

## **Florida Regional High Speed Rail System Construction Project (“Project”)**

This shall serve to summarize the basis on which we propose to create an interlocal Entity (“**Entity**”) for the purpose of completing the design, planning, construction, operation and maintenance of the above-referenced Project.

The four key elements of the proposal are:

I. The State of Florida and the local governments creating the Entity shall have no liability for the Project. The Entity shall be non-recourse as to the state and the local government members. The Entity shall be established by interested local governments, with initial membership by City of Orlando, City of Tampa, City of Lakeland, and City of Miami.

II. Florida DOT shall provide interim assistance to ensure continuity in project development and the construction and bid award process until and to the extent required to allow development of a transition plan to be agreed upon by the Entity, FDOT and USDOT to transfer all development and construction responsibility to the entity.

III. The Entity will issue the RFQ and RFP pursuant to the requirements and selection process already developed by the FDOT.

IV. For the Project to proceed to construction, the Constructing Entities/Vendor must be willing and able to demonstrate that it can meet the financial obligations required to ensure completion of construction of the Project, guarantee operation for the term of the concession, and meet all grant requirements, without any additional public funding.

These elements are described in additional detail below.

### **I. The State of Florida Shall Have No Liability and the Entity Created Shall be Non-Recourse.**

A. Neither the State of Florida nor any of its departments, agencies or affiliates shall have any liability whatsoever for the costs, fees, expenses or general liability associated with the design, planning, construction, operation or maintenance of the Project. The State and State entities shall have no liability for: (i) the costs of construction, including any cost overruns (“**Cost Overruns**”); (ii) operating cost shortfalls for the operation of the system for the first thirty (30) years of its operation (“**Operating Shortfalls**”); and (iii) any obligation to pay back to the funding source or any other lender, any money provided for the Project, due to the failure of the performance conditions to be met in full (“**Refund Payments**”).

B. The Entity will be created pursuant to the requirements of Chapter 163, Florida Statutes, and will serve as the funding recipient and project manager for the Project, subject to the terms, provisions and conditions contained herein, including the

participation, direction and oversight by Florida Department of Transportation (“**FDOT**”) and the United States Department of Transportation (“**USDOT**”) as outlined in paragraph II. H below.

C. The Entity will be comprised of the City of Orlando, City of Tampa, City of Lakeland, and City of Miami and such other local governments or other qualified entities under Section 334.03(14), Fla. Stat. as may be necessary to complete the Project pursuant to the terms hereof.

D. The Entity shall be non-recourse as to its members and the State of Florida. No other public agency will be liable for the costs of completing the Project or any Cost Overruns, Operating Shortfalls or Refund Payments. All such costs, fees and expenses and general liability of Cost Overruns and Operating Shortfalls shall be passed on to and guaranteed by the winning bidder selected from a concurrence of bidders from the private sector to complete the Project (hereinafter “**Vendor**”) pursuant to a Request for Qualification (“**RFQ**”) process. USDOT shall waive any right to Refund Payments. The Entity will be responsible to disburse the funds provided to it through the grant and subgrant agreements for the purpose of completing the Project, all as provided herein and any documents executed in furtherance hereof (“**Project Documents**”).

E. The Project Documents shall provide that the Entity will look strictly to the Vendor awarded the bid for the design, construction, operation and maintenance of the Project for the payment of all costs, fees, expenses and general liability associated therewith.

F. The Entity shall obtain appropriate assurances from the Vendor of its ability to guarantee complete construction of the Project including a surety bond, letter of credit or other form of reasonably acceptable financial guarantees, or whatever other assurances, pledges and guarantees deemed necessary to the satisfaction of the FDOT and USDOT, as same shall be incorporated into the bid documents (“**Bid Documents**”), regarding the capacity of the Vendor to complete the Project in a lien free and liability free manner and to guarantee funding of any Operating Shortfalls.

## II. Cooperative Project Management.

A. The Project shall be let and completed in the same manner as currently planned by the FDOT, which shall include oversight responsibility in the same manner as a typical FDOT project, governing the implementation planning, design, location, bid award, construction, maintenance and operation of the Project and attendant Project Documents, all as spelled out in the subgrant agreement.

B. The FDOT will provide assistance and support and will assign to the Entity all items relevant for carrying out the completion of the Project including but not limited to: the design documents, all research, permits obtained and applications submitted.

C. The operation of the Entity and the design, planning, construction and operation of the Project shall be consistent with and subject to all applicable statutory requirements.

D. The FDOT will assign to the Entity, all rights-of-way access and all rights and property necessary to construct in the rights-of-way as may be needed in order to fully complete and operate the Project in the manner contemplated.

E. At all times and in all instances, FDOT shall fully cooperate and expedite any and all necessary reviews and approvals, including but not limited to, any plans, documents, agreements, permits, and any other actions required or convenient for use of rights-of-way, access to rights-of-way, maintenance of traffic, and relocation of utilities.

F. The USDOT requirements and the terms, conditions and provisions associated with the grant money shall be complied with at all times and to the extent necessary such compliance shall be set out clearly in the Bid Documents and included in the Project Documents.

G. The Project will comply with all federal and Florida high speed rail statutory and regulatory requirements, including but not limited to Florida Rail Enterprise Act, all as amended from time to time.

H. FDOT involvement in the Project will continue on a reimbursable fee for service basis until the earliest practicable time that FDOT, USDOT and the Entity agree to a transition plan assuring that continued FDOT involvement is no longer required for the successful completion of the Project.

### III. **Construction and Bid Award Requirements.**

A. The Entity will issue the RFQ, pursuant to the requirements already developed by the FDOT and other comment, review and direction provided by FDOT and USDOT. All such surviving requirements shall be included in the Bid Documents so that the winning Vendor can understand the applicable requirements.

B. The contract between the Entity and the Vendor will include the right to relocate utilities and other assets within the rights-of-way and the FDOT shall control the issuance of any additional utility agreements.

### IV. **Selection of the Project Vendor.**

A. As indicated above, the Project Vendor selected to complete the design, construction, location, maintenance and operation of the high speed rail system must meet any criteria established by FDOT and USDOT for demonstration of sufficient financial capability to complete the Project and meet all of the requirements necessary to cover any Cost Overruns, Operating Shortfalls, Refund Payments, or any other costs, fees and expenses necessary to complete the Project and render it fully operational.

B. The Project Vendor shall also provide a guarantee, indemnification and if necessary, financial assurances to the reasonable satisfaction of FDOT and USDOT that it will be able to cover any such Cost Overruns, Operating Shortfalls or Payment Refunds.

C. As part of the consideration for the Project Vendor assuming all the financial liabilities as set forth herein, the Project Vendor shall be awarded a right of first refusal (“ROFR”) on any additional construction to be associated with or linked with the first segment being constructed pursuant to this agreement.

V. **Miscellaneous.**

A. Any and all other agreements including the delegation to the Entity or authorization of it by FDOT to construct a high speed rail system pursuant to the requirements of Chapter 341.8225 or other applicable statute or legal requirements shall be subject to review and approval by FDOT and USDOT.

B. The Entity shall provide any further assurances as may be required by FDOT and USDOT in order to fully carry out the completion of the Project as summarized herein.