Six Thousand Eighty Four Dollars and 75/100)**, which shall represent the first quarterly payment of the estimated Project cost for DEPARTMENT Fiscal Year 2024/2025. The initial deposit or quarterly payment shall be a quarter of the total estimated Project Cost without allowances in the amount of \$12,723,584.75 (Twelve Million Seven Hundred and Twenty Three Thousand Five Hundred Eighty Four Dollars and 75/100) of Local Operating Support, Capital Costs in the amount of \$1,112,500.00 (One Million One Hundred Twelve Thousand Five Hundred Dollars and 00/100) plus the full amount of the required Self Insured Retention Account Funding in the amount of \$10,000,000.00 (Ten Million Dollars and 00/100), which is represented by the approved budget. No earlier than January 1, 2025, the DEPARTMENT may utilize this quarterly payment for payment of the costs of the Project. Thereafter, the COMMISSION shall furnish the DEPARTMENT with subsequent quarterly payments in the amount of \$13,836,084.75 (Thirteen Million Eight Hundred Thirty-Six Thousand Eighty-Four Dollars and 75/100) which shall be the amounts above less the required Self Insured Retention Account Funding on or before forty-five (45) calendar days prior to the quarter within which those funds are to be utilized for services. The payment amounts, breakdown and respective deadlines are outlined in more detail on Exhibit "C". The approved budget amount shall be adjusted annually based on the budget approved by the COMMISSION and based on Local Government Partner Fiscal years, which fiscal years begin on October 1 and end on September 30.

(D) If the Project costs are in excess of the quarterly deposit amount, the COMMISSION will provide an additional deposit within sixty (60) calendar days of notification from the DEPARTMENT so that the total deposit is equal to the revised total Project cost for the appropriate quarter. The DEPARTMENT will notify the COMMISSION when the DEPARTMENT knows or should have known that the Project costs are in excess of the quarterly payment amount. However, failure of the DEPARTMENT to notify the COMMISSION shall not relieve the COMMISSION from its obligation to pay for its full participation on final accounting as provided herein below. If the COMMISSION cannot provide the additional deposit within sixty (60) calendar days, a letter must be submitted to and approved by the DEPARTMENT indicating when the deposit will be made. The COMMISSION understands the request and approval of the additional time could cause delays to the Project, and additional costs may be incurred

due to those delays. The COMMISSION will not be liable for any delay costs that result directly from the DEPARTMENT's delay or failure to notify the COMMISSION of excess Project costs that the DEPARTMENT knows or should have known of.

(E) If the Project costs plus overruns are less than the quarterly payment, the DEPARTMENT will apply the excess against any cost overruns incurred during the previous periods or hold those funds in escrow for future overruns. The DEPARTMENT will provide to the COMMISSION an accounting of these funds within sixty (60) days of the end of each quarter. In no event shall any such excess be applied to cost overruns which occurred during the FDOT Funding Period.

(F) Should Project modifications or changes occur that increase the COMMISSION share of total Project costs, the COMMISSION will be notified by the DEPARTMENT accordingly. The COMMISSION agrees to provide, without delay, in advance of the additional work being performed, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund its share of the Project. The DEPARTMENT shall notify the COMMISSION as soon as it becomes apparent the actual costs will overrun the approved budgeted amount. However, failure of the DEPARTMENT to so notify the COMMISSION shall not relieve the COMMISSION from its obligation to pay for its full participation during the Project and on final accounting as provided herein below. Funds due from the COMMISSION during the Project not paid within sixty (60) calendar days from the date of the invoice are subject to an interest charge at a rate established pursuant to Section 55.03, Florida Statutes (F.S.), less the 400 basis points.

(G) With regard to Project costs, overruns, modifications and changes outlined in sections 8(D) and (F) above, such obligation of the COMMISSION to fund said costs is controlled, conditioned and limited by various provisions within the Interlocal Agreements and nothing herein shall modify said conditions in the Interlocal Agreements. Thus, any obligation for Project costs which exceed the Local Government Partners' collective annual obligation to fund the Annual System Deficit, as such terms are defined in the Interlocal Agreements, shall be controlled by the relevant provisions within the Interlocal Agreements. Furthermore, any refusal or failure by any individual Local Government Partner member of the COMMISSION to pay their respective share of the Annual System Deficit or other costs or payments outlined herein will be governed by the terms of the Interlocal Agreements.

(H) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three hundred

and sixty days (360) of final payment to the Contractors, Vendors, Consultants, and all others providing services on the Project or within three hundred and sixty days (360) following the conclusion of the relevant DEPARTMENT Fiscal Year, whichever comes first. All Project cost records and accounts shall be subject to audit by a representative of the COMMISSION for a period of three (3) years after final close out of the Project. The COMMISSION will be notified of the final cost. Both Parties agree that in the event the final accounting of total Project costs pursuant to the terms of this Agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the COMMISSION. If the final accounting is not performed within three hundred and sixty (360) days, the COMMISSION is not relieved from its obligation to pay nor is the DEPARTMENT relieved of its obligation to refund any excess to the COMMISSION, should any excess exist. The DEPARTMENT will return any excess funds, should any exist, to the COMMISSION within sixty (60) calendar days following the conclusion of the final accounting outlined herein.

(I) In the event the final accounting of total Project costs is greater than the total deposits to date, the COMMISSION will pay the additional amount within sixty (60) calendar days from the date of the invoice from the DEPARTMENT. The COMMISSION agrees to pay interest at a rate as established pursuant to Section 55.03, F. S., less the referenced 400 basis points, on any invoice not paid within sixty (60) calendar days until the invoice is paid.

(J) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached Escrow Agreement(s) between COMMISSION, DEPARTMENT, and the State of Florida, Department of Financial Services, Division of Treasury. The full amount of the required Self Insured Retention Account Funding in the amount of \$10,000,000.00 (Ten Million Dollars and 00/100) outlined above will be placed in a separate escrow to ensure segregation from other funds necessary for the Project.

(K) Pursuant to the Operations Phasing Agreement, the DEPARTMENT has agreed to share in the ongoing cost of Positive Train Control (PTC) in amounts calculated pursuant to an agreed upon formula within the Operations Phasing Agreement. Such payment is defined as the PTC Funding Amount. During the term of this Agreement, the Parties agree that the DEPARTMENT will provide notification to the COMMISSION that the PTC Funding Amount is budgeted and such amounts will be applied to the cost of PTC on the Project by the DEPARTMENT directly to the appropriate Contract Operator or vendor.

(L) Also pursuant to the Operations Phasing Agreement, the DEPARTMENT agreed to the following:

FDOT will fund the operating cost of Phase II North for a period of one year following its revenue service date. For purposes of this Section, the operating cost of Phase II North shall be equal to the increases in amounts payable under the Contract Operator agreements resulting from the commencement of Phase II North operations (the "Phase II North Cost"). An amount equal to the Phase II North Cost shall be paid to the Commission on dates payments are due under the Contract Operator agreements.

The revenue service date for Phase II North was August 12, 2024. To avoid certain inefficiencies, the Parties agree that the Phase II North Cost shall be paid to the Contract Operator on the dates the relevant payments are due rather than the COMMISSION.

(M) Contact Persons:

DEPARTMENT

Charles M. Heffinger, Jr., P.E.
 CFRC/SunRail Chief Operations Officer
 719 South Woodland Boulevard
 DeLand, Florida 32720
 (386) 943-5477

Charles.Heffinger@dot.state.fl.us

District 5 Local Programs
 719 South Woodland Boulevard, M.S. 4-520
 DeLand, Florida 32720-6834
 (386) 943-5537

D5-LocalPrograms@dot.state.fl.us

COMMISSION

Central Florida Commuter Rail Commission
 CFCRC Chair
 801 SunRail Drive
 Sanford, Florida 32771

(000) 000-0000

[email address](#)

9. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use until such time property is transferred to the COMMISSION in accordance with the Interlocal Operating Agreement. The COMMISSION may, however, inspect or request copies of those materials upon providing reasonable advance notice to the DEPARTMENT. All assets subject to conveyance will be transferred in accordance with the Interlocal Operating Agreement and the Operations Phasing Agreement.

10. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year."

11. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the COMMISSION to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

12. This Agreement constitutes the complete and final expression of the Parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document, other than those outlined in the Interlocal Agreements and the Operations Phasing

Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

13. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

14. The DEPARTMENT and the COMMISSION acknowledge and agree to the following:

(A) The COMMISSION shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the COMMISSION during the term of this Agreement; and

(B) The COMMISSION shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the contractor/subcontractor during the term of this Agreement.

15. CONTINUATION OF PRIOR AGREEMENTS. Except as expressly modified by this Agreement, all referenced agreements shall remain in full force and effect.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the COMMISSION has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

COMMISSION

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: Charles M. Heffinger, Jr., P.E.

Title: _____

Title: Director of Transportation Operations
CFRC/SunRail Chief Operations Officer

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:

COMMISSION Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

EXHIBIT "A"**SCOPE OF SERVICES**

As outlined in the Operations Phasing Agreement and/or the Interlocal Agreements:

(A) The Parties agree that the financial obligations for funding the costs of operation, management, and maintenance of SunRail, as said costs are described in the Operations Phasing Agreement and the Interlocal Agreements, other than financial obligations for the segment of Phase II between the DeBary and Deland Stations ("Phase II North"), which is addressed in subsection (D) of the Operations Phasing Agreement, shall be transferred from FDOT to the Commission and Local Government Partners on December 31, 2024 (the "Financial Transition Date"), which shall be the final day of the FDOT Funding Period.

(B) Upon expiration of the FDOT Funding Period, the Commission will become responsible for funding the costs of operation, management, and maintenance and capital work of and associated with SunRail, as said costs are described in the Operations Phasing Agreement and the Interlocal Agreements, other than financial obligations for Phase II North, which is addressed in subsection (D) of the Operations Phasing Agreement. Furthermore, following the expiration of the FDOT Funding Period, the Commission will be responsible for all activities outlined in the Interlocal Operating Agreement, to include, but not limited to those which are generally described in Section 4.01 of same. The immediately preceding sentence is not intended to assign greater responsibility to either party than is outlined in the Interlocal Operating Agreement. However, beginning on the Financial Transition Date and ending on the Operational Transition Date, as defined in Section 4 hereof (this period of time is referred to hereinafter as the "Interim Operation Period"), FDOT agrees to continue providing management services in connection with the operation, management, and maintenance of SunRail as it has done in accordance with the Interlocal Agreements.

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In order to account for certain matters encountered during the transition process, the following Actions Steps in the Operations Phasing Agreement will be or have been delayed and such delay has been or will be agreed to between the FDOT District 5 Secretary and the Chairman of the COMMISSION as required by the Operations Phasing Agreement:

No.	Description of Phase I Action Steps
12	Commission and FDOT approve the Easement form, including a mutually agreeable demonstrative exhibit that encompasses the operational portion of the Corridor, but excludes the encroachment issues, and Amtrak ADA issues. ⁽¹⁾
13	Commission and FDOT complete closing memorandum specifying responsibilities, sequencing and document deliveries for contract assignments/novations, conveyance of Easement and transfer of assets.
14	Commission secures insurance.
15	CFOMA, Contract Operator, Joint Use Agreements and other vendor contracts assigned or novated to the Commission – documents escrowed for delivery on December 31, 2024.
16	Conveyance of Easement and transfer of asset documents escrowed for delivery on December 31, 2024.
17	Commission completes participation in relevant state cooperative contracts.
18	Commission completes and approves asset inventory (update WSP report) with FDOT's assistance.

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EXHIBIT "B"

APPROVED BUDGET by COMMISSION for CALENDAR YEAR 2025

Estimate Five Year LFP Allocation					
County	Estimated FY 24/25 Budget	Estimated FY 25/26 Budget	Estimated FY 26/27 Budget	Estimated FY 27/28 Budget	Estimated FY 28/29 Budget
<i>Local Support by Each Jurisdiction, Net of all revenues</i>					
Volusia County	\$ 5,479,779	\$ 6,969,500	\$ 7,548,682	\$ 8,442,208	\$ 9,001,510
Local Operating Support	\$ 3,527,263	\$ 5,630,389	\$ 5,866,699	\$ 6,496,110	\$ 6,764,675
Capital Maintenance	\$ 933,517	\$ 1,313,636	\$ 1,656,508	\$ 1,920,623	\$ 2,211,360
Insurance	\$ 1,018,999	\$ 25,475	\$ 25,475	\$ 25,475	\$ 25,475
Seminole County	\$ 12,098,668	\$ 11,338,104	\$ 12,188,327	\$ 13,606,218	\$ 14,443,969
Local Operating Support	\$ 9,154,554	\$ 9,594,228	\$ 10,000,608	\$ 11,076,605	\$ 11,538,002
Capital Maintenance	\$ 1,208,424	\$ 1,700,484	\$ 2,144,327	\$ 2,486,220	\$ 2,862,575
Insurance	\$ 1,735,690	\$ 43,392	\$ 43,392	\$ 43,392	\$ 43,392
Orange County	\$ 9,433,404	\$ 8,011,179	\$ 8,716,769	\$ 9,758,801	\$ 10,433,425
Local Operating Support	\$ 5,981,036	\$ 6,268,824	\$ 6,534,350	\$ 7,237,402	\$ 7,538,876
Capital Maintenance	\$ 1,198,131	\$ 1,686,000	\$ 2,126,063	\$ 2,465,044	\$ 2,838,193
Insurance	\$ 2,254,237	\$ 56,356	\$ 56,356	\$ 56,356	\$ 56,356
City of Maitland LOS	\$ 1,562,831	\$ 1,638,092	\$ 1,707,477	\$ 1,891,189	\$ 1,969,967
City of Winter Park LOS	\$ 4,346,159	\$ 4,553,642	\$ 4,746,519	\$ 5,257,212	\$ 5,476,202
City of Orlando	\$ 20,208,199	\$ 18,096,519	\$ 18,984,076	\$ 21,055,337	\$ 22,020,374
Local Operating Support	\$ 16,647,279	\$ 17,448,706	\$ 18,187,775	\$ 20,144,656	\$ 20,983,784
Capital Maintenance	\$ 404,278	\$ 568,896	\$ 717,384	\$ 831,764	\$ 957,674
Insurance	\$ 3,156,642	\$ 78,916	\$ 78,916	\$ 78,916	\$ 78,916
Osceola County	\$ 12,215,300	\$ 11,178,890	\$ 11,867,567	\$ 13,204,424	\$ 13,911,839
Local Operating Support	\$ 9,675,217	\$ 10,140,045	\$ 10,569,543	\$ 11,706,754	\$ 12,194,400
Capital Maintenance	\$ 705,650	\$ 992,984	\$ 1,252,163	\$ 1,451,809	\$ 1,671,578
Insurance	\$ 1,834,433	\$ 45,861	\$ 45,861	\$ 45,861	\$ 45,861
Total	\$ 65,344,339	\$ 61,785,926	\$ 65,759,416	\$ 73,215,390	\$ 77,257,286
Local Operating Support	\$ 50,894,339	\$ 55,273,926	\$ 57,612,971	\$ 63,809,929	\$ 66,465,906
Capital Maintenance	\$ 4,450,000	\$ 6,262,000	\$ 7,896,445	\$ 9,155,461	\$ 10,541,380
Insurance	\$ 10,000,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000

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EXHIBIT "C"

PAYMENT SCHEDULE

QUARTERLY PAYMENT	AMOUNT	COMMISSION DEADLINE FOR PAYMENT
1	\$23,836,084.75	JANUARY 1, 2025
2	\$13,836,084.75	FEBRUARY 15, 2025
3	\$13,836,084.75	MAY 17, 2025
4	\$13,836,084.75	AUGUST 17, 2025

PAYMENT BREAKDOWN

QUARTERLY PAYMENT	Local Operating Support	Capital Costs	Self Insured Retention Account Funding	TOTAL
1	\$12,723,584.75	\$1,112,500.00	\$10,000,000	\$23,836,084.75
2-4	\$12,723,584.75	\$1,112,500.00	N/A	\$13,836,084.75

Exhibit "D"**SCHEDULE OF FINANCIAL PROJECT NUMBERS**

1	455872-1-82-01	26	455872-4-82-01
2	455872-1-82-02	27	455872-4-82-02
3	455872-1-82-03	28	455872-5-82-01
4	455872-1-82-04	29	455872-5-82-02
5	455872-1-82-99	30	455872-5-82-03
6	455872-2-22-01	31	455872-5-82-04
7	455872-2-22-99	32	455872-5-82-05
8	455872-2-32-01	33	455872-5-82-07
9	455872-2-32-02	34	455872-5-82-08
10	455872-2-32-99	35	455872-5-82-09
11	455872-3-82-01	36	455872-5-82-10
12	455872-3-82-02	37	455872-5-82-11
13	455872-3-82-03	38	455872-5-82-12
14	455872-3-82-04	39	455872-5-82-99
15	455872-3-82-05	40	455872-6-82-01
16	455872-3-82-06	41	455873-1-82-99
17	455872-3-82-07	42	455873-3-82-01
18	455872-3-82-08	43	455873-3-82-02
19	455872-3-82-09	44	455873-4-82-01
20	455872-3-82-10	45	455873-4-82-02
21	455872-3-82-99	46	455873-4-82-99
22	455874-1-32-01	47	455874-3-82-01
23	455874-2-32-01	48	455874-4-82-01
24	455874-1-82-01	49	455874-5-82-01
25	455874-2-82-01		

**“ATTACHMENT”
THREE PARTY ESCROW AGREEMENT**

THIS AGREEMENT is made and entered into by and between the State of Florida, Department of Transportation ("FDOT"), _____ ("Participant"), and the State of Florida, Department of Financial Services, Division of Treasury ("Escrow Agent"), and shall become effective upon the Agreement's execution by Escrow Agent.

WHEREAS, FDOT and Participant are engaged in the following project ("Project"):

Project Name:
Project #:
County:

WHEREAS, FDOT and Participant desire to establish an escrow account for the project.

NOW THEREFORE, in consideration of the premises and the covenants contained herein, the parties agree to the following:

1. An initial deposit will be made into an interest bearing escrow account established hereunder for the purposes of the Project. The escrow account will be opened with the Escrow Agent on behalf of FDOT upon Escrow Agent's receipt and execution of this Agreement.
2. Other deposits to the escrow account may be made during the life of this agreement.
3. Deposits will be delivered in accordance with instructions provided by the Escrow Agent to the FDOT for deposit into the escrow account. A wire transfer or ACH deposit is the preferred method of payment and should be used whenever possible.
4. FDOT's Comptroller or designee shall be the sole signatory on the escrow account with the Escrow Agent and shall have sole authority to authorize withdrawals from the account. Withdrawals will only be made to FDOT or the Participant in accordance with the instructions provided to the Escrow Agent by FDOT's Comptroller or designee.
5. Moneys in the escrow account will be invested in accordance with section 17.61, Florida Statutes. The Escrow Agent will invest the moneys expeditiously. Income is only earned on the moneys while invested. There is no guaranteed rate of return. Investments in the escrow account will be assessed a fee in accordance with Section 17.61(4)(b), Florida Statutes. All income of the investments shall accrue to the escrow account.
6. Unless instructed otherwise by FDOT, all interest accumulated in the escrow account shall remain in the account for the purposes of the Project.

7. The Escrow Agent agrees to provide written confirmation of receipt of funds to FDOT. FDOT agrees to provide a copy of such written confirmation to Participant upon request.
8. The Escrow Agent further agrees to provide quarterly reports to FDOT concerning the escrow account. FDOT agrees to provide a copy of such quarterly reports to Participant upon request.
9. The Escrow Agent shall not be liable for any error of judgment or for any act done or omitted by it in good faith, or for anything which it may in good faith do or refrain from doing in connection herewith.
10. Escrow Agent shall have no liability for any claim, cost, expense, damage or loss due to the acts or omissions of FDOT and Participant, nor from any separate agreements between FDOT and Participant and shall have no responsibility to monitor or enforce any responsibilities herein or in any separate agreements associated with this Agreement between FDOT and Participant.
11. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida.
12. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. This Agreement shall terminate upon disbursement by the Escrow Agent of all money held by it in the escrow account in accordance with the instructions given by FDOT's Comptroller or designee and notification from FDOT to Escrow Agent that the account is to be closed.

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IN WITNESS WHEREOF, the parties have duly executed the Agreement on the date(s) below.

For FDOT-OOC (signature)

For PARTICIPANT (signature)

Name and Title

Name and Title

59-3024028

Federal Employer I.D. Number

Federal Employer I.D. Number

Date

Date

FDOT Legal Review:

For Escrow Agent (signature)

Name and Title

Date