

**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: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by Viviana Janer, 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 _____ as identification and did/did not (circle one) take an oath.



(NOTARY PUBLIC)

Notary Public, State of Florida

Name: _____

Notary Commission No. _____

My Commission Expires: _____

Signed, sealed, and delivered
in the presence of:

Print Name: _____

Print Name: _____

ESCROW AGENT:

SEMINOLE COUNTY CLERK OF THE
CIRCUIT COURT AND COMPTROLLER

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

Date: _____



EXHIBIT A

